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CHEMICAL WEAPONS CONVENTION

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

APRIL 8, 9, 15 AND 17, 1997

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CHEMICAL WEAPONS CONVENTION

TUESDAY, APRIL 8, 1997—A.M. SESSION

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m. in room SD–419, Dirksen Senate Office Building, Hon. Jesse Helms (chairman of the committee) presiding.

Present: Senators Helms, Lugar, Hagel, Smith, Thomas, Ashcroft, Grams, Brownback, Biden, Sarbanes, Dodd, Kerry, Robb, Feingold, Feinstein, and Wellstone.

The CHAIRMAN. The committee will come to order.

I believe it is customary to wait until there is at least one Senator from each party present.

I would inquire of the minority counsel.

Can you give us some advice as to whether Senator Biden would wish us to proceed?

I might explain to our distinguished guests this morning—and, as a matter of fact, everybody here is a distinguished guest as far as I am concerned—as I just said, it is a tradition, in this committee, at least, to have at least one Senator from each party present before the proceeding begins.

Senator Biden is on a train coming in from Delaware, and I am seeking information as to whether it would be his wish that we proceed without him until he gets here.

I am told that it is satisfactory with Senator Biden that we do proceed.

As is obvious, this morning's hearing is the first of the Foreign Relations Committee's final round of testimony on the Chemical Weapons Convention, or that's right.

I think it is fair to say that history is being made here this morning and I believe today is the first time that three distinguished, former U.S. Secretaries of Defense have ever appeared together before a Senate committee to oppose ratification of an arms control treaty. And if ever a treaty deserved such highly respected opposition, it is the dangerous and defective so-called Chemical Weapons Convention.

This morning's witnesses include Hon. James Schlesinger, Secretary of Defense for President Nixon, Hon. Donald Rumsfeld, Secretary of Defense for President Ford, and Hon. Caspar Weinberger, Secretary of Defense for President Reagan.

Further, we will have testimony today in the form of a letter from Hon. Richard Cheney, Secretary of Defense for the Bush administration. Secretary Cheney's schedule precluded him from

being here in person today. But he has asked Secretary Schlesinger to read into the record Secretary Cheney's strong opposition to Senate ratification of the Chemical Weapons Convention.

So with Secretary Cheney's contribution, this hearing will consist of testimony by and from Defense Secretaries of every Republican administration since Richard Nixon, testimony that will counsel the Senate to decline to ratify this dangerously defective treaty.

These distinguished Americans are by no means alone. More than 50—more than 50—generals, admirals, and senior officials from previous administrations have joined them in opposing the Chemical Weapons Convention, and if that does not send a clear signal on just how dangerous this treaty really is, I cannot imagine what would.

So, gentlemen, we welcome you and deeply appreciate your being here today to testify. I regret that we cannot offer you the pomp and circumstance of the Rose Garden ceremony last week, but our invitation to be there got lost in the mail somehow.

Your testimony here today will convey to the American people highly respected assessments of this dangerous treaty.

Now our precise purpose today is to examine the national security implications of the CWC which is important because the 105th Congress has 15 new Senators, including three new and able members of this committee who have never heard testimony on this treaty.

The case against the treaty can be summarized quite simply, I think. It is not global, it is not verifiable, it is not constitutional, and it will not work. Otherwise, it is a fair treaty.

The Chemical Weapons Convention will do absolutely nothing to protect the American people from the dangers of chemical weapons. What it will do is increase rogue regimes' access to dangerous chemical agents and technology while imposing new regulations on American businesses, exposing them to increased danger of industrial espionage and trampling their constitutional rights. Outside of the Beltway, where people do not worship at the altar of arms control, that is what we call "A bum deal."

We have been hearing a lot of empty rhetoric from the proponents of the treaty about "banning chemical weapons from the face of the earth." This treaty will do no such thing. No supporter of this treaty can tell us with a straight face how this treaty will actually accomplish that goal.

The best argument they have mustered to date is yes, it is defective, they say, but it is better than nothing.

But, in fact, this treaty is worse than nothing for, on top of the problems with the CWC's verifiability and constitutionality, this treaty gives the American people a false sense of security that something is being done to reduce the dangers of chemical weaponry when, in fact, nothing—nothing—is being done. If anything, this treaty puts the American people at greater risk.

More than 90 percent of the countries possessing chemical weaponry have not ratified the CWC, and more than one-third of them have not even signed it. This includes almost all of the terrorist regimes whose possession of chemical weapons does threaten the United States, countries like Libya, Syria, Iraq, and North Korea.

Not one of them—not one of them—is a signatory to this treaty and none of them will be affected by it.

Worse still, this treaty will increase access to dangerous chemical agents and technology to rogue states who do sign the treaty. Iran, for example, is one of the few nations on this earth ever to use chemical weapons. Yet Iran is a signatory of the CWC.

I am going to stop with the rest of my prepared statement today so that we can get to our witnesses, which is what you are here for.

But I want to say, once more, that I ask the American people not to take my word for anything that I am saying. I ask the American people to consider the judgments of these distinguished former Secretaries of Defense who oppose the CWC.

I am looking forward to hearing from them about the treaty's scope, verifiability, about its Articles X and XI, and the assessment of our distinguished witnesses about the overall potential impact of this treaty on America's national security.

That said, we turn to the witnesses.

Secretary Schlesinger, we call on you first.

[The prepared statement of The Chairman follows:]

PREPARED STATEMENT OF CHAIRMAN HELMS

This morning's hearing is the first of the Foreign Relations Committee's final round of testimony on the Chemical Weapons Convention. I think it is fair to say that history is being made this morning. I believe today is the first time that three distinguished former United States Secretaries of Defense have ever appeared together before a Senate committee to oppose ratification of an arms control treaty. And if ever a treaty deserved such highly respected opposition, it is the dangerous and defective Chemical Weapons Convention.

This morning's witnesses include the Honorable James Schlesinger, Secretary of Defense for President Nixon; the Honorable Donald Rumsfeld, Secretary of Defense for President Ford; and the Honorable Casper Weinberger, Secretary of Defense for President Reagan.

Further, we will have testimony today, in the form of a letter from the Honorable Richard Cheney, Secretary of Defense for the Bush Administration. Secretary Cheney's schedule precludes him from being here in person today, but he has asked Secretary Schlesinger to read into the record Secretary Cheney's strong opposition to Senate ratification of the Chemical Weapons Convention.

So with Secretary Cheney's contribution, this hearing will consist of testimony by and from defense secretaries of every Republican administration since Richard Nixon—testimony that will counsel the Senate to decline to ratify this dangerously defective treaty. These distinguished Americans are by no means alone. More than 50 generals, admirals, and senior officials from previous Administrations have joined them in opposing the Chemical Weapons Convention. If that doesn't send a clear signal of just how dangerous this treaty really is, I can't imagine what would.

So, gentlemen, we welcome you and deeply appreciate your being here today to testify. I regret we cannot offer you the pomp and circumstance of a Rose Garden ceremony, but your testimony here today will convey to the American people highly respected assessments of this dangerous treaty.

Our precise purpose today is to examine the national security implications of the CWC. This is important because the 105th Congress has 15 new Senators, including three new and able members of this committee, who have never heard testimony on the treaty.

The case against this treaty can be summarized quite simply: It is not global, it is not verifiable, it is not constitutional, and it will not work.

The Chemical Weapons Convention will do nothing to protect the American people from the dangers of chemical weapons. What it will in fact do is increase rogue regimes' access to dangerous chemical agents and technology, while imposing new regulations on American businesses, exposing them to increased danger of industrial espionage, and trampling their Constitutional rights. Outside the beltway, where people don't worship at the altar of arms control, that's what we call a bum deal.

We have been hearing a lot of empty rhetoric from proponents of this treaty about "banning chemical weapons from the face of the earth." This treaty will do no such thing. No supporter of this treaty can tell us, with a straight face, how this treaty will actually accomplish that goal.

The best argument they have mustered to date is: Yes, it is defective, but it is better than nothing.

But in fact, this treaty is much worse than nothing. For, on top of the problems with the CWC's verifiability and constitutionality, this treaty gives the American people a false sense of security that something is being done to reduce the dangers of chemical weapons, when in fact nothing is being done. If anything, this treaty puts the American people at greater risk.

More than 90 percent of the countries possessing chemical weapons have not ratified the CWC, and more than one third of them have not even signed it. That includes almost all of the terrorist regimes whose possession of chemical weapons does threaten the United States—countries like Libya, Syria, Iraq, and North Korea. Not one of them is a signatory to this treaty. And none of them will be affected by it.

Worse still, this treaty would increase access to dangerous chemical agents and technology by rogue states who do sign it. Iran, for example, is one of the few nations on the earth ever to use chemical weapons. Yet Iran is a signatory to the CWC.

Why, you may ask, why does Iran support the treaty? Because by joining the CWC, Iran can demand access to chemical technology of any other signatory nation—including the United States, if the U.S. Senate were to make the mistake of ratifying it. In other words, Iran will be entitled to chemical defensive gear and dangerous dual-use chemicals and technologies that will help them modernize their chemical weapons program.

Giving U.S. assent to legalizing such transfers of chemical agents and technology to such rogue nations is pure folly, and will make the problem of chemical weapons more difficult to constrain, not less.

For example, if the U.S. were to protest a planned sale of a chemical manufacturing facility by Russia to Iran, under the CWC Russia could argue that not only are they permitted to sell such dangerous chemical technology to Teheran, but they are obliged to do so—by a treaty the U.S. agreed to. Because Iran's terrorist leaders have promised to get rid of their chemical weapons.

Is it possible for the United States to verify whether Iran will be complying with its treaty obligations? Of course not. Even the administration admits that this chemical weapons treaty is unverifiable.

President Clinton's own Director of Central Intelligence, James Woolsey, declared in testimony before this committee on June 23, 1994, that, and I quote, "the chemical weapons problem is so difficult from an intelligence perspective, that I cannot state that we have high confidence in our ability to detect noncompliance, especially on a small scale.

So in other words, under this treaty, the American people will have to take the Ayatollahs' word for it.

And what about Russia—the country possessing the largest and most sophisticated chemical weapons arsenal in the world? Russia has made perfectly clear it has no intention of eliminating its chemical weapons stockpile. In fact, Russia is already violating its bilateral agreement with the U.S. to get rid of these terrible weapons; It has consistently refused to come clean about the true size of its chemical weapons stockpile; and Russia continues to work on a new generation of nerve agents, disguised as everyday commercial or agricultural chemicals, specifically designed to circumvent this chemical weapons treaty that the Clinton Administration is pulling out all the stops to force the Senate to ratify.

All this, sad to say, is just the tip of the iceberg in terms of what's wrong with this treaty. There is a whole array of other problems which I hope we can discuss today. But I think it borders on fraudulent to mislead the American people, as so many other treaty proponents have, into to believing that their lives will somehow be made safer if this treaty is ratified—and that their safety is being put at risk if the Senate refuses to be stampeded by Rose Garden ceremonies and high-pressure tactics.

But I ask the American people not to take my word for it. I ask all Americans to consider the judgments of these distinguished former Secretaries of Defense who oppose the CWC. I am looking forward to hearing from them about the treaty's scope, verifiability, its Articles X and XI, and the assessment of our distinguished witnesses about the overall potential impact of this treaty on America's national security.

STATEMENT OF HON. JAMES R. SCHLESINGER, FORMER SECRETARY OF DEFENSE

Dr. SCHLESINGER. Thank you, Mr. Chairman.

At the outset, I will allow Secretary Cheney to join us vicariously. He has sent a letter, as you indicated, and I shall read it into the record.

This letter is dated April 7, from Dallas, Texas.

Hon. JESSE HELMS,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman. Thank you for your letter inviting me to join several other former Secretaries of Defense in testifying in early April when the Foreign Relations Committee holds hearings on the Chemical Weapons Convention. Regrettably, other commitments will preclude me from participation. I hope that this correspondence will be sufficient to convey my views on this convention.

During the years I served as Secretary of Defense, I was deeply concerned about the inherent unverifiability, lack of global coverage, and unenforceability of a convention that sought to ban production and stockpiling of chemical weapons. My misgivings on these scores have only intensified during the 4 years since I left the Pentagon.

The technology to manufacture chemical weapons is simply too ubiquitous, covert chemical warfare programs too easily concealed, and the international community's record of responding effectively to violations of arms control treaties too unsatisfactory to permit confidence that such a regime would actually reduce the chemical threat.

Indeed, some aspects of the present convention—notably its obligation to share with potential adversaries, like Iran, chemical manufacturing technology that can be used for military purposes and chemical defensive equipment—threaten to make this accord worse than having no treaty at all. In my judgment, the treaty's Articles X and XI amount to a formula for greatly accelerating the proliferation of chemical warfare capabilities around the globe.

Those nations most likely to comply with the Chemical Weapons Convention are not likely to ever constitute a military threat to the United States. The governments we should be concerned about are likely to cheat on the CWC even if they do participate.

In effect, the Senate is being asked to ratify the CWC even though it is likely to be ineffective, unverifiable, and unenforceable. Having ratified the convention, we will then be told we have "dealt with the problem of chemical weapons" when, in fact, we have not. But ratification of the CWC will lead to a sense of complacency, totally unjustified given the flaws in the convention.

I would urge the Senate to reject the Chemical Weapons Convention.

Sincerely,

DICK CHENEY.

The CHAIRMAN. Thank you, sir.

Dr. SCHLESINGER. Mr. Chairman, members of the committee, I thank the committee for its invitation to testify today on the ratification of the Chemical Weapons Convention. I must at the outset underscore my belief that the proper criterion for judging the convention is whether or not it is in the interest of the United States and whether or not it will serve the long-run purposes of the American people. It should not be approved simply for reasons of diplomatic momentum or a gesture toward multilateralism, but as a treaty with which this Nation must live.

Mr. Chairman, I start with the interesting and somewhat checkered history of efforts at the control of chemical weapons. The introduction of poison gas in World War I and then its widespread use in the later stages of that war led to a horrified reaction. That reaction, plus the unease concerning its subsequent use by colonial powers, led to the Geneva Convention in 1925, which forbids the use of poison gas by all signatories.

In the period prior to World War II, the European powers carefully prepared for the possible use of poison gas. In the actual circumstances of the war, however, the German decision to refrain from using poison gas came not for humanitarian reasons, not for reasons of the treaty, which German diplomats might well have described as "a scrap of paper," but out of concern for the threat of devastating retaliation by the Western allies.

Iraq has been and is a signatory to the Geneva Convention. In the Iran-Iraq war of the 1980's, Iraq used poison gas as a way of stemming the "human wave" attacks of the Iranians. What was our reaction and the reaction of other Western powers at that time? In brief, it was to avert our gaze.

Later, as the war died down, Saddam Hussein used gas against Iraq's Kurds. This time, however, the response was slightly more vigorous. An international gathering took place in Paris in January 1989. Not only did the international community fail to denounce Iraq, most participants were reluctant even to name Iraq for using gas. Our own reaction, was to say the least, somewhat muted. After all, Iraq provided protection in the Gulf against the Ayatollah's Iran. For what were regarded as sound geopolitical reasons, we failed to take action to sustain the existing prohibition on the use of poison gas by a signatory—despite Iraq's blatant violation of the Geneva Convention. This manifest failure of the existing arms control regime did stimulate renewed efforts on the Chemical Weapons Convention that lies before you. Aha! Perhaps if we were unwilling to enforce the existing ban on the use of poison gas, we might be more willing to take strong actions against its manufacture.

Would we actually do more in enforcement when the evidence is far more ambiguous and the menace more distant? The use of poison gas is readily detectable; manufacture is not. Tapes and photographs were widely available of Kurdish women clutching their children to their breasts in the vain attempt to protect them against the gas. And yet we did nothing—for then it was not regarded as in our interest to intervene.

By contrast, in the Gulf War, Saddam Hussein did not use poison gas against our troops. In the famous letter from President Bush to Saddam Hussein in early 1991 in which we demanded Iraq's withdrawal from Kuwait, we reminded Saddam that the United States had nuclear weapons. As Secretary Baker has said, we also, "made it very clear that if Iraq used weapons of mass destruction, chemical weapons against U.S. forces, that the American people would demand vengeance and that we had the means to achieve it."

What are the lessons learned from these episodes? Treaties alone will do little. To prevent the use or the manufacture of chemical weapons requires a structure for deterrence backed by real capabilities. Above all, enforcement will depend upon the will to take action which, if history is any guide, will in turn depend upon a careful geopolitical assessment.

Mr. Chairman, let me turn from history to specific problems in this convention. In this brief statement, I can only deal with five problem areas. Nonetheless, I would hope that the members of this committee and your colleagues in the Senate receive clear reassurance in these areas before you approve the convention.

First is non-lethal chemicals. Non-lethal chemicals are necessary for crowd control, for peacekeeping, for rescuing downed pilots and the like. In the negotiations on the convention, we were pressed to ban non-lethal chemicals along with lethal chemicals. President Bush, under pressure from the Joint Chiefs of Staff, reiterated prior American policy and indicated that use of riot control agents would not be banned. The Clinton administration has been far more ambiguous on this subject, retreating from President Bush's stated exclusion. Sometime it has suggested that such agents could be used in peacetime but not in wartime. That raises the question of defining when the Nation is at war. Was the Vietnam War a war?

Just 2 days ago, the *New York Times* stated that the administration "has also refused to interpret the treaty in a way that would allow the use of tear gas for crowd control, mainly because the Pentagon has said it has no need to ever use non-lethal gases."

If the latter is true, it represents a remarkable transformation of Pentagon attitudes, and I recommend that you check this out. The first part of the quotation reflects the continuing ambivalence of the administration on the question of non-lethal chemicals. I trust that the Senate will seek clarification of the administration's position and indeed insist that the use of tear gas will not be banned either in peace or war. Otherwise, we may wind up placing ourselves in the position of the Chinese Government in dealing with the Tiananmen Square uprising in 1989. The failure to use tear gas meant that that government only had recourse to the massive use of firepower to disperse the crowd.

Second is sharing CW technology. Article X of the treaty requires that signatories have a right to acquire CW defensive technologies from other signatories. This may mean that the United States is obliged to share such technologies with Iran, Cuba, and other such nations that may sign the convention. Almost certainly that interpretation will be argued by lawyers in the government. But, even if the Senate were able to prevent such obligatory transfers, it is plain that Article X legitimizes such transfers by other industrial nations which will argue they are obliged to do so by the treaty.

Clearly, that undercuts any sanctions directed against rogue nations that happen to sign the convention. And, in any event, there are still other states that do not agree with our judgments in these matters and will acquire such chemical warfare defensive technologies and will share such technologies with rogue nations whether signatories or not.

Third is the defense against chemical weapons. Continued and vigorous efforts to develop chemical weapons defenses are required. In the years ahead, various groups, inclined to fanaticism, are likely to use chemical weapons as instruments of sabotage or terrorism. Aum Shin Rikyo, the Japanese religious cult, is but a prototype of these other terrorist groups. To deal with such prospective attacks, it is essential to have continuing efforts on defensive measures to protect our civilian population as well as our forces.

In this connection, two points must be made. First, the illusion that this convention will provide protection against chemical weapons will tempt us to lower our guard and to reduce our efforts on defensive CW measures. Such temptations should be formally re-

jected through safeguards. Second, the sharing of technologies required by Article X will provide other nations with the information that will help to neutralize our chemical weapons defenses and, thus, expose us to greater risk.

Fourth is industrial espionage. The convention permits or encourages challenge inspections against any facility deemed capable of producing chemical weapons—indeed against any facility. This exposes American companies to a degree to industrial espionage never before encountered in this country. This implies the possibility of the capture of proprietary information or national security information from American corporations by present or by prospective commercial rivals. To preclude such intrusive inspections requires the vote of three-quarters of the Executive Council of the Organization for the Prohibition of Chemical Weapons. Such super majority votes are unlikely to be forthcoming and will grow less so over time.

The committee may wish to inquire how FBI counter intelligence feels about these arrangements.

Mr. Chairman, I trust that the committee will delve deeply into this issue because scuttlebutt has it that the White House has indicated to senior FBI officials that they are to say nothing against this treaty. Consequently, you may wish to examine not only present but former counter intelligence officers.

The CHAIRMAN. We will. Thank you.

Dr. SCHLESINGER. This convention is sometimes compared to the arrangements under the Atoms for Peace Agreement. But it should be noted that few of the several mechanisms that provide protection in the nuclear area exist under this convention.

Five is how do we respond to violations. Is the convention something more than a feel good treaty? Is it more meaningful than the more explicit and more relevant ban on use in the Geneva Convention? If so, what is its operational significance? Last April, Secretary Perry, reiterating some of the warnings of President Bush and Secretary Baker to Saddam Hussein stated, "Anyone who considers using a weapon of mass destruction against the United States or its allies must first consider the consequences. We would not specify in advance what our response would be, but it would be both overwhelming and devastating."

Administration officials have more recently reiterated that threat. Does this convention oblige us to take actions beyond attacks on ourselves or on our allies? Are we prepared to take action if Iran attacks Tajikistan or even uses gas against its own minorities? If Syria, or Saudi Arabia, or Israel, or South Africa manufactures gas, what are we prepared to do? What actions would we take if we discover that Russia, or Ukraine, or China is engaged clandestinely—or openly—in the manufacture of gas?

As the leading world power and as the initial sponsor of this convention, the United States bears a particular responsibility for those signatories who have foregone the right of direct retaliation and who lack the American capacity for a response, both "overwhelming and devastating." The role of the United States visibly transcends that of the Netherlands, or of Sweden, or of other nations that are prepared to sign the convention. I trust, therefore, that this committee will press for clear answers regarding how we

might feel obliged to respond in different hypothetical circumstances.

Mr. Chairman, as this committee proceeds with its deliberations, I trust that it will carefully examine some of the exaggerated or false claims that have been made on behalf of the convention. This treaty will not serve to banish the threat of chemical weapons. It will not aid in the fight against terrorism. Only effective police work will accomplish that.

As the Japanese cult, Aum Shin Rikyo, has demonstrated, a significant volume of lethal nerve gas can be produced in a facility as small as 8 feet by 15 feet. Increasingly, are we aware how vulnerable this Nation may be to terrorist attacks, and this treaty will do little to limit such vulnerability. Nor will this treaty "provide our children broad protection against the threat of chemical attacks." Such statements merely disguise and, thereby, increase our vulnerability to terrorist attacks. To the extent that others learn from international sharing of information on CW defenses, our vulnerability is enhanced rather than diminished.

Finally, this treaty in no way helps "shield our soldiers from one of battlefield's deadliest killers." As indicated earlier, only the threat of effective retaliation provides such protection. That we would respond in the event of an attack on our troops has great credibility and, thus, serves as an effective deterrent. The Chemical Weapons Convention adds no more to this protection of our troops than did the Geneva Convention.

Mr. Chairman, some treaty proponents, while conceding the lack of verifiability, the lack of broad enforceability, and the other inherent weaknesses of the convention, suggest that it should be ratified because whatever its weaknesses, it serves to establish "international norms." If Senators are moved by that last ditch defense of the convention, they should vote for ratification. I urge, however, that Senators bear in mind that most nations do not care a figure for "international norms," and we already have the Geneva Convention as a norm, regularly violated. And they remain relatively free to violate this norm with relative impunity since the treaty is difficult to verify and more difficult to enforce.

Proponents have simply ignored the evidence of the past failure to control chemical weapons and have proceeded blithely with a renewed effort at control which disregards the ambiguity and the ineffectiveness of the control mechanism. In the rather forlorn hope to preclude the employment of chemical weapons, they have produced an agreement with an illusory goal and a rather gargantuan and worrisome enforcement mechanism. The manifold weaknesses of the proposed convention deserve careful attention from every member of the Senate.

Thank you, Mr. Chairman. I shall be pleased later to respond to any questions the committee may have.

The CHAIRMAN. Thank you, Mr. Secretary. Mr. Weinberger.

STATEMENT OF HON. CASPAR WEINBERGER, FORMER SECRETARY OF DEFENSE

Mr. WEINBERGER. Mr. Chairman and Senators, it is always an honor to appear before a committee of the U.S. Senate and I am deeply appreciative of that this morning.

I think that both your Chairman's statement and Secretary Schlesinger's very impressive statement also, both together, set out the basic reasons why I think all of us on this Secretary of Defense panel feel so strongly that this treaty should not be ratified.

I would like to make a couple of points at the beginning because it is the common practice now for opponents of anything that is desired by the White House to be painted in as unenviable a position as possible. I would like to make it clear that everybody I know detests chemical weapons, particularly soldiers.

I have some small personal experiences I might share with you. They stem mainly from the fact of my extreme age. The fact is that, during World War II, I had been assigned to the Australian Anti-Gas School. The Australians used very spartan methods and very rigorous methods of instructing, and they instructed by showing us the actual effects on our own persons of mustard gas, a blister agent. They gave us all kinds of information with respect to the required defense and defensive equipment.

I was then later appointed one of the gas defense officers to the 41st Infantry Division, conducted a lot of training with the soldiers in the gas protective equipment which, as anybody who served in the armed forces knows, is extremely difficult to operate in, and this leads, without any question whatever, to this detestation of these weapons.

So people who oppose this treaty are not people who favor poison gas. I think it is important to make that rather obvious point at the beginning because we have heard so much about the motives of opponents of this treaty. My motive is the security of the United States, with which I had the honor to be associated for 7 years as Secretary, and which I think, as a country, should be maintained, even in the face of very strong support of a treaty which purports to outlaw and ban the production of these terrible weapons.

Everybody likes the aims of the treaty. Everybody will admit, I think, that it is a well intentioned treaty. Everybody that I know including many of the proponents, admit that it is a very badly flawed treaty, and it is with those flaws that I am concerned today.

Primarily the flaws, as Secretary Schlesinger just mentioned, are that it cannot be verified and it cannot be enforced. The enforcement mechanism involves going to the United Nations Security Council, of which Russia and China are members. It does not require a very big stretch of the imagination to indicate that they would probably veto any kind of enforcement action proposed against them.

So you would have not only the lack of verifiability, you would have, very much like with the Geneva Convention, a very nice statement of the proper intentions of humankind which simply cannot be enforced and which basically, sadly, accomplish nothing.

Now there has been a great deal of discussion also about the enforcement mechanisms, the international inspectors and what they can do and their powers. This is not just academic discussion, Mr. Chairman. These inspectors, under this treaty, under Articles X and XI, would have powers that basically American enforcement agents do not. Even the IRS and even the Department of Justice cannot wander around the country without search warrants and demand to see anything they want to see in thousands of factories.

There are varying estimates of the number of factories and commercial plants involved, but they are all in the thousands. I won't attempt to say which one is right or wrong, but they are in the thousands. The treaty gives the right to these inspectors to see what they want to do, to make analyses and tests, and the other articles of the convention require that we share any late technologies we might develop—and we should be working on them; I hope we are; we always used to—defensive technologies to improve the masks, the protective equipment, and all of the other things.

As we make some progress in this field, that would have to be shared and, therefore, would be, consequently, far less valuable, to put it mildly, in the event that any of our troops should be attacked with a gas attack.

These inspections are a two-way street in some ways. We have the right of inspection under what I consider to be the worst appeasement agreement we have signed and that has been presented since Munich, and that is the North Korean Agreement under which we promised to give them two very large nuclear reactors which can produce plutonium—although it is always said not to worry, they can't. But, of course, they can. And we are permitted also to have all kinds of inspection under that appeasement agreement.

We have not been granted this to the extent that we need it. What we are allowed is to go where North Korea wants us to go. It's exactly as with the agreement with Iraq that ended that war. We are permitted to go where the Iraqis let us go and after long delays in which they are given the opportunity to remove any incriminating kinds of evidence.

That is one way that these inspections can work, and those would be probably the ways that countries like Iran, that have signed the agreement, would interpret it.

But the permitted inspections and the way we would do it, because we carry out our word as a country and we do allow these things once we sign an agreement, would be as intrusive as anything previously imagined and far more intrusive than our own officials are allowed under our own laws to investigate violations of American law.

Jim Schlesinger has covered very adequately and thoroughly the industrial espionage problems that are involved in this and in the sharing of these not only offensive, but defensive technologies that we may be working on. And it is important that we work on these defensive technologies because, even if all the countries sign this agreement, the possibilities that it would be treated as Geneva is always treated are always there. Indeed, we know that Iraq is stockpiling this VX nerve agent, which is a rather nasty piece of equipment, and Russia has been developing the nerve agent A–223, which is purported to be something like 7 times as fatal as the VX nerve agent. These are things that are going on now, after these treaties have been signed and while the whole discussion is there.

The idea that these countries would give up these newly developed agents on which they spent a great deal of money, some of it, in Russia's case, our money that we sent over for economic development, does not seem to me to be very credible.

The requirement that we share all of these technologies also would remove any kind of deterrent capability that we might have if we carry out the treaty in full. And one of the deterrent capabilities is retaliation.

We have had many indications not only in World War II but in the Gulf and elsewhere, that the fact that we were spared a chemical attack there simply stems from the ability that we would have to retaliate. If we give up that retaliatory capability, along with all but four or five nations, the four or five nations would still not be nearly as worried about launching an attack as they were in the case of the Gulf War.

We already know that there is at least a possibility. We don't know it and I would not claim it as a fact, but there is at least a possibility that Iraq's storage of these chemical weapons is resulting in disease and illness to American forces now. People talk about who is to blame and all of that. The only important issue, I think, there is that we should remember, and I hope we always will, that we have an absolute obligation to take care of these people who did fall ill from whatever cause in that war for the rest of their lives and take care of their families. I hope we are prepared to honor that.

All of these are things that have happened with nations that have either signed or refused to sign the treaty. Iran is one that has signed. Iran, therefore, would be able to see and inspect any one of several thousand companies. They would have to share their technologies and we, as a country, would have to share our technologies with Iran.

Strong supporters of the treaty, including General Schwarzkopf, when reminded of the fact, when asked if that is what he really wanted, said of course not. He said the worst thing in the world would be to share any knowledge with a country like Iran in this field.

So there has been, I think, a lack of understanding, and I congratulate the committee on holding these hearings, because I hope that we can get a full understanding of how a well intentioned treaty, the goals of which everybody of course supports, cannot possibly reach those goals if we are going to have the kind of provisions that remain in this treaty.

We also have a situation in which we are repeatedly told that the April 29 deadline must be met, otherwise we will have no influence in administering the treaty. Mr. Chairman, we are going to bear 25 percent of the cost of this treaty, and I suspect any 25 percent owner, so to speak, to use corporate terms, is going to have a little influence in it. I think that it is absurd to say that we must rush to judgment simply because April 29 is the deadline.

There was plenty of opportunity last fall when the treaty was before the Senate, and was withdrawn by the administration, to have the kind of discussion that we are now having and that we should have. If it takes a little past April 29, and if by any chance we are able, through reservations or other changes, to make any of these things to which we object so strongly slightly more acceptable, that would certainly be worth a few days or a few months delay.

The costs involved, of course, are not just the 25 percent of the costs of administering the treaty and of all of the inspections that

we would find so intrusive and so violative of what we believe to be our constitutional rules against unreasonable search and seizure, seizing property without due process, and all the rest. We could add the $70 million that we have already given Russia under the so-called "Bilateral Destruction Act" to start destroying their weapons. And they have announced publicly and in writing—I guess it has been released; it's been printed all over the country—that they will no longer be bound by it, that it no longer serves their best interests and, therefore, they are not paying any more attention to it.

They are a signatory of this Chemical Weapons Convention and they have been held up as a country that is essential to get into the international order and is willing to destroy these weapons. But certainly the record thus far is slightly less than modest.

I think it is important that we emphasize again, as I did at the beginning, that our opposition to these kinds of weapons is well known. We were instrumental in getting the Geneva Agreement approved many, many years ago. We have signed the Bilateral Destruction Agreement, which had a great deal of hope behind it, and practically no realization. And now Russia has walked away from it.

We have showed that we would, of course, not only if we sign this convention comply with it, but that we would be a leader in financing it. All of that I think is an ample demonstration to the world, if any is needed, that we don't like these weapons. But we don't have to sign a flawed and an ineffective, unenforceable, unverifiable convention to prove that; and I don't think that we should worry so much about being tarred as being pro chemical weapons that we would disregard completely the flaws in this treaty and ratify it anyway just to make a statement.

Mr. Chairman, I appreciate very much having had the opportunity to express these views before you and your committee, and as Secretary Schlesinger has said, I will be glad to try to answer questions at an appropriate time.

The CHAIRMAN. We thank you, sir. Secretary Rumsfeld.

STATEMENT OF HON. DONALD RUMSFELD, FORMER SECRETARY OF DEFENSE

Mr. RUMSFELD. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to express concerns about this convention. Rather than read my entire statement, I would like to touch on some of the more important points, and I ask that my entire statement be included in the record.

The CHAIRMAN. Without objection.

Mr. RUMSFELD. Certainly, one of the most serious problems facing our country and our friends and allies around the world is, indeed, the issue of proliferation of weapons of mass destruction. The Chemical Weapons Convention before the Senate would appear to fit in that category. But in my view, it has serious flaws.

I recognize that there are arguments on both sides of this and, indeed, that a number of our friends and associates that we have worked with on these problems over the years find themselves on opposing sides.

As a former Member, I also recall the difficulty of finding oneself in the position of opposing a position that is strongly supported by a President. It is not an attractive position to be in or a pleasant one. My inclination was always to try to support the President on these matters.

Certainly in this case, being positioned as appearing to favor chemical weapons, is also not an appealing position.

So let me be very clear: Were there pending before this committee a convention that was verifiable and global and that would accomplish the elimination of chemical weapons in the hands of nations most likely to use them, I would be appearing before the committee as a supporter.

Unfortunately, I do not believe that it meets those tests.

First, I don't believe that this is verifiable, nor have I met a single, knowledgeable person who believes that it is verifiable. It might reduce chemical weapons in arsenals in some countries, but it is debatable whether the treaty would reduce chemical arsenals in any of the nations potentially hostile to the United States. Countries identified by the United States as possessing chemical weapons that have not signed the CWC, let alone ratified it, include Libya, Syria, Iraq, and North Korea. Certainly these countries are among the most likely to use chemical weapons against our citizens, our soldiers, and our allies.

In addition, there are countries that might sign the convention which would not be reliable with respect to compliance. Since the convention is not verifiable, that is not a trivial problem, it seems to me.

For example, even if Iran does ratify the agreement, we really cannot rely on them to comply with its terms. Also, it is my understanding that Russia has yet to fulfill its obligations under the 1990 Bilateral Destruction Agreement, as Secretary Weinberger pointed out. Also, Washington newspapers and *Jane's* have recently reported that the Russians have developed new nerve agents that are designed in a manner that would make discovery next to impossible in that they are apparently comprised of common commercial chemicals. This raises the question as to the likelihood of their complying with the convention.

As a *Wall Street Journal* article recently put it, under the Chemical Weapons Convention, members to the convention could look for chemical weapons in New Zealand or the Netherlands but not in North Korea, Libya, or Iraq, which are countries that could be chemical warfare threats.

Despite what I believe to be the low possibility that the convention would result in real arms control accomplishments, nonetheless a case can be made that it is important for the world to have standards and values, as Secretary Schlesinger mentioned. This is the "speed limit" argument.

My friend, Dr. Kenneth Adelman, a former Director of ACDA, recently argued, supporting the agreement, that standards and values violated are better than no standards and values at all.

I personally think that is probably the most persuasive case that can be made for the convention. However, I do not believe that it is sufficiently persuasive to tip the scales.

While standards and norms are important, there is a real risk that in ratifying the convention and in setting forth high standards, the U.S. would be misinforming the world by misleading people into believing that we had, in fact, done something with respect to the international controls over the use of chemical weapons, despite the certainty, in my mind, at least, that this convention cannot provide that assurance.

Furthermore, it is important to consider and weigh not only potential benefits of the convention, such as standards and norms, but also its burdens and costs.

It seems to me clear that any advantages of setting forth such standards by ratifying the convention are more than offset by the disadvantages.

I note that there would be considerable cost to the taxpayers in that the convention provides for the use of a U.N.-style funding formula, which calls for the United States to pay some 25 percent of the total. In addition, there would be costs to private industry, which I do not believe can be properly quantified at present in that it is not possible yet to know how the mechanisms to police this convention would actually work. This is to say nothing of the cost to companies of trying to protect proprietary information from compromise.

These costs would amount, in a real sense, to unfunded mandates on American enterprise.

These were among the concerns that were expressed by a number of government, civilian, and military officials in a letter sent to Senate Majority Leader Trent Lott late last year, which I signed, and I ask that a copy of that letter and the signatories be placed in the record at this point.

The CHAIRMAN. Without objection, it is so ordered.

[The information referred to follows:]

September 9, 1996.

Hon. TRENT LOTT,
Majority Leader, United States Senate,
Washington, DC 20510.

SENATOR LOTT: As you know, the Senate is currently scheduled to take final action on the Chemical Weapons Convention (CWC) on or before September 14th. This Treaty has been presented as a global, effective and verifiable ban on chemical weapons. As individuals with considerable experience in national security matters, we would all support such a ban. We have, however, concluded that the present convention is seriously deficient on each of these scores, among others.

The CWC is not global since many dangerous nations (for example, Iran, Syria, North Korea, and Libya) have not agreed to join the treaty regime. Russia is among those who have signed the Convention, but is unlikely to ratify—especially without a commitment of billions in U.S. aid to pay for the destruction of Russia's vast arsenal. Even then, given our experience with the Kremlin's treaty violations and its repeated refusal to implement the 1990 Bilateral Destruction Agreement on chemical weapons, future CWC violations must be expected.

The CWC is not effective because it does not ban or control possession of all chemicals that could be used for lethal weapons purposes. For example, it does not prohibit two chemical agents that were employed with deadly effect in World War I—phosgene and hydrogen cyanide. The reason speaks volumes about this treaty's impractical nature: they are too widely used for commercial purposes to be banned.

The CWC is not verifiable as the U.S. intelligence community has repeatedly acknowledged in congressional testimony. Authoritarian regimes can be confident that their violations will be undetectable. Now, some argue that the treaty's intrusive inspections regime will help us know more than we would otherwise. The relevant test, however, is whether any additional information thus gleaned will translate into convincing evidence of cheating and result in the collective imposition of sanctions

or other enforcement measures. In practice, this test is unlikely to be satisfied since governments tend to took the other way at evidence of non-compliance rather than jeopardize a treaty regime.

What the CWC will do, however, is quite troubling: It will create a massive new, U.N.-style international inspection bureaucracy (which will help the total cost of this treaty to U.S. taxpayers amount to as much as $200 million per year). It will jeopardize U.S. citizens' constitutional rights by requiring the U.S. government to permit searches without either warrants or probable cause. It will impose a costly and complex regulatory burden on U.S. industry. As many as 8,000 companies across the country may be subjected to new reporting requirements entailing uncompensated annual costs of between thousands to hundreds-of-thousands of dollars per year to comply. Most of these American companies have no idea that they will be affected. And perhaps worst of all, the CWC will undermine the standard of verifiability that has been a key national security principle for the United States.

Under these circumstances, the national security benefits of the Chemical Weapons Convention clearly do not outweigh its considerable costs. Consequently, we respectfully urge you to reject ratification of the CWC unless and until it is made genuinely global, effective and verifiable.

SIGNATORIES ON LETTER TO SENATOR TRENT LOTT REGARDING THE CHEMICAL WEAPONS CONVENTION

As of September 9, 1996; 11:30 a.m.

Former Cabinet Members:

RICHARD B. CHENEY, former Secretary of Defense
WILLIAM P. CLARK, former National Security Advisor to the President
ALEXANDER M. HAIG, Jr., former Secretary of State (signed on September 10)
JOHN S. HERRINGTON, former Secretary of Energy (signed on September 9)
JEANE J. KIRKPATRICK, former U.S. Ambassador to the United Nations
EDWIN MEESE III, former U.S. Attorney General
DONALD RUMSFELD, former Secretary of Defense (signed on September 10)
CASPAR WEINBERGER, former Secretary of Defense

Additional Signatories (retired military):

GENERAL JOHN W. FOSS, U.S. Army (Retired), former Commanding General, Training and Doctrine Command
VICE ADMIRAL WILLIAM HOUSER, U.S. Navy (Retired), former Deputy Chief of Naval Operations for Aviation
GENERAL P.X. KELLEY, U.S. Marine Corps (Retired), former Commandant of U.S. Marine Corps (signed on September 9)
LIEUTENANT GENERAL THOMAS KELLY, U.S. Army (Retired), former Director for Operations, Joint Chiefs of Staff (signed on September 9)
ADMIRAL WESLEY MCDONALD, U.S. Navy (Retired), former Supreme Allied Commander, Atlantic
ADMIRAL KINNAIRD MCKEE, U.S. Navy (Retired), former Director, Naval Nuclear Propulsion
GENERAL MERRILL A. MCPEAK, U.S. Air Force (Retired), former Chief of Staff, U.S. Air Force
LIEUTENANT GENERAL T.H. MILLER, U.S. Marine Corps (Retired), former Fleet Marine Force Commander/Head, Marine Aviation
GENERAL JOHN. L. PIOTROWSKI, U.S. Air Force (Retired), former Member of the Joint Chiefs of Staff as Vice Chief, U.S. Air Force
GENERAL BERNARD SCHRIEVER, U.S. Air Force (Retired), former Commander, Air Research and Development and Air Force Systems Command
VICE ADMIRAL JERRY UNRUH, U.S. Navy (Retired), former Commander 3rd Fleet (signed on September 10)
LIEUTENANT GENERAL JAMES WILLIAMS, U.S. Army (Retired), former Director, Defense Intelligence Agency

Additional Signatories (non-military):

ELLIOTT ABRAMS, former Assistant Secretary of State for Latin American Affairs (signed on September 9)
MARK ALBRECHT, former Executive Secretary, National Space Council
KATHLEEN BAILEY, former Assistant Director of the Arms Control and Disarmament Agency
ROBERT B. BARKER, former Assistant to the Secretary of Defense for Nuclear and Chemical Weapon Matters

ANGELO CODEVILLA, former Senior Fellow, Hoover Institute (signed on September 10)
HENRY COOPER, former Director, Strategic Defense Initiative Organization
J.D. CROUCH, former Principal Deputy Assistant Secretary of Defense
MIDGE DECTER, former President, Committee for the Free World
KENNETH deGRAFFENREID, former Senior Director of Intelligence Programs, National Security Council
DIANA DENMAN, former Co-Chair, U.S. Peace Corps Advisory Council
ELAINE DONNELLY, former Commissioner, Presidential Commission on the Assignment of Women in the Armed Services
DAVID M. EVANS, former Senior Advisor to the Congressional Commission on Security and Cooperation in Europe
CHARLES FAIRBANKS, former Deputy Assistant Secretary of State
DOUGLAS J. FEITH, former Deputy Assistant Secretary of Defense
RAND H. FISHBEIN, former Professional Staff member, Senate Defense Appropriations Subcommittee
FRANK J. GAFFNEY, Jr., former Acting Assistant Secretary of Defense
WILLIAM R. GRAHAM, former Science Advisor to the President
E.C. GRAYSON, former Principal Deputy Assistant Secretary of the Navy
JAMES T. HACKETT, former Acting Director of the Arms Control and Disarmament Agency
STEFAN HALPER, former Deputy Assistant Secretary of State (signed on September 10)
THOMAS N. HARVEY, former National Space Council Staff Officer (signed on September 9)
CHARLES A. HAMILTON, former Deputy Director, Strategic Trade Policy, U.S. Department of Defense
AMORETTA M. HOEBER, former Deputy Under Secretary, U.S. Army
CHARLES HORNER, former Deputy Assistant Secretary of State for Science and Technology
FRED IKLE, former Under Secretary of Defense for Policy
SVEN F. KRAEMER, former Director for Arms Control, National Security Council
CHARLES M. KUPPERMAN, former Special Assistant to the President
JOHN LEHMAN, former Secretary of the Navy
JOHN LENCZOWSKI, former Director for Soviet Affairs, National Security Council
BRUCE MERRIFIELD, former Assistant Secretary for Technology Policy, Department of Commerce
TAFFY GOULD MCCALLUM, columnist and free-lance writer
JAMES C. MCCRERY, former senior member of the Intelligence Community and Arms Control Negotiator (Standing Consultative Committee)
J. WILLIAM MIDDENDORF II, former Secretary of the Navy (signed on September 10)
LAURIE MYLROIE, best-selling author and Mideast expert specializing in Iraqi affairs
RICHARD PERLE, former Assistant Secretary of Defense
NORMAN PODHORETZ, former editor, *Commentary* Magazine
ROGER W. ROBINSON, Jr., former Chief Economist, National Security Council
PETER W. RODMAN, former Deputy Assistant to the President for National Security Affairs and former Director of the Policy Planing Staff, Department of State
EDWARD ROWNY, former Advisor to the President and Secretary of State for Arms Control
CARL M. SMITH, former Staff Director, Senate Armed Services Committee
JACQUELINE TILLMAN, former Staff member, National Security Council
MICHELLE VAN CLEAVE, former Associate Director, Office of Science and Technology
WILLIAM VAN CLEAVE, former Senior Defense Advisor and Defense Policy Coordinator to the President
MALCOLM WALLOP, former United States Senator
DEBORAH L. WINCE-SMITH, former Assistant Secretary for Technology Policy, Department of Commerce
CURTIN WINSOR, Jr., former U.S. Ambassador to Costa Rica
DOV S. ZAKHEIM, former Deputy Under Secretary of Defense

Mr. RUMSFELD. Over the coming days, the members of the committee and the Senate will be faced with two important questions relating to the convention. First is, can the Senate responsibly oppose the President on this important foreign policy issue? Second is, what will happen if the Senate does reject the treaty and the United States seemingly stands essentially alone in the world, ex-

cept for the rogue states with whom we would be associated as non-signatories?

Let me address those questions in order.

First is the issue of not supporting the President. As I indicated, my inclination has always been to try to do that. However, we know the Constitution did not grant sole authority to the President of the United States in the area of foreign policy. Indeed, it does not provide for a simple majority to ratify a treaty but, rather, for a two-thirds vote, so that it would have to be almost beyond doubt that a given treaty is in our national security interest. So it is certainly within the right of the Senate to disagree.

Also, not surprisingly, there have been a number of treaties, conventions, and agreements where the Senate has disagreed over our history.

The second question, as to what might happen if the U.S. stands alone, is an important one and one that I suspect will be a principal focus of the debate over the coming days.

One result of the Senate not ratifying the treaty will be, admittedly, expressions of concern by some of our friends and allies around the world that have. But I suspect there will be no smiles from the rogue states. And the world will be spared the deception which would follow ratification, because the world will not be led to have erroneously believed that the threat of chemical weapons has been effectively dealt with. I submit that we will be spared the complacency that Secretary Schlesinger mentioned, which I think would follow ratification.

Further, small and medium sized companies will be spared the costs and the risks to their proprietary information which would result from U.S. participation. You know, big companies seem to get along just fine with big government. They get along with American government, they get along with foreign government, they get along with international organizations. They have the staying power, they have the resources to wait things out. They have the ability, with all their Washington representatives, to deal effectively with bureaucracies.

Indeed, that talent and skill, that capability on the part of big companies actually serves as sort of a barrier to entry to small and medium sized companies that lack that capability. So I do not suggest for a minute that the large American companies are not going to be able to cope with these regulations. They are. They will do it a whale of a lot better than small and medium sized companies.

But if you look at that opening round with the Department of Commerce's regulations and requirements, and having been a regulator in the Federal government at one point in my life, I know that if you start with this, you end up with this (indicating). It does not take long.

That problem of regulation on small and medium sized companies literally sucks the energy out of those companies. They are not capable of waiting and finding out the answers to all those things. They are trying to make money. That is the area of our society where the energy, the vitality, and the creativity is. They are the ones who are creating jobs in our country—not the large companies, which have been downsizing for the most part.

So the fact that a number of large companies are not concerned about this does not surprise me the all, I must say.

What would be the result of the U.S. standing alone? Well, we did this at our Nation's birth. We did it because we had very different views as to what the appropriate relationship between the American people and their government ought to be than other countries did.

Would we be abdicating leadership on this issue of chemical weapons and the threat by not ratifying, as some have argued? I say no. I think not.

I say this because the threat of chemical weapons will remain despite the fact that this agreement gets ratified by a number of nations. And the world will—must—look to the United States for leadership in dealing with that threat. Because of our capacity, our resources, our knowledge, our credibility, we will retain a significant leadership role.

So, despite the argument, the power of the argument, that the U.S. would be standing alone, I think the truth is that we have done it before and it has worked out rather well. Not every country has the ability to stand alone, but the U.S. is not just any country.

With our resources, our weight, our capabilities, we can not only afford to provide leadership, but we have a special obligation to provide that kind of leadership and not just go along with the current diplomatic momentum.

Because we are the United States, we have a singular responsibility to exercise our best judgment on matters such as this and then to set about the task of fashioning a better solution.

Other countries look to us for that kind of behavior.

I hope the Senate will decide to take its time and work to achieve the changes necessary to improve this in material ways. The proposal introduced by Senator Kyl and others to the reduce the chemical and biological weapons threat is a practical place to start.

Mr. Chairman, I commend you and your committee for your efforts to give such careful consideration to the matter and I appreciate the opportunity of participating.

Thank you very much.

PREPARED STATEMENT OF DONALD RUMSFELD

Mr. Chairman, members of the committee, good morning.

Let me say at the outset that I am not an expert on chemicals, nor am I a lawyer. I have been in and around the subject of Arms Control since my service in the Congress in the 1960s, as U.S. Ambassador to NATO during the early 1970s when we were working on MBFR and SALT, as well as my service in the Pentagon. So, I am here today not as an expert on chemicals or international law, but rather as one with a long interest in U.S. national security.

One of the most serious problems facing the United States, our friends and allies, and indeed the world is proliferation of weapons of mass destruction. Surely among the most important treaties of the decades since World War II are those which effectively enhance U.S. national security by addressing this problem. The Chemical Weapons Convention now before the Senate would appear to fit in that category, but, in my view, it does not.

I recognize that there are arguments on both sides of this issue. Indeed, a number of the people many of us have worked with on these subjects over the years and respect, find themselves on opposing sides.

Furthermore, as a former Member of the Congress, I well understand the difficulty in finding oneself in the position of opposing a treaty that the President of the United States strongly supports and that has such broad appeal. Being posi-

tioned both as opposing our President and as favoring poison gas, which seems to be what happens to those who oppose this convention, is not an attractive position.

Let me be clear. Were there pending before the Senate a convention that was verifiable and global and which would accomplish the elimination of chemical weapons in the hands of the nations most likely to use them, I would be appearing before this committee as a supporter, asserting that ratification would be in our national interest. Unfortunately, I do not believe this convention meets these tests.

Interestingly, the preamble of the convention states in the first paragraph: "The states parties to this convention * * *. Determined to act with a view to achieving effective progress toward general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction * * *."

That is a goal that can only be described as monumentally ambitious. More to the point, it is not clear to me that that is today the agreed policy of the U.S. government or even that it is realistic. The history of mankind suggests that the achievement of "complete disarmament" is not a likely prospect, and the idea of "strict and effective international controls" to assure compliance with "complete disarmament" is, to put it mildly, a stretch.

I do not believe that this convention is verifiable. Nor have I met or heard a single knowledgeable person who believes it is verifiable. The U.S. intelligence community has acknowledged in congressional testimony that we cannot have high confidence that violation of the CWC will be detected.

It might reduce chemical weapons in arsenals in some countries. It is debatable, however, whether this treaty would reduce the chemical arsenals of any of the nations potentially hostile to the United States. Countries identified by the United States as possessing chemical weapons, that have not signed the CWC let alone ratified it, include Libya, Syria, Iraq and North Korea. Certainly, these countries are among the most likely to use chemical weapons against our citizens, our soldiers and our allies.

In addition there are countries that might well sign the convention, but which would not be reliable with respect to compliance. Since the convention is not verifiable, that is not a trivial problem. For example, even if Iran does ratify can we really rely on them to comply? Also, it is my understanding that Russia has yet to fulfill its obligations under the 1990 U.S.–Russian bilateral destruction agreement. *The Washington Times* and *Jane's* have reported that the Russians have developed new nerve agents that are designed in a manner which would make discovery next to impossible, in that they are comprised of common commercial chemicals. This raises the question as to the likelihood of their complying with this convention.

It appears that this convention is proceeding in a way that it could conceivably disarm democratic, friendly, non aggressive nations, that either do not have chemical weapons, or if they have them would be most unlikely to use them against us, while it will not effectively apply to totalitarian, enemy and aggressive nations that would be most likely to use them against the U.S. and its allies. As a recent *Wall Street Journal* article put it, under the Chemical Weapons Convention, members to the convention could look for chemical weapons in New Zealand or the Netherlands, but not in North Korea, Libya or Iraq—countries which could be chemical warfare threats.

Despite what I believe to be the low possibility that the convention would result in real arms control accomplishments, nonetheless a case can be made that it is important for the world to have standards and values. Dr. Kenneth Adelman, former director of ACDA, recently argued in supporting the agreement that "standards and values violated are better than no standards or values at all." That is the most persuasive argument for the convention I have heard. However, I do not believe that it is sufficiently persuasive to tip the scales.

While standards are important, there is the real risk that in ratifying the convention and setting forth high standards, the U.S. would be misinforming the world by misleading people into believing that there were reasonable international controls over the use of chemical weapons, despite the certainty that this convention cannot provide that assurance. The use of various gases during World War I led to the Geneva Protocol of 1925, which banned first use of chemical weapons in war. Despite that high standard, that ban has not been observed, witness Iraq's use of such chemicals.

Furthermore, it is important to consider and weigh not only any potential benefits of the convention, but also its burdens and costs. It seems clear that any advantages of setting forth laudable standards and values by ratifying the convention are more than offset by the disadvantages.

I note that there would be considerable cost to U.S. taxpayers in that the CWC provides for use of a U.N.-style funding formula, which as I recall bills the U.S. to

pay some 25 percent of all costs. Personally, I think that percentage is too high and I cannot see why we would wish to extend it to still more international organizations.

In addition, there would be costs to private industry, which I do not believe can be quantified at present, in that it is not possible to know yet how the mechanisms to police the convention would work. And this is to say nothing of the costs to companies of trying to protect proprietary information from compromise.

These were among the concerns expressed by a number of former U.S. government civilian and military officials in a letter sent to Senate Majority Leader Trent Lott late last year, which I signed. (I have attached a copy of the letter to my remarks, and ask that it be made a part of the record at this point.)

[The letter referred to by Mr. Rumsfeld appears on page 15.]

Other concerns expressed in the letter included: The risk that the convention would lead to the creation of a new U.N.-style international inspection bureaucracy at great cost to the American taxpayers; that the CWC could undermine the standard of verifiability that had been a key national security principle for the U.S.; and that the convention could prevent the use of non-lethal riot control agents, to the disadvantage of U.S. forces.

Over the coming days members of the committee and the Senate will be faced with two important questions.

First, can the Senate responsibly oppose the President on this important foreign policy issue; and second, what will happen if the Senate does reject the treaty, and the U.S. seemingly stands essentially alone and apart in the world.

Let me address those questions in order.

First, is the issue of not supporting our President on a key foreign policy matter. As one, with a background in the executive branch, I begin with a strong preference to support the President on such matters. Indeed, I felt that pull even as a Member of Congress with Presidents of the other party. And I so voted. So that is my inclination.

However, we know the Constitution did not grant the President sole responsibility in foreign affairs. Indeed, it provides not for a simple majority vote for the Senate to ratify a treaty, but a two-thirds vote, so that it would have to be beyond doubt that a given treaty is in the U.S. national security interest. So, it is not only well within the right of the Senate to disagree with a treaty as its best judgment may dictate, but it is its constitutional obligation. In exercising that responsibility, there have been a number of treaties, conventions, and international agreements that have not been approved by the U.S. Senate over our history, and in each case the sun came up the next day and the world did not end.

The second question as to what might happen if the U.S. stands apart on this issue, is also an important one, and one which I suspect will be a principle focus of the debate over the coming days. One result of the Senate not ratifying this treaty will be expressions of concern by some of our friends, but there will likely be no smiles from the rogue states.

Next, the world will be spared the deception which would follow ratification, because the world will not be led to believe erroneously that the threat of chemical weapons had been effectively dealt with, and the complacency which would follow.

Further, small and medium sized U.S. companies will be spared the costs and the risks to their proprietary information which would result from U.S. participation. Big companies seem to get along well with big governments, foreign governments, and international organizations. They have the resources, the time, and the Washington representatives to work skillfully with governments. These capabilities of larger companies serve as an advantage over smaller companies, which lack the staying power and resources to cope with national and international regulations, inspections and the like.

Next, U.S. taxpayers will be spared the cost of the convention. That is not a reason to reject it alone, but it is a fact. The U.S. would be spared the time and effort of implementing, complying with, and trying to enforce an agreement which in any event doesn't cover the nations most likely to use chemical weapons.

So what would be the result of the U.S. standing alone? Well, we did this at our Nation's birth. We did it because we had very different views as to the appropriate relationship between the people and their government.

Also, President Ronald Reagan did it with the Law of the Sea Treaty, notwithstanding the fact that most every nation in the world had signed that agreement. He did so because he found objectionable certain provisions relating to the seabed mining provisions. He refused to sign that treaty and asked me to serve as his Special Envoy to alert key countries of the dangers of going forward with that portion of the treaty.

Would the U.S. be abdicating its leadership on this issue by not ratifying the convention, as some have argued? The answer is no. I say that because the problem of chemical weapons will remain despite this agreement, and the world will look to the U.S. for leadership in dealing with that serious threat.

So despite the power of the argument that the U.S. would be standing alone, the truth is, we have done it before and it has worked out rather well. Not every country has the ability to stand alone. But the U.S. is not just any country. With our resources, our weight, our capabilities and our credibility the United States not only can afford to provide leadership, but it has a special obligation and ability to not just go along with what seems popular at the moment, but to stand up for what is right. Because we are the United States we have a singular responsibility to exercise our best judgment on matters such as this, and then set about the task of fashioning a better solution.

I hope that the Senate will decide to take its time and work to achieve the changes necessary to improve it in material ways. The proposal introduced by Senator Kyl and others to reduce the chemical and biological weapons threat is a practical place to start.

Mr. Chairman I commend you and your committee for your efforts to give the most careful consideration to this matter. I appreciate this opportunity to express my views and my concerns about the convention.

Thank you.

The CHAIRMAN. I thank all three of you.

Senator Biden was necessarily detained because of the train this morning, and we were authorized to begin without him. So he missed his opportunity, as the ranking member, to make a statement.

I would just say for perhaps his guidance that I took 14 minutes and he might want to consider that same neighborhood.

Senator BIDEN. I will try to do less than that, Mr. Chairman. I thank the committee for its indulgence and I would like the record to show that, although I am late, it will not add to the total time. Had I been here, I would have used the time. And the only manifest failure this morning that I have observed, to use Secretary Schlesinger's words, is the train schedule. That has been my most manifest failure this morning. I may reveal others as I speak, though.

Mr. Chairman, I think this is a defining moment, not only for the United States but, quite frankly, for this committee and in your significant effort to reestablish this committee and its credibility and standing within the Congress. I think our failure to act on this treaty would be a reflection on us, as well as an extremely negative reflection on the United States' role internationally.

Twelve years ago, the United States made a firm commitment to destroy 30,000 tons of poison gas that we had stockpiled. We had made that decision because these weapons no longer had any military value, according to our leaders.

President Reagan also initiated an international effort aimed at forcing others to do what we already decided to do unilaterally. Through two Republican administrations, efforts to negotiate a chemical weapons treaty made slow, but steady, progress, and I would go back to that in a minute, but that was all part of that process.

The effort gained new urgency after the Gulf War brought home the threat of poison and chemical weapons over 4 years ago. To set the record straight on that, as my friends I am sure know, in terms of the use of chemical weapons in the Gulf War, Secretary Weinberger alluded to the exposure of American troops to poison gas. That was part of an Iraqi stockpile we destroyed after the Gulf

War. I am certain he realizes that there was nothing illegal under any law about stockpiling or producing chemical weapons.

The Geneva Convention applies only to the use of poison gas in international conflict.

The CWC, on the other hand, bans production and stockpiling of poison gas and would give significant justification in the eyes of the international community had we again discovered another nation was making or storing these weapons or had we used whatever force we chose to use against them.

Second, with regard to the issue of the Gulf War, prior to the Gulf War, an example of Saddam Hussein using poison gas against the Kurds, which was alluded to here, is another reason why the CWC is needed, in my view. There is nothing illegal under the Geneva Convention about the use of poison gas in internal conflicts.

The proscription applies only to international armed conflict, as I am sure the Secretary knows. So they didn't even violate the Geneva Convention. It is also true the international community failed to act.

But you did not fail to act, Mr. Chairman. You led the effort here in the U.S. Senate with Senator Pell and we received a unanimous vote for a sanctions bill on September 1988 soon after this came to light.

Unfortunately, the bill died at the end of the Congress, in large measure because of the opposition of the Reagan administration. Indeed, the Reagan State Department, then deluded into believing the United States could cooperate with Saddam Hussein, denounced the Senate bill that you pushed and you got through as premature.

So I say that neither this Senator nor would others stand idly by if violations of the Geneva Convention were discovered. But I'm sure the Secretary knew that there was no violation of the Geneva Convention and the point he made was still a very valid one. That is, we did not act.

We led the world to the altar, you might say, of attempting to deal with chemical weapons, and I am confident that we will not abandon 160 other nations, for, if we did, it seems to me we would send a signal of retreat, forfeit our leadership, and cripple our ability to forge coalitions against the gravest threats we face as a Nation, as Secretary Rumsfeld referred to. This is the proliferation of weapons, all weapons, of mass destruction. We have not even talked about biological weapons yet.

I know that the witnesses this morning do not share my view that this treaty is in our vital national interest. And I know that and we have heard arguments that the treaty is flawed because several rogue states have not signed.

We also heard that verification will be difficult and that the CWC will harm U.S. industry and that it will supposedly force us to transfer sophisticated chemical equipment and defenses to dangerous regimes.

And, finally, maybe the most strenuous argument we have heard today is that we are going to be lulled into a false sense of security, that we are going to drop our guard.

I hope to demonstrate through these hearings today, tomorrow, and the next day that those criticisms are incorrect and the problems they site will only get worse—get worse—without CWC.

From the military perspective, I believe this convention is clearly in our interest. I know that the witnesses do not agree with me. However, two other former Secretaries of Defense and the present Secretary of Defense, not represented here today, do agree with me. Harold Brown, William Perry, and Secretary of Defense Cohen all believe it is in our interest.

There is a draft statement from Brown and Perry. It says, ''As former Secretaries of Defense, we would like to join former military leaders, including past Chairmen of the Joint Chiefs of Staff Powell, Vessey, Jones, Crowe, and former Chiefs of Staff of the Army, Navy, Air Force, and Marine Corps plus combat veterans like Norman Schwarzkopf in offering our strong support for ratification of the Chemical Weapons Treaty.''

I ask unanimous consent that the remainder of their statement be placed in the record in the interest of time, Mr. Chairman.

The CHAIRMAN. Without objection.

[The information referred to follows:]

DRAFT STATEMENT OF HAROLD BROWN AND WILLIAM PERRY

As former Secretaries of Defense, we would like to join former military leaders including past chairmen of the Joint Chiefs of Staff Generals Colin Powell, John Vessey, David Jones, and Admiral William Crowe, and former chiefs of staff from the Army, Navy, Air Force, and Marine Corps, plus other combat veterans like General Norman Schwarzkopf, in offering our strong support for the ratification of the Chemical Weapons Convention.

We firmly believe that U.S. ratification of the CWC will contribute significantly to the security interests of the United States and the safety of our armed forces. In conjunction with the Department of Defense's other efforts against chemical weapons proliferation, a robust chemical protection program and maintenance of a range of non-chemical response capabilities, the CWC will serve the best interests of the United States and the world community. In light of the decision under President Reagan to get rid of the vast majority of U.S. chemical weapons stockpiles, it is in our interests to require other nations to do the same. The access provided for by the treaty will enhance our ability to monitor world-wide CW activities.

We believe the CWC, which was negotiated under Presidents Reagan and Bush and completed by President Bush, to be a carefully considered treaty that serves our national interests well. Failure to ratify the CWC would send a clear signal of U.S. retreat from international leadership to both our friends and to our potential adversaries and would damage our ability to inhibit the proliferation of chemical weapons.

Senator BIDEN. As the authors of this statement note, every single Chairman of the Joint Chiefs of Staff since President Carter's administration has endorsed ratification of the Chemical Weapons Convention. Last Friday, 17 distinguished retired military officers sent a letter to the President in which they endorsed ratification of the Chemical Weapons Convention. The collection of signatures on this letter is quite impressive. If my colleagues will indulge me, let me just read a few: General Colin Powell, Norman Schwarzkopf, Admiral Stanley Arthur, General Michael Duggan, General Charles Horner, General David Jones, General Wesley McDonald, General Meryl McPeak, General Carl Mundy, Admiral William Owens, General Gordon Sullivan, Vice Admiral Richard Truly, Admiral Stansfield Turner, General John Vessey, General Fred Warner, Admiral Elmo Zumwalt.

In this letter they wrote—and I will just read the first paragraph—the following. They say, "As former members of the United States Armed Forces, we would like to express our strong support for Senate ratification of the Chemical Weapons Convention. This landmark treaty serves the national security interests of the United States."

I will not read the rest of the letter, but I ask unanimous consent that it be placed in the record, Mr. Chairman.

The CHAIRMAN. Without objection.

[The information referred to follows:]

April 3, 1997.

The Honorable WILLIAM J. CLINTON,
The White House, Washington, D.C. 20500.

DEAR MR. PRESIDENT: As former members of the United States Armed Forces, we write to express our strong support for Senate ratification of the Chemical Weapons Convention (CWC). This landmark treaty serves the national security interests of the United States.

Each of us can point to decades of military experience in command positions. We have all trained and commanded troops to prepare for the wartime use of chemical weapons and for defenses against them. We all recognize the limited military utility of these weapons, and supported President Bush's decision to renounce the use of an offensive chemical weapons capability and to unilaterally destroy U.S. stockpiles. The CWC simply mandates that other countries follow our lead. This is the primary contribution of the CWC: to destroy militarily-significant stockpiles of chemical weapons around the globe.

We recognize that the proliferation of weapons of mass destruction, including chemical agents, presents a major national security threat to the U.S. The CWC cannot eliminate this threat, as terrorists and rogue states may still be able to evade the treaty's strict controls. However, the treaty does destroy existing stockpiles and improves our abilities to gather intelligence on emerging threats. These new intelligence tools deserve the Senate's support.

On its own, the CWC cannot guarantee complete security against chemical weapons. We must continue to support robust defense capabilities, and remain willing to respond—through the CWC or by unilateral action—to violators of the convention. Our focus is not on the treaty's limitations, but instead on its many strengths. The CWC destroys stockpiles that could threaten our troops; it significantly improves our intelligence capabilities; and it creates new international sanctions to punish those states who remain outside of the treaty. For these reasons, we strongly support the CWC.

Officers who signed the April 3, 1997 letter to the President

ADMIRAL STANLEY ARTHUR, USN (Ret.), former Vice Chief of Naval Operations
GENERAL MICHAEL DUGAN, USAF (Ret.), former Air Force Chief of Staff
GENERAL CHARLES HOMER, USAF (Ret.), former CINC, U.S. Space Command
GENERAL DAVID JONES, USAF (Ret.), former Chairman, Joint Chiefs of Staff
ADMIRAL WESLEY MCDONALD, USN (Ret.), former CINC, Atlantic Command
GENERAL MERRILL MCPEAK, USAF (Ret.), former Air Force Chief of Staff
GENERAL CARL MUNDY, USMC (Ret.), former Commandant, U.S. Marine Corps
ADMIRAL WILLIAM OWENS, USN (Ret.), former Vice Chairman, Joint Chiefs of Staff
GENERAL COLIN POWELL, USA (Ret.), former Chairman, Joint Chiefs of Staff
GENERAL ROBERT RISCASSI, USA (Ret.), former CINC, U.S. Forces Korea
GENERAL H. NORMAN SCHWARZKOPF, USA (Ret.), former CINC, Central Command
GENERAL GORDON SULLIVAN, USA (Ret.), former Army Chief of Staff
ADMIRAL RICHARD TRULY, USN (Ret.), former Director, NASA
ADMIRAL STANSFIELD TURNER, USN (Ret.), former Director of Central Intelligence
GENERAL JOHN VESSEY, USA (Ret.), former Chairman, Joint Chiefs of Staff
GENERAL FREDERICK WOEMER, USA (Ret.), former CINC, Southern Command
ADMIRAL E.R. ZUMWALT, JR., USN (Ret.), former Chief of Naval Operations

Senator BIDEN. Now several of these signatories to the letter I have just read were present at a White House event early on Friday in which dozens of distinguished Americans from many walks of life joined together to call for early ratification of the treaty.

I would like to ask unanimous consent that the text of the remarks made at this event be included in the record as well, Mr. Chairman.

The CHAIRMAN. Without objection, it is so ordered.

[The information referred to appears in the Appendix.]

Senator BIDEN. Mr. Chairman, the convention has won the endorsement of several highly respected veterans organizations as well. These include the Reserve Officers Association, the Vietnam Veterans Association, the Veterans of Foreign Wars, the Jewish War Veterans of the U.S.A., the American Ex-Prisoners of War, and I would ask unanimous consent that the statements by these organizations also be placed in the record.

The CHAIRMAN. Without objection.

[The information referred to appears in the Appendix.]

Senator BIDEN. These individuals and organizations, none of whom can be characterized as soft headed or soft hearted, recognize the benefits of the convention for our front line soldiers, who increasingly face the risk of less discriminating and more treacherous weapons like poison gas. We should do the same.

I would like to point out that I do not for a moment, nor do I know anybody else who does, question the patriotism, the integrity, or the distaste for poison gas or chemical weapons that is shared by our three most distinguished witnesses today. Anyone who would make such a statement is a damn fool.

But the truth of the matter is we just have, as I say, a healthy disagreement among respected women and men about the value of this treaty for the United States. I think the value for those in favor far outweigh those opposed, but not in terms of their intellectual capability but in terms of their number.

The argument that the treaty will be ineffective because several rogue states have not signed is, I find, equally perplexing. Today there is absolutely nothing illegal about the chemical weapons programs in these rogue states, and that will change once the CWC comes into force. At least it will be illegal. It will make such programs illegal. It will also provide us with a valuable tool—the moral suasion of the entire international community—to isolate and target those states who violate the norm which my friend, the former Secretary and head of more than one agency, believes—his view is that norms don't matter in international relations. I would like to have a talk with him, if we have more time, about the notion of norms and why I think they do matter.

But at any rate, if you disagree and norms don't matter, then it doesn't matter. But most Americans and most people do agree that norms do matter. They do have some impact. They may not solve it all, but they have an impact.

As Secretary of State Madeleine Albright, who will testify this afternoon has noted, to say that we should not try to make chemical weapons illegal because there will be cheaters is like saying we should not have laws because we know people are going to break them.

Norms are created so that we have standards for civilized conduct by which to judge others. Without them, we leave the rogue countries to behave as free actors.

Indeed, by joining the convention, we place the full weight of the world community to take whatever actions are necessary to respond and to prevent them. I acknowledge that we will ultimately take only that action which we view to be in our national interest. We will ultimately take only that action we view to be in our national interest.

When my friends were former Secretaries of Defense, they did not recommend actions taken when we knew countries were acting in ways that were beyond our interests without considering the global interest and the interest of the United States relative to other considerations.

So I acknowledge that ultimately we will take action or not take action based on whether it is in our interest.

Equally importantly, we will place our military might behind the world's threat to act against violators.

The argument that U.S. industry will suffer under the supposedly onerous burdens of the treaty is particularly intriguing to me. You see, I come from Delaware. If there is any state in the Union that has a greater interest in the chemical industry, I know of none. And I can assure you gentlemen, big or small—and they are both big and small—if they had a problem, I guarantee you I would hear about it. I promise you that I would after 24 years.

You were a former member, Secretary Rumsfeld. Do you doubt that the industry would let me know? Do you doubt for one moment?

I can tell you that not only do they support it—and, by the way, this impacts on half of Delaware's industrial output, these chemicals. It is one-half. Not only does industry support it, they strongly support it.

And in terms of those small outfits, Secretary Rumsfeld may not be aware of this, but Dan Danner of the National Federation of Independent Businesses said the CWC will have no impact on their members. They are neutral on the treaty.

Maybe he was unaware of that, but that is their position.

What I have heard from the chemical industry is if you don't ratify this convention, the chemical industry, which is the country's largest exporter, stands to lose hundreds of millions of dollars in export earnings; because it would be subject to trade sanctions that the United States wrote into the treaty to target rogue states. We wrote it in.

Now this will be the irony of all ironies. My State will get a kick in the teeth on something we wrote into a treaty, because we do not ratify the treaty. And Germany has already announced that, come April 29, sanctions are going to apply.

In fact, we have heard that all non-members will be subject to those German sanctions.

By the way, one of our largest competitors is Germany, as you might guess. So there is a little interest there.

The argument that the convention is unverifiable is a classic case of making the perfect the enemy of the good. No arms control treaty is perfectly verifiable, and the CWC is no exception to the rule. While there are risks that a State party will hide some covert chemical weapons stockpiles or illegally produce chemical weapons,

it will be much more difficult to engage in large scale violations that would pose the greatest danger to U.S. military forces.

As one of our witnesses this afternoon, a former colleague of yours, Ambassador Kirkpatrick points out—though she did not mean to point it out this way—she said you know, don't worry about verification. We are going to have to do this verification anyway, even if there is no treaty. That is the point. That is the point. We have to do it anyway. And we can do it less well—less well—without the treaty than with the treaty.

George Tenet, the Acting Director of CIA, said, "In the absence of tools that the convention gives us, it will be much harder for us to apprise you, apprise the military and policymakers of where we think we are in the world regarding these developments." The intelligence community sees benefits in us ratifying CWC.

In addition, there may well be occasions in which on-site inspection will provide evidence of treaty violations. In other words, while we will not catch every violator, we will catch some, and that does act as a deterrent. And without CWC, we won't catch anybody.

The allegation that the treaty would lead to the end of export controls on dangerous chemicals is based on a poor reading of the treaty, with all due respect.

Article XI of the convention supports the chemical, trade, and technology exchange "for purposes not prohibited under the convention." It also requires that trade restrictions not be "incompatible with the obligations undertaken under this convention."

The CWC is completely consistent with continued enforcement of the Australia Group controls which member states use to keep chemical and biological materials out of the hands of rogue states. The executive branch has said this time and again and so have our Australia Group allies.

In fact, as we speak, our allies are in the process of repeating these assurances through diplomatic contacts. It is the decline and failure of U.S. leadership that would pose the gravest threat to the Australia Group, and failure to ratify the CWC would be seen by friend and foe alike as a retreat from that world leadership.

Under that circumstance, State and chemical industries might indeed conclude that we should go back to helping the Iraqis and Libyans of the world to build their suspect chemical facilities. If one were to extrapolate the argument treaty opponents make, one would have to conclude that no matter what we do, the Australia Group is a dead letter because on April 29, those Australia Group countries that have joined the convention will be required to begin trading freely in dangerous chemicals, according to the argument made by the opponents. Obviously, this is as preposterous as it sounds. But it is a logical outgrowth of the allegation made by opponents.

Finally, I would look forward to engaging the witnesses on their claim that the convention will lull us into a false sense of security. The Pentagon made it clear on numerous occasions that it will maintain a robust chemical capability supported by robust intelligence collection. The commitment to protecting our forces has the full support of the President and the Congress. In addition, I have agreed with Senator Helms, assuming this treaty comes up, to a legally binding condition of the treaty that requires the Secretary of

Defense to insure that the U.S. forces are capable of carrying out our military missions regardless of any foreign threats or use of chemical weapons. Besides, our experience in other arms control agreements shows there is little chance of our becoming complacent about a chemical weapons threat if the CWC is ratified.

I just would cite the Nuclear Nonproliferation Treaty and not much more in the interest of time.

Article X does not require the CWC defense assistance beyond antidotes and medical treatments. Does that really harm U.S. security? Isn't it a fair trade for getting those countries to forego chemical weapons? If other countries want to provide additional CWC defenses, as the Secretary indicates, how would the U.S. failure to ratify stop that in any way? You made your own argument. You said these guys are going to go out and do this anyway.

Well, that's true. If they're going to do it, they're going to do it whether we are a signatory or not. Being a signatory in no way enhances that prospect. Industrial espionage is another question that I will not get into in the interest of time. But I notice that the chemical industry is not making that case, Secretary Rumsfeld, and we will have safeguards requiring the Secretary of Defense to maintain U.S. military capabilities to operate in chemical environments.

The riot control agents is another subject that I would like to speak to, which I think we have taken care of.

I thank the Chairman for allowing me to make my statement late, and I thank you gentlemen for listening. But then, what else could you do?

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF SENATOR BIDEN

Mr. Chairman, this is a defining moment in our foreign relations. In my view, the credibility and continued leadership of the United States on arms control and proliferation matters hangs in the balance. Twelve years ago the United States made a firm commitment to destroy the thirty thousand tons of poison gas that we had stockpiled. We made that decision because these weapons no longer had any military value.

We also initiated a global effort aimed at forcing others to do what we had already decided to do unilaterally. Through two Republican administrations, efforts to negotiate the Chemical Weapons Treaty made slow but steady progress. The effort gained new urgency after the Gulf War again awakened us to the threat posed by chemical weapons. Over four years ago, Secretary of State Eagelburger signed the Chemical Weapons Treaty on behalf of the Bush Administration.

Having led the world to the altar, I am confident that we will not abandon 160 other nations. For if we did, we would send a signal of retreat, forfeit our leadership, and cripple our ability to forge coalitions against the gravest threat we face as a nation—the proliferation of weapons of mass destruction.

I know that the witnesses today do not share my view that this treaty is in our vital national interest. I know that we will hear arguments that the treaty is flawed because several rogue states have not signed. We will hear that verification will be difficult, that the CWC will harm U.S. industry, that it will supposedly force us to transfer sophisticated chemical equipment and defenses to dangerous regimes. Finally, perhaps their most strenuous argument will be that this treaty will lull us into a false sense of security and cause us to drop our guard.

I hope to demonstrate today that these claims are incorrect and that the problems they cite will only get worse without the CWC. From the military perspective, I believe that this convention is clearly in our interest. I know that the witnesses may not agree with me in this regard. However, two other former Secretaries of Defense not represented here today do agree with me. These are Harold Brown, Secretary of Defense in the Carter Administration, and William Perry, Secretary of Defense in the first Clinton term.

I ask unanimous consent that their statement be included in the record. As they note in their statement, every single Chairman of the Joint Chiefs of staff since President Carter's Administration has endorsed ratification of the Chemical Weapons Convention.

Last friday, 17 distinguished retired military officers sent a letter to the President in which they endorsed ratification of the Chemical Weapons Convention. The collection of signatures on this letter is quite impressive. I would ask unanimous consent to place the text of this letter as well as an opinion piece by Secretary of Defense William Cohen in the record.

Several of these signatories were present at a White House event on Friday in which dozens of distinguished Americans from many walks of life and both sides of the political fence joined together to call for early ratification of this treaty. I would ask unanimous consent that the text of the remarks made at this event be included in the record.

The Convention has won the endorsement of several highly-respected veterans and military organizations as well. This list includes the Reserve Officers Association, the Vietnam Veterans Association, the Veterans of Foreign Wars, the Jewish War Veterans of the U.S.A., and The American Ex-prisoners of War. I would ask unanimous consent that statements by these organizations be placed in the record.

These individuals and organizations—none of whom can be characterized as soft-headed or soft-hearted—recognize the benefits of this Convention for our front-line soldiers, who increasingly face the risk of less discriminating and more treacherous weapons like poison gas. We should do the same.

Mr. Chairman, the argument that the treaty will be ineffective because several rogue states have not signed is equally perplexing to me. Today, there is absolutely nothing illegal under international or domestic law about the chemical weapons programs in these rogue states. That will change once the CWC enters into force. It will make such programs illegal. It will also provide us with a valuable tool—the weight of the entire international community to isolate and target those states that violate the norm set by this treaty.

As Secretary of State Madeleine Albright, who will testify this afternoon, has noted—to say that we shouldn't try to make chemical weapons illegal because there will be cheaters, is like saying that we shouldn't have laws because people will break them. International norms of behavior are created so that we have standards of civilized conduct by which to judge others. Without them, we leave the rogue countries to behave as free actors.

Indeed, by joining the convention, we place the full weight of the world community to take whatever action is necessary to respond to, or prevent an adversary from using chemical weapons. Equally important, we will place our military might behind the world's threat to act against violators.

The argument that U.S. industry will suffer under the supposedly onerous burdens of the treaty is particularly interesting for me to hear. You see, coming from Delaware I know a thing or two about the chemical industry—which is the industry that will be most impacted by this treaty. The chemical industry accounts for over one-half of Delaware's industrial output. If the chemical industry had a problem with this treaty, I assure you that I would have been among the first to hear about it. Instead, what I have heard is that the chemical industry played a key role in negotiating the convention and is among its strongest supporters.

What I have heard is that if we don't ratify this convention, the chemical industry, which is this country's largest exporter, stands to lose hundreds of millions of dollars in export earnings because it would be subject to trade sanctions that the United States wrote into the treaty to target rogue states. In fact, we have now heard that Germany has announced that it will impose trade restrictions on non-members come April 29.

The argument that the convention is unverifiable is a classic case of making the perfect the enemy of the good. No arms control treaty is perfectly verifiable. The CWC is no exception to that rule. While there are risks that a state party will hide some covert chemical weapons stocks or illegally produce chemical weapons, it will be much more difficult to engage in large-scale violations that would pose the greatest danger to U.S. military forces. This is because of the CWC's extensive on-site inspection regime.

George Tenet, the Acting Director of Central Intelligence, testified before the Senate Intelligence Committee that: "In the absence of the tools that the Convention gives to us, it will be much harder for us to apprise you, apprise the military and policymakers of where we think we are in the world with regards to these developments."

The intelligence community wants us to ratify CWC because it will give them additional tools to detect chemical weapon programs in other countries. And that is

something we're going to have to do anyway. In addition, there may well be some occasions in which on-site inspection will produce evidence of treaty violations. In other words, while we may not catch every violator, we may well catch some—and that will lead to deterrence.

And without the CWC, we won't catch anybody—because there will be no bar on countries producing and stockpiling those weapons. The allegation that the treaty would lead to the end of export controls on dangerous chemicals is based on a poor reading of the treaty text. Article Eleven of the Convention supports chemical trade and technology exchange "for purposes not prohibited under this convention." It also requires that trade restrictions not be "incompatible with the obligations undertaken under this convention."

But the CWC is completely consistent with continued enforcement of the Australia group controls, which member states use to keep chemical and biological weapons material out of the hands of rogue states. The executive branch has said this time and again, and so have our Australia group allies.

In fact, as we speak, our allies are in the process of repeating those assurances through diplomatic contacts. It is the decline and failure of U.S. leadership that would pose the gravest threat to the Australia group. And failure to ratify the CWC would be seen by friend and foe alike as a U.S. retreat from world leadership in an area that is critical to global security. Under that circumstance, states with chemical industries might indeed conclude that they should go back to helping the Iraqs and Libyas Of the world to build suspect chemical facilities.

If one were to extrapolate the arguments of treaty opponents, one would have to conclude that no matter what we do, the Australia group is a dead letter. Because on April 29 those Australia group countries that have joined the Convention will be required to begin trading freely in dangerous chemicals according to the argument made by opponents. Obviously, this argument is as preposterous as it sounds, but it is the logical outgrowth of the allegation made by the opponents.

Finally, I look forward to engaging our witnesses on their claim that this Convention will lull us into a false sense of security. The Pentagon has made it clear on numerous occasions that it will maintain a robust chemical defense capability supported by robust intelligence collection. The commitment to protecting our forces has the full support of the President and the Congress and I believe strongly that no future Administration or Congress will abandon our solemn responsibility to our troops in this regard.

In addition, I have agreed with Senator Helms to add a legally binding condition to the treaty that requires the Secretary of Defense to ensure that U.S. forces are capable of carrying out military missions regardless of any foreign threat or use of chemical weapons. Besides, our experience with other arms control agreements shows that there is little chance of our becoming complacent about the chemical weapon threat if the CWC is ratified.

For example, the Nuclear Non-proliferation Treaty was signed twenty-five years ago, yet we are continually vigilant on the threat of nuclear proliferation. As for defenses against poison gas—troop protection and decontamination training is a function of congressional funding. That equipment and that training will not go away unless Congress lets it go away. I certainly won't allow it, and I don't think my colleagues on the other committees of jurisdiction or on side of this issue will either.

I am concerned that the opponents solution to the perceived problem of being lulled to sleep is to allow the threat of chemical weapons to grow even worse. Mr. Chairman, I look forward to a frank and open exchange with our witnesses. I hope that the hearing today moves us one step closer to action on this critical treaty before the impending deadline.

Thank you.

The CHAIRMAN. You didn't take but 18.5 minutes.

Senator BIDEN. Well, then I will forego my questions, Mr. Chairman.

The CHAIRMAN. Oh, no, no. You are always very impressive, I will say, one way or another.

The CHAIRMAN. Since we are playing a name game, Trent Lott got a letter the other day, signed by a few military people, such as Dick Cheney, Bill Clark, Alexander Haig, John S. Herrington, Jeane Kirkpatrick, Edwin Meese, Donald Rumsfeld, Caspar Weinberger, General Voss, Vice Admiral William Houser, General Kelley of the Marine Corps, General Thomas Kelly of the Army, Admiral Wesley McDonald—is that enough?

Senator BIDEN. That's pretty good, Mr. Chairman.

The CHAIRMAN. OK. We have about 75 other signatories. Without objection, we will put that in the record.

[The letter referred to by Chairman Helms appears on page 15.]

Senator BIDEN. Mr. Chairman, this is not fair to do, but two of the guys you named changed their mind and signed a letter on April 3 saying that they are for the treaty.

Oh, they changed their mind after they signed that.

Oh, gosh, all right.

There are a lot of guys changing their minds around here these days. Maybe we can change your mind, too.

The CHAIRMAN. That will be the day.

You won't change my mind about this statement made repeatedly about the Reagan Administration, which is not for this treaty. Think about Weinberger, Kirkpatrick, Bill Clark, Ed Meese, Richard Perle, Dick Adams, and on down the list. In fact, I know of no one on the Reagan team, as it is known, who is in favor of it. Sadly, nobody can ask the President himself, President Reagan, how he feels about it.

I understand that several Senators are going to return so that they can have their time. We have agreed that 5 minutes for the first round may be the course of wisdom.

Secretary Rumsfeld, you served for many years as Chairman and CEO of G.D. Searle and Company, which is, I believe, a large, multilateral pharmaceutical business. You have had quite a bit of experience and expertise in dealing with government regulations, to which you referred.

In your expert opinion, why would the Chemical Manufacturers Association be so aggressive in supporting the treaty when I have this many letters (indicating) from chemical companies saying it is a bad treaty and please do not approve it?

Mr. RUMSFELD. Well, I cannot climb into the minds of the executives of the Chemical Manufacturers Association, Senator, but certainly an industry like that has, as Senator Biden has indicated, an opportunity to increase the number of chemicals they can export if this treaty is passed. At the present time, a number of chemicals are not permitted for export, which would be made permissible for export by this convention.

So it is in their interest to have it passed in that regard.

The CHAIRMAN. Thank you.

Mr. RUMSFELD. Second, I am not an expert on the association, but certainly they represent the big companies. They don't represent the medium sized and small companies.

Senator Biden has said he does not doubt that he would be hearing from small companies if there were a problem. I suspect if this passes he will hear from them. I don't believe that the thousands, whatever the number is, of companies across this country know about this treaty in any detail, believe that the treaty would apply to them, understand that they could be subjected to inspections, appreciate the unfunded mandates that would be imposed on them in the event this treaty were to be ratified.

I might just point out that the Aerospace Industries Association has stated its strong concern about the treaty, and I hope that since they have said that they have not changed their mind.

But you never know.

But they have said it would unnecessarily jeopardize our Nation's ability to protect its national security information and proprietary technological data.

I was told yesterday by an individual who is knowledgeable that the Lawrence Livermore Laboratory, for example, personnel from there were involved in one of the mock inspections conducted by the U.S. government. They evaluated the inspection results and some weeks later, from outside the facility, using modern technology, were capable of coming away with classified information and proprietary information from the inspection.

So I don't think that it would be wise for us to underestimate the risk that would exist to classified information, to a company's proprietary information.

There is a third problem. Most of us in business are engaged with joint ventures and partnerships with companies across the globe. We share proprietary information in the same facility. Were these inspections imposed, it is entirely possible that not only your own proprietary information could be compromised but also the proprietary information of joint venture partners to whom you have promised not to permit their proprietary information to be shared.

Even cereal companies close their doors and do not allow people to walk through the plant. Why? They don't have classified information. What they have is process information, and the idea of photography or samples leaving their factory would unquestionably concern them deeply.

The CHAIRMAN. I thank you. My time is up.

Without objection, I am going to ask that the letters from industry in opposition to treaty ratification be made a part of this record.

[The information referred to appears in the appendix.]

The CHAIRMAN. I don't have but 30 seconds left, so I will turn to the distinguished Senator from Delaware.

I was just handed an interesting little comment that I will say to all of you. One of the letters that I have is from the company which makes the ink for the dollar bill. They are frightened that foreign inspections under the CWC would give counterfeiters some advantage.

Mr. RUMSFELD. They are probably incorporated in Delaware.

Senator BIDEN. I hope so. That accounts for the other 50 percent of our business.

Actually, that's not true. Chickens are bigger.

Dr. SCHLESINGER. They are incorporated in Virginia and the letter was sent to Charles Robb.

Senator BIDEN. Thank you.

Gentlemen, obviously because of the time I am not going to be able to ask you all that I want to, though I am sure my colleagues will do a better job at it than I would.

Let me ask you about a few things you have mentioned here and about conditions that have been tentatively agreed to, conditions added to the treaty that have been tentatively agreed to by Senator Helms and me—speaking only for me and not for any other member of the Democratic Caucus or the Republican Caucus. One of the criticisms was that this is unenforceable, this treaty. And one of the conditions we have tentatively agreed on is that the President

would be required to consult with the Senate if the treaty is being violated. The President would be required to report to us on what was being done by way of inspections, diplomacy, and sanctions to respond to the violation. And if the violations were to persist for one year, the President would have to come back to the Senate and ask the Senate to decide if we should continue to adhere to the treaty or not. He would have an affirmative obligation.

My question is, does this condition in any way, do you view it as positive, not whether it cures the problems of the treaty, but do you consider it a positive condition?

Dr. SCHLESINGER. I think it is a positive condition.

Mr. WEINBERGER. I would suggest, however, that we might want to look very carefully at the content of the report that the President makes to the Senate and see if it, in fact, is as accurate as it should be.

Senator BIDEN. I think that is a valid concern and a valid point raised. There is another condition that we have tentatively agreed on.

In response to a piece, an op-ed piece done by you distinguished gentlemen, you said, on March 5, that if the United States is not a CWC member State, the danger is lessened that American intelligence about ongoing chemical weapons operations will be "dumbed down" or otherwise compromised.

In order to address that concern, Senator Helms and I have agreed to a condition requiring periodic reports and prompt notice to the Congress about chemical weapons programs around the world and the status of CWC compliance.

The executive branch would also be required to offer briefings on these issues. This condition would give Congress an active role in advising the President in regard to insuring compliance. The information would be before the Congress and it would be incumbent upon us to review it and define, if we disagreed, when violations were taking place.

My question is does this in any way go toward alleviating the concern about dumbing down?

Dr. SCHLESINGER. Well, it helps in some ways and it adds to the problem in others.

As you know, there is a proclivity of the executive branch, when it wants to avoid action, to ignore or to dumb down violations by others. There is a long history of this. I need not repeat it.

Senator BIDEN. I'm aware of that.

Dr. SCHLESINGER. You referred to the Iraq case yourself.

Senator BIDEN. Now the other question that several of you have indicated in written material in the past was without a commitment of billions of U.S. aid to pay for destruction of Russia's vast arsenal, they will not comply with this treaty.

Senator Helms and I have agreed to a condition to a resolution of ratification in an attempt to address this issue. Our condition states: The United States will not accept any Russian effort to condition its ratification upon the U.S. providing guarantees to pay for implementation.

Let me ask you this. Does this in any way help in that problem, although I find it kind of strange? It's like the argument about why the Nunn-Lugar legislation was a bad idea—this is not an argu-

ment on your part, but some here have argued that it was a bad idea because we were paying money to the Russians to destroy nuclear weapons.

I always found that an interesting argument, and I don't know why it would be such a bad idea to help destroy their chemical weapons, either. At any rate, we have a condition that says that that can be no condition of ratification.

Is that a useful or a destructive addition to this treaty?

Dr. SCHLESINGER. I think that is useful, Senator. It does, however, underscore a fundamental problem that we have in that the bilateral destruction agreement was the foundation for the Chemical Weapons Convention and that Prime Minister Chernomyrdin has now said that agreement has outlived its usefulness. That is worrisome.

Senator BIDEN. As you will recall—and this will obviously be my last comment—as you will recall, the reason for that treaty was to prompt this treaty. You will remember that. Second, we did not ratify the treaty nor did they ratify the treaty.

Anyway, thank you very much Mr. Chairman.

Thank you, gentlemen.

The CHAIRMAN. Before I recognize Senator Lugar, let me say that the distinguished ranking member, Joe Biden, and I have spent several hours together trying to work on details, and we have agreed on about 21 relatively minor defects in the treaty. There are 5 or 6 major things yet to be considered, and the administration up till now—not Joe Biden, but the administration—is stonewalling considering even those defects.

Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

I want to join you and members of the committee in welcoming witnesses this morning who are good public servants and personal friends of many of us on this committee. I have listened to their testimony and I have studied the op-ed which they wrote for the *Washington Post* last month. I believe their contribution was well written, but, at least for me, it was unpersuasive.

Critics of the convention often speak as if the concerns they are expressing are being heard almost for the first time and that members of the committee have now taken these issues into account in developing the resolution of ratification.

The critics may not be familiar with the resolution of ratification that we passed out of this committee by a vote of 13 to 5 last year or the ongoing negotiations on the ratification issue this year which the Chairman just cited.

The resolution is precisely the vehicle through which these matters of interpretation are taken up and conditions added to conform to U.S. domestic law. Instead of working these complex interpretation issues, many critics are repeating many of the same arguments that we have dealt with.

I would say, for example, that we are treated to the so-called complacency argument; that is, United States ratification of the CWC will lull the country into a false sense of security and a tendency to neglect its defenses. But this is surely a matter of political will here at home. It has nothing to do with the treaty. There is nothing inevitable about arms control agreements contributing to

lessening a perceived need and, therefore, support for defense against such threats.

But there is something wrong with the notion that by allowing our potential adversaries to have a chemical weapon situation without norms and international law, that we are sure to be reminded to defend ourselves against them. Rather than whining about complacency, Congress ought to do its job: Authorize and appropriate the funds necessary to provide for a robust chemical defense capability.

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

Second, we are treated again to the so-called poisons for peace argument; namely, 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 the treaty commits new member states not to observe any agreements that would obstruct these transfers.

That is the Iranian interpretation of Article XI. The United States and others rejected that argument and maintain that interpretation of Article XI did not require them to do so, that mechanisms such as the Australian Group are legitimate under the CWC, and the work of the Australian Group will continue.

The resolution of ratification clarifies the American interpretation. The U.S. preserves the right to maintain or impose export controls for foreign policy or national security reasons. But nothing in the convention obligates the United States to accept any weakening of existing national export controls and that the export control and nonproliferation measures the Australian Group has undertaken are fully consistent with all requirements of the CWC.

If, as critics state, the CWC would likely leave the United States more and not less vulnerable to chemical attack, then the blame again 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 and maintain export controls.

Third, we are told that if the U.S. is a CWC participant, American intelligence is in danger of being dumbed down or compromised. Again, any dumbing down of intelligence has nothing to do with the convention. It has to do, once again, with political will.

We quite predictably get, then, a charge on the Constitution made by critics that U.S. participation could leave U.S. citizens and companies vulnerable to burdens associated with reporting and inspection arrangements and to jeopardizing confidential business information.

The critics pose as protectors of American industry, but industry has spoken for itself. U.S. industry would not support the CWC if it posed significant risks to confidential business information. Specifically, the chemical industry has worked intensively to ensure that protections against the loss of confidential information are incorporated in the CWC and the administration-proposed implementing legislation.

By the same token, allegations that this will require violation of the Constitution are wrong. The proposed implementing legislation provides for search warrants if routine or challenge inspections are

to be carried out without consent. The CWC also allows the U.S. to take into account constitutional obligations regarding searches and seizures, proprietary rights, and providing access through challenge inspections.

Finally, there is the argument that we be in no hurry to adhere to the convention and if and when we decide to join other signatories will have no choice but to adjust. Nevertheless, if we are not a party when it enters into force, we will have no role in the governing body and that is important.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman. I noted when I walked in here the presence of the distinguished Admiral, who has rejoined us here.

It is a pleasure to see you again, Admiral. We are glad to have you back with us.

Today I thank all three of you for being here as witnesses. All three of you had distinguished careers, and it is a pleasure to see you back before the committee.

Mr. Chairman, I thank you for holding these hearings. I respect immensely the concerns that you have raised. You have done so in an appropriate fashion over the last number of months, and we are going to have a chance, as it appears now, in the next few days to actually express our will in the Senate on this, which I think is appropriate and proper given the April 29 deadline.

I commend you and Senator Biden for the tremendous effort you have both put in, along with your staffs, to try to resolve some of the outstanding differences. Senator Lugar as well deserves a great deal of credit, having a long-standing commitment to this issue.

So I commend all of you for your work.

I noted, Mr. Chairman, that you said the Reagan administration team was sort of opposed to this. The name game is dangerous, but the last time I looked, General Vessey, Jim Baker, Ken Adelman, Colin Powell, General Rowny, Paul Nitze and the Vice President were part of the Reagan team and they support the Chemical Weapons Convention.

But there is a danger in going back and forth. I think the question has to be raised of what is in the interest of our country here, whether or not this is going to serve our interests in the 21st century.

I am struck by a couple of observations. One is that we saw in the 1970's—in fact, Secretary Schlesinger I think was very much involved in this—the Biological Weapons Convention or treaty which President Nixon sent up to us here, which was strongly supported, as I recall, by both parties, both sides of the aisle. It has some 157 signatories, I think. One hundred forty countries ratified it. There is no verification, to the best of my knowledge, in that particular convention, yet it has worked pretty well.

It has short comings, obviously. There is not universal adherence to it, but it has worked fairly well.

I raise that because this treaty obviously does have verification included in it. One would argue that it actually does a much better job.

I am also struck by the fact that in 1985, President Reagan signed into law a bill that would eliminate by the year 2004 the

entire existing stockpile of chemical weapons. So we made a decision about a decade ago. One could argue, I suppose, the merits of it, but we made that decision; and we have been about the business not of upgrading or modernizing any of our chemical weapons but to unilaterally—to unilaterally—eliminate our own stockpiles in chemical weapons.

I know of nothing that has been said here, nor has anyone advocated, at least in the last few years that I have been here, that we ought to modernize our stockpiles in chemical weapons. No one has made that suggestion that I know of or offered legislation in that regard.

So it seems as a country, in a bipartisan way, going back almost 25 years, more than 25 years, that we have taken a leadership position, both internationally and unilaterally, on the issue of chemical weapons; because we realize the dangers involved and associated with these weapons of mass destruction.

The issue now comes down to whether or not this Nation, having authored, championed, and led this effort, whether or not we are going to be able to sit on the Executive Council which will set the rules of the road.

We are acting in some way as if, if we don't ratify this, it does not happen. It does happen. If we don't ratify this, it does happen.

The issue now becomes whether or not we are going to ratify in such a way that the interests of our country and the interests which we champion, that is, the abolition of chemical weapons and weapons of mass destruction, that we are going to be allowed to sit at the very table to decide the rules of the road to determine whether or not that is going to work, having unilaterally decided that we will take ourselves out of this game by the year 2004.

I just wonder, briefly, if our three witnesses here might, in the context of the Biological Weapons Convention of the 1970's, the general success of that, the decision in 1985 by the Reagan administration and Secretary Weinberger to unilaterally get out of this business by the year 2004—that was a Reagan administration decision—why it is not in the best interest of our country to move forward on this convention in light of the decisions we have already made.

The CHAIRMAN. We will let you answer that on the next round.

Senator Hagel.

Senator DODD. Thank you, Mr. Chairman.

Senator HAGEL. Mr. Chairman, thank you.

I very much appreciate the opportunity to listen and learn this morning. Mr. Chairman, as you suggested, there are 15 new United States Senators. There are 3 new United States Senators on this panel.

This is one United States Senator who needs to know more about what we are doing here, and I very much appreciate you and Senator Biden opening the process and giving us a chance to learn and listen.

Just as in life where actions have consequences, treaties have consequences. We live with those consequences.

I, as a supporter of a ballistic missile defense system, am somewhat struck that we are still captive to the 1972 ABM Treaty in

the argument of some why we cannot go forward and construct a ballistic missile defense system.

We are not here to talk about the ABM Treaty, but I am here to learn a little bit more about what this chemical treaty is about. Understanding, as the distinguished panel has brought out in rather poignant terms this morning in the questioning and the comments by my distinguished colleagues have added to this enlightenment, first, civilized conduct is not predicated on treaties and is not governed by treaties. Civilized conduct is not anchored by treaties or some esoteric academic kind of parchment.

Civilized conduct is anchored by civilized people. One of the concerns I have with this treaty as it is written, not unlike what I have heard this morning—and I must say also what Secretary Weinberger has said, I do not know of anyone who is for chemical weapons or the use of them—and as someone who has understood a little bit about combat, as others on this committee know and some of the direct personal experiences articulated by our panel this morning show they understand a little bit about this business, is this; and I guess my question comes down to this: Should we have a chemical weapons treaty and if we should, what form should it take? I would be very interested in our three distinguished panelists, Mr. Chairman, answering that question. If not this treaty, should we have one? Whatever that answer is leads us obviously to the next question, which is what form, if you agree we should have a treaty, what form should that treaty take.

Secretary Weinberger?

Mr. WEINBERGER. I think we have to bear in mind the point that you made at the beginning, that you don't solve the problems of ethics or of use of these weapons by any attempt to impose civilized standards on uncivilized government. I don't think for a moment, in connection with the statements Senator Biden and Senator Dodd made, that it would make the slightest difference to Saddam Hussein whether it was legal or illegal for him to use poison gas. He did violate that treaty, the original agreement in Geneva, when he attacked the Kurds. I think any time it suits his interest, he would do so.

Indeed, the old Soviet definition of truth is whatever serves the country. So you have to have in mind that kind of attitude.

Against that background, there is no impropriety in setting standards. I think that you can make it clear that the use of poison gas is outlawed by public opinion around the world. You can get statements to that effect. But when you add to that the enormously intrusive processes which require us to share with some extremely potentially hostile countries defensive mechanisms that we may be, and I hope are, working on to improve our capability of defending against this type of warfare, then I think you are neglecting the best interests of the United States. That is one of the reasons why I think this treaty, this convention, should not be ratified.

There are all kinds of ways of making international statements. But when you bind yourselves to the situation of preventing the country from having the kind of defensive capability it needs in a world like this, then I think you are not serving the best interests of the United States. That is one of the reasons I think this treaty goes far beyond attempting to set just international standards and

speed limits, and all those other comforting terms, because at the same time it requires us to take actions that would weaken us very severely and, I think, increase the chances of chemical warfare being used by rogue nations who would be told very publicly that other nations had no retaliatory capability.

Senator HAGEL. Thank you.

Secretary Rumsfeld.

Mr. RUMSFELD. Just very briefly, I won't take much time. I see you are on the yellow already.

First, obviously a great deal of the problem is with Articles X and XI.

Second, the Executive Council is a problem. It is unlike the United Nations, where the United States at least has a veto. Here, in this instance, as I recall, Asia has 9 members, Africa has 9 or 10, Latin America has 7, Eastern Europe has 5, Western Europe has 10, and "other" is thrown in with Western Europe. We don't even have a guaranteed seat.

So it would be a very different kind of mechanism, even different than the International Atomic Energy mechanism, as Secretary Schlesinger mentioned.

So I think those two things stand out by way of problems.

Senator HAGEL. Thank you.

The CHAIRMAN. Thank you.

Senator Kerry.

Dr. SCHLESINGER. Might I add just a little bit on that point, the last point that Mr. Rumsfeld mentioned?

The fact is that, under the IAEA, the United States provides scrutiny of the budget in a way that this budget will not be scrutinized through the internal politics of the IAEA. Second, the Western nations have a blocking vote in the Board of Governors of the IAEA. It requires a two-thirds vote of the IAEA. To prevent intrusions in the United States requires a three-quarters adverse vote. And as Mr. Rumsfeld has just indicated, under the circumstances, the United States is not guaranteed a seat. It is described as "other."

That is, I think, a clarification of the remarks by Senator Dodd with regard to our participation in the Executive Council. That may be a transitory device. It may be a permanent device. But there is no indication of it.

Finally, there is a facilities agreement under the IAEA so that there is no hunting license to go around in the 10,000 facilities in the United States that are subject to the requirements of this agreement.

The CHAIRMAN. Now Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman.

I have a number of questions, and I am sure I will not be able to get at them in the short time available. But let me begin, if I can.

Gentlemen, I assume you don't believe that chemical weapons manufacturing or chemical weapons threats can be adequately monitored by U.S. technical means alone.

Do you agree with that?

Mr. WEINBERGER. That's correct. I agree with that. It cannot be.

Senator KERRY. So you need some kind of protocol, some kind of mechanism for the process of adequately providing our intelligence community with a capacity to advise our leaders adequately.

Mr. WEINBERGER. Senator, I see what you are getting at. But the fact of the matter is that the treaty that we are considering here does not have any kind of guarantees or any kind of verifiability that countries that say they are going to do one thing are going to do it.

Just because it has a very intrusive mechanism which allows them to go all into these 10,000 or more companies in the United States or similar numbers in other countries of the world does not mean that there is any guarantee that any of the countries that are signatory to it are in effect going to be doing what they say they are going to be doing.

Senator KERRY. By that same logic, there is no absolute guarantee for any treaties that we have signed. Isn't that accurate?

Mr. WEINBERGER. That's one of the reasons I was always worried about relying exclusively on an arms control regime, as opposed to a military capability regime along with arms control for insuring our own security.

Senator KERRY. If you follow that logic——

Dr. SCHLESINGER. Mr. Chairman, could I say something without taking away from the Senator's time?

Senator KERRY [continuing]. Can he do it without taking away from my time?

The CHAIRMAN. Oh, certainly.

Senator KERRY. That is a privilege. Thank you.

Dr. SCHLESINGER. Senator, let me try and raise the fundamental question here, which is the loss of sources and methods.

When David Kaye was in charge of the inspection in Iraq, he discovered to his chagrin that the Iraqis had been able to hide from Western intelligence their activities. Why—because the Iraqis themselves had been trained by the IAEA in the techniques used by Western, specifically American, intelligence.

He had a conversation with an Iraqi official who simply stated we have gotten all of this information.

Now the Executive Council of the Organization for the Prohibition of Chemical Weapons is engaged in training people from all nations at this juncture.

What we are doing in the intelligence area is probably suffering a net loss. As the Senator indicates, we will have greater access and, therefore, we will have increased intelligence of one type. But our techniques for intrusion, our techniques for interpretation will be compromised.

This is clearly the case in North Korea, in which the North Koreans have wisely discovered through our revelations that the IAEA's demand to see their waste dumps will compromise information on their production of plutonium.

So the Senator's question is quite right with regard to improved intelligence, but it is offset by the compromise of sources and methods.

Thank you, Senator.

Senator KERRY. Mr. Chairman, if I could respond, I understand your argument, but I think the logic is lost here for a number of reasons.

First of all, Iraq is not a party. So nothing will change with respect to Iraq. In fact, none of the rogue states about which we have the greatest fears are parties. Therefore, nothing with respect to our intelligence gathering or state of anxiety should change with respect to those states.

On the other hand, because you have a regimen with respect to everybody else who is trafficking in or legitimately trading in the precursor chemicals, we will have a much greater ability, in fact, according to our own intelligence personnel, to determine the ability of those rogue states to, in fact, get a hold of those chemicals, or the ability to manufacture on their own.

What do you say to that? It is interesting that Jim Woolsey said this will give the country an additional tool in the box. Our current CIA Acting Director, George Tenet, says it will. John Deutch said it will. The entire U.S. command structure, almost the entire U.S. command structure for the Persian Gulf, who faced the threat of chemical weapons, say that this will strengthen our hand.

It is hard for me to understand why you find their perception of this as an increased tool and as an important protection wanting.

Dr. SCHLESINGER. I think that is easily answered, Senator, and if I may respectfully suggest, you are on the wrong wicket in this regard.

For a decade DCI's have come to this Senate, to the House, and stated that this treaty is unverifiable. Jim Woolsey came up and said this treaty is unverifiable. John Deutch, who has been cited by the administration as saying that it is verifiable has stated, "I've never said it's verifiable. It's clearly unverifiable." And in the article with General Scowcroft, he indicated it was unverifiable.

The nonsignatories, such as Syria and Libya, are likely to get a little assistance from signatories like Iran and Cuba. That will not be difficult to establish.

Senator KERRY. Can I just interrupt you there on the point of verifiability?

Dr. SCHLESINGER. Sure.

Senator KERRY. First of all, no treaty is purely verifiable. No treaty.

Second, none of them said that this treaty is not verifiable to some degree. They all said this is verifiable to a certain degree. We all understand that.

The question before us is are we better off without any protocol which controls precursor chemicals, are we better off being totally outside of the regime that will be set up by the control as of the 29th of this month, and are we better off without all nations, Russia included, coming in to an agreement as to how we will try to track this. Are you better off in terms of verifiability?

Are you better off in terms of verifiability without this? That is my question.

Dr. SCHLESINGER. We have to look at the——

Senator KERRY. No. Please answer my question.

Are we better off without verifiability?

The CHAIRMAN. Just a minute. The Chair is——

Senator KERRY [continuing]. I'd just like to get my question answered, Mr. Chairman.

The CHAIRMAN. Well, you can do it with a little more discretion than that.

Now you are talking with a former Director of the Central Intelligence Agency. He should know what he is talking about. He deserves better than to be——

Senator KERRY. Mr. Chairman, I'm not trying to do anything except——

The CHAIRMAN [continuing]. Please, please.

Dr. Schlesinger. Now you can answer the question, sir.

Dr. SCHLESINGER. There will be gains in verifiability and losses in verifiability. The fact that our techniques will be undermined probably will exceed the gains in verifiability. Moreover, we are dealing not only with the verification of chemical weapons, we are dealing with the possible industrial espionage in the United States. And that industrial espionage is going to be a godsend—I repeat, a godsend—to foreign intelligence agencies and to the corporations which will feed on those foreign intelligence agencies.

A recent book, "War by Other Means," talks about economic espionage in the United States and how vulnerable we are to economic espionage. That must be included in the total assessment with regard to the performance of the intelligence community.

Mr. Chairman, may I say that I worry deeply about the statement that was earlier made by Senator Biden that the intelligence community wants us to ratify the treaty. I heard that statement—and excuse me, Senator Kerry for drifting off your question—I heard that statement, and I am deeply concerned that the intelligence community should not be wanting a decision on any policy matter. The intelligence community is there to provide information, not to provide judgments on policy issues.

I hope that that statement did not reflect either the DCI's, the Acting DCI's views or the views of the intelligence community.

Mr. WEINBERGER. Mr. Chairman, I wonder if I might answer another of Senator Kerry's questions which is do you think we are better off by not signing this protocol. My answer is unequivocally yes, we are better off by not signing it because this particular protocol not only has all of the faults that we pointed out and is not verifiable, but it does require us, and we would carry out our obligations, I am confident, because we always have, it requires us to share both defensive and offensive technological developments that we should be working on to protect our troops.

That I think is a very deep flaw. The Senator, I am sure inadvertently, omitted from the list of rogue nations that have not joined the fact that Iran has joined and Iraq has not.

So you would be giving an enormous intelligence advantage and an enormous disclosure advantage to a country like Iran. When General Schwarzkopf was asked why he supported the treaty and if he understood that by supporting the treaty he was supporting the sharing of this kind of technical development with Iran, he said of course not. He was horrified.

I think that is a fair description of what he felt when this was brought home to him.

The CHAIRMAN. Senator Grams.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman. I want to welcome our distinguished panel, and I appreciate your time here this morning.

Some of these you might have already answered. I came in late, so I apologize. But I would just like to go over some of the basics on this.

One basic argument, a major argument, that has been made by the supporters of the CWC is that, although it may be far from perfect, that it is better to have some treaty in force rather than none at all; in other words, sign on to be part of this board or Executive Council to enact what may be a troubled treaty.

How would you respond to that assertion, that it is better to be a part of this treaty than none at all.

Mr. Rumsfeld, may we start with you?

Mr. RUMSFELD. I think that when one weighs the advantages and disadvantages, it is clear to me, at least, that the defects vastly outweigh the advantages of establishing a standard or a norm in this instance.

Further, I think it is perfectly possible to achieve the advantages that would accrue from this agreement without having to be burdened with the disadvantages.

Senator GRAMS. How would you do that, Mr. Rumsfeld?

Mr. RUMSFELD. Well, one way, as I mentioned, is the question of Articles X and XI, which I think should not be in there. The way they are written they represent very serious problems. The second way I mentioned was the mechanism of enforcement. The so-called Executive Council I think is flawed and would offer the United States nowhere near the ability to affect decisions that we have in the United Nations or that we have in the IAEA.

Senator GRAMS. Mr. Weinberger?

Mr. WEINBERGER. Well, I think the argument that something is better than nothing depends upon something not being worse than what you have.

We don't need to sign this treaty to assert our goodwill or to assert the fact that we are against chemical weapons. I said at the beginning that I have the greatest detestation for these weapons, and I am sure every soldier does. Anyone who took part in any kind of service understands what they mean and what they do.

But we don't have to sign a flawed treaty to demonstrate to the world our rejection of these kinds of weapons. We have many times taken actions that indicate that we are opposed to them.

So I would certainly agree completely with Don Rumsfeld that you do have great disadvantages and those disadvantages outweigh any possible good that can come from a generalized statement that we, too, dislike these weapons and we, too, are willing to have them abolished.

Senator GRAMS. Mr. Schlesinger?

Dr. SCHLESINGER. We have a treaty, we have an agreement, we have a convention, the Geneva Convention, which is already in force. So it is not a question that something is better than nothing because we already have something. That something prohibits the use of chemical weapons. It is easier to detect the use of chemical

weapons than it will ever be to detect the manufacture of chemical weapons. Consequently, we are far better off not watering down the Geneva Convention in the way that this treaty threatens to.

I note that in Article VII or, thereabouts, it says that no way does this current agreement weaken the requirements of the Geneva Convention. We should take a firm stand on the use of weapons, and we need to have the capacity to enforce it.

If we look at what will happen after the signing of this agreement, if, for example, China signs—and I have been described as a friend of China. I don't see any reason for us to drift into confrontation with China. But I want to say that anybody who believes that the Chinese will give up their chemical weapons capability or that they will give up the capacity to manufacture must be suffering from hallucinations.

If we are prepared to do anything about it, that would require a greater rigor in dealing with Chinese departures from agreed on arms control measures than we have exhibited to this point.

Mr. RUMSFELD. May I add one comment or thought that comes to mind?

Senator GRAMS. Sure.

Mr. RUMSFELD. In view of both what you and Senator Kerry have asked and discussed, the implication that nothing will change with respect to Iraq goes back to my point on Articles X and XI. I think it will change, even with respect to Iraq, in this sense. Country's that don't sign will be there, and with the dramatically increased flow of information which Articles X and XI require, and transfer of technology, and availability of information, it will get around. There is no question but that the information, particularly with respect to the defensive side, will be available. It will get out into the marketplace.

You cannot keep it in. If that many countries have access to it, it will not be secret from the rogue nations.

Senator GRAMS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me first take this opportunity to thank you and the ranking member, Senator Biden, for the leadership and the dedication you have demonstrated on this issue before us this morning. I also want to recognize the efforts of the White House Working Group and the Lott Task Force to clarify this issue. I know that these negotiations are taking a great deal of time and involve a tremendous amount of technical detail.

I want to note that this committee, too, has spent a lot of time on this treaty. In the 104th Congress, the distinguished Chair held three extensive hearings. I was pleased to be able to participate in those hearings, which have given the members of this committee an opportunity to closely examine a number of issues pertaining to this treaty and the consequences of its ratification or of the failure to ratify it.

We asked some tough and probing questions and I think received thoughtful responses from the administration and private witnesses who have come before us.

Despite all of this hard, hard work, we find ourselves at the 11th hour without Senate debate on this treaty. Even though the United States had the key leadership role throughout negotiations over this treaty, and even though 70 countries have already ratified it, this institution has not yet had a chance to actually consider the ratification of CWC.

I just would like to reiterate, in the couple of minutes I have, what has already been said here this morning. Time is of the essence for the full Senate to have this debate. We are all well aware of the looming deadline of April 29, exactly 3 weeks from today. That is the deadline by which the United States must deposit its instrument of ratification of this treaty so that we may be a full participant in the Organization for the Prohibition of Chemical Weapons, or OPCW, the governing body that will have the responsibility for deciding the terms for the implementation of CWC.

In my view, the United States participation in the OPCW is fundamental to ensuring that American companies and American citizens are treated fairly under the inspection provisions of this treaty. It is precisely because some observers think that these provisions are faulty that Senate consideration is essential. Senators should have the opportunity to debate these concerns, and the American people certainly deserve a chance to hear them.

As elected representatives with the constitutional responsibility to provide advice and consent to treaties signed by the President, I think we are obligated to give full consideration to the CWC. With the April 29 deadline looming ahead of us, I think we owe it to the people who elected us to fulfill that duty to do it in a timely fashion and to do it responsibly.

This treaty was signed by President Bush in January 1993 and was submitted to the Senate by President Clinton in November of that year. Almost 3½ years later, the Senate is now faced with a 3-week deadline. The Chemical Weapons Convention is the culmination of a decades-long effort to bring these weapons under international control and work toward their eventual elimination.

While I think we would all concede and have said that the CWC remains imperfect, I still believe it is the best avenue available for beginning down the road to that eventual elimination.

So, Mr. Chairman, I again commend the tremendous interest you have taken in this issue, but I hope we can vote on the treaty soon.

Mr. Chairman, I just have a couple of questions for the panel.

First, in your March 5 *Washington Post* op-ed, the three distinguished members of this panel indicated that if the United States decides to become a party at a later date to this convention, perhaps after improvements are made to enhance the treaty's effectiveness, it is hard to believe that its preferences regarding implementation arrangements would not be given considerable weight.

I guess I would like to know what improvements you would make. If it is in the interest of the United States to make these improvements, how would you propose that the United States accomplish this if we are not a member of the OPCW?

Mr. WEINBERGER. Well, I don't think that the possibility of our being disregarded exists, Senator. I think if we are expected to pay 25 percent of the costs of this treaty, which are very considerable, we are certainly going to be listened to.

As far as changes are concerned, I tried to indicate this morning, in a too lengthy statement, perhaps, all of the things that I think are wrong with it. Certainly Articles X and XI would have to be changed in a major way so that we do not preclude ourselves from having the capability of defending against rogue states who either signed or didn't sign this convention.

What we have done in those articles, in my opinion, gives them all of the opportunity to either weaken or basically eliminate any kind of improvements we would make in the protective clothing, the masks, the defensive capabilities against these terrible weapons. It does not prevent rogue states from using them, or from stockpiling them, or from manufacturing them.

Senator FEINGOLD. If I may follow up just for a second on that, in effect, then, you are saying that our financial leverage would be sufficient to allow us to change it?

Mr. WEINBERGER. Oh, I would be extremely disappointed if it isn't, Senator. Yes. We have quite a lot of opportunity to observe that in a number of other organizations, and if we are expected to put up 25 percent—and I would suspect that within a couple of years it would be 35 percent—of the cost of this treaty, we would certainly, I would hope anybody who was President at that time or Secretary of State at that time would make it quite clear that we require for our contribution a very genuine decisionmaking role.

Senator FEINGOLD. Thank you, Mr. Secretary, and thank you, Mr. Chairman.

The CHAIRMAN. Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman and for holding the hearing. I am delighted to be here with these three gentlemen who I view as some of the key implementers of our strategy to win the cold war. You gentlemen were allegation three there and were a key part of that, to which our country and my children have an enduring debt to you for doing that.

I thank you for it, for all you have done.

I have a couple of questions. I am new to this committee and new to the Senate. So this is among the first hearings I have had on the Chemical Weapons Convention.

Secretary Weinberger, Russia, of course, has not signed on to the treaty and yet is the world's largest chemical weapons possessor. Do you think we at a minimum should require that they sign on before we would consider signing on to this treaty?

Mr. WEINBERGER. Senator, my understanding is that they have agreed, or "signed on," so to speak, but they have not ratified it yet. Their record is extremely poor in this because, as you said, they have a very large stockpile of these weapons and they have already stepped out of—which is the kind and polite way to phrase it—the Bilateral Destruction Agreement, which was widely heralded as one of the great saviors of mankind when it was originally submitted. They have simply said it has outlived its usefulness.

So that is a very unfortunate record to have before the world.

They are widely reported to have said that they would only sign on if we agreed to pay the full costs of their destruction of their weapons. This is a large sum; and if it ever should happen, I would very much hope that we would have some ability to monitor and follow any money we gave them. We have already given them some

sort of token or opening demonstration of our goodwill, and we don't know what that was used for. And we don't know what a lot of the economic aid is used for.

So all of these are things that I think would certainly have to be at least far better understood than they are now. It would not bother me at all if Russia were required to have some kind of guarantee that they would take care of destruction of their own weapons and that we should not make our commitment to any kind of agreement to pay for that.

Senator BROWNBACK. Now as we have both noted, they have not ratified. Should we require their ratification before we would ratify?

Mr. WEINBERGER. Well, it would certainly be a more comfortable feeling, but it certainly would not remove, in my mind, the objections to the faults and the flaws within the treaty itself.

Senator BROWNBACK. So, even really if they do ratify, you would still have the same sort of reservations you do now?

Mr. WEINBERGER. As it stands now, yes, sir, I would.

Senator BROWNBACK. And that would depend upon further negotiations with the Russians and their destruction of the chemical weapons they have?

Mr. WEINBERGER. I would just like to find out what the problem is with the Bilateral Destruction Agreement they signed. Why has it served its purpose? Why is it no longer useful for them to adhere to it?

Senator BROWNBACK. Secretary Rumsfeld, you had noted that the United States has the ability as a nation to stand alone, to pull something to be a much better document, a much better treaty, than what it is in your testimony. If we did stand out on this and we said we're not going to sign the CWC; because it is such a flawed agreement, how would we be able to, how do you think it would evolve that we would pull that on toward a better agreement? How would you see that evolving into the future to where it would be something that you would like to support?

As all of you noted, and as all of us have noted, none of us wants chemical weapons in this world. We are all opposed to those. How would you see that evolve to where we could get a better agreement?

Mr. RUMSFELD. I do think that the United States is among the very few countries in this world that do have the ability to not be subject to the kind of diplomatic momentum and to decide what they believe is right and then set about trying to fashion an arrangement whereby what's right can be achieved. If we can't, who in the world can do that?

So the idea that we are going to lose our leadership I think is just not true.

The way to approach it, it seems to me, would be to start with what is important and what is realistic. As these gentlemen and I have tried to do today, we have pointed out the things that are the problems. What one would do would be to try to avoid those.

I must add a comment, however, about the Russians. The fact that recently there is information available suggesting that they have, using everyday commercial chemicals, developed the ability to develop chemical weapons suggests that they or anyone else

would be able to shift facilities from making chemical weapons to making commercial chemicals in a very short period of time.

We were talking about no treaty is verifiable. It is a lot easier to verify intercontinental ballistic missiles than it is chemicals, commercial chemicals, that can also be used for chemical weapons and things that can be made in very small spaces.

So I think even though we have an enormously intrusive regime for policing it, as intrusive as it is, it would not be able to do the job.

So I think that we have the cart before the horse in this process, and I would like to see us go back and do it right.

Senator BROWNBACK. Thank you, Mr. Chairman.

Dr. SCHLESINGER. Mr. Chairman, you might want to put in the record the Reuters report on what the Russians are doing. It is interesting that the new development avoids any of the precursors that are listed under the existing treaty. So if one uses different precursor chemicals, one can avoid the restrictions of the treaty.

The CHAIRMAN. Let's go to one more round. I don't want to keep you here all day, but this is a fascinating discussion. Let me reiterate at mid point that I certainly do appreciate your coming here today and cooperating with us.

We will make this a 3-minute-per-Senator round.

You said something early in your testimony, Mr. Secretary, about people being instructed not to say anything unfavorable about this treaty. Well, we have had the same thing in our committee among the staff, and I had one report saying that the FBI had specifically been instructed to say nothing unfavorable about this treaty.

Now you have been Director of the CIA and I need your help. Whom would you recommend, past or present, that we subpoena to testify under oath regarding the CWC and the White House directions that we have had reported to us?

Dr. SCHLESINGER. I will suggest a list to the staff, Senator.

The CHAIRMAN. Pardon?

Dr. SCHLESINGER. I will suggest a list to the staff——

The CHAIRMAN. Very well.

Dr. SCHLESINGER [continuing]. A list of suitable witnesses—whether or not the subject of subpoena is a decision for the committee and not by me.

The CHAIRMAN. That will be fine, and I thank you.

Now I think it has not been mentioned, except indirectly, about Jim Woolsey's testimony in June 1994, in which he said the chemical weapons problem "is so difficult from an intelligence perspective that I cannot state that we have a high confidence in our ability to detect noncompliance, especially on a small scale."

Now, Secretary Rumsfeld, I have a letter from the Aerospace Industry Association stating strong concern that the CWC will, and I quote the letter, "unnecessarily jeopardize our Nation's ability to protect its national security information and proprietary technological data."

Now this was fascinating to me because back in early January, I think it was, the B–2 was taken to North Carolina, to Seymore Johnson Air Force Base, and thousands of people came to see it. Everybody was proud of it and marveled at the enormity of it, and so forth.

But then it occurred to me that chemicals are used in the manufacture of the B–2.

Now let me ask you to step back and very quickly say what kinds of risks to our companies are posed by letting foreign inspectors poke around, interview employees, take photographs, and take samples for analysis overseas.

Mr. RUMSFELD. Well, Mr. Chairman, I must say that I cannot answer it authoritatively, and I am struck by the dramatically different views on this particular issue by proponents and opponents.

My personal view is anything I have read or seen in this document and these materials I cannot see how we could avoid allowing classified information to be made available to inspection teams.

I have heard statements by Members of the Senate of: "Don't worry about that, that's not a problem." But I have not seen anything in the agreements that suggest to me that it's not a problem, because modern technology enables people to do an enormous amount of analysis some distance in time and space from where the materials were located and still come away with information that is exceedingly important, classified, and proprietary.

I don't know how it would be avoided.

The CHAIRMAN. Very well.

Senator Biden.

Dr. SCHLESINGER. Mr. Chairman, on that particular point, the Organization for the Prevention of Chemical Weapons will use as its principal tool the GC/MS, to wit, the gas chromatograph mass spectrometer. That is the tool that was used by the Livermore Laboratory to procure from outside the gates classified information at a missile facility, and that will be the tool of choice.

The CHAIRMAN. Thank you.

Joe.

Senator BIDEN. Thank you very much, Mr. Chairman.

Gentlemen, I apologize for having left for a few moments. I had to go to another meeting briefly.

I understand this issue of defensive technologies made available to rogue states, states that are parties to the convention. I assume we are primarily talking about Iran. We could be talking about China, we could be talking about, in some people's minds, Russia.

But paragraph 1 of Article X lists "medical antidotes and treatments" as a permissible form of defensive assistance.

Now, again, as Secretary Rumsfeld just pointed out, it is amazing how an authoritative and informed people end up on both sides of the issue on the same point. So let me ask you this.

Where do any of you find the requirement that a State Party, that is, a signatory to this convention, a ratifier, is required to provide anything more than that—medical antidotes and treatments?

Mr. WEINBERGER. Do you want to look at the third paragraph, Senator, of Article X? Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material, scientific and technological information concerning means of protection against chemical weapons.

Senator BIDEN. Has the right.

Mr. WEINBERGER. Yes, the right.

Senator BIDEN. So you believe that paragraph says that we are required to give them, any State, any technology that we have available?

Mr. WEINBERGER. Senator, as was said in another connection, English is my mother tongue, and I can't read it any other way.

Senator BIDEN. Now on Article XI, the chemical trade that the CWC would encourage is only that "for purposes not prohibited under the convention." And the only prohibited trade restrictions are those "incompatible with the obligations undertaken under this convention."

Now we don't say we have to undo our trade restrictions and neither do the other Australia Group members. So why do we accept Iran's interpretation of this article over that of our allies and the U.S.?

Mr. WEINBERGER. Precisely because it is so fuzzy that you have all kinds of interpretations, and you will have a big set of arguments as to who is doing what. And any interpretation that we may claim can be denied very easily by all other countries that don't happen to agree with us or don't want to agree with us.

You have, what you have set up here is an oral battleground for varying interpretations. It will allow enemies of the United States or potential enemies to make claims that, when we are in the position of denying them, will set us up as being violators of this treaty.

Senator BIDEN. If I can, I would conclude by saying would a condition that would be binding, that a legal declaration we'd make to not provide rogue states with advanced chemical defenses—assurances—would that meet any of your concerns?

Mr. WEINBERGER. Well, I would certainly like to see it written down, Senator. Yes.

Senator BIDEN. OK, thank you.

Dr. SCHLESINGER. Well, the provisional body, the provisional body states that we are obligated to provide these defensive technologies.

There was an argument in a recent National Public Radio broadcast between the general counsel of ACDA and the head of the provisional body, Mr. Kenyan, a Brit. He stated and rebuked the proposition that the United States might be able to avoid providing this kind of technology, that it was required underneath the CWC.

So I think that you have a clear legitimization. Even if we, for one reason or another, withhold such information, our industrial partners will proceed to provide this because of the legitimization provided by this agreement.

As Senator Biden observed earlier, norms are important, and if you provide a norm which allows the Germans or others to provide information to Iran, they will accept that norm.

The CHAIRMAN. Senator Hagel.

Senator HAGEL. Thank you, Mr. Chairman.

Secretary Weinberger, you obviously were the Secretary of Defense during most of the Reagan administration. For the record, and for this Senator, much has been made of the fact that the CWC was initiated during the Reagan administration.

Could you provide, at least me, somewhat of an analysis as to how it was initiated, why it was initiated, and today why most of

the Reagan administration officials during that time are now opposed to it?

Mr. WEINBERGER. Well, I cannot speak for anyone else, Senator, and I don't know what the historic origins of it were all the way back. But I think that everybody was appalled by the use by Iraq of poison gas against the Kurds, and there was an attempt to get some kind of international order to try to prevent that sort of thing.

President Reagan is a very compassionate and humane man and obviously shared with the world the distaste and the detestation of these kinds of weapons.

I would hesitate very much to say that he had an opportunity to see all of the provisions that emerged from the very lengthy negotiation. He certainly did not have that opportunity. He certainly did not know that four of the principal rogue nations of the world would stay outside the treaty and, therefore, not be banned from doing anything at all and that we would be put in the position of weakening any kind of retaliatory capability we might have.

Those are conditions that changed since the initial praiseworthy, humanitarian effort to try to do something about the elimination of these weapons.

As Secretary Schlesinger pointed out, we did that after World War I, the Geneva Conference. We did it later on, after President Reagan left office, with the Bilateral Destruction Agreement, which simply does not work out.

There are all kinds of reasons why humane and compassionate people—and I like occasionally to classify myself in that same category—dislike these weapons and would like to do something about it.

But the fact of the matter is that what we have done here is not only ineffective, but it is dangerous for the security of our troops, in my opinion.

Dr. SCHLESINGER. I have two quick points, Senator.

When George Shultz announced the quest for a chemical weapons agreement, he said that it would be a verifiable chemical weapons treaty. This is not verifiable.

Second, the Reagan administration to the very end believed that the United States should retain a 500 aging ton level of binary chemical weapons and should not surrender that minimum capability until such time as other countries came into conformity. I think that the argument that this all originated with Ronald Reagan is not an accurate argument.

George Bush was for this treaty, but Ronald Reagan would not be if he were able to comment on it.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Gentlemen, the first question I want to put to you is that the United States is now embarked on a path of unilaterally destroying our stockpile of chemical weapons. Do you think we should carry through on that?

Mr. WEINBERGER. To the extent that Secretary Schlesinger indicated, with the reservation that was made during the Reagan administration that we should have a minimal deterrent capability and that other nations should know that we do have that, particu-

larly rogue nations that are likely to or have indeed used chemical weapons.

Senator SARBANES. So you would keep some chemical weapons?

Mr. WEINBERGER. I think you have to, Senator. Yes.

Senator SARBANES. And that's your position, I take it, Secretary Schlesinger?

Dr. SCHLESINGER. No, sir. The existing stockpile is obsolete, and it is more dangerous.

Mr. WEINBERGER. Excuse me. It's the binaries we're talking about now.

Dr. SCHLESINGER. It's obsolete and dangerous, and I think we must get rid of it one way or another.

Mr. WEINBERGER. The unitary weapons are indeed being replaced. It is the binary weapons that we were talking about under the Bilateral Destruction Agreement. But everyone said that we had to keep some kind of minimal retaliatory capability of the binary weapons.

Senator SARBANES. What is your position, Secretary Rumsfeld?

Mr. RUMSFELD. I think that we need some to develop the defensive capabilities that are necessary, so that we know what we are doing.

Senator SARBANES. So you would all keep some chemical weapons.

Now the next question I have is what is your position on whether the Senate should have an opportunity to vote on this treaty. I know how you would encourage members to vote as I understand your testimony. But what is your position on whether the Senate ought to be able to take this treaty up and consider it and vote on it.

Dr. SCHLESINGER. The Senate should vote.

Mr. WEINBERGER. Yes, certainly. I thought that's what this process was, that this was the beginning of the process that leads to a Senate vote.

Senator SARBANES. Well, it doesn't always lead to a Senate vote. No. The question I am putting to you is whether you think there should be a Senate vote.

Mr. WEINBERGER. I have no problem with that at all.

Senator SARBANES. Secretary Rumsfeld?

Mr. RUMSFELD. I have no problem with it.

Senator SARBANES. Now the other question I want to ask you is this. You have each raised a number of problems or concerns that you have with the treaty. I want to narrow it down and isolate it out.

If the rogue nations do not sign the treaty, is that in and of itself, in your view, sufficient grounds not to approve the treaty?

Mr. WEINBERGER. Speaking for myself, Senator, it would seem to me that if you have a ban on the nations that are basically in some form of general agreement with us with respect to democratic values and all the rest of it, and that they carry that out, and that the nations that do not, including specifically the rogue nations outside this treaty at the moment, you would be offering them an invitation to launch a chemical attack. This is because we would have, by a standard that we follow, we would carry out our agree-

ment and we would denude ourselves of any capability of retaliating and that is one of the best ways of deterring.

It is unfortunate that in this kind of world that has to be the case, but it is.

Even the nations, some of the nations that are within the treaty, like Iran, you find that——

Senator SARBANES. I just want to try to focus this for the moment.

Mr. WEINBERGER [continuing]. Yes, I understand what you are saying, Senator, but I would like to complete the answer. The answer basically is that the answer of rogue nations from those who sign would be a source of considerable concern.

It is not the only source of concern because many nations which sign——

Senator SARBANES. I understand that.

Mr. WEINBERGER [continuing]. Would not be able, would not keep their word, and we could not verify whether they are doing it or not.

Senator SARBANES. Is the absence of the rogue nations in your view of sufficient concern that you would be against the treaty?

Mr. WEINBERGER. It is one of the reasons that leads me to oppose it, but there are many others.

Senator SARBANES. If the others were not present, would that in and of itself be enough that you would oppose it?

Mr. WEINBERGER. If the others were what?

Senator SARBANES. If the other reasons that you have for opposing it were not present, were taken care of, would the absence of the rogue nations be enough for you to oppose it?

Mr. WEINBERGER. Well, as you put the question, if all of the things I object to are not in the treaty, then almost by definition I wouldn't oppose it.

Senator SARBANES. No, no—the rogue nations are not in the treaty in the question I'm asking. That's all I'm—I'm just trying to determine how critical a factor that is in your thinking.

Mr. WEINBERGER. Let me say that my opposition is based on a large number of reasons and one of them is the absence of the rogue nations from any provisions with respect to compliance.

Senator SARBANES. Secretary Schlesinger?

Dr. SCHLESINGER. No, the absence of the rogue nations in and of itself would not lead me to oppose the treaty. I would regret that absence. But the other problems are much more serious in my view.

Senator SARBANES. Secretary Rumsfeld?

Mr. RUMSFELD. I agree with Secretary Schlesinger.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman. I have just a quick, brief question.

As you know, riot control agents, such as tear gas, have also been used by the U.S. military during search and rescue missions for downed pilots or to handle situations where noncombatants are mixed in with the combatants. My understanding is that the Clinton administration's current interpretation of the CWC is that it would ban such uses of riot control agents by the U.S. military.

Mr. Weinberger, when the Reagan administration was negotiating the CWC, was it ever your understanding that the U.S. would have agreed to such a ban or that it was a desired result of this treaty at all?

Mr. WEINBERGER. No. Those were always to be excluded because of their obvious importance and their obvious necessity. We understand that the commitment was made that they would be excluded from the treaty but that the Clinton administration changed its mind in its commitment and now says that they would be banned.

There is now some very technical discussion of whether they would be banned in wartime or not; that it might be all right to use them in peacetime crowds, but not in wartime. I would like to use them to protect our soldiers in wartime or in peacetime.

Senator GRAMS. Now if this is not a lethal chemical, does this give you any concern about the broad scope of agents that could be covered under this treaty, which would open the door for more inspections?

Mr. Schlesinger?

Dr. SCHLESINGER. I'm not sure I understood the question, sir.

Senator GRAMS. I mean, if this is a nonlethal chemical and this is included, is there a concern that it would be so broad that all chemicals or any definition of a chemical could be part of the reasons for inspections or to come into plants in the U.S.?

Mr. RUMSFELD. The very reason for an investigation suggests that there is a question. So "investigation" can run to organizations that don't have anything to do with lethal or nonlethal chemical weapons—because someone has to look. If there is an allegation, a charge, a question, they can go in and investigate. That is where you end up with the numbers of companies running into the thousands.

Senator GRAMS. Mr. Schlesinger, this is the economic warfare that you had talked about earlier, possibly?

Dr. SCHLESINGER. I'd like to clarify one thing.

President Ford issued an Executive order which has existed and prescribed U.S. policy on riot control issues for the last 20 years. That has been somewhat obscured now by pressures from our allies and equivocation within the administration.

On the question that you put, indeed, inevitably questions will be raised about any chemicals under those circumstances.

Senator GRAMS. Thank you.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Thank you, Mr. Chairman.

If I could just say with respect to my last round of questioning, I want to make it very clear, and I think Secretary Schlesinger knows this, that he is a friend and a man for whom I have enormous respect. I would in no way try to do anything except work this light here, which is our perpetual enemy. We try to get answers rapidly and, unfortunately, sometimes we get witnesses here who are so good at answering only one question.

Dr. SCHLESINGER. I fully understood, Senator, and I tried to protect your time. I was not successful.

Senator KERRY. I thank you very much, Mr. Secretary.

If I could just ask you, Secretary Weinberger, I was really struck by your statement about deterrence. Is it your position that you can only deter chemical weapons use with chemical weapons?

Mr. WEINBERGER. No. I thought I was quite clear, Senator, that it is one of the ways of trying to do it. Arms control is another way, and there are probably many more. But it is essential, I think, that a country that has already used poison gas against some of its own people, as just occurred, it is only prudent I think for that country to know that if they launch a chemical attack on some other nation or the United States that they would be met with a comparable, not a proportionate, response in the terms of one of our departments, but a massive response and that they should know that. That is one of the means of deterring, though it is not the only means.

Senator KERRY. Wouldn't you say that the Bush administration was, in fact, quite effective at making it clear to Iraq that the nuclear use was, in fact, available and, to the best of our knowledge, there is, as of now, no indication that that was not successful?

Mr. WEINBERGER. Yes. That is my exact point, that we were able to do that. If we denuded ourselves of any capability of making that kind of response, I have no doubt that——

Senator KERRY. But nobody here is talking about that. All we are talking about is continuing to pursue what a number of administrations have pursued, which is reducing our own manufacturing participation in chemical weapons.

Mr. WEINBERGER [continuing]. That's fine. But I don't think at the same time we ought to take away our capabilities of developing new, improved, and better defensive technologies and equipment.

Senator KERRY. Defensive, I agree. And the treaty agrees.

Mr. WEINBERGER. No, the treaty doesn't.

Senator KERRY. Well, the treaty says very clearly that we are allowed to defend.

Mr. WEINBERGER. That's right, and we have to disclose them completely to any other signatory, and that disclosure in itself weakens them if it does not destroy their effectiveness.

Senator KERRY. Well, in point of fact Article I, which you have not referred to, addresses the questions of whether or not you have to, under any circumstances, assist, encourage, or induce in any way anyone to engage in any activity that is prohibited by this treaty.

Now all we are talking about under this treaty is chemical weapons. So, therefore, Article I, in fact, most people—see, there is that infernal bell, or light. It is hard to have a dialog here.

Most people have argued it supersedes any other clause in here, because the basic intent of this treaty is to preclude the manufacture by anybody of chemical weapons in a way that could be used against another nation.

Mr. WEINBERGER. That is the intent. There are nations outside it who may be manufacturing them, who may be stockpiling, and, in fact, are stockpiling them as we know now.

What I am troubled by is the fact that if we develop a so-called fool proof mask and protective clothing that still enables you to take the actions that soldiers have to take in defending themselves and their country, you are going to have to share that. By sharing

it, you eliminate its effectiveness. There is a little process called reverse engineering whereby all of the processes which you have to produce that have to be given to other members, other signatories, and those signatory members, as Secretary Rumsfeld suggested, that kind of information, distributed on that kind of scale, one way or another is bound to get into the hands of potential enemies.

Senator KERRY. Mr. Secretary, this is a very, very important point. In effect, what you are saying is that if you were to share it, you would have rendered even more ineffective the capacity to use chemical weapons, which is, in effect, the very purpose of this treaty.

Mr. WEINBERGER. Well, that is not the way I would phrase it. No.

Senator KERRY. Let me just finish my thought.

Mr. WEINBERGER. We are talking about defensive equipment now.

Senator KERRY. I understand. But if you can defend against something, it has no offensive capacity. If it has no offensive capacity, you have taken away its military value. That is precisely the purpose of this treaty.

Mr. WEINBERGER. You are talking about absolutes, Senator, absolute capabilities and all the rest. But what I am talking about are improvements in an already imperfect defensive capability that we have now.

Senator KERRY. But if I were a military leader——

Mr. WEINBERGER. Sharing those improvements makes them relatively—at least we could phrase it this way if you would like—makes them relatively less effective than if we didn't share them.

Senator KERRY [continuing]. I agree. But if I were a military leader, knowing that we had shared our ability to be able to have a foolproof mask, I am not going to use the chemical weapon. And if you don't use the chemical weapon because you know it is foolproof, you have done exactly what you have tried to do with this treaty, which is eliminate the potential for chemical weapons to be used.

Mr. WEINBERGER. I'm sorry, but I don't follow you. I have great respect for you, but I don't follow that.

Senator KERRY. Well, I don't think it is that hard to follow.

Mr. RUMSFELD. May I respond?

Senator KERRY. I think——

The CHAIRMAN. Mr. Secretary Rumsfeld.

Mr. RUMSFELD. I just think that the way you have cast it is not correct. First, there is the threat of the use of chemical weapons, which is a terror weapon. It affects people, behavior, and soldiers. Second is the reality that for every offense there is a defense and for every defense there is going to be an offense. There is always going to be an evolution in technology. So the idea of perfection does not exist in this business.

But let's say that you had reasonably good defensive capability. Assume that on the part of the other side. You cannot function for long in a chemical environment. You could not function with that kind of equipment. The advantage clearly is in the hands of the aggressor.

So I think you are on a track that, to me, does not make sense. In my view, sharing technology about how to defend against these weapons is not anything other than disadvantageous for the defender and advantageous for the aggressor.

The CHAIRMAN. That is the last word.

We have been here for 2 hours and 47 minutes. I have been on this committee for quite a while—otherwise I would not be sitting in this chair, and I do not recall a more significant hearing with more facts and figures being given than you gentlemen have provided.

I want you to know, speaking for myself and I think for all of the Senators on this committee, I am enormously grateful for your having made the sacrifice to even be here, particularly Secretary Rumsfeld. You came quite a distance.

But I do thank you on behalf of the Senate and the committee.

As we close, let me point out once more, in case somebody has forgotten it, that last year this treaty was reported by this committee and scheduled for debate in the Senate. And it was not dropped by my request. It was dropped by the request of the administration, which did some head counting and realized they did not have the votes.

Now I presume in saying that you think the Senate ought to vote on this treaty that you mean after the committee has performed under the rules and reported it to the Senate with a majority vote. Is that what you mean?

Mr. WEINBERGER. Of course. Yes.

Dr. SCHLESINGER. Yes, it is.

Mr. WEINBERGER. As I said, Senator, I thought this was part of the process for the Senate.

Mr. RUMSFELD. It's for this committee to decide that.

Senator BIDEN. Mr. Chairman, if we were ready last year, why aren't we ready this year? Nothing has changed in the treaty.

The CHAIRMAN. Well, I don't know about that. I thought you and I made some changes in it.

Senator BIDEN. Oh, we know we did. But the point is we were ready before.

Dr. SCHLESINGER. Well, there are two branches of government, Senator, at least.

Senator KERRY. But only one does treaties.

The CHAIRMAN. I'm at a disadvantage with hearing aids, so I had better get out of this one.

There being no further business to come before the committee, we stand in recess.

Thank you again, gentlemen.

[Whereupon, at 12:49 p.m., the committee recessed, to reconvene at 3:30 p.m. the same day]

CHEMICAL WEAPONS CONVENTION

TUESDAY, APRIL 8, 1997—P.M. SESSION

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 3:30 p.m., in room SD–419, Dirksen Senate Office Building, Hon. Jesse Helms (chairman of the committee) presiding.

Present: Senators Helms, Lugar, Coverdell, Hagel, Smith, Grams, Brownback, Biden, Sarbanes, Robb, Feinstein, and Wellstone.

The CHAIRMAN. The committee will come to order.

Madam Secretary, I was delighted late yesterday to learn that you wanted to appear before this committee today to give the benefit of the administration's perspective on the treaty again. I think it is clearly a matter of public record that the entire Helms family admires you. I think they are going to score some points by having you up here this afternoon.

Now, if Senator Biden will agree, this is the first time you have appeared as Secretary of State formally.

Secretary ALBRIGHT. That is true.

The CHAIRMAN. And this being such an important issue, I know that the Senators will have questions either in writing or in person that they want to ask directly of you. I know, knowing you, that you will respond to these written questions, realizing the Senators have commitments to other places.

I and the other members of the committee will forego our statements, unless Senator Biden wishes to make one.

Senator BIDEN. I will be happy to place mine in the record, Mr. Chairman.

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF SENATOR BIDEN

Thank you, Mr. Chairman. I would like to thank Secretary Albright this afternoon for appearing on such very short notice and making time in her busy schedule to be with us this afternoon because she recognizes the central importance of this issue for our national security.

I appreciate the opportunity to take a few minutes again to address perhaps the most important issue to come before the 105th Congress to date: The Chemical Weapons Convention.

This afternoon we will hear more testimony about this treaty and what it does and does not do, but the core issue is very simple: This treaty outlaws poison gas weapons.

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

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

The CWC will help protect our citizens from the use of poison gas weapons by terrorist groups. It will benefit our military by requiring other nations to follow our lead and destroy their chemical weapons. It will improve the ability of our intelligence agencies to monitor chemical weapons threats to our armed forces and our Nation.

The convention has the strong support of the American chemical industry, which was centrally involved in the negotiation of the CWC. It also takes into account all of the protections afforded Americans under our Constitution.

The CWC will make pariahs out of states that refuse to abide by its provisions. Through the sanctions required by the convention, it will make it more difficult for those pariah states to obtain the precursor chemicals they need to manufacture poison gas. It will create international pressure on these states to sign and ratify the CWC and to abide by its provisions.

The CWC will create a standard for good international citizens to meet. It will brand as outlaws those countries that choose to remain outside this regime.

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

we need to disregard arguments that are superfluous to the core reality of what this convention will accomplish: It outlaws poison gas, period. The United States is already committed to destroying its chemical weapon arsenal. By ratifying the CWC, we can hold other countries to the same standard we have set for ourselves.

In this morning's testimony, we heard three very distinguished former Secretaries of Defense tesify on this treaty.

Among the claims they made about the CWC are that it would force us to share our most advanced defensive technology with all states, including countries of concern, that have ratified this agreement. Another assertion they made is that it requires us to abandon all controls we have on the proliferation of sensitive technology through mechanisms like the australia group.

In reviewing the treaty, we find both claims are false.

With regard to sharing defensive technology, paragraph seven of article ten states that: "Each state party undertakes to provide assistance through the organization and to this end to elect to take one or more of the following measures." Let me emphasize: "Elect to take one or more."

Among the options, the option I expect the United States would choose, is that we could: "Declare, not later than 180 days after this convention enters into force for [us], the kind of assistance we might provide in response to an appeal by the organization."

That's right: We would declare what we might provide.

The Chairman and I are very close to agreement on a condition that would require the executive branch not to provide any assistance to a rogue state beyond medical antidotes and treatment. And that would be fully in keeping with article ten of the CWC.

As for the argument that we would be forced to abandon our current mechanisms to control the proliferation of sensitive technology, the CWC explicitly allows us to keep these protections in place.

Article eleven supports chemical trade and technology exchange "for purposes not prohibited under this convention." It also requires that trade restrictions not be "incompatible with the obligations undertaken under this convention."

But the CWC is completely consistent with continued enforcement of the Australia Group controls, which member states use to keep chemical and biological weapons material out of the hands of rogue states. The executive branch has said this time and again, and so have our Australia Group allies.

I am convinced that the CWC does not require us to share our most advanced defensive technology or to abandon existing controls on chemical weapons. I will be interested to hear how the officials in the administration today view these provisions.

I understand that Secretary Albright must leave after her statement today, and I welcome the opportunity to hear her testimony and the statements and responses of all of our witnesses here today.

The CHAIRMAN. And we will print any statement that you wish to make for the record, and that will give you an opportunity to

summarize if you wish. In other words, you are a free agent and you are welcome. Madam Secretary, the stage is yours.

STATEMENT OF HON. MADELEINE KORBEL ALBRIGHT, SECRETARY OF STATE

Secretary ALBRIGHT. Thank you very much, Mr. Chairman. I am delighted to see you here, as I enjoyed our trip to North Carolina.

The CHAIRMAN. We enjoyed it.

Secretary ALBRIGHT. I had a good time.

Senator Biden and Senator Brownback, I am very glad that you were able to make time for me to testify on such short notice. I am also delighted to note the return of Admiral Nance, who just walked through the door. I wish him continued recovery, and I say that sincerely on behalf of the entire Department and not simply those whose names are scheduled to come up before you for confirmation.

Mr. Chairman, the Chemical Weapons Convention, or CWC, is one of the President's top foreign policy priorities and, this afternoon, I would like to explain why. I begin with the imperative of American leadership. The United States is the only nation with the power and respect to forge a strong global consensus against the spread of weapons of mass destruction.

In recent years, we have used our influence wisely to gain the removal of nuclear weapons from Ukraine, Belarus and Kazakstan. We have led in securing the extension of the Nuclear Nonproliferation Treaty. We have frozen North Korea's nuclear program. We have maintained sanctions against Iraq. We have joined with others in controlling the transfer of dangerous conventional arms. In these and other efforts, we have counted on the support and counsel of this committee and your Senate colleagues.

American leadership on arms control is not something we do as a favor to others. Our goal is to make the world safer for Americans and to protect our allies and friends. We have now another opportunity to exercise leadership for those ends and, once again, we look to this committee for help.

The CWC will enter into force on April 29th. For reasons I will discuss, we believe it is essential to ratify the agreement before then, so that America will be an original party. Chemical weapons are inhumane. They kill horribly, massively, and—once deployed—are no more controllable than the wind.

We decided years ago to renounce the use of these weapons and to begin destroying our own chemical weapons stockpiles. Thus, the CWC will not deprive us of any military option we would ever use against others, but it would help ensure that others never use chemical weapons against us.

In considering the value of this treaty, we must bear in mind that today, keeping and producing chemical weapons are legal. The gas Saddam Hussein used a decade ago to massacre Kurdish villagers was legally produced. In most countries, terrorists can buy chemical agents, such as sarin gas, legally. Countries such as Iran and Libya can buildup their stockpiles of chemical weapons legally.

If we are ever to rid the world of these horrible weapons, we must begin by making not only their use, but also their development, production, acquisition, and stockpiling illegal. This is fun-

damental. Making chemical weapons illegal is the purpose of the CWC.

The CWC sets the standard that it is wrong for any nation to build or possess a chemical weapon and gives us strong and effective tools for enforcing that standard. This will not eliminate all danger, but it will make chemical weapons harder for terrorists or outlaw states to buy, build, or conceal.

Under the treaty, parties must give up the chemical weapons they have and refrain from developing or acquiring them in the future. To enforce these requirements, a comprehensive inspection regime will be in place. The treaty will give us the tools we need to learn more about chemical weapons programs. It will also enable us to act on the information we obtain.

In the future, countries known to possess chemical weapons and who have joined the CWC will be forced to choose between compliance and sanctions. Countries outside the CWC will be subject to trade restrictions whether or not they are known to possess chemical weapons.

These penalties would not exist without the treaty. They will make it more costly for any nation to have chemical weapons and more difficult for rogue states or terrorists to acquire materials needed to produce them.

Over time, I believe that if the United States joins the CWC, most other countries will, too.

Mr. Chairman and members of the committee, the problem states will never accept a prohibition on chemical weapons if America stays out, keeps them company, and gives them cover. We will not have the standing to mobilize our allies to support strong action against violators if we ourselves have refused to join the treaty being violated.

The core question here is, who do we want to set the standards? Critics suggest that the CWC is flawed, because we cannot assume early ratification and full compliance by the outlaw states. To me, that is like saying that because some people smuggle drugs, we should enact no law against drug smuggling. When it comes to the protection of Americans, the lowest common denominator is not good enough. Those who abide by the law, not those who break it, must establish the rules by which all should be judged.

Moreover, if we fail to ratify the agreement by the end of April, we would forfeit our seat on the treaty's Executive Council for at least 1 year, thereby losing the right to help draft the rules by which the Convention will be enforced; we would lose the right to help administer and conduct inspections; and because of the trade restrictions imposed on nonmember states, our chemical manufacturers are concerned that they would risk serious economic loss.

Eliminating chemical weapons has long been a bipartisan goal. The convention itself is the product of years of effort by leaders from both parties. The treaty has strong backing from our defense and military leaders.

I am aware, Mr. Chairman, that the committee heard this morning from three former Secretaries of Defense who do not favor approval of this convention. Their arguments deserve consideration. I would point out, however, that other former Secretaries of Defense from both parties support the treaty, and that every former

Chairman of the Joint Chiefs, going back to the Carter administration, has endorsed it.

Just this past week, we received a letter signed by 17 former four-star generals and admirals, including three of the former Chairmen of the Joint Chiefs and five former service chiefs.

Let me quote from that letter:

> Each of us can point to decades of military experience in command positions. We have all trained and commanded troops to prepare for the wartime use of chemical weapons and for defense against them.

The quote continues:

> Our focus is not on the treaty's limitations, but instead on its many strengths. The CWC destroys stockpiles that could threaten our troops; it significantly improves our intelligence capabilities; and it creates new international sanctions to punish those states who remain outside the treaty. For these reasons, we strongly support the CWC.

I also note, Mr. Chairman and members of the committee, that your witnesses this morning have not had the benefit of the dialog we have been conducting with Senators, including yourself, the Ranking Member and other members of this committee. We have attempted, in the course of this dialog, to address the major issues treaty opponents have raised.

For example, some believe the CWC will require its members to exchange manufacturing technology that could then be used to make chemical agents. In fact, the CWC prohibits members from providing any assistance that would contribute to chemical weapons proliferation.

There are those who suggest that if we were to ratify the CWC, America would then become complacent about the threat that chemical weapons pose. This, too, is false, and this body can help ensure that it remains false.

The President has requested an increase of almost $225 million over 6 years in our already robust program to equip and train our troops against chemical and biological attack.

Some have expressed the view that the inspection requirements of the CWC could raise constitutional problems here in the United States. However, the CWC provides explicitly that inspections will be conducted according to each nation's constitutional process.

Another fear is that the CWC could become a regulatory nightmare for small business. But after reviewing the facts, the National Federation of Independent Business concluded that its members "will not be affected" by the treaty.

Finally, I have heard the argument that the Senate really need not act before April 29th. But, as I have said, there are real costs attached to any such delay. The treaty has already been before the Senate for more than 180 weeks. More than 1,500 pages of testimony and reports have been provided and hundreds of questions have been answered. The Senate is always the arbiter of its own pace; but from where I sit, a decision prior to April 29 would be very welcome and, Mr. Chairman, I believe very much in the best interest of the United States.

Mr. Chairman, America is the world's leader in building a future of greater security and safety for us and for all who share our commitment to democracy and peace. The path to that future is through the maintenance of American readiness and the expansion

of the rule of law. We are the center around which international consensus forms. We are the builder of coalitions, the designer of safeguards, the leader in separating acceptable international behavior from that which cannot be tolerated.

This leadership role for America may be viewed as a burden by some, but I think, to most of our citizens, it is a source of great pride. It is also a source of continuing strength, for our influence is essential to protect our interests, which are global and increasing. If we turn our backs on the CWC after so much effort by leaders from both parties, we will scar America with a grievous and self-inflicted wound. We will shed the cloak of leadership and leave it on the ground for others to pick it up.

But if we heed the advice of wise diplomats such as James Baker and Brent Scowcroft, experienced military leaders such as Generals Powell, Mundy and Schwarzkopf, and thoughtful public officials such as former Senators Nunn, Boren and Kassebaum-Baker, we will reinforce America's role in the world.

By ratifying the CWC, we will assume the lead in shaping a new and effective legal regime. We will be in a position to challenge those who refuse to give up those poisonous weapons. We will provide an added measure of security for the men and women of our armed forces. We will protect American industry and American jobs. We will make our citizens safer than they would be in a world where chemical arms remain legal.

This treaty is about other people's weapons, not our own. It reflects existing American practices and advances enduring American interests. It is right and smart for America. It deserves the Senate's support and it deserves that support now.

Thank you very much, Mr. Chairman.

[The prepared statement of Secretary Albright follows:]

PREPARED STATEMENT OF MADELEINE K. ALBRIGHT

Mr. Chairman, members of the committee, I appreciate the opportunity to testify before you this afternoon. As evidenced by the bipartisan show of support at the White House last week, timely approval of the Chemical Weapons Convention, or CWC, is one of the President's top foreign policy priorities.

This afternoon, with the help of my colleagues, I would like to explain why.

I begin with the imperative of American leadership. The United States is the only nation with the power, influence, and respect to forge a strong global consensus against the spread of weapons of mass destruction. In recent years, we have used our position wisely to gain the removal of nuclear weapons from Ukraine, Belarus, and Kazakstan. We have led in securing the extension of the Nuclear Nonproliferation Treaty. We have frozen North Korea's nuclear program. We have maintained sanctions against Iraq. And we have joined forces with more than two dozen other major countries in controlling the transfer of dangerous conventional arms and sensitive dual-use goods and technologies.

In these and other efforts, we have counted on the strong support and wise counsel of this committee and your Senate colleagues. Your consent to ratification of the START II Treaty made possible the agreement in Helsinki to seek further significant reductions in cold war nuclear arsenals. And the Nunn-Lugar program set the standard for forward-looking bipartisan action to promote nuclear security.

American leadership on arms control is not something we do as a favor to others. Our goal is to make the world safer for Americans and to protect our allies and friends. We have now another opportunity to exercise leadership for those ends. And once again, we look to this committee for help.

The CWC will enter into force on April 29. Our goal is to ratify the agreement before then so that America will be an original party. By so doing, as the President said last Friday, we "can help to shield our soldiers from one of the battlefield's

deadliest killers * * * and we can bolster our leadership in the fight against terrorism, and proliferation around the world." Chemical weapons are inhumane. They kill horribly, massively, and—once deployed—are no more controllable than the wind. That is why the United States decided—under a law signed by President Reagan in 1985—to destroy the vast majority of our chemical weapons stockpiles by the year 2004. Thus, the CWC will not deprive us of any military option we would ever use against others; but it would help ensure that others never use chemical weapons against us.

In considering the value of this treaty, we must bear in mind that today, keeping and producing chemical weapons are legal. The gas Saddam Hussein used to massacre Kurdish villagers in 1988 was produced legally. In most countries, terrorists can produce or procure chemical agents, such as sarin gas, legally. Regimes such as Iran and Libya can buildup their stockpiles of chemical weapons legally.

If we are ever to rid the world of these horrible weapons, we must begin by making not only their use, but also their development, production, acquisition, and stockpiling illegal. This is fundamental. This is especially important now when America's comparative military might is so great that an attack by unconventional means may hold for some potential adversaries their only perceived hope of success. And making chemical weapons illegal is the purpose of the CWC.

The CWC sets the standard that it is wrong for any nation to build or possess a chemical weapon, and gives us strong and effective tools for enforcing that standard. This is not a magic wand. It will not eliminate all danger. It will not allow us to relax or cease to ensure the full preparedness of our armed forces against the threat of chemical weapons. What it will do is make chemical weapons harder for terrorists or outlaw states to buy, build or conceal.

Under the treaty, parties will be required to give up the chemical weapons they have, and to refrain from developing, producing or acquiring such weapons in the future. To enforce these requirements, the most comprehensive and intense inspection regime ever negotiated will be put in place. Parties will also be obliged to enact and enforce laws to punish violators within their jurisdictions.

Of course, no treaty is 100 percent verifiable, but this treaty provides us valuable tools for monitoring chemical weapons proliferation worldwide—a task we will have to do with or without the CWC.

CWC inspections and monitoring will help us learn more about chemical weapons programs. It will also enable us to act on the information we obtain. In the future, countries known to possess chemical weapons, and who have joined the CWC, will be forced to choose between compliance and sanctions. And countries outside the CWC will be subject to trade restrictions whether or not they are known to possess chemical arms.

These penalties would not exist without the treaty. They will make it more costly for any nation to have chemical weapons, and more difficult for rogue states or terrorists to acquire materials needed to produce them.

Over time, I believe that—if the United States joins the CWC—most other countries will, too. Consider that there are now 185 members of the Nuclear Nonproliferation Treaty, and only five outside. Most nations play by the rules and want the respect and benefits the world bestows upon those who do.

But the problem states will never accept a prohibition on chemical weapons if America stays out, keeps them company and gives them cover. We will not have the standing to mobilize our allies to support strong action against violators if we ourselves have refused to join the treaty being violated.

The core question here is who do we want to set the standards? Critics suggest that the CWC is flawed because we cannot assume early ratification and full compliance by the outlaw states. To me, that is like saying that because some people smuggle drugs, we should enact no law against drug smuggling. When it comes to the protection of Americans, the lowest common denominator is not good enough. Those who abide by the law, not those who break it, must establish the rules by which all should be judged.

Moreover, if we fail to ratify the agreement by the end of April:

- We would forfeit our seat on the treaty's Executive Council for at least 1 year, thereby costing us the chance to help draft the rules by which the convention will be enforced;
- We would not be able to participate in the critical first sessions of the Organization for the Prohibition of Chemical Weapons, which monitors compliance;
- We would lose the right to help administer and conduct inspections; and
- Because of the trade restrictions imposed on nonmember states, our chemical manufacturers are concerned that they would risk serious economic loss.

According to a letter signed by the CEOs of more than fifty chemical manufacturing companies, the American chemical industry's "status as the world's preferred supplier * * * may be jeopardized if * * * the Senate does not vote in favor of the CWC."

According to those executives "we stand to lose hundreds of millions of dollars in overseas sales, putting at risk thousands of good-paying American jobs."

Eliminating chemical weapons has long been a bipartisan goal. The convention itself is the product of years of effort by leaders from both parties.

And the treaty has strong backing from our defense and military leaders.

I am aware, Mr. Chairman, that the committee heard this morning from three former Secretaries of Defense who do not favor approval of this convention. There is no question their arguments are sincerely held, and deserve consideration. I would point out, however, that other former Secretaries of Defense from both parties are on record in support of the treaty, and that every former chairman of the Joint Chiefs of Staff, going back to the Carter Administration, has endorsed it.

Just this past week, we received a letter of support signed by 17 former four star generals and admirals, including three of the former chairmen of the Joint Chiefs of Staff and five former service chiefs. In their words:

> Each of us can point to decades of military experience in command positions. We have all trained and commanded troops to prepare for the wartime use of chemical weapons and for defenses against them. Our focus is not on the treaty's limitations, but instead on its many strengths. The CWC destroys stockpiles that could threaten our troops; it significantly improves our intelligence capabilities; and it creates new international sanctions to punish those states who remain outside of the treaty. For these reasons, we strongly support the CWC.

I also note, Mr. Chairman, that the former officials who testified before the committee this morning have not had the benefit of the intensive dialog we have been conducting with Members of the Senate leadership, including yourself, the ranking Member, and other key members of this committee. We have attempted, in the course of this dialog, to address the major issues the opponents of the treaty have raised, and to provide appropriate assurances in binding conditions to accompany the resolution of ratification.

For example, critics have asserted that the CWC obliges member states to exchange manufacturing technology that can be used to make chemical agents. This is untrue. The CWC prohibits members from providing any assistance that would contribute to chemical weapons proliferation.

Nothing in the CWC requires any weakening of our export controls. Further, the United States will continue to work through the Australia Group to maintain and make more effective internationally agreed controls on chemical and biological weapons technology. And, as I have said, the CWC establishes tough restrictions on the transfer of precursor chemicals and other materials that might help a nation or terrorist group to acquire chemical weapons.

Opponents also suggest that if we ratify the CWC, we will become complacent about the threat that chemical weapons pose. This, too, is false—and this body can help ensure it remains false. The President has requested an increase of almost $225 million over 5 years in our already robust program to equip and train our troops against chemical and biological attack. We are also proceeding with theater missile defense programs and intelligence efforts against the chemical threat.

Some critics of the treaty have expressed the fear that its inspection requirements could raise constitutional problems here in the United States. However, the CWC provides explicitly that inspections will be conducted according to each nation's constitutional processes.

Another issue that arose early in the debate was that the CWC could become a regulatory nightmare for small businesses here in the United States. But after reviewing the facts, the National Federation of Independent Business concluded that its members "will not be affected" by the treaty.

Finally, I have heard the argument that the Senate really need not act before April 29. But as I have said, there are real costs attached to any such delay. The treaty has already been before the Senate for more than 180 weeks. More than 1,500 pages of testimony and reports have been provided, and hundreds of questions have been answered. The Senate is always the arbiter of its own pace. But from where I sit, a decision prior to April 29 would be very much in the best interests of the United States.

Mr. Chairman, America is the world's leader in building a future of greater security and safety for us and for those who share our commitment to democracy and

peace. The path to that future is through the maintenance of American readiness and the expansion of the rule of law. We are the center around which international consensus forms. We are the builder of coalitions, the designer of safeguards, the leader in separating acceptable international behavior from that which cannot be tolerated.

This leadership role for America may be viewed as a burden by some, but I think to most of our citizens, it is a source of great pride. It is also a source of continuing strength, for our influence is essential to protect our interests, which are global and increasing. If we turn our backs on the CWC, after so much effort by leaders from both parties, we will scar America with a grievous and self inflicted wound. We will shed the cloak of leadership and leave it on the ground for others to pick up.

But if we heed the advice of wise diplomats such as James Baker and Brent Scowcroft, experienced military leaders such as Generals Powell, Mundy, and Schwartzkopf, and thoughtful public officials such as former Senators Nunn, Boren, and Kassebaum-Baker, we will reinforce America's role in the world.

By ratifying the CWC, we will assume the lead in shaping a new and effective legal regime. We will be in a position to challenge those who refuse to give up these poisonous weapons. We will provide an added measure of security for the men and women of our armed forces. We will protect American industry and American jobs. And we will make our citizens safer than they would be in a world where chemical arms remain legal.

This treaty is about other people's weapons, not our own. It reflects existing American practices and advances enduring American interests. It is right and smart for America. It deserves the Senate's timely support.

Thank you very much.

The CHAIRMAN. Thank you, Madam Secretary.

Let us see, we have nine, and you need to leave here by about 4:15 or 4:20?

Secretary ALBRIGHT. That is correct, sir.

The CHAIRMAN. I think we will have to confine ourselves to about 3 minutes per Senator.

Let me just say to you, as your well-advertised friend, that during the 103d Congress, both the Congress and the administration were controlled by the political party to which you belong and to which I once belonged. The CWC was submitted in November 1993 and it lay absolutely fallow for the entire remainder of the 103d Congress, with no action even hinted by the Senate.

During the 104th Congress, with the Senate controlled by Republicans, we passed the treaty from this committee and were prepared to vote for it—or vote on it—on September 14, 1996. But, what do you know? On the very day that the vote was scheduled, the administration panicked and asked the Senate not to vote on the treaty. Now I read in the press that members of the administration are either openly stating or insinuating that some of us are to be blamed for blocking passage of the treaty.

Now, that kind of thing will not do. I have said repeatedly, and I will say it to you again—and as we discussed when you were good enough to go to North Carolina—if some in the administration will stop stonewalling and let us look at some of the important changes that I think need to be made in this treaty, I think you might be surprised at the outcome. But as long as the administration stonewalls, I can stonewall, too.

I am going to reserve the balance of my time. I think I have about a minute and a half remaining.

Senator Biden.

Senator BIDEN. Mr. Chairman, I will adopt your practice and yield to my colleague from California, since I get to speak to the Secretary all the time on this issue.

Senator FEINSTEIN. Thank you very much, Senator.

Good afternoon, Madam Secretary. I very much appreciated your comments.

Let me ask you a question that is somewhat speculative, but I hope you will answer it. I have been really very puzzled. I have read all of the analyses, all of the discussions that I could find between our Ranking Member and our Chairman over why this situation seems to have become so polarized. It is hard for me to understand it. I see the argument made on verification. It seems to me, though, that we are a step ahead whenever we make illegal the manufacture of some of these gasses.

I think the important points you made in your speech were that the Iraqi gasses were legally made, and the degree to which nations will conform to an international concordat which simply states these are illegal and that the verification is based on the constitutional methodology of each country, that still we accomplish something. Have you been able to pinpoint more definitively any of the rationale for the opposition to this?

Secretary ALBRIGHT. Senator Feinstein, you ask, I think, a very important question. Because from the perspective of those of us who believe that this Chemical Weapons Convention is a tool for those countries, especially the United States, that have already given up the use of chemical weapons, to get insight and control over what is going on in other countries in chemical weapons programs, it seems mighty strange that we would want to deprive ourselves of what is clearly a very good method for checking up on what others are doing.

I must say that as I have read testimony by the others or, frankly, have listened to my friend, the Chairman, who I think is a true patriotic American, there is something that makes one wonder what is the problem with this. I think that the issue comes down to the fact that we would all very much like to have perfect arms control treaties. That is, those that are completely and totally verifiable, that limit everybody else and leave us some options. This is not possible.

This treaty does have certain issues raised about verification. But our estimation is that the treaty can verify and does verify problems where there can be a massive problem or a large military problem for the United States. Therefore, we can go through other parts, but I think that the reason that good Americans are concerned about this is that they want perfection, and what we have is a treaty that is excellent and very good and a useful tool for the United States.

I would, with your permission, Mr. Chairman, like to enter into the record two letters that I have for you—one from the Secretary of Defense and one from the Chairman of the Joint Chiefs—that really, I believe, address in a very cogent and coherent way some of the questions that have been raised. If I might just take one more minute and deal with the verification issue—and this is in Secretary Cohen's letter. He says:

Critics have argued that the CWC's verification regime is not good enough. While no verification regime is perfect, the CWC's comprehensive and extensive regime will improve our ability to monitor possible chemical weapons proliferation, which we must do with or without the CWC. As you know, the military use of any weapon typically requires significant testing, equipping, and training of forces. These activities would be more difficult to hide in the face of the CWC's comprehensive inspection regime that includes a broad-based data declaration and both routine and challenge inspection rights. Together with our unilateral intelligence efforts, this regime should enable us to more readily detect significant violations before they become a real problem for U.S. national security.

So the point is the same—that it is impossible to have perfection. But with this convention, it is a huge step forward for America.

[The material referred to by Secretary Albright follows:]

THE SECRETARY OF DEFENSE,
Washington, DC 20501.

The Honorable JESSE HELMS,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC 20510.

Dear Mr. Chairman,

Thank you for the opportunity to provide the views of the Department of Defense on the Chemical Weapons Convention (CWC). I sincerely regret that my duties as Secretary of Defense have taken me out of the country and thereby, have precluded me from testifying before your Committee on this most important national security treaty.

As you very well know, as we approach the next millennium, we face the prospect of regional aggressors and others seeking to use chemical weapons to achieve what they cannot achieve through conventional military means. Dealing with this threat requires a coherent, multi-faceted national response involving: active and passive defenses against chemical weapons; strong unilateral and multilateral export controls to limit the spread of chemical weapons technology; improved intelligence collection and threat analysis; well-coordinated civil defense capabilities and an international standard barring the production and possession of chemical weapons. The CWC is a necessary component of this response. It strengthens our hand in achieving effective limits on the spread of technology that could be used against us, supports our intelligence and civil defense efforts, and holds others to the standard that Presidents Reagan and Bush and previous Congresses set for the United States.

As I have stated before, the United States does not need chemical weapons to protect our security interests. Our robust military response capabilities and increasingly robust defensive capabilities provide an effective deterrent and allow us to inflict an effective, devastating and overwhelming response should we be attacked. We have a strong national security interest in seeing other nations eliminate their chemical weapons stockpiles and capabilities, since that elimination will reduce the risk that our troops will face chemical weapons on the battlefield.

Critics of the CWC have made several assertions regarding the implications of the CWC for our national security that I urge you to reject.

Chemical Defense: Critics suggest that if the United States ratifies the CWC, it will reduce our support for defensive measures. Nothing could be further from the truth. DOD not only maintains a robust program to equip and train our troops against chemical and biological attack, but I have asked Congress to increase our budget for chemical and biological defenses by almost $225 million over the next six years. Moreover, I place a high priority on our theater missile defense programs and intelligence efforts against the chemical threat

U.S. Response Capability: Critics charge that the CWC, by constraining riot control agents, will reduce our options for responding to an attack against our troops, including our ability to rescue downed pilots. In fact, the Chemical Weapons Convention does not limit our options in the situations in which our troops are most likely to be engaged and pilots might be downed: peacetime military operations within an area of ongoing armed conflict in which the U.S. is not a party to the conflict (such as Somalia, Bosnia and Rwanda); consensual peacetime operations when the receiving state has authorized the use of force (including UN Chapter VI operations); and peacekeeping operations under the Chapter VII authority of the UN Security Council.

In all such cases, the CWC's restrictions on the use of RCAs against combatants apply only when U.S. forces are engaged in a use of force of a scope, duration and

intensity which would trigger the laws of war. These are situations in which other options normally would be used and for which I am accelerating the development and fielding of non-chemical, non-lethal alternatives that are consistent with the CWC.

The CWC also does not limit our options in normal peacekeeping operations and other likely scenarios, such as law enforcement operations, humanitarian and disaster relief operations, counterterrorist and hostage rescue operations and noncombatant rescue operations outside of internal or international armed conflict.

Chemical Weapons Proliferation: Some have argued that by ratifying the CWC, we would be contributing to chemical weapons proliferation. This is because they believe that the CWC would require us to provide to other member states our most advanced defensive equipment and manufacturing technologies, which some of these states would then use to build up clandestinely their chemical weapons capabilities. In fact. nothing in the CWC requires that we share our advanced chemical weapons defensive capabilities or chemical manufacturing technologies. Indeed, quite the opposite is true. The CWC prohibits any member from providing any assistance to anyone if that member believes that doing so would contribute to chemical weapons proliferation. Further, it establishes strict trade restrictions on precursor chemicals and requires that member states ensure that their internal regulations, which would include export controls, also are consistent with the object and purpose of the CWC. We will continue to work in the Australia Group to maintain effective internationally-agreed controls on chemical weapons-usable elements and technology.

Rogue States: While some critics argue that it is meaningless since only law-abiding nations will respect it, the reality is that the CWC will reduce the chemical weapons problem to a few notorious rogue states and impose trade restrictions that will curb their ability to obtain the materials to make chemical agents. This is clearly better than the status quo.

Verification: Critics have argued that the CWC's verification regime is not good enough. While no verification regime is perfect, the CWC's comprehensive and extensive regime will improve our ability to monitor possible chemical weapons proliferation—which we must do with or without the CWC. As you know, the military use of any weapon typically requires significant testing, equipping and training of forces. These activities would be more difficult to hide in the face of the CWC's comprehensive inspection regime that includes a broad-based data declaration and both routine and challenge inspection rights. Together with our unilateral intelligence efforts, this regime should enable us to more readily detect significant violations before they become a real problem for U.S. national security.

U.S. Industry: Some critics have claimed that the CWC will impose costly burdens on U.S. industry that could potentially erode our technological edge and, by eroding our edge, affect our national security. The reality is that the American chemical companies most affected by the CWC view its requirements as reasonable and manageable. Small chemical businesses who were initially troubled by critics' claims now also agree that abiding by the CWC will be manageable. The reality also is that, if the United States fails to ratify the CWC, it will be U.S. industry that is penalized with trade restrictions that industry estimates could cost hundreds of millions of dollars.

Mr. Chairman, in the 1980s, I led the Congressional fight to build binary chemical weapons to deter Soviet chemical use in Europe. With the end of the Cold War, the world has changed. Regional aggressors can be deterred by our vow to respond with overwhelming and devastating force to a chemical attack. Our military commanders agree that threatening a chemical weapons response is not necessary and they support the CWC.

The safety of our troops and the security of our nation will be strengthened by the CWC. But, the clock is ticking. So that we can reap the full security benefits of the CWC, it is imperative that the Congress act on this national security treaty before the treaty goes into force on April 29. If we ratify in time, the U.S. will have a seat at the table during the first critical days of implementation of the CWC and be assured that American citizens will be able to ensure the fullest and most rigorous compliance with this treaty. I urge your Committee to report the Chemical Weapons Convention out favorably to the Senate and the Senate to act now to ratify the Convention before it enters into force on April 29.

Sincerely,

WILLIAM S. COHEN

cc:

Joseph R. Biden, Jr.,
Ranking Member

CHAIRMAN OF THE JOINT CHIEFS OF STAFF,
Washington, DC 20510–3301,
8 April 1997.

The Honorable JESSE HELMS
Chairman, Foreign Relations Committee,
United States Senate,
Washington, D.C. 20510-3301

Dear Mr. Chairman,

Thank you for the opportunity to provide you, and through you to the United States Senate, my military appraisal of the Chemical Weapons Convention.

Let me state that the accession to the Chemical Weapons Convention by as many nations as possible is in the best interest of the Armed Forces of the United States. The combination of the nonproliferation and disarmament aspects of the Convention greatly reduces the likelihood that US Forces may encounter chemical weapons in a regional conflict. The protection of the young men and women in our forces, should they have to go in harm's way in the future, is strengthened not diminished, by the CWC.

The United States has unilaterally commenced the destruction of its chemical weapons stockpile—under the CWC, all other chemical weapons capable State Parties incur this same obligation. While no verification regime is perfect, the Convention's regime allows for intrusive inspections while protecting national security concerns. The CWC enjoins the world community to forego these heinous weapons, implements a regime of enforcement, and impairs the ability of those outside the Convention to obtain the materials to make chemical agents.

The Joint Chiefs of Staff and the Combatant Commanders are steadfast in support for a strong chemical defense posture. We will maintain a robust chemical defensive capability supported by aggressive intelligence collection efforts, but will not rely solely an these measures. As Secretary Perry testified in March 1996, if any country was foolish enough to use chemical against the United States, the response will be overwhelming and devastating. We do not need chemical weapons to provide an effective deterrent or to deliver an effective response.

It is important to emphasize that the CWC permits the use of riot control agents under most scenarios that the United States will likely face during future operations. If US Forces are deployed during peacetime to intercede in an internal or international armed conflict, such as under a UN mandate, the CWC will not affect our use of RCAs unless US or UN Forces become engaged in a use of force of a scope, duration, and intensity that would trigger the laws of war with respect to these forces. Until that time, the United States is not restricted by the CWC in its RCA use options, including against combatants who are parties to the conflict.

If we are a party to an international armed conflict, the CWC prohibits the use of RCAs only in specific situations where combatants are present. In these particular situations, options other than RCA exist. As one example, non-lethal alternatives that are consistent with the CWC could be employed. The CWC permits RCA use in riot control situations under direct and distinct US military control, such as controlling rioting prisoners of war, and in rear echelon areas outside the zone of immediate combat to protect convoys from civilian disturbances, terrorists, and paramilitary organizations. The ability of our forces to defend themselves will not be reduced by the Chemical Weapons Convention. Nothing will override our commanders' inherent authority and obligation to use all legal means available and to take all appropriate action, including the use of lethal force, in self defense of their units and personnel.

In my military judgment, we are better served as an original member of the Convention. I strongly support this Convention and respectfully request the Senate's advice and consent.

Sincerely,

JOHN M. SHALIKASHVILI,
Chairman of the Joint Chiefs of Staff.

Copy to:
The Honorable Joseph R. Biden, Jr.
Ranking Member

The Honorable Strom Thurmond,
Chairman, Senate Armed Services Committee

The Honorable Carl Levin,
Ranking Member, Senate Armed Services Committee

Senator FEINSTEIN. Thank you, Madam Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lugar.

Senator LUGAR. Madam Secretary, two of the strong points of the convention are that our own intelligence will be enhanced—namely, we know a lot about chemical weapons, or believe we do now; but, given the network of inspections and a network of finding out about the shipment of chemicals and their precursors, we will have a better lead as to who is active and where the materials are going.

The question that arises, and I suppose arose this morning, is: Is there value to us in terms of having international law behind us; that is, a norm in which clearly the production of chemical weapons is illegal in the world? I just ask you from your standpoint of your previous work in the United Nations, dealing with other nations. If the charge is made that we might let our guard down, would not be active, is it not your experience that in fact, if we have international law going for us, plus an international set of inspections and intelligence collection, we are more likely not only to act, but to act effectively, and maybe even, in some cases, unilaterally?

Specifically, if Libya had a situation that we felt was undesirable, we could now, I presume, send aircraft there and demolish the facilities before they knew what we were doing? Are we more likely, however, as a Nation, to do that if we have international law going for us, plus the intelligence apparatus of all other nations going for us likewise?

Secretary ALBRIGHT. Senator Lugar, I believe that we gain greatly by having, first of all, the added intelligence capability that comes from having an international regime and, second, the force of being part of an international regime. Though it is not exactly the same situation, I would say that we have multiplied our own effectiveness through something like the IAEA—the way to inspect and have safeguards on nuclear weapons, by having a regime that puts the force of the entire international community behind an inspection or behind a determination to take action and provide international sanctions.

So this is a force multiplier for us, the country that no longer plans to use chemical weapons ourselves and knows that others still have them.

Senator LUGAR. Thank you.

The CHAIRMAN. Senator Biden.

Senator BIDEN. Madam Secretary, it seems to me—and I will not take the time, in part, because I do not have the time—that everything that the critics say is wrong with this treaty is worse without the treaty, beginning with verification and I think, literally, every major criticism.

Let me ask you a question. This is a strange-sounding question, I guess. But let us assume we either bring this treaty up—hopefully, we will have an opportunity to do that by April 29th and vote on it—we bring it up and it is defeated or we do not bring it up. What do you say? I mean what happens? Describe to us what happens when you attend the next meeting of your counterparts, where the Secretaries of State, your counterparts in France and Germany and Great Britain, *et cetera*—I mean our allies, our friends, the Australia Group—not all of whom are European, obviously—what happens at that meeting?

I am not being facetious when I ask the question; I am being serious.

Secretary ALBRIGHT. I would hope very much that I would never have to be in that position; because I truly do think that it would be not just a major embarrassment for the leading country in the world to be in a position of having decided not to become a part of what is now a hugely ratified convention, but I think it would also hurt us, Senator, in other ways. Because we see ourselves as the leaders of creating international norms and regimes.

I think I have said to some of you that I believe that there are four groups of countries in the world, and the largest one are those countries of which we are the leader, that are basically those countries that abide by international norms, that provide—because they establish a better way of life for our citizens—rules of the road. It would lessen our credibility not only in this obviously important regime but across the board if we decide, for some reason, not to become a part of what is clearly a step forward in limiting weapons of mass destruction.

I think it would hurt our credibility across the board, and not just on this issue, Senator Biden.

Senator BIDEN. My time is up. Thank you, Mr. Chairman.

Thank you, Madam Secretary.

The CHAIRMAN. Senator Coverdell.

Senator COVERDELL. Madam Secretary, I know that there have been extensive discussions about conditions between the administration, the Chairman, and others. Could you characterize your assessment of the progress, your general feeling at this hour, as we are embedded in the debate? Is there an optimism on your part with regard to this process? Have we gone as far as we can and we are down to our differences? Do you characterize it as still being a viable process that might move to an agreement?

Secretary ALBRIGHT. Senator Coverdell, first of all, I think that there has been a great deal of goodwill as the process has gone forward and through a variety of meetings. There has been, I think, considerable movement on dealing with a variety of questions that obviously are legitimate, given our process of government and the importance of having you all, as the representatives of the people, understand more about how this treaty is being carried out.

I do think that I am optimistic, because that is my nature. I do think that while there are still a number of points on which we disagree, that we are moving forward in a good way. What I do think is absolutely important is for the time to come for the Senate to vote. There have been, as I have stated—13 hearings that have been held before this one was, 1,500 pages of testimony, lots of back-and-forth, in terms of trying to exchange information. I think that if we cannot agree on some of the differences within informal groupings, that there must be some way that we can vote—you all can vote—on the differences that still exist.

I cannot stress enough the importance of having the vote before the time expires to be an original party. I think we are definitely cutting off our nose to spite our face if we do not ratify before that deadline. Our request to all of you is to vote.

Senator COVERDELL. If I have just a second, just as a matter for clarification and not necessarily related to the overall aspect of our

position in the world, but has Israel signed this treaty, do you know?

Secretary ALBRIGHT. Israel has signed, but not ratified.

Senator COVERDELL. But not ratified?

Secretary ALBRIGHT. Right.

The CHAIRMAN. The Senator from Minnesota.

Senator WELLSTONE. Thank you, Mr. Chairman.

Madam Secretary, thank you.

I guess, in the limited amount of time that we have, almost more than asking the question, I just would like to amplify or build on a point you made about the importance of our hoping to have an agreement and moving this forward and having a vote. I am on the Veterans' Affairs Committee, and General Schwarzkopf, when he testified before our committee dealing with the illness of the Gulf veterans, was really poignant in also expressing his support for this agreement. Just to quote from not just General Schwarzkopf, but any number of other military leaders:

"On its own, the CWC cannot guarantee complete security against chemical weapons." I think that was your point. You did not come here to argue it is perfect. We must continue to support robust defense capabilities and remain willing to respond through the CWC or by unilateral action to violators of the convention. Our focus is not on the treaty's limitations but, instead, on its many strengths. The CWC destroys stockpiles that could threaten our troops, it significantly improves our intelligence capabilities, and it creates new international sanctions to punish those states who remain outside the treaty. For these reasons, we strongly support the CWC.

I hope, Mr. Chairman, that we will be able to have an agreement and bring this to the floor. I do believe we owe it to people in the country to have an up or down vote, and I hope it will be a favorable vote.

Secretary ALBRIGHT. I must say that I was very impressed with the testimony that General Schwarzkopf gave earlier, in which he basically said that, by our not ratifying, we put ourself on the side of Iraq and Libya and on a different side from our allies.

I think, when Senator Biden said, how would I feel in meetings, I would find it mighty strange to be on the same side of the table as Iraq and Libya.

The CHAIRMAN. Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you.

Madam Secretary, always nice to see you.

Secretary ALBRIGHT. Thank you.

Senator HAGEL. Since I last saw you, I know you have become much more enlightened in many areas. You have played baseball. You have gone to North Carolina.

Secretary ALBRIGHT. That is true.

Senator HAGEL. I know we can expect even greater things from you now.

Senator HAGEL. Madam Secretary, picking up on the Iraq, Libya, North Korea, Syria issues, those are the real threats. Those countries are the real threats. I do not believe the threats of chemical warfare to our troops or civilized nations' troops are within the signatory countries of the CWC. So my question is: How do we get to

the real threat, those countries that we fear most, who we either suspect or know now possess chemical weapons and are not afraid to use them?

Secretary ALBRIGHT. Senator, I think that it is exactly because of our concern over the rogue states that we have to try to use the tools that the international regime puts before us. I think that what happens here is, first of all, that it becomes even more clear that the rogue states are isolated politically and that they are subject to trade sanctions that put pressure on their economies and limit their ability to obtain the ingredients for chemical weapons.

If, for instance, there is also a concern, I think, by some that they will sign in a cynical way, well, if they sign up and then try to cheat, the rogue states will be subject to the CWC's unprecedented verification measures, and they will probably get caught. When they are caught, they will be subject to international pressure and other CWC sanctions. I think that by not putting ourselves in a position of being one of the original ratifiers of CWC, we weaken the convention itself, and then weaken our own ability and deprive ourselves of this force multiplier to try to get at the rogue states.

This is the single best tool we have to try to get a handle on the Iraqs and Libyas, because this will provide an eye into their system.

Senator HAGEL. Thank you.

The CHAIRMAN. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Madam Secretary, thank you for coming. There is an old saying in politics that to get a vote, you have got to ask for a vote. I appreciate your being here, because no one from the administration has ever asked for my vote on this. I have had many people from the other side asking me for my vote on this.

Senator BIDEN. Ask him, will you, now, quick. Ask him.

Secretary ALBRIGHT. Give me a minute. I was going to do it with drama.

Senator SMITH. And all I have heard is from the other side. So my question, which has already been asked somewhat before, is: Is this the best we can do? And Senator Helms' comments earlier, which were that there are three points he wants to work out. Is it too late to work anything else out in this treaty?

Secretary ALBRIGHT. Well, first of all, let me say officially, openly, publicly, I am asking you for your vote.

Senator SMITH. Thank you.

Secretary ALBRIGHT. And let me also say that there are some areas, I think, that the Chairman has concern about that I think we can still work on. I think there are some where we may not be able to work something out. You all will have to vote on that.

Senator SMITH. And would that be done in the OPCW decision-making process, which means the April 29 deadline and U.S. participation in the process are important? Is that where we address questions like nonlethal chemicals that our police may need for riot control and things of that nature?

Secretary ALBRIGHT. Well, let us talk specifically about the riot control issue. I think that difference, if I may be so bold, is based on a misunderstanding about what the treaty provides in terms of

riot control. If I might just take a minute while asking you for your vote to explain fully what happens to the riot control agents.

The CWC does not limit our ability to use RCA's, riot control agents, in the situations in which U.S. troops are most likely to be involved. I think there is a concern that we are robbing ourselves of a tool. What I am going to tell you is how we are not doing that.

The CWC does not limit our options in such likely scenarios as law enforcement operations, humanitarian and disaster relief operations, counter-terrorist and hostage rescue operations, and noncombatant rescue operations outside of armed conflict. The CWC also does not limit RCA use under normal peacekeeping operations. That includes peacetime operations within an area of ongoing conflict, to which the U.S. is not a party, such as Somalia, Bosnia or Rwanda, or in consensual peacetime operations, when the receiving State has authorized the use of force—that is including Chapter 6 operations under the U.N. peacekeeping operations under Chapter 7.

So the CWC restrictions on riot control agents apply only when combatants are present and U.S. forces are engaged in the use of force of a scope, duration, and intensity that would trigger the laws of war.

Now, the reason I read this to you in such detail is that I think this is an example of where we may have a misunderstanding of fact and as one of the areas where there are still discussions, which we believe could be dealt with. In the letter that I introduced into the record, written by General Shalikashvili, I think more of this is addressed.

So I am hoping, in the intervening days we have here, that we can address in a factual way some of the problems that still exist.

Senator SMITH. Thank you. I hope that we can do that. My time is up. We are discharging our constitutional responsibility to vote on this treaty. One of my concerns you answered earlier in your testimony, which was that we are not in fact voting for something that is unconstitutional or violates the constitutional rights of Americans.

Finally, I hope at some point here you can address an implication that Secretary Schlesinger made that some in the FBI are being muzzled right now, not to speak unfavorably about this treaty. I wonder, at some point, if you could comment on that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grams.

Senator GRAMS. Thank you very much, Mr. Chairman.

Madam Secretary, a pleasure to see you.

Just to kind of clarify the last question that Senator Smith asked, dealing with riot control chemicals. On February 2nd, an article in a column by John Deutch, who served as Director of Central Intelligence and Deputy Secretary of Defense for President Clinton, wrote the following. He said:

> We should reject interpretations of the CWC that prohibit the use of tear gas or other nonlethal chemicals so that we do not put ourselves in the bizarre position of having no choice but to rely on guns and bullets when we face situations like driving off noncombatants who might be threatening a downed pilot.

Now, do you agree with that statement? And do you believe that is what the CWC is stating clearly?

Secretary ALBRIGHT. I think that the CWC does not prohibit it. As I said, the restrictions apply only when combatants are present and U.S. forces are engaged in the use of force of the scope, duration and intensity that would trigger the laws of war. I think we would have to see what the situation is. But, basically, it is possible for us to use various new kinds of chemical agents in order to rescue hostages and to deal with isolated issues. We always have a third choice in a war, which is to use nonlethal weapons. We are not left only with the possibility of using chemical weapons or riot control agents.

Senator GRAMS. So, generally then, you would agree with the statement that Mr. Deutch made?

Secretary ALBRIGHT. Well, I would have to see it within its overall context, but I generally agree with the statements that he made.

Senator GRAMS. And just one other quick question dealing with Russia. The recent record on arms control agreements has been less than impressive for Russia. It has not implemented the Bilateral Destruction Agreement on chemical weapons which it signed with the United States several years ago. There have been reports that Russia has developed a chemical weapons program specifically designed to evade the CWC.

In addition, Russia has not even ratified the START II Treaty on nuclear weapons, which I and many other Senators strongly support. So does the administration believe that Russia should agree to fully implement the Bilateral Destruction Agreement before the U.S. would join the CWC?

Secretary ALBRIGHT. Senator, let me just take a little minute here to explain something. We just finished our meetings in Helsinki with the Russians. We went there with the idea of issuing a number of joint communiques. One which had not been part of our original intention, because we were dealing with Russia—NATO and with START and other issues—but the Russians came to us and we then issued a joint U.S.-Russian statement on chemical weapons. It was basically done because of President Yeltsin's and Foreign Minister Primakov's interest in making clear that they wanted to go forward in order to expedite ratification.

So the second paragraph says: The Presidents reaffirm their intention to take the steps necessary to expedite ratification in each of the two countries.

President Clinton expressed his determination that the U.S. be a party. Then President Yeltsin noted that the convention had been submitted to the Duma with his strong recommendation for prompt ratification—I am not reading it all. The Presidents noted that cooperation between the two countries in the prohibition of chemical weapons has enabled both countries to enhance openness regarding their military chemical potential and to gain experience with procedures and measures for verifying compliance with the Chemical Weapons Convention, *et cetera*.

So I would say that there is a major push on behalf of President Yeltsin, who is going to use this document to make sure that they go forward with ratification of the CWC also.

Senator GRAMS. How much cost will there be to the U.S. For the Russian program to destroy its chemical weapons?

Secretary ALBRIGHT. I will have to get that for you for the record.

[The information referred to was unavailable at the time of printing.]

Senator GRAMS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

I think I first ought to give you the opportunity—because the question was simply left hanging out there by one of my colleagues—that people within the administration were being muzzled with respect to commenting on this treaty. I think the specific reference was to the FBI. Could you address that?

Secretary ALBRIGHT. Senator, I am completely unaware that something like that would be taking place. I have heard nothing like that. I have no reason to believe that that is true—absolutely none.

Senator SARBANES. Well, now, the Joint Chiefs are in favor of this treaty, are they not?

Secretary ALBRIGHT. They are, sir.

Senator SARBANES. And I think they have been very clear in indicating, not just the chairman, but all the other members of the Joint Chiefs, as well, is that correct?

Secretary ALBRIGHT. That is correct. Then, earlier, there was a letter submitted, or a statement, by 17 other former generals and former chairmen of the Joint Chiefs and other generals very much in favor of the Chemical Weapons Convention.

Senator SARBANES. I do not quite understand—and I addressed some questions this morning directed toward it—this notion that unless the rogue states sign up, the rest of the world should not approve and ratify this treaty and the United States ought not to be part of it. Do you understand that argument?

Secretary ALBRIGHT. I do not, sir, because my own feeling is that it is as if we had been provided with a brand-new mechanism for looking inside potential violator societies to find out what they are doing. We are eschewing that tool mainly because the rogues, or those who are not part of the system, do not want to sign it.

As I said in my statement, it is like saying that you are not going to have laws against drug smuggling just because all the drug smugglers have not signed up to it. What you do is you try to develop the best possible regime, and not allow the lowest common denominator to determine what the will of the international community and the majority of nation-states would like to have happen.

Senator SARBANES. Would not the convention in fact make it possible to put into place a more rigorous regime against the rogue states than is possible under the current situation?

Secretary ALBRIGHT. Absolutely. What it does is provide a system for intrusive inspections into their societies, and then a system for also having more stringent sanctions against them, with the force of having international law and the international community behind them. So, by deciding not to take action until they do, I think we are cutting off our nose to spite our face.

The CHAIRMAN. Madam Secretary, we are within 2 or 3 minutes of fulfilling what I hope was a commitment. Before you leave, let

me suggest that you mention to the administration that it would clear up the whole thing if a statement were issued in the name of the President or the administration, saying that nobody in the FBI nor anybody else employed by the Federal Government must not speak disapprovingly of the treaty. Now, that will clear it up.

Now, there is one other thing. The Chemical Manufacturers' Association was claiming that $600 million in sales would be lost if this treaty is not ratified. We discussed that when you were here. They have since cut that number down by more than half, and even their new figures are highly suspect. It was said here this morning that the Chemical Manufacturers' Association does not represent the small manufacturers—only a few big ones.

During your confirmation hearing, you may recall that I asked that you supply the committee with a detailed list of chemicals that would be affected if the United States were not to ratify the CWC. You told me then, in good faith I am sure, that such a list would be forthcoming. It has not come. I certainly understand why. Would you tell your people to get that list to us?

Secretary ALBRIGHT. Yes, absolutely.

The CHAIRMAN. I know you have another meeting. I thank you for coming to see us. Do you have further comments to make? I see notes being passed around. I figured there is one more thing they want you to say.

Secretary ALBRIGHT. Yes. Apparently the list has been sent to you this morning in response to that question.

The CHAIRMAN. This morning. Very well.

Secretary ALBRIGHT. So the check is in the mail.

The CHAIRMAN. If there be no further business to come before the committee——

Senator BIDEN. Mr. Chairman, I do not have any further business for the Secretary. I want to just publicly thank you. I was a bit of a pain in the neck in attempting to see you and ask you to accommodate.

I guess I was a pain in the neck to Secretary Albright, as well, to come up here this afternoon. I thought it was important.

With regard to tomorrow's hearing, Mr. Chairman. I realize that the committee has a rule that I am just learning. Back in the good old days, when my team was in charge and I was Chairman of the Judiciary Committee, we used to have a one-to-one rule. That is, the minority and majority could have the same number of witnesses. I have learned subsequently that is not the rule here.

The CHAIRMAN. It never has been.

Senator BIDEN. I understand that. But yesterday we were going to have—I wanted to have Mr. Scowcroft and Mr. Deutch. Mr. Deutch had to go out of town. I said to my staff—there was a bit of a misunderstanding—that Scowcroft could come tomorrow, along with General Rowny and Admiral Zumwalt. I am now told by my staff that they may not be able to appear tomorrow because of a rule.

I would like you to consider accommodating a rookie ranking minority member here and allow them, since I have asked them to change their schedules, so that I do not find myself—this is probably the only thing I have ever agreed with General Rowny on and Admiral Zumwalt.

And I do not want to completely ruin my credibility with them. So I would like to publicly ask you to consider allowing an exception to the rule. I will give up two future draft choices at a later date if you would consider allowing me to have them tomorrow, notwithstanding the committee tradition of a 2- or 3-to-1 majority. So I am going to publicly ask you if you would consider that. I am not asking for an answer now. If the answer is no, do not give it to me now.

If it is yes, I would take it now.

The CHAIRMAN. Well, as Mr. English back in my home town of Monroe used to say, I will study about it.

Senator BIDEN. All right. Good.

The CHAIRMAN. There being no further business to come before the committee, we stand in recess.

[Whereupon, at 4:23 p.m., the committee adjourned to reconvene at 2:11 p.m., April 9, 1997.]

CHEMICAL WEAPONS CONVENTION

WEDNESDAY, APRIL 9, 1997

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:11 p.m., in room SD–419, Dirksen Senate Office Building, Hon. Jesse Helms (chairman of the committee) presiding.

Present: Senators Helms, Hagel, Smith, Frist, Biden, Kerry, Robb, Feinstein, and Wellstone.

The CHAIRMAN. The committee will come to order.

We have been delaying a little bit, because one of the four witnesses on the first panel has just arrived. We are delighted to see you.

Well, I say to my distinguished colleagues, Mr. Robb and Mr. Biden, that today marks the third in this particular round of hearings on the Chemical Weapons Convention. This morning's first panel of witnesses will include the Hon. Jeane Kirkpatrick, known to all of us, former Ambassador to the United Nations; the Hon. Richard Perle, former Assistant Secretary of Defense; the Hon. Fred Ikle, former Director of the Arms Control and Disarmament Agency; and Doug Feith, former Deputy Assistant Secretary of Defense. Former goes before each one of those titles.

There will be a second panel of witnesses in support of the Convention.

We appreciate your appearing here this afternoon as the committee undertakes further consideration of the CWC. All four of you are distinguished leaders, whose impressive expertise makes your insight crucial to the Senate's consideration of this matter, which involves, as we all know, the future security of the United States. The Senate will benefit greatly from your assessment and guidance regarding the wisdom of ratifying the treaty in its present form—and I would underscore those words.

Now, I will say we have had many, many compliments by telephone, fax and otherwise regarding the testimony of three former Secretaries of Defense who were here in person, and one of whom read a letter of opposition to the treaty written by the previous Secretary of Defense. We look forward to your testimony. You are joined in your opposition by a fourth Secretary of Defense, Richard Cheney, and more than 50 generals, admirals and top officials from previous administrations.

I think this ought to be sort of a wake-up call to the administration, because the American people, despite efforts to the contrary by some in the news media, the American people are increasingly

aware of the defects in this treaty. Now, I am not going to proceed further with my statement, in the interest of hearing our witnesses, but I will defer to the distinguished Ranking Member.

If Senator Robb has any comments, since I did not know you were here yesterday, we would be glad to hear from you as well.

Senator BIDEN. Mr. Chairman, thank you very much. Let me begin by publicly thanking you for allowing the second panel. We have a number—seven very distinguished Americans here. I think they probably find—they are probably in the position, not for the first time, but not as frequently as we are, of finding themselves on opposite sides of things they are usually in total agreement with their friends on and vice-versa. I mean we are accustomed to that. That is part of our stock in trade.

I appreciate you allowing former National Security Advisor Brent Scowcroft—a former general, as well—General Rowny, and Admiral Zumwalt to be here. I realize the rule is basically 3-to-1, but you were kind enough to us yesterday to allow that. I appreciate it.

I want to take just a few minutes to address a few concerns that we raised in yesterday's hearing and that have gone unanswered. The reason I bother to do it I am not sure, because so much has been going on in terms of the non-public side of this process and in terms of negotiations; I am not suggesting that any of the things we have tentatively agreed on among ourselves on this side of the bench and with the administration and Senator Lott and others, that they will satisfy any of the witnesses, but there is no reason they would know they existed. I will just take just a few minutes—probably about 9 I hope.

My impression is that one of the reasons you suggested that we have an additional set of hearings was that we have a number of new Members—a very bright, informed group of people, who have taken their jobs on this committee very seriously—and that they did not have an opportunity to participate in previous hearings. My impression is that these new Members truly want to learn about the treaty and base their decision on the facts. I hope that these hearings are giving them an opportunity to be acquainted with them.

This afternoon, we are going to hear testimony about the treaty and what it does and does not do. But I used to practice law with a fellow who was one of the best trial lawyers in the State of Delaware, a guy named Sid Bialek. He always used to say when he would teach young lawyers like me how to address a jury, he would say, when you start off with a jury, tell them: Now, jury, keep your eye on the ball. This is not about whether or not my client is a nice guy. It is whether he killed Cock Robin. Keep your eye on the ball.

Well, I think one of the things we have to keep our eye on, I say to my colleagues—obviously, not to the witnesses—is that this is a treaty that outlaws poison gas. It outlaws chemical weapons. At least that is its intent. I guess that is the essence of the debate here—whether or not it adequately does that.

Entry into force of the Chemical Weapons Convention will mark a major milestone in our effort to enlist greater international support for an important American objective of containing and penalizing rogue states that seek to acquire or transfer weapons of mass destruction. I want to make it clear, based on yesterday's panel,

the first one—and it was a distinguished panel—several said, including one former Secretary of Defense, that they were accused of being for chemical weapons and for the use of these.

I just want you to know, I know no one who supports the treaty in the Senate who suggests anyone who opposes the treaty is someone who is for the active use of chemical weapons. So I want to make that clear at the outset. I never heard anybody say that, and I am sure the former Secretary would not have said it unless someone had mentioned it to him. But no one on this committee that I am aware of who is for the treaty thinks that.

Among the claims, though, that were made yesterday about the CWC is that it would force us to share our most advanced defensive technology with all states, including countries of concern that have ratified the agreement. Iran comes to mind immediately.

Another assertion is that it requires us to abandon all controls we have on the proliferation of sensitive technology through mechanisms like the Australia Group. As I reviewed the treaty, I became a little concerned about this initially. With regard to sharing the defensive technologies, some general provisions appeared to back up their claim. But, on close inspection, I believe it reveals that the critics are wrong.

First, the provisions in Article X, Paragraph 3, are deliberately vague. The obligation on a party is to facilitate the fullest possible exchange of equipment and information. When read in light of the overriding imperative of Article I, to not assist any party from engaging in activities prohibited by CWC, it seems clear to me and the lawyers that I have consulted that we will not be obliged to provide assistance to rogue states under this provision.

Now, just to make sure that I was reading this correctly, I asked for some clarification. I spoke to somebody who obviously would want to clarify it the way I read it, so take it for what it is worth. But the National Security Advisor, Sandy Berger, today sent me a letter. In that letter, he states that any exchange of equipment and technology under Paragraph 3 of Article X, "is limited to that which we determine would be appropriate and permitted under the convention." In addition, Paragraph 7 of Article X requires no assistance, "other than medical supplies, if we so choose"—if we so choose.

I ask that this letter from Mr. Berger be inserted in the record, Mr. Chairman, so that my colleagues can at least understand the position that I hold and that I believe that pertains.

The CHAIRMAN. Without objection.

Senator BIDEN. Thank you very much.

[The information referred to follows:]

THE WHITE HOUSE,
Washington, DC, April 9, 1997.

Hon. JOSEPH R. BIDEN, JR.,
U.S. Senate, Washington, D.C. 20510.

DEAR SENATOR BIDEN. In recent days, concerns have been raised about the impact of the Chemical Weapons Convention on the ability of rogue states to acquire advanced U.S. Chemical defense or chemical manufacturing technology. I would like to take this opportunity to set the record straight on these matters.

Specifically, concern has been expressed about Paragraph 3 of Article X of the CWC, which states that "Each Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemi-

cal weapons." The inclusion of the words "facilitate" and "possible" underscores that no specific exchange is required and that any exchange which does occur is limited to that which we determine would be appropriate and permitted under the Convention. Moreover, nothing in Paragraph 7 of Article X, which concerns possible responses to requests for assistance, requires us to provide anything other than medical supplies, if we so choose.

Concern has also been expressed about whether Article XI of the CWC, which relates to cooperation in the field of chemical activities for purposes not prohibited under the treaty, might force our chemical industry to share dual-use technologies and manufacturing secrets with other nations. Let me assure you that Article XI does not require private businesses to release such proprietary or otherwise confidential business information, nor does it require the U.S. Government to force private businesses to undertake such activities. Let me further assure you that the export controls that we and other Australia Group members have undertaken, as well as our own national export controls, are fully consistent with the CWC and serve to further its implementation.

I hope this information facilitates Senate consideration of the CWC. I look forward to continuing to work with you and other CWC supporters to ensure a successful vote on this vital treaty in the days ahead.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President for National Security Affairs.

Senator BIDEN. At this point, Mr. Chairman, you and I have come close to agreement on a condition that would require the executive branch to ensure that countries of concern receive no assistance from us beyond medical antidotes and treatment, and that we would be fully informed and it would be fully in keeping with Article X of the CWC.

As for the argument that we would be forced to abandon our current mechanisms to control the proliferation of sensitive technology, the CWC explicitly allows us to keep these protections in place. Article 7 supports chemical trade and technology exchange "for purposes not prohibited under this convention." It also requires that trade restrictions not be, quote, incompatible with the obligations undertaken in this convention.

But the CWC is completely consistent with the continued enforcement of the Australia Group controls, which member states use to keep chemical and biological weapons materiel out of the hands of rogue states. The executive branch has said this time and again, and so have our friends and allies in the Australia Group. That helps explain why 26 of the 29 members of the Australia Group have ratified this treaty—everyone except Iceland, Luxembourg and the United States.

Last October, at the most recent meeting of the Australia Group, the 29 countries reaffirmed their intention to maintain common export controls, while joining the treaty convention. In a statement issued at the meeting, the Australia Group said, "the maintenance of effective export controls remain an essential, practical means of fulfilling obligations under the CWC."

I would also ask unanimous consent that that statement be inserted in the record, Mr. Chairman.

The CHAIRMAN. Without objection.

[The information referred to follows:]

AUSTRALIAN EMBASSY, PARIS,
October 17, 1996.

AUSTRALIA GROUP MEETING

Australia Group participants held informal consultations in Paris between Oct. 14-17, to discuss the continuing problem of chemical and biological weapons (CBW)

proliferation. Participants at these talks were Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, the European Commission, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom and the United States, with the Republic of Korea taking part for the first time.

Participants maintain a strong belief that full adherence to the Chemical Weapons Convention (CWC) and to the Biological and Toxin Weapons Convention (BTWC) will be the best way to eliminate these types of particularly inhumane weapons from the world's arsenals. In this context the maintenance of effective export controls will remain an essential practical means of fulfilling obligations under the CWC and the BTWC.

All participants at the meeting welcomed the expected entry into force of the CWC, noting that this long-awaited step will be an important, historic moment in international efforts to prohibit chemical weapons. Participants agreed to issue a separate statement on this matter, which is attached.

Participants also welcomed the progress of efforts to strengthen the BTWC in the negotiations taking place in the Ad Hoc Group of BTWC States Parties in Geneva. All Australia Group participating countries are also States Parties to this treaty, and strongly support efforts to develop internationally agreed procedures for strengthening international confidence in the treaty regime by verifying compliance with BTWC obligations.

Experts from participating countries discussed national export licensing systems aimed at preventing inadvertent assistance to the production of CBW. They confirmed that participants administered export controls in a streamlined and effective manner which allows trade and the exchange of technology for peaceful purposes to flourish. They agreed to continue working to focus these national measures efficiently and solely on preventing any contribution to chemical and biological weapons programs. Participants noted that the value of these measures in inhibiting CBW proliferation benefited not only the countries participating in the Australia Group, but the whole international community.

Participants also agreed to continue a wide range of contacts, including a further program of briefings for countries not participating in the Paris consultations to further awareness and understanding of national policies in this area. Participants endorsed in this context the importance of regional seminars as valuable means of widening contacts with other countries on these issues. In particular, Romania's plans to host a seminar on CBW export controls for Central and Eastern European countries and the Commonwealth of Independent States in Bucharest on Oct. 21–22 and Japan's plans to host a fourth Asian Export Control Seminar in Tokyo in early 1997 were warmly welcomed by participants. Argentina will also host a regional seminar on non-proliferation matters, in Buenos Aires, in the first week of December 1996. France will organize a seminar for French-speaking countries on the implementation of the CWC. This will take place shortly before entry into force of the Convention.

The meeting also discussed relevant aspects of terrorist interest in CBW and agreed that this serious issue requires continuing attention.

Participants agreed to hold further consultations in October 1997.

Australia Group Countries Welcome Prospective Entry Into Force of the Chemical Weapons Convention

The countries participating in the Australia Group warmly welcomed the expected entry into force of the Chemical Weapons Convention (CWC) during a meeting of the Group in Paris in October 1996. They noted, that the long awaited commencement of the CWC regime, including the establishment of the Organization for the Prohibition of Chemical Weapons, will be an historic watershed in global efforts to abolish chemical weapons for all time. They also noted that all states adhering to the CWC are obliged to ensure their national activities support the goal of a world free of chemical weapons.

All of the participating countries reiterated their previous statements underlining their intention to be among the original States Parties to the CWC. They noted that 24 of the 30 countries participating in the Australia Group have already ratified the Convention. Representatives also recalled their previous expressions of support for the CWC, and reaffirmed these commitments. They restated their view that the effective operation and implementation of the CWC offers the best means available to the international community to rid the world of these weapons for all time. They called on all signatories to ratify the CWC as soon as possible, and on the small

number of countries which have not signed the treaty to join the regime and thereby contribute to international efforts to ban these weapons.

Representatives at the Australia Group meeting recalled that all of the participating countries are taking steps at the national level to ensure that relevant national regulations promote the object and purpose of the CWC and are fully consistent with the Convention's provisions when the CWC enters into force for each of these countries. They noted that the practical experience each country had obtained in operating export licensing systems intended to prevent assistance to chemical weapons programs have been especially valuable in each country's preparations for implementation of key obligations under the CWC. They noted in this context, that these national systems are aimed solely at avoiding assistance for activities which are prohibited under the Convention, while ensuring they do not restrict or impede trade and other exchanges facilitated by the CWC.

Senator BIDEN. Mr. Chairman, I am convinced the CWC does not require us to share our most advanced defense technology or to abandon existing controls on chemical weapons. Just to make certain of that, I asked Sandy Berger to address this point. I will, in the interest of time, since I asked you to add additional witnesses, ask that the remainder of my statement be placed in the record and conclude by saying this treaty enters in force on April 29th, and time is running short. Mr. Chairman, I hope that we, when we conclude these hearings—as long as I do not prolong them—that at some point we might be able to reach an agreement on how to proceed on the floor. But that is for another time, another moment.

I thank the witnesses and I thank the chair.

[The prepared statement and the information referred to by Senator Biden follows:]

PREPARED STATEMENT OF SENATOR BIDEN

Thank you, Mr. Chairman. I wanted to take a few minutes this morning to address a few concerns that were raised in yesterday's hearing and may have gone unanswered.

When you called these hearings, you said that it was important that the new members of the committee have an opportunity to learn more about it. And I am pleased to see that our new colleagues have taken your recommendation to heart.

My impression is that they truly want to learn about this treaty and base their decision on the facts—and maybe the request by the Secretary of State won't hurt, either.

This afternoon we will hear more testimony about this treaty and what it does and does not do, but the core issue is very simple: this treaty outlaws poison gas weapons.

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

Yesterday, we heard three very distinguished former Secretaries of Defense testify on this treaty.

Among the claims they made about the CWC are that it would force us to share our most advanced defensive technology with all states, including countries of concern, that have ratified this agreement.

Another assertion they made is that it requires us to abandon all controls we have on the proliferation of sensitive technology through mechanisms like the Australia Group.

As I reviewed the treaty, I became a little concerned about this. With regard to sharing defensive technology, some general provisions appeared to back up their claim.

But close inspection reveals that the critics are wrong.

First, the provisions of Article Ten, Paragraph Three are deliberately vague: the obligation on a party is to "facilitate" the "fullest possible exchange" of equipment and information.

When read in light of the overriding imperative in Article One to not assist any party from engaging in activities prohibited by the CWC, it is clear that we will not be obligated to provide assistance to rogue states under this provision.

Now just to make sure that I was reading this correctly, I asked the White House to clarify this point for me. Sandy Berger, the President's National Security Adviser, today sent me a letter that confirms this interpretation.

In Mr. Berger's letter, he states that any exchange of equipment and technology under Paragraph Three of Article Ten "is limited to that which we determine would be appropriate and permitted under the convention." In addition, Paragraph Seven of Article Ten requires no assistance "other than medical supplies, if we so choose."

I ask that this letter from Mr. Berger be inserted into the record, so that my colleagues can reassure themselves that this treaty does not oblige us to share advanced chemical defense technology with rogue states.

On this point, the Chairman and I are very close to agreement on a condition that would require the executive branch to ensure that countries of concern receive no assistance from us beyond medical antidotes and treatment. And that would be fully in keeping with Article Ten of the CWC.

As for the argument that we would be forced to abandon our current mechanisms to control the proliferation of sensitive technology, the CWC explicitly allows us to keep these protections in place.

Article Eleven supports chemical trade and technology exchange "for purposes not prohibited under this convention." It also requires that trade restrictions not be "incompatible with the obligations undertaken under this convention."

But the CWC is completely consistent with continued enforcement of the Australia Group controls, which member states use to keep chemical and biological weapons material out of the hands of rogue states. The executive branch has said this time and again, and so have our friends and allies in the Australia Group.

That helps explain why twenty-six of the twenty-nine members of the Australia Group have ratified this treaty—everyone except Iceland, Luxembourg and the United States.

Last October, at the most recent meeting of the Australia Group, the twenty-nine countries reaffirmed their intention to maintain common export controls while joining the Chemical Weapons Convention.

In a statement issued at that meeting, the Australia Group said, and I quote: "the maintenance of effective export controls will remain an essential practical means of fulfilling obligations under the CWC."

I ask consent that this statement be inserted into the record.

I am convinced that the CWC does not require us to share our most advanced defensive technology or to abandon existing controls on chemical weapons. And just to make certain of that, I asked Sandy Berger to address this point in the letter I referred to.

So I ask my colleagues to review this section of the treaty and to examine Mr. Berger's letter and the Australia Group's statement to reassure themselves that the CWC does not obligate us to share advanced defensive technology or chemicals or chemical technologies with countries like China, Cuba or Iran.

Turning to another issue, my colleague, Senator Smith, expressed an interest yesterday in the constitutional issues that many critics of the convention have raised. I want to take this opportunity to set the record straight.

The convention is constitutional. There is nothing in the convention that requires searches in violation of the Fourth Amendment, takings of property without just compensation, or compelled self-incriminatory testimony

Just this morning we received a letter from twenty-two law professors and distinguished attorneys expressing their view that the convention is constitutional, including former Attorney General Elliot Richardson, former State Department legal adviser and Harvard law professor Abram Chayes, Columbia University professor Louis Henkin, and Harvard law professor Laurence Tribe. I ask that this letter be placed into the record.

Those who claim that the CWC would permit international inspectors to engage in warrantless searches in any business or private home are dead wrong and are spreading falsehoods.

There will be no warrantless searches under the CWC, period. Here are the facts:

There are two types of inspections—routine inspections and challenge inspections.

Routine inspections apply only to declared facilities—that is, facilities that produce or use scheduled chemicals. In the unlikely event that a declared facility does not consent to be searched, an administrative warrant will be sought from a federal judge or magistrate judge.

This is the same procedure that would be used for inspections conducted under Federal health, safety, and environmental laws.

Challenge inspections are conducted at the request of another government based on evidence of possible non-compliance. These inspections can take place anywhere in the United States.

The administration has agreed that, absent consent, the U.S. Government will have to obtain a criminal search warrant, based on probable cause of criminal wrongdoing, to conduct a challenge inspection everywhere but declared facilities.

If a search warrant cannot be obtained for either type of search, the inspection will not take place.

And, since the convention allows the United States Government to "take into account any constitutional obligations it may have with regard to searches and seizures" when granting access to U.S. facilities, we will not be in breach of our treaty obligations if a challenge inspection is denied due to Fourth Amendment considerations.

I ask consent that a letter from the Attorney General to Senator Lott addressing these very issues be made a part of the record.

I hope that the Attorney General's assurances, along with the statements of other administration officials, have eased the concerns of those who, like me, strongly believe in the importance of the Fourth Amendment.

Again, I would like to thank my colleagues and our witnesses for their time and attention this morning. I hope that these hearings will help to clear up the misconceptions about the Chemical Weapons Convention so that we can move expeditiously to bring this treaty before the full Senate for a vote on ratification.

This treaty enters into force on April 29, and time is running short.

Thank you, Mr. Chairman.

LETTER FROM ATTORNEY GENERAL JANET RENO
TO SENATE MAJORITY LEADER TRENT LOTT

OFFICE OF THE ATTORNEY GENERAL,
Washington DC, March 3, 1997.

Hon. TRENT LOTT,
Majority Leader,
U.S. Senate, Washington, DC 20510.

DEAR MR. LEADER: As the public debate over ratification of the Chemical Weapons Convention (CWC) grows in intensity, various concerns regarding the constitutionality of the CWC have come to my attention. Some have suggested that enforcement of the CWC, in order to be effective, will necessarily impinge on Fourth Amendment rights. Specifically, concerns have been raised that the Convention will authorize warrantless, non-consensual searches or that searches will be conducted pursuant to warrants that lack probable cause. The CWC and the draft implementing legislation contemplate no such circumstances. All inspections will be conducted consistent with the requirements of the Fourth Amendment.

Let there be no doubt, the Department of Justice stands fully behind both the goals and the specific terms of the CWC. The Convention, along with the proposed legislation, strikes the proper balance between effective efforts to eliminate the scourge of chemical weapons and to preserve our constitutional rights. Over the course of the past four years, the Justice Department has closely scrutinized CWC and has assisted in the drafting of its implementing legislation. Our focus has been consistently on the necessity of adherence to constitutional requirements. In testimony given on September 9, 1996, before the Senate Judiciary Committee's Subcommittee on the Constitution, Richard Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, explained how inspections would be conducted consistent with the Fourth Amendment. We expect the vast majority of routine inspections will be conducted with consent. On the few occasions where consent has been withheld, administrative search warrants will be sought for routine inspections. In the case of challenge inspections, again, we expect consent to be the rule. Declared facilities selected for a challenge inspection would be subject to inspections in the same manner as provided under the CWC and implementing legislation for routine inspections. However, a criminal search warrant will be applied for in every case where consent is denied to a challenge inspection of undeclared facilities.

The convention, in Annex 2, pt. X, para. 41, specifically allows the U.S. Government, in granting access to facilities identified for challenge inspections, to "take into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures." Hence, in the rare event that the Fourth Amendment would pose a bar to a search of premises identified for a challenge inspection, the United States would remain in full compliance with its obligations under the CWC.

I realize that many of the detractors of the Convention are principled in their opposition. Their constitutional concerns are, however, unfounded. The dictates of the

Fourth Amendment have been scrupulously honored in the drafting and will be rigidly followed in the implementation. Finally, no legitimate Fifth Amendment issues are raised with respect to the record keeping or disclosure requirements. The provisions of the Convention and the draft implementing legislation neither require nor contemplate compelling anyone to incriminate himself. And, both the CWC and draft legislation in no way authorize the taking of private property without compensation.

It is my hope that the Senate will consider the Convention in an expeditious manner and will consent to its ratification.

Sincerely,

JANET RENO.

April 9, 1997.

Hon. JOSEPH R. BIDEN, JR,
Minority Leader, Committee on Foreign Relations,
Washington, DC.

DEAR SENATOR BIDEN: The undersigned lawyers, former government officials, and professors of constitutional and international law write to urge the Senate to give its prompt advice and consent to the ratification of the Chemical Weapons Convention (CWC). The Senate's decision will have profound ramifications for United States leadership in controlling the spread of weapons of mass destruction. Moreover, the Convention will enter into force on April 29 whether or not the United States ratifies, but if it does so without U.S. ratification, American participation in the staffing of the Organization for the Prohibition of Chemical Weapons (OPCW) and in the inspector corps will be severely reduced. Therefore, prompt action is essential.

The CWC is a global commitment to eliminate an entire category of weapons of mass destruction and to verify their continued absence. The treaty's backbone is the most thoroughgoing international law enforcement system yet devised, providing for verification of the destruction of chemical weapons stockpiles and for monitoring of chemical plants to prevent future proliferation. The verification system includes declaration of precursor chemicals that could be made into chemical weapons, routine inspections at facilities that are declared to possess such precursors, and "challenge" inspections to confirm compliance at any facility or location. President George Bush, under whose administration the treaty was completed and signed, characterized the Convention as "an entirely new concept for overcoming the great obstacle that has impeded progress in the past toward a full chemical weapons ban."

We would have thought that U.S. ratification of this Convention was a foregone conclusion. Unfortunately, at the last minute, objections have been raised concerning the constitutionality of the Convention's elaborate verification system under the Fourth Amendment. Treaty opponents have circulated the claim that, under the CWC, foreign inspectors would be empowered to intrude into the privacy of American citizens and businesses in violation of their Fourth Amendment rights. Much of this commentary based on a letter from Judge Robert Bork to Senator Orrin Hatch stating that "there are grounds to be concerned" about the compatibility of some of the provisions of the Convention with the Constitution. Judge Bork's letter concedes that he is "not intimately familiar with the provisions of the Convention," an acknowledgment that is borne out by the inaccuracy of his description of the Convention in the body of his letter.

The short answer to these contentions is that the Convention itself provides that each State Party shall implement its provisions "in accordance with its constitutional processes," (Art. VII, par. 1), and the challenge inspection provisions further require that inspections must be consistent with "any constitutional obligations * * * with regard to * * * searches and seizures." (Verification Annex, pt. X, par. 41). Thus, Congress, which must pass domestic legislation to implement the inspection provisions of the Convention, can do so in a manner that fully protects the rights of American citizens under the Fourth Amendment without in any way violating the international obligations the United States will undertake under the treaty. A vast quantity of scholarly and governmental discussion on the subject has affirmed virtually unanimously that the CWC fully respects U.S. constitutional protections of privacy. Indeed, every scholar willing to put his or her opinions on the CWC to the test of detailed public review agrees that the treaty manifests extraordinary care in balancing the demands of privacy against the requirements for effective verification of the Convention.

If the Senate fails to give its advice and consent to the CWC, an extraordinary achievement of over fifteen years of bipartisan effort will be frustrated; and a major

opportunity to prevent the proliferation of chemical weapons will have been lost. If the Senate wishes to reject the treaty, that is of course its prerogative. But it should not do so on the spurious ground that it conflicts with the Constitution.

Sincerely,

PROFESSOR M. CHERIF BASSIOUNI, DePaul University College of Law
PROFESSOR RICHARD B. BILDER, Burrus-Bascom Professor, University of Wisconsin Law School
PROFESSOR THOMAS BUERGENTHAL, Lobingier Professor of Comparative Law & Jurisprudence, the George Washington University Law School
PROFESSOR GEORGE BUNN, Dean Emeritus, Professor Emeritus, University of Wisconsin Law School
PROFESSOR DAVID D. CARON, University of California at Berkeley School of Law
ABRAM CHAYES, Professor of Law, Emeritus Felix Frankfurter Harvard Law School
PROFESSOR LORI FISLER DAMROSCH, Columbia University School of Law
PROFESSOR JOHN HART ELY, Richard A. Hausler Professor University of Miami School of Law
PHIL FLEMING, Crowell & Moring
PROFESSOR THOMAS M. FRANCK, Murray and Ida Becker Professor, Director, Center for International Studies, New York University School of Law
PROFESSOR MICHAEL J. GLENNON, University of California at Davis School of Law
PROFESSOR BARRY KELLMAN, DePaul University College of Law
PROFESSOR JOHN F. MURPHY, Villanova University School of Law
JOHN B. RHINELANDER, Shaw, Pittman
PROFESSOR ANNE-MARIE SLAUGHTER, J. Sinclair Armstrong Professor of International, Comparative and Foreign Law, Harvard Law School
PROFESSOR LAURENCE H. TRIBE, Ralph S. Tyler, Jr. Professor of Constitutional Law, Harvard Law School
PROFESSOR LOUIS HENKIN, University Professor Emeritus, Special Service Professor, Columbia University School of Law
PROFESSOR DAVID A. KOPLOW, Director, Center for Applied Legal Studies, Georgetown University Law Center
PROFESSOR PETER RAVEN-HANSEN, Associate Dean, Academic Affairs, Glen Earl Weston Research Professor, George Washington University Law School
ELLIOT L. RICHARDSON, ESQ., Milbank, Tweed, Hadley & McCloy
PROFESSOR EDWIN (RIP) SMITH, Leon Benwell Professor of Law and International Relations, University of Southern California Law School
PROFESSOR BURNS H. WESTON, Bessie Dutton Murray Distinguished Professor, Associate Dean, International and Comparative Legal Studies, University of Iowa College of Law

The CHAIRMAN. Let us have brief statements by our other Senators here, if you wish. Senator Robb.

Senator ROBB. Thank you, Mr. Chairman. You were kind enough to make reference to the fact that I came in just at the conclusion of yesterday afternoon's hearing, and you had not recognized me as you were banging the gavel. I thank you for that acknowledgement.

I had raced up from an armed services hearing, trying to sort out the dangers posed by Russian submarines and other submarines, in order to get here. I want to assure you, however, that both the portions of yesterday's meeting, in the morning that I had to leave and the portion that I missed yesterday afternoon, were replayed on C–SPAN, beginning about midnight and ending about 2:45 a.m.

And, Mr. Chairman, to demonstrate my commitment to the cause, I want you to know that I stayed up and watched all of the hearing that I missed. Regrettably, I am going to have to go to an intelligence hearing today, so I will miss more. But I am sure that it will be rebroadcast.

On a more serious vein, I did attend all of the hearings last year. I thought they were some of the best and most informative. There have been excellent witnesses on both sides of the question. I committed myself to the affirmative side. I thought that was the more persuasive argument last year. I have not changed my position. But I think that the distinguished witnesses that we have had for

these hearings have done more to give the American people, and certainly the members who are going to vote on these issues, a better understanding of what the treaty does and does not do. For that, I commend you, and I thank you.

The CHAIRMAN. Thank you very much. Senator Frist.

Senator FRIST. Thank you, Mr. Chairman. I want to congratulate you for bringing forth such outstanding witnesses in this series of hearings. I want to thank each of you for being with us today.

I continue to struggle with the issues that we are talking about—the verification, the extent of coverage, global coverage, enforceability. Part of it is based on my experience of being in chemistry labs myself, whether it is organic chemistry or inorganic chemistry, which I had to do to become a physician, and remembering very vividly people saying, "right in this room, in this little laboratory, we could do such destruction if we wanted to." Then I come back today, in terms of that verification and enforceability, and I look forward to hearing from each of our witnesses as we systematically continue our addressing these very important issues.

The CHAIRMAN. Thank you.

Briefly, please, ma'am, and sir. After you two, if any other Senators come in, I am going to not notice their arrival either. Senator Feinstein.

Senator FEINSTEIN. Just very quickly, Mr. Chairman, if I might, and to our distinguished witnesses.

I think the thing that would be most helpful to me, and perhaps you can cover this in your testimony, would be if you could substantiate your comments on your belief of non-verification, why you believe it is better to stay out of this kind of a treaty and why you think that, with our staying out of it, we would have a better opportunity (a) to make a moral commitment and (b) a real commitment and (c) how verification would be improved if we are not in the treaty.

I thank you, Mr. Chairman.

The CHAIRMAN. I am sure they will answer that in due time.

Briefly, please.

Senator WELLSTONE. Mr. Chairman, I feel like I am under pressure to be brief.

The CHAIRMAN. You are.

Senator WELLSTONE. So I will be brief. I know we have got a long hearing today, and I am only going to be able to stay for the first part. I apologize to the others. So I thank the Chair for the hearing and I thank each of you for being here.

The CHAIRMAN. Do you have anything to say, Chuck?

Senator HAGEL. No. Thank you.

The CHAIRMAN. Ambassador Kirkpatrick, you will be the lead-off, please.

STATEMENT OF DR. JEANE J. KIRKPATRICK, FORMER U.S. PERMANENT REPRESENTATIVE TO THE UNITED NATIONS, SENIOR FELLOW, AMERICAN ENTERPRISE INSTITUTE

Ambassador KIRKPATRICK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for coming.

Ambassador KIRKPATRICK. Thank you very much, Mr. Chairman, for inviting me to testify before this distinguished committee on

this important subject. It is an important subject, and the Senate's decision will be more important even.

I have followed this and some comparable issues with great interest since I served as U.S. Permanent Representative to the United Nations under Ronald Reagan. At that time, there were several such covenants that either had been passed or were being considered. It was then that I became aware of some of the facts which have ever since caused me to have a lot of questions and doubts about such covenants.

It was then that I first became aware of the fact that the Nuclear Nonproliferation Treaty was being used to achieve very different purposes than those for which it was undoubtedly intended. It was then I became aware of the fact that it was being used to acquire and spread the technology and products needed to produce nuclear weapons rather than to prevent their spread.

It was even then understood among the informed public in the United Nations context that a country such as Iraq, by signing the Nuclear Nonproliferation Treaty, the NPT, acquired a right to share technology which could then be used to produce nuclear products. Now, it is generally understood by such countries that the shortest route to a nuclear capacity is through the NPT, the Nuclear Nonproliferation Treaty.

Iran is traveling that road today. We and other signatories are helping to finance their development of a nuclear capacity, and we know it.

Secretary of State Christopher made an interesting comment on this subject 2 years ago, when he said, in terms of its, "organization, programs, procurement and covered activities, Iran is pursuing the classic route to nuclear weapons, which has been followed by almost all states that have recently sought a nuclear capability."

Now, more recently, there have been several public reports of U.S. Government efforts to persuade Russia not to assist Iran in the development of a nuclear capacity and of operational reactors. There have been reminders from Russia that Iran is a signatory of the NPT and, as such, has a right to assistance in developing a nuclear capacity for peaceful use. I believe, Mr. Chairman, that there has been far too little attention given to this problem, the principal source of nuclear proliferation.

It was also in my U.N. years that I first became really sensitive to the issue of the composition of the governing board of the IAEA. Senator Biden may think I am not keeping my eye on the ball. But I assure you, Senator Biden, I am.

As for the composition of the governing board of the IAEA, Iraq, as I am sure many of you know, sat on the governing board of the IAEA through just exactly that period that it was violating its own promises not to undertake development of nuclear weapons.

It also was violating, at that very moment, already existing promises not to use poison gases in war. Iran and Iraq are two of the countries in the world that have already violated the Geneva Protocol against using poison gases. As we all understand, I think, there is already an operative treaty which forbids the use in war of, "asphyxiating, poisonous or other gases," which is the Geneva Protocol of 1925.

Now, Mr. Chairman, many people speak of the Nuclear Nonproliferation Treaty and its verification regime as if it had prevented the proliferation of nuclear weapons. If that were the case, Mr. Chairman, Iraq, North Korea, India, and Pakistan, among others, would not today have either advanced programs for producing nuclear weapons or the weapons themselves. But, of course, they do.

There is a kind of strange silence which shrouds the facts of nuclear proliferation. Even the U.S. Government has been strangely reluctant to face facts about the failure of the Nuclear Nonproliferation Treaty to prevent proliferation. But if our government and our allies had faced facts about the nuclear proliferation facilitated by the NPT, they would presumably not have reproduced Article XI and other key loopholes in the Convention on Chemical Weapons which have permitted and facilitated proliferation.

But, of course, in the Convention on Chemical Weapons, they have paragraphs which call for sharing technology among the signatories and forbid efforts to restrict or impede trade in development and promotion of scientific and technological knowledge in the field of chemistry—for peaceful purposes, to be sure. I think the spirit of the CWC is, "share now" the treaty counsels, "verify purposes and intentions later."

Mr. Chairman, my years at the United Nations sensitized me to the composition of governing boards of the United Nations. All too often, the composition of those governing boards simply reflect the bloc system and its operation in the U.N.; it dominates many processes of the U.N. The bloc system is purely geographical and political in character, and takes little or no account of technical competence or democratic representation—or of who pays the bills, I might add.

I believe that the Senate should take specific note of the composition of all the international boards entrusted to enforce international covenants, boards which make important decisions affecting our country. The CWC governing board will be chosen on a basis that gives little weight to competence, because the IAEA's governing board is used as a model. The IAEA's verification regime has not been able either to verify or to enforce the Nuclear Nonproliferation Treaty.

As we can learn hard lessons about failures of the IAEA regime to adequately verify violations of the NPT, so, Mr. Chairman, can we learn some hard lessons from the IAEA experience, about the non-enforceability of just such treaties.

What happens when violations of the Nonproliferation Treaty are discovered? This is a very important question. There are the questions of verifiability and enforceability. What happens when a nation which has signed the Nuclear Nonproliferation Treaty is discovered to be in violation?

The answer is: Not much.

Iraq has suffered some penalties because of its violations of the NPT. But it has suffered, because it invaded a neighbor—namely, Kuwait—not because it cynically violated the NPT norms.

I believe that the composition of the governing board of the Chemical Weapons Convention, the OPCW, guarantees that countries with the greatest technical knowledge will be in a permanent

minority in that decisionmaking group. The important decisions will be made by the OPCW; but the United States and Western Europe, the most highly industrialized and technically sophisticated countries, will be in a permanent minority in that group.

The United States has no guaranteed seat in that governing body. Neither the amount of our financial contribution nor our technical competence guarantees us a seat. We will compete for a seat with the other most highly industrial countries for 10 of 41 seats. Asia will have nine. There will be one rotating seat. Latin America and the Caribbean will have seven. Africa will have nine. Eastern Europe will have five. What we in the U.N. call WEOG, Western Europe and others group—and we fall in that group—will have 10.

I am not certain, Mr. Chairman, where Russia falls in these groups today. Probably in Eastern Europe, but maybe not. There would have to be some special provision made. That is important, since, if indeed Russia ratifies the treaty, it is eligible to sit on the OPCW. It may not. It has signed but not yet ratified, of course.

But the composition of the OPCW explains why its decisions are not likely to take account of the best technical information available. Not only that, the method of composition of that group explains why most efforts by U.N. bodies to develop operational groups fail. Because the members of the group are chosen on the basis of criteria which are irrelevant to their ability to perform, with technical competence, the task of the group.

From experience with the NPT and the IAEA, I believe we have had a great deal of opportunity to learn about the problems of verification and enforceability. The IAEA's verification procedures, of course, require prior notification and consent of the party to be inspected including the parties inspected, the right to approve or veto the composition of the teams of inspectors.

Now, we all know that Iraq's nuclear projects and its progress were discovered only as a consequence of their defeat in the Gulf War. Iraq's violations of NPT have been discovered again and again, as we keep finding things we did not know and new information about aspects of their program that we were unaware of by virtue of our access through the armistice and their defeat in the Kuwaiti War. It was not the result of IAEA inspections. Routine procedures for verification did not reveal Iraq's large nuclear project.

Now, as everyone knows, it is much simpler to develop chemical weapons than nuclear weapons. It is much easier to procure and hide the components. As everyone knows, the technology required in developing nuclear weapons is much more complex and esoteric than chemical weapons. Everyone knows that chemical weapons rely largely on dual-use substances that are common in everyday life. Chemical weapons can be manufactured with uncomplicated technology.

That is, I think, why, in the 1980's, when I was at the United Nations, it was commonplace to hear Third World spokesmen refer to chemical weapons as the Third World's nuclear bombs. Even very technologically underdeveloped countries could produce them. It was suggested often that it was not quite cricket for the devel-

oped countries to try to deprive the least developed countries of the Third World weapons of mass destruction.

I do not think any of us need weapons of mass destruction, quite frankly, to prove that we can survive in the contemporary world.

Mr. Chairman, I believe that the Senate should face the fact that ratifying this treaty will not prevent the manufacture or use of chemical weapons. That is precisely the point. The Chemical Weapons Convention is neither verifiable nor enforceable.

Proponents sometimes say, so it is not perfect. Is not something that is not perfect better than nothing at all?

I do not think that is necessarily so, particularly since the countries that have signed and ratified the Convention are countries about which we would never worry about using chemical weapons. The countries that have neither signed nor ratified are countries that we are most likely to worry about—the so-called rogue states or outlaw nations—Syria, Iraq, North Korea, Libya. Those are the countries we worry about.

We do not worry about Britain, France, the WEOG, and the Australia Group. I do not worry a bit about the Australia Group. Those are our best friends. They do not need to worry about us either, I might say.

The treaty's advocates simply ignore the fact that the treaty cannot help us monitor the production of these weapons by states most likely to use chemical weapons. Why, then, have so many countries signed on to a treaty that can offer so little protection?

I believe, Mr. Chairman, that it is simply wishful thinking, frankly. I believe it is hoping and pretending that something that you want to be verifiable, enforceable, and universal may actually turn out to be that, in spite of the fact that, from experience, we know it is not and will not.

We should also face the fact that signing the treaty will not prevent signatories of bad will from breaking their promises not to produce noxious gases. We know that Russia has in fact already, in its continuing production of noxious gases, broken two sets of promises—not the promises of the treaty, but bilateral promises to the United States involving the production of nerve gases and the failure to destroy gases which they had agreed to destroy. Countries do not necessarily keep their promises.

Advocates of the treaty argue it would surely do some good and, at the very least, would do no harm.

Mr. Chairman, I believe that the Chemical Weapons Convention will actually make the world more dangerous. That is why I came today. I believe the treaty will hasten the spread of advanced chemical weapons, as I believe a comparable treaty has hastened the spread of the technology for nuclear weapon construction—and that is not all.

Mr. Chairman, I recently asked a French friend, who happens to be visiting just now, did the Maginot Line do France any harm in World War II?

Well, I think most French think so. It gave them the impression that they had dealt with a dangerous threat—an invasion from the east, across their borders—when in fact they were in as much danger as before. The Maginot Line created a comforting illusion which lulled France into a false sense of security.

I believe the world is probably less dangerous today, Mr. Chairman, than at any time in my life—or certainly than in most of my life. I cherish this sense of lessened threat. I love it. But I believe we are not so safe that we can afford to create a false sense of security by pretending that we have eliminated chemical weapons.

President Clinton said in one statement that I read: "We will have banished poison gas from the Earth." Well, that is poetic license or a politician's license or perhaps a President's license, but it surely is not an accurate statement about what will be the case. The countries most likely to produce and use poison gas are unaffected by this treaty.

I think the Senate, personally, should reaffirm the U.S. sense of responsibility and our commitment to that responsibility toward preserving a peaceful world and decline to ratify this treaty unless or until progress is made toward making it more verifiable, enforceable, and universal. There is still a long way to go.

Thank you, Mr. Chairman.

[The prepared statement of Ambassador Kirkpatrick follows:]

PREPARED STATEMENT OF DR. JEANE J. KIRKPATRICK

Mr. Chairman, thank you for inviting me to testify before this distinguished committee today.

The subject of today's hearing is important. The Senate's decision will be more important. I have followed this issue with interest since my tenure as U.S. Permanent Representative to the United Nations under Ronald Reagan brought several such proposed covenants to the forefront of my attention.

It was then that I first became aware of the fact that the Nuclear Nonproliferation Treaty (NPT) was being used to achieve very different purposes than those for which it was intended—that it was being used to acquire and spread the technology and products needed to produce nuclear weapons rather than to prevent their spread.

It was even then understood among the informed public that by signing the treaty a country—such as Iraq—acquired a "right" to share technology needed to produce nuclear products.

By now, it is generally understood that the shortest route to a nuclear capacity is through the NPT. Iran is traveling that road today. We and other signatories are helping finance their development of a nuclear capacity. Secretary of State Warren Christopher said on this subject, "Based upon a wide variety of data, we know that since the mid-1980's, Iran has had an organized structure dedicated to acquiring and developing nuclear weapons." He added that in terms of its "organization, programs, procurement, and covert activities, Iran is pursuing the classic route to nuclear weapons which has been followed by almost all states that have recently sought a nuclear capability." [F.N. Bulletin of Atomic Scientists, 7/95. Vol. 51, Issue 4, page 23.]

More recently there have been several public reports of U.S. Government efforts that persuade Russia not to assist Iran in the development of its nuclear capacity and reminders that Iran—a signatory of the NPT—had the right to assistance in developing a nuclear capacity for peaceful use. There has been far too little public attention to this—the principal source of nuclear proliferation.

It was also in my U.N. years that I first noticed the composition of the governing board of the International Atomic Energy Agency (IAEA). Iraq sat on the governing board of the IAEA and were at that very time violating promises not to undertake the development of nuclear weapons—promises not to use poison gases in war. [Iraq did both.] Several of the same countries have already violated commitments not to use poison gas in war, for, as we all understand, there is already an operative treaty which forbids the use in war of "Asphyxiating, Poisonous or Other Gases." It is the Geneva Protocol of 1925.

Mr. Chairman, many people speak as if the Nuclear Non-Proliferation Treaty and verification regime had prevented proliferation of nuclear weapons. If that were the case Iraq, North Korea, India, Pakistan would not have either bombs today nor advanced programs for producing them. But they do.

A strange silence shrouds the facts of nuclear proliferation. Even the U.S. Government has been strangely reluctant to face the facts about the failure of the NPT

to prevent proliferation. But it is an open secret that the Nuclear Non-Proliferation Treaty has been a source of proliferation of nuclear technology. It is also perfectly clear that the CWC will facilitate the spread of chemical weapons through provisions in Chapter Eleven of the treaty that call on countries with a developed chemical industry to share their advanced technology with less developed countries.

If our government and our allies had faced facts about the nuclear proliferation facilitated by the NPT they would presumably not have reproduced in Article XI the loopholes that have been permitted and facilitated it. But they have in the paragraphs which call for sharing technology among the signatories and forbid efforts to "restrict or impede trade and development and promotion of scientific and technological knowledge in the field of chemistry * * * " for peaceful purposes to be sure.

Share now, the treaty counsels, verify purposes and intentions later.

My years at the United Nations also sensitized me to the composition of the governing boards of U.N. bodies. All too often the composition of governing boards simply reflects the bloc system which dominates many processes in the United Nations. The bloc system is purely political/geographical in character. It takes little or no account of technical competence and standards, of democratic representation, or of who pays the bills.

The Senate should take careful note of the IAEA governing board.

Iraq served on the governing board of the IAEA the entire time that it was working to develop nuclear weapons in violation of its pledge. It is not the only known violator to be selected for that board. The Chemical Weapons Convention (CWC) governing board will be chosen on a basis that gives still less weight to competence.

The IAEA's verification regime often regarded as a model has not been able either to verify or to enforce the NPT.

As we can learn hard lessons about failures of the IAEA regime to adequately verify violations of the NPT, so we can learn about the non-enforceability of such Treaties. What happens when violations are discovered? Not much. Iraq has suffered because it invaded a neighbor, not because it cynically violated NPT norms.

The composition of the governing body of the Organization for the Prohibition of Chemical Weapons (OPCW) guarantees that countries with the greatest technical knowledge will be in a permanent minority. There are no permanent members on the OPCW and no vetoes.

The composition of the Executive Council of the OPCW explains why the U.N. bodies fail at operational efforts, through their validity as representational bodies.

From experience with the NPT and the IAEA we have had the opportunity to learn a good deal about the problems of verification and the weaknesses of the verification regime that was developed to prevent the proliferation of nuclear weapons and the inadequacy of the IAEA's verification procedures that require prior notification of the party to be inspected, consent of the inspected party, and a right to approve or veto the composition of the team of inspectors.

Iraq's large, advanced nuclear development project was discovered only as a consequence of their defeat in the Gulf War NOT as a result of IAEA inspections. Likewise, North Korea's large nuclear development.

And as everyone knows, it is much simpler to develop chemical than nuclear weapons, much easier to procure and to hide the components. Nuclear weapons require weapons grade plutonium. The technology required in developing nuclear weapons is more complex and esoteric. But chemical weapons rely largely on dual use substances common in everyday life, small space, and uncomplicated technology. That is why in the 80s chemical weapons were sometimes called the "Third World's nuclear bombs." Even very technologically underdeveloped countries could produce them.

The Senate should face the fact that ratifying the treaty will not prevent the manufacture or use of chemical weapons. The Chemical Weapons Convention is neither verifiable nor enforceable. Proponents attempt to dismiss the many loopholes in the treaty with the assertion that nothing is perfect. But perfection is not the question.

Proponents seek to minimize the fact that the countries with the most highly developed programs either have signed but not ratified the treaty—Russia, China, Cuba, Iran, Vietnam—or have not signed at all—Syria, Iraq, North Korea, Libya—but signing does not solve the problem. Signing will not prevent signatories from breaking their promises not to produce noxious gases as Russia has recently broken a promise to the United States.

And the treaty's advocates simply ignore the fact the treaty cannot help us monitor the production of the states most likely to use chemical warfare.

Why then have so many countries signed on to a treaty that can offer so little protection?

Only wishful thinking encourages it. It is as if pretending that the treaty were verifiable, enforceable, and universal would make it so. But it doesn't. It also will

not prevent signatories from breaking their promises not to produce noxious gases as Russia has recently done.

But surely it would do some good, treaty advocates argue. At the very least we can say it would do no harm.

Mr. Chairman, it is because I believe the CWC would actually make the world more dangerous that I am here. I believe the treaty will hasten the spread of advanced chemical weapons as it has nuclear technology.

Americans working for ratification of the CWC should take a hard look at what happened in the United Nations Human Rights Commission meeting in Geneva this week. The United States could not even get a discussion of China's human rights violations put on the agenda.

For the seventh straight year China was able to prevent discussion—much less censure—of its deeply shocking treatment of Tibet and all manner of dissidents and to do so by a comfortable 27 to 17 margin (with nine abstentions). China won the vote with strong Third World support, including some close U.S. associates such as Egypt, India and Indonesia.

China's chief delegate, Wu Jianmen, explained later the vote showed that the Third World "identified" with China. He also emphasized the failure of some close U.S. allies (France, Germany, Italy, Spain, Japan, Greece, Italy, Canada and Australia) to co-sponsor the "Western" resolution this year, because, he said, they "want dialog and cooperation and not confrontation." In truth China won the vote because there is weak support for democracy beyond North America, Europe, and a few Asian and South American states, and also because China mounted a tough worldwide campaign—that included arm-twisting and threat of economic consequences. A belated U.S. effort to rally support—including personal intervention by Secretary of State Madeleine Albright—did not help much.

This shameful outcome was not a defeat for the United States or the countries sponsoring the resolution. It was a defeat for humane values and rational discussion of deeply serious moral and political issues. It was a defeat for victims of repression and for the very purposes for which the United Nations was founded. This outcome in the Human Rights Commission is a harsh reminder that the United States often cannot win votes for its basic values and interests in U.N. arenas—even when the issue is purely symbolic and the U.S., itself, and most of our principal allies are present.

The balance of power would be much less favorable to the United States in the governing body that will implement the Chemical Weapons Convention.

In pressing the Senate to ratify the CWC quickly, before the treaty enters into effect on April 29, the Clinton administration has argued that by getting in on the ground floor the United States will be assured of having an important voice in shaping the structure and function of the organization. But that is not so. The composition and structure of the governing body of the CWC are prescribed in the treaty. The treaty, itself, hands us a stacked deck with which to play for influence.

The United States, Great Britain, France, Russia and China (that is, the permanent members of the Security Council) are all guaranteed seats on the Human Rights Commission but not on the Executive Council that will administer the CWC. The 41 members of that Executive Council will be designated from the U.N.'s standard geographical groupings and elected by all the signatories of the CWC for 2 year terms. There will be no permanent members and no vetoes.

The United States is a member of the WEOG (Western European and Other Group) which is allotted 10 seats on the 41 member Executive Council that also provides nine seats for Asia, seven for Latin America and the Caribbean, nine for Africa, five for Eastern Europe plus one rotating seat. To win one of the 10 WEOG seats for a 2-year term, the United States will need to compete with the other Western industrial democratic nations who altogether will have only 10 of 41 seats (or 15 of 41 seats if we count Eastern Europe; or 16 of 41 with all of Europe plus Japan).

In this competition our friends in the European Union will have 15 votes to our one vote. Therefore, the United States would frequently fail to gain a voice in the decisions of the Executive Council. Neither the amount of our financial contribution nor our technical competence would guarantee us a seat.

The draft of the CWC supported by the Reagan administration guarded against this possibility. It provided that permanent members of the Security Council would be members of the Executive Council that implements the treaty. This would have guaranteed representation of the most powerful nations and those with the most highly developed chemical industries. The CWC which is now before the Senate operates on the basis of one country, one vote.

The fact that the United States might have no voice in setting policy for implementing the CWC but would surely be bound by its decisions is one important reason that the U.S. Senate should not ratify this treaty.

There are others.

Most of the countries in the Human Rights Commission have ratified the Declaration on Universal Human Rights.

Will the United States ratifying the CWC make the world safer?

Mr. Chairman, did the Maginot Line do any harm to France in World War II? Most French think so. It gave them the impression that they had taken care of a dangerous threat: an invasion from the East; when in fact, they were in as much danger as ever. The Maginot Line created a comforting illusion which lulled France into a false sense of security and facilitated Hitler's conquest.

The world is less dangerous today than during most of my lifetime. I cherish this sense of lessened threat. But we are not so safe we can afford to create a false sense of security by pretending that we have eliminated the threat of chemical weapons. President Bill Clinton said, "We will have banished poison gas from the Earth." It will not be so. We had better do some hard thinking about how to defend ourselves and the world against the poison gases that have been and will be produced whether or not we ratify.

I think the Senate should reaffirm the U.S. sense of responsibility and commitment to a peaceful world and decline to ratify this treaty unless or until it becomes verifiable, enforceable, and universal. There is a long way to go.

Thank you.

The CHAIRMAN. Thank you, Madam Ambassador.

Let me say to the visitors here today and those who are watching on television that I have been to several functions that shared the podium with the distinguished Jeane Kirkpatrick, who, by the way, is a Senior Fellow of the American Enterprise Institute and, as almost everybody knows, she is a former U.S. Ambassador to the United Nations. But everywhere I go or have gone, where she has appeared likewise, I have sensed that she is one of the most respected women in America. We are honored to have you with us today.

Ambassador KIRKPATRICK. Thank you, Mr. Chairman.

The CHAIRMAN. Now, we move to Mr. Richard N. Perle, who is one of the best informed individuals I know. He is formerly Assistant Secretary of Defense for International Security Policy. I do not know how many times I have called on Richard for information and guidance on various issues. We are certainly glad to have you here, and you may proceed, sir.

Senator BIDEN. Mr. Chairman, you do not have any idea how many times we have regretted that you called on him, because he is so persuasive. I hope you are not so good today, Richard.

The CHAIRMAN. Just watch him.

STATEMENT OF RICHARD N. PERLE, FORMER ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY POLICY

Mr. PERLE. Mr. Chairman, thank you very much for inviting me.

Senator Biden, I can assure you I would not have come today if I did not think there was a very strong case to be made. I will try to take seriously your injunction to keep my eye on the ball.

In fact, I think my colleague and friend Jeane Kirkpatrick clearly identified the ball when she described the way in which the Nonproliferation Treaty, without anyone ever having intended that it should work this way, had the effect of making technology for the production of nuclear material far more readily available than it might have been otherwise—a defect that unhappily is reproduced like a computer virus in the Chemical Weapons Convention.

Before I get into the key point I want to make today, let me say that I have chosen to focus on one issue—one rather narrow issue.

I think that is in fact the ball that Senator Biden has in mind. My colleague Doug Feith, from whom you will hear shortly, has prepared a more comprehensive statement that deals with other aspects of the treaty in a thoroughly convincing and understandable way. I agree entirely with the points that Doug will soon be making.

But I want to restrict myself to one key point. That is, as it happens, the point that Sandy Berger was concerned to deal with in the letter with which he provided you. I take that letter as confirmation of the fact that the National Security Adviser, like others, have begun, under the exigency of imminent action on this treaty, to understand that there are problems in the treaty that need to be addressed. I wish they had been addressed at an earlier stage in the proceedings. That is to say, while the treaty was under negotiation. Because had the ball that Sandy Berger has now found been seen earlier, we would have a treaty without Article X in it, and probably without Article XI in it.

Had we been more attentive, had we learned the lesson of the Nonproliferation Treaty, had we thought through the means by which countries may in future acquire a meaningful military chemical weapons capability, I am quite convinced that we would not have allowed Article X to become a part of this treaty.

What Jeane had to say about the Nonproliferation Treaty applies to this Convention in spades. The reason why I say in spades, Mr. Chairman, is that the production of nuclear material clandestinely from facilities that are intended for peaceful purposes and that are monitored by the IAEA—not perfectly, but monitored—is a very difficult thing to accomplish. Building nuclear power plants is not easy. Operating them is not easy. Handling nuclear material is not easy.

Chemical weapons, on the other hand, pose an entirely different set of issues. The production of lethal chemicals which can be used for military purposes is not difficult. Any facility capable of producing insecticides, any facility capable of producing fertilizer can, with relatively minor modifications—well within the capacity of any country that has an insecticide or a fertilizer plant—be converted to the production of chemicals. Indeed, some of the chemicals of concern are not even barred under this treaty, because they are already so widely spread around the world.

So the acquisition of lethal chemicals for military purposes is easy. But the possession of lethal chemicals is not, by itself, sufficient to constitute a military capability. Because in order to use chemical weapons for military purposes, you have to be able to protect your own troops. The soldiers that go into the field, the pilots that drop canisters, the artillerymen that launch chemical shells all need to be protected themselves. Otherwise, their missions become suicidal. They are difficult enough even if they are protected themselves.

So what is difficult about acquiring a chemical weapons capability, a military capability, is not the offense; it is the defense. The offense is easy. The defense is very hard.

Article X of this treaty says that the parties to the treaty, the signatories, will be entitled to receive help in the development of

the hard thing—the defensive capabilities. In fact, it requires participants who enter into this in good faith to assist them.

I want to read the exact words of Article X, because I have a feeling that, by the time the Senate votes, everyone will have understood that this is the ball that we have to keep clearly in focus. Paragraph 3 of Article X reads as follows:

> Each state party undertakes—undertakes—to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons. The parties undertake.

Paragraph 6 of Article X reads:

> Nothing in this convention—nothing in this convention [if we had drafted this up here, it would say notwithstanding any other provision of law] nothing in this convention shall be interpreted—shall be interpreted—as impeding the right of states parties to request and provide assistance bilaterally and to conclude individual agreements with other states parties concerning the emergency procurement of assistance.

So Article X not only pledges the parties, they undertake to share everything that is hard to achieve in a chemical weapons capability—the defensive side—but, in fact, anticipating the possibility that someone might say, well, we interpret this differently, words have specifically been included that say nothing in this convention shall be interpreted as impeding.

Now, what are we talking about when we talk about the assistance, the fullest possible exchange, and so forth? That is defined in Article X. It refers *inter alia* to detection equipment and alarm systems, protective equipment, decontamination equipment and decontaminants, medical antidotes and treatments, and advice on any of these protective measures. In short, everything you need, combined with the offensive chemicals themselves, to constitute a militarily effective chemical weapons capability.

Senator BIDEN. Mr. Chairman, I am sure Mr. Perle would not mind my asking. Can I ask a clarification question?

Mr. PERLE. Sure.

Senator BIDEN. What does Paragraph 7 mean?

Mr. PERLE. The paragraph I read to you, nothing in this convention shall be——

Senator BIDEN. No. Each party undertakes to provide assistance through the organization and, to this end, to elect—to elect to take one or more of the following measures. Does that modify it? That is all I am trying to bring up.

Mr. PERLE [continuing]. No. I do not believe it does.

It sets up a mechanism, which actually makes matters a little bit worse. Because the Secretariat will become a repository—not the only repository, because this envisions bilateral cooperation, as, for example, between China and Iran or China and Pakistan. But the Secretariat will now become a repository of information about defensive technology.

So the span of control of the United States will be diluted, to the extent to which the United States does not constitute the Secretariat all by itself, which of course it will not.

Senator BIDEN. I thank you. I have a different view, but I will wait until my time for questions.

Mr. PERLE. So I think it is reasonable to speculate that if we go ahead and approve this convention as it is now written, we will look back 1 day—5 years from now, 7, 10 years from now, maybe sooner—and we will unhappily identify states who got their chemical weapons capability through the sharing that is going to take place pursuant to Article X.

The administration argues that, well, we are not going to do that. Of course, we are not going to give our defensive technology to rogue states. You would have to be out of your mind to do that. We have no intention of doing that. It is certainly the right of the administration to enter into an undertaking without any intention of carrying it out, because it runs counter to one's common sense. Some people would call that bad faith. I think it would be justified bad faith if we were unhappily unable to avoid the undertaking in the first place, which we are still in a position to avoid.

But there are a great many other countries that also possess defensive capabilities and defensive technology. They may not be so willing to act in bad faith. Indeed, they may be actually rather eager to find a basis for sharing the kinds of defensive technologies, equipment, know-how, and so forth that we are talking about here.

So if, for example, the challenge were to discourage the Chinese from assisting the Pakistanis, would not the Chinese invoke Article X of the treaty and say, we understand your feelings about this, Mr. President, but we undertook to share this technology. You are not asking us to violate a solemn undertaking, are you?

I think our capacity to persuade others will be significantly diminished by virtue of the undertakings in Article X, which we may enter into in bad faith, but others will not.

Let me give you a proliferation scenario just for illustrative purposes. Let us take Iran as the example. Iran has already signed, and I assume it will ratify the convention. I think there is evidence that Iran presently has a chemical weapons capability. But let us say that the Iranians, upon entering the Chemical Weapons Convention, decide to abandon that offensive capability. It is a matter of converting some plants that are now producing chemicals to the production of insecticide or fertilizer. What can you do from left to right, you can do from right to left.

So Iran now ceases to have an offensive chemical weapons production capability. It is, therefore, in strict compliance with the terms of this convention. That is what I would do if I were Mr. Rafsanjani and wanted a chemical weapons capability. Because I do not today have the defensive side of the equation.

So I would eliminate any violation by ceasing illegal activity. Now I would invoke Article X, and I would go to other countries and say, "We have no offensive capability. We are in full compliance. You are obliged—you have undertaken to share with us the defenses." I promise you there will be countries that will accommodate them—for a price—maybe even without insisting on much of a price. Who could argue against it, since they will be, at that point, in full compliance?

So a period of time elapses, during which the Iranians, who were clever, acquire all the defensive technology they need. They acquire, in the words of the treaty, detection equipment and alarm systems, protective equipment, decontamination equipment and

decontaminants, medical antidotes and treatments, and advice on all of the above.

Once they have that firmly in hand, once they have the difficult part of acquiring a chemical weapons capability, now they restart the production of offensive chemicals. But it is too late. We will have supplied them the thing that they cannot now easily achieve. They will put part A and part B together, and they will have a chemical weapons military capability. The instrument by which they will have achieved this is the convention that we are now talking about ratifying.

Let me conclude, Mr. Chairman, by saying two other things. One about how we could get into this situation. How could we be at this stage of the proceedings, with so many countries having signed this agreement, with the Senate about to take it up, having overlooked—because that is the only fair way to describe it—the portentous implications of Article X?

There is another article, Article XI, which tends very much in the same direction, and I think it will have a similar result.

I had occasion to discuss this treaty recently with a senior official of this government, a cabinet level official. I asked this person about Article X. This person did not know about Article X. Now, Article X has become better known in the last 72 hours. But a couple of weeks ago, there were an awful lot of very senior officials of this government who did not know about Article X and did not know about the problem.

You wonder how this could happen. Well, it happens in the following way. The United States makes a decision to propose a treaty on chemical weapons and a draft is put together. The draft did not have Article X in it. We sent a team of people to Geneva, and they come back 10 years later, basically. For 10 years, they are working away on this convention.

The people who are receiving their cables in Washington are very often people who were in Geneva, because there is a kind of rotation. This is how it works in the real world. So you get an intellectually incestuous relationship among the Geneva people and the Washington people, with almost no adult supervision. The individuals involved in this invest a great deal of their time, years of their lives, in attempting to bring about a treaty.

Somebody insists on an Article X, or maybe a group of countries insist on an Article X. It is 10 years after we got started on this, and we want to bring this treaty home. It is the experts who are making the decision. No President reads the treaty. No Secretary of State reads the treaty. No Under Secretary. No Assistant Secretary. I promise you, Mr. Chairman, this treaty, 160 pages long, has not been read by anyone who was not paid full-time to work on it.

So terrible mistakes can be made—mistakes in which somebody loses sight of the ball along the way. That is what comes to the Senate for ratification.

One last point. Senator Feinstein asked about verification. How would verification be improved if the United States remained outside the treaty? It is a fair question. The answer is counterintuitive. So let me take a quick shot at it.

I think it would be improved in two ways. First of all, I think we would do a better job of keeping to ourselves the means by which we detect violations. Jeane Kirkpatrick made reference to the fact that Iraq had served on the governing board of the IAEA. They were there for a good reason.

The Iraqi Government did not contribute the full-time talent of one of its senior officials for the benefit of the IAEA; I promise you that. He was there to learn as much as he could learn about how the IAEA went about detecting illegal activity. He was an intelligence officer. I promise you that the organization responsible for implementing this agreement will be full of intelligence officers, including intelligence officers from countries who are eager to discover how they might be caught if they had a clandestine program.

So we will end up educating the very people whose programs we are trying to stop in how to avoid getting detected in the first place. So that is one way in which we will be worse off. We do not have to educate them now, but we will then.

Second, and this is a more subtle point, once activity becomes illegal, the way in which information about it is collected and analyzed and reported acquires an entirely different meaning than when it is simply intelligence about the activities of others.

When we are interested in the capabilities of a Russian missile, we employ technicians who look at the test data that they are able to acquire, who look at photography, who look at all sources of intelligence; and they make a judgment about the capability of that missile; and they say how far they think it can go; and they say what size warhead they think it can carry.

They say everything to the best of their ability about that missile; and they do not think about the implications of their answer, because their job is to unearth the truth about that missile.

But now, suppose there is an arms control regime in which that missile, if its range is over 600 kilometers, is a violation of a treaty; but if it is only 595 kilometers it is not a violation of a treaty, and you are now responsible for deciding whether to send to the President a report that says, we believe the range of this missile to be 650 kilometers, which has very important political implications. At that point, an element of political judgment enters into the assessment of intelligence.

I saw this day in and day out as we grappled with the question of how to interpret what we were seeing in the old Soviet Union in the cold war days, so I believe that the objectivity with which we view the evidence becomes inevitably colored by political considerations when the issue is not, what do we know, but is what we know going to touch off a crisis because we have now caught someone violating the treaty; and that requires some response on our part.

So I do not accept the now hourly-passed-off view that we are going to do more with this treaty than without it, which is the conventional wisdom; but I think it overlooks these two very important points.

I am sorry for going on too long, Mr. Chairman. Thank you very much.

The CHAIRMAN. You have not at all, and I thank you very much.

Now we have another long-time friend of all of us, Dr. Fred Ikle, former Director of the Arms Control and Disarmament Agency. We appreciate you coming, sir. We will be glad to hear from you now.

STATEMENT OF DR. FRED C. IKLE, FORMER DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY

Dr. IKLE. Thank you, Mr. Chairman. I am honored to be invited here.

The previous witnesses, Ambassador Kirkpatrick and Richard Perle, made so many of the important points of what effectively is a sad story that I can be quite brief. It is a sad story; because as witnesses yesterday mentioned, there were good intentions behind this treaty, and we all are—the witnesses yesterday and today—are horrified by the potential of chemical weapons and would like to see them banished from the face of the Earth.

Ambassador Kirkpatrick very tellingly brought back the nonproliferation treaty, which of course was preceded by the Atoms for Peace program. President Eisenhower with that program also had very good intentions. In fact, he got enormous kudos in the press when he presented that program. It was one of his greatest public affairs successes, and—as it turns out now from hindsight—one of the main contributors to nuclear proliferation.

I can add to the telling points Richard Perle made about Article X and the related culprit, Article XI about the assistance in chemical manufacturing technology. Here, there is something a bit startling in the discussion we had. By and large the discussion in Congress and in the media has been very thoughtful on both sides, serious arguments, honestly felt.

It is all the more regrettable here that on the question relating to Article XI it looks like some misinformation has deliberately been infiltrated into our discussion, and that is the allegation which a number of people here picked up innocently, the allegation that the United States would lose seriously in chemical manufacturing exports if we did not ratify the treaty.

For a while, the administration spokespersons mentioned a number like $600 million lost per year in U.S. exports, legitimate chemical manufacturing exports. When pressed on where that number came from, the administration said: "talk to the Chemical Manufacturing Association." When the people there were asked, they really were unable to give an explanation.

So we did some further digging into this question; and it turns out the only exports that the U.S. could no longer make, if it did not become a party to the treaty, to other treaty members like Germany, Japan, and the U.K., would be the poison gas itself, which of course we do not want to be exporting, and the most dangerous ingredients to be used in gas warfare.

Schedule I type chemicals is poison gas itself. There are no exports, obviously, from the United States of any importance. Schedule II, that may have some role in pesticides, but exports are much more limited than the $600 million figure suggested.

So why has this export damage been so vigorously mentioned, particularly by the Chemical Manufacturing Association representatives that are urging the Senate to ratify this treaty? I think the answer, I believe, is that some people there relish the prospect that

the Chemical Weapons Convention would undo the restrictions of the Australia Group, precisely the thing Senator Biden expressed serious concern about, and rightly so.

Now, this is a serious charge to make, and maybe I had better have a couple of exhibits for my case. One, I was not able to fully nail down. Maybe you could have this done, Mr. Chairman. Last fall, in the House of Representatives, a step was taken—exactly where it came from I do not know, it would seem to have the support of the Chemical Manufacturing Association—to lift the licensing requirements for chemical weapons exports to the member states of the convention before even the United States had ratified the treaty.

Then, Members—colleagues of yours—I think yourself, Mr. Chairman, Senator Pell, Senator Glenn, Senator Kyl in a bipartisan effort stopped that premature dismantling of our licensing requirements.

The more definitive exhibit goes further back. In testimony before this committee on June 9, 1994, a spokesman conveying the support of the Chemical Manufacturing Association said, and I quote, "There are several significant reasons why the chemical industry supports the CWC. Those chemical manufacturers do not make chemical weapons. Our industry does produce commercial chemicals which can be illegally converted into weapons. An effective CWC could have the positive effect of liberalizing—liberalizing the existing system for export controls applicable to our industry's products, technologies, and processes."

So I think there is at least a partial explanation for the enthusiasm of the CMA for this treaty. Now, that is perhaps in some ways a serious charge. I think it is.

Let me add one more point there. To the extent I have been able to find out, and I know some other people have confirmed this, this is not a charge against the most senior officials of the industry who are members of the association. I have talked to CEO's of large chemical companies, including in Delaware, who have never heard of the treaty while it was in process and while the representatives here in town of the CMA have been working together with this club in Geneva that Richard Perle described, and nourished the support for this treaty.

So I think we have to first of all get rid of the idea that not ratifying the treaty would damage the exports of the United States chemical industry, the legitimate, important exports; and second I think we have to put a question mark behind the support alleged by the CMA of the responsible senior officials in the chemical industry.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you, Dr. Ikle. I think the legislation you were talking about was H.R. 364, and that would have just devastated the U.S. export controls.

Now we come to Doug Feith, former Deputy Assistant Secretary of Defense for Negotiation Policy, and by George, I am anxiously awaiting hearing from you. Thank you for coming in.

STATEMENT OF DOUGLAS J. FEITH, FEITH AND ZELL, P.C., FORMER DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR NEGOTIATION POLICY

Mr. FEITH. Thank you very much, Mr. Chairman. I appreciate the opportunity to appear before this committee again on this important question. I agree with Dr. Ikle that the debate on the Chemical Weapons Convention has been of remarkably high quality for a matter so complex. I have a statement that I would appreciate the committee admitting for the record, and what I would like to do now is just touch on some of the points in my written statement, if that is acceptable.

The CHAIRMAN. Very well. Without objection it will be so ordered.

Mr. FEITH. Thank you.

Both sides in this debate have established substantial common ground. Both sides agree that the treaty is not verifiable, if by verifiable we mean confidence in detection by U.S. intelligence of illegal clandestine stockpiling or production of chemical weapons. No one in the intelligence community has ever said the treaty is verifiable by that standard.

It is worthwhile to stress that the verification problem here is not the lack of perfection. The problem is not that we would detect cheating only 90 percent or 50 percent of the time. The problem is that chemical weapons production is so easy to do and to conceal that it is inherently impossible to achieve any degree of confidence, let alone high confidence, that we could detect it even regarding militarily significant quantities of chemical weapons.

Someone once drove this point home by saying that the Chemical Weapons Convention is like an effort to ban Hollandaise sauce without banning eggs and butter. Treaty critics believe that it would not serve the anti-chemical-weapons cause for us to join a ban that we know will be ineffective, impossible to monitor properly, and impossible to enforce.

I speak as a lawyer devoted to the principle of law. The world would surely be a better place if law in fact played a greater role in securing international peace and civilized behavior, but we do not move toward this goal by promulgating a patently ineffective treaty. A chemical weapons ban that states know they can sign cynically and violate without punishment will not shore up the international norm against such weapons. Creating bad law is not the way to build respect for law. The CWC will cheapen the currency of international law.

The wiser approach, in my opinion, to chemical weapons arms control is embodied in the bill S. 495, authored by Senator Kyl and cosponsored by Senators Lott, Helms, and others. The United States should work to obtain international agreement on mechanisms for enforcing the existing treaty that bans initiation of chemical warfare. We should put teeth in the 1925 Geneva Protocol.

If that treaty were properly enforced, there clearly would not be any need for the CWC; and if the Geneva Protocol continues to be violated with impunity, then there is no hope that the CWC will be respected, for violations of the CWC are far less discoverable and provable and far less likely to horrify worldwide opinion than violations of the non-use ban.

What of the point that we might as well ratify the CWC as we are destroying the U.S. chemical arsenal anyway? It is better, in our view, to destroy our arsenal unilaterally than to enter into a treaty that we know will not accomplish its purpose. By acting unilaterally, we produce some of the key benefits hoped for from the CWC without taking on the treaty's undesirable baggage. Our action makes a strong moral statement against chemical weapons, but it does not lend our name to the dishonest proposition that Iran, China, or others have actually abolished their chemical weapons arsenals.

Which brings us back to the question highlighted by Senator Feinstein: Whether we are better off with the inspection and information rights that the CWC will provide, or without. On balance, we are better off without.

The CWC's verification regime stands on two legs. The first is voluntary disclosure. Most of the regime is based on what the parties voluntarily declare about their own holdings of chemical weapons, manufacturing facilities and the like. Virtually all the CWC's inspections will be at so-called declared facilities, that is, locations that each party will itself declare to be subject to inspection.

Nearly all the large budget of the new CWC organization based in The Hague will be allocated to inspecting declared facilities and processing the parties' voluntary declarations. Does anyone expect a country like Iran or China or Russia to declare a facility in which it is planning to produce or store illegal chemical weapons? The declarations and the inspections of declared facilities will yield our government little, if anything, of value to augment what we already know from our own national intelligence means.

Looking for chemical weapons at declared facilities brings to mind the joke about the drunk who looks for his keys under the street lamp rather than some ways off where he dropped them, because there is more light under the lamp.

The verification regime's second leg is challenge inspection. That is, inspection of a facility that was not declared. This is often talked of as if it were a tool for adding to our knowledge, or for finding violations. It is not. One cannot spot check a country the size of Iran, much less China, by means of challenge inspections.

The purpose of challenge inspections is to try to embarrass a state that one has by other intelligence means caught in a violation. So it is incorrect to think that we will learn much of substantive value through challenge inspections.

Moreover, the CWC's challenge inspection provisions were watered down in the negotiations to the point where they are not even a useful tool for embarrassing cheaters. Parties will easily be able, within the treaty's terms, to delay and otherwise defeat the purposes of the challenge inspection provisions.

The issue of whether the CWC will produce a net gain for our intelligence capabilities must also be considered in light of the harm that will result from participation in the international inspection program by unreliable states, as Ambassador Kirkpatrick and Mr. Perle highlighted, and as Secretary Schlesinger highlighted yesterday.

I would simply emphasize that when rogue states learn how to inspect, they learn how to conceal, and in this regard I think it

should disturb the Senate that the administration has taken steps to begin training foreign CWC inspectors even before the Senate has acted on this treaty. I understand that some government agencies are resisting this effort, and I urge this committee to inquire into this.

Now, Articles X and XI of the CWC have received a great deal of attention lately, and these provisions are a major part of the reason that the CWC will do more harm than good, as has been explained very well.

I do want to reemphasize in response to the textual analysis that Senator Biden mentioned that the argument that Article X, paragraph 3, the most troubling provision, is overridden by Article I, is, I believe, flatly contradicted by what paragraph 6 says, that nothing in this convention shall be interpreted as impeding the right of States' Parties to provide assistance.

The people who drafted this provision anticipated precisely the argument that Article I might override Article X, paragraph 3, and they took care of it by nailing it in paragraph 6. This is a serious problem.

As for Article XI, it prohibits, or at least expresses disapproval of export restrictions in the chemical field among treaty parties.

Unlike the language of Article X, that of Article XI is not completely unqualified, so the administration has been able to offer an interpretation that renders this provision meaningless, a legal nullity.

But whether or not the administration's interpretation is valid, I would argue that it is beside the point—the real issue is not—and I want to emphasize this point. The real issue is not what the United States itself will export, but what third countries will want to sell to the Irans of this world.

For export controls to be effective they must have multilateral support, which is hard to organize. If a German or Chinese company arranges to sell an advanced chemical plant to Iran, and the U.S. Government protests that this would enhance Iran's chemical weapons program, we can expect the German or Chinese Government to cite Article XI for the proposition that the sale is not only permitted but required by the CWC; for Iran will be a party in good standing, or in any event a party against whom no violation can be proved.

Whatever one thinks of the CWC overall, no one can deny that it would be a better or less bad treaty if the so-called, "poisons for peace" provisions were fixed.

Though I think the Senate should reject the CWC outright, some treaty critics would be willing to withdraw their opposition if only the Senate would ensure that Articles X and XI are properly amended before U.S. ratification. Such critics argue that to be minimally acceptable the CWC should at least not undermine the very interests—stemming chemical weapons proliferation—that it aims to promote.

Administration officials counter with the argument that it would be embarrassing for the United States at this late stage to insist that the treaty be amended. They say this would destroy our diplomatic credibility.

While it would to some extent be embarrassing, it is also embarrassing to ratify a treaty with provisions as perverse as Articles X and XI. As for our diplomats' credibility, the effect of forcing amendments of Article X and XI could be powerfully positive.

If the administration's interpretations of those provisions are widely held, then the amendment should not be unduly difficult to arrange. If they are so difficult, this would confirm that the provisions are a problem, and the United States should not ratify until the problem is resolved.

If the administration, as is likely, then succeeds in getting the needed amendments, the influence of our diplomats would be enhanced. The next time a multilateral forum proposes a treaty with a bizarre provision adverse to our interests, our negotiators would be able to declare credibly that that provision will preclude Senate approval of the treaty. This will strengthen our hand.

A final point regarding deadlines. Many states of concern to us—Syria, Libya, Iraq, and North Korea—have not signed the CWC. Although some such states, specifically Russia, China, Iran, and Cuba, have signed; none of these latter four has yet ratified. The administration insists that it is crucial that the United States ratify the CWC before April 29, but if we do we will be the only state party that actually has a significant chemical weapons capability.

April 29 is an artificial deadline. Any time the United States might decide to become a party, it will, because of its military and financial status, be afforded an appropriate position of influence in the treaty organization if we assert ourselves properly.

This is true because we are to pay 25 percent of the total budget of the new organization. It is true also because the other major states in this field are waiting for the United States before they decide whether to ratify. If the Senate is ready to act before April 29, then well and good, but the Senate should not, in my opinion, hasten its deliberations simply to make a meaningless deadline.

Thank you very much.

[The prepared statement of Mr. Feith follows:]

PREPARED STATEMENT OF DOUGLAS J. FEITH

Chairman, I appreciate the opportunity to appear before you again on this important question. It was in March 1996 that I last had the honor to address this committee on why I think the Senate should not consent to ratification of the Chemical Weapons Convention (CWC). During the Reagan Administration, I served as Deputy Assistant Secretary of Defense for Negotiations Policy and my responsibilities included the chemical weapons treaty negotiations.

The debate on the CWC has been of remarkably high quality for a matter so complex. The sides have engaged each other intelligently and generally respectfully and have established substantial common ground. They agree that chemical weapons are evil. Specifically, all four of us on this panel—Fred Ikle, Jeane Kirkpatrick, Richard Perle and myself—agree with the treaty's proponents that it would be desirable to eliminate these weapons from the world entirely and that the United States should continue to destroy its own chemical weapons, as we are already doing, whether or not the United States joins the CWC. We all favor the CWC's goal. We all agree that the chemical weapons threat in the world is a problem the gravity of which the world should never underestimate. In fact, a key reason for opposing the CWC is that it will falsely advertise that the chemical weapons threat has been mitigated when it has not.

The debate has also made clear that both CWC proponents and critics acknowledge that the treaty has flaws. Both sides agree that the treaty will not be global and will not cover a number of the states of greatest concern to us.

Both sides also agree that the treaty is not verifiable, if by "verifiable" we mean confidence in detection by U.S. Intelligence of illegal, clandestine stockpiling or pro-

duction of chemical weapons. No one in the intelligence community has ever said the treaty is verifiable by that standard. It is worthwhile to stress that the verification problem here is not the lack of perfection. The problem is not that we would detect cheating only 90 percent or even only 50 percent of the time. The problem is that chemical weapons production is so easy to do and to conceal that it is inherently impossible to achieve any degree of confidence—let alone "high confidence"—that we could detect it, even regarding militarily significant quantities. Someone once drove this point home by saying that the CWC is like an effort to ban hollandaise sauce without banning eggs and butter.

In her testimony before this Committee yesterday, Secretary of State Albright argued for the CWC by asserting that rogue states would be subject to unprecedented verification measures and "will probably be caught" if they violate the treaty. The Secretary of State was incorrect in this assertion and there is no intelligence authority in the government that would confirm her claim.

Both sides in the CWC debate agree that the treaty will not actually eliminate chemical weapons from the world. And both sides agree that the CWC is in essence a moral statement against chemical weapons, a declaration that the civilized nations abhor these weapons and think that no one should possess them.

The debate now has a rather precise focus: Given the importance of the chemical weapons problem and given that the CWC has its flaws, is the United States better served by ratifying the treaty or not. Treaty proponents say that the United States is better off if the world enacts this new international law against possession of chemical weapons, even if we know that key countries will violate it. They also say that we are better off with the inspection and information rights that the CWC will provide than without. Treaty critics contend that the treaty will not accomplish its purpose and will actually exacerbate the chemical weapons problem in the world.

Treaty critics believe that it would not serve the anti-chemical-weapons cause for us to join a ban that we know will be ineffective, impossible to monitor properly and impossible to enforce. I speak as a lawyer devoted to the principle of law. The world would surely be a better place if law in fact played a greater role in securing international peace and civilized behavior. But we do not move toward this goal by promulgating a patently ineffective new treaty. A chemical weapons ban that states know they can sign cynically and violate without punishment will not shore up the international norm against such weapons. On the contrary, it will damage that norm even more severely than it was harmed by the world's failure to uphold the 1925 Geneva Protocol on Chemical Weapons when Iraq violated that venerable treaty in the late 1980's.

Creating bad law is not the way to build respect for law. The ill-conceived CWC will cheapen the currency of international law. The wiser approach to chemical weapons arms control is embodied in the bill, S. 495, authored by Senator Kyl and cosponsored by Senators Lott, Nickles, Mack, Coverdell, Helms, Shelby and Hutchison: The United States should work to obtain international agreement on mechanisms for enforcing the existing treaty that bans initiation of chemical warfare. In other words, we should put teeth in the 1925 Geneva Protocol. If that treaty were properly enforced, there would clearly be no need for the CWC. And if the Geneva Protocol continues to be violated with impunity, then there is no hope that the CWC will be respected, for violations of the CWC are far less discoverable and provable and far less likely to horrify world opinion than violations of the non-use ban. If one cannot get the world excited about disfigured corpses produced by violations of the Geneva Protocol, it is unrealistic to expect tough enforcement action when U.S. officials allege clandestine storage somewhere of some chemical bulk agent.

What of the point that we might as well ratify the CWC as we are destroying the U.S. chemical arsenal anyway? It is better, in my view, to destroy our arsenal unilaterally than to enter into a treaty that we know will not accomplish its purpose. By acting unilaterally, we produce some of the key benefits hoped for from the CWC without taking on the treaty's undesirable baggage. Our action makes a strong moral statement against chemical weapons. But it does not lend our name to the dishonest proposition that Iran, China or others have actually abolished their chemical weapons arsenals. The world can verify our compliance with our self-imposed ban by reading the Congressional Record. We then do not have to participate in a costly, wasteful, intrusive but ineffective verification regime that is more likely to spread militarily relevant chemical weapons technology than contain it.

Any other chemical weapons state that wants to follow our lead can do so, also unilaterally. Each will have the opportunity to persuade the world as best it can that it is doing what it has promised. This way, states will not obtain a clean bill of health simply by signing a treaty and subjecting themselves to an inspection regime that they know is easy to defeat.

Which brings us back to the question of whether we are better off with the inspection and information rights that the CWC will provide or without. On balance, we are better off without. Treaty proponents stress that the CWC's verification provisions are unprecedented in their elaborateness and intrusiveness, which is true. But they will contribute little of any importance to what we need to know about the chemical weapons threat in the world.

The CWC's verification regime stands on two legs. The first is voluntary disclosure. Most of the regime is based on what the parties voluntarily declare about their own holdings of chemical weapons, manufacturing facilities, chemical stocks and the like. Virtually all the inspections to be conducted under the CWC will be of so-called "declared facilities"—that is, locations that each party will itself declare to be subject to inspection. Routine inspections will focus exclusively on "declared facilities." Nearly all the large budget of the new CWC organization based in the Hague will be allocated to inspecting "declared facilities" and processing the parties' voluntary declarations. Does anyone expect a country like Iran or China or Russia to declare a facility at which it is planning to produce or store illegal chemical weapons? The declarations and the inspections of "declared facilities" will yield our government little if anything of value to augment what we already know from our own national means of intelligence. Looking for chemical weapons at "declared facilities" brings to mind the joke about the drunk who looks for his keys under the street lamp rather than some ways off, where he dropped them, because there is more light under the lamp.

The CWC verification regime's second leg is challenge inspection—that is, inspection of a facility that was not "declared." This is often talked of as if it were a tool for adding to our knowledge or for finding violations. It is not. One cannot spot check a country the size of Iran, much less China, by means of challenge inspections. The purpose of challenge inspections is to try to embarrass a state that one has, by other intelligence means, caught in a violation. So it is incorrect to think that we will learn much of substantive value through challenge inspections. Moreover, the CWC's challenge inspection provisions were watered down in the negotiations to the point where they are not even a useful tool for embarrassing cheaters. Parties will easily be able, within the treaty's terms, to delay and otherwise defeat the purposes of the challenge inspection provisions.

The issue of whether the CWC will produce a net gain for our intelligence capabilities must be considered also in light of the harm that will result from participation in the international inspection program by unreliable states. As Secretary Schlesinger noted before this committee yesterday, Iraq in the 1970's and 1980's learned a great deal about how to conceal its nuclear weapons program through participating in the inspection regime of the Nuclear Non-Proliferation Treaty. When rogue states learn how to inspect, they learn how to conceal. In this regard, I think it should disturb the Senate that the Administration has taken steps to begin training CWC inspectors even before the Senate has acted on the treaty. I understand that some government agencies are resisting this effort. I urge this committee to inquire into this.

Articles X and XI of the CWC have received a great deal of attention, including at this committee's hearing yesterday with the three former Secretaries of Defense—Rumsfeld, Schlesinger and Weinberger—who opposed ratification. These provisions are a major part of the reason that the CWC will do more harm than good. These provisions will promote the spread of chemical defense and other technology that will make it easier for states to develop a chemical war fighting capability than if the CWC did not exist.

Article X obliges the parties to facilitate the exchange with the other parties of chemical weapons defense material and technology. To have an effective chemical war fighting capability, one must have defense material and technology to protect one's own forces. Article X will establish the right of Iran, for example, to obtain such items from Germany, France, China or some other state. And it will establish the right of the would-be sellers to provide such items to Iran. The language of Article X is straightforward. Paragraph 3 says:

> Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.

And Paragraph 6 says:

> Nothing in this Convention shall be interpreted as impeding the right of States Parties to * * * provide assistance * * * [where "assistance" is defined as "delivery * * * of protection against chemical weapons, including * * * detection equipment and alarm systems; protective equipment * * *;

decontamination equipment * * *; medical antidotes * * *; and advice on any of these protective measures].

As Richard Perle has pointed out, the CWC prohibits that part of a chemical weapons capability that is easy for states to make for themselves: the weapons themselves. The other part of that capability—defense material and technology, which is relatively "high tech" and difficult to acquire—is precisely what the treaty affirmatively requires the parties to proliferate.

Similarly, Article XI prohibits—or at least expresses disapproval of—export restrictions in the chemical field among treaty parties. Unlike the language of Article X, that of Article XI is not completely unqualified, so the Administration has been able to offer an "interpretation" that renders this provision meaningless, a legal nullity. This allows Administration officials to assert that the United States will maintain export controls on Iran and others notwithstanding Article XI. Whether or not the Administration's interpretation is valid, it is beside the point.

The real issue is not what the United States itself will export, but what third countries will want to sell to the Irans of this world. For export controls to be effective, they must have multilateral support which is hard to organize. To return to the example above: If a German or Chinese company will arrange to sell an advanced chemical plant to Iran and the U.S. government protests that this would enhance Iran's chemical weapons program, we can expect the German or Chinese government to cite Article XI for the proposition that the sale is not only permitted but required by the CWC, for Iran will be a treaty party in good standing (or, in any event, a party against whom no violation can be proved). There is precedent for such a colloquy. The Clinton Administration protested against a Russian sale of a nuclear reactor to Iran. The Russians replied by citing the provisions in the Nuclear Non-Proliferation Treaty—the "atoms for peace" section—on which CWC Articles X and XI are modeled. This is why Fred Ikle has referred to Articles X and XI as "poisons for peace."

Whatever one thinks of the CWC overall, no one can deny that it would be a better (or less bad) treaty if the "poisons for peace" provisions were fixed. Though I think the Senate should reject the CWC outright, some treaty critics would be willing to withdraw their opposition if only the Senate would ensure that Articles X and XI are properly amended before U.S. ratification. Such critics argue that, to be minimally acceptable, the CWC should at least not undermine the very interest—stemming chemical weapons proliferation—it aims to promote.

Administration officials counter with the argument that it would be embarrassing for the United States, at this late stage, to insist that the treaty be amended. They say this would destroy our diplomatic credibility. While it would, to some extent, be embarrassing, it is also embarrassing to ratify a treaty with provisions as perverse as Articles X and XI. Also, the Clinton Administration could take comfort from the fact that the error of agreeing to those provisions was committed not by itself but by the Bush Administration.

As for our diplomats' credibility, the effect of forcing amendments of Articles X and XI could be powerfully positive. If the Administration's interpretations of those provisions are widely held, then the amendments should not be unduly difficult to arrange. If they are so difficult, this would confirm that the provisions are a problem and the United States should not ratify until the problem is resolved. If the Administration, as is likely, then succeeds in getting the needed amendments, the influence of our diplomats would be enhanced. The next time a multilateral forum proposes a treaty with a bizarre provision adverse to our interests, our negotiators would be able to declare credibly that that provision will preclude Senate approval of the treaty. This will strengthen our hand.

A final point regarding deadlines. Many states of concern to us—Syria, Libya, Iraq and North Korea—have not signed the CWC. Although some such states—specifically Russia, China, Iran and Cuba—have signed, none of these latter four has yet ratified. The Administration insists that it is crucial that the United States ratify the CWC before April 29, but if we do, we shall be the only state party that actually has a significant chemical weapons capability.

April 29 is an artificial deadline. Any time the United States might decide to become a party, it will, because of its military and financial status, be afforded an appropriate position of influence in the treaty organization. This is true because we are to pay 25 percent of the total budget of this new organization. It is true also because the other major states in this field are waiting for the United States before they decide whether to ratify. If the Senate is ready to act before April 29, then well and good. But the Senate should not, in my opinion, hasten its deliberations simply to make a meaningless deadline.

Thank you.

The CHAIRMAN. Thank you, sir. That concludes the testimony.

Now, we have two or three Senators on this side coming back. I think we had better limit ourselves in the first round to 5 minutes, if that is satisfactory.

Senator KERRY. Mr. Chairman, is it possible to get a little more? Five minutes is really very difficult to develop any line.

The CHAIRMAN. Well, it will eat into the time of the proponents of the treaty.

Senator KERRY. We have got all day.

Senator BIDEN. Admiral Zumwalt has to leave here at 4:30, I am told. Maybe——

Senator KERRY. Well, I will go along with it, then.

The CHAIRMAN. All right. Let us try 5 minutes.

Dr. Ikle, I have a letter dated March 13 from the Aerospace Industries Association. It states that a strong concern that the CWC will, and I quote from the letter, "unnecessarily jeopardize our Nation's ability to protect its national security information and proprietary technological data."

Now, this treaty, as we know, will permit foreign inspectors into thousands of U.S. businesses to poke around, interview employees, take photographs, and take samples home for analysis there. Now, given your assessment of the foreign policy benefits of this treaty, if any, do you think it makes sense to subject U.S. companies, private companies, to this danger of the theft of millions of dollars in trade secrets?

Dr. IKLE. I like the way, Mr. Chairman, you put the question—"given the benefits of the treaty."

If the treaty was of major benefit, clearly verifiable in other aspects and it enhanced arms control objectives, maybe that was a risk we would want to take, that on occasion some very clever disguised intelligence person, disguised as an objective inspector, could pick up some valid information.

But that is not the case. The benefits of the treaty, even as seen by the supporters, are not that strong, and from what we have heard today, they are a negative. From what we have heard so far among the witnesses today, what you can obtain by samples that can be analyzed in a national laboratory back home by instruments which can be carried with you, brought into the places where chemicals are prepared for our sensitive weapons systems, could be very, very significant.

I remember from my days in the Pentagon the briefings that I received of analyses that our intelligence organization had made in other places, and how much we learned from just somebody walking through with the right little instrument in his pocket. So that is very serious.

Incidentally, if I may insert here a further thought, as if all of this was not bad enough, some supporters who want to hasten the ratification of the Chemical Weapons Convention argue that it should be followed up then by a verification scheme for biological weapons.

As Arms Control Director, I took the biological weapons treaty before this committee. Senator Fulbright was sitting in the chair at the time, and I explained right away that it was not verifiable but it was a useful thing to have as a statement of our opposition

to biological weapons, and I do not regret that. I think it is useful even now in Iraq, because it caught Iraq violating the agreement that they had signed.

But if you want to follow that up with an inspection team on biological weapons—many people in the bureaucracy are now working on that, in this process that Richard Perle described to Geneva and back here without "adult supervision"—it is ten times as dangerous, the things you can then steal from these so-called onsite inspections to get really way ahead in biological weapons. So it is dangerous here, and if you cannot stop the follow on it will be really catastrophic.

The CHAIRMAN. I thank you, sir.

Ambassador Kirkpatrick, you hear a lot of arguments that nonratification of the CWC will mark the forfeiture of U.S. leadership in the fight to eliminate chemical weapons from the face of the Earth. That is almost a quote-unquote from voice after voice after voice orchestrated by the White House. Do you agree, or do you believe that the rest of the world will continue to look to the United States with or without this treaty?

Ambassador KIRKPATRICK. Mr. Chairman, actually I think that to the extent that the rest of the world looks to us for leadership, and I think we sometimes exaggerate that leadership in our own minds, I do not think it will be affected much by what we do on this treaty; and I will tell you why.

The reason is that our reputation for leadership in the military, scientific, and technological domain rests not only on our clear undoubted excellence and long lead on other nations, but also in our willingness to assume responsibility for responding to dangerous challenges.

We have done this again and again, and I think we will continue to offer that kind of leadership. Sometimes that requires standing alone, or standing nearly alone and saying, should we not consider what the implications of this are for the spread of chemical weapons in the Middle East, North Africa, and Europe?

I think that those nations that have a high regard for us might even have a higher regard for us.

The CHAIRMAN. I think so, too. Senator Biden. My time is up.

Senator BIDEN. Thank you very much. In the interests of time I am going to focus on only one issue, and I think we all acknowledge that sometimes the more persuasive we make one of our arguments against the treaty, the more irrelevant another argument becomes.

For example, it is kind of interesting that I think Ambassador Kirkpatrick and Mr. Perle have made very strong arguments against universality of the treaty, because if they are correct then the last person you want in this, Mr. Chairman, is Korea and the other rogue nations, Iraq and Libya; so I think it is a very compelling argument against universality.

Mr. Feith makes a very compelling argument that one of the reasons why verification does not work is because the Bush administration responded to what Ronald Reagan wanted done, and that was he wanted intrusive investigations that were inspections that maybe would violate our Fourth Amendment, and so we fixed the Fourth Amendment. There is no Fourth Amendment problem here,

notwithstanding what people assert, and I think you would acknowledge that. You may not want to, but as a good lawyer I believe you would have to. I know you looked at it.

So the administration fixed one piece and made the inspections, the relevance of inspections that were challenge inspections less relevant.

But let me focus on this notion that paragraph or Article X is so bad. Let me tell you folks how I read it, and Mr. Perle, I would like to direct this to you, but I will not limit it to you, although I would like to get in one other question before the light goes out.

As I read it, and I might point out, Mr. Feith, paragraph 6 is not affected—does not in any way limit paragraph 1. Paragraph 6 refers to bilateral, not international regimes but bilateral, and so the issue here is whether or not we are going to contribute to, in effect, this fund. We are going to put in this information that can be disbursed by this international organization.

All paragraph 6 is about is saying that if we want to keep our deal going with NATO, if we want to keep our deal going with our allies, we can do that.

But as I see this, multilateral is the only way to limit these chemical weapons, yet paragraph 6 on Article X refers to bilateral. Paragraph 1, which defines assistance, I believe trumps paragraph 3, but ultimately paragraph 1's definition lies in paragraph 7. It defines what international assistance is. That is where it is defined.

Within that, it says that international assistance is the following, that you can provide assistance, and to this end elect—elect one or more of the following so there is no requirement, as I read Article X, and as constitutional scholars I have spoken to—and this is not a constitutional issue, but legal scholars I have spoken to, there is no requirement of the United States to throw anything into the pot but what it decides it wishes to throw in, and to that end, Senator Helms and I have been negotiating conditions, which leads to my question.

A condition that says—let me get it here—that requires the United States—requires the United States not to contribute to the voluntary fund for chemical defense assistance anything other than certain medical antidotes and treatment, which is what is listed in paragraph 1, so if we are not in the treaty, the point you made still pertains. If England or if France or if anyone else is going to transfer this technology to Iran, they are going to do it whether we are in it or not.

If we are in the treaty, we are not obliged to do that, and to clarify that—at least I am, and I assume the Chairman still is—willing to attach a condition to the treaty defining our interpretation of Article X and limiting what can or cannot be transferred to what is mentioned, medical antidotes and treatments.

I am not asking you to accept it. I would just like your view, Mr. Perle, whether that would—assume the worst from your perspective, that the treaty passes. Is it better to have that, and if it is, how much better is it?

Mr. PERLE. I do think, Senator, that paragraph 3, which describes the undertaking, is not qualified by the elaboration of the various means in paragraph 7. I do not think that was ever the intention.

It will, I am sure, not surprise you to know that in the course of negotiation at one time paragraph 3 read, "each State Party guarantees to facilitate."

The United States thought that was too much, and maybe others did as well, so we ended up compromising on "undertakes," as though—the point, in objecting to "guarantee," the American representative made it very clear that he did not think he could fall back on the interpretation you have just offered of paragraph 7 to limit the extent of the undertaking.

Senator BIDEN. My time is up. I would disagree with that. I would argue statutory interpretation, the specific controls the general. The specifics in paragraph 7, the legal judgments I have gotten comport with this.

Mr. PERLE. Senator, if I could just answer the question with a kind of question, if we could fix this treaty, I mean, I am sure that you would agree that the cleanest solution would be to eliminate the whole of Article X. Why not do that?

Senator BIDEN. I think the cleanest solution would be to limit our participation in the treaty to define this the way in which we intended, or at least we intended here; because I think to go back and renegotiate an entire treaty, we are another 10 years down the road, but we can fix it by doing this in my view.

Mr. PERLE. But if it means what you say it means, and other parties to the treaty understand that, then it seems to me it would be a breeze to change it.

The CHAIRMAN. Because of this point, I am going to allow you about 45 seconds, which I will take off my time.

Mr. FEITH. I appreciate that, Senator. I would just say, Senator Biden, if everybody in the Senate devoted the kind of meticulous attention to the words that you have done, I am confident that there would be a much greater understanding and much less support for the treaty.

I do compliment you on paying close attention. This treaty looks worse when you look at it closely, so I very much applaud your careful attention.

Senator BIDEN. Now, that is a nice smart-ass comment.

Mr. FEITH. When you said that if we are out of the agreement we will not be bound, and the Germans or the British will be participating under the terms of this article, that is true.

If, on the other hand, the United States made clear that the condition for our coming into the treaty is fixing this provision, without which, I think we can all agree the treaty would be better off—the fact that you have to do so elaborate an interpretation makes it clear that we will have difficulties when we go to other countries. Even if we could persuade ourselves of your interpretation, on which reasonable people can differ, when we go to persuade other countries, that is the nub of the issue: going to Germany or China or whoever and trying to get their cooperation on export controls——

Senator BIDEN. No, that is not is how it is happening here.

Mr. FEITH [continuing]. We are going to have great difficulty. The treaty would be better off without this provision complicating things.

The CHAIRMAN. Thank you. Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you, and I wish to thank the panelists. You have provided an awful lot of very significant insight, and I, as well as all of my colleagues, am grateful, and thank you.

I am going to help my friend Senator Biden here, because I am going to follow along that path that he has taken. Is this, in your opinion—and I would like to hear from each of you—a treaty, a convention that is one that you can rehabilitate? Is it one that you think we can still work on and, if it is, what do we do? Do we eliminate X and XI, amend it? If we were able to amend X and XI, would that satisfy the four of you?

Each of you, I would like to have each of you, if you would, respond. Ambassador.

Ambassador KIRKPATRICK. I think it would be very significantly improved. I believe that the composition of the governing board requires attention as well.

Senator HAGEL. Thank you.

Mr. PERLE. Senator, I could support this treaty without any great expectations of its efficacy if we corrected the problem in Article X and Article XI, and I think that can be done. It took 10 years to produce this treaty with this serious flaw in it. I think it would take a great deal less time to eliminate the flaw. Nothing else would have to be renegotiated, only this one provision.

Senator HAGEL. In your opinion. Thank you. Sir.

Dr. IKLE. I would agree that it would eliminate the damage to the down side. It would not make it into a great accomplishment, and it would still have some flaws on the intelligence collection; but it would be much less damaging, so that on balance maybe it could be passed, if it is really amended, Article X.

Senator HAGEL. Thank you.

Mr. FEITH. In my view, the treaty is a net loss from the national security point of view, in any event. I believe that the country would be better off if the Senate rejected the treaty and sent everybody back to the drawing board and did something constructive in this field.

But one of the key questions is: How much of a net loss? I agree with all of my colleagues that the treaty would be far less bad if Articles X and XI were duly amended.

Senator HAGEL. So there we are, Mr. Chairman. We figured it out, and I will yield my time back. Thank you.

The CHAIRMAN. Very good. He is a breath of fresh air in the Senate, I will tell you that.

I am going to suggest that the Senator have 8 minutes to sort of compensate for whatever has run over with time.

Senator KERRY. Thank you very much, Mr. Chairman. With my voice, I may need it.

Welcome back to the panel. Let me, if I can, follow up on the question from Senator Hagel. Mr. Perle, I understand, then, from your answer to Senator Hagel that your chief, your principal objection to it resides in the transfer of technological scientific information, Article X, section 3, and then in Article XI, the entire question of technical information with respect to chemical, general chemical development, is that correct?

Mr. PERLE. Yes, although it is not just section 3 of Article X. It is really the whole of Article X.

Senator KERRY. Well, let me ask you why—and I am having difficulty with this, but I am trying to keep open-minded about it. Reading Article I, which as you, I am sure, will agree, is the heart of this treaty and the overpowering article, it says that each party to the convention undertakes never under any circumstances—and I presume you will agree that any circumstances mean, under any circumstances, so that when you go to Article XI, or X, you are clearly defining within the context of Article I under any circumstance no party can ever transfer directly or indirectly chemical weapons to anyone.

Therefore, all of Article XI with respect to development of any kind of chemical is clearly interpreted by the directly or indirectly clause of I.

Second, it says that you can never undertake under any circumstances to develop or produce or otherwise acquire, stockpile, retain, to assist, encourage or induce anyone to engage in any activity prohibited under this convention.

Now, I do not think any lawyer sitting here has any problem with that language, do we? Is there any confusion as to what is prohibited here?

Mr. PERLE. Senator, the problem is that until a State Party to the convention is found to have violated the convention by engaging in the production of chemical weapons——

Senator KERRY. Precisely.

Mr. PERLE [continuing]. There is no basis upon which you could presume that Article I would permit you to avoid the undertaking of Article X or the promise of Article XI.

Senator KERRY. Now, let us get to that. Now we are sort of going down the road.

So therefore, under any circumstances, the only way we will ever be able to do anything about Article I or any of the others is to know what is going on.

Mr. PERLE. No, not to know what is going on. There is a very big difference between knowing what is going on and proving through the mechanisms of the institution that a violation has taken place.

Senator KERRY. Right, but that is ultimately how you know. You prove it. You prove it through the challenge process, through the inspection process.

Mr. PERLE. No, I do not think you will ever prove anything through the inspection process.

Senator KERRY. So no verification process——

Mr. PERLE. Could I just say one thing?

Senator KERRY. Let me just ask you, are you saying that no verification process whatsoever would therefore be sufficient?

Mr. PERLE. I am saying you cannot verify the production of chemical weapons, because any plant that can be used for the production of permitted chemicals can also be used for the production of chemical weapons. There is a problem here.

Senator KERRY. I understand that, and that can happen today, without the treaty.

Mr. PERLE. In 1997 a country that is not violating the agreement, and which is therefore entitled to all the benefits of Article X and XI, may exploit those benefits, invite international companies in to buildup their chemical industry as perfectly proper and perfectly legal, invite, solicit, receive cooperation in the development of the full range of defensive measures, and then, having accomplished all of that, violate Article I and some other point.

Senator KERRY. But isn't the problem, can't they do that now anyway?

Mr. PERLE. Can they induce others to?

Senator KERRY. They could invite anybody or induce anybody or pay anybody to do whatever they want today.

Mr. PERLE. The difference is the following. Let us take China and Pakistan as an example. The Germans complain that they are too frequently identified in this regard. The German industry is very aggressive in this regard, but set that aside, and take China and Pakistan.

If China today engages in the sharing of chemical defensive technology with Pakistan, you can be sure that an American administration that is doing its job is going to be in Beijing remonstrating with the Chinese and saying, we think this is a very dangerous thing to do.

Senator KERRY. But let me stop you there if I can for a minute.

Mr. PERLE. But suppose there was a treaty that says they must do it?

Senator KERRY. I understand. Well, no. What it says is, they shall have the right to participate in the fullest possible exchange.

Mr. PERLE. Right.

Senator KERRY. Now, possible is what is right and appropriate under Article I, which means——

Mr. PERLE. No, no. No, no. But there will have been no finding in the case of Pakistan, Senator. Pakistan is a legitimate recipient of assistance until Pakistan is found to have violated the agreement.

Senator KERRY. Correct, but it is only as to defense, number 1, that they have a right to request anything.

Mr. PERLE. Well, both with respect to defensive, and with respect to commerce and chemicals.

Senator KERRY. Defensive with respect to chemical weapons, and generically with respect to the development of a chemical.

Mr. PERLE. But the defense is the tough part. That is what is hard to do.

Senator KERRY. But let me ask you, you were in the administration that offered to give the Russians Star Wars once we developed it. I mean, you were going to turn over the entire defense to them once we put it together. That was your plan.

Mr. PERLE. There is an important difference here.

Senator KERRY. Which is?

Mr. PERLE. Which is that the defense in this case, the ability to operate in the presence of chemical weapons, is what makes the offensive capability possible.

Senator KERRY. But that is exactly the same thing.

Mr. PERLE. No, it is not. The sharing of defenses in the earlier context was intended to permit both sides to eliminate the offensive capability.

Senator KERRY. Correct.

Mr. PERLE. Not to make it feasible. It is exactly the opposite.

Senator KERRY. I would disagree. If you are sharing a defensive capacity—I mean, Caspar Weinberger yesterday used a good example. If you have developed a foolproof gas mask, and you transfer the foolproof gas mask to another country, the likelihood, if you both have a foolproof gas mask, of either of you successfully using chemical weapons against each other is zero if it is foolproof, so the likelihood—I mean, you are not going to factor it into your military strategy. That was the same strategy in Star Wars.

Mr. PERLE. Well, we do not have chemical weapons, Senator, and we will not, so a foolproof gas mask—let me just put it this way. I would not worry if we had a foolproof gas mask, but I would certainly worry if Iran or Iraq or Libya had a foolproof gas mask, even if we also had one.

Senator KERRY. But you see, you have already suggested that we are better off getting rid of our chemical weapons altogether, without any inspection regimen. Now, that is very hard for me to follow.

Mr. PERLE. Because I do not think they are militarily useful.

Senator KERRY. Well, if they are not militarily useful, then you do not worry about what they have in terms of defensive capacity. You are going to deter it with nuclear weapons. We did not have any problem deterring Iraq, did we, during that war. It seems to me that there is a cold war philosophy going on here that you have got to have a technological edge, and you have to keep having the edge rather than struggling to go into a state of neutrality.

Mr. PERLE. I take very seriously what Jeane said, that chemical weapons are regarded in much of the Third World as the poor man's equivalent of nuclear weapons, and there is a lot of pressure to acquire these chemicals.

We want to discourage that, and we want to discourage it in every possible way, and one way to discourage it is to make sure that the thing that is most difficult for a country desiring chemical weapons to accomplish, which is the acquisition of a defense, is made more difficult and not less difficult, and any treaty that promises to share that technology is just headed in the wrong direction. Why don't we fix it?

The CHAIRMAN. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I want to thank the witnesses, because I think their testimony has really been very thought-provoking. I have been a proponent of the treaty, and I must say you have encouraged me to look at it in a very different way.

I have read and reread Article X now about eight different times.

But Mr. Perle, you make an interesting theorem, and that is that the effectiveness of any policy here is the defense, and if you can defend against it you create a spiral. I mean, you succeed.

Do you have any information that the administration might have agreed to this section on a case-by-case basis?

Mr. PERLE. I am not sure I understand what you mean.

Senator FEINSTEIN. In other words, that this section would only be carried out provided they, the United States, had the right to reject a request.

Mr. PERLE. No, I have no information to that effect. I think it is our intention not to honor the undertaking. I mean, I would prefer that when we undertake to treaties——

Senator FEINSTEIN. You mean, to guarantee to undertake and then not honor—in other words, not carry out that section?

Mr. PERLE. I think we intend not to carry out what is a clear obligation.

Senator FEINSTEIN. That is No. 3.

Mr. PERLE. If we are burdened with this treaty then I, too, would be in favor of not honoring that commitment, because it would be a foolish thing to do.

Senator FEINSTEIN. Because I think you made a good argument. Why is Article X in there? Obviously, if somebody has an offensive use of a chemical weapon against them, I think the legitimate nations of this world are going to respond and try to be helpful as much as possible. I wonder why it is necessary to have this in it at all, in terms of the integrity of the treaty.

Mr. PERLE. I believe it is not, and more to the point, if you will allow me to say this, I think that if you came to the conclusion that it should not be there, and two or three of your colleagues joined you, we can get it out of there.

Senator FEINSTEIN. May I then go on, and thank you very much, to what Ambassador Kirkpatrick mentioned on the composition of the governing bodies. You mentioned that. That was the other concern that you had. What changes do you think are merited in the composition?

Ambassador KIRKPATRICK. Senator Feinstein, what concerns me with this governing body and comparable ones is the preponderance on the governing body of countries lacking in the technological sophistication and technological experience to make really well-informed judgments about handling these materials. That is what concerns me.

I just do not think that the quality of the decisions will be nearly as reliable as they could be. They are dangerous in any case. We all agree that this is a dangerous subject, and any decisions dealing with it are going to be imperfect and leave some danger. But the more the board that makes the decisions knows, the more experience they have, the more detailed technological sophistication they have, the better their decisions will be. That is what concerns me about it.

Senator FEINSTEIN. Thank you very much.

Mr. Chairman, I do not know whether this is possible or not, but I would very much like to have an administration response to the arguments made on Article X. I think the points made here are very good points. I wonder why Article X is really necessary.

Senator BIDEN. I would be happy to give them to you. They have responded officially and on the record. I would be happy to make sure you get them.

Senator FEINSTEIN. All right. That is a major concern to me. I just make that point.

Thank you very much.

The CHAIRMAN. I thank you, Senator Feinstein.

Lady and gentlemen, thank you so much for coming.

Senator BIDEN. Mr. Chairman, before you dismiss this panel, could I have 30 seconds to try to clarify one point, if I may?

The CHAIRMAN. Thirty seconds.

Senator BIDEN. First of all, I think Article X—I disagree with the reading, but even if your reading is correct, I think it can be cleared up by a condition.

But, Mr. Perle, you talked about the real world. The real world is Saddam Hussein, Qaddafi, or any of the rogue states. They are not going to worry about protecting their troops before they use chemical weapons. Nothing in their *modus operandi* would suggest that would even be a consideration for whether or not they would use chemical weapons, if they were going to use it, I would respectfully suggest.

The CHAIRMAN. Very well.

Senator KERRY. Mr. Chairman, could I have 20 seconds? I just want to clarify one point with Mr. Perle.

The CHAIRMAN. It is your time, 20 seconds. Go.

Senator KERRY. Thank you very much, sir.

I just wanted to clarify with Secretary Perle that it is my understanding that nothing in the convention requires the finding of a treaty violation before Article I applies to that particular country. I think, in your answer to me, you were suggesting you had to first find the violation. I do not believe you do.

Mr. PERLE. In the illustration that I offered before, where the Chinese might be building a facility for Pakistan, I do not mean—I just chose Pakistan at random.

Senator KERRY. I am not even picking those countries. I just mean generically.

Mr. PERLE. But any country pair. I do not see on what basis, Senator, we could prevail over the words and the obligations and the undertakings of the treaty itself if there had been no finding of a violation. Otherwise, you are saying, anybody can do whatever anybody wishes.

Senator KERRY. Well, in effect——

The CHAIRMAN. No, wait a minute, 20 seconds.

Senator KERRY. Mr. Chairman, I think this is important to note.

The CHAIRMAN. All of them are important, including the next panel.

Senator KERRY. In effect, in this treaty, you can.

The CHAIRMAN. Come on, Senator, I gave you more time than anybody else had.

Senator KERRY. I appreciate that, Mr. Chairman. But I am not trying to abuse it. I just think the record is important here.

Mr. PERLE. I will be glad to call you after the hearing.

Senator KERRY. There is a withdrawal capacity for national interest here. Any time we see the national interest, you have got 90 days to get out of this.

Mr. PERLE. Oh, yes, we can always get out of this treaty. But that is not going to solve any of the problems we are concerned about.

The CHAIRMAN. Thank you, gentlemen and lady. We appreciate your coming so much.

Senator KERRY. Thank you, Mr. Chairman.

The CHAIRMAN. The next panel consists of three friends of all of us. They have been around this place for a while.

As I was saying, this panel not only consists of Americans who are well known, but they are friends of every one of us on the committee. General Scowcroft, I have known him ever since I came to this city, and that was a while ago. He is now President of the Forum for International Policy. He is former National Security Policy Advisor. Admiral Zumwalt is a member of the President's Foreign Intelligence Advisory Board, and he is former Chief of Naval Operations. Ed Rowny. He is the very Hon. Ed Rowny, my neighbor, former Ambassador, and Lieutenant General, U.S. Army, retired, International Negotiation Consultant, former Chief Negotiator for START I, and Special Arms Control Advisor, Washington, D.C.

Now, I am going to have to depart for another meeting I cannot get out of, and Senator Hagel said that he would take the gavel for me. I have one question, if I may, out of order. That would be for Admiral Zumwalt.

Sir, Article X has been criticized, because it promotes the spread of CW defense technology. Article XI has been criticized, because it tends to undermine multilateral export controls among treaty parties in the chemical field. Even regarding untrustworthy states like Iran, are the concerns about Article X and XI sensible? In other words, is it sensible, sir, to concern ourselves with whether Iran might more easily get CW defense or other technology as a result of these Articles? Would the United States of America be better off if Articles X and XI are fixed before the CWC is ratified? Three questions.

Admiral ZUMWALT. It is a fair question to raise in connection with Articles X and XI, in my judgment. The answer, in my judgment, is that non-ratification to seek a modification at this time would, in essence, delay the participation of the United States, in the mechanism that is being set up for a very large number of years, and that the organization created by those that have ratified it in sufficient numbers would operate with all of the advantages and disadvantages the critics on either side are citing.

I believe that we would be better off to ratify the treaty and to work from within the system, with the considerable powers we bring, both financial and political, to make any modifications over time than we would to let this new treaty regime operate without the insider influence of the U.S. Government.

The CHAIRMAN. Very well.

Now Senator Hagel is going to take the chair and the gavel. Why do not you, since you are under time constraints, go with your statement first, sir, followed by Ed Rowny and Mr. Scowcroft.

Senator BIDEN. Again, thank you, Mr. Chairman, for accommodating this panel. I appreciate it.

STATEMENT OF E.R. ZUMWALT, JR., ADMIRAL, UNITED STATES NAVY (RETIRED), MEMBER, PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

Admiral ZUMWALT. Thank you, Mr. Chairman.

Since I was notified, Mr. Chairman and members of the committee, just yesterday of the requirement to be here, I would submit for the record an article I have written and a letter which I co-authored, which state the positions I have taken on this treaty. I, of course, recommend that it be ratified.

I found myself disappointed to have to be at crosshairs with the distinguished panel that just preceded he me, because they are all good friends of mine; but I take issue with a number of things that were said.

First, with regard to the Nuclear Proliferation Treaty, I was a part of the group that analyzed the capabilities of the nations of the world to acquire nuclear weapons before the Nuclear Proliferation Treaty was considered. We estimated that there were somewhere between 20 and 30 nations, within a period of 10 years, that would have the nuclear capability. In my judgment, the Nuclear Proliferation Treaty has, without a question of a doubt, slowed down the rate of acquisition of nuclear weapons.

It was not a perfect treaty. It could have been made more perfect if it could have been negotiated, but it was not negotiable in any other form. It has accomplished its mission far better than no regime would have permitted it be accomplished. I think the same thing can be said with regard to this Chemical Weapons Convention.

We hear that it is a disadvantage that we will not get the rogue nations in. The rogue nations will not come in whether or not the United States ratifies it. It will make no difference whatsoever with regard to the situation in the world whether or not we ratify insofar as the rogue nations are concerned. It has been said that because they would not come in, the treaty is therefore useless.

In my judgment, the international regime that the treaty gives us—the ability to sanction the rogue nations that do not come in—is not there without U.S. membership and thus effective U.S. influence as it is for those like Iran who do come in. But the conventional sanctions that we are capable of bringing about in other ways are still there for us to operate. In other words, insofar as those who do not come in are concerned, I think this treaty, ratification or not, is irrelevant.

With regard to the Article X issue, I think it has been quite clear, both based on what lawyers have told us and what Mr. Berger for the administration has told us, that the undertaking to facilitate does not obligate the United States to do more than has been discussed here; namely, to provide, if it chooses to do so, the kind of help that would not in any way harm us.

The ability for us to get more access is an important thing to me as a member of the President's Foreign Intelligence Advisory Board. I have just finished service on a subcommittee of that group, which has examined our ability to gain the appropriate intelligence in the BW field and the CW field and in the nuclear field. I can tell you that we need to improve it and that, however less than perfect it might be, the opportunity to inspect is going to give us additional information which can be cross-compared with what we get through other sources in the intelligence community. It will, without a doubt, enhance our ability to know more about what is going on.

That, coupled with the fact that we have an international regime, if we ratify the treaty, to work within, the fact that the treaty will cause, at the very least, the disposition of masses of volumes of poisonous substances— after all the nations who are ratifying it will be obligated to eliminate their volume—make it less available for the terrorists groups and for the rogue nations to get, in one way or another.

I worry about a decision to reject. I worry about a decision to qualify in a way that does not provide formal ratification. I think that the logical course for the United States, now that we have reached this point, with a treaty that is going to come into effect whether or not we ratify it, is that we are better off to work within the system, use our financial powers and our political powers to seek the modifications that are necessary and to pick up the advantages that are there.

Thank you, Mr. Chairman.

[The information referred to by Admiral Zumwalt follows:]

WASHINGTON POST,
January 6, 1997.

A NEEDLESS RISK FOR U.S. TROOPS

[by E. R. Zumwalt Jr.]

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

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

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

To a Third World leader indifferent to the health of his own troops and seeking to cause large-scale pain and death for its own sake, chemical weapons have a certain attraction. They don't require the advanced technology needed to build nuclear weapons. Nor do they require the educated populace needed to create a modern conventional military. But they cannot give an inferior force a war-winning capability. In the Persian Gulf war, the threat of our uncompromising retaliation with conventional weapons deterred Saddam Hussein from using his chemical arsenal against us.

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

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

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

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

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

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

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

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

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

[See page 25 for the letter to which Admiral Zumwalt referred.]

Senator Hagel [presiding]: Admiral Zumwalt, thank you very much.

In the interest of time, what Senator Biden and I have agreed to do, if it is OK with your fellow panelists, is get the last 15 minutes we have with you, Admiral, with questions. So, with that, the Chairman had a question and I would turn to Senator Biden.

Senator BIDEN. I understand the Admiral has a 4:30 plane, if you guys do not mind. I will be very brief.

Thank you, Mr. Chairman.

Admiral, did not the Nonproliferation Treaty regime help us mobilize the world reaction to North Korea's violations?

Admiral ZUMWALT. In my judgment, it did; yes, sir.

Senator BIDEN. And would we have been able to make a credible threat of international sanctions had there been no such treaty?

Admiral ZUMWALT. Clearly the regime, the NPT, made that more feasible and more effective.

Senator BIDEN. And did not that point you are making about the CWC, that, at least at a minimum, it establishes a norm against which, when violations are clear, we can mobilize world opinion and justify actions we would likely take that we might not be able to justify in world opinion?

Admiral ZUMWALT. Absolutely. It is a less than perfect step, but far better than the present system.

Senator BIDEN. In the interest of time, obviously, this is going to be somewhat more of a statement than a question. I think you have made five very valid points. That is, as I translate them, everything the critics say is wrong with this treaty would be worse if you did not have the treaty. Everything that is wrong with the treaty would be worse if you did not have the treaty.

The last point that you made, which you referenced, is political power. As it relates to Article X and Article XI, even if my interpretation is wrong, which I believe it is not—and most legal scholars

do not believe it is either—but even if it is wrong, the place in which we are going to be able to impact on whether or not another nation transfers technology, a defensive technology, to a rogue state will not be through a treaty provision, it will be through our economic power. We just flat say to Germany and Britain and France and the rest—we will either say it or we will not—we will either say, if you do, you have got a problem, and here is the problem, let me define it for you.

I know that Brent Scowcroft met with his counterparts in Germany, France, England, and Italy, and every other country in the world, when they were engaged in things that we might have had questions about. So the point you make, I think, should not be missed. Our significant political, military, and economic power with nations that have the capability of transferring technology is what is going to determine whether they transfer technology.

The last point I would make is, the Australia Group, I think they all—and there are 26 of them who have ratified—they all believe that Article XI in no way, in no way, impedes the organizational structure of the Australia Group and the commitment they have made to one another.

Anyway, there is more to say, but I thank you for being here, and especially for the notice. I jerked you all around, because we were unable to get a commitment as to when. I apologize. But I thank you for being here.

Admiral ZUMWALT. Thank you.

Senator HAGEL. Senator Biden, thank you.

If it is appropriate and OK, what I would like to do, we have got 10 minutes left, maybe we could break it down into 3-minute pieces. That way we give our three colleagues an opportunity to each ask a question.

Senator Frist.

Senator FRIST. Admiral, thank you for being here today. In the interest of time I have just one question regarding the countries who have not signed on, the so-called rogue nations, whether it be Syria or Iraq or North Korea or Libya. If we did not sign on or if we do sign on, either way, how do you see this treaty really impacting those particular nations?

Admiral ZUMWALT. I think, with or without the treaty, we can continue to impose sanctions on those rogue nations who have not come in. With the treaty, we can clearly impose sanctions on them if they do not respond to our right to inspect. So it seems to me that we lose nothing and gain something by the ratification. The fact that that regime exists as of April 29th, whether or not we are in it, means that we are foregoing a great opportunity to shape for the better a regime that does exist. We cannot stop that existence.

Senator FRIST. And by our not participating but still having the regime there, say once again how our presence is going to affect those nations.

Admiral ZUMWALT. Well, the Chairman of this committee, in my judgment, has done a good job of shaping up the United Nations by withholding funds. The same thing can be done, or the other means of asserting political power can be used, working within the organization, while having the influence of being a member.

Senator FRIST. Thank you, Admiral.

Senator HAGEL. Senator, thank you.

Senator Kerry.

Senator KERRY. Thank you very much.

Admiral, welcome. What do you think would be the impact with respect to Russia and their potential participation if we do not ratify?

Admiral ZUMWALT. I believe that Russia is likelier to come in if we ratify than if we do not—far likelier. I believe that we can continue to use all the same kind of methods that we have used to shape up, if I may use that expression, the Russians to date, by helping and withholding.

Senator KERRY. Do you, in reading either Article XI or Article X, do you perceive any overt or discernible conflict or do you have to search for the conflict that has been described with respect to Article X and the rights and fundamental obligations of this treaty?

Admiral ZUMWALT. If I understand the points they have made, I do not—I think there is a consensus on both sides that we do not find ourselves forced, if we ratify, to do anything that is harmful to us. The issue is then, what about the other members of the regime? I repeat again, they are in that regime whether or not we ratify. So that their conduct is something that we will have more opportunity to influence from within than from without.

Senator KERRY. Now, Admiral, you were Chief of Naval Operations and have had a remarkable career, in charge of our young people in harm's way. I think that you—and General Scowcroft likewise, and I will come to him later with this question—but based on your military career and the responsibilities that you have had to exercise, in your judgment, are our military forces and our young people in uniform better off with this treaty or without?

Admiral ZUMWALT. In my judgment, as I say in the documents that I will submit for the record, they are better off with us within the treaty than they are without. I believe that it would be a disservice to our men and women in uniform if we stay outside this regime, which in any event is going to come into existence on April 29.

Senator KERRY. And the principal reason in shorthand for that is?

Admiral ZUMWALT. That we have the ability better to influence from within than from without. Pluses and minuses notwithstanding, the regime exists as of April 29th.

I might also add, Senator, that you used to take orders a lot better than you do now.

Senator KERRY. Well, I was elected not to take orders.

Thank you. I share with my colleagues that the Admiral was my commanding officer when I was in Vietnam; yes, he was. I had the privilege of having him pin my Silver Star on my chest at a beach in Vietnam. So it is nice to have him here.

Admiral ZUMWALT. For a very well deserved act of courage.

Senator HAGEL. Senator, for that, you get an extra couple of minutes.

Senator KERRY. For that, I have learned not to take them.

Senator HAGEL. I was going to say, your life is a lot easier right now, Senator. Seriously, if you would have any questions, we have a little extra time.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Admiral, welcome.

Admiral ZUMWALT. Thank you.

Senator FEINSTEIN. I wanted to go back again to I think the central point that Mr. Perle made, which was developing a defense against chemical weapons is perhaps the greatest incentive to the development of chemical weapons, in the sense that if you can defend against them adequately, it creates perhaps an incentive to be able to use them—and particularly, I guess, with the mentality that might use these horrible things. Do you agree with that theory?

Admiral ZUMWALT. The regime makes it possible for defenses to be improved. That is unassailable. One has to make a judgment about the tradeoff between what that accomplishes for the good of the majority of the nations involved, versus what opportunities it gives the bad guys to take advantage of it.

The fact that we have created an international regime that gives us at least some opportunity to provide sanctions, some opportunity to provide a regime of international law, makes me feel that, on balance, we are better off to go ahead and take the——

Senator FEINSTEIN. If you would permit me, the good guys really do not need this. Because the good guys are not going to use the chemical weapons. The good guys are going to respond to a neighbor in need like that and help. It is really the bad guys that you have got to deal with. My experience is, with the bad guys, they are going to use this kind of thing for every conceivable edge they can get. Therefore, why help them?

Admiral ZUMWALT. Well, Senator, let us take Iran as an example. I think we both agree that they are a bad guy. Iran is going to be within the regime. Based on my experience on the President's Foreign Intelligence Advisory Board, I would rather get the advantage of being able to demand the inspections that we get from this regime than I would to worry about the rather exotic strategy that my brilliant friend Richard Perle suggested they would follow. I think that the fact that we would have the pressure of public opinion, the opportunity to use political power, and so forth, would more restrain Iran that otherwise would be the case.

Senator FEINSTEIN. All right. Then take that example. Iran has an illegal insecticide plant or any kind of a manufacturing plant. Somewhere within this plant there is some capacity to make or combine or to produce a chemical weapon in some way. That is not necessarily going to be found on an inspection. It probably will not be.

Admiral ZUMWALT. There is some probability that it will not be found. There is some probability that it will be. Coupled with other intelligence capabilities, which are constantly improving, I think we can increase that probability over time. Therefore, I would rather be within the regime than without. I think we gain more than we lose. I do not trust Iran at all, but I think that there will be more restraint on them if we are within the regime and operating it in a vigorous way.

Senator FEINSTEIN. Thank you very much.

Senator HAGEL. Senator, thank you.

Admiral Zumwalt, thank you very, very much for taking the time.

Senator BIDEN. Thank you very much, Admiral. I appreciate it.

Admiral ZUMWALT. Thank you, sir. Thank you for accommodating my schedule.

Senator HAGEL. I hope you are on your way to somewhere exotic.

Admiral ZUMWALT. I made a promise to a granddaughter.

Senator HAGEL. Oh, wonderful. General Rowny, welcome.

STATEMENT OF EDWARD L. ROWNY, LIEUTENANT GENERAL, U.S. ARMY (RETIRED), INTERNATIONAL NEGOTIATION CONSULTANT

Ambassador ROWNY. Thank you, sir.

Before I start, I would like thank the Chairman, Senator Helms, who is my neighbor and good friend, who stood by me when I resigned from SALT II in protest over that flawed treaty. I think we got a good subsequent treaty as a result of turning down SALT II. I have him to thank for that.

I also have tremendous respect for the minority leader here, Senator Biden, who attended to our negotiations in Geneva. While we did not always agree, he was always thoughtful and fair and never *ad hominem*. We had a great deal of respect for him.

Senator BIDEN. Thank you, General.

Ambassador ROWNY. Rather than read my prepared statement, which I would like to put into the record, perhaps I could save some time by just hitting some of the high points.

I will *ad lib* however. I would like to have my written statement put into the record.

Senator HAGEL. It will be, without objection.

Ambassador ROWNY. Thank you, Mr. Chairman.

Mr. Chairman, initially I was opposed to this treaty. I was opposed to it, because I didn't think it was verifiable. I didn't like the provisions about the inability to use tear gas in combat. I didn't like Article X and particularly paragraph 3 of Article X. Most importantly, I felt that this treaty might lull us into a false sense of security and fail to provide protection for our troops.

But after listening to various debates and following the fascinating evolvement of the 30 conditions, 22 of which have been agreed upon, I have changed my mind. Now I feel that on balance the U.S. Senate should ratify this treaty.

Let me give you my reasons.

First, as to verifiability, this treaty is not effectively verifiable. I think that is clear, and I think we should not kid ourselves that might be.

Second, as to tear gas, I would hope that one of the conditions that is placed on the treaty allows the use of tear gas in combat.

Senator BIDEN. I think we can do that.

Ambassador ROWNY. I understand that the treaty allows us to use tear gas in domestic situations. But, for example, if in time of war it is necessary to go after a downed pilot, we should be able to use tear gas to do so.

As for paragraph three of Article X, I think if we could interpret this in the U.S. way and not the Iranian way, this would be very helpful.

I want to dwell on this idea of the ability to protect against chemical weapons. I was appalled when I spoke to several of my friends who were in the Gulf War that we had to go to Germany to get protective vehicles, that we had to go to Great Britain to get our sniffing devices, and that we had to go to the Czech Republic to get contamination equipment. This is no way for a great power to operate, to have to rely on its allies for essential defensive equipment and detection devices.

Also, I think that there are more aspects to defense. We should help to defend against terrorists in this country, and I think the moneys and efforts should be put to that end. Furthermore, I believe that ballistic missile defenses should be deployed, because I feel that there are several rogue states which now have ballistic missiles capable of reaching our troops in time of combat with nuclear, biological, and chemical warheads. In a few years they will be able to reach the United States.

I think that we should be able to defend not only our troops in combat but the United States against an accidental launch or limited attack. I am not talking about full scale attacks by China or a resurgent Russia but only about limited attacks.

I am encouraged that the administration has now recognized our lack of defenses and has said that $225 million will be allocated to protect our troops.

I hope that the Congress will fully support this $225 million to provide the defenses against chemical attack.

As for Russia, I have been working for 4 years since I left the government to try to get the Russians to ratify START II, and I have been finding this increasingly difficult. I think it is important, but in connection I think it is also important that we get Russia to join the states which would ratify the CWC.

President Yeltsin has already signed the CWC, but the Duma is opposing ratification. I think if the U.S. fails to ratify the CWC, it will give the Russians an excuse for not ratifying it.

The United States has been in the vanguard, asking countries to join this convention. For us to renege and not ratify the CWC will tarnish our international prestige.

A great deal of the world looks up to us as leaders and for setting norms and standards. I think, as a minimum, this treaty would set norms and standards. I am in favor of that.

Mr. Chairman, I was in the arms control business for over 2 decades. I think that there are four criteria for any good treaty.

First is verification. Second is that the treaty should not be flawed. Third is that it be enforceable, and fourth is that it be in the security interests of the United States.

I have already said that this treaty is not effectively verifiable. On the other hand, if we were to enter into the treaty before the 29th of April, we would get a seat within the process and we would be able to help get violators exposed. I think on balance we gain more from being on the inside than we do by being on the outside, especially since this treaty is going to come into effect in any case.

The second criterion is that a treaty not be fatally flawed. While the CWC is a flawed treaty, I don't think any of the flaws are fatal. The flaws that are there I think are fixable. I think the tear gas flaw is fixable. I think that paragraph 3 of Article X is fixable.

Therefore, I do not think that the fatally flawed argument can apply against this treaty.

As for the third criterion, enforceability, no arms control agreement can stand on its own. Even the START I and START II treaties, with which I was proud to be associated, can not stand on their own. To make a treaty effective you need a good defense posture. You have to have a credible way of enforcing it. If you don't have that, an arms control treaty is not worth the paper it is written on.

I would hope, again as a matter of emphasis, that we give whatever moneys are necessary to defend ourselves against an attack in the field, terrorist attacks at home, and ballistic missile attacks.

Finally, the vital fourth criterion of any treaty is that it be in the interest of the United States. On weighing the pros and cons I have concluded after a lot of thoughtful consideration, that the U.S. Senate should ratify this treaty.

Thank you, Mr. Chairman.

[The prepared statement of General Rowny follows:]

PREPARED STATEMENT OF GENERAL EDWARD L. ROWNY

Mr. Chairman: It is a privilege for me to testify once again before the Foreign Relations Committee.

Until recently, I was opposed to the ratification of the Chemical Weapons Convention (CWC) by the U. S. Senate. My initial reading of the CWC led me to believe that it was unverifiable, that it would prevent the U.S. from using tear gas in combat, and that it would obligate us to provide sensitive chemical technology to signatory rogue states. However, my major concern was that the United States might be lulled into a false sense of security and fail to provide adequate defenses for our men and women in uniform and citizens at home.

I have now studied the treaty more carefully and have also followed the negotiations of the 30 conditions opponents want to attach to the convention. I have been impressed with the Administration's willingness to negotiate a number of these conditions. Accordingly, I have changed my mind, and I now feel that ratification of the CWC would be in the best interests of the United States.

The treaty is clearly not verifiable. However, I believe that we can gain from being a member of the inspection framework. it is important that the U.S. Senate ratify the CWC before 29 April, 1997 so that we may be a party to the verification process and that American inspectors, who are among the best trained and experienced in the world, can become members of the international inspectorate. It is true that there are certain disadvantages to being a party to the inspection process. However, I am convinced that we have more to gain by being on the inside than on the outside looking in.

I still have misgivings about the prohibition against the use of tear gas during time of war. While I understand that it is not prohibited for use in domestic situations, I can visualize many cases where non-lethal agents would be beneficial in combat.

As for the obligation to share defensive technology in all cases, I do not subscribe to the Iranian interpretation of Article X. Rather, I am convinced that the treaty can be interpreted in a way that protects our interests without violating the terms of the CWC.

When it comes to my major concern, I was appalled to learn from several officers that during the Gulf War they had to borrow detection equipment from Great Britain, protected vehicles from Germany, and decontamination equipment from the Czech Republic. I am encouraged by the Administration's recent request for funds which would eliminate or mitigate the dangers to our soldiers in combat and our civilian populace. This demonstrates an awareness of our inadequate defensive posture and progress to correct it. However, it is important that the $225 million in requested expenditures be approved by the Congress.

I believe that it is also important that the Administration pursue a vigorous program to provide ballistic missile defenses for our forces overseas and for our people at home against accidental launches and limited attacks by rogue states. Several of these states now possess ballistic missiles equipped with nuclear, biological and

chemical warheads capable of striking our U.S. troops deployed overseas and will soon be capable of striking the United States. Protecting our soldiers in combat and our civilians from terrorist activities, accidental launches, and rogue state attacks requires not only the request for funds by the administration, but the provision of such funds by the Congress.

The CWC will come into effect on 29 April, 1997 whether the U.S. Senate ratifies it or not. A failure to ratify the treaty would place us outside the world's civilized nations and associate us with the pariahs. Additionally, failure of the U.S. Senate to ratify the CWC would give the Russian Duma an excuse to discard the treaty. It is important that Russia become a party to the treaty so that we can inspect their facilities which are reportedly developing new chemical agents.

I am also concerned that our enviable position as leaders of the free world would suffer if we fail to ratify a treaty we have convinced scores of other nations to join. We are highly respected and admired abroad largely because of our leadership in establishing high standards and norms of international conduct. At the very least, the CWC will establish such norms and standards for others to follow.

For more than two decades as an arms controller, I have maintained that arms control agreements must meet four criteria. First, they must be effectively verifiable; second, they must not contain fatal flaws; third, they must be enforceable; and fourth, they must serve the interests of the United States.

The CWC does not meet the first criterion; it is not effectively verifiable. However, the problem of verifying the production and stockpiling of chemicals is more difficult than that of verifying the existence and storage of ballistic missiles, bombers, and air delivered weapons. I believe that under the CWC we stand to gain more information than we might lose.

As for the second criterion, while the treaty is flawed, none of the flaws, in my opinion, is a fatal one. Moreover, I believe that continued discussions between the White House and the Senate Foreign Relations Committee can remove or mitigate some of the remaining flaws.

The third criterion is a critical one. No arms control treaty, including the START treaties, of which I am proud, can stand alone. The CWC by itself will not protect our troops or citizens, but it will be useful if—and only if—we spend the funds to protect ourselves and have the will to do whatever is necessary to enforce the terms of the treaty.

Finally, we come to the vital fourth criterion, that the treaty be in the best interests of the United States. The bottom line must answer the question, "Are we better off with the CWC or without it?" Careful analysis and my considered judgment lead me to conclude that we will be better off with it than without it.

Accordingly, I respectfully urge the United States Senate to ratify the Chemical Weapons Convention.

Thank you Mr. Chairman.

Senator HAGEL. General Rowny, thank you.

General Scowcroft, welcome.

STATEMENT OF GENERAL BRENT SCOWCROFT, PRESIDENT, FORUM FOR INTERNATIONAL POLICY, AND FORMER NATIONAL SECURITY POLICY ADVISOR, WASHINGTON, D.C.

General SCOWCROFT. Thank you, Mr. Chairman. It is a great pleasure for me to appear before this distinguished committee on such an important issue.

At the outset, I would like to make one thing clear. Chairman Helms made some comment about support being orchestrated by the White House. I want to make sure everybody understands I am not orchestrated by the White House. I am orchestrated by my concern for the national interest. It is in that capacity that I appear.

We are talking about how best to deal with one of the scourges of modern man, one of the three weapons of mass destruction, and in some respects the most distasteful one.

I am going to be very brief, because I am going to follow Senator Biden's prescription to keep my eye on the ball. I think a lot of the debate this afternoon has been on peripheries.

We are not starting a treaty here. We are finishing a treaty. When you strip where we are now to its basic essentials, what is facing us in the Chemical Warfare Convention are very narrow and relatively straight-forward issues.

First is: The United States is going out of the chemical weapons business. We were forbidden many years ago, quite a few years ago, by the Congress to modernize our chemical stocks by building the so-called binaries; and subsequent to that we agreed legislatively to mandate the unilateral destruction of our chemical weapons stocks.

We are going out of the business. That is the first major point.

The second one is that the Chemical Warfare Convention will enter into force whether or not the United States ratifies it. We are not dealing with a bunch of putty here that we can mold any way we want.

So the basic question is really a very simple one: Is the national interest served better by acceding to the treaty or by staying outside the convention? The question is not whether this is the perfect treaty.

As other witnesses today have said, there is no perfect treaty for chemical weapons. Their manufacture is a lot like insecticides and fertilizers. There is no truly verifiable treaty. So that is not the issue before us.

There is not even a possible treaty written just as the United States would like it; because some 160 nations have signed this treaty, and any multilateral convention requires compromise of one way or another.

There is only before us this particular treaty. Given the real world situation we are in, therefore, I think the answer to the question is a resounding yes to ratification of the treaty, because it is in the national interest of the United States. I want to digress to make just a couple of points about some of the earlier questions. First is about the Nonproliferation Treaty.

As Ambassador Kirkpatrick was winding up, I was waiting for her real punch line, the logical conclusion to her remarks which should be that we would be better off had there been no Nonproliferation Treaty. I think General Rowny has clearly pointed out, as have you, Senator Biden, that that is not the case.

Is it flawed? Sure. Do I have problems with it? Sure. But I think there is no question that the treaty played some kind of role in the fact that—I think it was President Kennedy who said that there were going to be 25 nuclear powers within the next decade, but that has not happened.

So it is something better than nothing.

Article X of the CWC has come in for a lot of discussion today. As I recall, the purpose for Article X was to help those countries who abided by the treaty who might be threatened by chemical attack to be able to defend themselves. Now that is a pretty logical kind of thing. This is not some nefarious thing that the negotiators

just cooked up to make a bad treaty. It is a very logical course of action.

Now as to the argument that one would never use chemical weapons until one had this perfect defense and, therefore, that is the real threat, I think that is not true. Chemical weapons are the poor man's nuclear weapons. But chemical weapons have, I think, demonstrated that they are not militarily useful weapons. There were masses of stocks of chemical weapons in World War II, which was certainly a no holds barred war. Against an enemy that has defenses, chemical weapons are an irritant; they are not overwhelming.

Chemical weapons are valuable as a terror weapon, and you don't need defenses to fire missiles armed with chemical weapons, aircraft dropping chemical weapons. Therefore I think that is a very important aspect in which Article X needs to be looked at.

As for reporting requirements, one of the things that has been overlooked, other than to complain about the administration's treaty, is that it does require reporting of shipments of chemical materials and so on.

Right now, it is possible for a country to buy a few pounds of a precursor here or a few pounds there, a few pounds somewhere else, and to amass an abnormal supply without anybody ever noticing it. That won't be possible anymore. Therefore, we will have a better idea of what's going on and who the bad guys seem to be.

We should ratify this treaty, recognizing that it is not a silver bullet. It is just one weapon—a good one, but just one—in our fight against chemical weapons, and we must continue to employ every weapon in the U.S. arsenal to fight this terror weapon. We cannot sit back and relax.

I think one of the things this sharp debate has brought to the national attention is that this is important and we cannot just sign it and forget about it.

Starting over, as was suggested this afternoon, I think is pure fantasy. If we reject this treaty, we will incur the bitterness of all of our friends and allies who followed us for 10 years in putting this thing together. It is not a matter of, "Just well, let's scrap this and let's start over again." We will throw the whole civilized world into confusion, and the idea that we can then lead out again down a different path I think is just not in the cards. We have got to deal with the situation we face now, not an ideal one out in the future.

Let me close by saying that I spoke to President Bush this morning, and he asked me to state for the record that he is a strong and enthusiastic supporter of the Chemical Warfare Convention and that it would be a severe blow to the U.S. role in the world were we to repudiate it.

Thank you, Mr. Chairman.

Senator HAGEL. General Scowcroft, as always, thank you.

Again, General Rowny, we are pleased to have you both here.

In consultation with my colleague, Senator Biden, what we will do is go back to the 5 minute rule, if that is appropriate.

Is that OK, Senator Kerry?

Senator KERRY. (Nods affirmatively)

Senator HAGEL. I will begin. Picking up, General Scowcroft, on your last comment about President Bush's continued commitment, full support of the CWC, I am intrigued in that yesterday we read a letter from former Secretary of Defense Cheney. You and Secretary Cheney are both highly respected, highly regarded, insightful leaders. You worked closely together. You fought a war together.

My understanding is that President Bush has great confidence in each of you. Could you explain to me how the two of you have now come at this differently, why Secretary Cheney can feel as he does and you feel as you do?

General SCOWCROFT. Well, Mr. Chairman, I would be uneasy putting words in Secretary Cheney's mouth. He is a dear friend of mine. We went through the last 4 years of negotiation of this treaty and evolution in what we were going to do, whether we were to going retain residuals until so many people ratified—the whole gamut of things.

What I will say is that I think it is a fair statement—I don't think Dick would contest this—that Dick Cheney does not like arms control. He thinks we ought to do whatever we are going to do for our own national defense interest and not do it as an attempt to get somebody else to do something.

That he would not have chosen to have the treaty signed I think is a fair statement. He did not resign over it. When President Bush decided to sign the CWC, he didn't make any comment on it. But I have talked to him, and he speaks for himself. But we simply differ on this issue.

Senator HAGEL. I don't know if you have had an opportunity to see the letter that he forwarded to us.

General SCOWCROFT. I have not seen his letter. I talked to him about 3 weeks ago.

Senator HAGEL. If you're interested, we will give you a copy of it——

General SCOWCROFT. I'd like that.

Senator HAGEL [continuing]. Because he gets into some specificity, as much as you can in a one page letter.

Obviously you had some occasion, as you suggest, to work with him a little bit and talk with him about this issue.

I have another question on Israel. My understanding is that they have not ratified this yet. Do you know why that would be?

General SCOWCROFT. No, I really don't. As a matter of fact, I think I assumed they had ratified it. I am not clear about that.

My guess is that they are waiting for the United States.

Senator HAGEL. General Rowny, would you care to make a comment?

Ambassador ROWNY. I subscribe to what Brent Scowcroft said. In the first place, I don't know. But I think they are waiting for the United States, and they want to follow our lead. I know that they were very worried during the Gulf War that they would be bombarded and, they were grateful for our help in trying to knock down those missiles and so forth. They were very keen on relying on our assistance to get a better defensive system, and I am sure that goes over into the chemical field as well.

Senator HAGEL. Thank you.

I would be interested in both of your thoughts on this. I think you each were here when the panel before you addressed some of the issues. You will recall Ambassador Kirkpatrick, Secretary Perle, and yesterday Secretary Schlesinger all talked about the IAEA and some of the ramifications in this opinion as to what has happened and has occurred. Would either of you like to respond to some of what you heard today from some of the two panels before you?

General SCOWCROFT. Let me just say that the IAEA was put together in a way which was not very effective. The terms under which it can inspect were not very effective. But we have some experience, and now I believe we are undertaking a way to make the IAEA very much tougher and to take over responsibilities for inspections that are now the responsibility of UNSCOM and so on.

Incidentally, UNSCOM has done a fantastic job. So I think IAEA can be made a very effective instrument in nuclear nonproliferation. But it could not if we did not have it—if we did not have an NPT.

Again, I would say that what we are really arguing is does this treaty help us at all. Since we are out of the chemical weapons business, if it gives us some help, we ought to look for help and take it anywhere we can find it; and I think we'd get some help here.

Senator HAGEL. General, thank you.

General Rowny, I want to hear your response as well.

Ambassador ROWNY. My response is similar to that of General Scowcroft, though I would go a little further.

The IAEA was initially inexperienced, but they have come a long way. That is one of the reasons that I think we ought to get in on the ground floor and the initial round of the CWC. The United States has the best trained inspectors in the world.

Also, we have learned a lot about countering the restrictions. In the old days, we could not go in unless Iraq invited us to do so.

This treaty has many inspection provisions. There are pages and pages of verification protocols which would bind any nation trying to get around the CWC.

On the point that was made that we would train other people to be able to circumvent this treaty, I think that is somewhat overblown. Even if it is not overblown, I would take that risk. I would rather be able to go in and inspect, knowing how to inspect and having a lot of rules behind me, even if I knew that I might be giving inspection secrets away.

Accordingly, I believe that this treaty would be more easily enforceable than its predecessors.

Senator HAGEL. Thank you.

Senator Biden.

Senator BIDEN. Thank you very much.

General Scowcroft, the point that you made I think is a very important point to make, not merely about Secretary Cheney who is a wonderful, fine, bright American. As a matter of fact, just as an

editorial comment, I thought for sure he was going to be your nominee. I mean that sincerely.

This guy has a presence, an articulation. But I think the point you made is an important one to make here generally.

If you look across the board, the bulk of the problem, the bulk of the opposition comes from people who legitimately, and truly consistent with their philosophy and intellectual predisposition, if you will, do not like arms control.

One of the things that our distinguished Chairman said when he spoke on the floor the first time on this is he quoted what has been quoted 50 times by a lot of people. I do not say this in a derisive manner. It is: As so and so said, America has never lost a war or won a treaty.

That is doctrine among an awful lot of people. I do not belittle it. I just think it is important that we put it in focus.

I mean, we have in here a very bright young guy, Mr. Gaffney. In all fairness to Mr. Gaffney, who is sort of the intellectual engine on the right on this one right now, has he ever seen a treaty he likes? It's kind of like: Do you ever take yes for an answer?

I understand that. But it is really important that we all understand it so that we can put into perspective some of the criticism.

The second point I would like to make is, if you look at the argumentation against the treaty, it is the ultimate Catch 22. The criticism my friends make of the treaty in terms of the Fourth Amendment: If you want to guarantee there is no possibility of ever arguing about it, you have to do something they also do not support, which is these onsite inspections without notification. If you eliminate those, then you have no Fourth Amendment debate. But guess what happens. You eliminate the ability for it to be verifiable and you diminish it.

You can go down every single argument. I think we should just make this clear. There is no way to satisfy the critics, the strongest and most articulate critics of this treaty, other than by solving half of their problem. If you solve half their problem, that is the most you can solve. You can't solve it all, because it makes the other portions they criticize even worse.

Now, General Rowny, I don't know whether people understand something. I have been here 24 years. I don't know whether they understand how significant your presence here is. I mean, I really don't know whether people fully understand it.

In my humble opinion, in terms of bringing *bona fides* to this debate, with no disrespect to anyone, from General Scowcroft to the President of the United States of America, to President Bush or anybody, you are, in my view, the single most significant supporter of this treaty. You resigned—you resigned—on principle over an arms control agreement you said you didn't like. Here you are, a man whose credentials in terms of being tough, yet still who believes some treaties are useful, here you are supporting the treaty.

Now I realize there are *ad hominem* arguments. I realize there are appeals to authority. I realize there are logical fallacies. But one of the things that, in fact, impacts on this debate overall is the vast majority of people do not have the time to do what the acting chairman and I are doing or any of the members of this committee,

or that you all have done. You know it, we hopefully know it, but the vast majority of Americans do what we do on everything else. They are looking at people they respect and are saying well, if it is good enough for them, it is good enough for me as I respect them. Or if they don't like it, I don't like it.

That is not an irrational thing to do. So, I want to tell you that I think it is very important you are both here.

I think it is fair to say the three of us, you two and me, have been on the opposite sides of more debates than we have been on the same side.

General SCOWCROFT. I believe so.

Senator BIDEN. So I want to thank you for being here. I would conclude, Mr. Chairman, since Mr. Kerry is not here quite yet——

Senator HAGEL. Just go ahead, Senator Biden.

Senator BIDEN [continuing]. By saying one of the things we talked about in terms of inspections before. Mr. Perle, who is always articulate, Mr. Perle made the point that what is going to happen here is we are going to have these rogue nation guys on the teams, meaning Iran, coming into the United States, inspecting, carrying little gadgets in their pockets and learning all there is to know about either trade secrets and/or a capacity to make chemical weapons better when they get home.

On Part II, paragraphs 1 and 4 specify that we can deny individual inspectors if we give notice.

So no Iranian ever has to inspect an American facility if that is the decision we make.

It is not a requirement. The good news about this is you may ask well, couldn't they deny us inspection. Yes. Yes, but we have allies, like France, Britain, and Germany who are part of this operation. We share with them a lot of this, our technological capability of detection. So, the fact that we would be denied inspection does not hurt us very much, having an inspector on a team. But their being denied at least should satisfy some of our critics of this treaty as to somehow they are all of a sudden going to be able to learn all there is to learn.

I find it interesting that when we thought, as a Nation, and other nations thought that chemical weapons were a useful tool of war, we did not have a vial of it, we did not have a canister of it, we did not have a truck load of it, we did not have a warehouse full of it. We had hundreds of tons of it.

So the idea when people say to me, isn't it true that in a chemical plant, or a fertilizer plant, or a pharmaceutical plant they could be producing chemical weapons, the answer is yes, they could. We might not be able to detect it.

But let me tell you something. I think the image, General Scowcroft, is people are thinking of a Japanese guy with sarin gas in the subway taking on the U.S. Army. I really mean that. I am not being facetious.

Listen to the distinguished Senator from California. It is a legitimate concern.

I think we have to kind of remind ourselves. We are not seeing the forest from the trees. Cheating will occur. But the idea that enough cheating could occur that the U.S. military would be in ulti-

mate jeopardy of losing a war—not a single encounter but a war—that we would be prostrate is bizarre. It is absolutely bizarre.

I just think in terms of keeping the focus here, when you argue on the other guy's terms, you tend to lose the argument. The terms we tend to argue on—at least I do, because I am so acquainted with the detail of this thing. I get so into the detail of it I argue about the specifics, when you can't lose.

That is why I conclude by thanking you, General, for your overall statement of the generic approach to this thing and why this is in our interest. It is in our interest, because the idea that somebody can cheat is true. But the idea that somebody could cheat enough to become a world power that is going to defeat the United States of America, the idea that we are going to be in a position where these rogue nations are going to gain all our trade secrets and build better Chevettes or Corvettes that we build, or our pharmaceutical products, is, at best, to use your phrase, General Rowny—and you are always a diplomat. You said you think this example is a little overdrawn.

I think that is a mild understatement, a mild understatement.

You will be glad to know that wasn't a question. I just cannot tell you how much I appreciate people of your caliber being here. I know it is not easy, General, to be here. All those guys were here. You sat on the same side of the table with them for a long, long time, as have you, General Scowcroft. This is an issue on which reasonable and honorable men can disagree. But I think the break point basically divides generally those who think arms control can be a useful tool for national security, who fall on this side (indicating), and those who think arms control generally is a bad idea, who fall on that side.

I think if you look down the line, that is the ultimate distinguishing feature about where people fall on this treaty.

Ambassador ROWNY. Senator, if I can elaborate on that, I agree with you that there are people who believe that all arms control treaties are good, and there are some who say all arms control treaties are bad. I happen to have been all along for good arms control.

Senator BIDEN. I know that, General.

Ambassador ROWNY. When I resigned in protest over SALT II, it was difficult, because I was drummed out of the Army. But later, when we fixed the flaws of SALT II, we got a good treaty: START I. START I reduced from 15,000 to 8,000 weapons on each side.

As I said before, you cannot do this in a vacuum. You have to always do it with the threat of being able to enforce the treaty, and without that, I don't think arms control is useful.

That is why I would like to see pressure put on Russia now to have the Duma ratify START II. I have been working on this idea for 3 years, and believe that we should go even further by moving to START III.

Senator BIDEN. I agree with you, General.

Ambassador ROWNY. The idea is to get good arms control agreements and also to have them bolstered with good, enforceable methods of carrying them out.

Senator BIDEN. I'll make you a bet that I hope I never win. If we do not ratify the CWC, the chances of the Duma ratifying START II, irrespective of all other questions, I think is remote. It is remote at best. It is difficult now and you are right.

The only point I want to make—and, Mr. Chairman, I have gone way over my time—is you are a man of principle, General. That is the only point I was making or attempting to make. I hope I made it clear. You are a man of principle. You gave up a lot on a principle, a principle. So, when people suggest—and no one here has, friend or foe—when people suggest that people are orchestrated to come here, General Scowcroft is a man who has taken on me in this committee, and the Democrats time and again. He is a guy who in my view educated my best friend, Bill Cohen, and that is why he is Secretary of Defense. General Rowny is a man of absolute principle who thinks that good arms control is as he defined it, and there is good arms control. The fact that you both are here I think is a big deal.

It reinforces my view of this treaty, quite frankly, because we all look to the people we admire as to whether or not they like it; and it reinforces our sense of the place we intellectually arrived at. The fact that you both are there quite frankly just reinforces and makes me feel better about my decision.

Senator HAGEL. If I could follow up, General Rowny, on something you mentioned earlier, you mentioned that you thought this was a flawed treaty, like I believe you said most are, but fixable. I think you mentioned specifically Paragraph 3 of Article X.

What other areas do you think need to be addressed?

Ambassador ROWNY. Just one other area, Senator. That is the one on tear gas. I have never understood this. It has a long history. As you know, President Ford issued an executive order. Brent Scowcroft played golf with him a good deal, and he might be able to understand that executive order at that time. But I felt that the idea of prohibiting the use of tear gas in times of war, I have always felt that was a mistake. I would like to see that one fixed in some way.

That is the only other flaw that I see in the treaty.

Senator HAGEL. To each of you, Admiral Zumwalt mentioned sanctions on those signatories who might violate the convention.

What realistically are we talking about when you say sanctions? Iran is a signatory. They violate inspections. If we find they have violated the convention, what do we do?

General SCOWCROFT. Well, I think sanctions run all the way from doing something that makes you feel good when you really don't want to take action but you have to do something to what I would call sanctions on Iraq right now, which are effective. They are good. UNSCOM is over there, they are rooting around, and they are finding out all kinds of things. That is the ultimate in sanctions.

Senator HAGEL. Would the entire body, as you read this treaty, be involved in the sanctioning process of a violating nation?

General SCOWCROFT. I think in the end, Mr. Chairman, sanctions depend on the national interest of the country whatever a treaty says. We could have responded when Iraq used chemicals against Iran or against its own people. Politically, nobody did; and they

didn't, because there were other kinds of things that militated against it.

I think you always have to look at sanctions in that light. Collective security is a chimera. It is never going to work, because when you don't know who the enemy is, then you cannot defend against it.

So every country is going to consult its own national interest when it decides whether or not to go with sanctions. That is where the United States is so important, because when we decide, we can get a lot of people along with us. When we sit on the sidelines, there isn't anybody else to pick up the ball and carry it.

Senator HAGEL. Thank you.

General Rowny.

Ambassador ROWNY. I have a less optimistic view about sanctions. I think that sanctions can be helpful, but I think in the end, you have to use more than sanctions in critical cases. So I would say: use sanctions. If they work, fine. If they don't, don't hesitate to use your military muscle, and I think in some cases you have to.

The Chemical Weapons Convention is important; but we have a more sinister set of circumstances facing us down the road, and that is the biological warfare issue. The Biological Weapons Treaty does not have any of the verification procedures contained in the CWC. As you know, Russia denied developing anthrax. Now there are reports that they have developed a new biological weapon which is not detectable. There is a vast difference between chemical and biological weapons. A chemical weapon will disperse and you can protect against it. However, biological weapons do not disperse but grow.

So I would hope as soon as this treaty is ratified that the Senate, and this committee in particular, turn their attention to the possible dangers of biological warfare, which, in my view, are more devastating than chemical weapons.

In this connection, I would not hesitate to go beyond sanctions and use whatever it takes to prevent against this great scourge. If what happened with just a few whiffs of sarin gas in Japan were to happen in this country, I think we would never forgive ourselves.

Senator HAGEL. Thank you.

Senator Biden.

Senator BIDEN. General, you just made, again, the point that I think it is important to keep in mind. You heard the last panel, all brilliant people, all decent, honorable people. This is the dividing line again. They said not only is this treaty bad, but if we ever tried to do anything in biological weapons, which is less verifiable, it would be a disaster.

I just want to keep reinforcing the point here. I happen to agree with you completely, General. People fall down on most of these issues based on which side of this treaty line they fall on.

As you heard spontaneously, three of the four witnesses said by the way, this is bad, but if you guys ever start looking at biological weapons, that would even be worse.

Now the question I would like to ask you is—or I guess I would make more of a point and would ask you to respond. In my view, when you were dealing and this administration was dealing, General Scowcroft, with Korea's attempt at, desire to, and potentially having achieved a nuclear capacity, nuclear weapons, there was a lot of loose talk up here with guys like me and others. It got all around. I refer not to you but to us, to me.

We said if they do develop or are on the verge of developing that capacity, we may very well have to use preemptive military action. That was talked about around the world.

I cannot fathom even being able to raise that issue had we not been part of the Nuclear Nonproliferation Treaty. If there were not an international norm established, the idea that in capitals—and I was in Europe at the time as well—the idea that in capitals of the world there was no commitment to use force, but no commitment to rule out the use of force, there is no way, in my view, there would have been any—any—ability to even contemplate that and to gain anything remotely approaching international understanding for the possible need of preemptively using force.

Now I am not suggesting that you suggested that, General. I want to make the record clear.

General SCOWCROFT. I did.

Senator BIDEN. Well, OK. I am not speaking for you now. But I was up here, as you will recall, saying the same thing that you recommended.

So, again, I state it to reinforce a point that seems to get lost as we focus on these individual trees in this forest. This is that national and international norms make a difference. They make a difference. They are not dispositive in every case, but they make a difference.

Had we followed Ambassador Kirkpatrick's notion of never having gone forward with the Nonproliferation Treaty, the idea that we would have had the consensus to consider—and I believe, General, your statements and recommendation were part of the reason why, ultimately, it did not go to the point we worried about it going. Now I am not now here positing where it is.

At any rate, if you would like to comment, fine, but there is no need to comment. I just think international norms make a big difference.

General SCOWCROFT. Well, one of the things that we did not really discuss this afternoon and that I thought about putting in my remarks, but I did not want to be accused of being "goody-goody" is that the very fact that you mobilize world opinion and say these things are bad, we are going to mobilize the international community against them, this does put pressure on the hold-outs. If they are doing things wrong, it is easier to call attention to it.

We have no coordinated kind of social, if you will, pressure on the rogue states right now in this area.

Senator BIDEN. That's right. I agree.

Senator HAGEL. Senator, are there any more questions?

Senator BIDEN. No. Again, gentlemen, particularly for the way you got bounced around by me in terms of timing on this, I just

cannot tell you how much I appreciate your being here and how important I think it is that you are here.

Thank you both.

Senator HAGEL. On behalf of the committee, thank you. Just as the other panel, you all have brought a tremendous amount of experience and insight to this. As you suggested, General Scowcroft, this is a critically important issue for this country and the world, and we need to spend as much time as we have been spending and that we will spend to air it all out.

So on behalf of all of us, thank you.

Senator BIDEN. Thank you.

Senator HAGEL. We are adjourned.

[Whereupon, at 5:20 p.m. The committee adjourned, to reconvene at 2:03 p.m. on Tuesday, April 15, 1997.]

CHEMICAL WEAPONS CONVENTION

TUESDAY, APRIL 15, 1997

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m., in room SD–419, Dirksen Senate Office Building, Hon. Jesse Helms (chairman of the committee) presiding.

Present: Senators Helms, Hagel, Brownback, Biden, and Kerry.

The CHAIRMAN. The Committee will come to order, but we will stand relaxed until the staff gets its act together. Both parties are represented at another hearing, and it should not be very long. [Pause.]

There is no Senate rule against a chairman doing what they do on television when they have got more time left than they expected. So they stretch it out.

Our first witness this afternoon will be a long time friend of so many of us in the Senate. We have worked with him in various capacities, including broadcasting to foreign countries. Malcolm S. Forbes, Jr., or Steve as he is known, is one of the most remarkable friends I have ever known; and I am going to give you one vignette for the record.

Some years ago I happened to be on the same campus with him where he had spoken to the students, and following all of the formal doings there was a reception, and the reception went on and on and on, and he was shaking hands and answering of the students, and along about 10 or maybe a little bit earlier I sent word to Mr. Forbes that I would rescue him and he could go out a certain door, get on his airplane, and go back to New York. He said oh, no. He said, I have got some more friends I wish to talk with.

Now, he was not a candidate for anything except the Kingdom of Heaven, I think, at that time. But I want to say to you, sir, that you won the hearts of those young people at that university. I still hear about your staying there until 11 talking with them and answering questions. Maybe another fellow would have gotten up and left, but you did not.

Mr. Biden, the ranking member of the committee, will be here momentarily, and we will just bide our time.

We will have two panels, by the way. Steve Forbes, or Malcolm S. Forbes, Jr., will be the first witness and only witness on panel one. Panel two will have businessmen: Mr. Wayne Spears, President of the Spears Manufacturing Company and so forth; Mr. Ralph V. Johnson, Vice President of Environmental Affairs at Dixie Chemical Company; Mr. Kevin L. Kearns, President of the United

States Business and Industrial Council; the Honorable Kathleen C. Bailey, Senior Fellow of the Lawrence Livermore National Laboratory, Livermore, California.

This hearing is the third in the final round of Senate Foreign Relations Committee hearings on the dangerously flawed Chemical Weapons Convention. Last week the committee heard from seven distinguished foreign and defense policy leaders about the national security implications of this treaty. This afternoon, our purpose is to discuss the destructive effects of this treaty, and what those effects will have on the American business community, the new regulations will be imposed, the intrusive and clearly unconstitutional inspections it will authorize, and the potential of abuse of the treaty by our foreign business competitors by industrial espionage.

I can think of no one—no one—who can better speak to these issues than our lead witness today, Mr. Forbes. He is chairman and CEO of Forbes Magazine. He is a leading voice of American business, and in particular a champion of the small and medium-sized enterprises that will be disproportionately affected by this treaty.

Last week we heard eloquent testimony from four former secretaries of defense of this country urging the Senate to reject this flawed treaty, and I want to quote something one of those witnesses said that day, because I think it will help us frame the discussion this afternoon.

Let me preface what I am going to read by saying that there have been repeated suggestions by the proponents of the treaty implying that all businesses support this treaty. Well, this simply is not accurate. Don Rumsfeld eloquently reminded us last week that many big businesses, and he stressed the word big, do support the treaty, but it is not the security of big business that we need to worry about in this country, it is the smaller businesses.

Here is what Don Rumsfeld said: Big companies seem to get along fine with big government. They get along with American government, they get along with foreign governments, they get along with international organizations, and they have the ability, with all their Washington representatives, to deal effectively with bureaucracies. Indeed, Mr. Rumsfeld said, and I am quoting him still, indeed, that capability on the part of the big companies actually serves as a sort of barrier to entry to small and medium-sized companies that lack that capability. So I do not suggest, he said, for 1 minute that large American companies are not going to be able to cope with the regulations. They will do it a whale of a lot better than small and medium sized companies, end of quote.

Mr. Rumsfeld made a vitally important point. It is small and medium-sized businesses, the entrepreneurs who are creating all of the jobs in our economy today, who will be hurt worse by this treaty. It is they who will have trouble coping with all of the new regulations and all of the red tape and all of the intrusive and unconstitutional inspections and all of the legal fees and potential losses of proprietary information.

The small businesses are the ones whose constitutional rights will be trampled because this administration refuses to require a criminal search warrant from involuntary challenge inspections granted to foreign inspectors. These inspections will be granted greater power of search and seizure than those granted to U.S.

Law enforcement officers. These inspectors are the ones who may well confront officials from Iran and China, knocking on their doors, demanding the right to rifle their records and so forth and so on.

Speaking of the law enforcement officers, they will interrogate the employees and remove chemical samples from their facilities, all because this administration has refused to ban inspectors from rogue regimes.

Now, we hear over and over again that the Chemical Manufacturer's Association, which has been very active in promoting the treaty, we heard that they support the treaty, and we have had, certainly, the strong inferences, if not declarations. But let me tell you something about this association. And I speak as a guy who ran a pretty sizable association some years ago. The CMA operates and represents just 191 companies—1–9–1—but this treaty, at the administration's most conservative estimate, will affect at least 3,000 businesses, and may affect as many as 8,000.

So I hope we can put an end to the notion that the CMA represents the interests of the thousands of small- and medium-sized companies that will be hurt by this treaty. And as one of our witnesses will tell us today, I believe, even within the ranks of the CMA companies there is concern about the impact of this treaty, including the cost of regulations and the potential loss of confidential business information.

The fact is there are literally thousands of companies across this country who do not know about this treaty, who do not understand it in any detail, who do not realize that it will affect them, who do not understand that they will be subjected to inspections, and are not aware what kind of unfunded mandates will be imposed on them should this treaty be ratified as is.

Now, I have no doubt that the businessmen affected by the CWC are patriotic Americans who love their country and are willing to make sacrifices for our national security. And if this treaty could actually reduce the danger of chemical weapons, I am sure they would be willing to make necessary sacrifices to get rid of those terrible weapons. But as we have heard from so many experts, it just will not work.

This treaty will not work. It will do nothing to reduce the danger of chemical weapons. If anything, we have learned that it will make the problem worse by giving rogue nations even greater access to dangerous chemical agents and technology and defensive gear. Even the treaty's proponents admit that it will not work, but they say we should ratify it anyhow; because it is better than nothing; because, they say, it will establish "norms."

Well, I do not believe that ratifying the treaty that cannot work just to make a statement is good policy; and when you take into consideration the fact that it will also create massive new burdens on businesses that are struggling to create jobs, that it will cost them money, time, and energy while trampling on their constitutional rights just to make a statement and establish norms, I say that this treaty is worse than nothing. The price of that kind of feel-good statement is just too high.

So, Mr. Forbes, if you will take the seat in the middle, we thank you for being here, and look forward to your testimony. And I note

that not only is Steve Forbes testifying today, he announced this Sunday on Face the Nation that he will be leading a public information campaign to bring the facts about the treaty to light. So on behalf of the silent majority of American businesses who do not realize what Washington has cooked up for them with this dangerous and destructive treaty, I thank you, sir, for all that you are doing.

I have just been handed a note saying that we should wait for Senator Biden to come and make his statement. He said he would try to be here by 2:15, so I suppose, Mr. Forbes, we can just stand at rest and wait for Senator Biden. [Pause.]

The Senator from Delaware is recognized.

Senator BIDEN. Mr. Chairman, thank you very, very much, and I thank the witnesses. We have, as the Chairman well knows, these things every Tuesday called caucuses where every Member of each of our parties gets together and we discuss our respective agendas. Ironically, I was to make a presentation in my caucus today on the Chemical Weapons Convention, and I appreciate the Chair doing this.

Mr. Chairman, I am happy you have called this hearing today on the effect that the CWC would have on American business; because, as we all know, there has been a great deal of discussion pro and con on that very point. The charge, in my view, that the CWC will harm American business, I think is dead wrong when one considers the fact that the convention was negotiated with an unprecedented input from the U.S. chemical industry. Thanks to the industry's help, in my view, the convention contains thresholds and exemptions that protect businesses small and large from bearing an undue burden.

The American chemical industry has helped develop the ground rules under which the inspections that will occur under this treaty will happen, including provisions for protecting the confidentiality of business information. Chemical companies' representatives have also helped in the decision on how to design the form, the written form, that represents the only reporting obligation for 90 percent of approximately 2,000 companies that will have an obligation under this convention.

The U.S. chemical companies recognize that while they produce goods intended for peaceful uses, their products and inputs could be misused for nefarious purposes. That is why they so actively have supported this convention. Their involvement in the CWC has been a model, in my view, of good corporate citizenship. Unfortunately, we will reward this responsible behavior with a slap in the face, in my view, if we fail to ratify this convention and subject the U.S. Chemical industry to international sanctions, the same sanctions, I might add, that we ourselves insisted be placed in this convention under both President Reagan and President Bush.

The CWC was designed with high thresholds for common industrial chemicals that ensure that only large producers of those chemicals will be subject to reporting and inspection requirements. Instead of throwing around old numbers and scare tactics, I would like to take a look very quickly at the outset here at the real requirements of this treaty.

Chemicals that are used to make chemical weapons have been placed in three schedules. Schedule I chemicals are those that are

chemical weapons and direct precursors with little or no commercial use. Schedule II chemicals are direct precursors with limited commercial uses. And Schedule III chemicals are indirect precursors with wide commercial use.

Now, both producers and consumers of chemicals on Schedule I and two are subject to CWC reporting and inspection requirements. For most Schedule II chemicals, though, there is a one-ton threshold. As a result, only 11 American facilities—11, 11 American facilities—will be subject to Schedule I requirements, and less than 35 will be covered by Schedule II requirements.

Turning to Schedule III chemicals, the rules change a little. Only those facilities that produce, import, or export more than 30 tons of Schedule III chemicals are covered by those requirements—30 tons. That is not a vial of chemicals, that is not a barrel, that is a lot of chemicals, and these rules apply only to producers. Consumers of these chemicals are not covered. As a result, only about 100 facilities face these requirements. An even higher threshold applies to producers of discrete organic chemicals. Everybody has an acronym in this bill, so I will just continue to call them discrete organic chemicals, or DOC's.

Facilities that produce more than 200 tons of discrete organic chemicals are subject to reporting requirements, as are those that produce 30 tons of chemicals containing phosphorus, sulfur, or fluorine. But again, we are talking about producers, and only producers of hundreds of tons of these chemicals—no soap manufacturers, no cosmetic firms, all the things we keep hearing about. You know: "They are going to go in and find a cosmetic firm is doing this or a soap manufacturer." We are not talking about those companies. They are not producers of these chemicals. They are consumers of these chemicals, these discrete organic chemicals.

While reporting requirements for discrete organic chemicals will apply to as many as 1,800 U.S. companies, I do not know of too many Mom and Pop businesses that produce 200 tons of chemicals a year. In addition, several industries have been completely exempted from all CWC requirements. These include explosives makers, hydrocarbon producers, oil refineries, polymer makers, and facilities that make discrete organic chemicals through biological processes. What does this mean? It means that plastic companies, textile makers, and breweries face zero—zero—obligation under the CWC.

The Commerce Department instructions for the brief data declaration says that in black and white. And the Conference of State Parties is also set to ratify these exemptions on May the 6th. So anyone who tells you differently, I would respectfully suggest, is dead wrong.

There is more to say, and I had planned on saying more, but I ask unanimous consent that the remainder of my statement be placed in my record, Mr. Chairman, and I would conclude with one sentence: We are going to hear from four very distinguished witnesses, one who believes that—well, I was going to read the quote. I will not. Anyway, let me just put my whole statement in the record since you were so kind to hold up for me, and I will get on with hearing from the witnesses.

The CHAIRMAN. Without objection, it is so ordered.

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF SENATOR BIDEN

Thank you, Mr. Chairman. I am happy that we are holding this hearing today on the effect the CWC would have on American business, because perhaps no single aspect of this debate has seen more misinformation.

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

Thanks to the industry's help, the convention contains thresholds and exemptions that protect businesses, small and large alike, from bearing an undue burden. The American chemical industry helped develop the ground rules under which inspections will occur, including provisions for protecting confidential business information.

Chemical company representatives also helped design the brief form that represents the only reporting obligation for ninety percent of the approximately two thousand companies that will have obligations under the CWC.

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

Unfortunately, we will reward this responsible behavior with a slap in the face if we fail to ratify the CWC and subject the U.S. chemical industry to international sanctions—the same international sanctions that we ourselves insisted be placed in this treaty to punish countries that do not ratify it.

The CWC was designed with high thresholds for common industrial chemicals that ensure that only large producers of these chemicals will be subject to reporting and inspection requirements. Instead of throwing around old numbers and scare tactics, let's look at what the real requirements of this treaty are.

Chemicals that can be used to make chemical weapons have been placed on three schedules. *Schedule I* chemicals are chemical weapons and direct precursors with little or no commercial use. *Schedule II* chemicals are direct precursors with limited commercial uses. *Schedule III* chemicals are indirect precursors with wide commercial use.

Now, both producers and consumers of chemicals on schedules one and two are subject to CWC reporting and inspection requirements. For most Schedule II chemicals, though, there is a one ton threshold.

As a result, only eleven American facilities will be subject to Schedule I requirements, and less than thirty-five will be covered by Schedule II requirements.

Turning to Schedule III chemicals, the rules change a little.

Only those facilities that *produce, import or export* more than thirty tons of Schedule III chemicals are covered by those requirements. *Thirty tons.* That's not a vial, that's not a barrel, that's a lot of chemicals. *And these rules apply only to producers.* Consumers of these chemicals will not be covered. As a result, only about one hundred facilities face this requirement.

An even higher threshold applies to producers of discrete organic chemicals, or "docs."

Facilities that produce more than two hundred tons of these chemicals are subject to reporting requirements, as are those that produce thirty tons of a chemical containing phosphorus, sulfur or fluorine. But again, we're talking only about producers, and only producers of hundreds of tons of these chemicals.

While the reporting requirements for discrete organic chemicals will apply to as many as eighteen hundred U.S. companies, I don't know of too many mom-and-pop businesses that produce two hundred tons of chemicals every year.

In addition, several industries have been completely exempted from all CWC requirements. These include explosives makers, hydrocarbon producers, oil refineries, oligomer and polymer makers, and facilities that make discrete organic chemicals through biological processes.

What does this mean? It means that plastics companies and textile-makers and breweries face zero obligation under CWC. The Commerce Department instructions for the brief data declaration says that in black and white. Some of these exemptions are already in the treaty, and the Conference of States Parties is all set to ratify the rest on May 6.

So anyone who tells you that these industries will be hurt by CWC is just dead wrong.

In addition, there will be an exemption for facilities that manufacture a product that contains a low concentration of a scheduled chemical. The treaty explicitly directs the Conference of States Parties to adopt such a rule.

For Schedule III chemicals, the ones with wide commercial applications, the proposed threshold is thirty percent.

So a plant that makes soap or cosmetics or one that processes food would not be subject to CWC requirements.

I also want to address the charge that the CWC will lead to international inspectors rummaging at will through American businesses. This too is entirely untrue.

Only a limited number of facilities will be subject to routine CWC inspections, and these are mostly the large chemical manufacturers that are supporting the treaty.

These routine inspections will be conducted on the basis of facility agreements negotiated with the full input of the plant involved in order to protect trade secrets.

And there will be no warrantless searches. If a firm does not consent to an inspection, an administrative or criminal search warrant will have to be obtained before the inspection goes forward.

Moreover, all challenge inspections will take place under the principle of "managed access," where our government negotiates with the inspectors over the places, records, and data that may be searched. So, all inspections will take place under the supervision of U.S. government officials.

Our exposure to loss of trade secrets due to the CWC is also greatly overstated.

The CWC contains an unprecedented level of protections for confidential business information, all of which were negotiated and supported by industry.

The combination of close supervision of confidential business information, plus the deterrence of our domestic criminal laws, should keep losses of trade secrets to a bare minimum.

The facts are that American industry and the executive branch have worked cooperatively—both in drafting the treaty and in drafting the proposed implementing legislation—to minimize the burden on U.S. industry.

The chemical industry is to be commended for the role that it played in helping to negotiate this treaty, and I look forward to hearing the testimony of our witnesses today.

The CHAIRMAN. Mr. Forbes.

STATEMENT OF MALCOLM S. FORBES, JR., PRESIDENT AND CEO, FORBES, INC., NEW YORK, NY

Mr. FORBES. Thank you very much, Mr. Chairman, for allowing me today to testify before your distinguished committee.

Senator BIDEN. Excuse me 1 second, Mr. Chairman. I would like to point out one thing: Mr. Forbes won my State. I would just like to point out that Delaware in the Republican primary, voted for Forbes. So I want the record to note I smiled at him, I have been very nice to him, I like him very much. We have agreed very heartily. We are together on the radios, right, Mr. Forbes? Tell them that, will you please?

Mr. FORBES. We are together on the radios, but I am keeping on my Kevlar for protection.

There are many compelling reasons, I believe, to oppose ratification of the Chemical Weapons Convention. The fact is that the Chemical Weapons Convention significantly threatens the freedoms we Americans cherish. It significantly diminishes America's sovereignty and significantly increases America's vulnerability to chemical warfare. It is as though we are being asked to endorse a drug that worsens the disease it purports to cure, and in addition has some highly dangerous side effects.

To explain just how dangerous the CWC side effects are, just let me ask the distinguished members of this committee a very simple question: What is the basis of America's greatness? Why is it that although the international arena contains many powers today, we are the world's sole superpower? Any adequate answer to this ques-

tion would have to include such factors as the competitive nature of our free market system, the unparalleled technological sophistication of America's enterprises, but most important, our basic freedoms. These are the sinews of our power, the basis of our national greatness. It is precisely these quintessentially American strengths that the convention would undermine.

Let me begin by talking about America's competitiveness. As I have strenuously argued on other occasions, maintaining America's competitive edge requires a lessening of the tax and regulatory burdens on the American people and on our Nation's enterprises. Unfortunately, the CWC will have precisely the opposite effect. It will burden up to 8,000 companies across the United States. Remember, these are in the hands of an international bureaucracy, not what we would like them to be, with major new reporting regulatory and inspection requirements entailing large and uncompensated compliance costs. These added costs constitute an unfunded Federal mandate. Like so many unfunded mandates, they are bound to retard our economic growth and make our companies less competitive.

Is it not ironic, Mr. Chairman, meeting here as we are on tax day and concerned as we all are with reducing the tax burden on the American people, that we should even consider ratifying a convention that amounts to a new tax on some of our most innovative and productive companies? But it gets worse. For in addition to the costs arising from heavy duty reporting, the CWC subjects our chemical companies to snap inspections that will allow other nations access to our latest chemical equipment and information. No longer will violators of intellectual property rights in China, Iran, and elsewhere, have to go to the trouble of pirating our secrets. Incredibly, we ourselves will effectively hand them the stuff on a silver platter. No wonder former CIA Director and Defense Secretary Jim Schlesinger has called the convention a godsend for foreign intelligence services.

But it gets worse. The CWC also threatens the constitutional rights guaranteed Americans under the Fourth Amendment. As former Secretaries of Defense Dick Cheney, Don Rumsfeld, and Cap Weinberger noted last September in a joint letter to Majority Leader Trent Lott, quote: The CWC will jeopardize U.S. citizens constitutional rights by requiring the U.S. Government to permit searches without either warrants or probable cause, end of quote. That is a serious statement from these former defense chiefs, jeopardize U.S. citizens constitutional rights.

Think about that, Mr. Chairman. And think about all the criminal cases that our courts have summarily dismissed, because in their view the defendant's constitutional rights had been violated by police searches conducted without probable cause. Are American businesses to receive less justice than suspected felons? Of course not. The idea is preposterous. And yet that is what compliance with the CWC would entail.

As Department of Justice officials publicly acknowledge in testimony before the Senate Judiciary Committee on September 9, 1996, in cases where private facilities do not voluntarily permit access to inspection a criminal warrant would be required. Obtaining such a warrant from a court, however, would require demonstration of probable cause. This will be impossible in many cases, be-

cause under the Chemical Weapons Convention the nation requesting an inspection need not cite its reasons for making such a request.

Hence, the treaty poses an insoluble dilemma. Should the U.S. Government choose to respect its citizens Fourth Amendment rights not to be subjected involuntarily to searches in absence of judicial warrants? It will be creating a precedent that other countries will assuredly cite to refuse onsite inspections in their territories. If we do not do it, do not expect them to do it. On the other hand, should the Government choose not to respect the Fourth Amendment rights it will be acting unconstitutionally.

But it gets worse, Mr. Chairman, for in addition to threatening our Fourth Amendment rights, the convention also undercuts our Fifth Amendment rights against having our property taken by the Government without just compensation. You are familiar with Judge Robert Bork, who noted in a letter to Senator Hatch last August, quote, Fifth Amendment problems arise from the authority of inspectors to collect data and analyze samples. This may constitute an illegal search and an illegal seizure, and perhaps constitute the taking of private property by the Government without compensation. The foreign inspectors will not be subject to punishment for any theft of proprietary information.

Mr. Chairman, these are very grave constitutional issues that need to be resolved before the CWC is ratified. To wait until after the convention is ratified and its provisions become the supreme law of the land would be an act of supreme folly.

Yet there is another pernicious aspect of this convention that I would like to touch on, the very different impact it would have on large and small companies. As former Secretary of Defense Don Rumsfeld noted in testimony before this committee last week, big companies are generally better able than small companies to withstand additional reporting, regulatory, and/or government inspection requirements. Some might even regard such burdens as a barrier to entry that can enhance their market share at the expense of their smaller competitors.

Now, large chemical manufacturers are among the most pervasively regulated industries in the world. These companies can reasonably conclude that the burdens of this convention are manageable. The same certainly cannot be said of smaller, less regulated companies, many of whom still seem to be unaware that this treaty could adversely affect them and their bottom lines. The array of American companies that fall into this category is simply mind-boggling. They include those in such diverse fields as electronics, plastics, automotive, biotech, food processing, brewers, distillers, textiles, nonnuclear utility operators, detergents and soaps, cosmetics and fragrances, paints, and even the manufacture of ball point pen ink. The Senate will be ill-advised to ratify a convention that could do harm, unintended harm, to so many American enterprises without truly compelling reasons to do so.

But finally, Mr. Chairman, in discussing the harmful side effects of the CWC, I would like to draw your committee's attention, as many other witnesses have done, to Articles X and XI. These provisions, which obligate the signatories to facilitate the fullest possible exchange of technology directly relevant to chemical war fighting

will be cited by other governments, and maybe even by some American companies, as pretexts for doing business with Iran and Cuba with adverse consequences for U.S. National interests.

These then, Mr. Chairman, are just some of the costs associated with ratifying the Chemical Weapons Convention. They are unacceptably high. Are there any offsetting benefits? Unfortunately, the answer is no, there are not. In fact, and this is critical, far from protecting us against an outbreak of chemical warfare, the convention would increase the likelihood of these awful weapons being used.

As former Defense Secretaries Jim Schlesinger, Cap Weinberger, and Don Rumsfeld wrote in last month's *Washington Post*, it was March 5th, quote, the CWC would likely have the effect of leaving the United States and its allies more, not less, vulnerable to chemical attack. How would the CWC increase our vulnerability to chemical attack? By giving rise, and this has happened before in our history, to a false sense of security and a diminished program for defending our troops and our people against the danger of chemical attack by leading the American people to believe that with this convention we have somehow rid the world of chemical weapons when in fact even the CWC's defenders acknowledge that it will be unverifiable, unenforceable, and ineffective in globally banning chemical weapons.

Historically, Mr. Chairman, phony arms control treaties have invariably translated into reduced efforts by the democracies to defend themselves against the predatory dictatorships. Sadly, there is no reason to suppose that the CWC will prove an exception to this general rule.

Mr. Chairman, if some of our best defense experts warn us that this treaty will harm our vital security interests, if it will lead to the creation of a massive intrusive U.N.-style bureaucracy costing taxpayers as much as $200 million annually, and if on top of all that it will diminish our competitiveness, render us more vulnerable to economic espionage, endanger some of or constitutional rights, and impose unfunded Federal mandates on thousands of American companies, many of whom do not even make chemical weapons, why on Earth should the convention be ratified? To demonstrate leadership? But surely, real leadership requires a willingness to stand alone if necessary to defend our vital interests and ultimately the interests of freedom-loving people around the world, not to sacrifice those interests on the alter of a misguided bureaucratic global consensus.

Unfortunately, that apparently is not the way President Clinton understands U.S. leadership. He would have us be a leader in implementing a global agenda consisting of multinational accords that a majority of the American people simply do not support. Like the CWC, these multinational accords, whether they relate to the environment, patents, property rights, the way we educate our kids, defraying the costs of U.N. operations, or protecting our homes, are unwelcome intrusions on American sovereignty. The best way to resist all of this is simply to stop the present treaty.

And finally, Mr. Chairman, it speaks volumes about what is wrong with the present CWC that its proponents declare that the United States might become a pariah nation like Libya, Iraq, and

North Korea, if we do not ratify it. Surely only hardened anti-American propagandists, deluded one worlders, can ever entertain the idea that the United States is akin to North Korea, Libya, and other pariah states. After all, these pariah nations are developing and manufacturing chemical weapons at the same time that America is destroying its stockpile of such weapons. It is a sign of desperation, as well as an insult to all Americans that President Clinton and some of his allies are advancing this argument in order to defend a convention that is truly indefensible.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Forbes follows:]

PREPARED STATEMENT OF MALCOLM S. FORBES, JR.

Thank you, Mr. Chairman, for allowing me to testify before this distinguished committee today.

There are many compelling reasons to oppose ratification of the Chemical Weapons Convention. The fact is that the Chemical Weapons Convention significantly threatens the freedoms we Americans cherish, significantly diminishes America's sovereignty, and, significantly *increases* America's vulnerability to chemical warfare. It's as though we were being asked to endorse a drug that worsens the disease it purports to cure and, in addition, has some highly dangerous side effects.

To explain just how dangerous the CWC's side effects are, let me ask the distinguished members of this committee a simple question. What is the basis of America's greatness? Why is it that although the international arena contains many powers, we are the world's sole superpower? Any adequate answer to this question would have to include such factors as the competitive nature of our free market system, the unparalleled technological sophistication of American enterprises, and, most important, our basic freedom. These are the sinews of our power, the basis of our national greatness. Yet it is precisely these quintessentially American strengths that the Convention would undermine.

Let me begin by talking about American competitiveness. As I have strenuously argued on other occasions, maintaining America's competitive edge requires a lessening of the tax and regulatory burdens on the American people and our Nation's enterprises. Unfortunately, the CWC will have precisely the opposite effect. It will burden up to 8,000 companies across the United States with major new reporting, regulatory and inspection requirements entailing large and uncompensated compliance costs. These added costs constitute an added federal mandate. Like so many unfunded mandates, they are bound to retard our economic growth and make our companies less competitive.

Isn't it ironic, Mr. Chairman, meeting here on Tax Day and concerned as we all are with reducing America's tax burden, that we should even *consider* ratifying a Convention that amounts to a new tax on some of our most innovative and productive companies?

But it gets worse. For in addition to the costs arising from heavy-duty reporting, the Chemical Weapons Convention subjects our chemical companies to snap inspections that will allow other nations access to our latest chemical equipment and information. No longer will violators of intellectual property rights in China, Iran and elsewhere have to go to the trouble of pirating our secrets; incredibly, we ourselves will hand them the stuff on a silver platter. No wonder former CIA Director and Secretary of Defense James Schlesinger, has called the Convention a "godsend" for foreign intelligence services.

But it gets worse. The CWC threatens the constitutional rights guaranteed Americans under the Fourth Amendment. As former Defense Secretaries Dick Cheney, Donald Rumsfeld and Caspar Weinberger noted last September in a joint letter to Majority Leader Trent Lott, "the CWC will jeopardize U.S. citizens' constitutional rights by requiring the U.S. government to permit searches without either warrants or probable cause."

"Jeopardize U.S. citizens' constitutional rights"—think about that, Mr. Chairman. And think about all the criminal cases that our courts have summarily dismissed because, in their view, the defendants' constitutional rights had been violated by police searches conducted without "probable cause." Are America's businesses to receive less justice than suspected felons? Of course not—the very idea is preposterous! And yet, that is precisely what compliance with the CWC would entail.

As Department of Justice officials publicly acknowledged in testimony before the Senate Judiciary Committee on Sept. 9, 1996, in cases where private facilities do not voluntarily permit access to inspection, a criminal warrant would be required. Obtaining a warrant from a court, however, would require demonstration of probable cause. This will be impossible in most cases, because *under the Chemical Weapons Convention, the nation requesting an inspection need not cite its reasons for making such a request.*

Hence, the treaty would post an insoluble dilemma. Should the U.S. government choose to respect its citizens' Fourth Amendment rights not to be subjected involuntarily to searches in the absence of judicial warrants, it will be creating a precedent that other countries will assuredly cite to refuse on-site inspections in their territories. On the other hand, should the government choose not to respect those Fourth Amendment rights, it will be acting unconstitutionally.

But it gets worse. For in addition to threatening our Fourth Amendment rights, the Convention also undercuts our Fifth Amendment rights against having our property taken by the government without just compensation. As Judge Robert Bork noted in a letter to Sen. Orrin Hatch last August:

> * * * Fifth Amendment problems arise from the authority of inspectors to collect data and analyze samples. This may constitute an illegal seizure and, perhaps, constitute the taking of private property by the government without compensation. The foreign inspectors will not be subject to punishment for any theft of proprietary information.

Mr. Chairman, these are very grave constitutional issues that need to be resolved *before* the CWC is ratified. To wait until after the Convention is ratified and its provisions become the "supreme law of the land" would be an act of supreme folly.

There is yet another pernicious aspect of this Convention that I would like to touch on—the very different impact it would have on large and small companies. As former Secretary of Defense Donald Rumsfeld noted in testimony before this Committee last week, big companies are generally better able than small companies to withstand additional reporting, regulatory and/or government inspection requirements. Some might even regard such burdens as a barrier to entry that can enhance their market-share at the expense of their smaller competitors.

Large chemical manufacturers are among the most pervasively regulated industries in the world. These companies can reasonably conclude that the burdens of this Convention are manageable.

The same certainly cannot be said of smaller, less regulated companies—many of whom still seem to be unaware that this treaty could adversely affect them and their bottom lines. The array of American companies that fall into this category is simply mindboggling. They include those in such diverse fields as electronics, plastics, automotive, biotech, food processing, brewers, distillers, textiles, non-nuclear electric utility operators, detergents and soaps, cosmetics and fragrances, paints, and even manufacturers of ballpoint pen ink. The Senate would be ill-advised to ratify a Convention that could harm so many American enterprises without having truly compelling reasons to do so.

Finally, Mr. Chairman, in discussing the harmful side effects of the Chemical Weapons Convention, I would like to draw your Committee's attention to Articles X and XI. These provisions, which obligate the signatories to "facilitate the fullest possible exchange" of technology directly relevant to chemical war-fighting, will be cited by other governments—and, probably, by some American companies—as pretexts for doing business with Iran and Cuba, with adverse consequences for U.S. national security interests.

These, then, are some of the costs associated with ratification of the Chemical Weapons Convention. They are unacceptably high. Are there any offsetting benefits? Unfortunately, the answer is no, there aren't. In fact, far from protecting us against an outbreak of chemical warfare, the Convention would increase the likelihood of these awful weapons being used. As former Defense Secretaries James Schlesinger, Caspar Weinberger and Donald Rumsfeld wrote in last month's *Washington Post* (March 5), "The CWC would likely have the effect of leaving the United States and its allies more, not less, vulnerable to chemical attack."

How would the CWC increase our vulnerability to chemical attack? By giving rise to a false sense of security and a diminished program for defending our troops and people against the danger of chemical attack. By leading the American people to believe that with this Convention we have somehow rid the world of chemical weapons when, in fact, even the CWC's defenders acknowledge that it will be unverifiable, unenforceable and ineffective in globally banning chemical weapons. Historically, phony arms control treaties have invariably translated into reduced efforts by the democracies to defend themselves against the predatory dictatorships. Sadly, there

is no reason to suppose that the Chemical Weapons Convention will prove an exception to this general rule.

Mr. Chairman, if some of our best defense experts warn us that this treaty will harm our vital security interests? If it will lead to the creation of a massive, intrusive, U.N.-style bureaucracy costing American taxpayers as much as $200 million annually? And if, on top of all that, it will diminish our competitiveness, render us vulnerable to economic espionage, endanger our constitutional rights, and impose unfunded federal mandates on thousands of American companies, none of whom even make chemical weapons, why on earth should the Convention be ratified? To demonstrate "leadership"? But surely, real leadership requires a willingness to stand alone, if necessary, to defend our vital interests and ultimately the interests of freedom-loving peoples around the world—not to sacrifice those interests on the altar of a misguided, bureaucratic global consensus.

Unfortunately, that apparently is not the way President Clinton understands U.S. leadership. He would have us to be a "leader" in implementing a global agenda consisting of multinational accords that a majority of the American people simply do not support. Like the Chemical Weapons Convention, these multinational accords—whether they relate to the environment, patents or other property rights, or to the ways in which we educate our children, defray the costs of the U.N. operations or protect our homes—are unwelcome intrusions on American sovereignty. The best way to resist them is to stop the present treaty.

Finally, Mr. Chairman, it speaks volumes about what is wrong with the present Chemical Weapons Convention that its proponents declare that the United States will become a pariah nation like Libya, Iraq and North Korea if we do not ratify it. Surely, only hardened anti-American propagandists and deluded One-Worlders could ever entertain the idea that the United States is akin to North Korea, Libya, etc. After all, these pariahs are developing and manufacturing chemical weapons at the same time we are destroying ours. It is a sign of desperation, as well as an insult to every American, that President Clinton and his friends are advancing this argument in order to defend a Convention that is truly indefensible.

Thank you, Mr. Chairman, for your gracious attention.

The CHAIRMAN. I suggest, anticipating that additional Senators will appear, there are afternoon committee meetings going on, as well, in other areas of the Capitol. I suggest that we embark on about a 7.5 minute round of questions.

First of all, I am going to use a few minutes of my time to say that my dear friend, the Senator from Delaware, never disappoints me. Somehow he always comes up with statistics that I do not know where they came from, and I do not know that he can explain them, either. But here he did it again today. But I am concerned, I must say to my friend, that the administration has becoming expert in low-balling the number of businesses that will be affected by the chemical weapons treaty, in order, I think obviously, to avert concern in the Senate.

Now, back in 1993 the Congressional Office of Technology Assessment reported that the administration believed that over 11,200 facilities would be subject to this treaty. During the past 4 years, that number has gone down like the Titanic. It dropped to 6,300 in October 1994, and then to 3,000 in May 1996. Now, continuing the trend of the CWC's seemingly ever-shrinking impact upon business, ACDA is now declaring that only 2,000 companies will be affected. Lord knows what it is going to be tomorrow morning at 10.

Yet when I review the response codes on ACDA's industry data base, it seems to me that the administration has simply developed now new information about 5,583 of these facilities to confirm or deny—confirm or deny—that they would be affected by the CWC. In fact, as of last year only 668 facilities in the entire country had responded to ACDA in recognition of the fact that they would have new regulatory obligations under the CWC. This means that even

CMA-owned facilities have not responded to ACDA's industry survey questionnaire.

Accordingly, I do not think it is appropriate for the administration to reduce their estimates when the companies themselves have not responded one way or the other, or to confirm or deny that they use or produce the chemicals that are subject to the treaty. Accordingly, I think there are serious problems with the statistics that may have already been presented today by my friend, or subsequent to that.

Now, Mr. Forbes, the CWC will require the Lord knows how many American companies to fill out detailed data declarations. Some companies have conducted comprehensive internal cost reviews of their own, based on the instruction manual and draft regulations compiled by the Commerce Department. The cost estimates associated with the reporting burden range from $1,500 to $2,000 for two small companies producing discrete organic chemicals, up to $250,000 estimated by a large diversified company.

Now, my question to you, sir, is do you think the advantages of this treaty, if any, are sufficient to warrant subjecting American companies to this new regulatory burden?

Mr. FORBES. Absolutely not. Even putting aside the fact that other nations can easily circumvent this treaty, just as other nations violated the 1925 accord banning the use of poison gases, even if that is true it will impose a burden on American companies, and to concentrate on trying to assess what that burden is, trying to assess how we might reduce it, it lies in the interpretation of a body over which we will have little effective control.

And so I do not see what the advantages are to argue, whether it is going to be 100 facilities or 10,000 facilities, Mr. Chairman, when you were reciting those numbers I thought for a moment you were talking maybe about the stock market going down to 2,000.

But we do not know. It is uncharted territory. We do not know what kind of inspections it will go to.

When the Iranians put in the request that they have spotted a challenge inspection somewhere, we do not know. And if we do not know, what are we doing it for? And given the history of these agreements and given how easy it is to produce deadly weapons, I mean, look at Iraq. The most trod on nation in the world in terms of inspections. Yet Saddam stays one step ahead of those inspectors. If it cannot work in Iraq, why are we subjecting ourselves to this in the first place.

The CHAIRMAN. According to the Congressional Office of Technology Assessment, to which I referred a minute or so ago, the U.S. Chemical industry is one of the top five industries targeted by foreign governments, and the problem of industrial espionage is growing. Do you agree with that statement?

Mr. FORBES. Yes, and we have seen an example of it last year.

The CHAIRMAN. And because proprietary information is often the basis for a chemical company's competitive edge, both nationally and internationally, the theft of trade secrets can result in major loss of revenue and investment. In fact, the theft of trade secrets can cripple even a giant company, according to this report, and can be fatal to a small enterprise. I suppose that you agree with that assessment by this government agency.

Mr. FORBES. [Nods affirmatively.]

The CHAIRMAN. But in any case, former Secretary of Defense and Director of Central Intelligence Jim Schlesinger testified last week, sitting almost where you are sitting right now, that the CWC would be a godsend, and that is his word, a godsend to foreign companies and governments engaged in industrial espionage. My question, sir, is do you agree with Jim's assessment of that?

Mr. FORBES. I am afraid so, yes.

The CHAIRMAN. The Chemical Manufacturer's Association, which represents the largest—the largest—U.S. Chemical companies, supports ratification of this treaty. This past week, as you know, former Secretary of Defense Rumsfeld suggested that the reason for CMA's support may be due to the fact that the large companies can cope with the new regulatory burden and so forth, but these are not surmises, they are the result of studies by a number of us. My question is how badly do you think this treaty will harm U.S. industry, and why do you think the association supports it?

Mr. FORBES. Well, large companies can cope with regulation. In fact, historians of regulation in America point out that larger companies often like regulation, often like government intruding, because that makes it more difficult for competitors to enter the business and compete. When airlines were deregulated we got a whole host of new companies coming in. When telephones were deregulated a whole host of new companies came in. When railroads were deregulated, short lines proliferated. So I think he is onto something.

It seems to be in human nature. They are obviously supporting it with the most honorable of motives. They think it will be good. But that begs the question. Here we are getting into almost how many angels dance on a pin arguments about how many facilities, what kind of chemicals, Schedule III, Schedule II, which begs the question will this reduce the possibility of production of poisonous chemicals around the world by nations that wish to do it. The answer is no.

The CHAIRMAN. I thank you.

Senator Biden.

Senator BIDEN. Thank you very much.

Mr. Forbes and Senator Helms, let me tell you where I got my numbers. I got my numbers from an analysis done by the Commerce Department, and the way it explains its previously higher number—I am reading from a letter signed by former Secretary of Commerce Mickey Kantor and Philip Lader, Administrator of the Small Business Administration. And I quote:

> Previously, the administration had estimated that more companies would be required to submit a data declaration. However, additional analysis indicated that many did not cross the CWC production threshold for reporting. Further, administrative exemptions at the Organization for the Prohibition of Chemical Weapons (OPCW) will be crafted to exclude entire industries from reporting—biomediated processes (such as certain beverages), polymers (such as certain plastics used in football helmets),* * *. In addition, plant sites that exclusively produce hydrocarbons (e.g., propane and ethylene) are completely excluded from reporting requirements.

That is why the number is different. Number 1.

Number 2, I might point out that these onerous reporting requirements are a total of, for Schedule I, I believe, six pages long,

for Schedule II I think it is seven, and Schedule III it is five. And of Schedule III and the so-called DOC's, which total roughly 1,900 of the 2,000 companies we are talking about, the total number of inspections under the treaty allowed, period, in any 1 year is 20. Let us put this in perspective—20.

Now, it does not go to the sovereignty argument Mr. Forbes raised. I understand that. But it goes to the facts—20—t-w-e-n-t-y—20. And if there are 1,800 of those 1,900 companies, as I am saying, that are in Schedule III and the so-called DOC's, if I am right about that, it is 20 out of 1,900. If it is 10,000 or whatever number my friend uses, or 6,000, it is 20. That is Number 1.

Number 2, on this issue of search warrants, there is a section in the treaty now, put in at the insistence, I am told, of President Bush, and it deals with covering the Fourth Amendment. It is good to see Mr. Gaffney here. Mr. Gaffney, you staff more people than I have ever seen. You are a very, very ubiquitous fellow. Every witness we have had against, you have been staffing, and they are fortunate to have your expertise.

"In meeting the requirement to provide access as specified in paragraph"—I am reading from the Verification Annex of Challenge Inspections. "In meeting the requirement to provide access as specified in paragraph 38, the inspected State Party shall be under the obligation to allow the greatest degree of access, taking into account any constitutional obligation it may have with regard to proprietary rights or searches and seizures." But assuming that was not sufficient, which it clearly is legally, assuming that was not sufficient, we are prepared to accept a condition to the treaty requiring search warrants for challenge inspections and the establishment of probable cause.

Now, I might also point out there is—this is black letter law, what I am referring to now. We are not talking about any hyperbole on my part about how search warrants work and do not work. The Supreme Court, in *Marshal* v. *Barlow's, Incorporated*, a decision argued June 9th, 1978, decided May 23rd, 1978, which is the prevailing law, talks about administrative warrants, criminal warrants, and those inspections where no warrant is required. And I might add, Federal law authorizing warrantless searches, which I am sure, I suspect Mr. Forbes, you would disagree with all these, but in fact I am citing what the law is. I am not implying that you agree what the law should be. I would imagine you do not think there should be the Federal Insecticide, Fungicide, and Rodenticide Act; or the Nursery Stock Guarantee Act; or Immigration and Naturalization Act; or Toxic Substance Control Act; Consumer Product Safety Act; National Forest System Drug Control Act; Bald Eagle Protection Act; Migratory Bird Treaty; Skies Act; Fisher and Wildlife Act of 1956; Northern Pacific Halibut Act of 1982; Whaling Convention of 1949; Tuna Convention of 1950; Eastern Pacific Tuna Licensing Act of 1934, Endangered Species Amendments of 1982, Antarctic Conservation Act of 1978, Antarctic Marine Living Resources Convention of 1984, Lacy Act Amendments of 1981; Food and Drug and Cosmetic Act; Federal Meat Inspection Act; Fisherman's Protective Act; Distillery Spirits Act; Occupational Health and Safeties Act; Migrant Season Agricultural Workers Act; Mine Safety and Health Act; Safe Drinking Water Act; Surface Mining

Control Act; Clean Water Act; Resource Conservation Recovery Act; Clean Air Act; Comprehensive Environmental Response Compensation Liability Act; and Federal Land Policy Management Act. I may have made the case why the Government is over-reaching. But I also would argue this makes the case that what is suggested in this treaty is nothing—nothing—nothing—different than the way in which the law has worked so far. None of these requires an act.

To walk on your estate to find out whether you are shooting bald eagles, which I am sure you are not, Mr. Forbes, they are allowed to do that without a warrant, old buddy. They are allowed to do that. So there are a lot of things you are allowed to do without a warrant. But there is a second category here. Nothing in here can be done without that kind of warrant if, in fact, any business objects.

There is a second category in the Supreme Court law, and it is called an administrative warrant. And it says for purposes of administrative search such as this, and I am reading from the case and there was an OSHA inspector who wanted to come on, probable cause justifying the issuance of a warrant may be based not only on specific evidence of existing violations, but also on showing that reasonable legislative, administrative standards for conducting an inspection are satisfied with respect to a particular establishment. That is an administrative warrant.

And third, there is a third kind of warrant, and that is a criminal warrant.

So we are willing to add a condition to this treaty requiring a criminal warrant in addition to an administrative warrant, where I might add under our Constitution and our Supreme Court now in similar circumstances—because the Court uses all this test on all Fourth Amendment cases—they use this notion of whether or not there is reason to believe the party involved thought they were protected from this kind of intrusion, whatever it is. And they argue that pervasively regulated industries start off without the benefit of the presumption that they would not be inspected without a warrant. That is the basis on which the Supreme Court could uphold all of these warrantless inspections or searches.

We are not talking about that. We are talking about criminal warrants in areas where there are challenge inspections. And so I hope when you see the condition, which I would be happy to show you Mr. Forbes, your concern on at least that one issue will be mildly allayed.

Mr. FORBES. By the way, Senator, I do not shoot bald eagles, and I do not shoot Democrats, either.

Senator BIDEN. Well, I will tell you what, if anybody could shoot Democrats and do it effectively, you are very good at it; and I mean that in a complimentary way. The way I saw you take my State by storm, I am glad I was not a Republican standing in the way of your shots.

Mr. FORBES. Some of my best friends are Democrats.

Senator BIDEN. And mine Republican.

The CHAIRMAN. I have just got one question. Did you understand the question?

Senator BIDEN. Well, I did not hear the answer, Mr. Chairman.

Mr. FORBES. I am trying to be diplomatic, Mr. Chairman.

The CHAIRMAN. Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you.

Welcome, Mr. Forbes. Good to have you with us.

Mr. FORBES. Thank you, Senator.

Senator HAGEL. As you know, every time I have an opportunity to be a part of this committee, it is a rather didactic experience, listening to my colleagues.

I never knew, Senator, that we had that many acts. And the way you went right through them was magnificent.

Let me, before I ask you a question, Mr. Forbes, make this observation. I think all my colleagues on this panel and in the U.S. Senate are coming at this issue based, first, not on what is good for business, what is bad for business, but what is good for America, what is in our best security interest.

Mr. FORBES. Right.

Senator HAGEL. That is the way I am looking at it. Obviously we have other elements and dynamics that are involved in this discussion. We should debate them. We should hear your views, as the next panel's views will be, I suspect, somewhat different. But I think it is important that we not lose sight here of what we are about. And that is dealing with the reality of a very unstable, very dangerous world. And everybody's opinion must be heard, but, in the end, it seems to me, and I think I can speak generally for my colleagues, that we must do what is right for the security interests of this country.

In particular, the young men and women of our armed forces, who may some day be called upon to fight in a theater against a nation that is using chemical weapons. And I think the defining question for all of us is, does this treaty help them or hurt them?

Now, with that said, I would like for you to delve in a little more into Articles X and XI, the transfer of technology, the obligations of what we share with our treaty friends and allies. That has gotten an awful lot of attention during the course of this debate, which I think it should have and is appropriate. And I noted you mentioned it in your testimony. And I would like for you to define more of that, if you would.

Mr. FORBES. Well, under Articles X and XI, there is the very real possibility that if we, one of our companies, we come up with a way of defending against chemical weapons, that that technology may end up in the hands of countries around the world. Countries who sign on to this convention have the right to request that technology. And we may be obliged to provide that technology.

And I think that that is a very real danger. The fact that four defense chiefs believe that we may have to give up information and technology that could be used for defensive purposes and would therefore allow a rogue nation to reverse engineer, to figure out how to possibly get around these defenses is, I think, a good reason to pause and say, is this the best way to protect our people in the future?

And if you look at the history of treaties, especially in the twenties, simply saying you are against poison gases, against war, as we did in the Kellogg-Briand Pact of 1928, or against armaments, as we did in the Naval Disarmament Treaty of 1922, guarantees, ultimately, nothing. In the 1980's, for example, Iraq used

poison gases against Iran. Iraq used poison gases against the Kurds. The international community did nothing, despite that 1925 Geneva agreement.

So the possibility that they could get that kind of technology and put it to uses to which we do not want it to be put to use is something that, as I say, should give us real pause.

Senator HAGEL. In your opinion, can this treaty be fixed?

Mr. FORBES. I think you have to ask a very basic question. Given the nature of chemicals, given the fact that you can take compounds—what they call precursors or ingredients—that in and of themselves are harmless, put them together in a basement laboratory and come up with something that is deadly, should make us think, is this the best way to protect our people, where we are subject to interpretations on inspections, but those who want to do it can do it?

Take Iraq again. They have inspectors on their soil. They were humiliated in a war. Yet the head of the agency that is in charge of those inspections said recently that the Iraqis have more than a handful of missiles, and it looks like they are playing games again with biological and chemical weapons. If they can do that under that kind of supposedly severe regime, who knows what Iran is doing.

We know what Libya is doing in the areas of biology, thanks in no small part to the Germans. So does this treaty make us more secure or does it end up being one of those situations where, despite its good intentions, it does more harm than good?

I, so far, based on the evidence I have seen as a citizen, I think it does more harm than good, especially when you look at the treaties of the twenties. What good did they do when violators were there?

Senator HAGEL. Should we have a chemical weapons treaty? Can, in your opinion, we produce one?

Mr. FORBES. Well, there is a bill, I understand, Senator Kyl and others have been putting together that might do something in terms of something substantive. I have not seen the bill. So maybe there is a better way to do it. But, clearly, this convention is not the way to do it, given the flaws that those defense chiefs and others have pointed out.

Senator HAGEL. If I could also refer back to your testimony, your point about it giving rise to a false sense of security. Which, I think, by the way, has been overlooked in some of our deliberations here, and has been easily dismissed, because it is one of those intangibles that is easy to dismiss. Would you like to elaborate a little bit on your comment about a false sense of security?

Mr. FORBES. Well, the classic case are the three treaties of the twenties, the Naval Disarmament Treaty of the early twenties, the prohibition against poison gas in the mid-twenties, and the Kellogg-Briand Pact in the late-twenties, that led the British and the democracies—not so much the French, but certainly the British—to believe that they did not have to take adequate measures for defense. And once you start on that slope, it is very hard to reverse it. Because there are always pressing domestic priorities. We see it today.

We are now downsizing to where our defense spending as a proportion of our GDP is getting down to below Pearl Harbor levels. But it is very hard to reverse, given the pressures that we face each day.

So, also, too, given some of the treaties we had in the sixties and seventies—look at SALT I—that did not prevent the Russians from a massive armaments program, which necessitated our building up in the 1980's. So it goes right up to modern times.

And also, too, in the early nineties, we did sign an agreement with the Russians on chemical weapons. And the evidence indicates that they are going ahead and developing and producing deadly chemical weapons. They are ignoring what we signed 6 or 7 years ago.

Senator HAGEL. Is there a particular way you get at the Russian chemical weapons program, in your opinion?

Mr. FORBES. Well, you publicize it. You make it very clear that this is going to affect our bilateral relations. In other words—I will give you an example outside of the defense area. A little over a year ago we were ready to sign an agreement, a worldwide agreement, on telecommunications. To its credit, this administration said this is pretty weak stuff, we can do better to open up those markets. Everyone said, oh, no, this is going to—our international allies will be upset at us. But, to its credit, Kantor and others said no, we are going to go for a better deal.

A few months ago they got a better deal. Because we took leadership. We had a clear idea on what we wanted. And here are two signatories, supposedly, of this convention. And here is the headline: China helps Iran—it was just in the paper on Sunday—develop chemical arms. The treaty is not worth the paper it is written on the way it is now.

Senator HAGEL. Thank you.

Thank you, Mr. Chairman.

Mr. FORBES. Thank you.

The CHAIRMAN. What do you think, about 2 or 3 minutes a piece for the next round? You name it.

Senator BIDEN. Three. If you give me the choice, I will take the higher.

The CHAIRMAN. You go first.

Senator BIDEN. Well, thank you, Mr. Chairman.

Mr. Forbes, it is interesting, you cited these treaties and agreements in the twenties as being useless, yet no chemical weapons were used in World War II.

Mr. FORBES. They were not used in World War II, because both sides felt it would be counterproductive to their own interests.

Senator BIDEN. Right.

Mr. FORBES. Not because of a treaty.

Senator BIDEN. Right.

Mr. FORBES. In the 1980's, when Iraq thought it was in its interests to use it, it did. And the international community did nothing.

Senator BIDEN. Right. Now, you acknowledge that does not have anything to do with whether there is a treaty or is not a treaty, right?

Mr. FORBES. I am saying it takes U.S. leadership, in terms of national security, to make things happen. Signing a piece of paper

will not, in and of itself, do it. As you know, enforcement is key. But, unfortunately, the history of these treaties suggests that in a democracy, where we would rather be doing other things, like bettering our lives, than having to worry about defense, these treaties do have a lulling effect, where we do not take the necessary steps.

Senator BIDEN. Well, we did all these arms control treaties and the cold war is over. Not because of that, but not in spite of that. I mean it is over. You know, all this stuff, these horrible treaties we signed and these arms control treaties, it is amazing, the Soviet Union is gone, in spite of the fact that we lulled ourself to sleep with all those things. It just amazes me how that happened.

Mr. FORBES. No. What happened, as you know, in the late-seventies, we were in serious trouble. We were in serious trouble here at home. The Soviet Union was on a major arms buildup. It gratuitously, because it did not respect our leadership, invaded Afghanistan. And that led, as it does in a democracy, in the American democracy, to a sense of alarm, a sense of renewal. And that is how we got the buildup of the eighties. Ronald Reagan stood strong, and we won the cold war.

If we continued the policies of the seventies, we would still have the cold war today.

Senator BIDEN. Well, what you are saying is, if we continue the policy of being strong and staying vigilant and have arms control treaties, they work in tandem. That is what Reagan did, did he not? He is the guy that gave us START. He is the guy that had this buildup and also got rid of the nuclear weapons, right?

Mr. FORBES. Because he did it—he had credibility to make the agreements work.

Senator BIDEN. I see. I see.

Mr. FORBES. And this agreement, even if you have Ronald Reagan—he said—Ronald Reagan said "Trust, but verify."

Senator BIDEN. Right.

Mr. FORBES. The villains here are not trustworthy.

Senator BIDEN. And he drafted the treaty.

Mr. FORBES. The villains here are not trustworthy, and you cannot verify what the North Koreans are doing or even what signatories like the Iranians or the Chinese may be doing. So this is a treaty, unlike some of the earlier arms agreements, this is one where the U.S. leadership is going to be for naught. You cannot do it.

Senator BIDEN. Have you seen an arms control agreement you like?

Mr. FORBES. The test ban of 1963 was good, sure.

Senator BIDEN. How about the one now? How about the Nuclear Test Ban Treaty now?

Mr. FORBES. Fine. Fine. That is where judgment——

Senator BIDEN. Mr. Gaffney just blanched. He is going to work on you on the way out.

I expect, by next campaign, you will have a different view.

Thank you, Mr. Chairman.

The CHAIRMAN. Why do not you go ahead. I will go last.

Senator HAGEL. Thank you, Mr. Chairman.

Mr. Forbes, would you go back and talk a little bit about your earlier statements, the effect on smaller, less regulated companies, in your opinion, this treaty would have.

Mr. FORBES. Well, this is, as you can see by the numbers that are being bandied about and how you interpret what is in the convention and what we promise we might add to the convention, makes it a whole murky area. We are on uncharted waters. And to say gee, it is going to be simple, the initial requirements, given the nature of bureaucracies—we know they do not say give us less paper—usually one thing leads to another.

Senator HAGEL. Well, I was interested very much in Mr. Rumsfeld's comments when he was here last week. What he was going beyond getting to was it would have, in his opinion, this treaty, a very inhibiting factor on young, small companies. And Senator Biden has, I think, addressed some of that. And I guess where we all have to come down to is where is the truth here. And I had an opportunity to be with Senator Biden last week on some of this. But that is a factor that I think is very important here. Because these young companies that are the engines of our economy should not have to carry a disproportionate burden here if we would go forward with this treaty or some form of this treaty.

And if you would like to, especially from your perspective, come at this in some way, I would be grateful for any other comments you want to make on this.

Mr. FORBES. Well, as you know, it is conceptual, because we do not know how the new body in The Hague is going to—how vigorous it is going to be in terms of these intrusive inspections. We also do not know about the so-called challenge inspections, whether they are going to be used against a smaller company, which could put it out of business. This is uncharted territory. But history shows that when you have regulations, when you have to keep track of things not for a business purpose but for a potential inspection or actual filings, it does have a cost and an inhibiting effect.

And you can see the nature of bureaucracies. Look what happened to telecommunications. We passed a bill a little over a year ago that said it was supposed to remove some of the shackles. The way it has been interpreted by the courts and the FCC, it is just as regulated as before—almost as regulated as before.

Senator HAGEL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Forbes, what do you think of the drop dead date of April 29th? They say that the whole thing will collapse and we will be at the mercy of all these rogue nations if we do not ratify this treaty by the 29th, but we will have to pay one-fourth of the cost nonetheless. Does that make any difference to you?

Mr. FORBES. Yes. And unfortunately, when you urge other nations to ratify something in order to trigger a date like April 29th, I think that shows a lack of good faith. And this, again, gets to leadership. If we were truly interested in looking at this in a timely but reasoned way, without an artificial deadline, maybe we could strengthen the treaty. I do not think so. But to put an arbitrary date and say the world will come to an end, when we help engineer that date, I think we should say——

The CHAIRMAN. Well, it was clearly put there, do you not think, to stampede the Congress, or the Senate, to say that boy, we got to do this by the 29th of April or the whole world collapses? I have heard it over and over and over again, and it does not hold any water at all.

But let me tell you what has happened. I think that the effort by some in the media, the *Washington Post* and the *New York Times* and some like that, that have advocated this treaty to the point of absurdity—there have been other newspapers—the *Wall Street Journal* has done a good job, your magazine has done a good job, and some others—but for the most part, the American people were not paying any attention to this treaty actually. So the result was that they could say 73 or 83 percent of the people approved the treaty.

Well, all of a sudden, the worm turned and the contents of this treaty were being analyzed in the media, particularly on the radio and in television. And I have a poll here that shows a total sample, total support as of April the 5th was 31 percent for the treaty—31 percent of the people support the treaty; 60 percent oppose it.

Now, in my own office they keep track of the calls, particularly when I am involved in an issue. And even in my home State a lot of people, even though they support me, they kept reading in the liberal media that this was such a great and grand thing and only idiots would oppose. And so that had some effect. It was about 50/50 in my State. Now it is about 80/20. And in our telephone calls, we had 83 calls yesterday relating to this treaty.

How many do you think supported it?

Three. Eighty now oppose it. So I think they have overplayed their hands.

I see Senator Kerry is here. And we had agreed on 3 and a half minutes. Is that what we said? We are glad to have you, sir.

Senator KERRY. Well, that is time for a good dialog, Mr. Chairman. Thank you very much.

Mr. Forbes, I have been interested to see that the Chemical Manufacturers' Association, the Synthetic Organic Manufacturers' Association, the Pharmaceutical Research and Manufacturers' Association of America, the Biotechnology Industry Organization, the American Chemical Society, the American Physical Society, the American Institute of Chemical Engineers, the Council for Chemical Research, and several other chemical trade organizations all strongly support the CWC. And they urge us to vote to ratify it. And they all insist that it will not pose an undue burden on business.

The National Federation of Independent Businesses responded to treaty opponents' claims that they were opposed by saying that those claims were 100 percent incorrect, according to the *Wall Street Journal,* which also quotes an NFIB official as predicting its members are not going to be impacted, contrary to your statement about small business.

So I really need your help in understanding what is the documentation here. On what do you base this notion? If the chemical industry, which is the industry that subjects itself to inspections, is for it, and they are threatened by the loss of some $600 billion worth of business, why are you so convinced they are wrong? And

what evidence do you have to support that they are wrong and cannot look out for their own interests?

Mr. FORBES. Well, first of all, as a general matter, there is no way that—the CWC is unverifiable and unenforceable with states like Iran, China, not to mention those that are not going to even sign the thing. The question now comes, how intrusive will it be on the United States?

Don Rumsfeld, who had testified here last week, who has been in a large business, made the point that historians have made. And that is big businesses can cope with regulations better than small businesses. As a matter of fact, when you have a regulatory regime, it makes it harder for small businesses to get in and compete. And they figure that since they are heavily regulated anyway, they can put up with this kind of regime.

But the fact of it really is not whether it is good for the Chemical Manufacturers' Association, the question is, is it enforceable, is it verifiable, is it good for the interests of the United States? Because if it is not good for America, then we should not do it just because a trade association says it might benefit our members. So big companies, as a rule, can cope with regulations, but small businesses can less cope with regulations. And the real problem is not just routine inspections—we can cope with those—but so-called challenge inspections. And that is unchartered territory.

Senator KERRY. Well, the challenge inspections, according to every observer, are going to take place primarily at military facilities. Nobody anticipates a series of major challenges at the commercial facilities.

Mr. FORBES. Well, given the nature, as you know, of——

Senator KERRY. And we are not looking at small manufacturers here. I mean you are aware, are you not——

Mr. FORBES [continuing]. Given, Senator, the nature of the manufacture of chemical weapons, since it can be done in a basement or a bathtub——

Senator KERRY. Correct.

Mr. FORBES [continuing]. It may need to be—experts say it should not need to go beyond military bases. But with chemical weaponry, since you can manufacture it almost anywhere, you may need a challenge inspection.

Senator KERRY. Well, let us follow that through. It can be manufactured anywhere, correct? It can be manufactured anywhere, even as we sit here today, correct?

Mr. FORBES. Well, you look at Iraq——

Senator KERRY. Just follow me through. Just follow the thinking.

Mr. FORBES. Yes, OK.

Senator KERRY. It can be manufactured anywhere, as we sit here today, can it not?

Mr. FORBES. Yes.

Senator KERRY. And this regime, this CWC, you are aware, is going to take effect no matter what we do; you are aware of that?

Mr. FORBES. Yes.

Senator KERRY. So as of April 29th, a date that you want to discard, something is going to happen, is it not? Correct?

Mr. FORBES. Not if we take leadership.

Senator KERRY. No, no matter what we do, something happens. You are absolutely incorrect.

Mr. FORBES. No, Senator——

Senator KERRY. On April 29th, the group that organizes the process of inspections takes its work without the United States of America, because we have not ratified it. Only those who have ratified are part of that; is that not correct?

Mr. FORBES. OK.

Senator KERRY. So, no matter what we do, on April 29th, I think it is 70 nations are going to sit down at a table and say, OK, how do we go about the business of doing what the United States asked us to do, but now does not want to do, correct?

Mr. FORBES. That is one way to put it. There is another way to put it.

Senator KERRY. Is that not accurate?

Mr. FORBES. What is your question? Because I believe——

Senator KERRY. My question was very simple. Is not that fact going to happen? Are they not going to sit at a table, without the United States, if we do not ratify it?

Mr. FORBES. They may sit at a table, but if the United States takes the lead, that treaty can be rewritten. We helped trigger that April 29th date by asking other nations to ratify that convention, so that trigger date came in. It was a cynical ploy by this administration to put the Senate in a box and say, if you do not ratify this, you are harming the future by allowing chemicals out there. They are using symbol over substance. And I think it is a shame that we have been put in that box. And we should say no.

As I pointed out earlier, in a whole other area, in telecommunications, for once this administration took a proper lead, over a year ago. There was a bad agreement on the table. Kantor said we can do better. Our allies said we cannot do better. He said we can. We went back to the table. We got a better agreement. And it was put on the table again this year and everyone praised it as being better than it was for American interests a year ago.

So we put ourselves in the box, and a great nation should say, if we put ourselves in a box and it is not good for America and not good for the world, we can take ourselves out of the box.

Senator KERRY. Well, let me address that. You are a promoter and have been—and I admire what you and your family have done to promote capitalism and the notion of entrepreneurship. As an entrepreneur, having signed on to this treaty—72 nations is the number that have ratified it—they will now be in a position where they can engage in a formal trade, under Schedule II, chemicals. But any nation that is not a participant is not going to be able to engage in that, correct?

Now, as an entrepreneur, if you were part of a nation that has signed on to it, you are going to be greatly advantaged. Because the United States of America's chemical companies are not going to be allowed to engage in the transfer of these chemicals under this treaty. So all of the entrepreneurs in these other countries are going to be sitting there licking their chops and saying, wow, we sure have a great capitalist opportunity here to make money at the expense of the United States of America.

That is what all our chemical companies think today.

Mr. FORBES. Senator, if a treaty is not good for America, then we should not ratify it.

Senator KERRY. Well, what do you think about what I just said?

Mr. FORBES. And if that is blood money, selling chemicals to nations that should not have that stuff in the first place, like Iran and China and some others, we should not be making those sales in the first place. We denied ourselves sales during the cold war, hurt our commercial interests, because we felt it was in our national interest. We should not hesitate to do so again.

Senator KERRY. But we do not sell to any of those countries, because they are all embargoed under trade restrictions.

Mr. FORBES. Yes, but under the——

Senator KERRY. It is not blood money to us. We do not sell to them.

Mr. FORBES [continuing]. But you just said before we are going to lose sales opportunities.

Senator KERRY. We are going to lose sales opportunities, because we are not allowed to trade among the ratified countries.

Mr. FORBES. Iran and China are signing on to this thing apparently.

Senator KERRY. But then they are subject to challenge inspection.

Mr. FORBES. Big deal. Iraq is the most regulated nation in the world in terms of inspections and the U.N.—and the chief inspector has just told us that Saddam still stays one step ahead. He is still making the missiles. He is still making and doing biological and chemical research.

Senator KERRY. We are not talking about Iraq.

Mr. FORBES. He is even still fooling around with nukes. If it can happen in Iraq, it can happen anywhere. I do not care how many inspections you have.

Senator KERRY. We are not talking about Iraq. We are talking about Iran.

Mr. FORBES. No. We are talking about Iraq is the most inspected nation on Earth today. And my point is that we have more inspections——

Senator KERRY. And we know exactly what they are doing pretty much.

Mr. FORBES. Yes, right. Exactly.

Seriously, the head of the agency, Senator, who did the inspection, just told us the other day that Saddam is still doing stuff he should not be doing.

Senator KERRY. Correct.

Mr. FORBES. And they have a hard time keeping up with him. If they have a hard time keeping up in Iraq, what of North Korea, Iran, Libya?

Senator KERRY. But, you see, what you seem to—and I think many of the critics of the treaty—seem to ignore is the fact that we are not going to produce these weapons anyway, Number 1. We do not sell to these people anyway, Number 2. And we do not have a regime today for any kind of inspection of accountability on the transfer of the precursor chemicals. Therefore, what you gain with this, while not perfection—none of us have alleged that any treaty—well, I will not say any treaty—that almost any treaty provides

you with a foolproof—certainly as to chemical weapons and biowarfare weapons, I do not think there is any such thing as a verifiable, foolproof treaty, because of where you can produce this.

The question is, are you better off with a structure that affords you some mechanism of tracing precursor chemicals, some responsibility of companies for reporting, some system of accountability through challenge and regular inspection, or none at all, as well as being outside of the sales? Now, that is really the issue.

The CHAIRMAN. We will let Mr. Forbes answer that without interruption, and then we will go to the next panel.

Mr. FORBES. OK. The ease with which you can make chemical weapons today—you can do it in a basement, you can do it in a bathtub—the ease with which you can do it makes this treaty unverifiable and unenforceable. The danger from doing this treaty, especially in a democracy, as we saw in the twenties and thirties, it will give us a false sense of security that, by golly, we have dealt with it.

Now, you have said, and I admire your candor, it is not perfect. But, yet, the administration goes out there—he did it with the newspaper editors and he has done it in speeches, making it sound like this is a foolproof protection for our kids, we have got to do it or they are all going to be blasted away. So a bill of goods is being sold.

At best, this is a flawed treaty that is going to do little or no good. And so, therefore, why lull ourselves with a false sense of security? I think we saw in the twenties and thirties where that led. We saw it in the seventies, where that led. Why repeat history?

The CHAIRMAN. Very well.

Mr. FORBES. Thank you.

The CHAIRMAN. I thank you so much, Mr. Forbes, for being here with us today and for coming. I know it is some inconvenience to yourself on short notice.

Mr. FORBES. Thank you very much, Mr. Chairman. I appreciate it.

The CHAIRMAN. Thank you, sir.

Senator BIDEN. See you in Delaware, Mr. Forbes.

Mr. FORBES. Thank you, Senator.

The CHAIRMAN. Now we will have panel Number 2, consisting of seven distinguished ladies and gentlemen. [Pause.]

Senator BIDEN. If you all can agree on your seating, I am sure then that we can work this treaty out.

The CHAIRMAN. Our second panel consists of friends of all of us. Sometimes you have to agree to disagree agreeably, and that is the way we will do it. But in Joe's case, in one or two instances, he will say huzzah, hooray and so forth.

The panel, from my left to my right, is Mr. Wayne Spears, who is president of the Spears Manufacturing Company at Sylmar, California; and Mr. Ralph B. Johnson, vice president of Environmental Affairs, Dixie Chemical Company, of Houston; Mr. Kevin L. Kearns, president of the United States Business and Industrial Council.

Senator BIDEN. It is good to see you.

The CHAIRMAN. The Hon. Kathleen C. Bailey—and how you do add to the looks of this crowd, I tell you that—senior fellow at the

Lawrence Livermore National Laboratory in Livermore, California; the Hon. Bruce Merrifield, former Assistant Secretary of Commerce; Fred Webber, whom we have all known, president of the Chemical Manufacturers' Association; and the Hon. William A. Reinsch, Under Secretary of Commerce for Export Administration.

And Mr. Spears, you may lead off, because that is the order they said that I was supposed to follow.

Senator BIDEN. Perhaps Mr. Kearns could go first.

The CHAIRMAN. Oh, you want Mr. Kearns. All right. Mr. Kearns, we will hear from you. Go right ahead.

STATEMENT OF KEVIN L. KEARNS, PRESIDENT, UNITED STATES BUSINESS AND INDUSTRIAL COUNCIL

Mr. KEARNS. Thank you, Mr. Chairman. It is a pleasure to be back testifying before this committee, where I served as a State Department Pierson Fellow on Senator Helms' staff from 1988 to 1989. When I went back to the State Department, I headed an office called the Office of Strategic Trade, and we dealt with many of the issues that are before this committee today.

Since I left the State Department, I have been president of the U.S. Business and Industrial Council. We represent mainly family owned, closely held businesses—what I would call medium-sized business. There is not a good definition, really, of size below large business. But our employers have between 100 and 800 employees. They are involved in various fields. Some of them are specialty chemical manufacturers, autos, food processing, brewing, you name it, USBIC members are in these industries. And we have been around since 1933. We do not lobby for a specific industry or a company; we are here to give a voice to small- and mid-sized businesses in public policy debates.

We take strong exception to the Chemical Weapons Convention. We do not believe it is in the best interest of the United States or American business. Many of the reasons have been discussed by Mr. Forbes and were brought up by the three secretaries last week.

We believe that, first of all, the CWC represents an unjustifiable erosion of American sovereignty. It seems, time after time, treaty after treaty, decade after decade, the U.S. gives up a bit of its sovereignty to one international body or another. And the results, generally, I think, are not good for the United States. When I look at the world today, it is not a hospitable place. And I do not feel comfortable that international bureaucrats, drawn from so many of these countries where there is strife or repression or many other problems, are the best guarantors of American interests.

At the Business and Industrial Council, we believe that the single best guarantor of American interests is American strength and power. We have wielded that, for the most part, over the centuries well. And we do not place our hopes for the future and the future of our kids on supranational organizations.

USBIC members are little guys, compared to perhaps some of the members of the Chemical Manufacturers Association or others. We have trouble with red tape now, with OSHA, with EPA, with the IRS, with State regulatory agencies, in the sense that they add a tremendous burden to the costs of our doing business, without adding another burden, or other burdens, under this treaty.

The large-sized companies, these large-scale companies, can afford big lobbying organizations in Washington. They can afford representation before international bodies. They all have offices, or many of them do, in Brussels, before the EC, et cetera. They have offices in various Asian capitals. They have the staff, they have the resources to cope with regulatory burdens. Smaller businesses are already drowning in a sea of red tape.

And I might add that the Fortune 500 have not created a single net new job in this country in 20 years. It is small business and mid-sized business that are creating jobs in this country, not these large multinationals, which feel free to move their factories around the world, seeking less regulation, seeking less bureaucratic red tape, seeking the cheapest labor available.

One element that I would like to address is the National Federation of Independent Business, which has come up several times in this discussion. To say that NFIB members will not be affected by this treaty is a tautology. That is, the vast majority of NFIB members are microbusinesses. They are small businesses, run out of the home. They are luncheonettes. They are insurance agencies, *et cetera*.

So I think the fact that people are citing NFIB as a voice of American business that says American business is not going to be harmed is wrong. No, that segment of very small businesses are not going to get challenge inspections—at a luncheonette, for example. And, believe me, I am not putting down NFIB members. They are the heart and soul of so many of our communities, if not all of them. It is just simply irrelevant to the discussion of this treaty. They are not people that are involved, by and large, in manufacturing. They do not handle chemicals. So it is simply irrelevant.

When we look at these various inspections that may be required under this treaty, I think the fact that Senator Biden led off with the statistics and how many companies may be subject to it and what the effect would be on those companies indicates, really, that the average American business, that is, a manufacturing business, that is potentially subject to this treaty really does not know what is going on. I commend the Chairman and this committee for the efforts made previously and for these hearings. These businesses really do not understand the scope of what is happening.

We believe that Fourth and Fifth Amendment rights are in danger. I do not agree with you, Senator Biden, that the forms that the Department of Commerce has put out—yes, actually, filling out the form may take only 2.5 hours. It is the hours—the hundreds of hours, perhaps, in gathering the information, seeing if you are using these chemicals, if somehow they are involved in your manufacturing process, either as something that you incorporate or that has been incorporated at an earlier stage. It is very difficult.

The fact that a company may be subject to a fine up to $50,000 would put many of my members out of business or put them in a very difficult situation. So you can be sure they are not going to take 2 hours and simply fill out the form as quickly as possible. They are going to do their homework. They know what it is when there is an unannounced OSHA inspection or an EPA inspection, for instance, coming into their plant or factory.

So, to conclude—the time goes very fast, I know—the U.S. Business and Industrial Council opposes this treaty. We do not think it is in the best interest of the United States, first and foremost, before we get to the business issues. And we think it places unnecessary and very heavy burdens on small- and medium-size business potentially.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Kearns. And if you wish to add to your statement for the printed record, please do.

Mr. KEARNS. Yes, I will submit the rest for the record. Thank you.

[The prepared statement of Mr. Kearns follows:]

PREPARED STATEMENT OF KEVIN L. KEARNS

Mr. Chairman, Members of the Committee: My name is Kevin L. Kearns and I serve as President of two organizations: the United States Business and Industrial Council and the Council For Government Reform. The first is a business league and the second is a grassroots lobbying group. While both groups oppose the Chemical Weapons Convention for the same reasons, I would like to highlight the business concerns in my testimony.

First though I would like to thank the Committee for allowing me the opportunity to testify against what I believe is an ill-advised treaty. I realize that there are many patriotic Americans on both sides of this issue, including many distinguished former Cabinet officials and high-ranking military officers. And that there are difficult issues involved. However, I believe that on balance the treaty will harm U.S. interests far more than advance them.

The US Business and Industrial Council was established in 1933 to give a voice in public policy debates to the thoughts of mid-sized, family-owned and run American companies. We are an advocacy organization that takes a national interest approach to public issues. USBIC is not a trade association and we don't have a PAC. We don't lobby for an individual company or an industry. We are funded through memberships from individuals and American firms representing more than 1,000 member companies with over 250,000 employees nation wide.

I believe that USBIC differs from other business organizations because of the size and composition of our members. They are primarily family-owned or closely-held companies that maintain close ties to their community. USBIC members live and work along side their employees in the city or town where their company is located and believe that there is more to running a company than just the bottom line on a balance sheet.

Mr. Chairman, The United States Business and Industrial Council opposes the Chemical Weapons Convention (CWC) because we believe that it is an irreparably flawed treaty. Although we understand that Sen. Helms is laboring mightily with Sen. Biden to correct both the excesses and deficiencies, we do not believe that process can correct all the treaty's problems. First, the CWC represents an unjustifiable erosion of American sovereignty. Second, the CWC presents a clear threat to national security of the United States since it increases rather than decreases the likelihood that chemical weapons will be used effectively against Americans. Third, the Chemical Weapons Treaty is unverifiable and will not stop outlaw states or others that wish to do so from hiding the manufacture and stockpiling of chemical weapons. Fourth, the CWC presents a grave challenge to the U.S. Constitution. The CWC's inspections will strip American businesses of their Fourth Amendment Rights. Fifth, the CWC represents another unfunded mandate from Washington placed squarely on the back of those businesses that can least afford it. CWC will add to the costs of manufacturing companies through new compliance costs. Finally, CWC will allow unparalleled opportunities for industrial espionage.

At the Business and Industrial Council we believe that the only certain guarantor of American interests is American wealth and power. We do not place our hopes and the future of our children on supranational organizations. Thus each new treaty or agreement that comes along—whether in the field of disarmament, trade, the environment, law of the sea, etc.—whittles away at American sovereignty. One wonders why we bother to have a federal government at all if international bureaucracies are better suited to represent the aspirations of the American people.

During the Cold War many believed that the only way to achieve peace was to lay down our sword. But that notion proved as illusory as the CWC is today. The

U.S. won the Cold War by relying on our military strength and relying on our deterrent capability. Just as arms control was not the answer, we believe that the Chemical Weapons Convention is not the solution. Our best defense and deterrence to chemical weapons are having military capabilities that will allow a swift and sure response.

President Clinton has concluded that this treaty will end the threat of chemical weapons worldwide. That is, I am sure, a sincere hope but a false one. There is simply no way to eliminate chemical weapons in the world. The chemical terrorist incident that recently occurred in Japan shows the difficulties in finding covert chemical manufacturing operations. Manufacturing facilities are easily concealed due to the small area needed for production.

USBIC believes that the Chemical Weapons Convention represents a major infringement of U.S. sovereignty and the proprietary rights of manufacturers. The Chemical Weapons Convention clearly strips away our members' Fourth Amendment rights by authorizing and enforcing illegal search and seizure. CWC empowers a U.N.-style agency that may conduct detailed inspections of facilities on both regular and surprise basis. They can carry out these inspections without justification of suspected illegal activity or even a search warrant.

America's large multinational chemical companies have endorsed CWC. But, if the Senate ratifies CWC, the CWC will create many problems for small and medium-sized chemical manufacturers and other non-related industries that process chemicals as part of their manufacturing operations. Included may be autos, auto parts, brewers and distillers, electronics, food processing, pharmaceuticals, paint and tire producers, and a host of other manufacturing industries.

Mr. Chairman, large, multinational companies do not care about the CWC's massive regulatory burdens because they have the legal, financial and bureaucratic resources to absorb compliance costs. But, small companies have neither the resources nor staffs to absorb these costs. The Chemical Weapons Convention will force businesses to hire more lawyers plus add additional compliance personnel that must specialize in new regulation that CWC will present.

Clearly, the CWC will place these small companies at a competitive disadvantage with their larger competitors. This is a key reason large companies are for the CWC and the small companies are against it. These inspections could cost individual companies anywhere from $10,000 to $500,000—a substantial unfunded mandate. CWC inspections could require up to eighty-four hours to complete and involve $50,000 fines even if inadvertent errors are made.

There will never be an arrangement in CWC to stop it from effectively authorizing industrial espionage. The CWC offers no protections for company formulas and other trade secrets that inspectors may steal. Moreover, nothing would prevent unscrupulous countries from placing intelligence officers on the inspection team.

The CWC will cost the American government millions simply to join up. Companies and the American taxpayers will pay $50 to $200 million for the privilege of handing over industrial secrets to competitors while not preventing chemical warfare or terrorism. An agreement to complete all inspections of chemical samples in the United States is not the answer. Corrupt countries will find covert ways to obtain chemical samples. Why should American businesses allow international inspectors the opportunity to obtain these chemical samples?

Finally, abroad CWC inspections will *not* substantially reduce the proliferation of chemical weapons around the globe. Russia, with its huge stockpile of chemical weapons and massive production capability, has not ratified the CWC and will only ratify if American taxpayers will pay for it. Also the world's most notorious terrorist nations, Syria, North Korea, and Libya, refuse to ratify. China, a proliferator of nuclear and missile technologies, has not ratified.

I think all Americans would support a treaty that ended the threat of chemical weapons. That is why we signed the Geneva Convention. USBIC believes an effective addition to the Geneva Convention would be the Chemical and Biological Weapons Threat Reduction Act of 1997, S. 495, sponsored by Senator Kyl (R-AZ). This bill would provide criminal and civil penalties for the unlawful acquisition, transfer, or use of any chemical or biological weapon.

Our companies are constantly fighting against overregulation. Mid-sized and small American businesses are fed up with the government policies that favor multinational corporations. Too often government overregulates and makes it harder for smaller companies to survive. For example, we have an estate tax so high that too often our members are unable to pass their business on to the next generation. The Chemical Weapons Convention is a bad treaty that will only add to the heavy burden our companies face today.

On behalf of the 1,000 member companies of the United States Business and Industrial Council (USBIC), I strongly urge you to oppose ratification of the Chemical Weapons Convention (CWC).

The CHAIRMAN. Now, Mr. Wayne Spears is the kind of American I admire. He has started at the bottom, as I understand it, and heads a substantial company now. How many people do you employ?

Mr. SPEARS. One thousand one hundred.

The CHAIRMAN. One thousand one hundred. Well, we are so glad you came. And you may proceed.

Mr. SPEARS. I will give it a shot.

The CHAIRMAN. I know you will do well.

Mr. SPEARS. It was a last-minute deal.

The CHAIRMAN. You just relax and let us hear from you.

Mr. SPEARS. I am not a real good spokesman. It is not my thing, but I am going to give it a shot.

The CHAIRMAN. Very good. You will do well.

STATEMENT OF WAYNE SPEARS, OWNER AND CEO, SPEARS MANUFACTURING, INC., SYLMAR, CALIFORNIA

Mr. SPEARS. Mr. Chairman, I would like to submit a statement.

The CHAIRMAN. Without objection, so ordered.

Mr. SPEARS. Mr. Chairman, I want to compliment the committee for having this hearing on the many ways in which the Chemical Convention threatens to affect American business. I especially appreciate the opportunity you have given me to describe how it looks from the perspective of one of the companies that may be harmed by this treaty.

My wife and I started Spears Manufacturing in 1969, in a 2,000-square-foot little building in Burbank, California. Today we employ over 1,000 people—1,100. We have over a million square feet of manufacturing space, 400,000 square feet of warehouse space in 10 States, Washington, Utah, California, Colorado, Texas, Georgia, Florida, Kansas, Illinois, Idaho, and Pennsylvania. And we started out in California. We are moving out of California as quickly as we can because of the regulations. The State is so tough. I mean, just to get a sewer permit takes forever.

In regulations, what all of us are afraid of is what the gentleman just brought up. We manufacture plastic pipe fittings and valves for use in everything from agriculture—we even make plastic pipe fittings that are suitable for fire sprinkler fittings, for silicon chips and for industrial. And we manufacture in size from one-eighth-of-an-inch fitting up to a 32-inch-diameter fitting—huge things.

We do use some chemicals. We use acetones, and we use some vinyl ester resins. We do not know what we will have to report or what is going to be reported. And, to add to that, we plan on putting in another half-million square feet of manufacturing space. And we have been sort of kicking it around, to try to get it done this year, to employ a couple of hundred more people. Not with the uncertainties of this treaty—we will not do that. That would be foolish on my part to do that.

I solely own the company. I do not know what is going to happen. I do not trust what has happened. I do not trust this administration and what burdens they are apt to put on me. And I think that

there is a lot of small business and medium-sized businesses like myself that just never gets around—we are so busy trying to run our business, we do not have time to pay attention to these things. And this thing was brought to my attention by one of my Senators from Idaho, who says that you better look into this; this may affect you. That is how I got involved.

I did everything in the world to keep from coming here.

Although I feel very honored. I feel very honored by all of you. I really do.

Senator BIDEN. As Lincoln said, but for the honor——

Mr. SPEARS. I am just a poor, old Okie boy. In all honesty, I hitch-hiked from Oklahoma to California. I did not have anything. I did well. I want to try to give some of that back to the American people. And I am going to. I have wrote over 10,000 letters against this—over 1,000 to my employees. I have over 8,000 customers worldwide. And we do do business worldwide. We actually compete with the Taiwanese and all those kind of people. And, might I add, we do a very good job.

We do some very unique things, because I love mechanical things. And we have been able to be very competitive. We actually sell—trademark things and put it on for other manufacturers. You may see our fittings around that have other people's names on them. We do such a good job that they cannot compete with us in Europe. We do it.

And there is no way I want some guy coming into my plant, seeing what we do—one of these surprise inspections. I just do not want it. I do not even want to take a chance on it. Why would we, the American people, ever allow that to happen or even take a chance on it happening? We are the strongest country in the world. Let us not tear it down.

As Mr. Forbes said, let us do it for America.

That is about all I have got to say. Thank you.

The CHAIRMAN. Well, you said it very eloquently, too, sir.

[The prepared statement of Mr. Spears follows:]

PREPARED STATEMENT OF WAYNE SPEARS

Mr. Chairman, I want to commend the Committee for having this hearing into the many ways in which the Chemical Weapons Convention threatens to affect American businesses. I especially appreciate the opportunity you have given me to describe how it looks from the perspective of one of the companies that may be harmed by this treaty.

My wife and I started Spears Manufacturing in 1969 in a 2,000 square foot space in Burbank, California. Today, we have over 1 million square feet of manufacturing space and about 400,000 square feet of warehouses in 10 states—Washington, Utah, California, Colorado, Texas, Georgia, Florida, Kansas, Illinois, Idaho and Pennsylvania. We employ more than 1,000 people.

Our principal products are plastic pipe fittings and valves used for everything from agriculture to fire sprinklers to silicon chip-manufacturing to industrial applications. The sizes range from one-eighth-of-an-inch to 32-inches in diameter.

We have established a unique niche in the world market with high quality, low-cost products that simply cannot be matched by any of our competitors, foreign or domestic. Naturally, we want to keep it that way, but others don't.

We take very seriously the dangers posed by commercial espionage and other means of jeopardizing our proprietary technological edge. And because of our advanced technology and competitive position we have reason to believe we are at real risk of being targeted for these purposes.

Let me say right up front that, as a businessman, I want less regulation, less red tape and less interference in my company's affairs from government bureaucrats. The way many of these folks are doing their jobs has the effect of making it a lot

harder for me—and countless other American entrepreneurs—to bring good products to market at competitive prices and as efficiently as possible.

For what it is worth, I believe the commitment the Republican Party has made to these principles has been a key ingredient in its success in achieving—and maintaining—control of the Congress.

Therefore, I have been amazed to discover that a Republican Senate might actually consider approving a treaty that would add to the burdens imposed on thousands of American businesses by our own government. This Chemical Weapons Convention would also give foreign bureaucrats new powers that will add to the costs for companies like mine.

There are others on this panel far better equipped to discuss all the fine points of this Convention. I look forward to learning more from them about this treaty and exactly how it will affect companies like mine—a subject that is creating great uncertainty at the moment.

This is particularly important to me since I currently have plans to expand my operations by another half-a-million square feet, employing another 200–300 people in good-paying manufacturing jobs across the nation. It would be irresponsible for me to proceed with those plans without knowing if the CWC will jeopardize my company's competitive edge.

Especially worrisome is the prospect that foreign inspectors could demand entry into my plants, gaining access to my records, procedures, inventory and customers data. These involve proprietary information that could, if stolen, cause my company real harm. And, from what I understand, there is every reason to believe that this could happen.

The challenge inspections authorized by the CWC would be very different from the sorts of site-visits conducted periodically by U.S. government agencies assigned to monitor our compliance with environmental and health and safety regulations. Those American inspectors do not concern themselves with our sensitive manufacturing technology, just our employees' safety and our emissions.

The CWC will put us in a position of having to open our doors to people well versed in our manufacturing techniques, who want our advanced technology and who are trained to collect this sort of information. We are so concerned about this problem that we do not even permit the suppliers of our manufacturing equipment to come into our plants.

Even if my company's facilities are not challenge-inspected, the burdensome reports we might have to provide could be enough to tell foreign competitors a lot about how we do what we do.

Mr. Chairman, I am sure I speak for many of my colleagues in American industry when I say that if this Chemical Weapons Convention really did get rid of chemical weapons, it would be worth it to us to accept some additional costs and risks associated with implementing such a treaty. As long as this Convention's defects make it unlikely to reduce the chemical warfare problem in any significant way, I find it unacceptable to impose these very high costs and risks on our businesses.

I hope that instead of forcing this treaty on the American people and—on thousands of companies that have little knowledge about the implications of this deal—the Congress will approve S. 495, a bill cosponsored by you, Mr. Chairman, Senator Jon Kyl and most of the Republican leadership. This legislation seems to me to offer a valuable alternative to the CWC. It does practical things, like making it a crime for private U.S. citizens to make poison gas, while avoiding totally impractical actions like the Convention's verification regime which will hurt our business interests—but be ineffective in catching nations that cheat on their international commitments.

Mr. Chairman, thank you for your brave leadership on this treaty. I very much hope that my testimony—and that of others who are critical of the CWC—will be useful to you in preventing this defective Convention from binding the United States at the expense of so many American businesses, their stockholders and their employees.

The CHAIRMAN. Mr. Johnson.

STATEMENT OF RALPH V. JOHNSON, VICE PRESIDENT, ENVIRONMENTAL AFFAIRS, DIXIE CHEMICAL COMPANY, INC., HOUSTON, TEXAS

Mr. JOHNSON. Good afternoon.

The CHAIRMAN. Good afternoon.

Senator BIDEN. Good afternoon.

Mr. JOHNSON. My name is Ralph Johnson. I am vice president of Environmental Affairs for Dixie Chemical Company. Dixie Chemical is a small, privately held chemical company, with its general offices in Houston, Texas, and its manufacturing plant is located in Pasadena, Texas. Dixie Chemical engages primarily in the manufacture of specialty organic chemicals, and we employ about 200 people.

Dixie Chemical fully supports the intent of the Chemical Weapons Convention treaty. It is difficult to imagine how anyone would not support the removal of chemical weapons as a threat to mankind. At Dixie, we have expertise in the manufacture of specialty organic chemicals and the regulations associated with this manufacture. We have no expertise in foreign policy. Whether this treaty is a viable vehicle to eliminate chemical weapons is a question for this committee and for the Senate of the United States.

As you Senators on this committee weigh the effectiveness of this treaty, you will need to be aware that this treaty presents some potentially serious problems to Dixie Chemical. At Dixie Chemical, we produce no chemical weapon chemicals, nor any precursor chemicals. We do not produce any Schedule I, II, or III chemicals. However, at Dixie, we would be required to submit a declaration that we produce discrete organic chemicals.

Discrete organic chemicals is a category of lower-concern chemicals, and it encompasses virtually the entire universe of organic chemicals. This declaration would require some additional time on our part, but is not unduly burdensome.

However, once we are declared as a discrete manufacturing chemical organic site, we then become subject to foreign inspections. If we use EPA inspections as an example, these foreign Chemical Weapon Convention inspections could cost up to maybe $50,000 per site. That is not a perfect number, but that is not a total guess either. These inspections would be very costly and burdensome.

The biggest problem with these inspections, however, is not their cost but rather our highly probable loss of confidential business information. An inspector observing one of our reactors would know, for the product being observed, our operating pressures, temperatures, catalysts, reaction time, ingredients, purification methods, pollution abatement methods. We would no longer have any confidential technology, methodology, or know-how relative to this product. It would be gone forever.

Specialty chemical manufacture is vastly different from that of large volume commodity chemicals, which are produced in continuous dedicated single product units operated by major chemical companies. Operating conditions and know-how for these commodity chemicals such as ethylene, propylene, high density polyethylene, can be licensed and/or purchased from manufacturers and engineering companies, both domestic and foreign.

These operating conditions can also be found in the literature. Since the technology for commodity chemicals is widely available, competitive success usually depends on world-scale plants, percent of volume utilization, location to markets, and cost to feed stocks. Therefore, inspections would not necessarily result in any probable

loss of confidential information, nor change the commodity producer's competitive position.

On the other hand, specialty organic chemicals are made in low volume batch operations where the expertise and process know-how lies solely within the realm of the individual producer. Production volumes typically range from a few thousand pounds a year to a few million pounds. Several specialty organic products are usually made intermittently on a campaign basis in nondedicated multipurpose operating units.

The process technology for these products has been internally developed by the individual producer, and it is the core of his competitive position. His technology is not licensable or purchasable unless he plans to go out of business on that specific chemical.

Therefore, maintaining the confidentiality of this expertise is of paramount importance, and is the heart of the continuing existence of specialty organic chemical manufacture.

Thank you for this opportunity to comment on this vital and perplexing problem.

The CHAIRMAN. We thank you very much, sir. All right. I am advised a little bit belatedly that the Hon. Kathleen C. Bailey is going to read a couple of letters before she begins her testimony, so hold the light.

STATEMENT OF HON. KATHLEEN C. BAILEY, SENIOR FELLOW, LAWRENCE LIVERMORE NATIONAL LABORATORY

Ms. BAILEY. Yes, sir.

This is the testimony of Paul L. Eisman, senior vice president for refining of Ultramar Diamond Shamrock Corporation, hereinafter called UDS Corporation.

Mr. CHAIRMAN: UDS is pleased to offer the following comments on the proposed Chemical Weapons Convention, or CWC treaty, which is being considered for ratification by this committee.

Although UDS agrees that the production of chemical weapons should be halted, we think that this treaty as presently crafted provides little, if any, protection from the devastating impacts of chemical warfare.

We find it ironic that this proposed treaty places a significantly greater regulatory burden on legitimate business operations that are in no way related to the production of chemical weapons, while not imposing similar requirements on countries such as Libya, Iraq, Syria, and North Korea, some of the very countries about which we should be most concerned.

Our concerns relate to two specific issues, the increased paperwork and compliance costs created by the reporting requirement, and the significant risk of industrial espionage resulting from the presence of international inspection teams in our facilities.

Increased paperwork is an enormous concern for UDS. In just the manufacturing portion of our business, over which I have direct responsibility, our production costs have increased significantly over the past few years to satisfy the recordkeeping and reporting requirements of new regulatory programs. This cost ultimately is passed on to our customers.

A petroleum refinery uses many different chemicals in the production of gasoline and diesel. Based just on a cursory review of the treaty requirements, UDS would have to report the following chemicals at a minimum: chlorine, sulfur, hydrogen, hydrogen chloride, sulfuric acid, ammonia, and sodium hydroxide. Many of these chemicals are crucial for making gasoline and diesel to comply with existing U.S. and California reformulated fuel requirements.

UDS cannot comply with the proposed reporting requirements with our current staff. We estimate it could cost as much as $500,000 per year to comply at all three of our U.S. refineries. We expect that these costs will be reflected in the higher prices at the pump.

In addition, the reporting requirements will greatly reduce our operating flexibility because of the 5-day advance notification requirement for changing processes in which reportable chemical processes are used. Many factors often outside our control influence how our refinery operates from day to day.

The advance notice requirement means that a change in our crude slate or in the availability of feed stocks, or even an equipment malfunction, could put our operations in violation of the reporting requirements and subject us to a $5,000 fine. Such a burden on business is untenable, particularly given the ubiquitous nature of the chemicals included on the reportable list.

UDS is not prepared nor do we want to receive an international inspection team in our facilities. We understand that the Congressional Office of Technology Assessment estimates that these inspections could cost $10,000 to $50,000 per visit. It should be noted that these costs are in addition to the estimated yearly costs of compliance. Given the complexity of a modern refinery, we think that those costs are extremely optimistic.

Moreover, there are no safeguards to ensure that the inspection teams will not gain access to unrelated or propriety information, nor are there any sanctions provided for inappropriate use of information thus gathered. All of the trade protections that we now receive under U.S. Law would thus be placed in jeopardy. This is an unacceptable security risk to place on U.S. Industry, especially when the most egregious users of chemical weapons will likely not even be covered by the treaty.

UDS does not have a thorough understanding of the provisions of the CWC. However, what we do understand causes us grave concern. For the reasons cited above, enforcement and verification will be a nearly impossible task even in those countries with a strong compliance commitment, but if such countries as Libya, Iraq, Syria, and North Korea are refusing to be a party to this treaty, the likelihood of eliminating chemical warfare are slim indeed.

The unacceptably high cost of business, coupled with the extremely low probability of success, leads us to conclude that this proposed treaty is bad for U.S. Economic and security interests. We urge you to reject this treaty unless and until the serious costs, security and enforcement problems it creates can be resolved.

Sincerely,

PAUL L. EISMAN,
Senior Vice President for Refining,
Ultramar Diamond Shamrock Corporation.

Ms. BAILEY. the next letter I have is from Sterling Chemicals, to the Hon. Jesse Helms, Chairman, Senate Foreign Relations Committee. It is dated April 15.

Dear Mr. CHAIRMAN: Sterling Chemicals, Incorporated strongly supports a worldwide ban on the production, possession, and use of chemical weapons, but we are concerned about the mechanics and cost impacts associated with the proposed CWC. We had made our concerns known to the Hon. Senator Kay Bailey Hutchison last August. Highlights of our concerns are:

1. We have serious misgivings about the ability to protect confidential business information. Having a foreign inspection team inside our facility with almost unlimited access to process knowledge and data is not acceptable to Sterling.

2. Cost impact will be significant. We project costs just to prepare for managing and completing an inspection to be at least $200,000 to $300,000. This does not include performing duplicate sampling and analysis as well as calibration and verification of process instrumentation.

3. We cannot comply with the threat provisions within our current annual budget and head count. Sterling has reduced head count to maintain our competitiveness. We are doing more with less. We believe the additional datakeeping, recordkeeping and paperwork burden associated with this treaty cannot be managed with existing resources.

4. The EPA and OSHA, while participating as part of the inspection team, may become overzealous with their enforcement philosophy and begin citing violations as part of their own agenda while they are supposed to be monitoring the inspection team.

Sterling Chemicals is not a foreign policy expert, yet we have serious misgivings about the foreign policy implications of the proposed CWC. For example, how will chemical weapon control be enforced in other countries such as Mexico, Colombia, North Korea, Iran, Iraq, Jordan, Libya, Croatia, *et cetera*? Since they probably will not cooperate, how does this treaty produce a worldwide ban?

How will international security and foreign policy issues related to protection of trade secrets be handled?

Will the cost and implementation of the treaty put American industry at a competitive disadvantage with foreign industry, whose compliance is less regulated?

Sterling emphasizes its desire to see a worldwide ban on chemical weapons. We hope this submittal provides the information you seek for an informed decision which is best for America.

Sincerely,

ROBERT W. ROTEN,
President and CEO of Sterling Chemicals.

Ms. BAILEY. And now, Mr. Chairman, may I proceed with my own testimony?

The CHAIRMAN. Yes, ma'am.

Ms. BAILEY. I am Kathleen Bailey from Lawrence Livermore National Laboratory. Mr. Chairman, members of the committee, I am pleased to appear before you today to address the ratification of the Chemical Weapons Convention, CWC. I have studied this treaty for some years, first as Assistant Director of the Arms Control Agency and then as principal author of a major technical study sponsored by the U.S. Defense Nuclear Agency on the issue of how nations might cheat under the CWC.

I am currently a senior fellow at my laboratory, but the views I express today are my own and not necessarily those of the University of California, my laboratory, or any other institution.

Today, I will focus my remarks briefly on the impact of CWC challenge inspections on U.S. companies and on U.S. national security facilities. My bottom line is that the use of treaty inspections for espionage is easy, effective, and all but impossible to detect.

The U.S. intelligence community officials have advocated ratification of the CWC, arguing that it would be "another tool in the tool box" for intelligence collection. Rarely, if ever, is it mentioned that the tool is every bit as effective in the hands of foreign intelligence services.

One could argue that, indeed, the advantage is to foreign nations and to foreign companies, because it is the United States that has the most to lose in terms of classified national security information and confidential business information.

Challenge inspections will rely on collection and analysis of samples to determine the presence or absence of key chemical compounds. A principal tool for analysis is the gas chromatograph mass spectrometer, or GC/MS for short, an instrument which can identify chemical compounds.

This information can be used to determine not only what chemicals are in use at a particular site but also what processes are being employed. Such data is useful for determining whether a facility might be making chemical weapons, but it is also useful for gleaning confidential business information as well as classified national security data.

I would like to quote now from a paper prepared by Dr. Ray McGuire, a chemist at Lawrence Livermore National Laboratory, on the results of mock inspections conducted by the U.S. Government. In my written testimony I quote from this at length, and would like to submit it for the record.

But briefly let me say that a mock inspection was held at a propellant production facility. Samples were taken outside of that facility and later analyzed using a variety of means, and the results did reveal classified data not only about the composition of the pro-

pellant, such as oxidizers, binders, and burn rate modifiers, but also process information.

Furthermore, a mock inspection was conducted at two industrial chemical plants using GC/MS technology. Batch production of a certain chemical could be detected at least 3 weeks after the production ended. Furthermore, other confidential business information was revealed. While this information may not be considered to be of much commercial value, it could be in cases where a foreign national is attempting to analyze and obtain confidential business information.

I will submit my written statement for the record. It contains additional information on the Fourth Amendment issue, but I will close now given my time is short.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Bailey follows:]

PREPARED STATEMENT OF KATHLEEN C. BAILEY

Introduction

Mr. Chairman, Members of the Committee, I am very pleased to appear before you today to address the issue of ratifying the Chemical Weapons Convention (CWC). I have studied this treaty for some years, first as Assistant Director of the Arms Control and Disarmament Agency, and then as principal author of a major technical study sponsored by the U.S. Defense Nuclear Agency on the means by which nations might cheat under the CWC. I am currently a Senior Fellow at Lawrence Livermore National Laboratory, but the views I express today are my own and not necessarily those of the University of California or any other institution.

Today, I will focus my remarks on the impact of CWC challenge inspections on U.S. companies and on U.S. national security facilities. My bottom line is that use of treaty inspections for espionage is easy, effective, and all-but-impossible to detect.

The Threat of Espionage

US intelligence community officials have advocated ratification of the CWC, arguing that it will be "another tool in the tool box" for intelligence collection. Rarely, if ever, is it mentioned that the tool is every bit as effective in the hands of foreign intelligence services. One could argue that indeed the advantage is to foreign nations and companies, because it is the United States that has the most to lose in terms of classified national security information and confidential business information.

CWC challenge inspections will rely on collection and analysis of samples to determine the presence or absence of key chemical compounds. A principal tool for analysis is the gas chromatograph/mass spectrometer (GC/MS) an instrument which can identify chemical compounds. This information can be used to determine not only what chemicals are in use at a particular site, but also what processes are employed. Such data is useful for determining whether a facility might be making chemical weapons agents, but it is also useful for gleaning confidential business information as well as classified national security information. I would like to quote from a paper prepared by Dr. Ray McGuire of Lawrence Livermore National Laboratory on the results of mock inspections conducted by the U.S. Government:

> In one of the early experiments, soil and water samples were collected in the near vicinity (a few feet to a few meters) of rocket propellant production buildings. No samples were collected from the inside of the buildings. These samples were analyzed at Lawrence Livermore National Laboratory for both organic and inorganic constituents.
>
> * * * While it was not possible to reproduce exact formulations from the results of this work, a significant and, in some cases, alarming amount of information could be extracted. The nature of the facilities—rocket propellant production—was easily determined. The general type of propellant being produced, strategic vs. tactical, could be defined in most instances. *Certain key ingredients of some classified formulations, such as oxidizers, energetic binders and burn rate modifiers, were determinable.*
>
> In three additional collections (involving wipe samples from building interiors and machinery in one case, and soil and waste water samples from just outside buildings in the others), the analytical techniques cited above

were used with the addition of gamma ray spectroscopy for determining radioactive materials. In both these instances, it was possible to determine the materials being processed in the facilities examined and some, but not all, details of the processes themselves. In all of these cases, major portions of the information are classified for security reasons.

In all of the cases cited above, classified data were disclosed. It was necessary in all cases to combine a series of analytical methods in order to obtain the sensitive results. Many of the techniques used would not be germane to CWC inspections.

However, *it was not necessary to employ a variety of sophisticated analytical tools to acquire sensitive information in exercises carried out at two industrial chemical plants. In one case, the batch production of a certain chemical could be detected at least three weeks after the production ended.* While this information might not be considered to be of much commercial value, the results of the second "inspection" were. In this instance, *not only was the product of the operation determined, but certain process details such as intermediates, reducing agents, were also detectable.* This information was gathered from soil and water samples collected exterior to the buildings and used on GC/MS for analysis. [emphases added]

CWC negotiators were aware that sample analysis could reveal sensitive information and sought to limit the potential for abuse by limiting the "library" of compounds for which inspections could look, and by assuring that samples would not be taken off-site unless it were necessary to resolve questions that on-site analysis could not answer. Despite these precautions, it is quite easy to acquire samples for later analysis. One means is analysis of residue remaining in the GC/MS equipment. Research conducted at Lawrence Livermore Laboratory proved that even thorough decontamination does not remove all residue. To prevent subsequent analysis off-site of that residue, the company or facility concerned would have to purchase and retain all of the GC/MS components that were exposed to the sample. This would cost approximately $15,000 per inspection.

A more likely scenario for espionage would be clandestine sampling. Sample collection could be as simple as taking swipes with a "handkerchief" or collecting air in a vial disguised, for example, as a ballpoint pen. It would be all-but-impossible to detect, let alone halt, such secret sampling.

Although I have emphasized sampling and analysis, it is also possible to use inspections for espionage in other ways. A knowledgeable inspector can learn much by observing the way a facility is configured, how operations are performed, temperatures, and other features. Equally important may be the opportunity to ask questions of facility employees and to review records and data. The fact that inspectors will have the opportunity to take pictures adds to the risk that secrets will be compromised.

It is worth noting that some treaty proponents dismiss these concerns, saying that if there were a genuine risk, companies and facilities with something to lose would have objected. There are ready answers why they have not. First, there is ample evidence that most companies which will be directly affected have either not heard of the treaty, or not focused on it. Second, there is a pervasive belief that inspections—even challenge inspections—will apply only to companies that manufacture chemicals. When I told a Bay Area biotechnology firm that it could be challenge inspected, the attorney for the firm replied, "No one would want to inspect us. We don't manufacture chemicals." When I explained that challenge inspection could be of any site, regardless of its activity, the attorney replied, "The Constitution protects us against things like that."

The Fourth Amendment Issue

The company representative whom I quote is probably right. The fourth amendment guarantees against warrantless searches and seizures and requires that probable cause be demonstrated prior to issuance of a criminal warrant. A private citizen or U.S. company may chose to decline a request for a CWC challenge inspection, thus requiring a criminal warrant for the inspection to proceed. Probable cause must be demonstrated before proper authorities can issue a criminal warrant. In the case of CWC inspections, this raises a problem because the country making a challenge inspection request is not required to provide evidence that would fit the requirements for probable cause—it may simply assert wrongdoing without providing substantiation. The requesting country does not have to identify the name or exact location of the company to be inspected until 12 hours before international inspectors are due to arrive at the port of entry. Thus, without the proper information to demonstrate probable cause to a U.S. judicial official, it will be extraordinarily

difficult, if not impossible, to gain a timely criminal warrant for a challenge inspection.

A related question is that it is unclear whether a criminal warrant may be administered in effect by foreign nationals. Can OPCW officials substitute for U.S. officials in a search?

If indeed challenge inspections can be rejected under the U.S. Constitution, there will be negative repercussions not only for the CWC, but for the future of arms control. The CWC verification regime, which will cost the taxpayers greatly, will not be implemented in any meaningful way. More importantly, such a scenario would surely cloud the future of arms control. Other nations would follow the example of the United States in rejecting challenge inspections as well as any treaties which are based on the CWC model.

The Issue of Preparing National Security Facilities

In closing, I would like to raise an issue to the Committee which I feel is important, but which has not been considered as yet—the need to assess the costs of preparing U.S. national security facilities for CWC challenge inspections. This preparation must take place well before any potential inspections, and requires a substantial budget.

Last year, preparation of Savannah River Plant for a Russian visit cost approximately $400,000. Estimates of cost requirements to prepare a facility within Lawrence Livermore National Laboratory for a CWC inspection are $250,000. The Department of Defense facilities are expected to require between $200,000–$500,000 each. Of course, some of these costs are non-recurring, but some will arise any time an inspection is to occur.

Mr. Chairman, if there is confidential or classified data that can be lost through use of GC/MS equipment, from observation, or from interviews, preparation may be futile in the event that a determined spy poses as an inspector. However, to minimize losses and to protect the data that is protectable, U.S. national security facilities must be prepared. Preparation will require substantial effort and resources.

Thank you.

The CHAIRMAN. Thank you, ma'am. I know the answer to the question, but I want it for the record. Have you served in any administration under any President?

Ms. BAILEY. Yes, sir. I served as Assistant Director for the Arms Control and Disarmament Agency under President Reagan.

The CHAIRMAN. Do you know whether President Reagan ever endorsed a treaty of this sort?

Ms. BAILEY. Not to my knowledge and, sir, I would add that this treaty as it ultimately ended up is not at all as Reagan officials, at least as far as I knew, envisioned it.

The CHAIRMAN. Well, I have had several people prominent in the Reagan administration say that they never saw it in this form. They never approved it, and they are confident that Ronald Reagan himself never approved a treaty like this. Mr. Merrifield.

STATEMENT OF HON. BRUCE MERRIFIELD, FORMER ASSISTANT SECRETARY OF COMMERCE

Dr. MERRIFIELD. Thank you, Mr. Chairman. My doctorate is in physical organic chemistry, and I have been in the chemical industry most of my life, starting with Monsanto and ending up as vice president of Continental Group, the Continental Can Company.

I came to the Commerce Department to head up the technology function there during the Reagan administration, and I was also Under Secretary of Economic Affairs for a time. Since then I have had an endowed chair at the Wharton Business School, as professor of entrepreneurial management; but I have also started a company, a high tech company, which is a major breakthrough in electrical energy storage, and it has a lot of process technology which is highly proprietary.

But my mission at Commerce, of course, was to try to renew the industrial competitiveness of the United States, since we were not competitive at that time. The Japanese were putting together vertically integrated consortia, and we could not even talk to each other. They were capturing all of the consumer electronics and mass memory business in semiconductors and so forth.

So a critical problem then was, first, to get the antitrust laws changed, those 100-year-old laws. President Reagan, when I first met him said, Bruce, why don't you change the antitrust laws.

Well, it took about 4 years. Subsequently, I started hundreds of consortia while I was at Commerce, including SEMATECH and a lot of others. My office also put through the tech transfer acts of 1984 and 1986, which cut the Government out of owning its technology and made billions of dollars available of R&D to the private sector.

The Baldrige Award, the technology medal, the process patent technology which strengthens our process patents were enacted. Process technology was very critical at that time, because anybody operating outside this country could operate under our process patents and then export to the United States. We got that changed. The patent extension act was another success. We did a lot of good things, increasing at least the environment for industrial competitiveness here; and as a result we are now the most competitive country in the world, and that is very important.

This law would mitigate that capability, that competency, very significantly. Through industrial espionage somewhere between $25 billion and $100 billion is lost each year. It is important now, in that this CWC law would open the floodgates of espionage to our proprietary technology, which is the heart of our competitiveness.

Technology is the engine of competitiveness, and it is important that we maintain it. We have an incredible thing going here in this country. We currently spend about $25 billion a year in basic research, much more than any other country in the world can spend or has the capability to spend or match in any reasonable time. As a result, we get most of the Nobel prizes. We make most of the seminal discoveries.

It is that basic technology that is the heart of our competitive advantage in this country, and it is terribly important that we protect that. It is awfully important that we not allow it to slip away with these challenge investigations that give you 12 hours' notice, with people showing up at your door without you even knowing they are going to be there.

Basically this all started with Vanover Bush back in 1945. We made thousands of liberty ships and advanced aircraft and the Norton bomb site and radar, and we detonated the atomic bomb, which absolutely stunned the scientific community. As a result, Vanover Bush captured the euphoria of the moment in a report to the President calling research the endless frontier.

As a result of that, we started the National Science Foundation. Since then, we have pumped about $1 trillion into our academic community, our universities and our government labs. That is the capability that is unique in this country. It is our competitive advantage. We need to protect it. Those are our crown jewels, and it is awfully important that we not let that slip away.

Competitive advantage, industrial competitiveness, is the primary concern of America, and this convention certainly is not going to help that at all. It is going to mitigate that capability.

Let us not forget for a minute that we have this incredible capability. We have 15 million companies in this country that can translate new discoveries into useful things. No other nation has that. We have this entrepreneurial culture which has permission to try and fail and try again until we succeed without fear of personal loss or penalty.

We have the most flexible capital development capability. We have the world's largest market. We have one common language. We have everything in spades. We need to protect and nurture it, and it is important that we not allow it to be mitigated by some naive, well-intentioned law such as this one.

Thank you.

The CHAIRMAN. Mr. Secretary, thank you very much. Has anybody called you that lately?

Dr. MERRIFIELD. I'm sorry?

The CHAIRMAN. I said, "Mr. Secretary, thank you very much." Has anybody called you "Mr. Secretary" lately?

Dr. MERRIFIELD. Not lately.

The CHAIRMAN. Sir, please pronounce your name for me correctly.

Mr. REINSCH. It's "Reinsch."

The CHAIRMAN. Thank you. You are recognized, sir. Thank you for coming.

STATEMENT OF HON. WILLIAM A. REINSCH, UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

Mr. REINSCH. Thank you, Mr. Chairman. It is a pleasure to be here to talk a little bit about the Commerce Department's prospective role in the implementation of this convention if it is ratified.

We expect to have a key role for industry liaison, and I want to assure you from the beginning that, taking into account the need for full and effective implementation of the convention's verification regime, we are committed to minimizing costs to the industry and to maximizing the protections of company confidential information in the two major areas which will affect the U.S. commercial sector, which are data declarations and inspections. I would like to speak briefly about each of those, if I may.

Commerce has developed user friendly draft data declaration forms and instructions to complete them. No information is requested that is not specifically required by the CWC.

These materials have been field tested and refined based on comments from industry, including the Chemical Manufacturers Association. We have also provided copies of these forms to the committee's staff. I am pleased to note that we have consistently received positive feedback from those who have reviewed them.

The administration estimates that about 2,000 plant sites will be required to file data declarations. Of those 2,000, we estimate that over 90 percent belong to a category called unscheduled discreet organic chemicals, or DOC's, as the gentleman from Dixie Chemical referred to them.

The DOC data declaration is a very simple form that asks the company to specify the location of the plant site and its general range of production—e.g., this plant site produced over 10,000 metric tons of DOC's last year, or whatever it was.

Mr. Chairman, I brought one along to demonstrate for you how simple I think it is. It consists of three pages. Page one is essentially name, address, type of declaration, with a couple of boxes to check. Page two is location of the facility and point of contact there, with a box or two to check. Page three, which is about a half page, consists essentially of checking the box as to what your level of production is. This is not a complicated form. It is not a complicated process, and it is not a complicated set of instructions.

Now, to ensure that the treaty remains focused on the most relevant industries, certain other industries have been exempted from the CWC data declaration process. For example, these exemptions apply to plant sites that produce explosives exclusively, produce hydrocarbons exclusively, refine sulfur containing crude oil, produce oligimers and polymers, such as plastics and synthetic fibers, and produce unscheduled chemicals via a biological or a biomediated process, such as beer and wine, which I know will be of great comfort to many people.

About 10 percent of the data declarations focus on the CWC's scheduled chemicals. These declarations are more involved, but still do not constitute a heavy and complicated reporting burden for the 140 or so firms that will be asked to comply. Most of these are larger companies and members of CMA, who are likely to have accumulated much of the needed information for other purposes.

In any event, I want to assure you that Commerce will provide substantial assistance to industry in the data declaration process if it turns out to be needed. We will help firms determine if they have a reporting requirement. We will develop a commodity classification program similar to the one we have for export licensing.

If a company does not know if its chemicals are covered, it can ask us for a determination. If firms do have a reporting requirement, our technical staff will assist them in filing their declarations.

We will also seek to put in place a system that enables firms to complete and file these forms electronically. This is a system that we already have in place for our export licenses.

Firms also want this data to be fully protected from unauthorized disclosure. We fully understand that concern and have substantial experience through our export licensing system in protecting company confidential information as part of our current responsibilities. Our CWC information management system will be in a secure location and will be only accessible to and operated by staff with appropriate clearances.

Now with respect to inspections, we will be charged with managing the CWC process inspections for U.S. commercial facilities. That applies to both routine and challenge inspections. We will identify firms that are likely to be subject to routine inspection and work with them to develop draft facility agreements that will protect company confidential information.

These agreements will set forth the site specific ground rules for the conduct of inspections. We estimate that about 40 U.S. com-

mercial plant sites each year will be subject to routine inspections. Our objective is to develop draft facility agreements before these inspections take place in order to give firms an opportunity to identify their confidential information and processes.

In this regard, we will work with firms to determine what constitutes company confidential information and will protect U.S. firms against any unwarranted request by international inspectors.

We anticipate very few challenge inspections. In the event there is one of a non-defense commercial facility, we would have the lead role managing access to ensure that the international inspectors obtain, by the least intrusive means possible, only the information and data that are relevant to specified noncompliance concerns. Firms would be under no obligations to answer questions unrelated to a possible violation of the CWC.

As with routine inspections, we will work closely with firms to determine what constitutes company confidential information, and we will protect firms against unwarranted requests that may be made by international inspectors.

Mr. Chairman, I can stop now or I can keep going for about 1½ more minutes, whatever you prefer.

Senator BIDEN. I'm not the chairman but I would hope he would let you go for 1½ minutes since Ms. Bailey got to read 2 letters.

Senator Hagel (presiding): I guess I am the only Republican here. It's great the way it works around here.

Senator BIDEN. Let's vote.

Senator HAGEL. I'm the Chairman. Do you want to get it over with, Joe?

Senator BIDEN. Yes.

Senator HAGEL. Please continue.

Mr. REINSCH. I will talk fast, Senator. Thank you.

Senator HAGEL. Take your time.

Mr. REINSCH. Let me make a brief comment about the Australia Group and about export controls, since that is part of my responsibility.

Some critics have expressed concern that the treaty will undermine the existing chemical nonproliferation export controls that have been developed by the Australia Group. I want to assure you that that is not the case.

Article I of the CWC commits States Parties to refrain from assisting any chemical weapon program in any way. The Australia Group's regime of export controls is end user/end use driven and is fully consistent with our obligations under Article I. It is not a regime of trade restrictions aimed at impeding any country's economic development. Rather, the Australia Group's controls focus exclusively on restricting transfers to end users of concern.

Accordingly, we will continue to strongly support the Australia Group after the CWC enters into force. We will not be required by the CWC to liberalize nonproliferation export controls to rogue nations, such as Iran and Libya, even if they ratify the CWC.

However, when considering export controls, it is important to note that the CWC mandates trade restrictions that affect countries who do not ratify. Senator Kerry made this point in his dialog with Mr. Forbes.

The real concern regarding export controls is that our allies and friends who have ratified the CWC will be required to impose controls on us that will have an adverse impact on U.S. industry if we do not ratify. Further, if we fail to join the CWC as part of the responsible family of nations, our overall leadership role within the nonproliferation community will be severely eroded and our ability to maintain a strong presence within the Australia Group will be lost.

Thank you, Mr. Chairman. I think I will stop now and ask you to put the full statement in the record.

Senator HAGEL. Without objection, yes.

[The prepared statement of Mr. Reinsch follows:]

PREPARED STATEMENT OF WILLIAM A. REINSCH

Good Morning Mr. Chairman and Members of the Committee: I am pleased to be here today to discuss the Commerce Department's prospective role in the implementation of the Chemical Weapons Convention (CWC). The Bureau of Export Administration (BXA) is expected to have a key role for industry liaison, and I am here to assure you, that taking into account the need for full and effective implementation of the convention's verification regime, we are committed to minimizing costs to industry and to maximizing protections of company confidential information in the two major areas that will affect the U.S. commercial sector—data declarations and inspections.

Data Declarations

Commerce has developed user-friendly draft data declaration forms and instructions to complete them. No information is requested that is not specifically required by the CWC. These materials have been field tested and refined based on comments from industry, including the Chemical Manufacturers Association (CMA). Copies of these forms have also been provided to the committee's staff. I am pleased to note that we have consistently received positive feedback from those who have reviewed the forms and their instructions.

The administration estimates that about 2,000 plant sites will be required to file data declarations. Of these 2,000, we estimate that over 90% belong to a category called "Unscheduled Discrete Organic Chemicals" (DOCs). The DOC data declaration is a very simple form that asks the company to specify the location of the plant site and its general range of production (e.g., this plant site produced over 10,000 metric tons of DOCs last year). No specific chemical identification, product mix or other substantive information is requested, and the declaration can therefore be completed quickly and without revealing sensitive data. I want to stress that the DOC declaration does not ask for any information on acquisition, processing, imports, or exports.

To ensure that the treaty remains focused on the most relevant industries, certain other industries have been exempted from the CWC data declaration process. For example, these exemptions apply to plant sites that produce explosives exclusively, produce hydrocarbons exclusively, refine sulphur-containing crude oil, produce oligimers (o lig i mers) and polymers (such as plastics and synthetic fibers) and produce unscheduled chemicals via a biological or bio-mediated process (such as beer and wine).

About 10% of the data declarations focus on the CWC's scheduled chemicals. These declarations are more involved but still do not constitute a heavy and complicated reporting burden for the 140 or so firms that will be asked to comply. Most of these are larger companies and members of CMA who are likely to have accumulated much of the needed information for other purposes.

In any event, I want to assure you that Commerce will provide substantial assistance to industry in the data declaration process if it turns out to be needed. We will help firms determine if they have a reporting requirement. We will develop a commodity classification program similar to the one we have for export licensing. If a company doesn't know if its chemicals are covered by the CWC, it can ask Commerce for a determination. If firms do have a reporting requirement, Commerce technical staff will assist them in filing their declarations. In short, we do not believe that firms will be required to hire outside consultants to complete the CWC forms. We will also seek to put in place a system that enables firms to complete and file data declarations electronically.

Firms also want this data to be fully protected from unauthorized disclosure. We fully understand that concern and have substantial experience in protecting company confidential information as part of our current export licensing responsibilities. I want to assure you that our CWC Information Management System will be in a secure location and will be only accessible to and operated by staff with appropriate clearances. I also want to stress that the administration's draft CWC implementing legislation provides strong protections for company confidential information, and I hope this legislation will be taken up as soon as possible after the Senate's vote on ratification.

Inspections

The Commerce Department will be charged with managing the CWC inspection process of U.S. commercial facilities. There will be two types of inspections—routine and challenge.

Routine inspections are conducted to confirm the validity of data declarations and the absence of Schedule I chemicals. They are not based on any suspicion or allegation of non-compliance with the CWC. Inspectors will not be permitted unrestricted access to U.S. facilities under this regime, because the inspection may not exceed the limited purpose for which it is authorized. I can assure you that no "fishing expeditions" will be permitted as part of the CWC inspection process, because the Commerce Department will not permit it to happen.

Commerce will identify firms that are likely to be subject to routine inspection and work with them to develop draft "Facility Agreements" that will protect company confidential information. These Facility Agreements, which must be concluded between the U.S. and the Organization for the Prohibition of Chemical Weapons, will set forth the site-specific ground rules for the conduct of inspections. We estimate that about 40 U.S. commercial plant sites each year will be subject to routine inspections. Commerce's objective is to develop draft Facility Agreements before inspections take place in order to give firms an opportunity to identify their confidential information and processes. In this regard, we will work with firms to determine what constitutes company confidential information and will protect U.S. firms against any unwarranted requests by international inspectors. Under the implementing legislation, firms will participate in the preparations for the negotiation of Facility Agreements and the right to be present when the negotiations take place. This is yet another reason why Congress should take up the implementing legislation as soon as possible after passage of the Resolution of Ratification.

Challenge inspections are conducted based on an allegation of noncompliance. These inspections may only be requested by a State Party to the CWC and can be directed at declared and undeclared facilities. We anticipate few challenge inspections. In the event that there is a challenge inspection of a non-defense U.S. commercial facility, Commerce would have the lead role "managing access" to ensure that the international inspectors obtain by the least intrusive means possible only the information and data that are relevant to the specified noncompliance concerns. Firms would be under no obligation to answer questions unrelated to a possible violation of the Chemical Weapons Convention.

As with routine inspections, Commerce will work closely with firms to determine what constitutes company confidential information and will protect U.S. firms against any unwarranted requests that may be made by international inspectors. Since Commerce will be responsible for "managing access," we will abide no administrative harassment of U.S. companies or ask them to reply to any questions not directly related to CWC compliance.

Mr. Chairman, I also want to stress that the CWC gives us the right to screen the list of inspectors before any foreign national is permitted to conduct verification activities on our soil. We certainly intend to exercise our right to screen that list and to disapprove any individuals we find unsuitable.

With regard to the overall CWC inspection process, I understand there have been concerns raised about Constitutional protections regarding unreasonable search and seizure. No treaty that is inconsistent with the U.S. Constitution has U.S. legal effect, and the CWC involves no such inconsistency. We anticipate that most firms will permit CWC inspections on a voluntary basis, but in cases where access is not granted voluntarily, the U.S. Government would always obtain a search warrant before proceeding.

Australia Group and Export Controls

Mr. Chairman, some critics have expressed concern that the treaty will undermine the existing chemical non-proliferation export controls that have been developed by the "Australia Group." As head of the agency that administers dual-use export controls, I want to assure you that this is not the case. Article I of the CWC

commits States Parties to refrain from assisting any chemical weapon program in any way. The Australia Group's regime of export controls is end-user/end-use driven and is fully consistent with our obligations under Article I of the CWC. It is not a regime of trade restrictions aimed at impeding any country's economic development. Rather, the Australia Group's controls focus exclusively on restricting transfers to end-users of concern. Accordingly, we will continue to strongly support the Australia Group after the CWC enters into force, and we will not be required by the CWC to liberalize non-proliferation export controls to rogue nations such as Iran and Libya—even if they ratify the CWC.

However, when considering export controls, it is important to note that the CWC mandates trade restrictions that affect countries who do not ratify. Therefore, the real concern regarding export controls is that our allies and friends who have ratified the CWC will be required to impose controls on us that will have an adverse impact on U.S. industry if we do not ratify. Further, if we fail to join the CWC as part of the responsible family of nations, our overall leadership role within the non-proliferation community will be severely eroded and our ability to maintain a strong presence within the Australia Group will be lost.

Conclusion

Mr. Chairman, the time has come for us to join the growing consensus to ratify the treaty that we have promoted for so many years under both Republican and Democratic administrations. I believe that we are far better off with the CWC than without it. The United States has always been the world leader in fighting the proliferation of weapons of mass destruction and we must not shrink from that challenge at this critical juncture. Further, we must not abandon the American chemical industry who worked with us for so many years to develop this treaty and who would be disadvantaged in world markets if we fail to act responsibly. In short, the CWC will not impose unreasonable burdens on U.S. industry, but failure to ratify the CWC will certainly damage our overall international economic and non-proliferation interests.

Senator HAGEL. Mr. Webber, you are no stranger around here. It is good to have you.

STATEMENT OF FREDERICK WEBBER, PRESIDENT, CHEMICAL MANUFACTURERS ASSOCIATION, WASHINGTON, D.C.

Mr. WEBBER. Thank you, Senator. First of all, I want to reassure you that you are not the only Republican in the room.

Second, being an old Marine, I am used to being outnumbered, and I see that we are very much outnumbered here today. But I sort of like those odds.

My name is Fred Webber, and I am president of the Chemical Manufacturers Association. I would like to enter into the record a letter that my board signed yesterday. We had our spring board meeting. It is a letter endorsing the Chemical Weapons Convention. There are 50 men on my board representing America's chemical companies of all sizes. And, by the way, a third of our membership, which is almost 200 chemical companies, is made up of companies with sales less of less than $100 million. So, indeed, we consider those to be small businesses.

Senator HAGEL. Without objection.

[The information referred to follows:]

April 15, 1997.

Hon. TRENT LOTT,
Senate Majority Leader,
United States Senate, Washington, DC 20510.

Dear Senator Lott: We, the undersigned members of the Chemical Manufacturers Association's Board of Directors, are writing to ask you to support the Chemical Weapons Convention (CWC).

We believe the Convention is a fair and effective international response to the international threat of chemical weapons proliferation. Ratifying the CWC is in the national interest.

The CWC is a natural extension of existing U.S. policy. In 1985, Congress voted to end production of chemical weapons by the military and to begin destroying existing stockpiles.

For years, the United States has imposed the world's strongest controls on exports of weapons-making ingredients. Our nation is the standard bearer in preventing the spread of chemical weapons.

The CWC requires other nations to do what the United States is already doing. That's why President Reagan proposed the treaty to the United Nations in 1984. It's why President Bush signed the treaty in Paris in 1993. And it's why President Clinton is asking the Senate to ratify it.

The chemical industry has thoroughly examined the CWC. We have tested the treaty's record-keeping and inspection provisions. And we have concluded that the benefits of the CWC far outweigh the costs.

Ratifying the CWC is the right thing to do. We urge you to vote for the Convention.

Sincerely,

FREDERICK L. WEBBER, President & CEO, Chemical Manufacturers Association
J. LAWRENCE WILSON, Chairman & CEO, Rohm and Haas Company; Chairman, Board of Directors, Chemical Manufacturers Association
JOHN E. AKITT, Executive Vice President, Exxon Chemical Company
PHILLIP D. ASHKETTLE, President and CEO, Reichhold Chemicals, Inc.
BERNARD AZOULAY, President and CEO, Elf Atochem North America
WILLIAM G. BARES, Chairman and CEO, The Lubrizol Corporation
JERALD A. BLUMBERG, Executive Vice President, DuPont; Chairman, DuPont Europe
MICHAEL R. BOYCE, CEO & President, Harris Chemical Group
VINCENT A. CALARCO, Chairman, President & CEO, Crompton & Knowles Corporation
WILLIAM R. COOK, Chairman, President and CEO, BetzDearborn Inc.
ALBERT J. COSTELLO, Chairman, President & CEO, W.R. Grace & Co.
DAVIS J. D'ANTONI, President, Ashland Chemical Company
JOHN R. DANZEISEN, Chairman, ICI Americas Inc.
EARNEST W. DEAVENPORT, JR., Chairman of the Board and CEO, Eastman Chemical Company
R. KEITH ELLIOTT, Chairman, President & CEO, Hercules Incorporated
DARRYL D. FRY, Chairman, President and CEO, Cytec Industries Inc
MICHAEL C. HARNETTY, Division Vice President, 3M
RICHARD A. HAZLETON, Chairman & CEO, Dow Corning Corporation
ALAN R. HIRSIG, President & CEO, ARCO Chemical Company
GERALD L. HOERIG, President, Syntex Chemicals, Inc.
JACK L. HOWE, JR., President, Phillips Chemical Company
JON M. HUNTSMAN, JR., Vice Chairman, Huntsman Corporation
DONALD M. JAMES, President & CEO, Vulcan Materials Company
DALE R. LAURANCE, President and Sr. Operating Officer, Occidental Petroleum Corporation
RAYMOND W. LEBOEUF, President & CEO, PPG Industries, Inc.
JAMES A. MACK, President & CEO, Cambrex Corporation
HANS C. NOETZLI, President & CEO, Lonza, Inc.
ROBERT G. POTTER, Executive Vice President Monsanto Company
ARTHUR R. SIGEL, President & CEO, Velsicol Chemical Corporation
ENRIQUE J. SOSA, Executive Vice President, Chemicals Sector, Amoco Corporation
WILLIAM STAVROPOULOS, President & CEO, The Dow Chemical Corporation
F. QUINN STEPAN, Chairman & President, Stepan Company
S. JAY STEWART, Chairman and CEO, Morton International, Inc.
ROBERT O. SWANSON, Executive Vice President, Mobil Corporation
RUDY VAN DER MEER, Member, Board of Management, Akzo Nobel nv
JEROEN VAN DER VEER, President & CEO, Shell Chemical Company
GEORGE A. VINCENT, Chairman, President & CEO, The C.P. Hall Company
J. VIRGIL WAGGONER, President & CEO, Sterling Chemicals, Inc.
H.A. WAGNER, Chairman & CEO, Air Products & Chemicals, Inc.
HELGE H. WEHMEIER, President & CEO, Bayer Corporation
RONALD H. YOCUM, President & CEO, Millennium Petrochemical Company

Mr. WEBBER. I might also add, Mr. Chairman, that Virgil Wagner, Vice Chairman of Sterling Chemical Company and a member of our board signed that letter yesterday afternoon at 11:00—excuse me, yesterday morning—and that, second, Mr. Robert Potter, Chairman and President of the new Monsanto Company—your old

company, sir—firmly endorsed that letter. Monsanto has always been on record supporting the Chemical Weapons Convention. So I was rather surprised today to hear about that letter and the concern.

The industry I represent is America's largest export industry. We sell over $365 billion worth of chemicals. We export over $60 billion of those. We employ about 1.1 million people in what I would call well-paying jobs.

As you know, we have been a firm and frequent advocate of this convention. We have appeared before this committee on four separate occasions. We have the major voice of the regulated business community on the convention. We have 20 years of experience working closely with Republican and Democratic administrations. We know how this treaty indeed affects our commercial interests.

Our long-standing support for the convention is rooted in the belief that the treaty is the right thing to do, and it is the right way to control the spread of chemical weapons.

The chemical industry does not produce chemical weapons. We do, however, make products used in medicine, crop protection, and fire prevention, which can be converted into weapons agents. The industry has a special responsibility to prevent illegal diversions of our products. We take that responsibility very, very seriously.

That is why, frankly, I am outraged by the remarks made before this committee about the U.S. Chemical industry, remarks that strongly suggest that our support for the Chemical Weapons Convention is motivated by a desire to supply dangerous chemicals for rogue nations. I am very disappointed in Mr. Forbes' comments about blood money. I thought they were very, very unfortunate.

Remarks that also suggest that we are trying to gut the U.S. export control regime and dismantle multilateral control organizations, like the Australia Group, frankly, again, deeply offend us. The chemical industry is proud of its record of support for U.S. antiproliferation efforts. We have long supported this Nation's tough export control laws, the toughest export control laws in the world; as they are necessary measures to assure that commercial interests do not contribute to the spread of chemical weapons.

No one has done more than the U.S. chemical industry to make the Export Administration Act an effective control system. No one has done more to build and support multilateral control organizations like the Australia Group. The charges made here last week against our industry are shameful and, frankly, they bring dishonor and discredit to those who make them.

We support the convention because it is a logical extension of U.S. policy. It will make our Nation's antiproliferation objectives more reachable by applying our high standards to other nations.

The treaty simply forces other nations to do what we are already doing—destroying our chemical weapons stocks. We have been committed to the success of the CWC for over 20 years. Indeed, one of the great leaders was a man by the name of Will Carpenter, again of Monsanto Corporation. We have been a true partner of the U.S. Government in negotiating this treaty.

We began with many of the same concerns about the treaty that have been voiced here. We have worked hard to protect U.S. industrial interests, especially proprietary information. We helped to de-

velop the protocols guiding the treaty's inspection and record-keeping requirements, and we put those protocols to live fire tests over and over again.

Protecting confidential business information was our industry's top priority. We think we achieved our goal in the treaty text and the inspection procedures developed to implement the treaty. In addition, we field tested the declaration formats and concluded that the requirements are reasonable and manageable.

Some claim that the CWC will impose a massive regulatory burden on companies. That is not true.

I have about 1 minute to go, sir, if I may.

Senator HAGEL. Mr. Webber, go right ahead. Take your time.

Mr. WEBBER. Thank you.

The treaty was specifically drawn to focus attention on a relatively narrow segment of the chemical industry. Only some 200 facilities have both reporting and inspection obligations under the treaty. Most of these are member companies of CMA.

Our involvement in preparing this treaty has made it a measurably better product than it would have been otherwise.

As I said, our board yesterday reaffirmed its strong support for the convention. In summary, we believe the treaty is not a threat to U.S. business. This treaty passes muster. The chemical industry supports it.

Again, we think the treaty is the right thing to do and we thank you very much.

[The prepared statement of Mr. Webber follows:]

PREPARED STATEMENT OF FREDERICK L. WEBBER

Good afternoon. My name is Fred Webber, and I am President and Chief Executive Officer of the Chemical Manufacturers Association.

The industry I represent is America's largest export industry, with over 1 million American jobs.

As you well know, CMA has been a frequent and vocal advocate for the Chemical Weapons Convention. We have appeared before this Committee on four separate occasions to testify on why the U.S. chemical industry believes this treaty is in the national interest.

We are the major voice of the regulated business community on the Convention. We have 20 years of experience working closely with Republican and Democratic Administrations. We know how this treaty affects our commercial interests.

Our long-standing support for the CWC is rooted in the belief that the treaty is the right thing to do. It is the right way to control the spread of chemical weapons.

The chemical industry does not produce chemical weapons. We do, however, make products used in medicine, crop protection, and fire prevention, which can be converted into weapons agents.

The chemical industry has a special responsibility to prevent illegal diversions of our products. We take that responsibility very, very seriously.

That is why I am outraged by remarks made before this committee about the U.S. chemical industry—remarks that strongly suggest that our support for CWC is motivated by a desire to supply "dangerous chemicals" to rogue nations.

Remarks that also suggest that we are trying to gut the U.S. export control regime and dismantle multilateral control organizations like the Australia Group deeply offend us.

The chemical industry is proud of its record of support for U.S. anti-proliferation efforts.

We have long supported this Nation's tough export control laws—the toughest export control laws in the world—as necessary measures to assure that commercial interests do not contribute to the spread of chemical weapons.

No one has done more than the U.S. chemical industry to make the Export Administration Act an effective control system. No one has done more to build and support multilateral control organizations like the Australia Group.

The charges made here last week against my industry are shameful and bring dishonor and discredit to those who make them.

We support the CWC because it is a logical extension of U.S. policy. It will make our Nation's anti-proliferation objectives more reachable by applying our high standards to other nations.

The treaty simply forces other nations to do what we are already doing, destroying our chemical weapons stocks.

CMA has been committed to the success of the CWC for close to 20 years. We have been a true partner of the U.S. Government in negotiating this treaty.

We began with many of the same concerns about the treaty that have been voiced here. We worked hard to protect U.S. industrial interests, especially proprietary information. We helped to develop the protocols guiding the treaty's inspection and recordkeeping requirements, and we put those protocols to live-fire tests over and over again.

Protecting confidential business information was our industry's top priority. We achieved our goal in the treaty text and the inspection procedures developed to implement it. In addition, we field tested the declaration formats, and concluded that the requirements are reasonable and manageable.

Some claim that the CWC will impose a massive regulatory burden on companies. That's not true. The treaty was specifically drawn to focus attention on a relatively narrow segment of the chemical industry. Only some 200 facilities have both reporting and inspection obligations under the CWC. Most of these are members of CMA.

Our involvement in preparing this treaty has made it a measurably better product than it would otherwise have been.

CMA's Board of Directors yesterday reaffirmed their strong support for the Chemical Weapons Convention. A copy of the CMA Board letter will be submitted for the Committee's record.

In summary, we believe the treaty is not a threat to U.S. businesses. This treaty passes muster. The chemical industry supports it. The CWC is the right thing to do.

Senator HAGEL. Mr. Webber, thank you. Thank you all for your time and your contributions.

Senator Biden, I think Senator Helms wanted to stay with the 7.5 minute questioning, if that is agreeable to you. Why don't you start and I will follow up.

Senator BIDEN. Thank you very much.

Mr. Webber, thank you. You would expect me to thank you and others would expect me to thank you. But thank you for such a clear, absolutely precise statement. I began to wonder. I say this again. You know, chemicals in my state are not a small operation. They are 51 percent of the manufacturing base of my state.

I have not heard anybody in my state out there who manufactures chemicals coming to me and saying this is a bad idea, and I think almost all of them belong to your organization. I may be mistaken. Maybe somebody does not, but I think they all do.

Mr. WEBBER. I believe they do.

Senator BIDEN. Ms. Bailey, I don't expect you to answer this, but the Diamond Shamrock example, Ultramar, the letter read, if they produce any of the chemicals mentioned in the letter—and I don't know if they produce them or use them—but if they produce them, they will, in fact, come under an inspection regime—if they produce at least 30 tons for some or 200 tons for others, which are still not subject to routine inspections. Still, out of the whole mess there are only 20 a year that can occur. That's Number 1.

Number 2, I am going to write the president of the company, too, to assure him he need not be as concerned as you are. And if they do not produce those chemicals, they don't have any requirement. If they use them or if they purchase them, there's no requirement—no requirement.

So I would have to find out, and it is hard to tell from the testimony, whether they produce the chemicals listed or whether they only consume them and do not produce them.

I would like to ask a question of Mr. Reinsch. I assume in your testimony, when you were talking about you, the Commerce Department, being required, being involved under the regime of how these inspections will take place, any inspection, when it takes place, is as a consequence of the language in the convention. The Confidentiality Annex, subsection (c) says: Measures to protect sensitive installations to prevent disclosure of confidential data—*et cetera*. It talks in there about how inspection teams will be guided and the requirement that there be facility agreements, that there be arrangements.

Translated into every day English, that means there has to be a deal that you sign off on, on how an inspection team is able to, under what circumstances, what part of the facility they can go into, when they can go in, how many people they can go in with, what they can look at, whether the system has to be turned on or off—all of those things. Right?

Mr. REINSCH. That's correct.

Senator BIDEN. I think that is a very important thing, because part of the problem I find here is this. Just as somebody said, I believe it was Mr. Kearns—and, by the way, you did a heck of a job when you were on this committee. You did a really fine job. You and I were on the same side then on the fighter. We are on a different side now.

But as he points out, a lot of people, including individual companies, do not know a lot about this treaty, any more than I suspect any of your members would know about the treaty if we sent them a poll. This is complicated stuff.

But what I find is the more we talk about it, the more we explain the mechanics of it, the lot less onerous it appears, even to people who are opposed to it. That is the reason I bother to mention that section of the treaty.

Now, one of the things that I am concerned about is this. And by the way, Mr. Johnson, I like witnesses like you. I mean this sincerely. You are the kind of person I like testifying. You don't mince any words. You go to the heart of what you think is wrong with whatever is being discussed and what you think is OK.

Your concern, I think were I you, is a legitimate one, and that is whether or not the processes your particular company uses would be able, in effect, to be pirated just by the mere fact someone can see how you line up the line, or what temperatures you run at, and so on and so forth.

Mr. JOHNSON. That is correct.

Senator BIDEN. I think were I you, I would be concerned about that, too. But I also appreciate your putting to rest, at least to some degree, how onerous the paperwork is and how onerous the inspections are—all the stuff we are hearing from the opponents. You do not say that. But you are worried, and with good reason, I think, if I were you sitting there.

That is where the Commerce Department comes in. Now, how would you take care of a fellow like Mr. Johnson who, in all likelihood, will have about as much chance of being inspected as win-

ning the lottery, because we are talking about how there are only going to be 20 inspections in the whole year that could take place. There are a couple of thousand outfits it could take place in—well, maybe he has a little better chance than winning the lottery, but it's not likely.

Mr. JOHNSON. I will buy my lottery ticket, Senator.

Senator BIDEN. You will buy your lottery ticket. Good point. Touché.

How would you deal with this. Let's say the treaty passes, as I hope, and I would hope, Mr. Johnson, that the first thing he would do is come to you and say OK, guys, if we get an inspection, how are we going to do this. Can we for the hour it takes place, or 20 minutes, or 5 hours, shut down a particular process so that they can't see what temperature we are doing this at?

Will you actually facilitate that kind of thing? Will it be that specific?

Mr. REINSCH. Well, if it came to that, Senator Biden. In the first instance, this is Dixie.

Senator BIDEN. Yes.

Mr. REINSCH. These are discreet organic chemicals. In the first instance, he is not going to have any inspections, at least for the first 3 years.

Senator BIDEN. I didn't want to mention that. Yes.

Mr. REINSCH. Beyond that, it would be up to the international body to ultimately decide if there were going to be any inspections.

Senator BIDEN. And if it had any inspections, it would only be 1 of 20.

Mr. REINSCH. Correct. So this is way down the road. But let's assume the worst case for the moment and that in the fourth or fifth year he is going to have an inspection.

What we would do in that case, as part of trying to create a facility agreement with him, is to come in, meet with him, talk to him about his confidential business information, his proprietary information, and try to set up a structure in which he would tell us what he does not want anybody to see, what parts of the plant he does not want them to go into, what kind of procedures he does not want them to observe, and we would construct an agreement that precludes the inspection of those.

Senator BIDEN. The bottom line in the treaty, all that it requires is that you supply sufficient proof that you are not supplying, or producing——

Mr. REINSCH. You are not producing a Schedule I chemical.

Senator BIDEN.—Schedule I stuff.

Mr. REINSCH. That's correct.

Senator BIDEN. So it is not something that is an automatic thing. I just want to establish—and my time is about to be up—I just want to establish that, even if an inspection took place in such a circumstance, it is not willy nilly unlock the doors, open the books, here they come, and the Iranian team is coming in to figure out how to transport all of this stuff to Iran. Right?

Isn't that a fair statement?

Mr. REINSCH. That's correct, Senator. That is exactly correct.

Senator BIDEN. Last point—and Mr. Spears is gone. I've got good news for him. He will not be inspected at all. He is not even in the

game. So someone ought to write him a letter—I will write him a letter—based on what he told us. He is not even subject to any inspection at all. That is really good news to him.

Maybe I should give it to Mr. Gaffney and he can give it to him. There is no need. He is not even in the game.

That does not mean that he shouldn't be opposed to the treaty. He made other, larger, objections to it, which I respect. But he does not have to worry about his pipe company.

The CHAIRMAN [presiding]. Thank you.

Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you. Again, thanks to all of you for coming today.

I apologize that we all had to jump out and vote. But I would like to get back, Ms. Bailey, to your testimony, and I left right at the beginning.

I would like, if you would, for you to expand a little bit on one of your subheadings in your testimony, the threat of espionage. Would you talk a little bit about where you see this treaty? And maybe you do not. I have not read what you said. But that has been brought up by former Secretary Schlesinger and others, that this is a treaty that is on some pretty thin ice when it comes to opening up our facilities to foreign espionage.

Ms. BAILEY. Yes, sir. The greatest threat in terms of espionage to U.S. companies and U.S. national facilities, such as my own laboratory, comes from challenge inspections which might be used specifically for the purposes of espionage.

Hypothetically, an inspector could either be an intelligence official assigned to be an inspector or could later sell information to a company or country abroad that reveals either classified or CBI, confidential business information, that they might have gleaned through the process of gathering samples and analyzing them.

I described in my testimony the GC/MS, the gas chromatograph/mass spectrometer, which can reveal not only what chemicals are being used at a site but also the processes being used. And in the case of the propellant production facility that was the subject of a mock inspection, we were able to analyze samples taken from that facility and determine not only what kind of chemicals, which chemicals were in the rocket propellant, but also a lot of process information. All of this was classified data.

This mock inspection, sponsored by the U.S. Government, proved the point that somebody can come in and use the very tools that will be used by inspectors in the challenge inspection regimes to look at classified information.

The counter argument to this is that they are only going to be looking for a specific library of types of information, such as the scheduled chemicals. The problem is you cannot limit it to that.

Our laboratory did a project last year for the Department of the Army which determined that samples an be acquired even from the GC/MS after it has been decontaminated and can reveal the same classified information.

We have also done research that indicates that an inspector could come in with a ball point pen that is really a sampling device, suck some air up in it, or water, or whatever, and take it away, analyze it, and get the same type of information.

Mr. REINSCH. May I comment on that, Senator?

Senator HAGEL. Yes.

Mr. REINSCH. I have two quick points, if I may.

With respect to the GC/MS, I am advised by the Defense Department's Onsite Inspection Authority that they have studied this kind of equipment and have developed procedures for its use by escorts during the inspections to ensure that only appropriate information is provided to the inspector.

Now beyond that, I will leave it to the engineers and the chemists to argue about that. But that is what I am advised.

The only other point I would make is Ms. Bailey has not mentioned the issue of managed access. What we would do in a challenge inspection is go in and consult with the company about where their intellectual property is, what it is that they are trying to protect from the very thing she is concerned about, and devise a plan for the inspectors' access that would prevent them from seeing those items.

Senator HAGEL. Is that now part of the convention, that wording?

Senator BIDEN. That's what I was talking about. Yes.

Ms. BAILEY. Neither of those points are relevant, however. The first one, the idea that they are only going to look for specific kind of chemicals is this "library of chemicals" argument I was using.

Mr. REINSCH. That is not the point I made.

Ms. BAILEY. It doesn't matter, because you can clandestinely take samples and get the same data offsite. It just doesn't matter.

Mr. REINSCH. We would manage access to protect intellectual property.

Senator HAGEL. I think she is kind of over that point.

Ms. BAILEY. In the mock inspection which I cited, the samples were taken outside of the propellant facility building. So you didn't even have to go into the building to get it.

So the whole idea that managed access is somehow going to prevent the acquisition of classified or confidential information is not legitimate.

Senator HAGEL. Thank you.

Mr. Secretary, I am on a timeframe, and if one of the other Senators wants to come back, or I can come back to this again. But I want first to get to Mr. Webber on this point.

Mr. Webber, what is your understanding of the inspection process? Are you concerned at all for your companies that the Iranians might come in or somebody would come in and what Ms. Bailey is talking about gets underneath some of the corporate issues, the national security issues? I mean, do you think you and your companies, Mr. Webber, have a good understanding of the process?

Mr. WEBBER. Certainly we were concerned early on. That is why we got deeply involved in the deliberations and, frankly, in the drafting sessions of this treaty, hoping that we could clear up some of these problems.

Under the procedures we helped negotiate on the CWC, our companies, frankly, have significant protections today against an inspection team knowingly or inadvertently disclosing proprietary information. First, the convention gives our companies, subject to routine onsite inspections, the right, as was mentioned earlier, to negotiate a facility agreement. That agreement will govern the in-

spection process and provide a means of assuring that trade secrets will not be routinely made available to the inspectors.

Second, the inspectors will be subject to personal liability and sanctions for wrongful disclosure of information.

Again, we were concerned about the possibility. We think the treaty tackles that problem head-on. We helped draft the verification procedures; and, again, we just think the benefits far outweigh the costs.

Senator HAGEL. So that is no longer a concern of you, your people, or your companies?

Mr. WEBBER. We think the language in that convention gives us the protections we need.

Senator HAGEL. Thank you.

Does anybody else want to respond?

Ms. BAILEY. Mr. Webber is referring essentially to routine inspections, whereas the inspections I was talking about are challenge inspections. Those are the ones that are likely to target, for example, a biotechnology firm, a pharmaceutical company, any company that might have confidential business information to lose or facilities such as my laboratory, where there are national security data.

We won't be subject to routine inspections. We would be subject to challenge inspections.

Senator HAGEL. I think that is part of the issue that we are trying to get at here; at least that is most important in my mind. I am not diminishing the importance of commerce here. But, again, I go back to my opening statement. I will vote on this treaty based on the national interests of this country. Everything else is important, but not nearly as important in my mind as what is most important in the national security interests of this country.

I suppose I am about out of time, Mr. Chairman, so I will defer to whoever is up next. Thank you.

The CHAIRMAN. I am not going to call you "Mr. Webber." I am going to call you "Fred," because we have been on the same side many times.

Mr. WEBBER. For a long time, sir.

The CHAIRMAN. I welcome you as I do all of our distinguished witnesses today.

I want to know if you or any other CMA representative has stated in the past that no companies which manufacture what they call "discreet organic chemicals" will be subject to foreign inspections.

Mr. WEBBER. First of all, as was pointed out just a few minutes ago, not within the first 3 years. They will not be inspected within the first 3 years.

As you know, again——

The CHAIRMAN. I'm sorry. Please repeat that. You're a little far away from the microphone.

Mr. WEBBER [continuing]. I'm sorry. Not within the first 3 years. They are not going to be inspected. And, indeed, if they are to be challenge inspected later on, I think the odds, again, are what—20 out of—what is the rule? It is going to be a very low percentage if there is, indeed, to be a challenge inspection. A challenge inspection relies on an allegation. So we feel fairly comfortable that the protections that I just described earlier will indeed apply to manufacturers of discreet organic chemicals.

The CHAIRMAN. Have you read the committee, part 2 of the Verification Annex, paragraphs 9–21 lately? Are you familiar with it?

Mr. WEBBER. If I read it, sir, it was a long time ago, and I can't quote it now.

The CHAIRMAN. It says nothing about any 3 years. And yes, they will be inspected.

Now I just want to be sure here.

You are talking about challenge inspections and we are talking about challenge inspections. What is your answer to my question based on that?

Mr. WEBBER. Well, sir, I think the International Inspecting Authority, if I read the convention correctly, has to make the decision early on as to what the time schedule will be to indeed, first of all, inspect those 200 facilities that will naturally come out of the convention mandate and then decide what to do with those discreet organic chemical manufacturers. And if, indeed, they decide to allow challenges early on, sure they will be subject to the treaty if there is a challenge to a company like Dixie.

The CHAIRMAN. Well, this has not changed, and your predecessor, a distinguished gentleman named Dr. Will Carpenter, supplied for the record a copy of his remarks before the American Association for the Advancement of Science on January 16, admitted in 1989, in which he noted, "Those of us who manufacture chemicals that are only a step or two away from chemical weapons, and that means a large number of us in the CMA, have already accepted the reality that a good treaty means significant losses of information that we consider confidential."

Is that still your position?

Mr. WEBBER. It is not our position today. Again, that statement, indeed, was made by Dr. Carpenter of Monsanto in 1989. But he has been a forceful presence and a strong supporter of the convention.

The CHAIRMAN. Did he speak in error when he said that? Was he wrong when he said that?

Mr. WEBBER. Today he would tell you, sir, that the industry has pressure tested the treaty and he feels very comfortable now that the needed protections are there.

So I think he would testify right along those lines. That is an 8 year old statement, when we were still working on the treaty, working with the government to make sure that those problems would be corrected.

The CHAIRMAN. But what was true in 1989, unless it has been changed, would be true today. So you are saying he was wrong in 1989?

Mr. WEBBER. Sir, we were in the midst of negotiating on that treaty. There were a lot of open-ended issues. A lot of progress has been made since then.

I have met personally with Dr. Carpenter in the last 6 months. He is a strong advocate of the treaty who feels today, as it is presently written, that it provides us with the protection we need.

The CHAIRMAN. So you are saying here that it is a good treaty?

Mr. WEBBER. Oh, yes, sir. We strongly support the treaty.

The CHAIRMAN. Are you mystified by the number of your members who are rejecting your appraisal of this treaty?

Mr. WEBBER. There are always, in any organization, say of 200 companies, you will find a few.

The CHAIRMAN. But you had said in the past that you were representing all of the chemical companies.

Mr. WEBBER. We represent 192—92—today to be exact. We have one at the table that has concerns. They have not said that the treaty ought to be defeated. They are concerned about confidential business information and the cost of inspections.

The CHAIRMAN. We have heard some say definitely that it ought to be defeated.

Mr. WEBBER. Well, I just heard a letter read into the record from Sterling Chemical expressing concerns. And yet, their vice chairman yesterday, along with the CMA board, signed that letter endorsing the treaty, and that letter is going to Senator Trent Lott today. And, by the way, Mr. Chairman, we enter that for the record.

[The letter from Sterling Chemical was read into the record by Kathleen Bailey and appears on page 183; the letter to Senator Lott appears on page 194.]

The CHAIRMAN. Well, not so long ago, less than a year ago, on November 26 of 1996, you made the claim that the U.S. Chemical manufacturers will "lose"—and these are indicated as your words—"as much as $600 million a year in export sales" if the CWC is not ratified.

Then, on March 10 of this year, you revised your estimate to say that the upper bound of lost sales would be $227 million. So you have come down. And also I have a list provided to the committee and the Majority Leader's Office by CMA which makes clear that the amount of sales of Schedule II chemicals will total less than half of what you have previously claimed.

Now that ball is bouncing crazily around the lot. What do you do, just reach out, get a figure, and say whatever is likely to excite the people?

Mr. WEBBER. Oh, Mr. Chairman, you know I wouldn't do that. We have known each other for too long.

The CHAIRMAN. Oh, I'm not sure. A lot of things are being said about this treaty that are simply not so, and the people who are saying them know that they are not so.

Now I want to know whether you are revising your figures and where are the figures now?

Mr. WEBBER. I appreciate the opportunity to correct the record and, indeed, it needs correction.

In September 1996, we estimated that the potential impact of the ban on trade in Schedule II chemicals would, if applied against the United States, impact some $600 million in exports—in exports. Since that time, CMA carefully reviewed the data available from the government and industry sources. Our conservative estimates today are that $500 million to $600 million in two-way trade—and here we stand corrected, but it is two-way trade, both exports and imports—will be affected by the Schedule II ban.

These numbers are the best estimates that we have been able to get throughout the debate.

By the way, Mr. Chairman, we feel that this is the tip of the iceberg. But these numbers we are prepared to stand behind. But it is two-way trade, not one-way trade, not just exports.

The CHAIRMAN. Well, let's see how well they will stand, Fred, and I say this as a friend.

Mr. WEBBER. Yes, sir.

The CHAIRMAN. Exports of Amiton, a pesticide—is that the way you pronounce that—A-M-I-T-O-N?

Mr. WEBBER. Yes. Yes, sir.

The CHAIRMAN. That is a pesticide. I am advised, quite reliably, that the U.S. exports of Amiton total more than half of your new figure. And yet, the United States sells this pesticide largely to countries that have not ratified the treaty and are not going to participate in it.

Am I wrong about that?

Mr. WEBBER. I'm not sure, Senator. I would have to look at the numbers. But the fact of the matter is all of our major trading partners, all of the major trading partners in the U.S. chemical industry, are signatories already to this convention. I don't know how else to approach the answer.

We could dig into the numbers, but I am trying to question the relevancy of it and the sale of it. It goes to our trading partners, and those trading partners have signed the convention.

The CHAIRMAN. Well, half of what you say that they will lose involves one chemical, Amiton—and I hope I am pronouncing that right.

Mr. WEBBER. Yes, you are, sir.

The CHAIRMAN. And yet, the United States sells this pesticide almost entirely to countries that have not ratified the treaty.

I have just been handed, as your man is handing you information I am being handed information, too, and what the hell would we do without our staff. Western companies cannot use this chemical, can they? You tell him.

Mr. WEBBER. If we understand correctly, U.S. law does not prohibit production of this chemical, this pesticide, for export purposes.

The CHAIRMAN. I understand that. But that is not what I asked you, though.

I asked you if you didn't send it to companies that are not participating. It is not a U.S. law. It is a European law that you are talking about in the first place. But environmental regulations are prohibiting the use of Amiton in Europe and elsewhere. Is that not correct?

Mr. WEBBER. I am at a disadvantage. I don't have the information or the numbers on that specific chemical. I would be delighted to work with your staff to dig into that to really see not only what is happening but what the significance of it is.

The CHAIRMAN. Well, let me tell you what bothers me about the proponents of this treaty.

I have caught them in so many misstatements of fact, and for a while, you know, I said we all make mistakes. But I have almost reached the conclusion that most—not all, but most—of the loud advocates of the treaty—and I am including the editorial writers—they don't know what they're talking about and they don't care.

They just get a statement out of thin air, throw it out there, and then the rest of us have to chase it down to see whether it is accurate. And nine times out of ten we find out it is not accurate.

That is the reason I have made the conclusion that we ought to defeat this treaty unless it is substantially modified and we go ahead and do it right. I am just exactly like Steve Forbes on this treaty. I thought he made good sense, as he does always.

Well, my time is up.

What shall we do about another round? Would you like another round?

Senator BIDEN. Well, since we have so many witnesses here—we really have two panels in one—I would like to have another round, if that is OK with you, Mr. Chairman.

The CHAIRMAN. OK. How many minutes per Senator?

Senator BIDEN. Do you mind if we have, if we could have one more round of 7.5 minutes, I think that will end it. At least I have about that much to ask.

Do you mind?

The CHAIRMAN. Not at all. I think it is a good idea.

Senator BIDEN. OK.

You know, I understand the Chairman's frustration. I am going to ask Mr. Webber to comment. I want to pursue that again in a moment.

But, you know, it is so easy. This is such a complicated issue. It is so easy to scare the living daylights out of proponents and opponents of this treaty by taking things, taking the worst case scenarios that have probabilities that are incredibly low.

For example, what Ms. Bailey was talking about is these challenge inspections, these challenge inspections of outfits that are the small outfits, the biochemical firms, the biotech firms, the pharmaceutical firms, who, I might add, signed on to these treaties, both their organizations.

Let's review what the treaty calls for if there is a challenge inspection.

If there is a challenge inspection, first of all a country has to, say Iran—we're all talking about Iran. We assume the French are not going to do this bad thing to us, or the Germans, the Brits, or whatever. We usually use Iran as the worst case.

Say an Iranian says I want to find out what that biotech firm is doing. I want to find out what that pharmaceutical firm has out there, because I want to steal their secrets, or I want to steal weapons-grade capability from someone.

So they say, "we think Company X, Diamond Shamrock"—assuming they were in the deal, and I'm not sure they are—"We want a challenge inspection." What happens mechanically? Mechanically, that request goes to the Director General of this outfit. The Director General then takes a look at it after looking at the evidence presented by the country asking for the challenge inspection. They just can't say, you know, I kind of think they make a lot of money over there at Diamond Shamrock, and I would kind of like to find out how they do it. I want to challenge. You know, like a kid in a pick-up game, "I challenge."

You can't do that. You have to supply a rationale. You have to say why you think they are violating this treaty.

Then the Director General takes it. He looks at it. Then he has to take it to the Executive Council. And if the Executive Council believes that the allegations offered, allegations of cheating under the treaty, have no merit, they have to have a super majority to say no inspection. They have to have, say, three-quarters. It's three-quarters.

And, by the way, if it turns out it is an abusive request, like abusing the courts with frivolous lawsuits, that kind of thing, they also then have to pay a penalty, "they" the country making these frivolous requests.

But even after that, let's assume it goes through the sieve, Iran says I want to know what's happening up at duPont-Merck. I think they have a deal there, and I would like to figure out how it works. No inspector from that country is allowed on the team. So the Iranians have to have somebody else. They have to go to Country Y and say here is a deal we will make together. You send your inspector in with this little thing he is going to put in his pocket to find out all this information and then, when you get it, you give it to us. This is because you can't send an inspector in.

OK. Assume they go through all of that. Then they get to the end of the day, they come to the United States, they go to duPont-Merck or some small outfit. Guess what? In a challenge inspection, they need a search warrant under the Fourth Amendment, and they must establish before a court of law probable cause to determine that the company is violating the Chemical Weapons Convention—in a Federal court. It's just like you have to have probable cause now for a search warrant.

Now, Mr. Johnson, if your company is worried about that part of the process, or anybody else who actually runs a company, you either don't have very good lawyers who work for you now to be able to explain this to you or you are one of those people who assumes you are going to get struck by lightning on those days when there is lightning out there.

It could happen. I acknowledge it could happen. Iran could make a deal with China—and, by the way, neither one is in the treaty yet, and if they are not in the treaty, they don't get to have an inspector; they don't get to be involved. They'd have to make a deal. There has to be collusion. They have to agree to share the information. They then have to go in with another inspector not from their team, but they have to get by the Director General, and the Director General then has to get by the Executive Council. And the Executive Council is probably not real crazy about Iran, either.

Then, even if they do that, they have to get by a Federal judge.

Now it can happen. It can happen. A good friend of mine, Billy Haggerty, got struck by lightning the other day in a park. It happens. Now I walk in the same park, in the same lightning storm—and I'm not joking, he really did get struck by lightening. But that's about what we are talking about here.

With regard to this issue, Mr. Webber, I assume the point of the question was—though I may be mistaken about this particular chemical—is that you really are not going to suffer a penalty, the industry, if you already trade it to a country not covered by the treaty. This is because the only penalties would be import sanctions that would be imposed upon us, or exports, which are imports

to that country. A country could say you can't sell your chemical in our country. We're a member of the treaty and you are violating the treaty or you are not in the treaty. You're not in.

I assume the Senator's point was this stuff is sold to countries that are not in the treaty, therefore you would suffer no loss if we were not part of the treaty.

Mr. WEBBER. If they are otherwise not controlled by the Export Control Act.

Senator BIDEN. Right.

Mr. WEBBER. That's correct.

Senator BIDEN. Otherwise not controlled by the Export Control Act, which is a separate piece of legislation.

Mr. WEBBER. Correct.

Senator BIDEN. Can you supply for the committee an analysis of this particular matter?

Mr. WEBBER. Yes.

Senator BIDEN. I see my train just left.

You know I care about this treaty, Jesse, if I miss the 5 train and there are no votes.

The CHAIRMAN. I wish you had gone home.

Senator BIDEN. Did you hear what he said, he wished I'd gone home.

I don't blame him.

Can you supply for the record a more detailed response based on your analysis to the Senator's question about 50 percent of the loss is attributed to one chemical and a significant portion of that chemical sale goes to countries not covered?

Mr. WEBBER. Yes. Your clarification is very helpful.

I'm sorry, Mr. Chairman, I didn't clearly understand the question. We would be delighted to supply for the record that analysis.

[The information referred to was unavailable at the time of printing.]

Senator BIDEN. Well, I'll stop. I have so many more questions that I don't want to get started.

I appreciate it, Mr. Chairman.

The CHAIRMAN. I can have somebody drive you to the station.

Senator BIDEN. The train has already gone. I am here for another hour, unless you can call Amtrak. After 24 years, I have never been able to hold an Amtrak train, so you know I don't have a whole lot of power.

Ms. BAILEY. Senator Biden, you made so many statements that I think can be challenged.

Senator BIDEN. Well, please do challenge them. I'd love to hear it.

Ms. BAILEY. I know your time is out.

Senator BIDEN. Oh, no. I have another minute. Then I can respond to you.

Ms. BAILEY. Starting with the frivolity question, in other words, if an inspection request comes in from a country——

Senator BIDEN. A challenge inspection.

Ms. BAILEY [continuing]. A challenge inspection request comes in from a country, and they want to go to a pharmaceutical firm in the U.S.; they don't have to specify the name of the company. They don't have to say the exact site. They don't have to give information

which would qualify as being substantial for demonstrating probable cause.

Senator BIDEN. No. I didn't say they have to establish probable cause. They have to give a reason.

Ms. BAILEY. I'm just saying the information they give is not sufficient to establish probable cause.

Senator BIDEN. I agree with that.

Ms. BAILEY. They don't even have to say the name of the site that they are going to until 12 hours before the inspectors arrive at the port of entry.

Senator BIDEN. But then they have to say it.

Ms. BAILEY. So this whole charade about frivolity being questioned by the Executive Council is——

Senator BIDEN. Are they allowed to have an inspector?

Ms. BAILEY. Sorry?

Senator BIDEN. Is the country asking for the challenge allowed to have an inspector on the team?

Ms. BAILEY. No. That's not the issue. The issue is you cannot determine frivolity in advance, because you may not even know what site they are asking to go to. That is the first point.

Senator BIDEN. I don't think it is frivolity. I thought it was a trick and a device to find out how to get information. I thought that was your point.

Ms. BAILEY. It is my point. I am just trying to argue that your case that there is this Executive Council that is going to sit there and look at a challenge inspection request and render a judgment as to whether it is frivolous or abusive is not going to save U.S. companies. It is not going to save them, because there will be insufficient data for that Executive Council to reach a reasonable decision until 12 hours before they enter.

Now I would like to agree with you—it's so rare—I would like to agree with you that it is quite possible that a company that does not want to have a challenge inspection request can say, "no way; you get a criminal warrant." All right.

Senator BIDEN. Correct.

Ms. BAILEY. Fine. Let's imagine a hypothetical situation in which there were credible evidence presented that substantiates the criminal warrant. The company, meanwhile, suffers tremendously because of the negative press it will get.

Senator BIDEN. The same way criminals do. The same way people accused wrongly of crimes do. You've got it. If there is probable cause, under our Constitution, if there is probable cause a crime has been committed, and then it turns out you are innocent, you suffer.

Ms. BAILEY. There was a real case I would like to tell you about.

Senator BIDEN. Sure.

Ms. BAILEY. The United States and Russia exchanged reciprocal visits to pharmaceutical facilities. We went over there and said, "you know, there are real problems here. It looks to us like you are producing biological weapons, or either have been, are going to, or just were yesterday." Then the Russians came over to the United States and went to a pharmaceutical firm here. The Russians walked out the front door and, in Russian, thankfully, gave a press

briefing in which they said this pharmaceutical company is involved in biological weapons production.

It was not picked up by the press here.

Senator BIDEN. That's why it can't be bilateral. That's why this treaty cannot be bilateral. That's why it's multilateral.

Ms. BAILEY. The point I am trying to make is that U.S. firms can be accused of nefarious actions by these foreign inspectors with no basis.

Senator BIDEN. Can I stop you there for just a second and take that example?

The inspection team is going to be made up of a number of people. Unless you assume the whole world conspires against us, the team is not going to walk out and say, tit for tat. Now if you assume that, and I can understand that you might, if you assume that the entire inspection team is going to do exactly that—we know how the Russians work. Whenever you expose them of something, accuse them of something, or prove something, they come back and say double on you, your mother wears combat boots, so do you. We know how they deal.

But you have to assume the entire regime, all these members of this treaty, whatever group of inspectors—they are not just going to be Russians or one or two people; they are going to be a group. You're going to have to assume that all of them are going to be as venal as the Russian example you gave me. That's a heck of an assumption.

Ms. BAILEY. No, I don't think so.

Senator BIDEN. No?

Ms. BAILEY. You see, my argument is that the company that is being challenge inspected will be so worried about negative press that there will be pressure on them to succumb and not stand up for their constitutional rights under the Fourth Amendment to say no foreigners are going to come in here and look at my process data or look at the way I have my company set up.

Senator BIDEN. No, that's not what they're going to say. That's not what they are allowed to say. They may want to say that and they won't. You're right. What they'll say is there is no evidence, credible evidence, to suggest that we, in fact, are doing anything wrong. Therefore, you cannot come in. That's what they're going to say.

Ms. BAILEY. And then the President will have a——

Senator BIDEN. You see, I practiced law, you practice inspections. I represented people like this where, in fact, the government came and said we want to do something. We want to search your home, your business, or you. I know how it works. I represented them. I know how they think—not all of them. But I have as much experience as you do in that regard.

I see no reason to believe your scenario. But the bottom line is this, and I will stop, Mr. Chairman.

You have to assume in your scenario that the entire inspection team is going to be venal.

Ms. BAILEY. That's not true.

Senator BIDEN. Sure it is. Look, the Russian walks out and says you know, they are making chemical weapons in there.

Ms. BAILEY. It only takes one person to make that accusation.

Senator BIDEN. No, it doesn't, because then what happens is you've got the other five people there, or three people, or seven people.

Ms. BAILEY. This is all prior to an inspection taking place at this facility.

The CHAIRMAN. Joe, you are out-shouting the lady. Give her a chance to answer you.

Senator BIDEN. I'm sorry. You're right and I beg your pardon.

The CHAIRMAN. You rest your tonsils just a little bit.

Not one iota of evidence is required by the CWC to start a challenge inspection. Is that correct—not one iota?

Ms. BAILEY. That's correct. No data.

The CHAIRMAN. And it's impossible to stop——

Senator BIDEN. No "data." There's a distinction.

Ms. BAILEY. The Senator is correct—no data, no evidence.

The CHAIRMAN. What's the difference?

Senator BIDEN. Well, there's a difference between "data" and an "assertion."

Ms. BAILEY. No data or evidence.

The CHAIRMAN. Anything else?

Senator BIDEN. No.

The CHAIRMAN. OK.

It's impossible to stop an inspection once it's started, is that correct?

Ms. BAILEY. Yes.

The CHAIRMAN. You have to get 31 of 41 diplomats to vote against the inspection within 12 hours to stop it.

Ms. BAILEY. Three-quarters of 41. Yes.

The CHAIRMAN. Yes. Now all you have to do to start an inspection is to say where you want to go. You don't have to have any evidence, is that correct?

Ms. BAILEY. You do not have to have any evidence.

The CHAIRMAN. Nowhere in the treaty, nowhere in the treaty does it say you have to say why you want an inspection. Is that correct?

Ms. BAILEY. All that is required is that a country say that they suspect that there is a violation of the Chemical Weapons Convention.

The CHAIRMAN. All right.

Now you already addressed this earlier on, so I won't get into that.

I think we have gone about as far as we can go, Senator.

Senator BIDEN. I have one last question, and I won't even comment. I'll just ask the last question.

The CHAIRMAN. Ask it, then.

Senator BIDEN. OK.

Madam, at the end of the day, if the facility for which a challenge inspection is sought, 1 second before they cross the threshold says you cannot come in, you do not have a search warrant, is it not true that they will be required to go to a Federal judge and establish probable cause? You and I should not guess their motivation. If they do, if they say you cannot cross the threshold, is it not true that you have to go to a Federal judge and establish probable cause as to why there is a violation? Is that correct?

Ms. BAILEY. Do you want to limit me to a yes/no? Could I say "yes" and then comment?

It is true. But I have two comments. The first one is why would we want to sign an arms control treaty which we know we are not going to apply ourselves in terms of challenge inspections in the future? In other words, any company that says no, or private individual that says no, can say no——

Senator BIDEN. Can I answer your question?

Ms. BAILEY [continuing]. That's the first part. Do you want both parts now?

Senator BIDEN. Do you want me to answer your question?

Ms. BAILEY. Yes, but both parts first?

Senator BIDEN. OK. I'll do it either way you want.

The CHAIRMAN. Let her make her case.

Ms. BAILEY. That's the first one. The second one is that if it is a U.S. national security facility, meaning a place like my laboratory, they will not be able to say no and foreigners can come in and use these GC/MS and other techniques to gather, to glean national security data. And that is something that is not covered by what we talked about so far.

But I think it is a terribly important issue worthy of your attention.

Senator BIDEN. Can I answer your question?

Ms. BAILEY. Sure.

Senator BIDEN. The answer to your question as to why we would be part of such a regime that would allow our Fourth Amendment to work is because the underlying philosophy of the treaty is challenge inspections are not intended to be frivolous. That is the underlying assumption.

Therefore, we are totally consistent with the spirit of the treaty when we say if you want to challenge us, you have to give us some good reason under our Constitution why you are saying that. That's why we should want to be a part of a treaty and want to enforce our Constitution. That's why.

Ms. BAILEY. Do you think Iran will want to amend its constitution——

The CHAIRMAN. Exactly.

Ms. BAILEY [continuing]. To add Fourth Amendment rights——

The CHAIRMAN. Or Russia, for that matter.

Ms. BAILEY [continuing]. Once they see us using them as a means of avoiding inspections?

Senator BIDEN. The answer is that may very well be. But it is kind of interesting how those of you who oppose the treaty, there is a weakness you see in the treaty and any correction of that weakness makes another part of your criticism worse. For example, if we did not have the Fourth Amendment guarantees built in here, you'd be saying it is a violation of the American Constitution, therefore we should not be part of the treaty. Right?

Ms. BAILEY. Right.

Senator BIDEN. Now that we have Fourth Amendment guarantees, then you say we don't want to do that, because it renders the treaty less likely to be efficacious against other countries. Right?

Ms. BAILEY. They're both true.

Senator BIDEN. Right. And you have used them skillfully. I think you are a lawyer.

The CHAIRMAN. Anything else to come before the committee?

Mr. JOHNSON. I would like to bring up one point.

The CHAIRMAN. Sure.

Mr. JOHNSON. Senator Biden, in part 9——

Senator BIDEN. Pardon me?

Mr. JOHNSON [continuing]. In part 9 of the treaty, they get into a discussion of the number of discreet organic chemical inspections that can happen in a year. In the third year, as I read it, in the third year they are limited to 5 percent of the facilities available, plus 3, or 20 whichever is the smallest number.

Senator BIDEN. Right.

Mr. JOHNSON. In our case, in the United States, that undoubtedly will be 20.

Now in that third year or fourth year, I am not sure which, this issue of number of inspections on discreet organic chemicals will again be addressed. You know, that could cut either way. We could maintain the number of 20, or it could become less, or it could become more. That is a little bit of a concern.

Senator BIDEN. If I may respond, sir, that is a good point that you make. My understanding is—I will withhold my understanding until I have staff check to see if I am right about whether or not the 20 could be changed—if it is a fundamental change, if it is a change in the treaty, to go from 20, say, to 30, 50, 100, 1,000 or whatever it is, it is an amendment to the treaty. Under a condition that we are going to add to this ratification—and there's no way you'd know this—we are going to add to this that it would have to come back to the Senate for ratification if they were going to change that.

So that would change the whole ballgame and it would change the requirement. They could not do that, could not bind us unless we ratify it as an amendment to the treaty.

But the second point is this. My understanding—and I would stand to be corrected, because I am not certain—hold on for just 1 second.

My understanding is—and I will check this for the record because I had not approached this before and it is a good point you raise, separate and apart from the requirement that we would have to get the Senate to sign off on it with a super majority vote again—my understanding of Section 9, relating to the companies you are talking about, which would fall into the category of being 1 of the 20 inspections, is that the 3-year period does not go to whether or not that can be upped from 20 to any other number. It goes to whether or not there will be any inspections—any inspections. There are no inspections now. So it will go to whether or not there will be any inspections.

Now because you have been so straight with me, with us, I promise you I will for the record—and I am sure the Senator and the staff will remind me—I will go back and give you a written analysis of my view. I may be wrong, but I will send you a copy of that. But my understanding is the 3 year period means for now there can be no inspections for the next 3 years and at the end of 3 years they are going to decide whether there will be any for the covered

category—not that there can be 20 of the covered category now and it may be amended to be 30, 40, or 50.

But even if that is true, such an amendment would have to come back to the United States Congress—the Senate, to be precise, not the Congress—and be ratified by the Senate before it would be binding on the United States of America, before it could be binding on the United States of America. But you raise a good point. I will check it out.

I always learn something at these hearings, and I now have to go back and find out whether my analysis, which I just told you, is absolutely accurate. I think it is. But I am not positive.

I am positive about the treaty part. I am not positive about the 20.

[The information referred to follows:]

May 21, 1997.

Mr. RALPH JOHNSON,
Vice President, Dixie Chemical Company, Inc.,
Houston, TX 77219.

DEAR MR. JOHNSON: Thank you for taking time on April 15 to testify before the Senate Foreign Relations Committee on the Chemical Weapons Convention. I appreciate your concern about how our country is governed. As you know, the Senate ratified the Chemical Weapons Convention on April 24 by a 74–26 vote, and the treaty entered into force on April 29.

During last month's hearing, you inquired as to whether the treaty's limitation on inspections in the United States could be revised upward after the treaty enters into force. As you are aware, no more than twenty American producers of Schedule III and unscheduled discrete organic chemicals can be subjected to routine inspection in any one year.

The Arms Control and Disarmament Agency (ACDA) has informed me that while this limit, in theory, could be revised upward with the support of the countries that have ratified the treaty, such a change is highly unlikely and would be strongly opposed by the United States Government. The Secretary General of the Organization for the Prohibition of Chemical Weapons could seek approval from the Executive Council to revise this limit. While the mechanism by which the Executive Council would rule on such a request has yet to be determined (whether by consensus or super majority), the United States will have a seat on the Council and would be in a strong position to oppose such a proposal.

More important, ACDA assures me that it is highly unlikely that such a proposal would ever be made. Because the purpose of routine inspections is to verify the declarations made by each country that has signed the treaty, the Organization is unlikely to focus as many as twenty inspections on any one country. Because the number of inspectors is limited, it is more likely that inspections will be conducted in as many countries as possible to determine the compliance of different nations.

I hope that this information answers any concerns you had about how the Chemical Weapons Convention might affect your business. If you have any further questions about the Chemical Weapons Convention and its effect on industry, please contact me or John Lis of my staff at (202) 224-5042.

Sincerely,

JOSEPH R. BIDEN, JR.,
Ranking Minority Member.

Mr. JOHNSON. OK. Thank you.

The CHAIRMAN. Whoever has something he wants to say, please do. I have one more question and then we will sing the doxology and depart.

Mr. WEBBER. Thank you, sir.

I want to elaborate on the $600 million figure.

Mr. Chairman, I said earlier that this could be the tip of the iceberg. As you know, Germany, the U.K., Japan, and other major trading countries have already signed the convention. Our greatest fear is that if we are a non-party, a non-signatory, we are going

to see some trade barriers being erected that will impact a good part of our $61 billion in exports that we produce annually.

For example, Germany has already announced that it is going to impose new restrictions on trade with nonmember nations commencing 29 April. That, in part, is what drives us. We want to be reliable trading partners. We have been up to this point.

Today, as we sit across the table, they are looking at us with a jaundiced eye wondering why this treaty has not been ratified and wondering what actions they ought to take commencing 29 April. And we have already seen, and it has been in the newspapers, the action that Germany plans to take. They are going to take a look at all of our chemical trade, and we have no idea what kind of nontariff barriers are going to be erected. But we know it is going to be very, very difficult down the road to continue to trade in chemicals with this very large trading country.

The CHAIRMAN. How many of your member companies are owned by Europeans? Glaxo is one of them.

Mr. WEBBER. I think a little under 30 percent of our entire membership is represented by foreign owners.

The CHAIRMAN. Do you mean the Europeans are going to put up trade barriers against their own companies in the United States?

Mr. WEBBER. Sir, we are unbelievably competitive on a global basis, and that signal that we got from Germany is very, very serious, indeed. We feel we have legitimate concerns here.

The CHAIRMAN. My last question, and I will let anybody answer this, though perhaps it is best directed to you, Fred, or Mr. Webber, is this. During these hearings, the committee has heard testimony from a number of foreign policy experts who are very concerned that Article XI of the treaty will be used by nations to pressure the United States to lower its export controls and to eliminate the Australia Group. Have you heard that?

Mr. WEBBER. Yes, sir, I have. In your absence, I tried to respond to that in my testimony.

The CHAIRMAN. OK. Let me get through this.

Now the administration has promoted the CWC as an arms control treaty, but some clearly view the CWC as a treaty designed to facilitate trade in chemicals and in technology.

Mr. Carpenter, in testimony before this committee, stated that one of the reasons for the Chemical Manufacturers Association's support of the CWC was the anticipation that, and I'm quoting him, "An effective CWC could have the positive effect of liberalizing the existing system of export controls applicable to our industry's products, technologies, and processes."

Now my question to you is did your association write a letter of support for H.R. 361, which allowed for the licensing of free trade in chemicals among the CWC members, and does CMA continue to favor the reduction of U.S. export controls on the dual use chemicals controlled by the CWC?

Mr. WEBBER. Let me take a stab at what I think Mr. Carpenter meant when he said we want to see trade liberalized, if you will.

As I said in my formal testimony, we have a long history of support for U.S. export control law, and the Australia Group, and limited multilateral control regimes like the Australia Group.

We think the CWC is a logical extension of those control systems. It broadens the scope, makes more nations live up to the high standards set by our own country, the U.S.

So we don't think CWC will replace existing U.S. export controls or the Australia Group. Both will be around, as you know, sir, for a long time.

As confidence in the treaty grows, we think it will eventually be possible to create a single, integrated export control regime under the banner of CWC. But, of course, that is down the road. But that's what we mean when we say "liberalizing trade," and I think that is what Dr. Carpenter meant.

The CHAIRMAN. Well, did you or did your association not, or did it, write in support of H.R. 361?

Mr. WEBBER. I have been advised that we were part of a coalition that indeed supported that bill. But we did not specifically focus on any particular provision of the bill. But we gave general endorsement.

The CHAIRMAN. So you didn't write a letter? You were just among those present?

Mr. WEBBER. No, we wrote a letter in support, as part of the coalition in support.

The CHAIRMAN. What I needed there was just a yes or no.

Mr. WEBBER. Yes.

The CHAIRMAN. Now you understand that that bill proposed to reduce U.S. export controls. Is that not correct?

Mr. WEBBER. Yes.

The CHAIRMAN. And, too, it offered to license free trade, did it not?

Mr. WEBBER. Yes.

The CHAIRMAN. And you still favored it?

Mr. WEBBER. We have not supported any elimination of export controls over precursor chemicals, and I think that is the key statement that we would stand by.

The CHAIRMAN. Please repeat that?

Mr. WEBBER. We would not advocate the elimination of any export controls having to do with precursor chemicals.

The CHAIRMAN. Well, didn't you do that when you advocated this bill?

Mr. WEBBER. We don't think so, sir.

The CHAIRMAN. You don't?

Mr. WEBBER. No.

The CHAIRMAN. I might want to put that letter into the testimony here.

Senator BIDEN. Mr. Chairman, before you strike the gavel, I'm not going to ask a question. I just want to make an admission.

Mr. Johnson may be right, because Part 10 is part of the Annex, Mr. Johnson, and the Annex means that it may not be covered by a requirement to have the U.S. Senate ratify any change. But I will still get you the full answer. I just wanted to make sure that I tell you my staff points out it is the Annex, not the body of the treaty. So you may be right. Let me check it out.

Mr. JOHNSON. Thank you, Senator.

The CHAIRMAN. The skies are going to fall.

No, he has admitted he has made a mistake—in 1987.

Senator BIDEN. No, in 1972, when I ran.

The CHAIRMAN. We enjoy each other; and I respect Joe, and he knows that.

Senator BIDEN. As I do you, Mr. Chairman.

The CHAIRMAN. Lady and gentlemen, thank you very much for spending this afternoon with us. I did not intend for it to go so long. But you have made a substantial record, and I appreciate your going through the trouble of being here and testifying as you have.

If there be no further business to come before the committee, we stand in recess.

Senator BIDEN. Thanks, Jesse.

The CHAIRMAN. Yes, sir.

[Whereupon, at 5:25 p.m. the committee adjourned, to reconvene at 10:07 a.m., Tuesday, April 17, 1997.]

CHEMICAL WEAPONS CONVENTION

THURSDAY, APRIL 17, 1997

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:07 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Chuck Hagel, presiding.

Present: Senators Hagel, Biden and Kerry.

Senator HAGEL. The committee will come to order.

Congressman Goss, thank you, and welcome. You probably were expecting Chairman Helms. I am sorry to disappoint you and the other members of the second panel. Chairman Helms had a couple of responsibilities to attend to this morning and has asked me to fill in, and I am privileged to do so.

As a 4-month United States Senator, Congressman, we make progress quickly over here, as you can see. So, if you work hard and do the right thing, you are Chairman of the Foreign Relations Committee after 4 months. That is the way it works.

So we are very, very pleased to have you, as well as our distinguished panel who follow you, Congressman. And I will just briefly acknowledge our panel, and then I know you may have a vote coming up soon, so we would get right to business. The opportunity to have you over here, Congressman, is significant, because we all know you chair the House Permanent Select Committee on Intelligence. Your observations, insights and contributions will be important to this body, in helping us make a very difficult decision.

Then, after you are completed with your testimony—I understand you will have to leave immediately after that—we will have a panel following you, consisting of General Bill Odom, former Director of the National Security Agency; Mr. Ed O'Malley, former Assistant Director of the Federal Bureau of Investigation and head of the FBI's Foreign Counterintelligence Operations; and the Hon. Ronald Lehman, former Director of the Arms Control and Disarmament Agency. So we are very privileged to have all of you.

And, again, Mr. Chairman, welcome, and we look forward to your testimony.

STATEMENT OF HON. PORTER J. GOSS, U.S. REPRESENTATIVE FROM FLORIDA

Mr. GOSS. Thank you very much, Mr. Chairman. I congratulate you on your meteoric rise and wish you continuing success in your endeavors, and I hope you will give my compliments to the Chairman when he is back.

I also compliment you on the quality of your second panel. It is obviously made up of folks who know a good deal about this subject as well. And I greatly appreciate the opportunity to be here this morning.

Mr. Chairman and members of the committee, you have clearly an awesome responsibility in deciding whether to ratify the Chemical Weapons Convention. As a Member of the House, who does not have a vote on this matter at this threshold, I am very especially honored that you have asked for my views as you pursue your advice and consent obligation.

My testimony today is generally based on my knowledge and experience, including of course committee assignments on the House International Relations and the Intelligence Committees. But I also come as a Member of Congress, charged with representing views of the good people of Southwest Florida, views I consider a very rich slice of America.

We all understand that the stakes are extremely high in what is about here today. No margin for error. Chemical weapons are so dangerous, so frightening and so difficult to control that is only natural and proper that the global community seeks to contain and eradicate them. The question is how to do it effectively.

I know that those of us charged with our Nation's security have given this matter very much thought and carefully reviewed the commentary of many distinguished former leaders, public servants who have come down on opposite sides of this issue. I remain deeply troubled about the CWC's ability to meet the promise of its title and of its proponents. Given my review and my concerns, Mr. Chairman, in general, I conclude that I cannot support this treaty. Primarily and specifically, effective and balanced verification is too doubtful.

My comments today focus on the critical issue of verification, and then seek to broaden the debate somewhat with a discussion of how the control of chemical agents and weapons fits into the overall strategy we all seek to ensure protection for the American people, for American interests, and for American allies.

Finally, I want to briefly discuss a very real and practical aspect of CWC that has great significance to all of us as we embark on our annual budget process that will not be news to anybody here—the cost of implementation.

Going to verification, first, Mr. Chairman, let me discuss this. At the outset, I want to state that I am not an individual who believes that arms control is a worthless endeavor. Mr. Lehman, I am sure, will agree with that. We have talked about this subject many times. On the contrary, I believe that our arms control efforts during the cold war were a critical component of a strategy that resulted in the end of the cold war and, subsequently, the collapse of the Soviet Union.

Arms control truly has its place in our foreign policy and national security objectives. The process of arms control and the treaties that result can build a level of trust between signatories, and it can provide a measure of insight and information that is useful to the Nation. Obviously, if this were the only yardstick needed to measure the worthiness of the treaty, then CWC would be an undeniably valuable and worthwhile endeavor.

Certainly, through the provisions found in CWC, some information would be available, and cooperation among most signatories could likely benefit our Nation to a degree. In fact, the acting Director of Central Intelligence, Mr. George Tenet, rightly stated to the Senate Intelligence Committee that there are some tools in the CWC—namely, inspections and data exchange—that, as an intelligence professional, he would find beneficial. And I certainly concur with that.

For the intelligence community, it is clearly true that more information and insight is beneficial to analysis. However, the decision to ratify a treaty is not based on whether the intelligence community can get more data, but, in part, on whether we can monitor the provisions of the treaty and whether we, as a government, can verify that these provisions have been met or are being broken.

And here, Mr. Tenet confirms what his predecessors have already stated and what I, too, believe. Monitoring compliance with CWC provisions will be very difficult. As you have heard, former DCI Woolsey, who negotiated the CFE treaty, an understands the complexity and importance of being able to monitor the provisions of a multinational treaty, stated that, quote, the chemical weapons problem is so difficult from an intelligence perspective that I cannot state that we have high confidence in our ability to detect noncompliance, especially on a small scale, unquote.

Mr. Tenet, more recently, confirmed that assessment when he told the Senate Intelligence Committee—again, I will quote—I will say that our ability to monitor the CWC provisions probably is still not very good, unquote.

Mr. Chairman, I must say that given the statements of those who have been in the position of managing intelligence resources and understanding their capabilities, combined with my own experience as an intelligence professional—a long time ago, I would add—and as a member and now chairman of the House Intelligence Committee, I believe that our ability to monitor the CWC is very questionable.

I believe that is certainly true if you consider the more traditional and accepted definition of, quote, effectively verifiable, unquote. That is, the effectively verifiable means having a high level of assurance in the intelligence community's ability to reliably detect a militarily significant violation in a timely fashion. I do not believe we have those assurances.

But even if you consider the much more watered down definition that has been promoted by the current administration, our capabilities are called into question—and I am not sure we can fulfill even that mandate. Former DCI John Deutch, when he was the Deputy Secretary of Defense, stated to the Senate Armed Services Committee that a CWC verification regime, quote, should prove reasonably effective, unquote, over time.

As this committee has heard several times, the language of the classified National Intelligence Estimate from August 1993 looms very large. And again, I will quote from it. The capability of the intelligence community to monitor compliance with the Chemical Weapons Convention is severely limited and likely to remain so for the rest of the decade. The key provision of the monitoring regime, challenge inspections at undeclared sites, can be thwarted by a na-

tion determined to preserve a small, secret program, using the delays and managed access rules allowed by the convention, unquote.

I think that Chairman Helms had some interesting comments on industrial espionage as well, which he put in the record back—I think it was—on the 19th of March, which fall generally into this area.

Moving from verification to a broader perspective, Mr. Chairman, I think that in viewing the CWC, one must put into perspective what we need do regarding the spread and potential use of chemical weapons in terms of our own national security. And I am not discounting our allies or other interests, but national security comes first.

Put simply, what is the threat and what do we do about it?

I would argue that the threat has continued to evolve over the past 4 years, since CWC was signed. Among obvious evidence of the types of new challenges we face was the incident in 1995, when the Aum Shinrikyo cult clandestinely produced sarin gas and deployed it into a Japanese subway. Although some may argue that this was simply an act of religious fervor, I fear that this is precisely the type of MO that terrorist groups may employ in the future.

The transnational issues of proliferation—and here I refer specifically to the production and proliferation of chemical weapons and terrorism, whether state-sponsored or not—directly affect our Nation's security, perhaps almost as dramatically as the threat introduced by the incorporation of nuclear weapons into the inventories of the Soviet Union that we all remember.

But the thought of small-scale production and employment of chemical weapons by a terrorist organization is one that should frighten anyone knowledgeable of the ease with which such weapons of terror can in fact be made. This type of threat must get special focus from our intelligence community—focus that could be drawn away by the need to monitor the CWC. It would be sad, indeed, if while creating a false sense of security by attempting to monitor this treaty, we found that we had diminished capacity to attack these transnational threats specifically.

Then, Mr. Chairman, there is the larger issue of state-sponsored chemical weapons programs. Some would argue that an advantage of CWC is the overall pressure that it would place on states that are not part of the agreement to do the right thing. Although this may have been true during the cold war at some time, I am not as confident that it is true today, or will be tomorrow, for those countries that concern us most. After all, we call these countries "rogue" for very good reasons—they do not conform and do not care about international norms, nor accepted behavior.

Let me use the first START treaty to illustrate my point on what could be the likely effects of CWC on some of these nations. START is a treaty that has proven to be very effective and extremely valuable to our national security. Because of the treaty provisions that can be monitored by the intelligence community and verified by our government, we have reduced the threat that once had many of us learning how to take shelter under our desks at school. Thank heavens those days are gone.

One of the noted values of START was the example it set for others, by saying that nuclear weapons were bad and that even the superpowers understood that we needed to walk back from that brink. However, it is clear that the START treaty did not set an example that was so dramatic that it prevented other rogue countries from pursuing their own nuclear weapons programs, as we all know.

In some cases, these are the same states as those we are now worried about regarding chemical weapons programs and whether they might adhere to CWC. Having witnessed the types of actions and activities of these countries during this decade, it is hard to believe that they will somehow now cave to the threat of international reason promoted in the CWC.

The fact is that reasonable nations will abide by international norms. Efforts like the Australia Group regime can be effective with reasonable nations. They are good efforts. The same is probably true for the CWC. But our greatest concern, certainly from an intelligence perspective, is not states that we term "reasonable." If everyone were reasonable, would we be here discussing this today?

Another question is the wherewithal of our signatories to enforce treaty provisions substantially and to engage actively non-signatories in adopting CWC principles. I noted with interest the recent statement by James Schlesinger, former DCI, regarding the world's incredibly mild reaction to the use of chemical weapons by the Iraqis, in clear and unambiguous violation of the Geneva Convention. I have little doubt that CWC could well suffer the same fate, coming under the same geopolitical yoke that often tempers the need for forceful, direct international actions.

And at this point, I am going to insert some recent history. I must say that I have reservations about our own government's seriousness in this regard. Just this morning I learned that this administration made yet another attempt to sidestep direct action regarding chemical weapons proliferation. In this case, I understand that the State Department has attempted to modify its statements to the Senate, taking a more relaxed approach to the transfers of dual-use chemicals to Iran. This was recently reported in the *Washington Times,* and I am relieved to see that there is bipartisan outrage to this.

This is not the first time that this administration has attempted to downplay China's activities in order to protect China from necessary, lawful sanctions. Many members of the House Intelligence Committee, on both sides of the aisle—and I stress that—are increasingly questioning this administration's response—or, more appropriately, their lack of response—to blatant proliferation of ballistic missiles and chemical agents or weapons, as has been reported in the press.

I think Senator Stevens had it right when he indicated that this administration is so narrowly interpreting our laws that we will be unable to do anything about the proliferation problem. And that concerns me. I am very concerned that in continued attempts to protect policy, the administration appears willing to ignore the spirit and possibly the letter of the law. With this in mind, I wonder what hope we have of implementing the CWC accords in a way that will really be effective.

Mr. Chairman, regarding the task ahead with those countries that we know are the bad actors, I point to the hurdles that we have encountered related to the United Nations inspections in Iraq. In what many would term a more robust inspection regime than CWC, proof of a chemical weapons program was concealed from U.N. inspectors for a great deal of time, and the full extent of such a program is likely still unknown. This is, in part, a factor of the ease with which chemical weapons can be concealed.

I am afraid, however, that some of this probably has to do with the fact that today much more is known about our national technical means and other techniques of information collection and analysis than at any other time in our history. Some of this has to do with the fact that the technological explosion that we have witnessed over this decade has made people and countries generally more knowledgeable. We have lost some of our edge. Denial and deception is an unresolved challenge that leaves unacceptable gaps in verifiability.

Unfortunately, another aspect is that we have made our own job harder. Mr. Chairman, it saddens me to say that I have just received a highly classified document in my office that relates to the damage to the effectiveness of some of our sensitive sources and methods. It appears this damage may have been the result of a very cavalier—or at least misguided—attitude toward declassification of information within the Department of Defense and the intelligence community, apparently in order to pacify political pressures from senior leaders in the government. And that is not a good reason.

Obviously, I cannot go into any detail here on this issue, but I assure you that my colleagues and I on the Intelligence Committee, and I am sure our counterparts on the Senate side, will be examining this problem in detail over the next few weeks and months. Suffice it to say, however, that if interpreted correctly, the bad actors could well have a leg up on their ability to conceal activity and our ability to detect that they did not have previously.

The final area I would like to briefly address for you to consider, Mr. Chairman, is that of the implementation costs associated with monitoring CWC provisions. I know that you have received reports on the overall costs associated with implementation, and that the United States may pay up to 25 percent of those overall costs. I would like to highlight the possible effects on the intelligence community.

Often, because monitoring of our agreements and treaties with other nations is a matter of great importance to us, obviously, the priority placed on such activity is high in terms of our requirements, and the costs and the allocation of our resources are commensurate. I think that this is generally the right approach. Sometimes, however, this can lead to intelligence programs and a collection and analytical emphasis that can place greater priority on monitoring specific technical aspects of a treaty than on filling in the intelligence gaps. This is not a complaint of the intelligence community; it is merely an observation.

My concern about this issue stems from the fact that dollars for intelligence and defense are at risk in the current budget environment—and we all know that. Yet, even though the intelligence

community is significantly smaller, the demands for intelligence have significantly increased. Consequently, budget decisions within the community and within the intelligence committees of Congress become more and more problematic. And that is probably an understatement.

At the end of the day, I must wonder whether intelligence dollars will be better spent on trying to effectively monitor CWC provisions that may in fact be unverifiable or focusing on comprehensive efforts against transnational threats. I use that term to refer to the proliferation of weapons of mass destruction, including chemical weapons, terrorism, narcotics trafficking, and of course international organized crime.

As the Intelligence Committee reviews this year's budget submission, the potential tradeoffs between monitoring the CWC and focusing on other measures against the transnational threats could be a risky proposition.

Mr. Chairman, I have no doubt that the CWC can be important. And I know that the motives of those supporting it are certainly very well intentioned, and I take nothing away from that effort. But the threat of the so-called transnational issues is so great that I must wonder to what degree the CWC helps us meet those challenges ahead. We need your support to make sure that we have a robust, flexible intelligence community in the future that can take on all of the challenges that we have. Unfortunately, when I look at the tradeoffs, the CWC comes up somewhat short of that mark.

I thank you, Mr. Chairman, for this opportunity to insert my views.

Senator HAGEL. Chairman Goss, thank you.

I have been joined here by my distinguished colleague from Delaware, Senator Biden, who is the ranking minority member of the Foreign Relations Committee. Welcome.

Senator BIDEN. Mr. Chairman, it is a pleasure to have you here. I served on the Intelligence Committee for 10 years, but you have served in the intelligence community. You are one of the only folks here that has that hands-on experience.

I must say, I apologize for not being here for your whole testimony; the Judiciary Committee is meeting, as well. I know you know the problem. But I will read your whole statement and take what you have to say seriously.

The one thing you have said that I do agree with, and I am not sure how much more relative to CWC, is the need for us to have a robust intelligence capability unrelated to CWC. I was one of those guys, back when we had this—when we started the committee you now chair, that came out of the—that is how old—that is how long I have been here—it came out of the Church committee. And I was one of the so-called charter members. And I remember how upset everyone was in my party and my part of the party, because I kept proposing spending more money on the agency.

And I would just say—and I realize it is slightly extraneous—but it seems to me, at a time when the wall is down, when other armies are weaker, when we have an overwhelming predominance of military capability, when we are cutting our military, this is the time to expand our capacity and not diminish our capacity relative to two things. One, the intelligence community and the other, the

Foreign Service. This is a time to move out, not pull in. And so I agree with your overall admonition to be careful about what we are not doing for the community.

I think we have a little disagreement on—I know we have a little disagreement on the efficacy of the CWC, but I will not engage you in that now. I am told you are off. I know how busy you are. I appreciate you, as they say, making that long walk to the other body. It is a long way over here, I know that.

Mr. GOSS. Thank you, Senator. I want to congratulate you for your vision in setting up the oversight committee. It has proved to be a totally appropriate and worthwhile enterprise.

Senator BIDEN. I cannot take credit for setting it up. That was Senator Church. I just got put on it. I was just one of the first ones put on the committee.

Mr. GOSS. Well, if you were there, your fingerprints are on it, and you will have to accept the praise.

Senator BIDEN. I am afraid they are.

Mr. GOSS. I also want to commend very much the comments you made last evening. They were very informative to me, and I think will be very informative in this process. And I was extremely impressed with your leadership on that point.

Senator BIDEN. Well, you are very gracious. Thank you very much, Mr. Chairman.

Mr. GOSS. Thank you, sir.

Thank you, Mr. Chairman.

Senator HAGEL. Senator, thank you.

Mr. Chairman, thank you very much.

If we could now have the second panel come to the witness table. Thank you. [Pause.]

Senator HAGEL. Gentlemen, thank you.

I have introduced all three of you, and unless my colleague, Senator Biden has any opening statements, why do not we get right to it. And we will just go, at least from Senator Biden and my perspective, we will go left to right, and we will start with you, Mr. Lehman.

Senator BIDEN. Does it matter if we let the General go first.

Senator HAGEL. No. That is fine with me. If you would prefer to have General Odom go first.

Mr. LEHMAN. I never made general, so I think it is a protocol question.

Senator HAGEL. Well, I am a former sergeant, so I always put the generals at the back.

Senator BIDEN. General, were you ever a sergeant?

General ODOM. No, I was not, unfortunately.

Senator BIDEN. Well, then, he outranks you in this man's army.

Senator HAGEL. I am glad we got that straight.

General, let me just reintroduce you, so that everyone knows, here in the hearing room, who you are and the expertise that you bring. You are the former Director of the National Security Agency. You spent a lifetime in the military. You come to this panel this morning with considerable experience and expertise. So, we are grateful. Thank you.

STATEMENT OF WILLIAM ODOM, GENERAL, U.S. ARMY (RETIRED), FORMER DIRECTOR, NATIONAL SECURITY AGENCY

General ODOM. Well, thank you very much, Mr. Chairman and Senator Biden, minority ranking member. It is a pleasure and an honor to testify before you today. You have asked me to express judgments on the verifiability and the verification regime of the Chemical Weapons Convention.

Now, initially, I considered the Convention rather benign, a treaty that would probably not prevent any determined state from violating it secretly, but probably having some marginal deterrent effect and, therefore, favorably.

In general, I think the public—certainly, the media and a lot of opinion-makers and Washington political leaders—tend to favor arms control treaties, not because these treaties necessarily control arms, but because the sentiments and the intentions are noble. And to oppose them in this climate is to appear to be against virtue and for sin.

Unfortunately, I think the record of arms control agreements is not objectively tracked and audited. And if it were, and widely published, I think the image of virtue would become seriously tarnished in several cases. But such a record is not kept to moderate these illusions and, therefore, whenever the potential damage for an arms control treaty is not very great and it may have some marginal advantage or gains, prudence allows us to support them responsibly, lining up with public virtue against sin.

Now, upon a little examination of the verification regime, I began to realize it was not as benign as I had assumed. The length of the treaty itself immediately raised my suspicion. Now, one need go no further than the definitions of the terms at the beginning of the text to see the possibilities for dangerous ambiguities. This is not to suggest that the definitions have not been set forth with great care and thought. It is merely to underscore that some aspects of the definition task inherently must include ambiguities.

For example, toxic chemicals and precursors, as clear categories, begin to be vitiated when purposes not prohibited by this convention are enumerated, especially where they concern international trade in chemicals. For another example, production capacity, is not easy to define in all cases with great certainty. The surge capacity of production facilities is often deceptive.

Now, moving to the guidelines for schedules of chemicals, one has to wonder if in the context of rapid technological change in chemistry, whether or not these schedules can be kept updated in a practical way. For example, in the early 1980's, when I was Chief of Army Intelligence, we were concerned with the possible Soviet production of mycotoxins, substances that rest ambiguously on the boundary between chemical and organic substances. A research chemist and a molecular biologist could debate that, and they could probably provide you numerous other such ambiguous examples that we will have to deal with if this treaty goes into effect.

The drafters of the text have probably done about as well as is possible in these circumstances. That is the point. The circumstances are not very amenable to arms control treaties. As a result, the length and the complexity of the treaty is such that very few people have the depth of expertise—scientific, technical, legal,

military, and intelligence—to say with even low confidence what the likely consequences of the treaty would be if implemented.

I am surprised, therefore, that senior officials in the administration assert their support for it in such an unqualified manner. And I seriously doubt that any but staff specialists have read it carefully. And if they have, I doubt that they fully understood it.

I am not surprised, however, to learn that the acting Director of Central Intelligence has reconfirmed the community's position that the treaty cannot be verified today, nor does he see prospects that it can be in the future.

Now, looking at the verification regime as a former official of the intelligence community, I am disturbed by it, not just because it is impossible to verify with a high degree of confidence, but because it also complicates our security problems. Take, for example, the U.N.-like organization set up to make inspections. All of the appointed members may have no intelligence links whatsoever initially. As they find that they can tramp around in all kinds of U.S. production facilities, however, foreign intelligence services are likely to offer to supplement their wages for a little technology collection activity on the side. And they will probably provide truly sophisticated covert technical means to facilitate these efforts.

Over time, therefore, it is only prudent to assume that a few members of this group will not be entirely trustworthy. If the KGB could penetrate the CIA, it and other intelligence services are likely to be able to penetrate this U.N.-like CWC inspection agency.

Now, I understand that other witnesses have already raised questions about Article X and Article XI, which give all signatories the right to participate in the fullest exchange of information concerning the means of protection against chemical weapons. Such information inevitably includes knowledge of offensive means. Because, without it, one cannot know how to defend against them.

It seems, from the treaty language, that each signatory is left to judge what information is to be included in sharing. And that implies as many interpretations as their are signatories. If all such information is available, then every signatory's interpretation governs its further distribution.

Now, the incentive to exploit this ambiguity will only be great where the most innovative and effective offensive chemical means are concerned. That is, the very ones one would hope the treaty would be most effective in restricting. Pondering the implications, I am forced to conclude that the treaty could become the mechanism for proliferating the most dangerous offensive CW means, while becoming reasonable effective against the far less offensive means.

This highly perverse and probable consequence of the treaty gives me pause, to say the least.

Another aspect of the treaty puzzles me deeply. This thick document is entitled "Instructions to Industry: Chemical Weapons Convention Data Reporting Requirements," which was drafted by the Commerce Department. It defines a very complex, tedious reporting system. Unless I am mistaken, one of the major concerns of the Congress in the last few years has been to reduce costly and burdensome regulations on U.S. business.

Now, this document, required for the verification regime, looks like a costly and troublesome stack of regulations. My discovery of it made me highly suspicious of the convention itself. Do all of the affected U.S. firms know that they are about to face these instructions? Do they really know what the data reporting will cost? Do they know the costs of an intrusive inspection, even an occasional one, not just in direct monetary costs, which they must bear, but also the inherent costs of shutting down production during an inspection?

Now, when I ask congressional staffers why the business community was not up in arms about this aspect of the treaty, I learned that several large chemical companies actually support this and agree to accept the costs. I also learned that not all businesses to be affected are aware that they will have to bear these costs. And, recently, it seems that some such firms, those in the aerospace industry, for example, have awakened to the implications and do not like them.

And when I asked why the large chemical firms so happily accept the idea of paying hundreds of thousands of dollars to carry the regulatory burden of the convention I got no good answers. The answers were no more satisfying to my questions about whether all the firms which will be affected actually know that they will be, and have considered the cost and the inconveniences.

Now, today, I pose another kind of question. The red tape morass, this kind of red tape morass, required by the verification regime—and even if the U.S. is willing to accept its costs and impose it on U.S. industry—what are the prospects that other countries will take equally comprehensive steps to monitor their own relevant industrial firms? As one who has devoted more than a little time to studying the nature of foreign domestic governments and political systems, I doubt that more than a few dozen have the administrative capacity to do so. And when the matter of costs is added, their incentives for making such a system effective will be negative, not positive.

Now, I am inclined to believe, therefore, that if the United States ratifies the convention, only it and a few other states—none of which really needs the treaty to restrain them from developing and using chemical weapons—will be tying themselves up in a tangle of red tape while the rest of the world largely ignores these requirements, even if they promise to abide by them. And those states posing the biggest problems for verification will not cooperate in any case.

Now, if one thinks through the implications of these regulations, therefore, one is encouraged to conclude that a few countries who do not need to be tied down by the convention will be engaged in the costly activity of checking one another while most states in the world go about their business ignoring the whole affair. Where states sign and ratify the convention and then are found by inspectors not to have regulations, what do we do then?

What do we say when they complain that they cannot afford them? Do we then finance them from our own budget, as we are doing in Russia in connection with other arms control agreements? Even if we agreed to do that, whatever the cost, it would not work;

because lack of administrative capacity, not shortage of funds, is the critical problem in most of these states.

These are some of my reactions to learning more about the convention.

As I considered the additional concerns expressed by several former Secretaries of Defense, I found them also very compelling. For those who were not persuaded by their arguments, however, and who approach the convention looking for reasons to support it, willing to accept only marginal advantages as sufficient for justifying the ratification, I strongly advise against following that inclination. The best intentions can sometimes produce highly undesirable outcomes. I see more than sufficient evidence to convince me that the CWC is clearly such a case.

It is not enough to resort to detailed technical arguments to score debating points against some of the objections I have raised. The treaty is so complex that it is possible to isolate a particular concern and to find arguments that seem to allay the fear. Within an hour of further examination, however, one can find yet another concern and another, almost endlessly.

This assessment does not mean the drafters and negotiators did a sloppy job. On the contrary, it means they were asked to apply an arms control solution to a problem that essentially defies its very nature. Common sense tells us this unhappy truth.

It is also implicit, I think, in acting Director George Tenet's rather candid letter to Senator Kyl about the intelligence community's own view of its present and future capacity to verify the treaty.

Now, I think to push ahead in such circumstances strikes me as imprudent, not a modest step toward controlling chemical weapons. Rather, it is an effort to use a hopelessly complex treaty to escape political and military responsibilities that we will eventually have to face. The several editorials in the *Washington Post* on the CWC show this tendency—a growing recognition that the complexities really are beyond the reach of treaty drafters, but not yet willing to accept the implications.

The most recent one today comes remarkably close to admitting the treaty's perversity, its enormous potential for very bad outcomes, hidden in its complicated verification regime, and wrapped in deceptive appeals to our best instincts.

Now, if we deceive ourselves for a number of years by the illusion that we have escaped these responsibilities, the price will be higher than had we faced up to them all along. Ratifying the convention, therefore, strikes me as unambiguously imprudent, not a close call, by no means a risk worth taking, certainly not a harmless step that puts us on the side of righteousness.

Thank you.

Senator HAGEL. General Odom, thank you very much.

Let me now introduce Mr. Edward J. O'Malley. Mr. O'Malley is the former Assistant Director for Counterintelligence, Federal Bureau of Investigation. Mr. O'Malley, thank you.

STATEMENT OF EDWARD J. O'MALLEY, FORMER ASSISTANT DIRECTOR (COUNTERINTELLIGENCE), FEDERAL BUREAU OF INVESTIGATION

Mr. O'MALLEY. Thank you, Mr. Chairman. Good morning, Senator Biden. Something you just said reminded me of an incident that happened many years ago.

Judge Webster, then director of the FBI, and I were testifying on the FBI's foreign counterintelligence budget before one of the two intelligence committees—I do not recall which one—and he was asked the question whether he thought he was really asking for enough money for the Bureau's foreign counterintelligence program, that the committee was quite willing to give him more.

I have never heard such a question before or since, but something you just said reminded me of that.

Yes, I did head the FBI's foreign counterintelligence program. After I retired, I have been employed for about 10 years in private industry, including with IBM, where I worked out of the Office of General Counsel and was involved in countering on IBM's behalf those who would steal IBM's trade secrets, including, I might add, the Japanese and the French.

Alvin Toffler, the futurist, has stated, the 21st Century will be marked by information wars and increased economic and financial espionage. The race for information of all kinds will be motivated not only by a desire to lead, but will be required to avoid obsolescence.

The energy released in competition for market share has significantly replaced but has not eliminated the energy that once drove the cold war military strategies of the West and its adversaries. The shift from acquisition of global power by force to one of acquisition by competitive strategy marks what promises to be a remarkable revolution, remarkable not only in the sense of its relevance to national power, but also in a sense of the increasingly disparate nature of the competitors, which run the gamut from many of the traditional cold war adversaries to traditional friends and allies.

In terms of a traditional classical espionage threat vis-a-vis hostile intelligence operations in the United States, intelligence services of the former Warsaw Pact, the People's Republic of China, Cuba, North Vietnam, and North Korea, were of major concern from a counterintelligence standpoint.

The activities of the former Soviet Union and others are as aggressive as ever, and remain a major threat. What is new, however, is the increased importance given by them to the collection of American corporate proprietary information. Another change in terms of the foreign threat is that it now includes not only a nation's intelligence services, but also other governmental ministries and/or corporations.

Chief among their strategies is the acquisition, licit or otherwise, of the battlefield's strategic targets, a corporation's sensitive business information and intellectual property. I think it is clear to anybody that the lifeblood of any corporation rests on intellectual property, and I might say the same thing, in my opinion, applies to the lifeblood of a country.

All of this has not gone unnoticed by our intelligence community and the Congress, both of which have been very much engaged in

addressing espionage concerns of whatever variety such as was done in the 1970's. My testimony today will focus on what was done by both—that is, the Congress and the community—in the 1970's to address the threat as it existed then, and what has been done in the 1990's to meet an ever-increasing and complex intelligence threat.

I will also comment on the concerns I have with the Chemical Weapons Convention as it relates to certain counterintelligence initiatives, and also to the extent that its ratification will result in mixed signals from the Congress to the counterintelligence community.

I am not arguing that the ratification of the CWC should succeed or fall because of counterintelligence concerns. What I am suggesting is that those involved in the strategic decisionmaking process ought to consider these current concerns along with many others, such as recently expressed by General Odom.

Historically, whatever other benefits may have resulted from the period of detente, there was no corresponding diminution of intelligence activities in the United States by the former Soviet Union or, for that matter, its Warsaw Pact allies. In fact, analysis by the American counterintelligence community in the 1970's documented a substantial increase in such activities undertaken with the hope that they would be overlook because of detente-generated goodwill.

These hostile intelligence services and their counterparts in other areas of the world used every means at their disposal to enhance their intelligence collection in the United States, including the use of their diplomatic establishments, the United Nations Secretariat, commercial and trade delegations, students, "illegals," third country operations, false flag operations, recruitment of third country nationals, and active major operations. No stone was left unturned in their efforts to obtain classified American political, scientific, and military information.

Although all had sophisticated human intelligence recruitment techniques to recruit their intelligence targets, it must be stated that volunteers also did a substantial amount of harm.

The common thread and the most important motivation of those who betrayed their country was money. This should not be forgotten in terms of today's threat, and I will comment a bit later on that point.

Having done its homework in terms of the seriousness of the intelligence threat, the counterintelligence community made its case to Congress in the seventies in terms of resources needed to meet the threat. Congress responded and approved the resources, enabling the enhancement of the quality and quantity of people involved, the equipment, analysis, and training.

The many counterintelligence successes of the 1980's were not accidental. They were the result of close cooperation between Congress and the counterintelligence community. Let me now switch to the nineties and the post cold war developments which are taking place.

During the early 1990's, the United States became increasingly aware of the economic espionage threat to its interests on several occasions, the last occurring in February 1995. The White House published national security strategies which focused on economic

security as crucial not only to U.S. interests but to U.S. national security.

This was further delineated by testimony of Secretary of State Christopher before the U.S. Senate on November 4, 1993, when he stated that in the post cold war world our national security is inseparable from our economic security, emphasizing the "new centrality" of economic policy in our foreign policy.

To be sure, the intelligence services of Russia, the People's Republic of China and others remain a very significant force to be contended with vis-a-vis classical espionage. For example, the Russian SVR, the successor to KGB, and the Russian military intelligence service, the GRU, have sustained their activities aimed at the collection of national defense information; but they have also begun to pay added attention to American economic, scientific, and technological information.

President Boris Yeltsin made this perfectly clear in a policy statement dated February 7, 1996. It was seconded by Ifgani Primakov, the former head of KGB. I think we ought to listen to these gentlemen.

It should be recognized that the economic espionage against the United States should not be considered only in the abstract, as something which should be only of concern at some ill-defined time in the future. Know this future is now, and there is more than ample evidence not only of the threat, but of the implementation of the threat by human and technical intelligence as well as significant resulting damages.

Again, it became clear to the counterintelligence community in 1990 that our counterintelligence policy had to be changed not only to meet classical espionage threat but also to mirror more closely the total spectrum of today's economic intelligence threats to the U.S. and corporations. The allocation of a large percentage of its counterintelligence resources to the former Soviet camp and the People's Republic of China had left it somewhat blind as to whether intelligence activities were occurring in the United States.

As in the seventies, it was realized that something had to be done. That something was a new counterintelligence policy approved by the Attorney General in 1992 known as the national security threat list, which provides a road map for the redirection of FBI counterintelligence resources.

The national security threat list contains two elements, an issue threat list and a country threat list. The latter is classified. I would like to concentrate, if I may, on the issue threat list.

Two of the issues significantly involve countering by the FBI of foreign intelligence activities aimed at illicitly collecting information regarding weapons of mass destruction, including chemical weapons. The second issue involves countering attempts by foreign services to collect proprietary information of U.S. corporations.

Given the importance of these two issues to U.S. national interests, the FBI will provide counterintelligence coverage irrespective of the country involved. A bit more on chemical weapons later.

In 1994, the FBI initiated an economic espionage counterintelligence program. In 1 year's time the number of cases doubled from 400 to 800. In 1995, the Attorney General revamped the national

security threat list to give greater emphasis to countering foreign economic espionage.

The Director of the FBI testified publicly before Congress in February 1996 regarding economic espionage, calling it "devastatingly harmful" in terms of billions of dollars of losses and hundreds of thousands of jobs lost. He focused on economic espionage by some foreign governments which steal U.S. technology and proprietary information to provide their own industrial sectors with a competitive advantage.

Economic intelligence collection operations come in various guises and under different sponsors. There have been Government-sponsored operations such as France's Direction Générale de la Sécurité Exterior, the DGSE, the French counterpart of CIA, with which I have some familiarity, which not long ago prioritized a collection effort aimed primarily at U.S. aerospace and defense industries.

Other operations have been sponsored and run by foreign competitor firms without the assistance of their government, and there are examples of operations which combine foreign governments and industry.

In the late 1980's, IBM learned that IBM France was penetrated by the DGSE through the recruitment of French nationals within the company. The information acquired by DGSE was passed to French companies, including Companie de Machine Bull, the IBM of France, which was then owned by the French Government.

There is current information that France has been developing in the last 2 years a substantial economic espionage capability involving its business community, the French commercial attaches, and other. Its principal target is purportedly the United States.

Despite all the efforts by the FBI and other governmental agencies, despite all the public and in camera testimony before Congress, and despite all the recognition on the part of the White House, the Department of State and others regarding the relevance of economic security to national security, Director Freeh and others recognize that in the final analysis there was little chance in stopping foreign economic espionage because Federal statutes simply did not allow the government to counter or deter this activity in any way remotely commensurate with the damage it was inflicting on the U.S. economy.

As in the 1970's, the Department of Justice and the FBI again made their case to Congress, this time that a new law was needed to facilitate the stopping of foreign economic espionage. Once again, the Congress responded and passed the Economic Espionage Act of 1996.

The EEA was passed with two goals in mind. First, to thwart attempts by foreign entities to steal trade secrets of American corporations. The more severe penalties of the act reflect this overriding concern regarding a foreign threat.

Second, to allow the Federal Government to investigate, which had not been done before, at least in the sophisticated sense, to investigate and prosecute those engaged in economic espionage. Importantly, section 1839 of the Economic Espionage Act precludes—precludes—any Federal prosecution for trade secret theft unless its

owner "has taken reasonable measures to keep such information secret."

Let me now conclude by commenting on my counterintelligence concerns with the Chemical Weapons Convention as it relates to what I have said and what is going on now.

While the national security threat list, *supra,* directs the FBI to focus its counterintelligence resources to prevent the illicit acquisition of chemical weapons information, the CWC would appear to facilitate the acquisition of such data through its challenge inspections. There is not an unrealistic possibility that these inspections could facilitate collection of the very kind of chemical weapons information that the FBI is charged to protect under the national security threat list.

If I were a foreign intelligence officer and my country needed offensive or defensive information regarding chemical weapons, I would focus on a group of inspectors to be stationed at The Hague.

As I indicated previously, there can be no Federal prosecutions under the Economic Espionage Act unless the owner of the trade secret has taken measures to keep it secret. This is standard trade secret law.

The list of chemicals covered by the CWC is huge and open-ended, and will encompass companies beyond chemical companies such as pharmaceutical companies, computer companies, and others with no relationship to chemical weapons or the CWC except the manufacture of chemicals covered by the convention.

One of the greatest concerns of companies that I have read about, and I have read a number of letters from major companies and major associations of companies, all of which—the common thread running through all of them is their concern that the CWC will open them up to economic espionage. I think their concerns are well-justified.

One of the greatest concerns of the companies I have read about, as indicated, concerns the loss of trade secrets through inspections, including dual use technologies to foreign competitors. There seems to be mixed signals to the corporate world in that the Economic Espionage Act requires them to protect trade secrets, while the CWC requires them to hand over to inspectors what they may regard as trade secrets, and which they otherwise would have treated as such. This confusion in my opinion ought to be cleared up.

I might add, there was one more issue on that national security threat list, and that was entitled, national critical technologies. Again, like proprietary information, the Bureau was charged with doing what it can from a counterintelligence perspective to protect against the illicit acquisition of these national critical technologies, which was decided by a panel at the White House. In other words, the panel said that these technologies are crucial to a superior military posture and also to a strong national economy.

If you read these lists of national critical technologies, and it is unclassified, materials synthesis processing, electronic photonic materials, ceramics, composites, a flexible computer-integrated manufacturing, software, biotechnology, aeronautics, *et cetera, et cetera,* you can see that there is a nexus between some of the chemicals which are mentioned in CWC and those which are involved with these technologies.

So again, you have somewhat of an inconsistency in terms of charging the FBI to protect these critical technologies on the one hand and CWC in effect possibly opening them up to compromise on the other hand.

Again putting myself in the shoes of a foreign intelligence officer, I would not bother to go through all the complicated recruitment efforts to recruit someone within XYZ company. I would simply recruit an inspector who would be able to interview XYZ's employees, inspect documentation and records, have photographs taken, and take samples. I would achieve the same end, but would be doing so in a way sanctioned by the CWC.

The acquisition of American trade secrets has become a high stakes business involving billions and billions of dollars, and I would be able to pay an agent handsomely to acquire such information.

Thank you.

Senator HAGEL. Mr. O'Malley, thank you. We appreciate your testimony.

Ronald F. Lehman, former Director, Arms Control and Disarmament Agency. Ron, welcome.

STATEMENT OF HON. RONALD F. LEHMAN, FORMER DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY

Mr. LEHMAN. Thank you, Mr. Chairman. Let me begin with a bit of a personal note. I was in California 2 days ago when the staff called and asked if I would come and testify, and of course I said I would.

I did so in part because of the friendships and the relationships I have had with this committee over the years, but there actually is another part of it that I think is a principled thing, and that is that this is a great deliberative body, and we need a marketplace of ideas, and we need to work together to get the facts out, and we need to do that throughout the negotiating process and beyond that into the implementing process; and so I will help as best I can.

The second thing is, as I think most of the Members here who have known me know, I believe that the United States ought to be the real leader of the world, and I believe that our military power ought to be unequaled. I am a hawk, and the Constitution gives me one very powerful tool, especially in the arms control business, and that is that a third of the Senate plus one can block a treaty.

You are my ally. I do not need all of you on my side. I need a third plus one on my side, and I have got a hell of a lot of leverage. Let me give you just one example. Back in the Wyoming Ministerial in 1989, we were trying to finish up the verification protocol on the Threshold Test Ban Treaty, and we had concluded pretty much most of the technical details that remained, and we had met all of the concerns of the intelligence community, all of the concerns of the JCS and the Defense Department writ large.

Everybody was happy, except I was not happy because I had not met Senator Helms' standards, so the negotiator and I got together, and we developed an approach to strengthen that protocol just a little bit more, and that protocol in the treaty which—the treaty had been sitting around since 1974—passed the Senate 98 to noth-

ing. I think that working together with the Senate strengthens the United States.

The marketplace for ideas gives us better ideas. I had hoped that it would also improve understanding. I am a little puzzled that we have a treaty that we concluded 4 years ago that is very similar to the treaty we tabled 10 years before that, and negotiated over 10 years, in which essentially all the issues that were out there today were present throughout that whole process, but that is why I am here.

Now, I am a straight shooter. I think Senator Biden will tell you that many times I have told him I have disagreed with him.

Senator BIDEN. If I could interrupt you, Mr. Secretary—if I could interrupt you for just a second, while you were sitting there I leaned over and I said to my new colleague, and I said, Lehman, he and I have been on opposite sides of the table. You find out one thing about him. He is a straight shooter. I used the exact words you just used.

Senator HAGEL. I think he was a little more graphic than that.

Senator BIDEN. But I did use the words, straight shooter. They were modified. There were adjectives attached to it, but you are a straight shooter.

Mr. LEHMAN. Let the record show I respect your views toward me, and your right to have them.

The point I want to make is basically this. I am here, I represent myself. I am going to give you my views. These are my personal views. They are not the views of any organization I am associated with now or in the past or in the future, necessarily; but I am going to give you my best estimate of where we are, and let me try to give at least something of a summary, and then I am yours.

You have asked me to comment on the Chemical Weapons Convention and on the verification issue. Although the issues are complex, my advice is straightforward. Ratification of this convention is essential to American leadership against the proliferation of weapons of mass destruction; but ratification alone is not enough. Strong followup involving all branches of government will be vital.

This hearing should not signal the end of your deliberative process, but rather the beginning. You must hold the executive branch's feet to the fire, and you must hold your own feet to the fire as well, and you must use your powers of oversight and the purse to bring about the most effective use of the tools that will be made possible by this treaty.

In the case of the Chemical Weapons Convention, its contribution to our security will be determined more by what we do in the future than what we have done in the past. The past, however, has given us some important lessons, and the CWC was designed to take advantage of that learning process.

The CWC offers us important tools which give us more data, greater access, and more leverage. The chemical weapons threat is serious, and will grow worse without the CWC. Even with the CWC, we will never be able to let up on our defenses; but with the CWC we will have more tools, more allies, and more options. The United States will be in the lead.

If we now walk away from the CWC, which was carefully crafted over many years to serve American security interests, we may try to lead, but few will follow.

I support your giving consent to ratification, because it is time to take that lead and to get on with the job. The time has come to stop giving lip service to nonproliferation, and in this regard I share many of the views of my friend Bill Odom, and to get on with the hard work.

I am more than aware that the CWC is not a perfect treaty. No treaty can be perfect, but the challenges facing a treaty trying to ban chemical weapons are among the most daunting. We knew that from the beginning. What is more surprising is that we made as much progress as we did.

The treaty we negotiated is stronger overall than the treaty we first tabled, and our ability to implement it has been strengthened in many ways. That was made possible by a number of factors, some of which I would like to enumerate briefly today.

First, we did not rush into this treaty. We engaged in a 10-year process of deep and careful study with the widest range of concerns reflected in the analysis and decisions.

Second, we were able to build upon lessons learned from both the successes and the disappointments of earlier arms control experience.

Third, the end of the cold war as we knew it improved some security considerations, such as reducing the possibility of a large land war in Western Europe.

Fourth, the collapse of the eastern bloc brought greater access to what were once incredibly closed regimes, and reduced the necessity for such heavy reliance, often solely, on national technical means of verification. Indeed, political change has given us new sources of information which often multiply the value of our National Technical Means (NTM).

Fifth, the threat of Iraqi weapons of mass destruction in the Gulf War generated greater support for a hard-nosed approach to nonproliferation here and abroad.

Sixth, the conjunction of the collapse of the Soviet Union and the defeat of Saddam Hussein created, at least for awhile, much stronger international support for American leadership and the American view of how to proceed. It was in that period that we concluded the Chemical Weapons Convention.

Seventh, we could build upon and learn from the experience of the U.N. special committee and the enhanced IAEA challenge inspections in Iraq.

Eighth, although no technological silver bullet permits us to monitor all chemical weapons activity with confidence, some improvements, including new forensic techniques, continue to appear.

And ninth, and I hope Senator Biden understands this, we really were prepared to walk away from this treaty if we didn't get what we wanted.

Senator BIDEN. I never had a doubt about that, Mr. Lehman.

Mr. LEHMAN. This negotiating from strength was very helpful in getting the provisions we wanted, including in the area of verification. The real problem initially was to know exactly what we wanted.

Early on, it became clear that NTM alone could not do the job. At the same time, even as political pressure built upon all nations to accept the traditional U.S. approach of more intrusive onsite inspection, our studies indicated that inspections were not magic, either. Worse, existence of inspection regimes could raise false expectations of the effectiveness of constraints and, if improperly done, the inspections themselves could produce false positive or negative results while endangering proprietary and national security information.

Many of us who raised these concerns throughout the negotiating process, or the specific concerns we raised, are often cited in opposition to the convention. What is important to understand, however, is how we address the problems, and why we can support the convention on its merits.

Again, we begin with the understanding that monitoring most CWC activity is a major challenge. In the past, we relied upon a comprehensive deterrence strategy which included as one element the ability to respond in kind with chemical weapons.

That element is no longer realistically available to us, not because of the treaty, but because the United States, both Congress and the executive branch, including the military, no longer desire to keep its offensive chemical weapons capability. Thus, unlike so many other arms control agreements such as INF, START, or CFE, we are not directly constraining a military capability we would otherwise retain.

This is an important part of the verification consideration. Let me explain. Verification has always involved more than estimates of the likelihood that a specific, prohibited act could be monitored by NTM. The intelligence community likes to remind you that they do not make verification judgments. They make monitoring judgments. They take great professional pride in that point. It involves a calculation of risks and benefits.

At the beginning of the administration of President Ronald Reagan a review was conducted of how we should approach arms control, including verification. A view had emerged among many in the arms control community that verification of a nuclear treaty would be sufficient if the overall military balance could not be altered by cheating.

The problem was that some of these same people expressed the view that no amount of inequality or cheating could upset the nuclear balance. The implication of this, thus, was that no treaty could be insufficiently verifiable, except, said some, perhaps at or near zero.

President Reagan, who recognized that absolute verification was not possible, wanted a different approach which would serve better the national security of the United States and his strategy for countering totalitarian regimes. The new, stricter approach to verification took into account a far wider range of considerations than just the state of the overall military balance.

Military significance remained at the core of this approach, but more based upon standards of equality, stability, and specific benefits and risks. More attention was to be given to details, including insistence on detailed verification provisions actually within the

treaties. Emphasis was placed also on the interaction of restraints, and the clarity of draftsmanship.

An analysis looked at the incentives to cheat, the alternatives available to us and to the cheater, and the prices paid or the gains made, including those associated with greater access on both sides.

It stressed that intelligence estimates should not be politicized, and that we should be honest about monitoring confidence of specific provisions of the treaty. It also took into account the important questions of deterrence of cheating by generating the fear of discovery, deterrence of any attack through strong military forces, the existence of defensive measures, and the enhancement of compliance enforcement when you find a violation.

What does this mean for the CWC? Clearly, it meant that the CWC was going to take a long time to complete, and it did. Certainly it meant that we would have to develop an approach which was intrusive and aggressive to take into account the monitoring challenge. Above all, it required that we do more than strengthen the international norm. We had to have the tools and the mandate to put together the support to do whatever we needed to do, including the use of military force in coalition or unilaterally to deal with violations.

To the soldier who is wounded by it, every bullet is militarily significant. The same is true of the use of gas against our forces, even if it does not deny us victory. A violation is a violation to be punished and corrected. The CWC was designed to get more of our allies and other nations to join with us and to support us. That is, to build upon and go beyond the experience with Iraq.

With this background in mind, those who oppose U.S. ratification of the treaty need to address some important questions. Why should we make it easier for others to use chemical weapons against us? With the inherent difficulties in monitoring chemical weapons activities we need all the help we can get.

We do not have the highest confidence that we will detect cheating, but the cheater must still worry that we might. Should we deny ourselves the strategic warning that comes from the detection of indications of chemical weapons activity, even if there is not complete proof?

And then, why should we let it be legal for rogue states to accumulate CW which, if discovered, is then not considered the basis for tough action because it is legal?

These are some of the many questions which must be considered.

Mr. Chairman, in my previous statement to the committee, which I have again made available, I discussed the work we did in dealing with the balance between intrusive inspections to deter cheating and the measures necessary to protect sensitive information.

Today, I would simply like to add that the tradeoffs between the two are not a zero-sum game. We discovered in our many studies and trial inspections that, although there will always be some tension between the two, we could find measures which would enhance one without too much cost to the other.

Also, I would like to add that our experience with Iraq continues to point the way to better ways to implement inspections. It is a

contest between skills and tools on the part of the inspectors, and in evasion techniques by the proliferators.

What we have learned is that as we gain experience, and as we learn more and more about legitimate activities for comparisons, we have gotten better and better at ferreting out the discrepancies, the inconsistencies, and the outright lies of those concealing a program. As technology improves, we may get additional help.

Having Americans involved in the experience was essential. With respect to the CWC, we need to continue to take the lead in strengthening enforcement. The time has come to give us the tools and let us get on with the job.

[Mr. Lehman's 1994 statement appears in the appendix.]

Senator HAGEL. Mr. Lehman, thank you, and to all our panelists we are grateful for your time this morning, your insights, and your willingness to stay a little longer for questions. Since it is just my colleague, Senator Biden, and I, we have agreed that we will just enter into somewhat of a colloquy here back and forth, and we will handle it that way.

I will begin. General Odom, would you go back into your testimony and elaborate more on some of the specifics of Articles X and XI that you referred to?

We have heard an awful lot about that over the last month in testimony, and I know you would probably have more to say about it; but there is a legitimate concern about transfer of technology and what exactly does X and XI say and mean, and whose interpretation, and I would be interested in your clarification of those areas, since you brought it up in your testimony.

Specifically, we have heard a lot about reverse engineering and that transfer. How deep does that transfer go, in your opinion?

General ODOM. Let me just say first, I do not claim to be the great expert in this, but I have read it and took it for what it seemed to mean, and I began to conclude fairly quickly that, as I said in my testimony, that if you are required to share all the information, information concerning means of protection against chemical weapons, part of the means of protection against chemical weapons requires knowledge of what they are.

When I was Chief of Army Intelligence, one of the major concerns in collecting information for our defensive production, production of defensive equipment such as MOP suits, gas masks, *et cetera,* was to know what the agents were and to understand the chemistry of the agents; and, therefore, if you are going to develop effective defensive means, it requires the leading edge knowledge of offensive means or you cannot produce them.

Therefore, it would seem to me that were I a signatory under this I could share knowledge of the leading edge technologies in offensive weapons with anybody, even to the degree I am obliged to do so.

And then when that crossed my mind I said, well, who makes the judgment; and it appears in the treaty that it is up to the signatories, so any signatory can decide with whom he shares what information, as long as he can make the argument that it is in the spirit of information concerning the means of protection against chemical weapons. It would be hard to take issue with him.

And as I said in my testimony, the kinds of information that you will be most concerned about from a defensive point of view are the most vicious and threatening offensive things. Therefore, the incentives would seem to be to cause the spread of knowledge about those most advanced and threatening offensive means and to pay less attention to the less threatening ones.

From that, it seems to me, as very often is the case in public policy, the intended consequences turn out not to be those we anticipated; but we end up getting a very perverse consequence that was almost impossible to foresee.

Senator BIDEN. Can I ask a clarification?

Senator HAGEL. Senator Biden.

Senator BIDEN. General, assuming you are correct on that, if we are not a signatory to the treaty, the same thing happens.

General ODOM. Absolutely.

Senator BIDEN. I mean, whether or not we are signatory of that treaty is not—and what you are talking about here is the motivation of the countries in question who are in the treaty and we have to assume, in order to reach the conclusion that you have reached, that the countries that have this advanced technology, most of whom are our allies, are going to want to spread this technology around that we do not want spread, right?

General ODOM. And I assume that, and I also assume that our chemical companies are going to want to do that; and I suspect, I do not know, that may be why they are for the ratification of this, so that I think if you are talking about other hidden land mines of unintended consequences, this brings us right to that one.

Senator BIDEN. Well, General, it says the States Parties. It does not say XYZ company. We are attaching a condition that everyone is at a disadvantage in this regard.

Senator Helms and I have been negotiating, our staffs for the last couple of months, and one of the conditions is going to be, if and when this treaty gets to the floor, will be that the United States will declare up front that it will only transfer—it will only—it reads, the paragraphs in question, as saying that it can choose what to transfer, and it will, if it transfers anything, only transfer that which has some medical—what is the exact term of art?—antidotes and medical treatments capability, so that no American company is going to be able to go and transfer that material.

I understand your concern, but I think it is one that it seems as though the negotiators took into consideration when they were drafting the treaty, but I may be mistaken about that. I do not know.

General ODOM. Senator, let me respond to that. As I said in my testimony, I think you can take each one of these issues out and make very good arguments that seem to allay the fears, and as you have allayed the fear on a particular one out of context, you can easily—if I want to go down the list I can bring up others, and we get into sort of an infinite regress here.

As I said, I came to this thing saying basically it is all right. I would even say today that I would not get upset if this treaty would go into effect with no verification regime.

You know, I just do not see why we should have this, when we know—when you and I are agreeing that it is going to have a triv-

ial or maybe even perverse effect; and I would be willing to stand up with those who are against chemical weapons.

So, I have said earlier, I think this is a misconceptual approach. We have asked the negotiators to do a task that cannot be done. It is sort of like asking somebody to reach the wall by going half the remaining distance. By definition, you never get there.

Therefore, I think we are applying an arms control solution where it simply is not conceptually appropriate. It makes us feel good. It is hard to be against it in spirit, but when I work my way into it I am inclined to say this really is not very compelling.

Senator BIDEN. General, as usual your integrity and intellectual rigor are always apparent. It seems to me this is the division, the dividing line, between those who support the treaty and those who do not, and that is not so much whether any of these provisions are as dangerous or as bad as critics say. But it seems to me as I look down the dividing line it is people who say: Look, bottom line is you cannot have a treaty relating to chemical weapons or biological weapons, *ergo* I am against the treaty, notwithstanding the fact you can give me an argument on each of my criticisms.

I think that is a legitimate, intellectually defensible position, one with which I disagree; and it comes down to where we are better off.

But I think when you cut through it, when you and I cut through it all, in my view most of the criticisms, specific criticisms of the treaty, have specific answers that are specifically—I am not saying you agree with this—in my view—but the bottom line that separates 95 percent of those who fall on for or against is this issue of, it starts with—and it is not your view or my view; it is my understanding—that we have never lost a war or won a treaty.

I might add, by the way, you laid waste to that old saying when you did START; because if we did not win that treaty I do not know what in God's name anybody would consider not having won.

Then it goes from there, I think, General, to people who say: Look, you just cannot deal with chemical weapons, period. And if you adopt that view—and I respect it; I disagree with it, but I respect it—then all these other things kind of become irrelevant, and you kind of fall from one side or the other of that spectrum, it seems to me.

General ODOM. Can I add one more point on the logic of this? And I do not mean to be just scoring debating points, but I am sure you are very familiar with the Luddite movement of the 1830's.

Senator BIDEN. Yes, smash the machinery.

General ODOM. Right, stop technology, put the lid on it. One of the things that struck me—I have a colleague at Yale today who has just done a little paper, Martin Shubick, showing that the price of killing people is going down. He has done some calculations, and it happens to be in the BW and CW area that this calculation turns out to have great effect.

This whole technology area is not standing still. It is in a state of rapid change.

Senator BIDEN. See, that is why guys like me and guys like Lehman would argue you have got to get in it. That is the very argument why we have got to get in it.

General ODOM. Well, but to get in like Ned Ludd is not the way to get in. We need to get in in a way to recognize that it is dynamic and that we are probably not by statutory means or by international agreements going to be able to contain it.

I am not saying we ought not to do something about it, and I have said I am prepared to sign a treaty, support a treaty that puts us on the right hand of God in this regard. But when you get into the details of whether this really delivers anything you promised, it is hard to be convinced.

Senator BIDEN. I thank you, General.

I am sorry.

Senator HAGEL. No, I think when we have got just a couple of us we can jump in and do this.

Senator BIDEN. Mr. Lehman wanted to say something.

Mr. LEHMAN. Mr. Chairman, if I could just make a point here. I agree with Bill Odom that we have got to watch the implementation of each and every provision. I am not privy to what the negotiations are on these various conditions and understandings, but anything you can do to reinforce where we were going with this treaty we would certainly appreciate.

But I would like to make a comment about the Article X, Article XI situation, just some general remarks; because it is an important question of subsequent practice, what do we do.

Senator HAGEL. I would say incidentally, Mr. Secretary, that this is one of the key elements of the discussion of the convention in question, and my guess is if that is not resolved in some way here this convention is not going to be passed.

Mr. LEHMAN. Well, I hope you can resolve it. I like to think we resolved it in the negotiations, and let me explain why. The issue of assistance—both these issues are not new—they came up fairly early. In fact, assistance was, I think, in the initial draft that we tabled back in 1984. So these were not new issues.

We made it very clear throughout the negotiations that all of this was subject to Article I, which is the fundamental obligation not to assist. So we reiterated that again and again and again.

But the most important, I think, telling factoid in support of the U.S. interpretation is the fact that after the convention was done so many of the usual list of suspects were so unhappy that they did not get what they wanted in these provisions. That is why I wish the critics would be a little more careful about asserting that they did get what they wanted, because they did not.

Now, if you can further strengthen that, then God bless you.

Senator HAGEL. Thank you.

I would like to stay with you, Secretary Lehman, on another issue. We heard an awful lot of conversation last month, and appropriately so, about how do you really deal with the uncivilized nations that we refer to as the rogue nations, those who are most unlikely to sign this—North Korea, Syria, Iraq, Libya.

Does that give us, if we would ratify this convention, a leg up, a moral high ground? I mean, does it give us more ability, better ability to deal with those nations? I mean, we know from 1925 on we have had the Geneva Convention and other treaties, conventions, agreements. But when you are dealing with uncivilized nations, they will resort to uncivilized means.

I think that is an important part of the dialog here. Incidentally, I appreciate very much your opening comments about information, because that is what this should be about. This should not be about Republican-Democrat, conservative-liberal. This should be about doing the right thing for this country. So I appreciate very much your thoughts.

Mr. LEHMAN. Well, I will tell you, on rogue states we have such a record of successes and failures that I can package them any way you want. But I will tell you what I personally think, which is there comes a time when you simply must not tolerate this sort of thing and you must take action. And if other nations will join you, as they did in the case of driving Saddam Hussein out of Kuwait, then that is what you have to do. If you have to act alone, as we did in the case of Libya, you do it.

You have got to make sure that the rogue states understand that there are severe consequences of their actions.

Again, let me echo Bill. I was in the Pentagon when, in the very last month of the Reagan Administration, we had the CW use conference in Paris. Our position was—you name Iraq—but you know, the foreign policy people were all divided over that, the allies were divided over that. We did not name Iraq.

My view was that was a big mistake. My administration made it. I was a part of that administration. I opposed it, but we did it. OK, we are guilty, too.

There is a consequence to that, and the consequence was that this policy of sort of constructive engagement with Iraq because Iraq is this viable Arab country of the future led us to too often keep a low profile on the enforcement question. As a result of that, we ended up having a war in which we could have faced these weapons, and there is still some debate of what the consequences of the weapons existence was.

I think you have to take a strong stand. I will tell you right now, Bill alluded, I think, to Korea.

General ODOM. No.

Mr. LEHMAN. I thought I heard you say Korea. But anyway, I have got Korea on the brain, I guess.

General ODOM. Assume I did. It is all right.

Mr. LEHMAN. Maybe I read something you said some time back on Korea. But in any case, I will not attribute anything to Bill any more.

In the early days of this administration, they did in essence what we did at the Paris CW use conference, on not supporting the IAEA suspect site inspections on Korea. Indeed, we had people backgrounding that—what a terrible thing it would be if North Korea were to withdraw from the NPT—and therefore we could not do anything to rock the boat.

What we were sending was the signal that we would rather have a violator stay in the treaty than hold them accountable for their violations. It was a terrible thing to say. It has continued to complicate our nonproliferation policy. I am hoping that the administration has moved beyond that. Things are developing in North Korea. Some things are not under our control. Maybe it will all work out fine.

But I think we made some mistakes. We can learn from those mistakes, though, and move on, and that is what we ought to be doing.

I think in the CWC have got additional tools and we ought to use them.

Senator HAGEL. Thank you.

We have been joined by our colleague Senator Kerry from Massachusetts. What I think I will do is go back to a 7½ minute time level so that everybody gets a fair shot at this, and I do not know who else may come.

Would you defer to Senator Kerry?

Senator BIDEN. I interrupted him in asking a question.

Senator HAGEL. Senator Kerry.

Senator KERRY. Thank you, thank you. Thank you, Mr. Chairman.

Welcome, gentlemen. Thank you for taking time to join us today.

It is my understanding, Mr. O'Malley—correct me if I am wrong, because this is just a staff summary, and I was not able to hear you. But your principal objection I understand is on the issue of corporate secrets, trade secrets, intrusive inspection; is that correct?

Mr. O'MALLEY. Yes.

Senator KERRY. Help me, if you would, to understand that. I mean, we have got an industry that obviously has a lot at stake, the chemical industry, correct?

Mr. O'MALLEY. Yes.

Senator KERRY. The chemical industry itself supports this treaty. These are the people that are going to be inspected. The Synthetic-Organic Chemical Manufacturers Association, the Pharmaceutical Research and Manufacturers Association of America, the Biotechnology Industry Organization, the American Chemical Society, the American Physical Society, the American Institute of Chemical Engineers, the Council for Chemical Research, they all support it.

They even went to the extent of creating seven test inspections to determine how it really worked and what the threat to them might be. In addition to that, they have the right to object to any particular inspector coming in that they suspect of espionage or have reason to believe might spy.

What is it that you know that they do not know?

Mr. O'MALLEY. Well, I am not sure what I know that they do not know. In my opinion, though, the kinds of companies that might be affected by this convention transcend the chemical companies that you just spoke about. I have an equal number of letters from different kinds of associations, the aerospace industry and others, which express serious concerns about the Chemical Weapons Convention as it relates to industrial espionage.

Senator KERRY. Well, are they going to be inspected?

General ODOM. Yes.

Mr. O'MALLEY. Yes.

Senator KERRY. By virtue of a challenge, conceivably, correct?

Mr. O'MALLEY. Conceivably.

Senator KERRY. But the challenge requires an appropriate showing. First of all, there is going to be a guarantee, because we are going to even—I think, with Senator Biden's leadership—go further

on the search and seizure to guarantee our constitutional rights. Is that correct, Senator Biden?

Senator BIDEN. That is correct, we are going to have a provision requiring probable cause be established before a Federal judge to get a search warrant.

Senator KERRY. Would that change your feeling about it a little bit?

Mr. O'MALLEY. It would be helpful, but I am not sure that that would be totally significant in terms of protecting the intellectual property.

Senator KERRY. Well now, you know that there is a compartmentalization capacity with respect to inspections. The only thing that is available to be inspected are those things that are directly shown to be with respect to possible production of chemical weaponry.

In fact, you are allowed to set up a procedure where you actually close off or avoid any penetration of those other areas where you may be doing something that is not involved at all with chemicals.

Mr. O'MALLEY. Hopefully those procedures would work and would be effective.

Senator KERRY. But is it not significant that the industry itself believes they will work and supports the treaty? Is that not significant?

Mr. O'MALLEY. Well, again, I do not know what the motivation of the chemical industry is in this regard. I can only speak of industry representatives that I have spoken to in connection with the Economic Espionage Act of 1996, and they have severe concerns about their inability to protect their secrets, security or not, against professional foreign intelligence services.

I mentioned earlier this list of national critical technologies which the FBI is charged to protect, and it is very, very broad. I think if you read this list and compare it with the chemicals identified in the convention you will see a nexus between those chemicals and the companies involved in these technologies.

Senator KERRY. Well, let us try to go again to the reality of this. Are you aware of the limitations on challenge inspections that could be conducted in any 1 year in this treaty?

Mr. O'MALLEY. Yes. If I may, though, you mentioned earlier that the United States or whatever country is involved in terms of inspection could object to the presence of an inspector which they had reason to believe might be an intelligence officer.

Senator KERRY. Right.

Mr. O'MALLEY. Well, that is much easier said than done. It is not all that easy—it might be easy to identify an intelligence officer, but it is significantly more difficult to identify an agent of that officer. In other words, if I were an intelligence officer I would try to recruit a chemical engineer who might be appointed to be a member of this inspection team.

Senator KERRY. But the point is if you do not have confidence in the person coming in you can peremptorily just not let him in. You are only going to let people in you have confidence in, number one.

Number two, under the budget, under the budget when this is running at full tilt in 3 or 4 years, it is anticipated that the most you would be able to have is conceivably two challenge inspections

per month, approximately 20 to 25 globally, globally. Will you explain to me what the potential threat ultimately to the United States is of that kind of rate of challenge?

Mr. O'MALLEY. Well, you have got the challenge inspections and you have got the routine inspections. I would not distinguish between the two of them in terms of the ability to collect proprietary information.

Senator KERRY. But the routine are as to a more limited kind of grouping of entities.

Mr. O'MALLEY. Exactly.

Senator KERRY. More clearly defined.

Mr. O'MALLEY. What I am suggesting is an inspector does not have to go into a company and get the total take as to what that trade secret might be that would be helpful to the person who had recruited him. There are bits and pieces of information that can be acquired over a period of time that might add up to a significant whole at some point in time.

Senator KERRY. So in essence—OK, I follow you. In essence—I need to cut you off there simply because I understand what you are saying. I want to be able to ask General Odom something. But I sense—in essence, I mean, to sort of reduce it to its lowest common denominator—you are seeing the potential for some goblins and in effect others directly involved are not concerned about it. And we just have to weigh, is your sighting of this potential goblin weighty enough to reject the treaty or is the sanguinity, if you will, of the industry itself and those who will be inspected to be taken at greater value? And I think that is the issue we have to measure.

Mr. O'MALLEY. Two points. Number one, I would not label them goblins. We are talking about the real world here, and to label them goblins seems to diminish the seriousness of the threat.

Senator KERRY. I believe in goblins.

Mr. O'MALLEY. Well, I do not.

Second, I mentioned earlier in my testimony that those who are charged with making the strategic decisions regarding this particular treaty ought to make that decision with a full deck of cards, that it ought not rise or fall on any counterintelligence concerns expressed by me or anybody else, but they ought to be considered in the total context of all the problems that are being considered by the policymakers.

Senator KERRY. Sure. I respect that. And when I say I believe in goblins, I believe there are nefarious types out there clearly who want to try to push the envelope. You have to be on guard about it. But I suspect we would be.

Senator HAGEL. Senator Biden.

Senator BIDEN. Mr. Lehman, comment on what Mr. O'Malley had said, please.

Mr. LEHMAN. I agree with him that these are not goblins. There is a real problem. But it is hard to imagine any issue we spent more time on than this question of how do you balance intrusive inspection with the risks of losing national security or proprietary information.

A lot has been said on it. A lot has been said before. But let me try to bring maybe some new twists or perspectives on it, just taking into account what has been said. First is, we ultimately came

to the conclusion that there was a risk with the inspectors, but it was not the biggest risk. So I guess there I have not seen any study that says that is the big risk.

In fact, what I think we have gotten from industry is, and of course what the national security community has found, is that turncoats in your own system can do a tremendous amount of damage. An inspector who comes in, who is escorted, who has got rules, people are watching him, yes, he is bright; if he is recruited, he can do some harm. But at least you have got a feel for the problem.

If you have got a turncoat inside your system, be it business or the intelligence community or in the military, you have got a real problem.

Senator BIDEN. By the way, when I speak to these guys who run these companies that is what they say. They would much rather have the guy coming in in a team, as part of a team, with the ability to have these management agreements and facility agreements before they come in. If they were given a choice of that or somebody coming in, either literally breaking in, nefariously getting in, or be a turncoat within, there is no question which side of that equation they would pick taking their chances on.

You know it, because it is your business. That is how you make your living, helping these guys prevent against the last two categories. They would much rather have this than that.

Mr. LEHMAN. I said "turncoat," but it is even a worse problem than that. It is not even the question of the person who is completely dishonest. It blurs into this whole question of loyalty to your company, when do you change jobs, what information do you take with you. It is a very complex area.

I share the analysis on the importance of proprietary information to our leadership in technology. What I am saying is this is not the big problem. We think we know how to handle this. There are risks, but we think we worked that.

The other point I want to make is this. When we first started getting involved, first with the national security community and then with the national security community, on this question of intrusive inspections, some strange things happened. For example, they would say: We think it would be dangerous to have an inspector come to a certain place. OK, why? Well, they could learn all of this. OK, what keeps a spy from coming to that place right now? You would be amazed the number of times the answer was: Nothing. That in fact the interaction between the negotiating process having to do with these inspections and their intrusiveness helped the counterintelligence community in some cases and helped industry begin to understand that they had some problems that they needed to deal with—with or without the CWC. They still need to do a lot of work.

Whatever you decide to do in the Senate on the CWC, you need to keep that process going of having the government experts, including the intelligence community, find some way to work with industry on this problem; because it is a serious problem.

Senator BIDEN. Mr. Secretary, the irony is that the corollary to "this will lull us to sleep," which is a concern—I think it is the most legitimate argument against this treaty in my view, is we will get lulled to sleep and not have to expend the dollars, the effort,

in implementing and/or in continuing our efforts on countermeasures to deal with chemical weapons use.

They are the two greatest—I think they are the two from my perspective most legitimate objections to this treaty. The corollary to that is, or the irony is, were it not for this treaty, were it not for this debate, companies would not be doing 80 percent of what they are doing now. All of a sudden everybody is figuring out: Whoa, wait a minute, this spectrometer guy who walks in, that guy does not have to be part of a team. He can stand outside that company gate right now.

All of a sudden what has happened is this has sort of awakened, in my view, the outfits I am familiar with—the chemical companies, the biotech companies, the pharmaceutical companies. My colleagues know a lot about what their constituencies do, because we have to learn. After 24 years, I have learned about those companies. They are waking up. It has been a wake-up call to them unrelated to the treaty.

One of the issues, though, that is raised and in the remaining time I would like to get to, my remaining few minutes here, is this issue people do think is very significant, and that relates to the intelligence capacity of the United States to detect cheating or anyone to detect cheating, and what constitutes militarily significant.

If I am not mistaken, I remember it was during—I suspect you may be responsible for it, although I do not know that for certain. We went from the notion in the Carter administration of "adequately verifiable" to "effectively verifiable." The terminology changed and so this debate about "effectively verifiable," what constitutes effective verifiability.

One of the things—and the intelligence community and two members of our CIA are here today if we need them for any input, are in the audience, who deal with this issue. The Joint Chiefs have testified on this. So you are going to hear a lot of debate, as I need not tell you or you, General Odom, about this issue of what is effectively verifiable.

But it is a big deal what we determine. What we think is effective, each of us individually determines whether or not we think this is a verifiable treaty or whether we should vote for it, at least as it relates to verifiability.

I want to talk about this notion of military significance. By the way, Shalikashvili said one ton. What he was talking about with one ton, he was talking about political impact and terror capability, not militarily significant. Everybody talks about the Joint Chiefs saying they have established that one ton, if you cannot detect one ton, up to one ton, then this is not effectively verifiable. The Chiefs never said that, but we will have to deal with that on the floor. I know you both know that.

One of the things that I get, I think we get confused about and what confuses the public—and I am diverting slightly here to make a larger point, trying to make a larger point or get to a larger issue—is you asked the rhetorical question, Mr. Secretary, why after all these years do so many people know so little about this treaty? I think it is for two reasons.

One, those who are for it basically assume there is inevitability. This is going to pass, because hard-nosed administrations had ne-

gotiated this thing. Therefore there was sort of a credibility given. I mean this sincerely. I think this is why. I think this is the answer.

Second, those who are against it are usually those against any treaties. Therefore, it is just kind of like there is inevitability.

Well, everybody has forgotten, there is no inevitability to this thing passing, so now people are focusing for the first time, and our colleagues understandably do not know a lot about it, because they have not, other than those who are involved in it, they have not focused on it a lot.

Now, if I may, can I ask the question? I appreciate the time.

So we get down to this verifiability issue and what constitutes effective verification, and we hear talk from our witnesses, not today, not from the General, but from many witnesses we have had, and people use phrases like: well, one vial, one vial of chemical weapons, and so on, and one ton. And one ton sounds—God almighty, one ton of a chemical weapon obviously can win a war, they think.

What I want to talk about is the distinction between a tactical advantage that could be gained by the use of an agent and a strategic advantage that could be gained by, say, the use of up to one ton of an agent. Here is what I want you to talk—I want you both, General Odom first and then Secretary Lehman.

If you think about the actual use of these weapons, in the Iran-Iraqi War each side used tons and tons of this. They used tens of tons of these weapons. And it did not give either the capacity strategically to save the day.

Now, I think it is bad to use in any event. I am just trying to get at this part about what constitutes a threat to U.S. security if we do not detect it.

I would also point out that we have hundreds of thousands of tons, we and the Russians. Now, the reason why our military felt there was a need to have more than a ton, or 10 or a 1,000 or 10,000 tons, is because I assume we concluded that one ton or anything that we possessed did not have the capacity.

One—one—missile, one nuclear warhead on top of a Peacekeeper missile can ruin somebody's day. It can really change the dynamic of everything. One ton of chemical weapons—as the intelligence community tells me, the rule of thumb, General, is you are about one ton, one square mile, and it dissipates.

Now, as you said, General, for those troops who are within that square mile this is militarily significant. It is big deal. And if you have everybody gathered in a soccer stadium, it is a big deal. And it is a big deal terror capacity.

But is it militarily significant in a strategic sense, in a sense that our national security or a major portion of our capacity in any conflict could be jeopardized by "a ton"? And I realize this is a bit artificial, to be using the ton. But it has become almost a mantra among people who are concerned about verifiability.

Can you talk a little bit about the significance of it in that sense, General? Assume we could not detect up to a ton. And some will argue we could not detect more than a ton. But let us just artificially, just for the sake of discussion, assume we could not detect up to a ton and countries, rogue or otherwise, members of this or-

ganization who signed the treaty, could develop up to a ton and use it. What consequence for you as a military planner does knowing the other team had a ton of chemical agents available to them?

General ODOM. Well, Senator, you have made in my view one of the strongest arguments against the treaty, for making it largely irrelevant.

Senator BIDEN. That may be. That is why I want you to talk about it.

General ODOM. It is sort of in line with my argument here earlier. I do not think—if you look at the record, when one side has chemicals and the other does not, the probability of it being used seems to be much higher. When both sides have it, chemical weapons do not seem to be used.

Senator BIDEN. How do you explain Iran and Iraq, then?

General ODOM. Well, they did not both have it at first.

Senator BIDEN. But they both ended up having it.

General ODOM. Well, but when the Iraqis started out using it the Iraqis were in trouble.

My own experience in learning to use, target chemical weapons back when we had them, I was a young armor officer in Fort Leavenworth doing map exercises. I became very unimpressed with chemical weapons. You do not like them. They are unpredictable. There are other ways to blow people away, and you would rather have something that is easier to control. So I think the more professionally trained military officers are likely to be very much against these things.

When it comes to a ton or even 200 or 300 or 400 tons, I think we have certain capabilities. The prospects of keeping them from being used in a conflict are very high. And I do not see that this treaty is going to affect this much one way or another. It does not seem to bear on it. The people who really want these weapons are going to get them anyway, and the ones right now who are troublesome states are clearly not going to be caught up in this.

Now let me make another point about that there is another way to look at this. It is hard to weaponeer these new weapons, but there is a lot of new technology emerging. I do not know how to judge that. I mentioned Martin Shubick's piece earlier that the price of killing people is going down because of technological change in this regard.

It is easy to do that in sort of theoretical calculations. Whether or not these new technologies can be weaponeered and brought into the battlefield even for terrorist use is an open question. So as I said earlier, we are in a period of dynamic change and that makes me nervous that anybody can write any kind of regime that is going to catch these kind of things.

That is why I say the spirit of the treaty I have no trouble supporting. I just do not understand why one would want to strap themselves to this regulatory system and pay the price when the probable outcomes of it are trivial.

Senator BIDEN. Thank you.

Mr. Lehman?

Mr. LEHMAN. Senator, you often hear people say chemical weapons have no military utility. I do not believe that. I think they can. During the mid-eighties when we faced the Warsaw Pact at the

Fulda Gap, I thought it was important to maintain a continuum of deterrent capabilities and that a modernized chemical weapons component with the binaries was an important part of that.

The world has changed since then. We have alternative weapons, advanced conventional munitions. What you saw in the Gulf War was that clearly when you ask people who have to deal with the logistics of warfare, what is it you need on station ready to go, they wanted weapons they knew they were going to have to use and they wanted them in large quantities, and they did not want to waste space with having a chemical deterrent there.

I remember going through the chemical training facility down at Fort McClellan, putting on a suit and decontaminating equipment with live nerve agent. I realized I did not want to go to war wearing that suit.

In Vietnam I used to carry my gas mask with me on a lot of the types of operations that we went on, and I hated having to carry that.

One of the things I learned out of that experience to me was that in today's world it is much more important—it is less important that we have chemical weapons than that we do everything we can to not have them used against our troops and reduce the chances they will be used. But we also have to make sure we maintain our defenses.

On the military significance question, I very much fall in the category of those who say, you know, the bullet that wounds you is militarily significant. Therefore, we need to have the tools that deter the use, and we need to have the will to enforce compliance.

But when you say your example of a ton, what does a ton mean? Well, in certain types of scenarios a ton can be very important. But remember, we are the United States. It ought to make us awfully damn angry, and with the CWC it ought to mean everybody ought to support us and we go in and we solve the problem.

Senator BIDEN. Well, here is the point——

Senator HAGEL. Senator Biden, let me ask this. I want to stay on time here, and I am going to ask a question. I am not going to take my full 7½ minutes. I know Senator Kerry wants to get back to it. I will get back to you as well.

What I want to do is go back to you, Mr. O'Malley, and I would like you to develop more of your counterintelligence insight, background, experience, as to how it relates to this treaty. Where are the real vulnerabilities coming at it from your years of working in the counterintelligence business?

Mr. O'MALLEY. I think, again, the concern that I have, shared by certain elements of industry, is in the illicit acquisition that this would facilitate, this convention, illicit acquisition of proprietary information that this would facilitate. It is not the only means, by any stretch of the imagination, of acquiring American proprietary information. It can be done in other ways, including technical means and the Internet and so forth.

What this does, though, it would give those who are desirous of collecting such information another avenue of approach. I mentioned earlier this list of critical technologies that the Bureau is charged with protecting. I might also add that this also could con-

stitute essential elements of information, *i.e.*, what the other side is seeking.

So there is no doubt at all in terms of what Senator Biden mentioned earlier, that any corporation would prefer to have someone coming in rather than a recruited agent inside. I mean, that is somewhat of a false choice in my opinion. That recruited agent inside ultimately happens as a result of people coming in and getting to know and have access.

I am not at all convinced that whatever security measures are present in this Chemical Weapons Convention are adequate. The primary mission of counterintelligence is to identify, penetrate, and neutralize such systems. I can give you a specific concrete example of such an instance.

I formerly represented the U.S. at something called the NATO Special Committee, which consists of the counterintelligence chiefs of the NATO member nations. We met twice a year in Brussels. Security, as you might well imagine, was extremely tight. They had all the usual bells and whistles. Everyone was vetted as they should be. And we would meet *in camera* and discuss sensitive information.

Lo and behold, one of our discussions ended up in a Bulgarian newspaper. So something was wrong. The secretariat of the NATO Special Committee asked for an FBI counterintelligence officer. We assigned one to the committee and, lo and behold, the secretary to the head of the secretariat was an East German agent. None of these security measures were able to identify this particular woman, who was a British national.

So I am not at all convinced that these security procedures will be adequate. But if they are, if the government believes that these security measures are adequate and in a sense acts as a guarantor of these security measures. And if a company does lose a trade secret as a result of these kinds of inspections, then it seems to me it ought to be fair on the part of the government to reimburse that company for the value of that trade secret.

Senator HAGEL. Mr. O'Malley, thank you.

What I am going to do for my colleagues, if this is agreeable, I have just been given a note indicating that some of our witnesses have some pressing time problems. So what I would recommend that we do 5 more minutes each and then allow our panel to leave. Senator Kerry, is that fine? We are going to do 5 minutes each, and that way the panel can get to their other business.

Senator KERRY. That is fine, absolutely. I have got to go to another meeting, too, so I appreciate it, Mr. Chairman.

Gentlemen, I have been struggling with this since one of our earlier hearings, when I went back and read a little of the history of the negotiations on this. We had Secretary Richard Perle here, former Secretary Perle here. And when Ronald Reagan and the administration first proposed this treaty—and they were the first ones to propose it—they came up with a concept called—you know, they wanted total verification, correct, General? I mean, that was the great goal, being really intrusive in our verifications.

So they came up with something called "anywhere, any time." We are going to go anywhere, any time. We are going to be able

to challenge anywhere, any time. That is the only way we can be safe.

Then, whoops, all of a sudden people here said: Un-uh, we do not want that. Correct?

General ODOM. Exactly right.

Senator KERRY. Anywhere, any time? Oh my God, they could come into one of our places and look anywhere any time. And so we have got to be a little bit smarter about how we come at this.

So the negotiators went to work and did a heck of a job, I think, over a period of time. General Scowcroft, whom I have great respect for, and General Powell, who this morning was before the Veterans Affairs Committee testifying in favor of this treaty, many other players of enormous military background, intelligence background, national security background, clearly with the United States of America's security interests at the forefront of their thinking, said: We are going to come up with a different scheme. And they did, to protect our sort of black institutions, as we call them, from being intruded, but to provide sufficient intrusiveness to be able to do something effectively with this treaty.

Now, I sort of see the two of you setting up what I have seen my colleagues on the other side of the aisle setting up over the last few weeks, which is this Catch 22 situation. You come in here, General, and you say: It is not verifiable, it is not verifiable enough. We have got to have more intrusive verification. But then on the other side, a whole bunch of other people are sitting there saying: It is too verifiable; we cannot have this, because you are going to get our secrets.

General ODOM. I did not take that position.

Senator KERRY. I beg your pardon?

General ODOM. I did not take that position.

Senator KERRY. You do not believe—you think the verification is strong enough?

General ODOM. I would vote for the treaty without verification. I do not want to vote for the treaty with verification. I think the verification is the big flaw in it and that you have got a huge regulatory cost you are about to strap on American industry. Most of them do not even know it is coming. The ones who are in favor of it clearly want some other payoff in terms of——

Senator KERRY. OK, fine, I accept that. It is even easier to deal with, frankly, from my point of view. I am happier to accept that.

But you are aware of people saying it cannot be verified and that has been a major argument, correct?

General ODOM. That is true.

Senator KERRY. So is there not a Catch 22 in that? I mean, you just go around and around in a circle.

General ODOM. My conclusion is that we should not bother to negotiate the treaty. I said in my testimony I think it is a misconceptual approach. The poor negotiators have been told to take on a problem that defies being managed with this approach.

You know, I just do not think you can get there from here with this kind of treaty. And as I made the point in my testimony, I originally came to it believing that it was a fairly benign thing and why not support it, it is on the side of virtue and why should I stand up in favor of sin? But when you get into it you begin to real-

ize that it has some costs. It probably creates some illusions and, it just very well could produce a lot of unintended consequences that we cannot fathom at all.

The length of the treaty was the first thing that raised my suspicions. I have sort of a little rule: The length of the treaty is related, inversely related, to its effectiveness.

Senator KERRY. You do not believe that that spells out the obligations and crosses the t's and dots the i's so that people really are held accountable?

My light is going to go off in a minute. I want to ask you a comparative question here.

General ODOM. Also, back on the early one when you talked about the mutual intrusiveness during the Reagan administration, I saw that coming and could not understand why they wanted to go anywhere any time.

Senator KERRY. Well, let me ask. I wanted to ask Secretary Lehman to respond to what I just asked the two of you and simultaneously to answer this question if you would, because we keep missing this point. Assuming that the treaty were either rejected—Mr. Secretary, if you would answer, I want you to answer the specific issue I just raised; but also add to that, would you please, what are the implications for the United States at this moment in time, where we now have 74 nations that have ratified it—it is up—where we now have 160 or so have signed it, we can anticipate that if we and Russia come on board a whole lot of other people are going to, what are the implications with respect to any possibilities of renegotiating it, changing it, going back and fixing it in terms of other countries, given the date and given the momentum of what will take place here? If you could comment on both.

Mr. LEHMAN. I would be pleased to. Let me pick up a bit on what Bill has said about any time anywhere and the Catch 22 aspect of that. There is a lot of—you know, we all look for slogans to describe what we are doing, and "any time, anywhere" was our way of trying to summarize what we were trying to do.

But clearly, Ronald Reagan's policy was not to go back to the old Biological Weapons Convention approach, where you ban something and God knows what you do about it, you do your best. But rather, he wanted to have treaties that were well crafted, that had verification provisions, that gave us some tools.

I am sympathetic with Bill that I wish the treaty were not so long. I am seeing right here in the debate in the Senate one of the disadvantages of having long treaties is that you have got to read the whole thing over a thousand times, and then you have got to debate it, and then you may not yet have gotten it right. So for that I apologize.

But what we discovered was in some cases it was very dangerous not to have a longer treaty. You had to lay out things. I can give you a lot of examples, but let me go to your question and use that to sort of find an example, the question of access and intrusiveness in inspection. When Bill says he was concerned about this "any time, anywhere," well, he was not the only one. Ronald Reagan was, too. So the NSDD that was drafted that implemented this said: Any time, anywhere, but by the way you have got to protect

national security information and proprietary information; go figure out how, with some general guidelines.

This notion of managed access was inherent. We did not invent the phrase until later to bring some people together, but it was clear from the beginning you were going to have to balance these factors.

Also, take the question "any time." What we really wanted was to get to a site quickly. The more we did studies, the more we discovered several things. One is some things that they hide at a site, you cannot get there fast enough; it is going to be gone. It will be gone in seconds or minutes or hours, but certainly before your plane gets there.

On the other hand, there were other things it might take months to get rid of, or maybe never, at least not in any human lifetime. So we had to balance all of that.

Then there was this question of intrusiveness. I think we could have simplified that, but we did not. The reason we did not is that the intelligence community and the defense community wanted more details spelled out in the treaty to give them specific hooks and rights. And since I did not think we could get this treaty through the Senate without making sure that it met their standards, we negotiated to get what they wanted into that treaty.

So a lot of that length is what the intelligence community and the defense community wanted to protect themselves. That is why all of that is in there.

Now, the implications of what happens if you do not ratify. Well, you heard a lot of discussion of what it will mean for nonproliferation. I think that is the important thing. We are going to lose a lot of leadership.

There are some issues that will undoubtedly occur that people will mention that I think are important, but we ought to know them for what they are. A lot of people out there, the rogue states, the usual list of suspects, will use this as an excuse to do what they want to do anyway and we will just make it easier for them. But I do not think we ought to excuse it, no matter what we do.

Businesses will sit there and realize that if you try to renegotiate you are probably going to see a number of our good friends who are these very economic competitors decide they do not want to negotiate; because, frankly they do not care if we are in the treaty, because if that means more production goes overseas to their countries and out—hey, you want to negotiate, fine. But I do not think they are going to want to fix this quickly.

Senator KERRY. That is because they have an advantage written into the treaty.

Mr. LEHMAN. See, the problem is that, because the U.S. wanted to try to promote universality, you have this provision that limits certain types of trade. You can look at the near-term costs, and you can dispute how much are direct and indirect costs, and it all gets kind of subjective perhaps. But the real reality is there, is that a lot of sharp-pencilled businessmen are going to understand that they start moving production around to take advantage of this treaty.

There are a lot of factors like that. But I will tell you what my concern is. I am a national security person. My point is this treaty

gives us a lot of useful tools. John Deutch says it, Jim Woolsey said it, George Tenet says it. We know that. I think what we got out of the treaty was these very important tools, and we want to use them.

If you follow Bill's logic, which I can respect, which is basically the bad guys are going to try anyway and you are not going to guarantee you are going to be able to stop them; his real argument then is he says: I would go with the treaty, but without the verification.

So what is the real issue? The real issue is are these tools worth the costs? And I think that is a legitimate question, and I think people can come out, reasonable people can come out on a different point. What I am finding fascinating is, though, that this is not a new issue. We thought we had addressed those costs. We thought we had driven up the benefits and driven down the risks and costs, and sometimes it sounds like nobody heard us.

Senator HAGEL. Secretary Lehman, thank you.

Senator KERRY. Thank you, Mr. Chairman.

Senator HAGEL. Yes, sir.

Senator Biden.

Senator BIDEN. I have a number of questions, but I do not know how I could, quite frankly, better summarize where we are. You have just said better than I have attempted to say it. This really gets down to that fundamental question. I mean, when all is said and done, all the talk about verification, all the talk about the threat to individual companies through espionage, all of that—I am not suggesting people who make those arguments are not sincere—but the truth of the matter is it really is not about that. It really does not get to that.

It gets to what General Odom is talking about, just are the tools worth the cost? And some believe the costs are much heavier, some believe they are onerous, and some believe they are insignificant; or in relative terms clearly the benefits outweigh the costs, the tools available outweigh the costs we have to pay.

And from my standpoint, when I take a look at all of these different scenarios of what it takes for the worst case to happen, the worst case on the military side is we are in this treaty, we are lulled asleep, one of the signatories, the 74 nations, is able to amass a significant chemical capability with emerging technology in such a way that it allows them on a battlefield and/or in an open conflict with the United States or one of our allies to prevail or enhance their probability of prevailing.

Well, the truth of the matter is an awful hell of a lot of things have to happen for that to happen. It is not merely that we do not detect one ton or two tons or twenty tons; we do not detect the reorganization of their military apparatus; we do not detect the fact of how they maneuver; we do not detect that they are using protective gear in a different way than they did before; we do not detect.

We would have to not detect a whole hell of a lot of things unrelated to whether or not they are making chemicals, in order to get into a position where our military circumstance changes.

With regard to the issue that Mr. O'Malley raises, we would have to—one of the reasons, one of the things everybody misses, Mr. Secretary, is what you did on this managed access piece. Everybody

misses that. Everybody misses that this is not a matter of being able to come in with 2, or 2 to 15—I met with the Intelligence, we all did, with the Intelligence Committee last night for 3 or 4 hours, and we went over this piece about managed access on these inspections.

It can be a team of from 2 to 15 people. You have to run up a hell of a scenario to figure out other than how accidentally some company, who by the way companies now are going to have the Commerce Department, with the help of the intelligence agencies, teaching them how they would deal with inspections so there is transparency with regard to chemical production, but not transparency with regard to trade secrets or unrelated activities taking place.

That is a technology, if you will, that will emerge. So you have got to come up with an incredible scenario other than pure luck to figure out how such a team is going to either cause great damage, as was suggested yesterday, by coming out and implying the Dupont company is making chemical weapons. You have got to have a lot of collusion for that to happen. You have got to have a whole lot of things happen of not knowing how to manage the access.

I mean, they are real stretches. They can be done. They can be done. It can happen. It can happen. So for me to get to the end, I get to where you are. If you look at the tools available to us versus the risk we take, I do not even think it is a close call.

Yet I do not, General, sit here and say: You know, this treaty is the be all to end all. You know where I end up, Mr. Lehman? I end up with your statement from 1994, which I would like to ask permission to be placed in the record if I may.

Senator HAGEL. Without objection.

Senator BIDEN. I end up at a place where the biggest benefit from this treaty and us being in it will be the way we will be able to impact on behavioral patterns of other countries, behavioral patterns. That is, how it will impact on—this new regime will not solve the end of chemical weapons, will not prevent clandestine production of them. It will not. But it takes a hell of a conspiratorial scenario and a lot of luck for it to do any damage in my view, any real damage. And on the other hand, it will modify behavior.

It is a little like what happens—if you want to be part of the community of nations that are viewed as civilized and have access to a thousand other benefits when you are in that economically, you are going to change your thinking. This helps change the thinking.

I will not take the time now to go back and recount your statement, but you—actually, do you have that one paragraph—where you ended your statement by talking about how the mind set had begun to change. I will put it in the record, but it goes to this larger issue. You say:

> For my part, I believe arms control and nonproliferation tools can be used to promote the national security and we must ensure that they do. The Chemical Weapons Convention is clearly a tool which can enhance our national security. I believe that unsuccessful conclusion of arms control agreements need not result in the neglect of our defenses, but it often has.
>
> In giving consent to the ratification of the CWC convention without reservation, the Senate should take real steps to support implementation of the treaty, fund strong defense programs, promote balanced national security strategy, and recognize

the United States must be a leader in a very dangerous world. This world has undergone dramatic change and arms controls have been rushing by. In such a world, if we do not shape the arms control process to serve our interests we can be certain that some nations will be pressing in the directions that are not in our interest. The Chemical Weapons Convention before this committee is in our interests. Again——

This is not the quote I wanted to read, but thank you.

Senator HAGEL. Well, it was very eloquent.

Senator BIDEN. It was. You did very well. It is still relevant. It is not the quote I am looking for. I will put it in the record without holding us up.

[The material referred to follows:]

One can see this, in one small example, even in the way our pursuit of a ban on chemical weapons reinforced our commitment to the spread of democracy. We sought intrusive verification measures so that we might reduce the threat posed by the Warsaw Pact, but also because we knew that totalitarian regimes cannot long survive when their citizens are exposed to contradictory information. The requirement for detailed information on chemical weapons stocks and facilities before reaching agreement, at the time an innovative negotiating step which led to the December 1989 U.S./Soviet Phase I data exchange and the recent Phase II exchange, sparked a controversy which continues in Russia even today over the history of the Soviet chemical and biological weapons programs.

Our demand for trial inspections prior to completion of negotiations aided in crafting a better treaty, but it also caused Soviet citizens to ask why they themselves could not see what Americans were allowed to see. Our insistence, first in the U.S./Soviet Bilateral Destruction Agreement (BDA) of 1990 and later in the CWC that destruction of chemical weapons stocks be done in a safe and environmentally sound manner has created a grassroots political process of "NIMBY"—not in my backyard—which has complicated agreement on a chemical weapons destruction plan but also complicates a return of the old system. One should not exaggerate the role that arms control has played in promoting our national agenda, but one should not ignore it either.

Senator HAGEL. Senator Biden, thank you.

General Odom, did you want to respond?

General ODOM. I just wanted to say, you made my objections seem far less than they are, and you have made this sound much more benign. I hope you do realize that I have said that the very things that you are saying we are going to set in motion here are likely to produce very serious adverse consequences, not trivial consequences.

Senator BIDEN. Well, I did not mean to suggest you thought they were trivial, General. If I did, I did not mean that. I am just pointing out that I think that it takes a hell of a lot to get to the worst case scenario that I think you are most worried about.

Senator HAGEL. Senator Biden, thank you.

Senator BIDEN. Thank you.

Senator HAGEL. Gentlemen, thank you. We are grateful, as always. If there is anything additional that you want to add for the record, we would be very pleased to receive that.

The committee is adjourned.

[Whereupon, at 12:21 p.m., the committee was adjourned.]

APPENDIX

Conditions to the Chemical Weapons Convention

(1) Effect of Article XXII

Summary:

The Senate reserves the right to add reservations to the resolution of ratification, despite the ban (in Article XXII of the Convention) on reservations to the Convention. This condition asserts the Senate's right under the U.S. Constitution, but does not exercise it.

Text:

(1) Effect of Article XXII.

Upon the deposit of the United States instrument of ratification. The President shall certify to the Congress that the United States has informed all other States Parties to the Convention that the Senate reserves the right, pursuant to the Constitution, to offer advice and consent to ratification of the Convention subject to reservations, notwithstanding Article XXII of the Convention.

(2) Financial Contributions (Helms #3)

Summary:

Requires statutory authorization and appropriation for payments or assistance to the Organization.

Text:

(2) Financial Contributions.

(A) Notwithstanding any provision of the Convention, no funds may be drawn from the Treasury of the United States for payments or assistance (including the transfer of in-kind items) under paragraph 16 of Article IV, paragraph 19 of Article V, paragraph 7 of Article VIII, paragraph 23 of Article IX, Article X, or any other provision of the Convention, without statutory authorization and appropriation.

(3) Establishment of an Internal Oversight Office (Helms #4)

Summary:

Requires the equivalent of an independent OPCW Inspector General's Office by late December 1997; withholds 50 percent of regular U.S. contributions to the OPCW, beginning April 29, 1998, if the required independent oversight office has not been established.

Text:

(3) Establishment of an Internal Oversight Office.

(A) No later than 240 days after the deposit of the instrument of ratification of the United States to the Convention (in this resolution referred to as the "United States instrument of ratification"), the President shall certify to the Congress that the current internal audit office of the Preparatory Commission has been expanded into an independent internal oversight office whose functions will be transferred to the Organization upon its establishment. The independent internal oversight office shall be obligated to protect confidential information pursuant to the obligations of the Confidentiality Annex. The independent internal oversight office shall—

(i) make investigations and reports relating to all programs of the Organization;

(ii) undertake both management and financial audits, including—

(I) an annual assessment verifying that classified and confidential information is stored and handled securely pursuant to the general obligations set forth in Article VIII and in accordance with all provisions of the Annex on the Protection of Confidential Information; and

(II) an annual assessment of laboratories established pursuant to Paragraph 55 of Part II of the Verification Annex to ensure the Director General is carrying out his functions pursuant to Paragraph 56 of Part II of the Verification Annex;

(iii) undertake performance evaluations annually to ensure the Organization has complied to the extent practicable with the recommendations of the independent internal oversight office;

(iv) have access to all records relating to the programs and operations of the Organization;

(v) have direct and prompt access to any official of the Organization; and

(vi) be required to protect the identity of, and prevent reprisals against, all complainants.

(B) The Organization shall ensure, to the extent practicable, compliance with recommendations of the independent internal oversight office, and shall ensure that annual and other relevant reports by the independent internal oversight office are made available to all member states pursuant to the requirements established in the Confidentiality Annex.

(C) Until a certification is made under subsection (A), 50 percent of the amount for United States contributions to the regular budget of the Organization assessed pursuant to paragraph 7 of Article VIII shall be withheld, in addition to any other amounts required to withheld by any other provision of law.

(D) Notwithstanding the requirements of this paragraph, for the first year of the Organization's operation, ending on April 29, 1998, the United States shall make its full contribution to the regular budget of the Organization assessed pursuant to paragraph 7 of Article VIII.

(E) For purposes of this paragraph, the term "internal oversight office" means the head of an independent office (or other independent entity) established by the Organization to conduct and supervise objective audits, inspections, and investigations relating to the programs and operations of the Organization.

(4) COST-SHARING ARRANGEMENTS (HELMS #5)

Summary:

Requires cost-sharing for "any new research or development expenditures for the primary purpose of refining or improving the Organization's regime for verification of compliance under the Convention, including the training of inspectors and the provision of detection equipment and on-site analysis sampling and analysis techniques." Permits programs to improve U.S. monitoring without cost-sharing.

We would not want the United States to do all the expensive research and development needed to maximize verification of compliance with the CWC, and not be reimbursed by other countries for such efforts. It will still be possible for U.S. agencies to pursue R&D programs so as to improve U.S. monitoring of chemical weapons, however, and cost-sharing arrangements need not be in place unless and until the United States wants to share the results with the OPCW.

Text:

(4) Cost-Sharing Arrangements.

(A) Prior to the deposit of the United States instrument of ratification, and annually thereafter, the President shall submit a report to Congress identifying all cost-sharing arrangements with the Organization.

(B) The United States shall not undertake any new research or development expenditures for the primary purpose of refining or improving the Organization's regime for verification of compliance under the Convention, including the training of inspectors and the provision of detection equipment and on-site analysis sampling and analysis techniques, or share the articles, items, or services resulting from any research and development undertaken previously, without first having concluded and submitted to the Congress a cost-sharing arrangement with the Organization.

(C) Nothing in this paragraph may be construed as limiting or constricting in any way the ability of the United States to pursue unilaterally any project undertaken solely to increase the capability of United States means for monitoring compliance with the Convention.

(5) INTELLIGENCE SHARING AND SAFEGUARDS (HELMS #6)

Summary:

Requires interagency Intelligence Community approval and sanitization of intelligence information before release to the OPCW, such that there would be only minimal damage from unauthorized disclosure. The Director of Central Intelligence may waive these requirements on a case-by-case basis, with notice to appropriate com-

mittees of Congress. Any unauthorized disclosure by the OPCW must be reported to Congress within 15 days of after the executive branch learns of it.

Text:

(5) Intelligence Sharing and Safeguards.—

(A) Provision of Intelligence Information to the Organization.—

(i) In General.—No United States intelligence information may be provided to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, unless the President certifies to the appropriate committees of Congress that the Director of Central Intelligence, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the Organization to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information. These procedures shall include, but not be limited to—

(I) offering and provision of advice and assistance to the Organization in establishing and maintaining the necessary measures to ensure that inspectors and other staff members of the Technical Secretariat meet the highest standards of efficiency, competence, and integrity, pursuant to subparagraph l(b) of the Confidentiality Annex, and in establishing and maintaining a stringent regime governing the handling of confidential information by the Technical Secretariat, pursuant to paragraph 2 of the Confidentiality Annex;

(II) explicit recognition, in each case in which intelligence information is to be provided to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, of the risks of unauthorized disclosure of the U.S. information to be provided to the Organization, and determination that such disclosure would result in no more than minimal damage to national security;

(III) sanitization of intelligence information that is to be provided to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, to remove all information that could betray intelligence sources and methods; and

(IV) interagency United States Intelligence Community approval for any release of intelligence information to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, no matter how thoroughly it has been sanitized.

(ii) Waiver Authority.—

(I) In General.—The Director of Central Intelligence may waive the application of clause (i) if the Director of Central Intelligence certifies in writing to the appropriate committees of Congress that providing such information to the Organization or an organization affiliated with the Organization, or to any official or employee thereof, is in the vital national security interests of the United States and that all possible measures to protect such information have been taken, except that such waiver must be made for each instance such information is provided, or for each such document provided. In the event that multiple waivers are issued within a single week, a single certification to the appropriate committees of Congress may be submitted, specifying each waiver issued during that week.

(II) Delegation of Duties.—The Director of Central Intelligence may not delegate any duty of the Director of Central Intelligence under this subsection.

(B) Periodic and Special Reports.—

(i) Periodic Reports.—

(I) In General.—The President shall report periodically, but not less frequently than semiannually, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on the types and volume of intelligence information provided to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, and the purposes for which it was provided during the period covered by the report.

(II) Exemption.—For purposes of subclause (i), intelligence information provided to the Organization or any organization affiliated with the Organization, or to any officials or employees thereof, does not cover information that is provided only to, and only for the use of, appropriately cleared United States Government personnel serving with the Organization or any organization affiliated with the Organization.

(ii) Special Reports.—

(I) Report on Procedures.—Accompanying the certification provided pursuant to subparagraph (A)(i), the President shall provide a detailed report to the Select

Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives identifying the procedures established for protecting intelligence sources and methods when sanitized intelligence information is provided pursuant to this section.

(II) Reports on Unauthorized Disclosures.—The President shall report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, within 15 days after it has become known to the U.S. Government, regarding any unauthorized disclosure of intelligence information provided by the United States to the Organization.

(C) Delegation of Duties.—The President may not delegate or assign the duties of the President under this section.

(D) Relationship to Existing Law.—Nothing in this paragraph may he construed to—

(i) impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5)); or

(ii) supersede or otherwise affect the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(E) Definitions.—In this section:

(i) Appropriate Committees of Congress.—The term "appropriate committees of Congress" means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

(ii) Organization.—The term "Organization" means the Organization for the Prohibition of Chemical Weapons established under the Convention and includes any organ of that Organization and any board or working group, such as the Scientific Advisory Board, that may be established by it.

(iii) Organization Affiliated with the Organization.—The term "organization affiliated with the Organization" includes, but is not limited to, the Provisional Technical Secretariat under the Convention and any laboratory certified by the Director-General of the Organization as designated to perform analytical or other functions.

(6) Amendments to the Convention (Helms #7)

Summary:

Requires the United States to vote on all proposed amendments and requires the executive branch to submit all amendments to the Senate for its advice and consent.

Text:

(6) Amendments to the Convention.

(A) A United States representative will be present at all Amendment Conferences and will cast a vote, either affirmative or negative, on all proposed amendments made at such conferences.

(B) The President shall submit to the Senate for its advice and consent to ratification under Article 11, Section 2, Clause 2 of the Constitution of the United States any amendment to the Convention adopted by an Amendment Conference.

(7) Continuing Vitality of the Australia Group and National Export Controls (Helms #11)

Summary:

Requires the President to certify, before depositing instruments of ratification, that the CWC will in no way weaken the Australia Group, and that each member of the Group agrees there is no CWC requirement to weaken their export controls.

Requires annual certification that Australia Group controls have not been weakened and remain effective or, if this cannot be certified, consultation with the Senate on a resolution of continued adherence to the CWC.

Requires the President to block any attempt within the Australia Group to change the Group's view of its obligations under the CWC.

Text:

(7) Continuing Vitality of the Australia Group and National Export Controls.

(A) The Senate declares that the collapse of the informal forum of states known as the "Australia Group," either though changes in membership or lack of compliance with common export controls, or the substantial weakening of common Aus-

tralia Group export controls and non-proliferation measures in force on the date of United States ratification of the Convention, would constitute a fundamental change in circumstances to United States ratification of the Convention.

(B) Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that—

(i) nothing in the Convention obligates the United States to accept any modification, change in scope, or weakening of its national export controls. The United States understands that the maintenance of national restrictions on trade in chemicals and chemical production technology is fully compatible with the provisions of the Convention, including Article XI(2), and solely within the sovereign jurisdiction of the United States;

(ii) the Convention preserves the right of State Parties, unilaterally or collectively, to maintain or impose export controls on chemicals and related chemical production technology for foreign policy or national security reasons, notwithstanding Article XI(2); and

(iii) each Member-State of the Australia Group, at the highest diplomatic levels, has officially communicated to the U.S. Government its understanding and agreement that export control and nonproliferation measures which the Australia Group has undertaken are fully compatible with the provisions of the Convention, including Article XI(2), and its commitment to maintain in the future such export controls and nonproliferation measures against non-Australia Group members.

(C) (i) The President shall certify to Congress on an annual basis that—

(a) Australia Group members continue to maintain an equally effective or more comprehensive control over the export of toxic chemicals and their precursors, dual-use processing equipment, human, animal and plant pathogens and toxins with potential biological weapons application, and dual-use biological equipment, as that afforded by the Australia Group as of the date of ratification of this Convention by the United States; and

(b) the Australia group remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials and technology, and that the effectiveness of the Australia Group has not been undermined by changes in membership, lack of compliance with common export controls and nonproliferation measures, or weakening of common controls and nonproliferation measures in force as of the date of ratification of this Convention by the United States.

(ii) In the event that the President is, at any time, unable to make the certifications described in subparagraph (C)(i), the President shall consult with the Senate for the purposes of obtaining a resolution of continued adherence to the Convention, notwithstanding the fundamental change in circumstance.

(D) The President shall consult periodically, but not less frequently than twice a year, with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, on Australia Group export control and nonproliferation measures. If any Australia Group member adopts a position at variance with the certifications and understandings provided under subparagraph (B), or should seek to gain Australia Group acquiescence or approval for an interpretation that various provisions of the Convention require it to remove chemical-weapons related export controls against any State Party to the Convention, the President shall block any effort by that Australia Group member to secure Australia Group approval of such a position or interpretation.

(E) For the purposes of this paragraph—

(i) "Australia Group" means the informal forum of states, chaired by Australia, whose goal is to discourage and impede chemical and biological weapons proliferation by harmonizing national export controls, chemical weapons precursor chemicals, biological weapons pathogens, and dual-use production equipment, and through other measures: and

(ii) "Highest diplomatic levels" means at the level of a senior official with the power to authoritatively represent their government, and does not mean a diplomatic representative of that government to the United States.

(8) Negative Security Assurances (Helms #12)

Summary:

Requires a classified Presidential report regarding the impact of CWC on U.S. options for responding to chemical or biological attacks, and on the assurances we offer to other countries that foreswear the use of nuclear weapons.

Some Members are concerned because ratification of the CWC will leave the United States unable to threaten retaliatory use of chemical weapons against a state that used chemical weapons on U.S. or allied forces. The United States has no in-

tention of using chemical weapons, however, even in response to a foreign chemical weapon attack. Even before the CWC was negotiated, the United States committed itself to the destruction of nearly all U.S. chemical weapons.

This condition requires the President to submit a classified report on the impact of CWC upon U.S. "negative security assurances" to other countries. Such assurances are the "umbrella" that we offer to countries that agree to forego weapons of mass destruction.

Text:

(8) Negative Security Assurances.

(A) In forswearing the possession of chemical weapons retaliatory capability under the Convention, the Senate understands that deterrence of attack by chemical weapons requires a reevaluation of the negative security assurances extended to non-nuclear-weapon states.

(B) Accordingly, 180 days after the deposit of the United States instrument of ratification, the President shall submit to the Congress a classified report setting forth the findings of a detailed review of United States policy on negative security assurances, including a determination of the appropriate responses to the use of chemical or biological weapons against the United States military, United States citizens, allies, and third parties.

(9) PROTECTION OF ADVANCED BIOTECHNOLOGY (HELMS #13)

Summary:

Requires the President to certify, prior to the deposit of the United States instrument of ratification and annually thereafter, that the legitimate commercial activities and interests of U.S. chemical, biotechnology, and pharmaceutical firms are not being significantly harmed by the Convention.

The Administration is prepared to certify, both now and annually, that the CWC's limits on the production and use of the most toxic chemical weapons and their precursors are not significantly harming the legitimate commercial activities and interests of U.S. chemical, biotechnology, and pharmaceutical firms.

Most of those firms played a major role in the negotiation of this Convention, of course, so they have long since signed up to any sacrifices that U.S. firms may have to make in order to limit the ability of rogue states to obtain and use chemical weapons. And the Reagan, Bush and Clinton Administrations have all taken extraordinary measures to limit the impact of the CWC upon U.S. businesses.

Text:

(9) Protection of Advanced Biotechnology.

Prior to the deposit of the United States instrument of ratification, and on January 1 of every year thereafter, the President shall certify to the Committee on Foreign Relations and the Speaker of the House of Representatives that the legitimate commercial activities and interests of the chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 contained in the Annex on Chemicals of the Convention.

(10) MONITORING AND VERIFICATION OF COMPLIANCE (HELMS #14)

Summary:

Requires detailed annual country-by-country reports on chemical weapons developments and U.S. intelligence coverage, as well as at least quarterly briefings on U.S. actions to pursue CWC compliance issues.

We all know that monitoring and verification of some aspects of CWC compliance will be difficult. This fact of life has prompted understandable concern on the part of some Members, and the administration is prepared to accept a condition that requires both periodic reports and prompt notice regarding world chemical weapons programs and the status of CWC compliance. The executive branch would also offer briefings on current compliance issues, including issues to be raised in OPCW meetings and the results of those meetings.

Text:

(10) Monitoring and Verification of Compliance.

(A) The Senate declares that—

(i) the Convention is in the interests of the United States only if all parties to the Convention are in strict compliance with the terms of the Convention as submitted to the Senate for its advice and consent to ratification, such compli-

ance being measured by performance and not by efforts, intentions, or commitments to comply; and

(ii) the Senate expects all parties to the Convention to be in strict compliance with their obligations under the terms of the Convention, as submitted to the Senate for its advice and consent to ratification;

(B) Given its concern about the intelligence community's low level of confidence in its ability to monitor compliance with the Convention, the Senate expects the executive branch of Government to offer regular briefings, not less than four times a year, to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives on compliance issues related to the Convention. Such briefings shall include a description of all United States efforts in bilateral and multilateral diplomatic channels and forums to resolve compliance issues and shall include a complete description of—

(i) any compliance issues the United States plans to raise at meetings of the Organization, in advance of such meetings;

(ii) any compliance issues raised at meetings of the Organization, within 30 days of each such meeting;

(iii) any determination by the President that a party is in noncompliance with or is otherwise acting in a manner inconsistent with the object or purpose of the Convention, within 30 days of such a determination.

(C) The President shall submit annually on January 1 to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) a certification of those priority countries included in the Intelligence Community's Monitoring Strategy, as defined by the Director of Central Intelligence's Arms Control Intelligence Staff and the National Intelligence Council, determined to be in compliance with the Convention, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Convention;

(iii) the steps the United States has taken, either unilaterally or in conjunction with another State Party—

(I) to initiate challenge inspections of the noncompliant party with the objective of demonstrating to the international community the act of noncompliance;

(II) to call attention publicly to the activity in question; and

(III) to seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant party with the objective of bringing the noncompliant party into compliance.

(iv) a determination of the military significance and broader security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant party in question to actions undertaken by the United States described in the report submitted pursuant to clause (iii).

(D) On January 1, 1998, and annually thereafter, the Director of Central Intelligence shall submit to the Committees on Foreign Relations, Armed Services, and the Select Committee on Intelligence of the Senate and to the Committees on International Relations, National Security, and Permanent Select Committee of the House of Representatives, a full and complete classified and unclassified report regarding—

(i) the status of chemical weapons development, production, stockpiling, and use, within the meanings of the Convention, on a country-by-country basis;

(ii) any information made available to the U.S. Government concerning the development, production, acquisition, stockpiling, retention, use, or direct or indirect transfer of novel agents, including any unitary or binary chemical weapon comprised of chemical components not identified on the schedules of the Annex on Chemicals, by any country;

(iii) the extent of trade in chemicals potentially relevant to chemical weapons programs, including all Australia Group chemicals and chemicals identified on the schedules of the Annex on Chemicals, on a country-by-country basis;

(iv) the monitoring responsibilities, practices, and strategies of the intelligence community and a determination of the level of confidence of the intelligence community (as defined in section 3(4) of the National Security Act of 1947) with respect to each specific monitoring task undertaken, including an assessment by the intelligence community of the national aggregate data provided by parties to the Organization, on a country-by-country basis;

(v) an identification of how U.S. national intelligence means, including national technical means and human intelligence, is being marshaled together with the

Convention's verification provisions to monitor compliance with the Convention; and

(vi) the identification of chemical weapons development, production, stockpiling, or use, within the meanings of the Convention, by subnational groups, including terrorist and paramilitary organizations.

(E) The report required under subparagraph (D) shall include a full and complete classified annex submitted solely to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee of the House of Representatives regarding—

(i) a detailed and specific identification of all United States resources devoted to monitoring the Convention, including information on all expenditures associated with the monitoring of the Convention; and

(ii) an identification of the priorities of the executive branch of Government for the development of new resources relating to detection and monitoring capabilities with respect to chemical and biological weapons, including a description of the steps being taken and resources being devoted to strengthening U.S. monitoring capabilities.

(11) ENHANCEMENTS TO ROBUST CHEMICAL AND BIOLOGICAL DEFENSES (HELMS #15)

Summary:

Requires the Secretary of Defense to ensure that U.S. forces are capable of carrying out required military missions in U.S. regional contingency plans, regardless of any foreign threat or use of chemical weapons, and that the U.S. Army Chemical School remains under the supervision of an Army general.

Former Secretary of Defense Casper Weinberger and others have asserted that ratifying CWC could lead to complacency regarding the need for chemical weapons defenses. This concern is frankly a bit mystifying. The fear of complacency persists, however, so the administration has agreed to a condition requiring the Secretary of Defense to ensure that U.S. forces are capable of carrying out required military missions in U.S. regional contingency plans, regardless of any foreign threat or use of chemical weapons. This means not only improving the defensive capabilities of U.S. forces, but also initiating discussions on chemical weapons defense with likely coalition partners and countries whose civilian personnel would support U.S. forces in a conflict.

The Administration has also agreed to assure that the U.S. Army Chemical School remains under the supervision of an Army general.

Text:

(11) Enhancements to Robust Chemical and Biological Defenses.

(A) It is the sense of the Senate that—

(1) chemical and biological threats to deployed U.S. Armed Forces will continue to grow in regions of concern around the world, and pose serious threats to U.S. power projection and forward deployment strategies;

(2) chemical weapons or biological weapons use is a potential condition of future conflicts in regions of concern;

(3) it is essential for the United States and key regional allies to preserve and further develop robust chemical and biological defenses;

(4) the United States Armed Forces are inadequately equipped, organized, trained and exercised for chemical and biological defense against current and expected threats, and that too much reliance is placed on non-active duty forces, which receive less training and less modern equipment, for critical chemical and biological defense capabilities;

(5) the lack of readiness stems from a de-emphasis of chemical and biological defenses within the executive branch of Government and the United States Armed Forces;

(6) the armed forces of key regional allies and likely coalition partners, as well as civilians necessary to support U.S. military operations, are inadequately prepared and equipped to carry out essential missions in chemically and biologically contaminated environments;

(7) congressional direction contained in the Defense Against Weapons of Mass Destruction Act of 1996 should lead to enhanced domestic preparedness to protect against chemical and biological weapons threats; and

(8) the U.S. Armed Forces should place increased emphasis on potential threats to deployed U.S. Armed Forces and, in particular, make countering chemical and biological weapons use an organizing principle for U.S. defense strategy and development of force structure, doctrine, planning, training, and exercising policies of the U.S. Armed Forces.

(B) The Secretary of Defense shall take those actions necessary to ensure that U.S. Armed Forces are capable of carrying out required military missions in U.S. regional contingency plans, despite the threat or use of chemical or biological weapons. In particular, the Secretary of Defense shall ensure that U.S. Armed Forces are effectively equipped, organized, trained and exercised (including at the large unit and theater level) to conduct operations in a chemically or biologically contaminated environment that are critical to the success of U.S. military plans in regional conflicts, including—

(1) deployment, logistics and reinforcement operations at key ports and airfields;

(2) sustained combat aircraft sortie generation at critical regional airbases; and

(3) ground force maneuvers of large units and divisions.

(C) The Secretaries of Defense and State shall, as a priority matter, initiate discussions with key regional allies and likely regional coalition partners, including those countries where the U.S. currently deploys forces, where U.S. forces would likely operate during regional conflicts, or which would provide civilians necessary to support U.S. military operations, to determine what steps are necessary to ensure that Allied and coalition forces and other critical civilians are adequately equipped and prepared to operate in chemically- and biologically-contaminated environments. No later than one year after deposit of the United States instrument of ratification, the Secretaries of Defense and State shall provide a report to the Committees on Foreign Relations and Armed Services of the Senate and to the Speaker of the House on the results of these discussions, plans for future discussions, measures agreed to improve the preparedness of foreign forces and civilians, and proposals for increased military assistance, including through the Foreign Military Sales, Foreign Military Financing and the International Military Education and Training programs pursuant to the Foreign Assistance Act of 1961.

(D) The Secretary of Defense shall take those actions necessary to ensure that the United States Army Chemical School remains under the oversight of a general officer of the United States Army.

(E) Given its concerns about the present state of chemical and biological defense readiness and training, it is the sense of the Senate that—

(1) the transfer, consolidation, and reorganization of the United States Army Chemical School, the Army should not disrupt or diminish the training and readiness of the United States Armed Forces to fight in a chemical-biological warfare environment;

(2) the Army should continue to operate the Chemical Defense Training Facility at Fort McClellan until such time as the replacement training facility at Fort Leonard Wood is functional.

(F) On January 1, 1998, and annually thereafter, the President shall submit a report to the Committees on Foreign Relations, Appropriations, and Armed Services and the Committees on International Relations, National Security, Appropriations, and Speaker of the House on previous, current, and planned chemical and biological weapons defense activities. The report shall include the following information for the previous fiscal year and for the next three fiscal years—

(1) Proposed solutions to each of the deficiencies in chemical and biological warfare defenses identified in the March 1996 General Accounting Office Report, titled "Chemical and Biological Defense: Emphasis Remains Insufficient to Resolve Continuing Problems," and steps being taken pursuant to paragraph (B) of this section to ensure that the U.S. Armed Forces are capable of conducting required military operations to ensure the success of U.S. regional contingency plans despite the threat or use of chemical or biological weapons;

(2) An identification of priorities of the executive branch of Government in the development of both active and passive chemical and biological defenses;

(3) A detailed summary of all budget activities associated with the research, development, testing, and evaluation of chemical and biological defense programs;

(4) A detailed summary of expenditures on research, development, testing, and evaluation, and procurement of chemical and biological defenses by fiscal years defense programs, department, and agency;

(5) A detailed assessment of current and projected vaccine production capabilities and vaccine stocks, including progress in researching and developing a multivalent vaccine;

(6) A detailed assessment of procedures and capabilities necessary to protect and decontaminate infrastructure to reinforce United States power-projection forces, including progress in developing a nonaqueous chemical decontamination capability;

(7) The progress made in procuring light-weight personal protective gear and steps being taken to ensure that programmed procurement quantities are suffi-

cient to replace expiring battle-dress overgarments and chemical protective overgarments to maintain required wartime inventory levels;

(8) The progress in developing long-range standoff detection and identification capabilities and other battlefield surveillance capabilities for biological and chemical weapons, including progress on developing a multi-chemical agent detector, unmanned aerial vehicles, and unmanned ground sensors;

(9) Progress in developing and deploying layered theater missile defenses for deployed U.S. Armed Forces which will provide greater geographic coverage against current and expected ballistic missile threats and will help mitigate chemical and biological contamination through higher altitude intercepts and boost-phase intercepts;

(10) An assessment of the training and readiness of the United States Armed Forces to operate in a chemically or biologically contaminated environment and actions taken to sustain training and readiness, including at national combat training centers;

(11) The progress in incorporating chemical and biological considerations into service and Joint exercises as well as simulations, models, and wargames and the conclusions drawn from these efforts about the U.S. capability to carry out required missions, including with coalition partners, in military contingencies;

(12) The progress in developing and implementing service and joint doctrine for combat and non-combat operations involving adversaries armed with chemical or biological weapons, including efforts to update the range of service and joint doctrine to better address the wide range of military activities, including deployment, reinforcement and logistics operations in support of combat operations, and for the conduct of such operations in concert with coalition forces; and

(13) The progress in resolving issues relating to the protection of United States population centers from chemical and biological attack, including plans for inoculation of populations, consequence management, and progress made in developing and deploying effective cruise missile defenses and a national ballistic missile defense.

(12) NONCOMPLIANCE (HELMS #16)

Summary:

In the event of noncompliance by a State Party, requires the President to inform and consult with the Senate and to take a series of actions designed to expose noncompliance and to force compliance. These actions include making effective use of CWC provisions for challenge inspections, high-level diplomacy and U.N. sanctions.

The President must also implement any sanctions required by U.S. law. If the noncompliance should persist for a year, the President must consult with the Senate regarding continued adherence to the Convention.

Text:

(12) Noncompliance.

(A) If the President determines that persuasive information exists that a party to the Convention is maintaining a chemical weapons production or production mobilization capability, is developing new chemical agents, or is in violation of the Convention in any other manner so as to threaten the national security interests of the United States. Then the President shall—

(1) consult with, and promptly submit to, the Senate a report detailing the effect of such actions,

(2) seek on an urgent basis a challenge inspection of the facilities of the relevant party in accordance with the provisions of the Convention with the objective of demonstrating to the international community the act of noncompliance;

(3) seek, or encourage, on an urgent basis a meeting at the highest diplomatic level with the relevant party with the objective of bringing the noncompliant party into compliance,

(4) implement prohibitions and sanctions against the relevant party as required by law;

(5) if noncompliance has been determined, seek on an urgent basis within the Security Council of the United Nations a multilateral imposition of sanctions against the noncompliant party for the purposes of bringing the noncompliant party into compliance; and

(6) in the event that noncompliance persists for a period of longer than 1 year after the date of determination made pursuant to subparagraph (A), promptly consult with the Senate for the purposes of obtaining a resolution of support of continued adherence to the Convention, notwithstanding the changed circumstances affecting the object and purpose of the Convention.

(B) Nothing in this section may be construed to impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5)).

(C) If the President determines that an action otherwise required under paragraph (A) would impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure, he shall report that determination, together with a detailed written explanation of the basis for that determination, to the Chairmen of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence no later than 15 days after making such determination.

(13) PRIMACY OF THE UNITED STATES CONSTITUTION (HELMS #17)

Summary:

Makes clear that the CWC does not contradict the U.S. Constitution.

Some CWC opponents have said that on-site inspections would be conducted in violation of the U.S. Constitution. This is simply not the case. No administration would agree to a treaty that violated the Constitution, no treaty ever takes precedence over the Constitution, and only the United States interprets our Constitution.

This condition states those facts.

Text:

(13) Primacy of the United States Constitution.

Nothing in the Convention requires or authorizes legislation, or other action, by the United States prohibited by the Constitution of the United States, as interpreted by the United States.

(14) FINANCING RUSSIAN IMPLEMENTATION (HELMS #18)

Summary:

Requires the United States not to accept any effort by Russia to make Russia's CWC ratification contingent upon U.S. financial guarantees to cover Russian destruction costs.

None of us would want the United States to be stuck with the bill for Russian destruction of their vast chemical weapons stockpile. So there is agreement on a condition that the United States shall not accept any Russian effort to condition its ratification of CWC upon the United States providing guarantees to pay for Russian implementation of CWC or of the 1990 Bilateral Destruction Agreement.

Text:

(14) Financing Russian Implementation.

The United States understands that in order to be assured of the Russian commitment to a reduction in chemical weapons stockpiles, Russia must maintain a substantial stake in financing the implementation of both the 1990 Bilateral Destruction Agreement, and the Convention. The United States shall not accept any effort by Russia to make deposit of Russia's instrument of ratification contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia under the 1990 Bilateral Destruction Agreement or the Convention.

(15) ASSISTANCE UNDER ARTICLE X (HELMS #19)

Summary:

Requires the United States not to contribute to the voluntary fund for chemical weapons defense assistance to other States Parties, and limits U.S. assistance to certain states to medical antidotes and treatments.

Opponents of CWC assert that Article X would require the United States to provide assistance and equipment to countries like Cuba to improve their chemical weapons defense capabilities. This is a misconception of paragraph 7 of Article X, which says: "Each State Party undertakes to provide assistance through the Organization." Assistance may include "detection equipment and alarm systems, protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures."

The rest of paragraph 7 of Article X makes clear that a State Party may simply *declare* what assistance it *might* provide in response to an appeal by the OPCW. CWC does not compel the United States to give any country, let alone an enemy like Cuba, anything more than medical assistance or advice.

Text:

(15) Assistance Under Article X.

(A) Prior to the deposit of the United States instrument of ratification, the President shall certify to the Congress that the United States shall not provide assistance under paragraph 7(a) of Article X.

(B) Prior to the deposit of the United States instrument of ratification, the President shall certify to the Congress that for any States Party the government of which is not eligible for assistance under chapter 2 of Part II or chapter 4 of Part II of the Foreign Assistance Act of 1961—

(i) no assistance under paragraph 7(b) of Article X will be provided to the States Party; and

(ii) no assistance under paragraph 7(c) of Article X other than medical antidotes and treatment will be provided to the States Party.

(16) CONSTITUTIONAL PREROGATIVES (HELMS #22)

Summary:

Sense of the Senate that U.S. negotiators should not agree to treaties that bar reservations and that the Senate should not consent to ratification of any such future treaties. (See also #1.)

Article XXII of the CWC states: "The Articles of this Convention shall not be subject to reservations. The Annexes of this Convention shall not be subject to reservations incompatible with its object and purpose." Senator Helms rightly notes that although the United States has ratified other treaties with similar provisions, the Senate Foreign Relations Committee has maintained that "the President's agreement to such a prohibition can not constrain the Senate's constitutional right and obligation to give its advice and consent to a treaty subject to any reservation it might determine is required by the national interest."

The U.S. Constitution vests in the Senate the power to give its advice and consent subject to reservations. So I am happy to support this condition that reminds the executive branch of the Senate's role.

Text:

(16) Constitutional Prerogatives.

(A) The Senate makes the following findings:

(1) The Constitution states that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur."

(2) At the turn of the century, Senator Henry Cabot Lodge took the position that the giving of advice and consent to treaties constitutes a stage in negotiation on the treaties and that Senate amendments or reservations to a treaty are propositions "offered at a later stage of the negotiation by the other part of the American treatymaking power in the only manner in which they could then be offered."

(3) The executive branch has begun a practice of negotiating and submitting to the Senate treaties which include a provision which has the purported effect of inhibiting the Senate from attaching reservations which the Senate considers necessary in the national interest or of preventing the Senate from exercising its constitutional duty to give its advice and consent to treaty commitments before ratification.

(4) During the 85th Congress, and again during the 102d Congress, the Committee on Foreign Relations of the Senate made its position on this issue clear when stating that "the President's agreement to such a prohibition can not constrain the Senate's constitutional right and obligation to give its advice and consent to a treaty subject to any reservation it might determine is required by the national interest."

(B) Sense of the Senate.

It is the sense of the Senate that—

(1) the past ratification by the Senate of treaties containing provisions which prohibit amendments or reservations should not be construed as a precedent for such clauses in future agreements with other nations which require the advice and consent of the Senate;

(2) United States negotiators to a treaty should not agree to any provision which has the effect of inhibiting the Senate from attaching reservations or offering amendments to the treaty; and

(3) the Senate should not consent in the future to any treaty article or provision which would prohibit the Senate from giving its advice and consent to the treaty subject to amendment or reservation.

(17) ADDITIONS TO THE ANNEX ON CHEMICALS (REPLACES HELMS #25)

Summary:

There may well be occasions where it is in our national security interest to add new chemicals to the list of restricted and prohibited chemicals when it becomes clear that they have chemical weapon uses.

However, some have expressed a concern that the addition of certain chemicals to the annex on chemicals might introduce new burdens on U.S. industry.

This condition requires that the executive branch inform Congress when a chemical is proposed for addition to the Schedules.

Consultation with Congress at that stage would enable the United States to object to routine adoption of a change that might have serious impact upon U.S. companies. Such an objection would force the OPCW to seek a two-thirds vote in the Conference of States Parties.

Text:

(17) Additions to the Annex on Chemicals.

(A) Presidential Notification.—Not later than ten days after the Director-General communicates information to all States Parties, pursuant to Article XV(5)(a) of the Convention, of a proposal for the addition of a chemical or biological substance to a schedule of the Annex on Chemicals, the President shall notify the Committee on Foreign Relations of the U.S. Senate of the proposed addition.

(B) Presidential Report.—Not later than 60 days after the Director-General communicates information of such a proposal pursuant to Article XV(5)(a) or not later than 30 days after a positive recommendation by the Executive Council pursuant to Article XV(5)(c) of the Convention, whichever is sooner, the President shall transmit to the Committee on Foreign Relations of the U.S. Senate a report, in classified and unclassified form, detailing the likely impact of the proposed addition to the Annex on Chemicals. Such report shall include, but not be limited to—

(i) an assessment of the likely impact on U.S. industry of the proposed addition of the chemical or biological substance to the Annex on Chemicals;

(ii) a description of the likely costs and benefits, if any, to U.S. national security of the proposed addition of such chemical or biological substance to the Annex on Chemicals; and

(iii) a detailed assessment of the effect of the proposed addition on U.S. obligations under the Verification Annex;

(C) Presidential Consultation.—The President shall, after the submission of the notification required under subparagraph (A) and prior to any action on the proposal by the Executive Council under Article XV(5)(c), consult promptly with the Senate as to whether the United States should object to the proposed addition of a chemical or biological substance pursuant to Article XV(5)(c).

(18) EFFECT ON TERRORISM (HELMS #27)

Summary:

Senator Helms and you have agreed to a condition by which the Senate will find that the CWC would not have stopped the Aum Shinrikyo group in Japan and that future terrorist groups will likely seek chemical weapons.

Both of these statements are probably quite accurate, and no harm is done by attaching them to the resolution of ratification.

Text:

(18) Effect on Terrorism.

The Senate finds that—

(A) Irrespective of whether the Convention enters into force, terrorists will likely look upon chemical weapons as a means to gain greater publicity and instill widespread fear; and

(B) the March 1995 Tokyo subway attack by the Aum Shinrikyo would not have been prevented by the Convention.

(19) CONSTITUTIONAL SEPARATION OF POWERS (HELMS #30)

Summary:

This condition recognizes the Constitutional responsibility of the Congress to pay the debts of the United States. It also declares the Senate's view that the appropriation of funds for financial contributions to the OPCW are beyond the control of the executive branch, and that the United States should not be denied its vote in the OPCW for failing to pay in full its assessed financial contribution.

Text:

(19) Constitutional Separation of Powers.

Article VIII, paragraph 8 of the Convention allows States Parties to vote in the Organization if that member is in arrears in the payment of financial contributions provided that the Organization is satisfied that such non-payment is due to conditions beyond the control of that member. Article I, Section 8 of the Constitution vests in Congress the exclusive authority to "pay the Debts" of the United States. Financial contributions to the Organization for the Prohibition of Chemical Weapons may be appropriated only by the Congress and thus the Senate declares that they are, for the purposes of Article VIII, paragraph 8, beyond the control of the executive branch of the U.S. Government. Therefore, the United States vote in the Organization should not be denied in the event the Congress does not appropriate fully funds for its assessed financial contribution.

(20) THE ON-SITE INSPECTION AGENCY

Summary:

In 1994, the Select Committee on Intelligence recommended that Congress authorize the DoD On-Site Inspection Agency (OSIA) to assist private facilities in the escorting of CWC inspectors. OSIA has done a fine job over the years in escorting arms control inspectors at U.S. Government and defense contractor facilities, making sure that treaty obligations are met with minimal risk to sensitive information.

OSIA's charter restricts it to DoD and contractor sites, so new legislation will be needed—probably in the CWC implementing legislation. (Note: The Armed Services Committee will support this so long as the assistance is provided on a reimbursable basis, but may object if DoD funds are to be used to help U.S. industry.)

Text:

(20) The On-Site Inspection Agency.

It is the sense of the Senate that—

In advance of any inspection, the On-Site Inspection Agency of the Department of Defense should be authorized to provide assistance to United States facilities subject to routine inspections under the Convention or to any facility which is the object of a challenge inspection initiated pursuant to Article IX, provided that the consent of the owner or operator of such facility has first been obtained.

(21) FURTHER ARMS REDUCTION OBLIGATIONS

Summary:

This declaration builds upon Section 33(b) of the Arms Control and Disarmament Act of 1961, which was originally intended to ensure that the Director of the Arms Control and Disarmament Agency would be prohibited from taking any actions in furtherance of arms control objectives that affect the armed forces of the United States without the approval of either a two-thirds vote of the Senate or a majority of both Houses.

This provision, which has been attached to major arms control treaties in recent years, sets forth the Senate position that any international agreement that would obligate the United States to limit its forces in a militarily significant way will only be considered by the Senate pursuant to Article II, Section 2, Clause 2 of the Constitution.

Text:

(21) Further Arms Reduction Obligations.

The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power as set forth in Article II, Section 2, Clause 2 of the Constitution.

(22) TREATY INTERPRETATION

Summary:

This provision, commonly referred to as the "Biden Condition," has been attached to all major treaties since the INF Treaty. It states the Constitutionally based principle that the shared understanding that exists between the Executive branch and the Senate at the time the Senate gives advice and consent to ratification can only be altered subject to the Senate's advice and consent to a subsequent treaty or protocol, or the enactment of a statute.

Text:

(22) Treaty Interpretation.

The Senate affirms the applicability to all treaties of the Constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification with respect to the INF Treaty. For purposes of this declaration, the term "INF Treaty," refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, approved by the Senate on May 27, 1988.

(23) CHEMICAL WEAPONS DESTRUCTION

Summary:

This condition requires the President to explore alternative technologies for the destruction of the U.S. chemical weapons stockpile. It recognizes that the deadline set in the Convention for the completion of stockpile destruction, 2007, supersedes the 2004 date established in an earlier law. It also reassures us that the requirement under the Convention to submit a plan on the method of destruction does not preclude the later use of alternative technologies. Finally, should a safer and more environmentally friendly alternative technology be discovered, but its employment circumscribed by the 2007 deadline, the President would need to consult with the Congress to determine whether the United States should exercise its rights under the Convention and request a brief extension of the destruction deadline.

Text:

(23) Chemical Weapons Destruction.

Prior to the deposit of the United States instrument of ratification of the Convention, the President shall certify to the Congress that all of the following conditions are satisfied:

(A) Exploration of Alternative Technologies.—The President has agreed to explore alternative technologies for the destruction of the United States stockpile of chemical weapons in order to ensure that the United States has the safest, most effective and environmentally sound plans and programs for meeting its obligations under the Convention for the destruction of chemical weapons.

(B) Convention Extends Destruction Deadline.—The requirement in Section 1412 of Public Law 99–145 (50 U.S.C. 1521) for completion of the destruction of the United States stockpile of chemical weapons by December 31, 2004 will be superseded upon the date the Convention enters into force with respect to the United States by the deadline required by the Convention of April 29, 2007.

(C) Authority to Employ a Different Destruction Technology.—The requirement under Article III(l)(a)(v) of the Convention for a declaration by each state party to the Convention, not later than 30 days after the date the Convention enters into force with respect to that party, on general plans of the State Party for destruction of its chemical weapons does not preclude the United States from deciding in the future to employ a technology for the destruction of chemical weapons different than that declared under that Article.

(D) Procedures for Extension of Deadline.—The President will consult with Congress on whether to submit a request to the Executive Council of the Organization for the Prohibition of Chemical Weapons for an extension of the deadline for the destruction of chemical weapons under the Convention, as provided under Part IV(A) of the Annex on Implementation and Verification to the Convention if, as a result of the program of alternative technologies for the destruction of chemical weapons carried out under Section 8065 of the Department of Defense Appropriations Act, 1997 (as contained in Public Law 104–208), the President determines that alternatives to the incineration of chemical weapons are available that are safer and more environmentally sound but whose use would preclude the United States from meeting the deadlines of the Convention.

The Case Against The Chemical Weapons Convention "Truth or Consequences"

Prepared by The Center for Security Policy

INTRODUCTION

As the Senate resumes formal consideration of the controversial Chemical Weapons Convention (CWC)—following the Clinton Administration's decision last fall to withdraw it in the face of certain defeat—the Center for Security Policy has undertaken to provide detailed analyses of many of the issues in dispute.

These papers, most of which have been previously issued as part of the Center's *Truth or Consequences* series, have been compiled and organized to maximize their usefulness to those who will be participating in the coming debate. They address in particular claims being made by the proponents that appear ill-informed, at best, and highly misleading, at worst.

The Center for Security Policy, whose mission is to stimulate and inform debate on vital defense and foreign policy matters, is gratified by the level of attention now being focused on the problematic Chemical Weapons Convention. Such attention—if informed and sustained—is essential to the proper functioning of the deliberative process of a democracy like ours.

Rarely is that deliberative process more important than with respect to decision-making on a treaty such as the CWC, with its ominous implications for U.S. national security, proprietary business information and constitutional rights. For these reasons, efforts now being made to circumscribe, foreshorten or otherwise attenuate the CWC debate are to be strenuously resisted.

The Center hopes that the following pages will prove helpful to those interested in determining the fate of the Chemical Weapons Convention on its merits. For additional background on the treaty and future analyses by the Center, please consult our site on the World Wide Web—www.security-policy.org.

Frank J. Gaffney, Jr.,
Director, 8 April 1997

"TRUTH OR CONSEQUENCES:" CENTER ANALYSES ON THE CWC DEBATE

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No. 97–D 49
4 April 1997

TRUTH OR CONSEQUENCES #10: CLINTON'S WHITE HOUSE SNOW JOB CANNOT CONCEAL THE CHEMICAL WEAPONS CONVENTION'S DEFECTS

(Washington, D.C.): The latest installment in the Clinton Administration's campaign to browbeat the U.S. Senate into ratifying a fatally flawed Chemical Weapons Convention (CWC) failed to live up to its advance billing—in more ways than one. Despite repeated press reports to the effect that former President George Bush and General Colin Powell were to play active roles in an "event" on the South Lawn of the White House, the former was nowhere to be seen and the latter had a letter he signed acknowledged by the President, but was otherwise scarcely in evidence. (The Center for Security Policy would like to think that the force of its argument in a paper released last night[1] encouraged these two influential figures to reconsider the active role as flacks that the Clintonistas have in mind for them.)

Please

Even more disappointing was the case the President made for this treaty. On issue after issue, he persisted in grossly overselling the benefits of this Convention, misrepresenting its terms and/or understating its costs. Consider the following:

- Item: The CWC Will *Not* 'Banish Poison Gas'

The President declared that by ratifying the CWC, the United States has "an opportunity now to forge a widening international commitment to banish poison gas from the earth in the 21st Century." This is the sort of wish-masquerading-as-fact that has been much in evidence in Presidential statements to the effect that "there are no Russian missiles pointed at our children."

The truth—as even more-honest CWC advocates acknowledge—is that not a single country of concern, or for that matter any sub-national terrorist group, that wishes to maintain a covert chemical weapons program will be prevented from doing so by this treaty. Neither are they likely to be caught at it if they do. And even if they are, there is a negligible chance the "international community" will be willing to punish them for doing so. This is hardly the stuff of which effective banishment is made.

- Item: 'Poisons for Peace'

The President claimed that: "The Convention requires other nations to follow our lead, to eliminate their arsenals of poison gas and to give up developing, producing and acquiring such weapons in the future." There is clearly no such requirement

on the rogue states that decline to participate in this treaty (e.g., Iraq, Syria, Libya, Sudan and North Korea).

What is more, the Convention's Articles X and XI may well *accelerate* the proliferation of chemical weapon technology. This is because these provisions obligate parties to "facilitate the fullest possible" transfers of technology directly relevant to the manufacture of chemical weapons and those used to defend against chemical attack—a highly desirable capability for people interested in waging chemical wars.[2]

- Item: The CWC Will *Not* 'Help Shield Our Soldiers'

President Clinton repeated a grievous misrepresentation featured in his State of the Union address: On the South Lawn he declared, that "by ratifying the Chemical Weapons Convention ... we can help shield our soldiers from one of the battlefield's deadliest killers." As noted above, the CWC may actually make our soldiers *more* vulnerable to one of the battlefield's deadliest killers—not least as a result of the insights shared defensive technology will afford potential adversaries about how to reverse-engineer Western protective equipment, the better to exploit its vulnerabilities.

- Item: The CWC Will *Not* Protect Our Children

President Clinton shamelessly claimed that "We can give our children something our parents and grandparents never had—broad protection against the threat of chemical attack." Just how irresponsible this statement is can be seen from a cover article published last month by *Washington City Paper*. The report disclosed that the people of the Washington, D.C. area and, indeed, the rest of the Nation are sitting ducks for chemical attacks.[3] This problem, which arises from a systematic failure to apply resources to civil defense that are even remotely commensurate with the danger, will only *grow* as people like the President compound the CWC's placebo effect of this treaty by exaggerating its benefits.

- Item: The CWC Will *Not* Help in the Fight Against Terrorism

While the President proclaimed that ratifying the CWC will "bolster our leadership in the fight against terrorism," the reality is that this treaty may actually facilitate terrorism. This could come about as a result not only of the dispersion of chemical warfare relevant technology and the placebo effect but also by dint of the sensitive information the Convention expects the United States to share with foreign nationals. At least some of these folks will be working for potentially hostile intelligence services—including those of states, like Iran, known to sponsor terrorism. Compromising what U.S. intelligence knows about international terrorists and their sponsors will only intensify the danger posed by such actors.[4]

- Item: Flogging a Phony Deadline

The President further claimed that "America needs to ratify the Chemical Weapons Convention and we must do it before it takes effect on April 29th." While the treaty will enter into force on that date, with or without the U.S. as a party, the dire consequences that are endlessly predicted if America is not in are being wildly exaggerated. Anytime the United States joins, the 25 percent of the tab that it is supposed to pick up will give Washington considerable influence in the new U.N. bureaucracy set up to implement the CWC.

The Clinton Administration's real—but largely unacknowledged concern—is that this arms control house-of-cards may *collapse* if the United States does not ratify the treaty. After all, in its absence, not one party to the Convention is likely to be an acknowledged chemical weapons state. The unfunded costs, combined with the inability to inspect American companies *while possibly exposing their own to undesired inspections,* will almost certainly prompt most states parties to think better of the whole idea.[5]

- Item: The CWC Will *Harm* American Business Interests

President Clinton further claimed that, "If we are outside this agreement rather than inside, it is our chemical companies, our leading exporters, which will face mandatory trade restrictions that could cost them hundreds of millions of dollars in sales." The truth is that *no one* has yet been able to document the $600 million cost the Chemical Manufacturers Association incessantly claims will arise from trade restrictions on U.S. industry if America is not a treaty party.

What is more, the actual cost (probably closer to $30 million) arising from such restrictions will be insignificant compared to the additional costs treaty participation will impose on taxpayers and private companies (conservatively estimated to be in the billions of dollars).[6]

• *Jane's* Underscores the Irresponsible Nature of the Clinton Snow-Job

Today's CWC photo opportunity at the White House seems all the more ignominious against the backdrop of a news item carried in this morning's *Washington Post*. It seems that the forward to *Jane's Air Defense 1997–98*, a highly respected London-based defense publication, confirms that Russia has developed a new variant of the lethal anthrax toxin that is totally resistant to antibiotics"—in flagrant violation of an earlier "international norm" governing biological weapons activities.

More to the present point, *Jane's* notes that the Russians have also developed three nerve agents "that could be made without using any of the precursor chemicals, which are banned under the 1993 Chemical Weapons Convention." It added that "two of the new nerve agents are *eight times as deadly* as the VX nerve agent that Iraq has acknowledged stockpiling, while the other is as deadly as VX." (Emphasis added.)

Unfortunately, this information is but the latest indication of bad faith on the part of the Russian government of Boris Yeltsin. One would have thought, for example, that the Kremlin's complete reneging on the Wyoming Memorandum and the Bilateral Destruction Agreement would have shamed their co-author, former Secretary of State James Baker, into staying away from the White House fandango for a CWC that was supposed to have been critically underpinned by these earlier agreements.[7]

The Bottom Line

The Center for Security Policy believes that it is becoming increasingly clear why the Clinton Administration and its allies on the Chemical Weapons Convention are relying on razzle-dazzle powerplays like today's—and eschewing opportunities for a real debate: The CWC is unlikely to be approved if its fate is determined on the merits.

By contrast, critics of the CWC are committed to fostering a real, thorough and informed debate. Toward that end, it looks forward to the start of hearings next week in the Senate Foreign Relations Committee, led off by three of this century's most distinguished American public servants: Former Secretaries of Defense James Schlesinger,[8] Donald Rumsfeld and Caspar Weinberger. Let the debate begin!

NOTES:

[1] See *Just Which Chemical Weapons Convention Is Colin Powell Supporting—And Does He Know The Difference?* (No. 97–D 48, 3 April 1997).

[2] For more on the absurd 'Poisons for Peace' aspect of the CWC, see *Truth or Consequences #8: The CWC Will Exacerbate The Proliferation Of Chemical Warfare Capabilities* (No. 97–D 38, 6 March 1997).

[3] See "Margin of Terror: In the two years since the Tokyo subway incident, local and Federal officials have had a chance to prepare Washington for a devastating chemical or biological attack. So why haven't they?" by John Cloud in the 14 March 1997 issue of the *Washington City Paper*.

[4] For more on the threat of chemical weapons, see *Truth or Consequences #6: The CWC Will* Not *Prevent Chemical Terrorism Against the U.S. or its Interests* (No. 97–D 30, 22 February 1997).

[5] For more on this fraudulent timeline, see the Center's Decision Brief entitled *Truth or Consequences #2: Senate Does Not Need To Sacrifice Sensible Study of CWC to Meet an Artificial Deadline* (No. 97–D 18, 31 January 1997). For more on the non-declaration problem, see *Truth or Consequences #9: CWC Proponents Dissemble About Treaty Arrangements Likely To Disserve U.S. Interests* (No. 97–D 46, 27 March 1997).

[6] For more on the costs—both direct and indirect to American firms—see the Center's Decision Brief entitled *Truth or Consequences #5. The CWC Will* Not *Be Good for Business—To Say Nothing of The National Interest* (No. 97–D 27, 17 February 1997).

[7] For more on Russia's chemical weapons programs, its behavior on the Bilateral Destruction Agreement and their implications, for the Chemical Weapons Convention, see the Center's Decision Brief entitled *Russia's Covert Chemical Weapons Program Vindicates Jesse Helms' Continuing Opposition to Phony CW Arms Control* (No. 97–D 19, 4 February 1997).

[8] While all three of these gentlemen have held other, distinguished positions, it is noteworthy in the present context that Secretary Schlesinger also served as a Director of Central Intelligence in the Nixon Administration and as a Secretary of Energy for President Jimmy Carter, *a Democrat*.

No. 97–D 43
21 March 1997

REPUBLICANS' SENATE LEADERSHIP OFFERS CONSTRUCTIVE ALTERNATIVE TO FATALLY FLAWED CHEMICAL WEAPONS CONVENTION

(Washington, D.C.): The Senate Republican leadership (i.e., Majority Leader Trent Lott, Majority Whip Don Nickles, Republican Conference Committee Chairman Connie Mack and Conference Secretary Paul Coverdell) has joined the chairmen of the Senate Foreign Relations and Intelligence Committees (Sens. Jesse Helms and Richard Shelby, respectively) as sponsors of critically important legislation introduced yesterday by Sen. Jon Kyl (R–AZ). This bill, known as the "Chemical and Biological Weapons Threat Reduction Act of 1997" (S. 495) makes it clear that the debate over the Chemical Weapons Convention (CWC) is not, as some treaty proponents contend, a dispute between those who are opposed to chemical weapons and those who favor poison gas.

S. 495 establishes, instead, that the Senate has a real choice—between a Republican leadership approach toward dealing with the threat of chemical weapons that is operationally oriented, practical, enforceable and relatively inexpensive and the CWC approach that is declaratory, ineffective, unenforceable and costly. This should not be a hard choice for any thoughtful legislator.

Highlights of the CBW Threat Reduction Act include the following:

- Creating civil and criminal penalties for the acquisition, possession, transfer or use of chemical and biological weapons.
- Lays out a range of sanctions to be imposed upon any country that uses CBW against another country or against its own nationals. These include suspending: U.S. foreign assistance, arms sales and the associated financing, multilateral trade credits, aviation rights and/or diplomatic relations.
- Calls for adding enforcement mechanisms to the existing, multilateral Conventions concerning chemical and biological weapons.
- Establishes as U.S. policy the goal of preserving existing national and multilateral restrictions on chemical and biological trade. These arrangements are at *direct risk* from the CWC's Article XI.
- Affirms existing U.S. policy governing the right to use Riot Control Agents (RCAs) in both peacetime and wartime. This would countermand President Clinton's plan to deny American servicemen and women the ability to use tear gas and other RCAs during wartime search-and-rescue operations and when combatants and non-combatants are intermingled.

S. 495 makes clear the United States' intention to dismantle its existing stockpile of chemical weapons and to participate in sensible, effective non-proliferation efforts. It is a valuable contribution to the debate on curbing the threat posed by chemical weapons—a debate that is expected to become much more intense as the Clinton Administration tries to coerce the Senate into rubber-stamping the Chemical Weapons Convention by the middle of April.

No. 97–D 34
26 February 1997

A PLACE TO START ON CAMPAIGN FINANCE REFORM: C.M.A. SHOULD REFRAIN FROM PUTTING SENATORS IN COMPROMISING POSITIONS ON THE CHEMICAL WEAPONS CONVENTION

(Washington, D.C.): Last night, the Chemical Manufacturers Association (CMA), an organization representing some 190 large American and multinational chemical producers, held a Washington fund-raiser for the Senate Majority Leader, Sen. Trent Lott (R–MS). This event presumably will help the distinguished Republican leader prepare his war chest for future electoral campaigns. It seems inconceivable, however, that this event could have the effect CMA probably hoped for—namely, inducing Senator Lott to disregard the serious concerns he has expressed about the Chemical Weapons Convention (CWC) and to secure the treaty's prompt ratification.

After all, such an initiative occurs at the very moment that Bill Clinton's presidency is undergoing a Chinese water-torture (pun intended) of daily revelations about fund-raisers buying access, influence and policy changes. This event, and other Capitol Hill occasions like it sponsored by interested parties such as CMA, can only complicate the position of Senators obliged to act on the controversial CWC.

The CMA is, nonetheless, reportedly investing millions of dollars in its campaign for CWC ratification—a campaign being carefully coordinated with the Clinton Ad-

ministration and others. As the Center has documented in recent weeks in its *Truth or Consequences* series of Decision Briefs,[1] this effort appears intended to obscure the key problems with this convention that have been identified by an array of knowledgeable experts—*problems called to the attention of the Senate a few months ago by no less a figure than Senator Lott.*

Senator Lott, On the Record

In fact, on 9 September 1996—shortly before the administration realized that it did not have the votes to approve the Chemical Weapons Convention and asked that it be withdrawn from consideration—Senator Lott made an important floor speech concerning the CWC's myriad flaws. Highlights of his remarks included the following:

> "...As we near consideration of [the CWC], I wanted to share with my colleagues some of the correspondence that I have recently received. Late on Friday of last week, I received a letter of opposition to the Convention signed by more than 50 defense and foreign policy experts, including two former Secretaries of Defense, former members of the Joint Chiefs of Staff, and many others.
>
> "The letter made four fundamental points: The Chemical Weapons Convention is not global, it is not effective, and is not verifiable, but it will have significant costs to American security. Their letter concludes by stating that, 'The national security benefits of the Chemical Weapons Convention clearly do not outweigh its considerable costs. Consequently, we respectfully urge you to reject ratification of the CWC unless and until it is made genuinely global, effective, and verifiable.'
>
> "This is not my judgment. It is the judgment, however, of Caspar Weinberger, William Clark, Dr. Jeane Kirkpatrick, Ed Meese, Dick Cheney, and many others who served with distinction under Presidents Reagan and Bush. I think their views deserve serious consideration from every Member.
>
> "As you will note, two of those names that I read are former Secretaries of Defense and certainly highly respected. Our colleague from the House of Representatives, Dick Cheney, is one that I really had not known exactly what his position was, so it was of great interest to me to see what his thoughts might be.
>
> "I have two other letters that I encourage Members to review. First, the National Federation of Independent Business wrote to me today expressing serious concern about the impact of the CWC on the more than 600,000 members of the NFIB. The letter notes that under the CWC, for the first time small businesses would be subject to a foreign entity inspecting their businesses. The concerns that are expressed concerning increased regulatory burden of the Chemical Weapons Convention on American small business I think should be weighed very carefully before coming to a decision about his or her attitude and what the position would be of that Senator on the convention. I know my colleagues do not want to vote first and ask questions later when it comes to small business, which already bears a disproportionate share of the regulatory burden from the Federal Government.
>
> "I also received a letter today from retired Gen. James A. Williams, former head of the Defense Intelligence Agency with almost four decades of experience in intelligence. General Williams raises very serious concerns over the potential of CWC being used to gain proprietary information from American business. He concludes that 'there is potential for the loss of untold billions of dollars of trade secrets which can be used to gain competitive advantage, to shorten R&D cycles, and to steal U.S. market share.' Many businesses have contacted my office and the offices of other Senators expressing these and similar concerns about Senate action on this convention. ...
>
> "I wanted to call to the Senate's attention this correspondence that I have outlined because it is very important that a range of views be made available to all Senators. The administration has been making its case for quite some time, but opponents of the convention have just begun the serious examination the convention really deserves. ...
>
> "My own personal greatest concern is the question of verification. What do we do about Iraq? If we pass a convention like this, that would be applicable to us, sort of the law-abiding citizens of the world, how do we make sure what is happening in Iraq, North Korea, and Libya, the renegade countries of the world? Is this going to be a situation where we go forward with this convention, this Chemical Weapons Convention, yet those who are the real threat do not participate, or deny that they are involved, or we are not in a position where we can verify what they are actually doing?"

The Bottom Line

As the foregoing remarks indicate, Senator Lott has approached the controversial Chemical Weapons Convention in a fair, reasonable and statesmanlike fashion. He has been responsive to the Clinton Administration's insistence that the treaty be scheduled for a vote last fall, its request on 12 September 1996 that the order for a vote be vitiated (in the face of certain defeat) and its demands this year for negotiations aimed at reviving the CWC's prospects and/or fixing the accord's shortcomings. At the same time, he has striven to ensure that the concerns of his colleagues and others opposed to this treaty are not given short shrift.

It would be a grave disservice to the Majority Leader, to the institution he manages so ably and to the Nation if the appearance that strings were attached to the Chemical Manufacturers Association's largess were to sully Senator Lott's future stewardship of the top CMA legislative agenda item—the CWC. The Center for Security Policy calls on CMA to refrain from using its deep-pocketed Political Action Committee in ways that could compromise the integrity of the debate on the Chemical Weapons Convention and put key participants in that debate in compromising positions.

NOTES:

[1] These papers—dealing with issues like the Convention's impact on the U.S. military, on American businesses, on citizens' Constitutional rights, etc.—can be accessed via the Center's site on the World Wide Web (www.security-policy.org) or by contacting the Center.

No. 97–D 18
31 January 1997

TRUTH OR CONSEQUENCES #2: SENATE DOES NOT NEED TO SACRIFICE SENSIBLE SCRUTINY OF CWC TO MEET AN ARTIFICIAL DEADLINE

(Washington, D.C.): A centerpiece of the Clinton Administration's campaign to obtain expedited Senate action on the controversial Chemical Weapons Convention (CWC) is the argument that something terrible will happen if the treaty is not ratified by April 29th. Precisely what the terrible something is—and what its implications for U.S. interests will be—has proved to be a little hard to pin down. The reason for this is because there will be no significant harm if the Senate declines to rubber-stamp this ill-conceived Convention in response to what amounts to a wholly artificial deadline.

The CWC Is Incomplete

Clinton Administration officials claim that if the United States doesn't ratify the Chemical Weapons Convention before 29 April, it will be unable to participate in deliberations at the Organization for the Prohibition of Chemical Weapons (OPCW) which will "flesh out" some critical issues. The Administration thus admits that the treaty awaiting the advice and consent of the U.S. Senate is not a finished document.

In the Bush Administration's haste to have a Convention ready for signature prior to its departure from office, a number of details—for example, particulars concerning the conduct of on-site inspections—were left unresolved. They were to be finalized by a preparatory commission prior to entry-into-force. Such details can have important consequences.

CWC advocates point to this reality as a compelling reason for getting the United States to ratify the treaty *before* April 29th (the date on which the Convention is supposed to enter into force). But they cannot have it both ways: If the details yet to be worked out may materially affect the acceptability of the treaty, the Senate is being asked to sign on to a work-in-progress—or perhaps a pig-in-a-poke since the negotiations may or may not come out acceptably. On the other hand, if the treaty *is* ripe for Senate approval, the details that remain to be sorted out should not be so important. In that case, the argument that the United States must participate in their negotiation as a state party is not compelling.

The United States is Already *Involved in the Ongoing Negotiations*

The truth is that the United States is already participating in the preparatory commission's negotiations on the CWC's outstanding details, even before the Senate gives its advice and consent. As a result, the administration is being represented, notwithstanding the fact that the U.S. has yet to become a state party.

Russia Is Not a State Party, Either

Another nation has to have a keen interest in the outcome of these negotiations: Russia. In fact, the Kremlin has already served notice that if the OPCW proceeds to finalize the CWC's implementation and other outstanding particulars in ways unsatisfactory to Russia's interests, Moscow will never agree to ratify.

European and other states parties appear to have taken this Russian threat seriously and seem increasingly disinclined to complete work on the treaty's details pending Russia's ratification.[1] If so, the United States should feel no undue pressure to complete its own ratification debate. In any event, it is far from clear why the U.S. should feel compelled to ratify the treaty before Russia does. After all, Russia has the world's largest arsenal of chemical weapons, continues to produce new and more dangerous chemical arms and is widely expected to continue to do so even if Russia becomes a state party.

The United States Will Have Considerable Influence Irrespective of When It Joins the CWC

By virtue of the immense size, technological advantages and valuable products of the U.S. commercial chemical industry, the United States will inevitably be the "600-pound gorilla" in the OPCW if and when it decides to become a state party. The contention that the preferences of the United States will be ignored in the implementation of the CWC is, consequently, implausible.

This is particularly true since Washington will be expected to pay 25 percent of the OPCW's operating costs—a substantially larger portion of the organization's budget than will be borne by any other nation. Even if, as the Clinton Administration claims, this tithe will amount to no more than $25 million annually,[2] such a sum represents an obvious source of leverage should the United States need to exercise it to protect its interests in OPCW deliberations.

The United States Will Have Standing Irrespective of When It Ratifies the CWC

CWC proponents suggest that, if the United States does not ratify the treaty by 29 April, it will not be an *original* state party—condemning it to second-class status with adverse implications for its ability to have its personnel participate in on-site inspections. In fact, by virtue of its being among the first nations to sign this Convention, the United States will in accordance with standard diplomatic practice be considered to be an original state party whenever it chooses to join the treaty regime.

While it is true that, until that time, the United States will not be able to have its personnel conduct on-site inspections, this may well prove to be the case even if the U.S. *does* ratify the CWC! In fact, countries being subjected to challenge inspections have the right to deny individual inspectors entry. Those nations unfriendly to the United States and, presumably, of greatest concern from a compliance point of view, are likely to exercise this right to preclude U.S. monitors. After all, if there is any prospect that an on-site inspector will be able to detect an illegal, covert chemical weapons program, chances are that it will be an American that does it.

(Unfortunately, those chances are likely to be reduced dramatically should the Clinton Administration succeed in an initiative now being discussed in the interagency process, one that would start sharing with the OPCW sensitive U.S. methods for detecting clandestine programs. Similar training given to the International Atomic Energy Agency gave representatives of Saddam Hussein's government and other rogue states invaluable lessons in how to defeat international monitoring and on-site inspection regimes.)

For its part, however, the United States will find it difficult—if not impossible as a practical matter—to object to all of the foreign inspectors whose participation in challenge inspections in this country will be of concern. Needless to say, this will not be because of any danger that a covert American CW program will be detected since the U.S. will have no such program. Rather, it will be because such individuals will assuredly try to expropriate confidential business information (CBI) or other sensitive data from the targeted U.S. facilities.

The Bottom Line

In short, the April 29th deadline is an artificial one, promoted principally so as to try to force the U.S. Senate to complete action on the Chemical Weapons Convention without further, substantive consideration of this accord's myriad shortcomings. So artificial is this deadline that the Clinton Administration bears considerable responsibility for creating it. After all, the administration last October vigorously encouraged Hungary to become the 65th nation to deposit its instruments of ratification, thereby starting the clock on the 6-month run-up to entry-into-force. Its trans-

parent purpose in doing so was to intensify pressure on the Senate to provide its uninformed advice and consent.

If anything, the Administration's efforts to try to foreshorten or confuse the debate about the Chemical Weapons Convention suggest that the Senate would be well advised to defer U.S. ratification until *after* the treaty enters into force. Doing so would afford an opportunity to validate—or disprove—the various concerns being expressed by this treaty's knowledgeable critics. It may, in fact, be the only way such concerns can be fully and authoritatively addressed without grave risk to American security, commercial and taxpayer interests.

Last but not least, it must be said that a treaty not worth ratifying is assuredly not worth ratifying quickly. For reasons described at length elsewhere,[3] it would be unsafe to ratify the CWC at any speed.

NOTES:

[1] There are as-yet-unsubstantiated rumors circulating in The Hague (where the Organization for the Prohibition of Chemical Weapons or OPCW is located) that the date of entry into force may be postponed, rather than have the CWC come into effect without the participation of nations such as Russia and possibly China (which has yet to deposit the instruments of ratification).

[2] The truth is, however, that the OPCW is constantly revising its budget estimates in an upwards direction. A more realistic estimate—derived from actual experience with another U.N. bureaucracy—the International Atomic Energy Agency (IAEA)—suggests that the budget is more likely to be on the order of $266 million, which would translate into a U.S. share of at least *$66 million* per year.

[3] See, for example, *Truth or Consequences #1: Center Challenges Administration Efforts to Distort, Suppress Debate on CWC* (No. 97–D 14, 28 January 1997). Other products detailing the CWC's fatal flaws can be obtained via the Center's site on the World Wide Web (www.security-policy.org).

No. 97–D 7
13 January 1997

CLINTON'S CHEMICAL POWER PLAY: BAD FOR THE SENATE, BAD FOR THE NATIONAL INTEREST

(Washington, D.C.): The Clinton Administration is mounting a campaign against the leadership of the U.S. Senate that has all the subtlety of a Mafia hit. The immediate object of its intimidation is Senator Trent Lott (R–MS), whose knees are at risk of being broken (presumably, figuratively) unless he bends to the President's will. To do so, however, the Majority Leader will, in turn, have to "take out" the chairman of the Senate Foreign Relations Committee, Senator Jesse Helms (R–NC)—and with him, the Senate's rules concerning the consideration of treaties and that institution's way of doing business more generally.

The Administration is resorting to such tactics for a very simple reason: Senator Helms is in a position indefinitely to bottle up a highly controversial treaty, the Chemical Weapons Convention (CWC). Incredible though it may seem Secretary of State-designate Madeleine Albright declared last week that ratification of this Convention was the Clinton team's top, near-term foreign policy priority. Unfortunately for them—and happily for the national interest—Senate procedures permit Chairman Helms permanently to pocket veto this treaty by declining to bring it up for a vote in his Committee.

Jesse Helms—Horatius at the Bridge

This is fortuitous for the national interest because, to his lasting credit, Senator Helms correctly concluded in the course of intensive Senate consideration of the Chemical Weapons Convention last fall that this treaty was fatally flawed. Since a sufficient number of Senators agreed with him in September 1996 to defeat the CWC, the Administration decided to withdraw it—hoping it would meet a different fate if presented later. Apparently, such is the Clinton team's contempt for members of the Senate—which is exceeded only by its disdain for their constitutional role in treaty-making[1]—that it thinks legislators either have forgotten what is wrong with this Convention or can be euchred into agreeing to it, if only enough coercive pressure is brought to bear.

Thanks to Chairman Helms and thoughtful colleagues like Senator Jon Kyl (R–AZ), though, the Senate will be reminded of the overarching reason for opposing the Chemical Weapons Convention: It is likely to *contribute to* the proliferation of chemical weapons, not eliminate it.

Not Global: After all, the Convention will not impose a global ban on chemical weapons, let alone rid them from the world, as its proponents often claim. In fact, it will not apply to every country that has chemical weapons. A number of the most dangerous rogue states—including North Korea, Syria and Iraq—have announced that they will not become parties to the CWC. Such nations tend cynically to see such "international norms" not as an impediment to pursuing prohibited activities but as an invitation to do so.

Not Verifiable: What is more, thanks to the inherent unverifiability of the Chemical Weapons Convention, even some of those who *do* join the regime will retain covert chemical stockpiles. The unalterable fact of life is that chemical weapons can be easily produced. By using facilities that are designed, for example, to manufacture fertilizers, pesticides or pharmaceuticals, they can be produced in considerable (even "militarily significant") quantities in relatively short periods of time. This is an objective reality that means the CWC is not simply "less than perfect"; it is an exercise in futility.

Indeed, Saddam Hussein has demonstrated that on-site inspections far more intrusive and timely than those provided for by the CWC cannot confidently monitor the covert weapons programs of totalitarian regimes governing closed societies. Consequently, few competent experts believe that industrialized states like Russia and China will actually get rid of their existing arsenals, let alone forego future production—notwithstanding their status as signatories to the CWC.

'Poisons for Peace': Third, the CWC obliges the United States to help other states parties—including countries like Iran and Cuba—to gain state-of-the-art manufacturing capabilities that can readily be used to produce chemical weapons. Unilateral trade embargoes and multilateral technology control arrangements against such parties to the CWC would be prohibited. This obligation is a recipe for rampant chemical weapons proliferation. The prospect that it provides for expanded overseas sales by U.S. chemical manufacturers, however, is a principal reason why their powerful lobby is helping the Clinton Administration make offers to Senators "they can't refuse."

Other Fatal Flaws: Opponents of the Chemical Weapons Convention recognize that it will have other undesirable repercussions, as well. For one, it will likely create a false sense of security that the burgeoning problem of chemical weapons proliferation has been meaningfully addressed. This placebo effect will almost exacerbate the dangers of chemical attacks by reducing our preparedness to deal with them. For another, the CWC—as interpreted by the Clinton Administration—will have the absurd effect of denying our military the right to use chemical-based Riot Control Agents like tear gas to protect themselves in situations where the use of lethal force can, and should, be avoided. Finally, the CWC will grant a U.N. agency the right to inspect anyplace in America—private or public, factories, facilities, *even homes*—on short notice, without a warrant, and without compensation for the associated costs, including for any proprietary information that might thus be lost.

The Bottom Line

Today, *on the fourth anniversary* of the signing of the Chemical Weapons Convention, President Clinton issued a statement that declared disingenuously: "*Early* CWC ratification by the United States is extraordinarily important. The security of our soldiers and citizens is at stake, as is the economic well-being of our chemical industry." He concluded by saying: "I look forward to working with the Senate leadership to get the job [of ratifying the Convention] done."

Notice is thus served. Using such presidential statements and phone calls, a drumbeat of sympathetic editorials and op.eds. And other pressure tactics, the Administration hopes to squeeze Senator Lott to break the CWC loose. It has even asked him to remove the Chemical Weapons Convention from the jurisdiction of Senator Helms' committee. Were Sen. Lott to agree, he would be creating a precedent that would wreak havoc on Senate operations. Fortunately, while the Majority Leader is committed to cooperate with the President where possible, he is unlikely to accommodate an Administration power play where cooperation is neither in the interest of the Senate as an institution nor the Nation as a whole.

NOTES:

[1] See the Center's Press Release entitled *Will the Senate Let Clinton Rewrite the C.F.E. Treaty Without Its Advice and Consent?* (No. 96–P 86, 18 September 1996).

No. 97–T 5
8 January 1997

HERE WE GO AGAIN: CLINTON PRESSES ANEW FOR SENATE APPROVAL OF FLAWED, UNVERIFIABLE, INEFFECTIVE CHEMICAL WEAPONS TREATY

(Washington, D.C.): In recent days, the Clinton Administration has launched a new campaign to secure Senate advice and consent to ratification of the Chemical Weapons Convention (CWC). Such a campaign was made necessary by its decision last September to withdraw the treaty from scheduled Senate consideration, rather than risk its certain defeat.

Now, sympathetic columnists like the *Washington Post*'s Mary McGrory have been enlisted to hammer Senate Majority Leader Trent Lott (R–MS) to bring the CWC back to the Senate floor. Retired flag officers like Admiral Elmo Zumwalt are being trotted out to declare that the military strongly supports this Convention. And just yesterday, the President used the occasion of the receipt of the interim report of his commission on Gulf War syndrome—which may be related to widespread exposure of U.S. servicemen and women to Iraqi chemical weapons—to imply that ratification of the CWC would "protect the soldiers of the United States and our allies in the future" by "mak[ing] it harder for rogue states to acquire chemical weapons in the future."

Senator Lott has responded to such pressure by announcing yesterday that he would ask the "appropriate committee members and chairmen" to reopen hearings on the treaty early in this session with a view to seeing what can be done to address the scourge of chemical weapons and the threat they pose to world peace. That decision puts the ball squarely back, first and foremost, in the court of Foreign Relations Committee chairman Jesse Helms (R–NC), whose opposition to the CWC was critical to the treaty's withdrawal from consideration last fall.

Let the Debate Begin, Again

The Center for Security Policy welcomes the prospect of new hearings into the Chemical Weapons Convention, presumably before not only Sen. Helms' panel but also before the Armed Services, Intelligence (under new management) and perhaps other committees. With the installation yesterday of new Members comprising nearly one-fifth of the Senate, there is clearly a need to review the gravity of the problem posed by the proliferation of chemical weapons and the regrettable fact that this convention will not only prove no real impediment to such proliferation—it will probably serve actually to *exacerbate* the problem.

The Center looks forward to continuing during such a review the educational role it performed last year. As part of that function, it is attaching for the information of all Senators—and in response to Adm. Zumwalt's op.ed. In Monday's *Washington Post*—a letter sent to Senator Lott on 6 September 1996 by 68 distinguished former senior civilian and military officials, including notably former Bush Administration Secretary of Defense Richard Cheney. They conclude authoritatively that the CWC should be rejected in its present form since it will not be global in its scope, verifiable or effective. The Center is confident that sufficient Senators will reach a similar conclusion should the Foreign Relations Committee decide to report the treaty out for action by the full Senate.

September 9, 1996.

HON. TRENT LOTT,
Majority Leader, United States Senate,
Washington, DC 20510.

SENATOR LOTT: As you know, the Senate is currently scheduled to take final action on the Chemical Weapons Convention (CWC) on or before September 14th. This Treaty has been presented as a global, effective and verifiable ban on chemical weapons. As individuals with considerable experience in national security matters, we would all support such a ban. We have, however, concluded that the present convention is seriously deficient on each of these scores, among others.

The CWC is not global since many dangerous nations (for example, Iran, Syria, North Korea, and Libya) have not agreed to join the treaty regime. Russia is among those who have signed the Convention, but is unlikely to ratify—especially without a commitment of billions in U.S. aid to pay for the destruction of Russia's vast arsenal. Even then, given our experience with the Kremlin's treaty violations and its repeated refusal to implement the 1990 Bilateral Destruction Agreement on chemical weapons, future CWC violations must be expected.

The CWC is not effective because it does not ban or control possession of all chemicals that could be used for lethal weapons purposes. For example, it does not

prohibit two chemical agents that were employed with deadly effect in World War I—phosgene and hydrogen cyanide. The reason speaks volumes about this treaty's impractical nature: they are too widely used for commercial purposes to be banned.

The CWC is not verifiable as the U.S. intelligence community has repeatedly acknowledged in congressional testimony. Authoritarian regimes can be confident that their violations will be undetectable. Now, some argue that the treaty's intrusive inspections regime will help us know more than we would otherwise. The relevant test, however, is whether any additional information thus gleaned will translate into convincing evidence of cheating and result in the collective imposition of sanctions or other enforcement measures. In practice, this test is unlikely to be satisfied since governments tend to took the other way at evidence of non-compliance rather than jeopardize a treaty regime.

What the CWC will do, however, is quite troubling: It will create a massive new, U.N.-style international inspection bureaucracy (which will help the total cost of this treaty to U.S. taxpayers amount to as much as $200 million per year). It will jeopardize U.S. citizens' constitutional rights by requiring the U.S. government to permit searches without either warrants or probable cause. It will impose a costly and complex regulatory burden on U.S. industry. As many as 8,000 companies across the country may be subjected to new reporting requirements entailing uncompensated annual costs of between thousands to hundreds-of-thousands of dollars per year to comply. Most of these American companies have no idea that they will be affected. And perhaps worst of all, the CWC will undermine the standard of verifiability that has been a key national security principle for the United States.

Under these circumstances, the national security benefits of the Chemical Weapons Convention clearly do not outweigh its considerable costs. Consequently, we respectfully urge you to reject ratification of the CWC unless and until it is made genuinely global, effective and verifiable.

SIGNATORIES ON LETTER TO SENATOR TRENT LOTT REGARDING THE CHEMICAL WEAPONS CONVENTION

As of September 9, 1996; 11:30 a.m.

Former Cabinet Members:

RICHARD B. CHENEY, former Secretary of Defense

WILLIAM P. CLARK, former National Security Advisor to the President

ALEXANDER M. HAIG, Jr., former Secretary of State (signed on September 10)

JOHN S. HERRINGTON, former Secretary of Energy (signed on September 9)

JEANE J. KIRKPATRICK, former U.S. Ambassador to the United Nations

EDWIN MEESE III, former U.S. Attorney General

DONALD RUMSFELD, former Secretary of Defense (signed on September 10)

CASPAR WEINBERGER, former Secretary of Defense

Additional Signatories (retired military):

GENERAL JOHN W. FOSS, U.S. Army (Retired), former Commanding General, Training and Doctrine Command

VICE ADMIRAL WILLIAM HOUSER, U.S. Navy (Retired), former Deputy Chief of Naval Operations for Aviation

GENERAL P.X. KELLEY, U.S. Marine Corps (Retired), former Commandant of U.S. Marine Corps (signed on September 9)

LIEUTENANT GENERAL THOMAS KELLY, U.S. Army (Retired), former Director for Operations, Joint Chiefs of Staff (signed on September 9)

ADMIRAL WESLEY MCDONALD, U.S. Navy (Retired), former Supreme Allied Commander, Atlantic

ADMIRAL KINNAIRD MCKEE, U.S. Navy (Retired), former Director, Naval Nuclear Propulsion

GENERAL MERRILL A. MCPEAK, U.S. Air Force (Retired), former Chief of Staff, U.S. Air Force

LIEUTENANT GENERAL T.H. MILLER, U.S. Marine Corps (Retired), former Fleet Marine Force Commander/Head, Marine Aviation

GENERAL JOHN. L. PIOTROWSKI, U.S. Air Force (Retired), former Member of the Joint Chiefs of Staff as Vice Chief, U.S. Air Force

GENERAL BERNARD SCHRIEVER, U.S. Air Force (Retired), former Commander, Air Research and Development and Air Force Systems Command

VICE ADMIRAL JERRY UNRUH, U.S. Navy (Retired), former Commander 3rd Fleet (signed on September 10)

LIEUTENANT GENERAL JAMES WILLIAMS, U.S. Army (Retired), former Director, Defense Intelligence Agency

Additional Signatories (non-military):

ELLIOTT ABRAMS, former Assistant Secretary of State for Latin American Affairs (signed on September 9)

MARK ALBRECHT, former Executive Secretary, National Space Council

KATHLEEN BAILEY, former Assistant Director of the Arms Control and Disarmament Agency

ROBERT B. BARKER, former Assistant to the Secretary of Defense for Nuclear and Chemical Weapon Matters

ANGELO CODEVILLA, former Senior Fellow, Hoover Institute (signed on September 10)

HENRY COOPER, former Director, Strategic Defense Initiative Organization

J.D. CROUCH, former Principal Deputy Assistant Secretary of Defense

MIDGE DECTER, former President, Committee for the Free World

KENNETH deGRAFFENREID, former Senior Director of Intelligence Programs, National Security Council

DIANA DENMAN, former Co-Chair, U.S. Peace Corps Advisory Council

ELAINE DONNELLY, former Commissioner, Presidential Commission on the Assignment of Women in the Armed Services

DAVID M. EVANS, former Senior Advisor to the Congressional Commission on Security and Cooperation in Europe

CHARLES FAIRBANKS, former Deputy Assistant Secretary of State

DOUGLAS J. FEITH, former Deputy Assistant Secretary of Defense

RAND H. FISHBEIN, former Professional Staff member, Senate Defense Appropriations Subcommittee

FRANK J. GAFFNEY, Jr., former Acting Assistant Secretary of Defense

WILLIAM R. GRAHAM, former Science Advisor to the President

E.C. GRAYSON, former Principal Deputy Assistant Secretary of the Navy

JAMES T. HACKETT, former Acting Director of the Arms Control and Disarmament Agency

STEFAN HALPER, former Deputy Assistant Secretary of State (signed on September 10)

THOMAS N. HARVEY, former National Space Council Staff Officer (signed on September 9)

CHARLES A. HAMILTON, former Deputy Director, Strategic Trade Policy, U.S. Department of Defense

AMORETTA M. HOEBER, former Deputy Under Secretary, U.S. Army

CHARLES HORNER, former Deputy Assistant Secretary of State for Science and Technology

FRED IKLE, former Under Secretary of Defense for Policy

SVEN F. KRAEMER, former Director for Arms Control, National Security Council

CHARLES M. KUPPERMAN, former Special Assistant to the President

JOHN LEHMAN, former Secretary of the Navy

JOHN LENCZOWSKI, former Director for Soviet Affairs, National Security Council

BRUCE MERRIFIELD, former Assistant Secretary for Technology Policy, Department of Commerce

TAFFY GOULD MCCALLUM, columnist and free-lance writer

JAMES C. MCCRERY, former senior member of the Intelligence Community and Arms Control Negotiator (Standing Consultative Committee)

J. WILLIAM MIDDENDORF II, former Secretary of the Navy (signed on September 10)

LAURIE MYLROIE, best-selling author and Mideast expert specializing in Iraqi affairs

RICHARD PERLE, former Assistant Secretary of Defense

NORMAN PODHORETZ, former editor, *Commentary* Magazine

ROGER W. ROBINSON, Jr., former Chief Economist, National Security Council

PETER W. RODMAN, former Deputy Assistant to the President for National Security Affairs and former Director of the Policy Planing Staff, Department of State

EDWARD ROWNY, former Advisor to the President and Secretary of State for Arms Control

CARL M. SMITH, former Staff Director, Senate Armed Services Committee

JACQUELINE TILLMAN, former Staff member, National Security Council

MICHELLE VAN CLEAVE, former Associate Director, Office of Science and Technology

WILLIAM VAN CLEAVE, former Senior Defense Advisor and Defense Policy Coordinator to the President

MALCOLM WALLOP, former United States Senator

DEBORAH L. WINCE-SMITH, former Assistant Secretary for Technology Policy, Department of Commerce

CURTIN WINSOR, Jr., former U.S. Ambassador to Costa Rica

DOV S. ZAKHEIM, former Deputy Under Secretary of Defense

No. 97–D 48
3 April 1997

JUST WHICH CHEMICAL WEAPONS CONVENTION IS COLIN POWELL SUPPORTING—AND DOES HE KNOW THE DIFFERENCE?

(Washington, D.C.): Starting tomorrow, the Clinton Administration intends to make General Colin Powell—the former Chairman of the Joint Chiefs of Staff—its Poster Child for the campaign to gain Senate approval of the controversial Chemical Weapons Convention (CWC). According to the Associated Press, this campaign will be kicked off at a "highpowered, bipartisan gathering of treaty supporters ... featuring Congressmen, veterans' group leaders, arms experts, religious organization heads and military leaders, past and present," including Army Gen. Colin Powell.

Does Powell Know What He Is Endorsing?

A warning to General Powell is in order, however: The Senate was recently treated to the spectacle of another accomplished retired flag officer, General Norman Schwarzkopf, who had to acknowledge that—while he is on record as supporting the CWC—he is not familiar with its details. For example, under questioning by Sen. Jim Inhofe (R–OK), chairman of the Armed Services Committee's Readiness Subcommittee, the following exchange occurred:

> Sen. Inhofe: "Do you think it wise to share with countries like Iran our most advanced chemical defensive equipment and technologies?"
>
> Gen. Schwartzkopf: "Our defensive capabilities?"
>
> Sen. Inhofe: "Yes."
>
> Gen. Schwartzkopf: "Absolutely not."
>
> Sen. Inhofe: "Well, I'm talking about sharing our advanced chemical defensive equipment and technologies, which I believe under Article X [they] would be allow[ed] to [get]. Do you disagree?"
>
> Gen. Schwartzkopf: "As I said Senator, I'm not familiar with all the details—I—you know, a country, particularly like Iran, I think we should share as little as possible with them in the way of our military capabilities."

Beware the 'Bait and Switch'

General Powell and others who served under President Bush should also be aware that there have been—as the Center noted on 10 February 1997 [1]—significant changes in a number of the assumptions, conditions and circumstances that underpinned the Bush Administration's judgment that the Chemical Weapons Convention was in the national interest. These changes have prompted several of General Powell's former colleagues—including Secretary of Defense Richard Cheney, Air Force Chief of Staff Merrill McPeak, Assistant Arms Control and Disarmament Agency Director Kathleen Bailey, Assistant to the Secretary for Atomic Energy Robert Barker and Principal Deputy Assistant Secretary of Defense J.D. Crouch—to urge that the present treaty be rejected by the Senate.[2]

A sample of the changes that have materially altered the acceptability, if not strictly speaking the terms, of the Chemical Weapons Convention include the following:

- Item: Russia's Evisceration of the Bilateral Destruction Agreement

The Bush Administration anticipated that a Bilateral Destruction Agreement (BDA) forged by Secretary of State James Baker and his Soviet counterpart, Eduard Shevardnadze in 1990, would critically underpin the Chemical Weapons Convention. As the Center for Security Policy observed in early February,[3] this agreement obliged Moscow to provide a full and accurate accounting and eliminate most of its vast chemical arsenal. The BDA was also expected to afford the U.S. inspection rights that would significantly enhance the more limited arrangements provided for by the CWC.

These assumptions about the BDA have, regrettably, not been fulfilled. To the contrary, Russian Prime Minister Victor Chernomyrdin declared last year that the

Bilateral Destruction Agreement has "outlived its usefulness" for Russia. What is more, it is now public knowledge that Russia is continuing to produce extremely lethal binary munitions—*weapons that have been specifically designed to circumvent the limits and defeat the inspection regime of the Chemical Weapons Convention*.[4]

- Item: On-Site Inspections Won't Prevent Cheating

When the Bush Administration finalized the CWC, there was considerable hope that intrusive on-site inspections would meaningfully contribute to the detection and proof of violations, and therefore to deterring them. Five years of experience with the U.N. inspections in Iraq—inspections that were allowed to be far more thorough, timely and intrusive than those permitted under this Convention—have established that totalitarian rulers of a closed society can successfully defeat such monitoring efforts.

In a 4 February 1997 letter to National Security Advisor Samuel Berger, Senate Foreign Relations Committee Chairman Jesse Helms noted that:

> "Unclassified portions of the National Intelligence Estimate on U.S. Monitoring Capabilities [prepared after Mr. Bush left office] indicate that it is unlikely that the U.S. will be able to detect or address violations in a timely fashion, if at all, when they occur on a small scale. And yet, even small-scale diversions of chemicals to chemical weapons production are capable, over time, of yielding a stockpile far in excess of a single ton [which General Shalikashvili described in congressional testimony on 11 August 1994 is a level which could, 'in certain limited circumstances ... have a military impact.'] Moreover, few countries, if any, are engaging in much more than small-scale production of chemical agent. For example, according to [the 4 February 1997] *Washington Times*, Russia may produce its new nerve agents at a 'pilot plant' in quantities of only '55 to 110 tons annually.'"

- Item: Facilitating Proliferation: 'Poisons for Peace'

In the years since the Bush Administration signed the Chemical Weapons Convention, it has become increasingly clear that sharing nuclear weapons-relevant technology with would-be proliferators simply because they promise not to pursue nuclear weapons programs is folly. Indeed, countries like North Korea, Iran, Iraq, India, Pakistan, Argentina, Brazil and Algeria have abused this "Atoms for Peace" bargain by diverting equipment and know-how provided under the Nuclear Non-Proliferation Treaty (NPT) to prohibited weapons purposes.

Unfortunately, commercial chemical manufacturing technology can, if anything, be diverted even more easily to weapons purposes than can nuclear research and power reactors. For this reason, recent experience with the NPT suggests that the Chemical Weapons Convention's Article XI—an article dubbed the "Poisons for Peace" provision—is insupportable. It stipulates that the Parties shall:

> "Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes."

Such an obligation must now be judged a recipe for *accelerating* proliferation of chemical weapons, not restricting it. Even if the United States were to become a party to the CWC and choose to ignore this treaty commitment, other advanced industrialized countries will certainly not refrain from selling dual-use chemical manufacturing technology if it means making a lucrative sale.

- Item: U.S. Chemical Defenses Will be Degraded

When the Bush Administration signed the CWC, proponents offered assurances that the treaty would not diminish U.S. investment in chemical defenses. Such assurances were called into question, however, by an initiative unveiled in 1995 by the then-Vice Chairman of the Joint Chiefs of Staff, Admiral William Owens. He suggested cutting $805 million from counter-proliferation support and chemical and biological defense programs through Fiscal Year 2001.

This was followed by a recommendation from JCS Chairman General John Shalikashvili in February 1996—a few weeks before he told the Senate Foreign Relations Committee that the Department of Defense is committed to a "robust" chemical defense program. He sought to slash chemical/biological defense activities and investment by over $1.5 billion through 2003.

The rationale for both these gambits? Thanks to a perceived reduction in the chemical warfare threat to be brought about by the CWC, investments in countering that threat could safely enjoy lower priority. Such reductions would have deferred, if not seriously disrupted, important chemical and biological research and develop-

ment efforts, and delayed the procurement of proven technologies. While the Owens and Shalikashvili initiatives were ultimately rejected, they are a foretaste of the sort of reduced budgetary priority this account will surely face if the CWC is approved.

Changes in the military postures of key U.S. allies since the end of the Bush Administration raise a related point: Even if the United States manages to resist the sirens' song to reduce chemical defenses in the wake of the CWC, it is predictable that the already generally deplorable readiness of most allied forces to deal with chemical threats will only worsen. To the extent that the U.S. is obliged in the future to fight coalition wars, this vulnerability could prove catastrophic to American forces engaged with a common enemy.

- Item: Clinton Repudiates Bush Commitment to the JCS on R.C.A.s

At the insistence of the Joint Chiefs of Staff in 1992, President Bush signed an executive order that explicitly allowed Riot Control Agents (for example, tear gas) to be used in rescuing downed aircrews and in dispersing hostile forces using civilians to screen their movements against U.S. positions. The Clinton Administration initially indicated that it intended to rescind this executive order outright once the CWC is ratified. The result of doing so would have been to compel U.S. personnel to choose between using lethal force where RCAs would suffice or suffering otherwise avoidable casualties.

In the face of Senate opposition to such a rescission, Mr. Clinton has apparently decided to allow tear gas and other RCAs to be used in these selected circumstances, but only in peacetime. In wartime, however, such use would be considered a breach of the treaty. The Administration has yet to clarify under what circumstances the Nation will be considered to be "at war" since there has been no declaration of that state of belligerency in any of the conflicts in which the U.S. has engaged since 1945.

What is particularly troublesome is the prospect that the Clinton reversal of the Bush Administration position on RCAs will impinge upon promising new defense technologies—involving chemical-based, non-lethal weapons (for example, immobilizing agents). If so, U.S. forces may be denied highly effective means of prevailing in future conflicts with minimal loss of life on either side.

Other, No Less Distinguished, National Security Experts Disagree with General Powell

In a letter sent to Senator Trent Lott last fall, when the Chemical Weapons Convention was last under consideration by the Senate, a host of former top civilian and military officials expressed their opposition to this treaty in its present form. Among the distinguished retired flag officers were:

General John W. Foss, U.S. Army (Retired), former Commanding General, Training and Doctrine Command; Vice Admiral William Houser, U.S. Navy (Retired), former Deputy Chief of Naval Operations for Aviation; General P.X. Kelley, U.S. Marine Corps (Retired), former Commandant of U.S. Marine Corps; Lieutenant General Thomas Kelly, U.S. Army (Retired), former Director for Operations, Joint Chiefs of Staff; Admiral Wesley McDonald, U.S. Navy (Retired), former Supreme Allied Commander, Atlantic; Admiral Kinnaird McKee, U.S. Navy (Retired), former Director, Naval Nuclear Propulsion; General Merrill A. McPeak, U.S. Air Force (Retired), former Chief of Staff, U.S. Air Force; Lieutenant General T.H. Miller, U.S. Marine Corps (Retired), former Fleet Marine Force Commander/Head, Marine Aviation; General John. L. Piotrowski, U.S. Air Force (Retired), former Member of the Joint Chiefs of Staff as Vice Chief, U.S. Air Force; General Bernard Schriever, U.S. Air Force (Retired), former Commander, Air Research and Development and Air Force Systems Command; Vice Admiral Jerry Unruh, U.S. Navy (Retired), former Commander 3rd Fleet; and Lieutenant General James Williams, U.S. Army (Retired), former Director, Defense Intelligence Agency.

Among the civilian leaders who signed the open letter to Sen. Lott were: Richard B. Cheney, former Secretary of Defense; William P. Clark, former National Security Advisor to the President; Alexander M. Haig, Jr., former Secretary of State; John S. Herrington, former Secretary of Energy; Jeane J. Kirkpatrick, former U.S. Ambassador to the United Nations; Edwin Meese III, former U.S. Attorney General; Donald Rumsfeld, former Secretary of Defense; and one of General Powell's past bosses, Caspar Weinberger, former Secretary of Defense.

The Bottom Line

The Center regrets General Powell's decision to lend his authority to a treaty that even he has freely acknowledged is completely unverifiable. It fears that he may also come to regret it. In any event, the Nation surely will, if the Clinton-Powell razzle-dazzle campaign induces the Senate to take its eyes off the ball—namely, the

fatal flaws that make the Chemical Weapons Convention unworthy of that institution's advice and consent.

NOTES:

[1] See the Center's Decision Brief entitled *Truth or Consequences #4. No D.N.A. Tests Needed To Show That Claims About Republican Paternity of CWC Are Overblown* (No. 97–D 24, 10 February 1997).

[2] See the Center's Transition Brief entitled *Here We Go Again: Clinton Presses Anew For Senate Approval of Flawed, Unverifiable, Ineffective Chemical Weapons Treaty* (No. 97–T 5, 8 January 1997).

[3] See the Center's Decision Brief entitled *Truth or Consequences #3: Clinton 'Makes a Mistake About It' in Arguing the CWC Will Protect U.S. Troops* (No. 97–D 21, 6 February 1997).

[4] See the Center's Decision Brief entitled *Russia's Covert Chemical Weapons Program Vindicates Jesse Helms' Continuing Opposition to Phony CW Arms Control* (No. 97–D 19, 4 February 1997).

No. 97–D 37
5 March 1997

TRUTH OR CONSEQUENCES #7: SCHLESINGER, RUMSFELD AND WEINBERGER REBUT SCOWCROFT AND DEUTCH ON THE CWC

(Washington, D.C.): Today's *Washington Post* featured an op.ed. article by three of the most distinguished public servants of the latter Twentieth Century—James Schlesinger, Donald Rumsfeld and Caspar Weinberger—concerning the reasons for opposing the present Chemical Weapons Convention (CWC). Written in response to an earlier op.ed. favoring this treaty which was authored by former National Security Advisor Brent Scowcroft and former Director of Central Intelligence John Deutch, the Schlesinger-Rumsfeld-Weinberger essay (a copy of which is attached) should be required reading for every Senator and American citizen following and/or participating in the debate on the CWC.

That should be the case in part simply because of the stature of the signatories. Dr. Schlesinger, Mr. Rumsfeld and Mr. Weinberger all served with distinction in the position of Secretary of Defense, respectively for Presidents Nixon and Ford, Ford and Reagan. It also is relevant to the present deliberations that Dr. Schlesinger's views are informed by his service as Director of Central Intelligence under President Nixon and Secretary of Energy under President Carter.

The joint op.ed. should also command careful attention because of the clear and persuasive way it, first, applauds Messrs. Scowcroft and Deutch's admissions about the CWC's flaws (notably, with respect to the Convention's unverifiability and the treaty's lack of global coverage) and, second, underscores their warnings about the dangers inherent in the accord's ratification (notably, with respect to inspiring a false sense of security, reduced investment in defensive technologies, transferring chemical weapons-relevant production and defensive technology to countries of concern and limitations on the use of chemical-based non-lethal technologies, such as tear gas).

Finally, the Schlesinger-Rumsfeld-Weinberger essay is of singular importance by virtue of the powerful rebuttal it offers to the Scowcroft-Deutch argument that the CWC is "better than nothing." The three Secretaries conclude to the contrary that—due to the combination of these defects and dangers inherent in the treaty, combined with its unacceptably high costs for American businesses and taxpayers—the U.S. would be better off not being a party than becoming one.

The Bottom Line

The Center for Security Policy commends former Secretaries Schlesinger, Rumsfeld and Weinberger for this latest in a long line of real contributions to the national security and commends their article to all those who will be affected by or responsible for this fatally flawed accord.

NO TO THE CHEMICAL ARMS TREATY

[by James Schlesinger, Caspar Weinberger, and Donald Rumsfeld]

The Washington Post/March 5, 1997.—The phrase "damning with faint praise" is given new meaning by the op-ed by Brent Scowcroft and John Deutch on the Chemical Convention ["End the Chemical Weapons Business," Feb. 11]. In it, the authors concede virtually every criticism made by those who oppose this controversial treaty in its present form.

They acknowledge the legitimacy of key concerns about the Convention: its essential unverifiability; its lack of global coverage; the prospect that it will inhibit nonlethal use of chemicals, including tear gas; and its mandating the transfer of militarily relevant chemical offensive and defensive technology to untrustworthy countries that become parties. It is our view that these problems are *inherent* in the present treaty.

Take, for example, Scowcroft and Deutch's warning against cutting investment in chemical defensive measures. Unfortunately, treaties such as the Chemical Weapons Convention (CWC)—which promise to reduce the menace posed by weapons of mass destruction but which cannot do so—*inevitably* tend to diminish the perceived need and therefore the support for defenses against such threats.

In fact, in December 1995, the then-vice chairman of the Joint Chiefs of Staff recommended a reduction of more than $800 million in investment on chemical defenses in anticipation of the Convention's coming into force. If past experience is a guide, there might also be a reduction in the priority accorded to monitoring emerging chemical weapons threats, notwithstanding Scowcroft and Deutch's call for improvements in our ability to track chemical weapons developments.

Scowcroft and Deutch correctly warn that the "CWC [must] not [be] exploited to facilitate the diffusion of CWC-specific technology, equipment and material—even to signatory states." The trouble is that the Chemical Weapons Convention explicitly *obligates* member states to facilitate such transfers, even though these items are readily exploitable for military purposes. What is more, the treaty commits member states not to observe any agreements, whether multilateral or unilateral, that would restrict these transfers.

In short, we believe that the problems with the Chemical Weapons Convention in these and other areas that have been identified by Brent Scowcroft and John Deutch clearly demonstrate that this treaty would be contrary to U.S. security interests. Moreover, in our view these serious problems undercut the argument that the CWC's "imperfect constraints" are better than no constraints at all.

The CWC would likely have the effect of leaving the United States and its allies more, not less, vulnerable to chemical attack. It could well serve to increase, not reduce, the spread of chemical weapons manufacturing capabilities. Thus we would be better off not to be party to it.

Notably, if the United States is not a CWC member state, the danger is lessened that American intelligence about ongoing foreign chemical weapons programs will be dumbed down or otherwise compromised. This has happened in the past when enforcement of a violated agreement was held to be a greater threat to an arms control regime than was noncompliance by another party. The United States and the international community have been unwilling to enforce the far more easily verified 1925 Geneva Convention banning the *use* of chemical weapons—even in the face of repeated and well-documented violations by Saddam Hussein. What likelihood is there that we would be any more insistent when it comes to far less verifiable bans on *production* and *stockpiling* of such weapons?

As a non-party, the United States would also remain free to oppose dangerous ideas such as providing state-of-the-art chemical manufacturing facilities and defensive equipment to international pariahs such as Iran and Cuba. And the United States would be less likely to reduce investment in chemical protective capabilities, out of a false sense of security arising from participation in the CWC.

In addition, if the United States is not a CWC party, American taxpayers will not be asked to bear the substantial annual costs of our participating in a multilateral regime that will not "end the chemical weapons business" in countries of concern. (By some estimates, these costs could be over $200 million per year.) Similarly, U.S. citizens and companies will be spared the burdens associated with reporting and inspection arrangements that might involve unreasonable searches and seizures, could jeopardize confidential business information and yet could not ensure that other nations—and especially rogue states—no longer have chemical weapons programs.

Against these advantages of nonparticipation, the purported down-sides seem relatively inconsequential. First, whether Russia actually eliminates its immense chemical arsenal is unlikely to hinge upon our participating in the CWC. Indeed. Moscow is now actively creating new chemical agents that would circumvent and effectively defeat the treaty's constraints.

Second, the preponderance of trade in chemicals would be unaffected by the CWC's limitations, making the impact of remaining outside the treaty regime, if any, fairly modest on American manufacturers.

Finally, if the United States declines to join the present Chemical Weapons Convention, it is academic whether implementing arrangements are drawn up by others or not. In the event the United States does decide to become a party at a later date—perhaps after improvements are made to enhance the treaty's effectiveness—

it is hard to believe that its preferences regarding implementing arrangements would not be given considerable weight. This is particularly true since the United States would then be asked to bear 25 percent of the implementing organization's budget.

There is no way to "end the chemical weapons business" by fiat. The price of attempting to do so with the present treaty is unacceptably high, and the cost of the illusion it creates might be higher still.

James Schlesinger was secretary of defense under Presidents Nixon and Ford, Donald Rumsfeld and Caspar Weinberger held the same post under Presidents Ford and Reagan, respectively.

No. 97–D 35
27 February 1997

GEN. SCHWARTZKOPF TELLS SENATE HE SHARES CRITICS' CONCERNS ABOUT DETAILS OF THE CHEMICAL WEAPONS CONVENTION

(Washington, D.C.): Under questioning before the Senate Armed Services Committee today, General Norman Schwartzkopf—commander of the allied forces in Operation Desert Shield/Storm—acknowledged that he was "unfamiliar with all the details" of the Chemical Weapons Convention and shared some of the concerns expressed by those who oppose it in its present form. This is a signal development insofar as the treaty's advocates had made much of the General's recent endorsement of the CWC during previous testimony on Gulf War Syndrome.

Q. & A.

General Schwarzkopf was questioned by one of the Senate's most steadfast leaders on national security matters and a courageous critic of the Chemical Weapons Convention—the new chairman of the Armed Services Committee's Readiness Subcommittee, Sen. Jim Inhofe (R–OK)—about several of the CWC's more troubling aspects as seen from a military standpoint. Among the most noteworthy aspects of their exchange (and a brief intervention by Deputy Secretary of Defense John White, who also participated in the hearing) were the following points:

Sen. Inhofe: "If the Chemical Weapons Convention were in effect, would we still face a danger of chemical attack from such places as Iraq [which has not signed the CWC]—or Iran [which] actually signed onto it?"

Gen. Schwartzkopf: "Senator, I think that the answer is probably yes. But, I think the chances of that happening could be diminished by the treaty only because it would then be these people clearly standing up and thumbing their noses at international law—and it would also help us build coalitions against them, if that were to happen."

Sen. Inhofe: "Aren't they still thumbing their noses right now in Iraq?"

Gen. Schwartzkopf: "There's no question about it, Senator—I mean the fact that they used it in the first place against their own people but, I still feel—we have renounced the use of them and I am very uncomfortable placing ourselves in the company with Iraq and Libya and countries such as ... North Korea that have refused to sign that Convention. The problem with those kinds of things is that verification is very difficult and enforcement is very difficult.

Sen. Inhofe: "... General Shali[kashvili] I think in August 1994 ... said that 'even *one ton* of chemical agent may have a military impact.' I would ask the question: Do you believe that an intrusive, on-site inspection—as would be allowed by the Chemical Weapons Convention would be able to detect a single ton or could tell us conclusively that there isn't a single ton?"

Gen. Schwartzkopf: "No, no as I said earlier, we can't possibly know what's happening on every single inch of every single territory out there where this would apply."

Sen. Inhofe: "And as far as terrorists are concerned, they would not be under this?"

Gen. Schwartzkopf: "Of course not."

Sen. Inhofe: "Like any treaty, we have to give some things up, and in this case, of course we do ... and there are a couple of things that I'd like to [explore] ... the interpretation from the White House changed ... they said that if the Chemical Weapons Convention were agreed to, that it would affect such things as riot control agents like tear gas in search-and-rescue operations and circumstances like we faced in Somalia—where they were using women and children at that time as shields. Do you agree that we should be restricted from using such things as tear gas?"

Gen. Schwartzkopf: "I don't believe that is the case but I will confess to you that I have not read every single detail of that Convention so, therefore, I really can't give you an expert opinion. I think you could get a better opinion here."

Secretary White: "I am going to hesitate to give a definitive answer because there has been, in the administration, a very precise and careful discussion about what exactly, and in what situations, this would apply and when this wouldn't apply. ...

Sen. Inhofe: "Do you think it wise to share with countries like Iran our most advanced chemical defensive equipment and technologies?"

Gen. Schwartzkopf: "Our defensive capabilities?"

Sen. Inhofe: "Yes."

Gen. Schwartzkopf: "Absolutely not."

Sen. Inhofe: "Well, I'm talking about sharing our advanced chemical defensive equipment and technologies, which I believe under Article X [they] would be allow[ed] to [get]. Do you disagree?"

Gen. Schwartzkopf: "As I said Senator, I'm not familiar with all the details—I—you know, a country, particularly like Iran, I think we should share as little as possible with them in the way of our military capabilities."

The Bottom Line

After this morning's hearing, Senator Inhofe announced:

"It is clear to me that the Clinton Administration's full court press to secure ratification of the Chemical Weapons treaty ought to be slowed down until the American people are fully apprised of what this agreement entails. I oppose this treaty because I have examined it closely and believe there are serious problems contained in its fine print.

"Before Senators vote to ratify this Treaty, it is absolutely vital that they be 'familiar with all the details.' The American people should expect no less of their elected representatives. All of us want to protect America from the dangers of chemical weapons. But we have no business blindly endorsing a treaty of nearly 200 pages without carefully evaluating all of its provisions on their own merits."

To this the Center for Security Policy can only add, "Amen."

No. 97–D 21
6 February 1997

TRUTH OR CONSEQUENCES #3: CLINTON 'MAKES A MISTAKE ABOUT IT' IN ARGUING THE CWC WILL PROTECT U.S. TROOPS

(Washington, D.C.): President Clinton used his State of the Union address Tuesday night to launch his Administration's latest and highest profile salvo on behalf of ratification of the Chemical Weapons Convention (CWC). Unfortunately, as with other aspects of this campaign to induce the Senate to advise and consent to a fatally flawed arms control treaty, Mr. Clinton made statements that simply do not stand up to scrutiny. One of the most troubling of these was his declaration: "Make no mistake about it, [the CWC] will make our troops safer from chemical attack ... We have no more important obligations, especially in the wake of what we now know about the Gulf War."[1]

Far from reducing the risks that American military personnel will be exposed to chemical weapons, the Chemical Weapons Convention is likely to exacerbate them. This reality has become increasingly evident subsequent to the Joint Chiefs of Staff endorsement of the CWC as originally negotiated by the Bush Administration. For the following reasons, it would actually be a great *disservice* to the U.S. armed forces—and to the national interests they protect—were the Senate to lend its support to the present convention:

Russia Remains a Chemical Threat

The cornerstone for the Chemical Weapons Convention was supposed to be a Bilateral Destruction Agreement (BDA) with Russia. Pursuant to this agreement, Moscow promised to provide a full and accurate accounting and eliminate most of its chemical arsenal—the world's largest and arguably the one that poses the most serious menace to the U.S. military. The BDA was also expected to afford the U.S. inspection rights that would significantly enhance the more limited arrangements provided for by the CWC.

Regrettably, Russian Prime Minister Victor Chernomyrdin declared last year that the Bilateral Destruction Agreement has "outlived its usefulness" for Russia. He has

also announced that the tab for Russia to implement the Convention's demilitarization arrangements (conservatively estimated to be at least $3 billion) would have to be paid for by the West. Under these circumstances, even if the U.S. agreed to shell out vast sums, chances are that Russia would retain a sizable, covert chemical stockpile.

As the Center for Security Policy noted earlier this week,[2] it is now public knowledge that such a Russian stockpile will probably include extremely lethal binary munitions—*weapons that have been specifically designed to circumvent the limits and defeat the inspection regime of the Chemical Weapons Convention*. There is reason to believe that such weapons may also have been engineered to defeat Western chemical defensive gear. This material danger to U.S. forces can only grow if, pursuant to the CWC's Article X, the United States winds up transferring chemical protective technology or equipment to those inclined to reverse engineer and overcome it.

Other Nations Will Also Have Militarily Significant CW Arsenals

Russia is hardly the only nation likely to pose a chemical threat to U.S. personnel in "a world with the CWC." Some, like Iraq, Syria, North Korea and Libya, will refuse to become states parties. Others will do so, secure in the knowledge that the treaty's inherent unverifiability will allow them to escape detection.

When the CWC was negotiated there was considerable hope that intrusive on-site inspections would meaningfully contribute to the detection and proof of violations, and therefore to deterring them. Experience, however, with the U.N. inspections in Iraq—an operation allowed to conduct far more thorough, timely and intrusive inspections than will be permitted under this Convention—has established that totalitarian rulers of a closed society can successfully defeat such inspections.

This reality applies, as Senator Helms noted in a letter to National Security Advisor Samuel Berger on 4 February, even to *militarily significant* stockpiles of chemical weapons:

> "General Shalikashvili testified on 11 August 1994 that 'In certain limited circumstances, even one ton of chemical agent may have a military impact. ... With such variables in scale of target and impact of chemical weapons, the United States should be resolute that the one-ton limit set by the Convention will be our guide.'"
>
> "Unclassified portions of the [National Intelligence Estimate] on U.S. Monitoring Capabilities indicate that it is unlikely that the U.S. will be able to detect or address violations in a timely fashion, if at all, when they occur on a small scale. And yet, even small-scale diversions of chemicals to chemical weapons production are capable, over time, of yielding a stockpile far in excess of a single ton. Moreover, few countries, if any, are engaging in much more than small-scale production of chemical agent. For example, according to [the 4 February 1997] *Washington Times*, Russia may produce its new nerve agents at a 'pilot plant' in quantities of only '55 to 110 tons annually'"

Facilitating Proliferation: 'Poisons for Peace'

The Chemical Weapons Convention may actually *contribute* to the spread of militarily relevant chemical technology. This could be the result of a provision (Article XI) modeled after the "Atoms for Peace" provisions of the Nuclear Non-Proliferation Treaty—which promised to share dual-use technology with those who might abuse it if only they promise not to do so. Article XI would oblige the United States to share inherently militarily useful chemical manufacturing technology and materials with countries like Iran and Cuba, if only they become states parties. This is a formula for expanding the threat to "our troops" posed by chemical proliferation, not effective chemical arms control.

The CWC Will Encourage the Military to Lower Its Guard

A March 1996 study by the General Accounting Office (GAO) determined that some elements of the U.S. military appear to be inadequately prepared, trained, or equipped to operate in areas contaminated by chemical or biological agents. A particularly troubling finding was the fact that none of the Army's five active divisions which make up the Nation's crisis response force and none of the reserve units that are designated to be deployed early in crises (such as Operation Desert Shield) were properly equipped to deal with a chemical or biological threat.

In fact, these units were significantly unprepared in a number of areas. According to the GAO, three of the "front-line" divisions had fifty percent or greater shortages of protective clothing with shortfalls in other critical gear running as high as eighty-four percent. Training was also determined to be deficient in a number of respects. This is not entirely surprising given that, in its first 4 years in office, the Clinton Administration decreased funding for chemical and biological defensive purposes by

some thirty percent, from $750 million in Fiscal Year 1992 to $504 million in Fiscal Year 1995.

Unfortunately, past experience suggests that matters will only be made worse by an arms control treaty like the Chemical Weapons Convention that purports to impose a global prohibition on chemical weapons, seemingly making such defenses less necessary. For example, after ratification of the Biological Weapons Convention (BWC), U.S. investment in relevant defensive technology, vaccines, detection equipment, etc. declined precipitously. As a result of years of inadequate attention to this threat, the United States found itself extremely ill-prepared to deal with a potential BW threat posed by Saddam Hussein's Iraq. (In fact, the U.S. may only have detected the use of biological weapons against our forces after they started dying *en masse.*)

That such a fate awaits U.S. chemical defensive efforts in the wake of a CWC ratification was brought home by a 1995 initiative proposed by the then-Vice Chairman of the Joint Chiefs of Staff, Admiral William Owens. He suggested cutting a further $805 million from counter-proliferation support and chemical and biological defense programs through Fiscal Year 2001. This reduction would have deferred, if not seriously disrupted, important chemical and biological research and development efforts, and delayed the procurement of proven technologies. His rationale: Thanks to a lowering in the chemical warfare threat brought about by the CWC, investments in countering it could safely enjoy lower priority. While the Owens gambit was ultimately defeated, similar initiatives must be expected in the future if the CWC is approved—resulting in *increased vulnerability,* not improved safety, for "our troops."

Even if the United States manages to resist the siren's song to reduce chemical defenses in the wake of the CWC, it is predictable that the already generally deplorable readiness of most allied forces to deal with chemical threats will only worsen. To the extent that the U.S. is obliged in the future to fight coalition wars, this vulnerability could prove catastrophic to American forces engaged with a common enemy.

Prohibitions on Tear Gas, Other Non-Lethal Technologies

The Clinton Administration has made clear that it intends to reverse a Bush executive order issued at the insistence of the Joint Chiefs in 1992—an order that explicitly allowed Riot Control Agents (for example, tear gas) to be used in rescuing downed aircrews and dispersing hostile forces using civilians to screen their movements against U.S. positions. The result could be to force our troops to use lethal force where it is not necessary or to suffer otherwise avoidable casualties.

Worse yet, one of the most promising new defense technologies—involving chemical-based, non-lethal weapons (for example, immobilizing agents)—may be restricted or prohibited by this Convention. The CWC defines chemical weapons as "toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes." It goes on to define a toxic chemical as "any chemical which through its chemical action on life processes can cause death, *temporary incapacitation,* or permanent harm to humans or animals." As a result of the CWC, "our troops" may be denied highly effective means of prevailing in future conflicts with minimal loss of life on either side.

The Bottom Line

In its present form, the Chemical Weapons Convention cannot be justified by the contribution it will make to the safety of our men and women in uniform. If anything, the "contribution" that will be made will be a negative one for "our troops."

A question that may not be as easily dispensed of is: Precisely what did President Clinton mean when he said "in the wake of what we now know about the Gulf War"? Is that an acknowledgment that chemical weapons were used against U.S. forces there, after all? Does it mean that the President is now convinced that American forces were inadvertently exposed to chemical agents in the process of destroying Iraqi bunkers—accounting for Gulf War Syndrome? Or is he simply acknowledging that U.S. chemical defenses are already inadequate and that "our troops" will likely be exposed to chemical threats—even if the enemy does not initiate their use—*with or without* the Chemical Weapons Convention?

NOTES:

[1] The fallaciousness of another Presidential declaration—"if we do not act by April the 29th when this Convention goes into force—with or without us—we will lose the chance to have Americans leading and enforcing this effort"—was addressed last week in the second paper in this "Truth or Consequences" series on the Chemical Weapons Convention, entitled *Truth or Consequences #2: Senate Does Not Need to Sacrifice Sensible Scrutiny of CWC to Meet an Artificial Deadline* (No. 97–D 18, 31

January 1997). A third erroneous claim concerning the CWC's value in fighting terrorism will be the subject of a forthcoming Decision Brief.

[2] See the Center's Decision Brief from earlier this week, *Russia's Covert Chemical Weapons Program Vindicates Jesse Helms' Continuing Opposition to Phony C.W. Arms Control* (No. 97–D 19, 4 February 1997).

No. 97–D 19
4 February 1997

RUSSIA'S COVERT CHEMICAL WEAPONS PROGRAM VINDICATES JESSE HELMS' CONTINUING OPPOSITION TO PHONY C.W. ARMS CONTROL

(Washington, D.C.): The Clinton Administration's campaign to railroad Senators into approving the fatally flawed Chemical Weapons Convention (CWC) ran into a major new obstacle today: The *Washington Times* disclosed that a report published recently in the classified Military Intelligence Digest confirms that "Russia is producing a new generation of deadly chemical weapons using materials, methods and technology that circumvent the terms of [that] treaty it signed outlawing such weapons."

Word of this frightening development was originally leaked by a Russian scientist, Vil Mirzayanov, who had been involved in the Kremlin's covert development of a new class of chemical arms. In an article he courageously published in the *Wall Street Journal* on 25 May 1994, Mr. Mirzayanov wrote about a new Russian binary weapon [i.e., one which uses two relatively harmless chemicals to form a toxic agent after the weapon is launched]:

> "This new weapon, part of the ultra-lethal *Novichok* [Russian for "Newcomer"] class, provides an opportunity for the [Russian] military establishment to disguise production of components of binary weapons as common agricultural chemicals because the West does not know the formula and its inspectors cannot identify the compounds." [1]

Now, More Details About Moscow's Ongoing CW Program

Excerpts of the secret intelligence report that appear in today's *Washington Times* provide considerable detail about Russia's efforts to maintain a deadly chemical arsenal, irrespective of its treaty obligations. According to the *Times*, these include the following (emphasis added throughout):

- "Under a program code-named 'Foliant,' a Russian scientific research organization has created a highly lethal nerve agent called A–232, large quantities of which could be made 'within weeks' through covert production facilities. ..."
- "A–232 is made from industrial and agricultural chemicals that are not lethal until mixed and that *never had been used for poison gas*."
- "'These new agents are as toxic as VX [a persistent nerve agent], as resistant to treatment as Soman [a non-persistent but deadly poison gas] and more difficult to detect and easier to manufacture than VX.'"
- "The report says A–232 and its delivery means have 'passed Moscow's rigorous military acceptance testing and *can be quickly fielded in unitary or binary form*.'"
- "Russia's State Scientific Research Institute of Organic Chemistry and Technology created the agents and novel ways of making them to avoid detection by international inspectors. 'By using chemicals not specified in the CWC schedules, the Russians can produce A–232 and its ethyl analog A–234, in unitary and binary forms within several chemical complexes.'"
- "The Russians can make the binary, or two part, version of the nerve agent using a common industrial solvent acetonitrile and an organic phosphate compound 'that can be disguised as a pesticide precursor.' In another version, *soldiers need only add alcohol* to form the agent, the report says."
- "'These various routes offer flexibility for the agent to be produced in different types of facilities, depending on the raw material and equipment available there. They also add complexity to the already formidable challenge of detecting covert production activities.'"
- "The Russians can produce the new nerve agent in 'pilot plant' quantities of 55 to 110 tons annually,' the report says. Several Russian plants are capable of producing the chemicals used in making A–232. One factory in Novocherboksarsk 'is capable of manufacturing 2,000–2,500 metric tons of A–232 yearly.'"
- "Several pesticide plants 'offer easy potential for covert production,' the report says. 'For example, substituting amines for ammonia and making other slight

modifications in the process would result in new agents instead of pesticide. The similarity in the chemistry of these compounds would make treaty monitoring, inspection and verification difficult.' "

The Administration's Unconvincing Response: The CWC Will Solve the Problem

The Clinton Administration's pollyannish response to these revelations ought to be instructive to Senators weighing the Chemical Weapons Convention. Although the Russians are violating their present obligation not to produce chemical weapons and are doing so in ways designed to circumvent the CWC's limitations and to defeat even on-site inspection regimes, an Administration spokesman told the *Washington Times* that "the treaty would make it easier to investigate such problems" since "agents and components can be added to the treaty's schedule of banned chemicals." The National Security Council's David Johnson is quoted as saying: "Without the CWC and the verification tools it provides, you don't have the means to get at problems like this. With CWC, you do."

Such a statement is, at best, wishful thinking. At worst, it is highly misleading since, for reasons outlined above, the Russian Novichok weapons (and counterpart efforts likely being pursued by other chemical weapons states) are specifically designed to thwart the CWC's "verification tools."

A variation on this disingenuous theme is being circulated in graphic form by proponents of the Chemical Weapons Convention. They offer two world maps, one under the heading "The World Without the CWC," the other "The World With the CWC." The former shows large areas of the world—notably Russia, China, Iran, India and Pakistan—with declared or suspected chemical arsenals. The latter, though, shows the entire world except for Libya, Egypt, Syria, Iraq and North Korea as being without either declared or suspected chemical stockpiles.

It is deceptive to suggest that the Chemical Weapons Convention will ensure that Russia, China, Iran, India or Pakistan will actually eliminate their chemical weapons programs thanks to the CWC. In fact, any country that is wishes to retain even militarily significant chemical stockpiles and is willing to flout international law to do so can be confident of its ability to escape detection and sanction. To his credit, one of the Convention's preeminent champions and distributors of these maps—retired Lieutenant General Tom McInerney—responded, when asked whether he really believed that Russia and China would give up their chemical arms if they became parties to the CWC—by saying: "Of course not."

Enter Chairman Helms

As it happens, front-page treatment was also given today to another aspect of the Chemical Weapons Convention drama. A 29 January 1997 letter from Senator Jesse Helms to Majority Leader Trent Lott expressing the Senate Foreign Relations Committee chairman's strong opposition to the present CWC was featured "above the fold" by the *Washington Post*. In this letter, Senator Helms declares: "I am convinced that the CWC, as it now stands, is fraught with deficiencies totally inimical to the national security interests of the United States."

Chairman Helms goes on to enumerate in an attached memorandum specific conditions that "are essential to ensuring that the Chemical Weapons Convention enhances, rather than reduces, our national security." In particular, he says preconditions are needed to address six concerns which "are best expressed in the letter [Senator Lott] received on 9 September 1996 from Richard Cheney, William Clark, Jeane Kirkpatrick, Alexander Haig, John Herrington, Edwin Meese, Donald Rumsfeld, Caspar Weinberger, 12 Generals and Admirals and 47 [other] officials from the Reagan and Bush Administrations": [2]

- Russian elimination of chemical weapons and implementation of the 1990 Bilateral Destruction Agreement (BDA);
- Inclusion of countries other than Russia believed to have chemical weapons;
- Certification by the U.S. intelligence community that compliance with the treaty can be monitored with high confidence;
- Specification of the actions that will be taken by the United States in the event of non-compliance;
- Establishing the primacy of the U.S. Constitution over all provisions of the CWC; and
- Protection of U.S. confidential business information (CBI).

Sen. Helms Rebuts the Administration's CWC Point Person

In addition, Senator Helms today sent National Security Advisor Samuel "Sandy" Berger a strongly worded letter concerning correspondence written by Dr. Lori Esposito Murray—the Special Advisor to the President and ACDA Director for the Chemical Weapons Convention—to members of the Senate in response to the Cheney *et al.* missive. Calling the Murray correspondence "offensive," the Chairman of-

fers his own, detailed rebuttal of her claim that there were "significant misinformation" and "misstatements" in the letter sent last fall by Secretary Cheney and his colleagues.

Specifically, Senator Helms affirms that:

- "The CWC does not—in fact—effectively cover the types of chemicals used to manufacture chemical weapons. Everything from Sarin and Soman to VX can be manufactured using a variety of chemicals which are not identified by the Schedules for the application of the verification regime."
- "... The CWC will not do one thing to reduce the chemical weapons arsenals of terrorist countries and other nations hostile to the United States. ... Not one country of concern to the United States has ratified this convention."
- "... The CWC is not 'effectively verifiable' and Dr. Murray should not have made representations to the contrary. ... Declassified portions from [a] August 1993 National Intelligence Estimate note:

  "'The capability of the intelligence community to monitor compliance with the Chemical Weapons Convention is severely limited and likely to remain so for the rest of the decade. The key provision of the monitoring regime—challenge inspection at declared sites—can be thwarted by a nation determined to preserve a small, secret program using the delays and managed access rules allowed by the Convention.'"

The Bottom Line

The Center for Security Policy commends Senator Helms for his leadership in insisting that the Chemical Weapons Convention's myriad, serious defects be addressed and corrected before the Senate is once again asked to give its advice and consent to this treaty. It looks forward to working with him, Senator Lott and all others who share Chairman Helms' determination to ensure that the CWC is only ratified if it "enhances, rather than reduces" U.S. national security.

NOTES:

[1] See in this regard *Not 'Good Enough for Government Work:' Senate Needs to Hear About Russian Chemical Weapons From Russian Experts* (No. 94–D 100, 5 October 1994).

[2] Copies of this letter, which was originally circulated by the Center for Security Policy last fall, may be obtained by contacting the Center.

No. 97–D 27
17 February 1997

TRUTH OR CONSEQUENCES #5: THE CWC WILL NOT BE GOOD FOR BUSINESS—TO SAY NOTHING OF THE NATIONAL INTEREST

(Washington, D.C.): Proponents of the Chemical Weapons Convention (CWC) now awaiting consideration by the U.S. Senate often declare that industry supports this controversial treaty. That claim requires careful consideration since, on its face, this arms control treaty will have myriad, and possibly quite adverse, implications for many American businesses. Such implications arise from the reporting, regulatory and inspection requirements generated by the treaty's verification regime.

Who Will Be Affected?

A common misconception is that only chemical *manufacturing* businesses will be covered by these requirements. To be sure, such pervasively regulated companies will *face* additional reporting requirements and be subjected to routine inspections by foreign nationals. A trade association representing some of these companies—the Chemical Manufacturers Association (CMA)—has judged the impacts of the CWC on its member companies to be acceptable, however. (Interestingly, some CMA companies—for example, Dixie Chemicals and Sterling Chemicals—have expressed opposition to the treaty on the grounds that the costs entailed in further reporting requirements, additional regulatory burdens and intrusive on-site inspections will be unacceptable.)

In fact, thousands of companies that do not produce but simply use a wide variety of chemicals or chemical compounds—notably, Discrete Organic Chemicals (DOCs) [1]—will also be burdened with new and potentially onerous responsibilities under the CWC. While the CWC's proponents frequently claim that many of these companies will be able to get away with filling out a simple, short form, there is reason to believe otherwise.

For a good many of the affected companies, the CWC's reporting requirements will entail a time-consuming, *and assuredly expensive,* process of producing declara-

tions, filing reports and complying with new regulations. These industries may also face *challenge* as well as routine inspections. Challenge inspections permit the use of sampling procedures—for example the use of mass spectrometers—that go beyond those to which companies facing only routine inspections are exposed and that have considerable potential for the loss of Confidential Business Information (see below).

Among the industries facing such prospects are: automotive, food processing, biotech, distillers and brewers, electronics, soap and detergents, cosmetics and fragrances, paints, textiles, non-nuclear electric utility operators and even ball-point pen ink manufacturers. The following well-known U.S. companies—none of which has anything to do with the manufacture of chemical weapons—have been identified by the Arms Control and Disarmament Agency as subject to the CWC's terms: Sherwin-Williams, Nutrasweet, Jim Beam, Archer Daniels Midland, Lever Brothers, Kaiser Aluminum, Goodyear Tire and Rubber, Xerox, Raytheon and Conoco.

Last but hardly least, in addition to the obligations befalling the foregoing industries, the Chemical Weapons Convention would allow *any site* in the United States to be subjected to intrusive challenge inspections. While proponents downplay the danger that such an arrangement might be abused by foreign governments, there are no guarantees that such abuses will not occur.

Who Speaks for All the Affected Industries?

While the Chemical Manufacturers Association has been the most vocal industry advocate of the Chemical Weapons Convention, it represents only some 190 of the companies expected to be covered by the treaty. It has aggressively lobbied Senators and other trade organizations on behalf of the treaty, evidently persuaded not only that the CWC will not hurt its businesses but will actually *benefit* them. Notably, CMA believes this accord's Article XI will clear the way for a substantial increase in U.S. exports of chemical manufacturing equipment and materials.

Since the bulk of this prospective increase may involve markets not currently open to American chemical concerns—presumably, including pariah states like Iran and Cuba—it is unclear just how willing responsible companies and/or the U.S. Government will be to engage in this sort of trade.[2] Such exports are currently proscribed by the supplier-control arrangement known as the Australia Group. If, as seems likely, the CWC has the effect of vitiating the Australia Group mechanism, CW-relevant exports *may* be permitted even to dubious customers—but it will be hard to contend that the effect on curbing proliferation of chemical weapons will be a positive one.

The truth of the matter is that no one can say for sure how many companies will be caught up in the CWC's reporting, regulatory and inspection regime. It is safe to say, however, that there will be thousands affected (according to official U.S. Government estimates as many as 3,000–8,000.) Even if one counts facilities, as few as *two-fifths* of those affected are owned by CMA member companies. Indeed, as Dr. Will Carpenter, formerly Vice President for Technology at the Monsanto Agriculture Company and a CMA representative, noted in an article in *Ratifying the Chemical Weapons Convention:*

> "The leaders of the chemical industry, through the board of directors of the CMA have always emphasized support of the convention. There are, however, another 60 to 80 trade associations whose members will also be regulated by the National Authority [set up to implement the CWC]. ... An overwhelming number of these companies are not aware of the implications of the Chemical Weapons Convention despite a continuing effort by ACDA, the CMA and other organizations to get the word out."

How Will American Businesses Be Affected?

The impact of the Chemical Weapons Convention on American companies will occur through two avenues:

(1) Impacts Due to New Reporting and Regulatory Requirements: The data required by the treaty's verification regime differs in both quantitative and qualitative respects from that already collected for other regulatory purposes. For example, current environmental regulations do not cover all of the chemicals relevant to the CWC. Moreover, of those that *are* covered, the production thresholds triggering current reporting requirements are set much higher than would be the case under the CWC. In addition, some existing regulations require reports concerning future actions (whereas the treaty imposes obligations for considerable *retroactive* reporting). Some of these current regulations apply to chemical producers, but not to industrial processors or consumers of chemicals. And deadlines for reports required by the CWC will be shorter, and necessitate more frequent updating, than those presently demanded, for instance, by the Environmental Protection Agency. For all these rea-

sons, new reporting requirements will have to be levied by the U.S. government in the implementing legislation for the Convention.

These new requirements may prove to be viewed by large concerns as simply a marginal additional cost of doing business. *Smaller* companies, however, may find these additional requirements to be considerably more burdensome. This is particularly true since some companies will be obliged to file detailed declarations for the first time. Such reports will also have to be updated on an annual basis. The associated costs for preparing these reports are likely to run to the thousands—and perhaps hundreds of thousands—of dollars per company.

What is more, the new U.S. bureaucracy dubbed the "National Authority" to whom these reports will be sent, must be notified of changes in declared activities 5 days before they occur. Complying with this requirement is likely to prove problematic for companies unable to predict their activities; it certainly will be burdensome. A failure to comply with this reporting regime could result in civil and perhaps even criminal penalties.

(2) Impacts Arising from On-Site Inspections: Any company that provides declarations to the "National Authority" should prepare to be inspected. Once the U.S. National Authority turns the information thus supplied over to the new *international* bureaucracy created under this Convention—the Organization for the Prohibition of Chemical Weapons (OPCW) the OPCW's Technical Secretariat will have the authority to conduct on-site inspections (both routine and challenge inspections) to verify the data thus supplied.

Depending on the sorts of chemicals declared and the nature of the inspections, the amount of notice, duration and degree of intrusiveness of the inspection can vary. For example, advance notice can be as little as twenty-four hours; the duration can extend to 96 continuous hours; and the international inspectors can in some instances demand to examine any data, files, processes, equipment, structures or vehicles deemed pertinent to their search for illegal chemical manufacturing activities.

What Will Be At Risk?

It is a virtual certainty that, in the course of at least some such inspections, confidential business information (CBI) will be put at risk. In 1993, the Congressional Office of Technology Assessment identified examples of proprietary information that could be compromised:

- The formula of a new drug or specialty chemical
- A synthetic route that requires the fewest steps or the cheapest raw materials
- The form, source, composition and purity of raw materials or solvents
- Subtle changes in pressure or temperature at key steps in a process
- Expansion and marketing plans
- Raw materials and suppliers
- Manufacturing costs
- Prices and sales figures
- Names of technical personnel working on a particular project
- Customer lists

According to the Office of Technology Assessment (OTA), the means by which the foregoing and other sensitive business information could be acquired by foreign inspectors (at least some of whom may be agents of their governments' intelligence services and specialists in the conduct of commercial espionage) include via the following:

- manifests and container labels that disclose the nature/purity of the feedstock and the identity of the supplier
- instrument panels [e.g., networked computer monitors] revealing precise temperature and pressure settings for a production process
- chemical analysis of residues taken from a valve or seal on the production line
- visual inspection of piping configurations and instrumentation diagrams could allow an inspector to deduce flow and process parameters
- audits of plant records

A loss of confidential business information either through a challenge inspection, or through sample analysis, could be particularly troubling for those in the chemical, pharmaceutical and biotechnology industries. Many companies have not sought patents for such proprietary information lest they be compromised by Freedom of Information Act (FOIA) requests, to which patents are subject. Even so, in August 1993, the OTA estimated that the U.S. chemical industry loses approximately $3–6 billion per year in counterfeited chemicals and chemical products.

If proprietary formulas are compromised by commercial espionage, the cost can be very great. For example, it takes an average of 10 years and an investment of $25 million to perfect a new pesticide. U.S. pharmaceutical companies must invest

an average of 12 years and on the order of $350 million in research and development to bring a breakthrough drug to market.

Clearly, while it is difficult to assess the potential dollar losses that may be associated with the compromise of proprietary business data, information gleaned from inspections and data declarations literally could be worth millions of dollars to foreign competitors. A small company whose profitability (and economic survival) derives from a narrow but critical competitive advantage will be particularly vulnerable to industrial espionage. The OTA notes that for a small company, "even visual inspection alone might reveal a unique process configuration that could be of great value to a competitor."

The Risk is Real

Unfortunately, *these are not hypothetical or "worst case" scenarios.* In preparation for the CWC, the U.S. has conducted mock inspections at seven government and private sector industrial sites. The results validate fears that even *routine* access by the OPCW's international inspectors could result in the loss of commercial and/or national security secrets. This would certainly be true of the access allowed under more intrusive challenge inspection provisions.

These conclusions are evident, for example, in a report submitted by the U.S. government to the Conference on Disarmament concerning the third of these so-called National Trial Inspections. It was conducted by U.S. experts at the Monsanto Agricultural Company's Luling, Louisiana plant in August, 1991. The report said, in part:

> "The Monsanto representative who was on the inspection team to determine the extent of CBI he could obtain, determined there *would* be a loss of such information. He stated he was able to obtain enough information about the glyphosate intermediate process merely by equipment inspection to save a potential competitor considerable process development, time and dollars. He said a knowledgeable inspector could compromise Monsanto's proprietary business interests with no access to their records beyond the quantity of phosphorous trichloride consumed." (Emphasis added.)

Even Exterior Sampling Can Put CBI At Risk: Another mock inspection revealed that soil and water samples taken even from the *exterior* of buildings at a chemical plant *three weeks after* a production run revealed the product of the operation and process details. This is especially worrisome in terms of the implications for confidential business information since the CWC's Verification Annex (Part II paragraph (E)(55)) *explicitly* affords an inspection team the right to take samples on-site using highly invasive mass spectrometers and, "if it deems necessary," to transfer samples for analysis off-site at laboratories designated by the OPCW. And, as Dr. Kathleen Bailey of the Lawrence Livermore National Laboratory told the Senate Foreign Relations Committee on 21 March 1996:

> "Experts in my laboratory recently conducted experiments to determine whether or not there would be a remainder inside of the equipment that is used for sample analysis on-site. They found out that, indeed, there is residue remaining. And if the equipment were taken off-site, off of the Lawrence Livermore Laboratory site, or off of the site of a biotechnology firm, for example, and further analysis were done on those residues, you would be able to get classified and/or proprietary information."

Matters are made worse by the prospect that the OPCW is likely to allow a number of states parties' laboratories to conduct sample analysis. Among the nations that have expressed an interest in providing such laboratory services are several with dubious records concerning non-proliferation and/or a record of using multilateral organizations—among other devices—for intelligence collection (including commercial espionage).

Conclusion

The Chemical Weapons Convention will entail real, if as yet unquantifiable, costs for thousands of U.S. industries having nothing to do with the manufacture of chemical weapons. Such costs might be justifiable if the treaty were likely to be effective in ridding the world of chemical weapons—or even in appreciably reducing the likelihood of chemical warfare. Unfortunately, while the CWC's verification regime will be sufficiently intrusive to jeopardize U.S. proprietary interests, it is woefully inadequate to detect and prove non-compliance by closed societies determined to maintain covert chemical weapons capabilities notwithstanding their treaty obligations.[3] As a result, the burdens that American private industries will be asked to bear—largely without their knowledge—simply cannot be justified on national security *or any other* grounds.

NOTES:

[1] The CWC defines DOCs only in the following, expansive terms: "Any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates."

[2] In fact, ACDA Director John Holum has indicated that the United States' obligations under the CWC would not be allowed to compel it to sell CW-relevant technology to proliferating states. Even if that position were actually adopted by the U.S. government after treaty ratification, Article XI would still provide political cover for other nations feeling no such compunction and deny Washington grounds for objecting.

[3] N.B. The UN's on-site inspection effort in Iraq (UNSCOM) has been unable to ascertain the true status of Saddam Hussein's weapons of mass destruction programs despite five years of challenge inspections under a regime providing for far more intrusive, timely and comprehensive inspections than those authorized by the CWC.

No. 97–D 14
28 January 1997

TRUTH OR CONSEQUENCES #1: CENTER CHALLENGES ADMINISTRATION EFFORTS TO DISTORT, SUPPRESS DEBATE ON CWC

DANGERS TO AMERICANS' CONSTITUTIONAL RIGHTS

(Washington, D.C.): Like a saturation bombardment of toxic gas on a World War I battlefield, proponents of the Chemical Weapons Convention (CWC) have suddenly unleashed a barrage of Cabinet-level public statements and op.eds., departmental letters, government fact sheets and interest group point papers. The purpose seems to be to asphyxiate informed debate about this treaty with billowing clouds of false or misleading information, even as the Convention's critics are wrongly accused of doing the same thing.

For example, in a letter written to Senators on 14 January 1997, Dr. Lori Esposito Murray—the Special Advisor to the President and ACDA Director on the Chemical Weapons Convention—took strong exception to correspondence authored by a large and distinguished group of former senior civilian and military officials who oppose ratification of the CWC in its present form. The latter include: former Secretaries of Defense Dick Cheney, Donald Rumsfeld and Caspar Weinberger, former U.N. Ambassador Jeane Kirkpatrick, former Secretary of State Alexander Haig and former National Security Advisor to the President William Clark.

Dr. Murray declared that the Cheney et al. letter "contains significant misinformation about the Convention." She proceeds to cite several portions of the letter (which was circulated by the Center for Security Policy originally last fall and again earlier this month)[1] which she characterizes as "misstatements." In opposition to these alleged "misstatements," Dr. Murray offers what she calls "facts."

As a contribution to a real and informed debate about the Chemical Weapons Convention, the Center will be issuing a series of Decision Briefs in the coming days briefly responding to each of Dr. Murray points—and similar arguments on behalf of the treaty made by others—that have the effect of confusing or distorting, if not actually suppressing, such a debate.

CWC Will Impinge Upon Americans' Constitutional Rights

As Secretaries Cheney, Rumsfeld, Weinberger and their colleagues noted in the joint letter: "We are concerned that the CWC will jeopardize U.S. citizens' constitutional rights by requiring the U.S. government to permit searches without either warrants or probable cause." Dr. Murray describes this as a "misstatement" and declares as a "fact" that:

> "The Administration expects that access to private facilities will be granted voluntarily for the vast majority of inspections under the CWC. If this is not the case, the United States Government will obtain a search warrant prior to an inspection in order to ensure that there will be no trampling of constitutional rights."

On 9 September 1996, Department of Justice officials publicly acknowledged in testimony before the Senate Judiciary Committee that in such cases a criminal warrant would be required. The problem is that obtaining such a warrant from a court would require demonstration of probable cause. This will be impossible in most cases because the nation requesting an inspection need not cite its reasons for making such a request.

Hence, the Clinton Administration faces a difficult choice. If the U.S. government respects its citizens' rights not to be subjected involuntarily to searches in the absence of judicial warrants, it will be creating a precedent other countries will assuredly cite to refuse on-site inspections on their territories. If it does not respect those rights, it will be acting in an unconstitutional manner.

Judge Bork Is Concerned About the Treaty's Constitutional Impact

In a letter sent to Judiciary Committee Chairman Orrin Hatch last August, a respected constitutional scholar and distinguished Federal judge, Robert H. Bork, expressed the view that "there are grounds to be concerned about [CWC provisions'] compatibility with the Constitution." He wrote:

> "Fourth and Fifth Amendment concerns are raised by the United States' obligation to open to on-site inspections any facility, whether in the public sector or privately owned. Apparently, no probable cause need be shown. A foreign state will have the right to challenge inspection of a U.S. facility without the grounds that are essential for a search warrant.
>
> "The U.S. is required by the CWC to enforce inspection by an international team, even over opposition from the owner. On-site personnel can be compelled to answer questions, provide data, and permit searches of anything within the premises—including records, files, papers, processes, controls, structures and vehicles.
>
> "Whatever the merits otherwise of the claim that the 'pervasively regulated industries' exception avoids the Fourth Amendment problems, it is my understanding that the majority of the 3,000–8,000 companies expected to be covered are not pervasively regulated.
>
> "Additional Fifth Amendment problems arise from the authority of inspectors to collect data and analyze samples. This may constitute an illegal seizure and, perhaps, constitute the taking of private property by the government without compensation. The foreign inspectors will not be subject to punishment for any theft of proprietary information.
>
> "American citizens will have fewer rights to information concerning investigations concerning them or their businesses than they would if investigated by a U.S. agency. Freedom of Information requests will not be permitted under the proposed CWC implementing legislation. ...
>
> "... The owner of a facility will [likely] be faced with an international inspection team, backed up by the U.S. government, demanding access to his property and demanding answers and documents from his employees. No one will be shown a search warrant and, so far as I can gather, the owner or employee must decide on the spot whether he has a constitutional right to refuse what is demanded. If he refuses and turns out to be wrong, he will face punishment. At least a citizen shown a search warrant knows that a judge has deemed the search constitutional.
>
> "The provision in question speaks of constitutional obligations with regard to property rights or searches and seizures. That does not cover the Fifth Amendment right not to incriminate oneself. Yet self-incrimination is a real danger for people required to answer questions, turn over documents and other matter."

Judiciary Committee Chairman Henry Hyde is Also Concerned

On 28 August 1996, Chairman Hatch received a letter from his House counterpart, Rep. Henry Hyde. It expresses similar misgivings to those addressed by Judge Bork. Rep. Hyde asked:

> "How can we accede to an arrangement that grants an international inspection agency the right to demand access to thousands of privately owned U.S. facilities without requiring the foreign inspectors to demonstrate probable cause necessary to secure a judicial warrant—except by compromising the American owners' constitutional rights?
>
> "Similarly, how can those owners be denied due process—or, for that matter, the right to sue for damages in the likely event that the foreign inspectors use their eighty-four hours of on-site inspection to elicit sensitive proprietary data and then that data finds its way into the hands of competitors overseas? As you are well aware, there is growing concern about illegal commercial espionage. If we are not careful, it would appear that we may be creating through the CWC a legal opportunity for carrying out such intelligence collection, to the severe detriment of America's competitive position.
>
> A further concern arises from the fact that the new Organization for the Prohibition of Chemical Weapons will be significantly less accountable than U.S. regulatory agencies for information collected in the course of international inspections of American businesses. I understand that the draft implementing leg-

islation proposes to preclude requests about OPCW inspections that might otherwise be made under the Freedom of Information act.

> "... Whatever one thinks ... about the wisdom of ratifying a treaty that is inherently unverifiable, unenforceable and inequitable, the likelihood that it will compromise the constitutional rights of many thousands of American companies and their owners and employees should be sufficient grounds for its rejection."

The Bottom Line

Clearly, there are grounds for concern about the constitutional impact of the Chemical Weapons Convention. These cannot be dismissed as "misstatements" or "myths." Neither can consideration of such issues be responsibly deferred—as some treaty proponents are arguing—until after the CWC is ratified by the United States. At that point, the theoretical option of building safeguards into the implementing legislation will be a non-starter, at least from a practical point of view, to the extent such protections would conflict with "the supreme law of the land," i.e., a ratified treaty. Accordingly, the Center for Security Policy encourages members of the Senate to examine the constitutional and other, serious problems with the Chemical Weapons Convention prior to any further consideration of this accord.

NOTES:

[1] See the Center's Transition Brief entitled *Here We Go Again: Clinton Presses Anew For Senate Approval of Flawed, Unverifiable, Ineffective Chemical Weapons Treaty* (No. 97–T 5, 8 January 1997).

No. 97–D 30
22 February 1997

TRUTH OR CONSEQUENCES #6: THE CWC WILL NOT PREVENT CHEMICAL TERRORISM AGAINST THE U.S. OR ITS INTERESTS

(Washington, D.C.): In recent weeks, proponents of the Chemical Weapons Convention (CWC) have cited the contribution this Convention would make to combating terrorists armed with chemical weapons as an important justification for the Senate to approve its ratification. In President Clinton's State of the Union address, in successive op.ed. articles by former Bush Administration officials and in news articles and editorials reflecting the administration's pro-treaty line, the assertion is made that an admittedly grave problem will be alleviated by the CWC's ban on the production, stockpiling or use of chemical weapons.

According to the *Wall Street Journal,* Senator Richard Lugar—the Chemical Weapons Convention's principal champion in the Senate—has even taken to darkly warning his colleagues that they better vote for the CWC lest there be a chemical terrorist incident in this country which might have been prevented if only the Convention had been in place.

The CWC Will Not Impede Terrorists

Such arguments are highly misleading, possibly dangerously so, for two reasons:

(1) The 'Home-Brew' Problem: The ability to produce toxic chemical agents is so widespread—and the materials required are so universally accessible and ordinary—that a treaty banning chemical weapons will have *no effect at all* on small, non-governmental groups determined to manufacture such agents. Lethal chemical substances can be manufactured by virtually anyone with a good understanding of chemistry and access to commercially available hardware and ingredients.

In fact, the Japanese cult, Aum Shim Rikyo, produced the toxic nerve agent Sarin it used a few years ago in its terrorist attack on the subways of Tokyo in just such a fashion—in a room with dimensions of eight by fourteen feet. Suggestions that such terrorist incidents will be precluded in the future by a prohibition on governmental stocks of chemical weapons—a step said to eliminate the danger some chemical weapons might be stolen and used in an unauthorized fashion—ignore the reality of this "home-brew" option. The effect of the CWC on this option will be roughly that an international treaty foreswearing bank-robbery by governments would have on independent bank-robbers, which is to say *no beneficial impact whatsoever.*

As a practical matter, neither the limits imposed by the Chemical Weapons Convention's three schedules of chemicals nor the intrusive inspection regime mandated by the treaty would prevent terrorist groups like Aum Shim Rikyo from garnering chemical weapons capabilities. This would be true even were they to produce quantities of chemical agents deemed by the Chairman of the Joint Chiefs of Staff, General John Shalikashvili, sufficient to have a "militarily impact" (i.e., one agent ton).[1]

On this point, a declassified Defense Intelligence Agency report of February 1996 observed:

> "Irrespective of whether the CWC enters into force, terrorists will likely look upon CW as a means to gain greater publicity and instill widespread fear. The March 1995 Tokyo subway attack by Aum Shim Rikyo would not have been prevented by the CWC."

(2) The Problem of State-Support for Chemical Terrorism: A number of the leading state-sponsors of terrorism—notably, Libya, Syria, Iraq and North Korea—have indicated that they will not become parties to this treaty. As a result, *at least some* of those who provide infrastructural support, training and other assistance to terrorists will be free to do so in the chemical arena, as well as with respect to more traditional tools of the trade (e.g., Semetex plastic explosive, fertilizer-based bombs and other high-explosives).

What is more, since the Chemical Weapons Convention's limitations cannot be monitored with confidence, it is possible—perhaps even likely—that *at least some* of the nations known to have supported international terrorism who may become parties to the CWC (e.g., Russia, China, Iran and Cuba) will also be able to assist those interested in performing acts of chemical terrorism. If the Convention cannot ensure that such CWC counties are entirely out of the chemical weapons business, it certainly cannot assure that those with whom these countries deal covertly are out of that deadly business.

In the final analysis, of course, state-sponsorship of terrorism is itself a violation of international law. The idea that nations that routinely flout treaty obligations and international norms will behave differently if only a new convention is adopted is absurd. The problem is not a lack of laws or the "tools" they ostensibly provide to deal with such nations and behavior. The problem is, rather, the absence of will to use the available laws and tools to penalize state-sponsors of terrorism and curb their malevolence.

The Bottom Line

The threat posed by chemical terrorism is a real one. Every American should be concerned about this danger—and insistent that it be *seriously* addressed by the elected and appointed officials charged with providing for the common defense. The predictable effect of the Chemical Weapons Convention, however, will be to reduce concern out of a mistaken belief that the chemical threat from terrorists and others has been appreciably lessened.

What is needed now is *effective* action, not placebos like the Chemical Weapons Convention. The Antiterrorism Act demonstrates that the United States can adopt legislation addressing the threats posed by terrorists without being compelled to do so by international treaty. That and other antiterrorism statutes can and should be strengthened so as to impose severe criminal penalties on those who enable, help or execute such attacks.

The existing, relatively verifiable international ban on use of chemical weapons should be given teeth. U.S. intelligence efforts aimed at identifying, penetrating and neutralizing groups that might be inclined to engage in such activities need to be intensified and given substantially greater resources. And a vastly increased effort should be made to provide protection against chemical attacks not only to the U.S. military but also to the American government and people.

By contrast, a treaty that will, in all likelihood, have the effect of *reducing* investment in chemical defenses[2] and possibly diminishing valuable chemical-related intelligence collection by diverting efforts to the inspection and other activities mandated by the CWC,[3] may actually make the U.S. *more susceptible*—not less—to terrorists wielding CW. That could also be the case thanks to the treaty's obligation on states parties to transfer chemical manufacturing capabilities and defensive equipment to other member nations.[4] Should this obligation be honored by the U.S. and/or its allies, it will prove a recipe for intensified threats emanating from terrorist-sponsoring countries.

Finally, if—as virtually everyone agrees—chemical terrorism is likely to occur in the future, Senators would be well advised to think about whether they wish to be implicated by having voted for a treaty falsely advertised as a means to prevent such incidents, but that will be seen in retrospect to have done nothing on that score, and perhaps actually served to make them more likely.

NOTES:

[1] See the Center's Decision Brief entitled *Truth or Consequences #3: Clinton 'Makes a Mistake About It' in Arguing the CWC Will Protect U.S. Troops* (No. 97–D 21, 6 February 1997).

[2] *Ibid.*

[3] Douglas J. Feith, a leading critic of the CWC and founding member of the Center for Security Policy's Board of Advisors, has likened the Convention's intrusive inspection arrangements to those of a drunk looking under a streetlamp for keys lost elsewhere simply because the light was better there.

[4] See the Center's Decision Brief entitled *Truth or Consequences #5: The CWC Will Not Be Good For Business, To Say Nothing of the National Interest* (No. 97–D 27, 17 February 1997).

No. 97–D 38
6 March 1997

TRUTH OR CONSEQUENCES #8: THE CWC WILL EXACERBATE THE PROLIFERATION OF CHEMICAL WARFARE CAPABILITIES

(Washington, D.C.): In recent days, proponents of the Chemical Weapons Convention (CWC) have taken to dissembling about the clear meaning—and certain effect—of the treaty's Article XI. Article XI says, in part:

> "... States parties shall ... undertake to facilitate, and have the right to participate in, the fullest possible exchange of chemicals, equipment and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under this Convention;

What is more—as noted in the attached article in the current edition of the *New Republic* by Douglas J. Feith, a former Deputy Assistant Secretary of Defense responsible for chemical arms control during the Reagan Administration and founding member of Center Board of Advisors—Article XI goes on to say:

> "[States parties shall] not maintain among themselves any restrictions, including those in any international agreements, incompatible with the *obligations* undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes. ...

In addition, the CWC's Article X declares that "Every state party shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons."

'Poisons for Peace'

Any reasonable reading of this language shows that these provisions would require the United States (in the event it ratifies the Convention) to provide other states parties—including in all likelihood countries like Iran, Cuba, China and Russia—with state-of-the-art manufacturing capabilities and defensive technologies with direct relevance to chemical warfare activities.

After all, advanced facilities designed to manufacture pesticides, fertilizers and pharmaceuticals have the inherent capacity to produce chemical weapons in substantial quantities. Supplying potential adversaries with modern chemical defensive gear could equip them to engage in chemical war. It could, in addition, aid in efforts to defeat Western protective equipment. As the Center recently reported,[1] General Norman Schwartzkopf recently reacted with incredulity and horror when advised that the CWC, which he has endorsed, would have such effects.

Will the U.S. Violate the CWC?

Remarkably, the Clinton Administration and other CWC advocates are now claiming that the United States will not be compelled by this treaty to transfer to nations like Iran and Cuba chemical technology that will lend itself to diversion for military purposes. Presumably, they think they will not have to abide by the treaty's "obligation" to provide chemical defensive gear to Teheran or Havana, either. Maybe so. Still, it would be helpful to establish in advance—and formally codify in any resolution of ratification—precisely which of the CWC's provisions the United States will not observe. Such a step would do much to protect against the predictable postratification demand from Arms Control and Disarmament Agency and State Department lawyers to the effect that the United States must faithfully observe *all* of the treaty's articles and obligations.

Even If We Don't, Who Else Will Observe Export Controls?

As Mr. Feith observes, even if the United States *does* selectively adhere to the Convention and maintains export controls (not to say embargoes) against Iran and Cuba, however, "Articles X an XI will invite other countries to transfer dangerous

technology to them. Germany can be expected to invoke the treaty against any U.S. official who protests a planned sale of a chemical factory to, say, Iran." CWC advocates' assurances to the contrary notwithstanding, voluntary supplier control arrangements like the Australia Group are likely to fall victim to the CWC-blessed, trade *uber alles* appetites of such "friendly" nations.[2]

What is more, one can safely predict that the prospect of foreign competitors closing such sales will cause would-be American suppliers to seize upon these same provisions to argue that Washington has neither the right nor an interest in penalizing U.S. firms. This punch has been telegraphed by the emphasis the frantically pro-CWC Chemical Manufacturers Association has placed on the opportunity the Convention will create for increasing exports, *presumably to countries where such U.S. exports are not currently permitted*.

The Bottom Line

Douglas Feith's essay in the New Republic and an op.ed. by former Secretaries of Defense James Schlesinger, Donald Rumsfeld and Caspar Weinberger which appeared in the *Washington Post* yesterday[3] make one point crystal clear: CWC Articles X and XI are but two of the myriad reasons why the United States would be better off not being a party to this Convention.

The Senate would be well-advised to give these arguments careful consideration. Indeed, it would make sense to defer action on the treaty's ratification until after it had been in force for some period so as to evaluate whether these unintended and counterproductive effects are as serious in practice as in prospect they would appear likely to be. Either way, the Senate should resist the pressure to rubber-stamp this accord—pressure that will only intensify as treaty advocates realize that time is no more on their side than are the merits of the case.

NOTES:

[1] See the Center's Decision Brief entitled *Gen. Schwartzkopf Tells Senate He Shares Critics' Concerns About Details of the Chemical Weapons Convention* (No. 97–D 35, 27 February 1997).

[2] For more on German behavior unbecoming an ally, see the Center's *Watch on the Rhine* series, e.g., *Watch On The Rhine: German Efforts To Extort The Czechs, Forge Relations With Rogue States Are Ominous Indicators* (No. 96–C 127, 10 December 1996) and *Watch On The Rhine #2: Germany Proceeds With Bait-And-Switch Encouraging Sudeten Claims And Moves To Reschedule Syrian Debt* (No. 96–C 131, 19 December 1996).

[3] See the Center's Decision Brief entitled *Truth Or Consequences #7: Schlesinger, Rumsfeld And Weinberger Rebut Scowcroft And Deutch On The CWC* (No. 97–D 37, 5 March 1997).

CHEMICAL REACTION: A BAD TREATY ON CHEMICAL WEAPONS

[By Douglas J. Feith]

It would seem an indisputable good: a treaty to eliminate poison gas from Beijing to Buenos Aires. Yet the new Chemical Weapons Convention is having trouble in the Senate. And the more the treaty is debated, the deeper the trouble. In congressional hearings and public forums, even the treaty's champions have been forced to concede our severely limited ability to monitor compliance and enforce the ban.

As a result, the chief pro-treaty argument is no longer that the CWC, as the treaty is acronymically known, will abolish chemical weapons—for it obviously will not—but that the CWC is better than nothing. Administration officials, in their standard pitch to skeptical senators, now stress that the treaty is on balance worthwhile, if flawed, and rebuke critics for measuring the treaty against an unrealistic standard of "perfection." "The limits imposed by the CWC surely are imperfect," former National Security Adviser Brent Scowcroft and former CIA Director John Deutch contended in a recent *Washington Post* op-ed, "but ... it is hard to see how its imperfect constraints are worse than no constraints at all."

The it's-better-than-nothing argument has some potency. After all, no decent person wants poison gas to proliferate. Conservatives and liberals alike want to continue to destroy the entire U.S. chemical arsenal regardless of what happens to the CWC. So even a small step in the direction of global abolition would be valuable. But the treaty is not such a step. It is not better than nothing. Indeed, it would eliminate export controls that now impede rogue states from developing their chemical warfare capabilities. And, as many senators have discovered after examining the treaty's 186-page text, it would exacerbate the problem of poison gas proliferation around the world.

Article XI, for instance, states that parties to the treaty shall:

> Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.

What this means is that the United States must not restrict chemical trade with any other CWC party—even Iran and Cuba, both of which are CWC signatories. Similarly, CWC Article X obliges countries to share with other parties technology relating to chemical weapons defense. "Each State Party," the article says, "undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons."

Once Iran and Cuba ratify the treaty, our current export controls against them will surely be attacked as impermissible. Furthermore, those countries, upon joining the CWC, will claim entitlement to the advanced countries' "scientific and technological information" on how to protect their armed forces against chemical weapons. A crucial element of an offensive chemical weapons capability is the means to protect one's own forces from the weapons' effects.

Even if the U.S. government decides to maintain export controls against Iran and Cuba, Articles X and XI will invite other countries to transfer dangerous technology to them. Germany can be expected to invoke the treaty against any U.S. official who protests a planned sale of a chemical factory to, say, Iran. Indeed, Bonn could not only argue that its firms are allowed to sell chemical technology to Iran, but that they are actually *obliged* to do so, for Iran will have renounced chemical weapons by joining the CWC.

Articles X and XI are modeled on similar provisions in the Nuclear Non-Proliferation Treaty, called "atoms for peace," which even admirers acknowledge have spread the very nuclear technology the treaty was intended to contain. When Iran, Iraq and North Korea became signatories, they quickly gained access to this sensitive technology, ostensibly "for peaceful purposes." Yet it helped these outlaw states to develop their nuclear weapons programs. The CWC encourages the same abuse. Even Scowcroft and Deutch acknowledge "we must ensure that the CWC is not exploited to facilitate the diffusion of CWC specific technology ... even to signatory states." Alas, the perverse product of the CWC will be "poisons for peace."

Without the treaty, any country that wants to destroy its chemical weapons can do so, as is the United States. But, for the sake of declaring an unenforceable ban on chemical weapons possession, the CWC will undermine existing export controls that are, in fact, doing some good. It is a stunning, though not unprecedented, example of arms control diplomacy resulting in the opposite of its intended effect. The treaty brings to mind Santayana's definition of a "fanatic" as someone who redoubles his effort upon losing sight of his goal. As this absurdity impresses itself upon the Senate, that body appears intent on rejecting the agreement, thereby sending the administration and the world a beneficial message: arms control treaties should make us more secure, not less.

Douglas J. Feith oversaw chemical weapons arms control as Deputy Assistant Secretary of Defense for Negotiations Policy in the Reagan administration.

No. 97–P 50
10 April 1997

NEW NATIONAL POLL SHOWS OVERWHELMING PUBLIC OPPOSITION TO A FLAWED CHEMICAL WEAPONS CONVENTION

(Washington, D.C.): On 4–5 April 1997, the Luntz Research Companies conducted a national poll of 900 American adults concerning the controversial Chemical Weapons Convention (CWC). This poll was intended to ensure that public sentiments about the present treaty were properly understood—an objective made all the more necessary by earlier canvass performed by the Wirthlin Group. The Wirthlin poll suggested overwhelming support for a treaty that "would ban the production, possession, transfer and use of poison gas."

The Luntz Poll

This poll—which was sponsored by the Center for Security Policy, a non-partisan educational organization specializing in national defense and foreign policy issues—asked respondents whether they would support the CWC if it had certain troubling

characteristics and/or implications. The text of the questions and the responses follow (including a breakout of the views of the respondents who identified themselves as having voted Republican in the 1996 congressional election, since the treaty's fate will be decided by the Senate's GOP members): [1]

"President Clinton will ask the U.S. Senate to vote in the next few weeks for an arms control treaty called the Chemical Weapons Convention. It is supposed to ban the production and stockpiling of nerve gas and other chemical weapons worldwide. Let me read you two opinions about the treaty [order of following two paragraphs reversed in every-other question]:

"Treaty supporters point out that more than 160 countries have signed the Chemical Weapons Convention and believe it would create international pressure to get rid of such weapons—and punish those who keep them. They say that, even if it does not work perfectly, it will still be better than having no treaty at all.

"Treaty opponents—including four former Secretaries of Defense—believe there are serious problems with this treaty. If they are right, it will not rid the world of chemical weapons and may, instead, have even more undesirable effects. They believe that such problems could make the result of this Convention worse than having no treaty at all.

"With these views in mind, I would like to ask you whether you would strongly support, somewhat support, somewhat oppose or strongly oppose the Chemical Weapons Convention if it did the following things:

"1. If only the United States and its allies wound up obeying it while other, potentially hostile countries like Russia, China, Iran, Iraq or North Korea keep their chemical weapons?"

Poll Results

Total Sample	Republicans
15% Strongly support 16% Somewhat support	13% Strongly Support 14% Somewhat support
Total Support 31%	Total Support 27%
16% Somewhat oppose 44% Strongly oppose	16% Somewhat Oppose 50% Strongly Oppose
Total Oppose 60%	Total Oppose 66%
9% Other (No opinion/Don't know/Refused)	

"2. If it would result in the transfer of technology that could help countries like Iran, Cuba or China increase their ability to fight chemical wars?"

Poll Results

Total Sample	Republicans
9% Strongly support 10% Somewhat support	7% Strongly support 10% Somewhat support
Total Support 19%	Total Support 17%
17% Somewhat oppose 53% Strongly oppose	14% Somewhat oppose 62% Strongly oppose
Total Oppose 70%	Total Oppose 76%
11% Other (No opinion/Don't know/Refused)	

"3. If countries that violated its prohibitions went unpunished?"

Poll Results

Total Sample	Republicans
7% Strongly support 9% Somewhat support	8% Strongly support 8% Somewhat support
Total Support 16%	Total Support 16%
17% Somewhat oppose 56% Strongly oppose	15% Somewhat oppose 61% Strongly oppose
Total Oppose 73%	Total Oppose 76%
11% Other (No opinion/Don't know/Refused)	

"4. If it would authorize UN inspectors to go to any site in the United States, potentially without legal search warrants and potentially risking American business or military secrets?"

Poll Results

Total Sample	Republicans
10% Strongly support 12% Somewhat support	6% Strongly support 8% Somewhat support
Total Support 22%	Total Support 16%
19% Somewhat oppose 49% Strongly oppose	19% Somewhat oppose 57% Strongly oppose
Total Oppose 68%	Total Oppose 76%
11% Other (No opinion/Don't know/Refused)	

The CWC Does Have These Flaws

Thanks to the Senate Foreign Relations Committee under the leadership of its chairman, Senator Jesse Helms, there is now little doubt that the Chemical Weapons Convention awaiting Senate advice and consent is defective in each and every one of these respects. In the course of hearings the Committee held this week, an array of unimpeachable authorities highlighted the treaty's flaws with respect to its ineffectiveness, its technology transfer implications, its unenforceability and its ominous implications for American constitutional rights and businesses.

Such points were underscored by four former Secretaries of Defense (James Schlesinger, Donald Rumsfeld, Caspar Weinberger and Dick Cheney [in the form of a letter]), a former Director of the Arms Control and Disarmament Agency (Fred Ilke), a former UN Ambassador (Jeane Kirkpatrick) and two other, prominent former Defense Department officials (former Assistant Secretary of Defense Richard Perle and former Deputy Assistant Secretary of Defense Douglas Feith).

The Center anticipates with pleasure further hearings next week by the Foreign Relations Committee that are expected to address in greater detail the business, constitutional, intelligence and military issues associated with the Chemical Weapons Convention. It calls upon the Senate Armed Services Committee and Intelligence Committees to exercise their respective oversight responsibilities as well before the full Senate is asked to address this fatally flawed treaty. Such hearings can only serve to inform the debate about the CWC *and reinforce the need for it to be conducted in a rigorous and deliberate manner*—not the artificially constrained, superficial and disinformed consideration the Clinton Administration would prefer from the Senate.

NOTES:

[1] The Poll has a margin of error of plus or minus 3.3%. Subtotals reflect rounding of responses.

No. 97–D 46
27 March 1997

TRUTH OR CONSEQUENCES #9: CWC PROPONENTS DISSEMBLE ABOUT TREATY ARRANGEMENTS LIKELY TO DISSERVE U.S. INTERESTS

(Washington, D.C.): In recent weeks, a number of arguments have been advanced by proponents of the controversial Chemical Weapons Convention (CWC) to counter concerns expressed by the treaty's critics. The more important of these have been rebutted in previous papers in this *Truth or Consequences* series.[1] Several of the advocates' other misrepresentations appear, by comparison, to be relatively insignificant at this moment. To the extent that these statements encourage Senators to underestimate the problems with this Convention, however, it is important that the facts be clearly established with regard to these issues, as well.

Generically, the statements in question fall in the category of mechanics and other organizational aspects of the institutional arrangements established by the Chemical Weapons Convention. Of particular concern are the following points:

'The Laugh Test'—Ha!

In response to concerns that foreign governments might abuse the CWC's intrusive inspection provisions to acquire proprietary information from American companies, treaty advocates have claimed that the Convention provides a mechanism for screening out any requests for challenge inspections that are frivolous or abusive. Some have called this colloquially the "laugh test": They note that, as long as three-quarters of the Executive Council (excluding the requesting party and the party to be inspected) of the Organization for the Prohibition of Chemical Weapons (OPCW)—the new UN bureaucracy established in The Hague pursuant to this treaty—determine that an inspection is frivolous, the inspection can be foreclosed.

In practice, though, it is hard to see how this "laugh test" will be able to protect American companies, including many that have nothing to do with the manufacture of chemicals—to say nothing of any involvement in the production of chemical weapons.[2] After all, under the Chemical Weapons Convention, the following factors will be at work:

No Timely Basis for Declaring an Inspection Frivolous: According to the CWC's Article IX, paragraph 17, the OPCW's Executive Council will have just 12 hours after receipt of an inspection request to determine whether it is a frivolous or abusive one. Making such a determination will be problematic, however, since there is no requirement at that juncture for the challenging state party to identify the company or site to be inspected.

The nation requesting the challenge inspection is initially required only to identify the country in which the site is located, the port of entry to be used by inspectors and the nature of the concern as it relates to the treaty (Part X, Section B, paragraph 4). In fact, the challenging party does not have to name the exact site to be inspected *until 12 hours before inspectors are to arrive* at the point of entry (Part X, Section B, paragraph 6). This will be well *after* the time by which a ruling on frivolity must have been rendered.

No Opportunity to Object: There will, as a practical matter, be no way for a country (or one of its companies) to object that an inspection is frivolous. Not only will they not know of the precise inspection request in time to appeal to the Executive Council for relief but—in the unlikely event that they do learn of the location to be inspected prior to the Executive Council's timeframe for acting—*the party to be inspected is precluded by the treaty from participating in Council deliberations on the frivolousness of the request* (Article X, paragraph 17).

Little Chance of Prevailing in the Executive Council: Even if the United States had the requisite information to argue that a challenge inspection would be frivolous or abusive and was in a position to make that argument before the Executive Council, the composition of that body makes it unlikely that American objections would be respected by three-quarters of the members. In standard U.N. style, the 41 seats (held for 2-year terms) are apportioned regionally: 9 African nations, 9 Asian, 7 Latin American and Caribbean, 5 Eastern European, 1 rotating between Asian or Latin and Caribbean nations and 10 Western European or "other" nations (the United States is an "other" nation for the purposes of the CWC).

The United States has *neither a guaranteed seat on the Council nor a veto.* If standard U.N. practice applies, Washington will find it hard to muster a majority—let alone a super-majority of three-quarters of the membership—in support of its positions. What is more, the U.S. government will almost certainly be disinclined to object to inspections of any but the most patently sensitive government installations

on the grounds that doing so will create precedents and otherwise facilitate foreign efforts to impede valid inspections.

'No Go' on Adding Chemicals to the Schedules

In the wake of revelations that Russia has been covertly developing new classes of extremely toxic chemical weapons using ingredients deliberately left off the CWC's Schedules of Chemicals, treaty proponents have claimed that such chemicals could easily be added to the list. Unfortunately, such statements ignore two inconvenient facts:

Revealing Formulas for Chemical Weapons May Do More Harm than Good: In the event the United States learns the composition of a novel chemical agent—such as the Russian A–232 nerve agent—it is highly unlikely that the U.S. would seek to add these chemicals (or their precursors) to the Annex on Chemicals. After all, adding these compounds to the Annex means making public the chemical structure of the agent, thereby undermining efforts to limit the spread of chemical weapons expertise and knowledge, especially to rogue states. Since U.S. intelligence has low confidence in its ability under the CWC to detect illicit *Novichok*-related activities in Russia (assuming Russia ultimately decides to ratify the treaty) the costs of adding A–232 to the Annex on Chemicals—measured in terms of abetting chemical weapons proliferation—far outweigh any potential benefits.

Impediments to Adding Chemicals to the CWC's Schedules: Even if the United States should wish to add an agent or precursor to the Chemical Weapons Convention's schedule, the process is not the simple undertaking that proponents have led the public to believe. To the contrary, it is a long and complicated one.

For one thing, modifications to the Annex on Chemicals are not treated as formal "amendments" to the Convention. "Changes" to the Annex on Chemicals, including additions of new chemicals to the schedules, are treated as *administrative or technical* in nature. Consequently, special provisions and procedures apply (Article XV, paragraph 4): Any state party may propose a change to the Annex on Chemicals. The proposal is then sent to the Director-General, who forwards it to states parties and the Executive Council (Article XV, paragraph 5(a)).

Within 90 days of receipt, the Executive Council makes a recommendation to states parties on whether to accept or reject the proposal. The decision requires a simple majority of the Executive Council (Article XV, paragraph 5(c)). If the Council recommends that the proposal be adopted, it shall be considered approved *unless a state party objects within 90 days*, and the changes will enter into force 180 days after formal notification of its acceptance by State Parties (Article XV, paragraph 5(d) & (g)). If a state party objects, a decision on the proposal will be taken as "a matter of substance" by the Conference of State Parties at its next session (Article XV, paragraph 5(c)).

Conferences are only held on an *annual* basis, however. Even then, as the treaty puts it, decisions taken in such Conferences on "matters of substance should be taken as far as possible by consensus." If consensus is not possible, the Conference shall take a decision by a two-thirds majority of members present and voting (Article VIII, paragraph 18). Currently, this would entail garnering the support of 51 out of 70 state parties to the Convention.

To make this process less abstract, assume that the U.S. government (a) knows the composition of a new chemical weapons agent (or precursor) and (b) has reached inter-agency agreement to seek inclusion of the compounds in the Annex on Chemicals—*possibly over the objection of the Chemical Manufacturers Association*. The following is a scenario describing what would be entailed in effecting such a change:

- C-Day: The United States proposes the change to the OPCW's Director-General;
- C + 3 months: The Executive Council recommends acceptance of the U.S. proposal;
- C + 6 months: Russia, for example, objects.
- C + 6-to-18 months: An annual Conference is held to address, among other things, the proposed change. The United States musters the two-thirds votes necessary.
- C + 12-to-24 months: Change becomes effective—*up to 2 years after the initial request*.
- Alternatively, if the United States cannot enlist two-thirds of the states parties, the change will not be adopted.

It is important to note that, even if the CWC's proponents were correct in their representations that it will be easy to add chemicals to the treaty's Schedules, it is not clear that U.S. interests would be served by that arrangement, either. After all, addition of chemicals to Schedules 1 or 2, or relocation from Schedule 3 to Schedule 2 over Washington's objections could impinge significantly on the reporting and inspection burden imposed on U.S. companies and on American chemical export

opportunities. In theory at least, changes in the Schedules could broaden the treaty's scope so as to cover hundreds, possibly thousands, of additional companies. The Senate would have no say over such changes—even if they were to have the effect of significantly altering the CWC's costs.

House of Cards

The Chemical Weapons Convention requires states parties to declare whether they have chemical weapons and where they were produced *within 30 days after the treaty enters into force.* Since the preponderance of the CWC's reporting, regulatory and inspection arrangements hinge on *voluntary* declarations, unwillingness of parties to provide full and accurate reports of their capabilities will significantly diminish even the putative value of this Convention.

Of the countries that have so far ratified the Chemical Weapons Convention, not one has publicly affirmed that it has chemical weapons. While they will not be obliged to make a formal declaration until May 29th, the fact that not even India—which is widely believed to have chemical warfare capabilities—has intimated that it is a CW state bodes ill for the candidness of future disclosures. What is more, there is no reason to believe that China, Iran, Pakistan or other states judged to have active chemical warfare programs will acknowledge that reality. Even Russia, which has, under the now moribund U.S.-Russian Bilateral Destruction Agreement, affirmed that it is a chemical weapons state, has consistently understated and otherwise misrepresented the nature and size of its chemical arsenal.

It will only be possible to calibrate the gravity of this problem thirty-days after entry into force (or after countries like Russia, China and Iran) deposit their instruments of ratification. The United States would be well-advised to wait until that point to become a state party.

The Bottom Line

While these issues may appear relatively minor compared with the Chemical Weapons Convention's other major defects—notably, the United States' inability to monitor compliance with the treaty with even moderate confidence; its prospective costs in terms of Americans' constitutional rights and their businesses' proprietary information; and the danger that the CWC's Articles X and XI will actually exacerbate the chemical warfare threat while the treaty's placebo effect diminishes U.S. preparedness to deal with that threat. Still, the *truth* about these "mechanical" aspects of the treaty once again belie assurances provided by the CWC's proponents and further compound the down-sides associated with U.S. ratification of the present Convention.

NOTES:

[1] To obtain copies of these papers, please check the Center's Website (http://www.security-policy.org) or contact the Center at 202–466–0515.

[2] See *Truth or Consequences #5: The CWC Will Not Be Good for Business—To Say Nothing of the National Interest* (No. 97–D 27, 17 February 1997) for more information about the number and kinds of companies likely to fall under the purview of the CWC's reporting, regulatory and inspection regime.

No. 97–P 40
17 March 1997

THE WEEKLY STANDARD WEIGHS IN ON THE CWC: 'JUST SAY NO TO A BAD TREATY'

(Washington, D.C.): According to the *Washington Post*, the debate over the Chemical Weapons Convention (CWC) has become one "between conservatives." A variation on this theme is the claim that it is a debate "between internationalists and isolationists"—read, "good" conservatives who appreciate the importance of American power and leadership in the world and "bad" conservatives who believe the United States can safely walk away from international affairs and responsibilities.

Fortunately, the fraudulent nature of such characterizations is revealed in the attached editorial which leads the current issue of one of American conservatism's most influential periodicals—*The Weekly Standard*. As the *Standard* puts it:

> "What we really have here is the continuation of one of this century's most enduring disputes. In the first camp are the high priests of arms control theology, who have never met an international agreement they didn't like. In the second camp are those who take a more skeptical view of relying on a piece of watermarked, signed parchment for safety in a dangerous world. The case for ratifying the Chemical Weapons Convention is a triumph of hope over experience."

The magazine goes on to describe the debate over the CWC as one essentially between those who subscribe to "Reaganite internationalism" on the one hand and "the more starry-eyed Wilsonian version" on the other—a difference it says is rooted in the principle that "treaties must reflect reality, *not* hope." Perhaps even more important is its practical guidance to conservatives who would prefer to be in the former camp rather than the latter:

> "In the Reagan years, the treaty was mostly a sop to liberals in Congress, an attempt to pick up some points for an arms control measure at a time when Reagan was trying to win on more important issues like the defense buildup and the Strategic Defense Initiative. And President Bush pushed the treaty in no small part because he had disliked having to cast a tie-breaking vote in the Senate as Vice President in favor of building chemical weapons. Republicans today are under no obligation to carry out the mistakes of their predecessors.
>
> "In one respect, the debate over the Chemical Weapons Convention calls to mind the struggle for the party's soul waged in the 1970's between Kissingerian detente-niks on one side and the insurgent forces led by Ronald Reagan on the other. Back then, conservative Republicans like *Senate Majority Leader Trent Lott* knew without hesitation where they stood. They should stand where they stood before, foursquare with the ideas that helped win the cold war, and against the Chemical Weapons Convention." (Emphasis added.)

JUST SAY NO TO A BAD TREATY

The Weekly Standard/March 24, 1997.—The United States Senate must decide by April 28 whether to ratify the Chemical Weapons Convention. The press, the pundits, and the Clinton administration have treated the debate over the treaty as another in a series of battles between "internationalists" and "isolationists" in the new, post-Cold War era.

It isn't. What we really have here is the continuation of one of this century's most enduring disputes. In the first camp are the high priests of arms control theology, who have never met an international agreement they didn't like. In the second camp are those who take a more skeptical view of relying on a piece of watermarked, signed parchment for safety in a dangerous world.

The case for ratifying the Chemical Weapons Convention is a triumph of hope over experience. It is an attempt to reform the world by collecting signatures. Some of the most dangerous nations—Iraq, Syria, Libya, and North Korea—have not ratified the convention and, for all we know, never will. Some of the nations that are signatories, like Russia, China, Iran, and Cuba, are manifestly unreliable and are already looking for ways to circumvent the convention's provisions.

The convention's most prominent American defenders admit that the agreement is probably not verifiable. And it isn't. Chemical weapons can be produced in small but deadly amounts in tiny makeshift laboratories. The nerve gas used by terrorists to poison subway riders in Japan in 1995, for instance, was produced in a 14 ft.-by-8 ft. room. No one in the American intelligence community believes we would be able to monitor compliance with an international chemical weapons regime with any reasonable degree of confidence.

The *Washington Post* opines that these failings in the convention—the very fact "that the coverage of this treaty falls short and that enforcement is uncertain"—are actually arguments for ratifying it. Presumably, signature of a flawed treaty will make all of us work harder to perfect it.

Great.

At the end of the day, the strongest argument proponents of ratification can offer is that, whatever a treaty's manifest flaws, it is better to have one than not to have one. How could it be bad to have a treaty outlawing production of chemical weapons, no matter how full of holes it may be?

Well, actually, such a treaty could be worse than no treaty at all. We have pretty good evidence from the bloody history of this century that treaties like the Chemical Weapons Convention—treaties that are more hortatory than mandatory, that express good intentions more than they require any actions to back up those intentions can do more harm than good. They are part of a psychological process of evasion and avoidance of tough choices. The truth is, the best way of controlling chemical weapons proliferation could be for the United States to bomb a Libyan chemical weapons factory.

But that is the kind of difficult decision for an American president that the Chemical Weapons Convention does nothing to facilitate. Indeed, the existence of a chemical weapons treaty would make it *less* likely that a president would order such strong unilateral action, since he would be bound to turn over evidence of a violation to the international lawyers and diplomats and wait for their investigation and con-

currence. And as Richard Perle has recently noted, even after Saddam Hussein used chemical weapons in flagrant violation of an existing prohibition against their use, the international bureaucrats responsible for monitoring these matters could not bring themselves to denounce Iraq by name. In the end, it would be easier for a president to order an airstrike than to get scores of nations to agree on naming one of their own an outlaw.

The Chemical Weapons Convention is what Peter Rodman calls "junk arms control," and not the least of its many drawbacks is that it gives effective arms control a bad name. Effective treaties codify decisions nations have already made: to end a war on certain terms, for instance, or to define fishing rights. Because they reflect the will of the parties, moreover, the parties themselves don't raise obstacles to verification.

But treaties whose purpose is to rope in rogue nations that have not consented, or whose consent is widely understood to be cynical and disingenuous, are something else again. They are based on a worldview that is at best foolishly optimistic and at worst patronizing and deluded.

One of the important things separating Reaganite internationalism from the more starry-eyed Wilsonian version is the understanding that treaties must reflect reality, not hope. The Chemical Weapons Convention turns the clock back to the kind of Wilsonian thinking characteristic of the Carter administration. It is unfortunate that among its strongest backers are some prominent Republicans who have served in key foreign-policy positions. It is true that the origins of the Chemical Weapons Convention date back to the Reagan years, and the convention was carried to fruition by the Bush administration. But let's be candid. In the Reagan years, the treaty was mostly a sop to liberals in Congress, an attempt to pick up some points for an arms control measure at a time when Reagan was trying to win on more important issues like the defense buildup and the Strategic Defense Initiative. And President Bush pushed the treaty in no small part because he had disliked having to cast a tiebreaking vote in the Senate as vice president in favor of building chemical weapons. Republicans today are under no obligation to carry out the mistakes of their predecessors.

In one respect, the debate over the Chemical Weapons Convention calls to mind the struggle for the party's soul waged in the 1970s between Kissingerian detenteniks on one side and the insurgent forces led by Ronald Reagan on the other. Back then, conservative Republicans like Senate majority leader Trent Lott knew without hesitation where they stood. They should stand where they stood before, foursquare with the ideas that helped win the Cold War, and against the Chemical Weapons Convention.

No. 97–D 24
10 February 1997

TRUTH OR CONSEQUENCES #4: NO D.N.A. TESTS NEEDED TO SHOW THAT CLAIMS ABOUT REPUBLICAN PATERNITY OF CWC ARE OVERBLOWN

(Washington, D.C.): The Clinton Administration's hole card in its bid to persuade a Republican-controlled Senate to agree to ratification of the controversial Chemical Weapons Convention (CWC) appears to be the contention that the fathers of this treaty are Presidents Ronald Reagan and George Bush. The most recent and visible manifestation of this gambit was Secretary of State Madeleine Albright's visit to Mr. Bush in Texas last Saturday to secure a public statement of his support for the CWC.

The Administration's reasoning seems to be that Republican Senators will be willing to disregard myriad, serious concerns about the substance of this accord and vote for it simply because two Presidents of their party were involved in its negotiation. This tactic may be explained by the fact that any arms control for which Mr. Clinton is seen as principally responsible will be viewed with skepticism by more than a third of the Senate—a number sufficient under the Constitution to defeat treaties.[1] Still, the idea that demonstrating Republican paternity for a flawed agreement will be sufficient to secure its ratification suggests a low regard for GOP Senators and their sense of responsibility when it comes to the Senate's constitutional role as equal partner with the executive in treaty-making.

Not So Fast—This is Not Ronald Reagan's Treaty

This proposition is even more extraordinary since the degree of Republican responsibility for the treaty as it now stands is, in important ways, less than the Clinton Administration would have Senators believe.

For example, in Sunday's *New York Times*, a letter signed by a number of senior Reagan Administration officials takes strong exception to the suggestion that the President they served is implicated in the agreement ultimately signed in January 1993. The signatories are the following distinguished former office-holders: Secretary of Defense Caspar Weinberger, U.N. Ambassador Jeane Kirkpatrick, Arms Control and Disarmament Agency Director Eugene Rostow, Under Secretary of Defense Fred Ikle, Assistant Secretary of Defense Richard Perle and Deputy Assistant Secretaries of Defense Douglas Feith and Frank Gaffney.

This joint letter notes, in part:

> "*It is a distortion of recent history for supporters of the controversial new Chemical Weapons Convention to describe it as a product of the Reagan Administration, implying that the treaty has Ronald Reagan's imprimatur.*
>
> "*The Convention now being debated in the Senate is a very different document from the chemical weapons ban the Reagan Administration was negotiating.* The principal difference is that the Chemical Weapons Convention is hopelessly unenforceable. Cynical signatories like Iran, China, Russia and Cuba know that they could ratify it, make and store nerve gas in violation of it, almost certainly escape detection and certainly escape serious penalty.
>
> "The Clinton Administration has recently told Senate leaders in considerable detail that it has no intention of imposing meaningful punishment on treaty violators. It has also admitted that American intelligence cannot certify confidence in our ability to detect illegal production and stockpiling of chemical weapons in secretive countries, even in militarily significant quantities.
>
> "*We know that the Chemical Weapons Convention, in its current form, would never have been accepted as consistent with President Reagan's policies.* President Reagan was clearsighted and principled in his opposition to arms control treaties that could be violated with impunity." (Emphasis added.)

Changed Circumstances Have Significantly Altered President Bush's Treaty

What is more, there have been significant changes in a number of the assumptions, conditions and circumstances that underpinned the Bush Administration's judgment that the Chemical Weapons Convention was in the national interest. These changes have prompted several top Bush Administration officials—including Secretary of Defense Richard Cheney, Air Force Chief of Staff Merrill McPeak, Assistant Arms Control and Disarmament Agency Director Kathleen Bailey, Assistant to the Secretary for Atomic Energy Robert Barker and Principal Deputy Assistant Secretary of Defense J.D. Crouch—to urge that the present treaty be rejected by the Senate.[2]

An illustrative sample of the changes that have materially altered the acceptability, if not strictly speaking the *terms*, of the Chemical Weapons Convention include the following:

- Item: Russia's Evisceration of the Bilateral Destruction Agreement

The Bush Administration anticipated that a Bilateral Destruction Agreement (BDA) forged by Secretary of State James Baker and his Soviet counterpart, Eduard Shevardnadze in 1990, would critically underpin the Chemical Weapons Convention. As the Center for Security Policy observed last week,[3] this agreement obliged Moscow to provide a full and accurate accounting and eliminate most of its vast chemical arsenal. The BDA was also expected to afford the U.S. inspection rights that would significantly enhance the more limited arrangements provided for by the CWC.

These assumptions about the BDA have, regrettably, not been fulfilled. To the contrary, Russian Prime Minister Victor Chernomyrdin declared last year that the Bilateral Destruction Agreement has "outlived its usefulness" for Russia. What is more, it is now public knowledge that Russia is continuing to produce extremely lethal binary munitions—*weapons that have been specifically designed to circumvent the limits and defeat the inspection regime of the Chemical Weapons Convention.*[4]

- Item: On-Site Inspections Won't Prevent Cheating

When the Bush Administration finalized the CWC, there was considerable hope that intrusive on-site inspections would meaningfully contribute to the detection and proof of violations, and therefore to deterring them. Five years of experience with the U.N. inspections in Iraq—inspections that were allowed to be far more thorough, timely and intrusive than those permitted under this Convention—have established that totalitarian rulers of a closed society can successfully defeat such monitoring efforts.

In a 4 February 1997 letter to National Security Advisor Samuel Berger, Senate Foreign Relations Committee Chairman Jesse Helms noted that:

"Unclassified portions of the National Intelligence Estimate on U.S. Monitoring Capabilities [prepared after Mr. Bush left office] indicate that it is unlikely that the U.S. will be able to detect or address violations in a timely fashion, if at all, when they occur on a small scale. And yet, even small-scale diversions of chemicals to chemical weapons production are capable, over time, of yielding a stockpile far in excess of a single ton, [which General Shalikashvili described in congressional testimony on 11 August 1994 as a level which could, 'in certain limited circumstances ... have a military impact.'] Moreover, few countries, if any, are engaging in much more than small-scale production of chemical agent. For example, according to [the 4 February 1997] *Washington Times*, Russia may produce its new nerve agents at a 'pilot plant' in quantities of only '55 to 110 tons annually.'"

- Item: Facilitating Proliferation: 'Poisons for Peace'

In the years since the Bush Administration signed the Chemical Weapons Convention, it has become increasingly clear that sharing nuclear weapons-relevant technology simply with would-be proliferators simply because they promise not to pursue nuclear weapons programs is folly. Indeed, countries like North Korea, Iran, Iraq, India, Pakistan, Argentina, Brazil and Algeria have abused this "Atoms for Peace" bargain by diverting equipment and know-how provided under the Nuclear NonProliferation Treaty (NPT) to prohibited weapons purposes.

Unfortunately, commercial chemical manufacturing technology can, if anything, be diverted even more easily to weapons purposes than can nuclear research and power reactors. For this reason, recent experience with the NPT suggests that the Chemical Weapons Convention's Article XI—an article dubbed the "Poisons for Peace" provision—is insupportable. It stipulates that the Parties shall:

"Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this Convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes."

Such an obligation must now be judged a recipe for accelerating proliferation of chemical weapons, not restricting it. Even if the United States were to become a party to the CWC and choose to ignore this treaty commitment, other advanced industrialized countries will certainly not refrain from selling dual-use chemical manufacturing technology if it means making a lucrative sale.

- Item: U.S. Chemical Defenses Will be Degraded

When the Bush Administration signed the CWC, proponents offered assurances that the treaty would not diminish U.S. investment in chemical defenses. Such assurances were called into question, however, by an initiative unveiled in 1995 by the then-Vice Chairman of the Joint Chiefs of Staff, Admiral William Owens. He suggested cutting $805 million from counter-proliferation support and chemical and biological defense programs through Fiscal Year 2001. The rationale: Thanks to a perceived reduction in the chemical warfare threat to be brought about by the CWC, investments in countering that threat could safely enjoy lower priority.

This reduction would have deferred, if not seriously disrupted, important chemical and biological research and development efforts, and delayed the procurement of proven technologies. While the Owens initiative was ultimately defeated, it is a foretaste of the sort of reduced budgetary priority this account will surely face if the CWC is approved.

Changes in the military postures of key U.S. allies since the end of the Bush Administration raise a related point: Even if the United States manages to resist the sirens' song to reduce chemical defenses in the wake of the CWC, it is predictable that the already generally deplorable readiness of most allied forces to deal with chemical threats will only worsen. To the extent that the U.S. is obliged in the future to fight coalition wars, this vulnerability could prove catastrophic to American forces engaged with a common enemy.

- Item: Clinton Repudiates Bush Commitment to the JCS on R.C.A.s

At the insistence of the Joint Chiefs of Staff in 1992, President Bush signed an executive order that explicitly allowed Riot Control Agents (for example, tear gas) to be used in rescuing downed aircrews and in dispersing hostile forces using civilians to screen their movements against U.S. positions. The Clinton Administration has stated its intention to rescind this executive order once the CWC is ratified. The result could be to compel U.S. personnel to choose between using lethal force where RCAs would suffice or suffering otherwise avoidable casualties.

Worse yet, the Clinton reversal of the Bush Administration position on RCAs may mean that promising new defense technologies—involving chemical-based, non-lethal weapons (for example, immobilizing agents)—may be restricted or prohibited by this Convention. If so, U.S. forces may be denied highly effective means of prevailing in future conflicts with minimal loss of life on either side.

The Bottom Line

The foregoing considerations make clear that Senators should consider the Chemical Weapons Convention carefully on its merits. They should, in particular, resist the Clinton Administration's pressure to ignore this treaty's flaws out of some sense of duty to earlier administrations. A treaty that has little in common with Ronald Reagan's approach to arms control and that has undergone material changes in circumstances since George Bush's presidency must be seen for what it is: a defective agreement that is unworthy of the intensive—and increasingly misleading—campaign being mounted for its ratification by the current resident of the White House and his team.

NOTES:

[1] Presumably, it is for this reason, that the administration has strenuously resisted demands that major changes it has been negotiating to the Conventional Forces in Europe and Anti-Ballistic Missile Treaty be submitted for the Senate's advice and consent.

[2] See the Center's Transition Brief entitled *Here We Go Again: Clinton Presses Anew For Senate Approval of Flawed, Unverifiable, Ineffective Chemical Weapons Treaty* (No. 97–T 5, 8 January 1997).

[3] See the Center's Decision Brief entitled *Truth or Consequences #3: Clinton 'Makes a Mistake About It' in Arguing the CWC Will Protect U.S. Troops* (No. 97–D 21, 6 February 1997).

[4] See the Center's Decision Brief entitled *Russia's Covert Chemical Weapons Program Vindicates Jesse Helms' Continuing Opposition to Phony CW Arms Control* (No. 97–D 19, 4 February 1997).

Remarks by President Bill Clinton and Others at White House, April 4, 1997 Chemical Weapons Convention Event

ALSO SPEAKING: VICE PRESIDENT AL GORE, SECRETARY OF STATE MADELEINE ALBRIGHT, SECRETARY OF DEFENSE WILLIAM COHEN, FORMER SECRETARY OF STATE JAMES BAKER, FORMER SENATOR NANCY KASSEBAUM BAKER (R–KS)

Vice President GORE. Please. Be seated, ladies and gentlemen.

On behalf of the President it is my pleasure to welcome all of you on this beautiful spring day to the White House.

I'm very pleased to be here this morning with a most distinguished group of Americans joining the President here today: the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, our U.N. Ambassador, other members of the Cabinet and the administration; leaders from the legislative branch, Senators Biden and Levin and others; former government officials and current ones, Democrats and Republicans; wise patriots like General Colin Powell and former Secretary of State Jim Baker; Paul Nitze, other strategists; Ed Rowny; leaders in our strategic thinking in America over the years; former Senators Warren Rudman and Nancy Kassebaum Baker and David Boren; General John Shalikashvili and other military leaders; and, I'm sure, a bunch of others that I may have accidentally overlooked, but this is quite a distinguished bipartisan gathering—Dick Holbrooke, the negotiator of the Bosnia accord, and quite a few others.

You look at this group, and you go down the list, and you see individuals—men and women in different political parties, different points on the ideological spectrum—and you think immediately of dozens of important issues that have faced America where these individuals have argued with one another and been on different sides, passionately.

But on this issue, every single one of them is in agreement because, looking at this from whatever point of view you want to look at it, these individuals have concluded this is very definitely in the best interest of the United States of America. The time has come to ratify the Chemical Weapons Convention.

From the killing fields of the Ardennes in World War I to those of Halabja in Iraq, to Tokyo's subways and beyond, over all that distance, chemical weapons have traced an insidious path of unspeakable horror through our century. It's been a long time since World War I. Allow me to say that the oral history of my own family teaches lessons about what happened there. My father's older brother went from the hills of middle Tennessee as a teenager to join the Army and served with our troops in World War I in Europe. He came home a broken man because he had been a victim of poison gas. He lived for a long time—coughing, wheezing, limited in his ability to move around. He had one lung removed and part of another. And his life—he made a lot of his life, but it was very nearly ruined by that experience.

So many millions of families around the world came into personal contact with the horrors of poison gas in World War I that the world arrived at a rare moral consensus that chemical weapons ought to be forever banned. And it lasted for a while, but then that consensus started to erode. And when some started using these terrible weapons again, as is always the case when memories had faded, the world said, "Now, wait a minute, how should we react to that?" Those who focused on it clearly spoke up and said, "We've got to react strongly, this is awful, this should be condemned." Others were busy with other things, and it's a natural process.

But now the world has focused again. The time has come to reestablish that moral consensus. And as always, the world looks to the United States of America for leadership, and we provided leadership, starting in former President Reagan's administration when this was begun. And then it was concluded in the negotiating phase in former President Bush's administration. And now, in President Clinton's administration, the cup passes to the Congress.

But our whole country has a chance to say to the Congress: Do the right thing. Now is the moment, because now, on the cusp of a new century, we can join in common cause to end this scourge. As we've done with pride and conviction so many times this past century, we can once again here in the United States lead the international community on a new path toward safety and security. This is an opportunity to help ensure that the 20th century is the first and last century in which our soldiers and our citizens will live under the dangerous clouds of the threat posed by chemical weapons. This is our chance to act in a manner befitting a strong nation and a wise people, so that we can say confidently to future generations that here in our time, we came together across party lines, and we did everything we could to control these weapons of mass and inhumane destruction. On this we must be clear, bold, and united.

Now it is my pleasure to introduce the individual in the President's Cabinet who is leading the charge on behalf of the President to seek confirmation of this important agreement: our Secretary of State, Madeleine Albright.

Secretary ALBRIGHT. Thank you very much, Mr. Vice President.

The presence of so many distinguished backers of the treaty here today demonstrates support that is broad, bipartisan, and growing.

There are some people who say the treaty is flawed because we cannot assume early ratification and full compliance by outlaw states. This is like saying that we should not pass a law against drug smuggling, because we cannot assume full compliance by drug traffickers. We cannot allow the rules of the international system to be set by the enemies of the international system.

As Secretary of State and as an American, I'm also concerned about our leadership in the fight to stop the spread of weapons of mass destruction. If the Senate were to reject the CWC, we would be isolated from our allies and on the same side as countries such as Libya and Iraq. The problem countries will never accept a prohibition on chemical weapons if America stays out and keeps them company and gives them cover. We will not have the standing to mobilize our allies to support strong action against violators if we ourselves refuse to join the treaty being violated.

The time for Senate action is now. The treaty has been pending in the Senate for 180 weeks.

It's been the subject of more than a dozen hearings and hours of briefings. And we have supplied more than 1,500 pages of testimony, reports, correspondence and answers for the record concerning it.

In summary, this treaty is a test of our ability to follow through on commitments. It reflects existing American practices, and advances enduring American interests. It is right and smart for America, and it deserves the Senate's timely support.

Thank you. (Applause.)

Secretary COHEN. Thank you very much, Secretary Albright. As we have all seen, you continue to throw the ball straight and hard and right down the middle. (Laughter.)

Ratification of the Chemical Weapons Convention, I believe, is indeed a critical test of American leadership, but as Secretary of Defense, I want to urge the Senate to ratify the treaty for another important reason. Quite simply, this treaty is critical to the safety of our soldiers, sailors, airmen and Marines. The Chemical Weapons Convention is needed to protect and defend the men and women in uniform who protect and defend our country. We live in a world today in which we find regional aggressors, third-rate armies, terrorist groups and religious cults who may view lethal chemical agents as the cheapest and most effective weapon against American troops in the field. Our troops, in fact, may be in greater risk of a chemical attack today than in the past. Because America's forces are the world's most powerful, adversaries are more likely to try to challenge us asymmetrically through the use of nonconventional means such as chemical weapons.

So, to protect against this threat, we've developed an array of tools, ranging from protective suits to theater missile defenses. By limiting the chemical weapons threat, the CWC strengthens these tools and our ability to protect our troops and our nation from chemical attack. And that's why our military leaders who stand before us stand firmly behind America's ratification of this treaty. They understand that we can far better protect our nation working to abolish chemical weapons from the world rather than stockpiling and threatening to use them. They believe, as I believe that ratification of the CWC is critical to America's security. And I am pleased to introduce someone who has played a major role in negotiating this vital treaty, former Secretary of State Jim Baker. (Applause.)

Mr. BAKER. Mr. President, Mr. Vice President, distinguished guests, ladies and gentlemen: As we've heard, the Chemical Weapons Convention was negotiated under Presidents Ronald Reagan and George Bush.

The argument that some have used against ratification of the CWC is that it would somehow undermine our national security. Frankly, the suggestion that George Bush and Ronald Reagan would negotiate a treaty detrimental to this nation's security is outrageous.

Ratification of the CWC is at its core really a test of American leadership. If we fail to ratify this treaty, we will forego the influence we would otherwise have had in the continuing international effort against chemical weapons. If we fail to ratify this treaty, we will postpone indefinitely any progress on a ban against the equally dire threat of biological weapons. And if we fail to ratify, we will also isolate ourselves from our friends in the international arena, and we will, as the Secretary of State has just told you, throw in our lot with the rogue states which oppose this treaty.

But most importantly of all, my friends, if we fail to ratify the CWC, we will be sending a clear signal of retreat from international leadership, both to our allies and to our enemies alike. This is a message we should never, never send. Instead, we should send another message; we should send a message that the United States of America is a nation aware of our international responsibilities and a nation confident enough to assume them. In a word, we should send a message that America is prepared to continue to lead. And that is why all of us are here—Republicans and Democrats alike. And that is why the Senate should immediately ratify the Chemical Weapons Convention.

Now its my distinct privilege to introduce to you my kissin' cousin, the former Senator from Kansas, Nancy Kassebaum Baker. (Laughter, applause.)

Ms. BAKER. Thank you. Mr. President, Mr. Vice President, and to distinguished friends who are gathered here today, many of whom played a key and important role over the years in the negotiations and debates regarding the Chemical Weapons treaty, I'm sure that I would be expressing on the part of most of the American people a deep sense of appreciation and gratitude for your dedication which has brought us to this point today.

As a former member of the Senate Foreign Relations Committee for 16 years who strongly supported President Reagan's efforts to negotiate this treaty, President Bush's efforts to complete it, and President Clinton's efforts to ratify it, I can attest to the strong bipartisan support for this convention over the years.

Our success in meeting the challenge of stopping the spread of chemical weapons will depend on our vigilance. No treaty can have perfect verification. No treaty will be 100 percent successful in eliminating a threat. But if we hold out for perfection, we will squander the opportunity, as has been said by all the speakers, to join with a growing number of nations to deal now with this serious challenge to our security.

Over the 4 years that the convention has been before the Senate, valid concerns have been raised. There have been 13 hearings to date, many questions answered, and numerous reports written. While to a foreign observer our internal debate may seem confusing, it is in fact the essential ingredient to forging a consensus. Our democratic traditions provide the foundation on which U.S. Leadership is built.

I must commend President Clinton and Senate Majority Leader Trent Lott for the intense and productive negotiations which have been undertaken to this date to address the concerns that have been raised. I'm confident that these efforts will lead to a successful ratification of the Chemical Weapons Convention, and continued U.S. Leadership on this issue.

As David Boren, Brent Scowcroft, and myself recently wrote the President, and I quote, "We believe that the real issue at stake is American leadership, not only on this critical issue of chemical weapons proliferation, but also with ramifications far broader—on a far broader array of issues which directly affect our interests.

It is for these reasons that we urge you, Mr. President, not to waiver in your efforts to win ratification in the U.S. Senate."

It's now my honor to introduce a colleague who came at the same time as I did to the U.S. Senate, in 1978. We've worked together on many issues. He now is the president of Oklahoma University. But his leadership over the years in the U.S. Senate has been central to our efforts to forge bipartisan consensus on such important issues as the one before us today. David Boren.

Mr. BOREN (Former U.S. Senator (D–OK)). Thank you very much, Senator Kassebaum Baker, and it's a privilege to have another opportunity to work with you on an important bipartisan cause for our country.

During the 6 years that I chaired the U.S. Senate Intelligence Committee, time and time again our intelligence experts came before our committee to warn us that the greatest threat to our national security and to the next generation is the spread of weapons of mass destruction, including chemical weapons. This threat is intensified as these weapons become available to some of the least responsible nations in the world and to the terrorist groups which they shelter.

The decision we must soon make about the ratification of the Chemical Weapons Convention is one of those decisions on which history will judge us, and I am proud to stand with those gathered today to urge its ratification.

At the end of World War II, America faced a new world situation with the beginning of the cold war. We provided as a nation the crucial leadership through NATO, the Marshall Plan and other measures which helped make this world a safer place for decades. Now, almost exactly 50 years later, with the end of the cold war, we once again face a totally new world situation, with growing fragmentation and the spread of dangerous weapons to rogue states. American leaders in the 1940's met the test of history. Members of the U.S. Senate in the 1990's must not fail it.

Congress, as has been said, has had 13 major hearings on the convention for over 3 years. The issues are clearly understood. It is time to act.

With the treaty due to take effect very soon, the United States will make a mistake which we will long regret if we sit on the sidelines with states we have criticized as being dangerous and irresponsible.

We will lose our ability to play a major role in assuring compliance with the weapons ban. But above all, we will lose the moral basis of our leadership on an issue of urgent importance to our national security.

As has been said, this is not a partisan issue. This is a question of American leadership, as has been said by Secretary Baker. This is a question of meeting our responsibility to the next generation. Earlier leaders did not fail our generation, and we must not fail those who will follow us.

And now it is my great privilege to present one who has called us as a nation to meet our leadership responsibilities on this vital issue. His effort deserves our strong bipartisan support. Ladies and gentlemen, the President of the United States. (Applause.)

President CLINTON. Thank you very much. Thank you.

Thank you very much, Senator Boren, for your words and your presence here today. We were laughing before we came out here—Senator Boren and I started our careers in politics in 1974 together, but he found a presidency that is not term-limited—(laughter)—and I want to congratulate him on it.

Mr. Vice President, Secretary Albright, Secretary Cohen, Secretary Baker, Senator Nancy Kassebaum Baker, General Shalikashvili. Let me thank all of you who have spoken here today for the words you have said, for you have said it all. And let me thank all of you who have come here to be a part of this audience today to send a clear, unambiguous, united message to America and to our Senate. I thank Senator General Colin Powell and Senator Warren Rudman; former arms negotiators Paul Nitze, Edward Rowny and Ken Adelman; so many of the Congressmen who have supported us, including Senator Biden and Senator Levin, who are here; the truly distinguished array of military leaders; leaders of businesses, religious organizations, human rights groups; scientists and arms control experts.

Secretary Baker made, I thought, a very telling point, which others made as well: This is, in the beginning, a question of whether we will continue to make America's leadership strong and sure as we chart our course in a new time. We have to do that, and we can only do that if we rise to the challenge of ratifying the Chemical Weapons Convention.

We are closing a 20th century which gives us an opportunity now to forge a widening international commitment to banish poison gas from the Earth in the 21st century. This is a simple issue at bottom, even though the details are somewhat complex. Presidents and legislators from both parties, military leaders and arms control experts have bound together in common cause because this is simply good for the future of every American.

I received two powerful letters recently calling for ratification. One has already been mentioned that I received from Senator Nancy Kassebaum Baker, Senator Boren, and former national security advisor General Brent Scowcroft. The other came from General Powell, General Jones, General Vessey, General Schwarzkopf, and more than a dozen other retired generals and admirals, all of them saying, as one, America needs to ratify the Chemical Weapons Convention, and we must do it before it takes affect on April 29th.

Of course, the treaty is not a panacea. No arms control treaty can be absolutely perfect, and none can end the need for vigilance. But no nation acting alone can protect itself from the threat posed by chemical weapons. Trying to stop their spread by ourselves would be like trying to stop the wind that helps carry their poison to its target.

We must have an international solution to a global problem.

The convention provides clear and overwhelming benefits to our people. Under a law Congress passed in the 1980's, we are already destroying almost all our chemical weapons. The convention requires other nations to follow our lead, to eliminate their arsenals of poison gas, and to give up developing, producing and acquiring such weapons in the future.

By ratifying the Chemical Weapons Convention, as Secretary Cohen said, we can help to shield our soldiers from one of the battlefield's deadliest killers. We can give our children something our parents never had—broad protection against the threat of chemical attack. And we can bolster our leadership in the fight against terrorism, of proliferation all around the world.

If the Senate fails to ratify the convention before it enters into force, our national security and, I might add, our economic security will suffer. We will be denied use of the treaty's tools against rogue states and terrorists; we will lose the chance to help to enforce the rules we helped to write, or to have American serve as inter-

national inspectors—something that is especially important for those who have raised concerns about inspection provisions of the treaty.

Ironically, if we are outside this agreement rather than inside, it is our chemical companies, our leading exporters, which will face mandatory trade restrictions that could cost them hundreds of millions of dollars in sales.

In short order, America will go from leading the world to joining the company of pariah nations that the Chemical Weapons Convention seeks to isolate. We cannot allow this to happen. The time has come to pass this treaty, as 70 other nations already have done.

Since I sent the Chemical Weapons Convention to the Senate 3½ years ago, there have been mom than a dozen hearings, more than 1,500 pages of testimony and reports. During the last 3 months, we have worked very closely with Senate leaders to go the extra mile to resolve remaining questions in areas of concern. I want to thank those in the Senate who have worked with us for their leadership and for their good-faith efforts.

Ratifying the Chemical Weapons Convention, again I say, is important both for what it does and for what it says. It says America is committed to protecting our troops, to fighting terror, to stopping the spread of weapons of mass destruction, to setting and enforcing standards for international behavior, and to leading the world in meeting the challenges of the 21st century.

I urge the Senate to act in the highest traditions of bipartisanship and in the deepest of our national interests.

And let me again say, the words that I have spoken today are nothing compared to the presence, to the careers, to the experience, to the judgment, to the patriotism of Republicans and Democrats alike and the military leaders who have gathered here and who all across this country have lent their support to this monumentally important effort.

We must not fail. We have a lot of work to do, but I leave here today with renewed confidence that together we can get the job done.

Thank you. God bless you. And God bless America. (Applause.)

False Promises, Fatal Flaws: The Chemical Weapons Convention

Prepared by Empower America *as part of its Ideas for the Next Century—International Leadership Series, March 1997*

FALSE PROMISES, FATAL FLAWS: THE CHEMICAL WEAPONS CONVENTION (CWC)

*"The CWC is not global since many dangerous nations have not agreed to join the treaty regime. * * * The CWC is not effective because it does not ban or control possession of all chemicals that could be used for lethal weapons purposes. * * * The CWC is not verifiable as the US intelligence community has repeatedly acknowledged in congressional testimony."*

—From a letter to Senator Trent Lott signed by Former National Security Advisor William P. Clark, Former Secretaries of Defense Caspar Weinberger and Richard Cheney, and Former US Ambassador to the UN Jeane Kirkpatrick

The Chemical Weapons Convention (CWC) purports to ban the development, production, stockpiling, and use of chemical weapons, as well as the destruction of existing arsenals and weapons production facilities. Various degrees of controls on and prohibitions against production of and trade in certain chemicals are to be phased in over several years. The alleged benefits of the CWC, however, are illusory and obscure serious harm to US strategic, economic, and civil interests.

- While claiming to reduce and even eliminate chemical arsenals, the CWC actually does nothing to remove such weapons from those states most likely to use them—including Iraq, Libya, North Korea, and Syria.
- The CWC creates a mechanism that could lead to the proliferation of chemical weapons technology among parties and their client states.
- The CWC's enforcement provisions would impose serious costs and economic risks on US businesses, even those not directly involved in defense industries, and pose serious challenges to rights protected by the Constitution.

THE EMPTY THREAT OF "BEING LEFT BEHIND"

"[T]he chemical weapons problem is so difficult from an intelligence perspective that I cannot state that we have high confidence in our ability to detect non-compliance, especially on a small scale."

—Former Director of Central Intelligence James Woolsey

The CWC is due to enter into force on April 29, 1997. The dire warnings of the Clinton Administration and others that failure to ratify the Convention before that date will exclude the US from involvement in the initial organization of the CWC's institutions and subject US companies to trade sanctions are misleading.

- Failure to participate in the organization of an inherently ineffective regime is of questionable concern.
- Failure of the US to join the CWC would inhibit trade only to a limited degree. Even the administration's estimate of potential losses to US companies totals only $600 million annually, far less than the cost CWC compliance.

SELECTED CHEMICAL WEAPONS PROGRAMS

Countries with declared programs: **Iraq, Russia, US**

Countries with undeclared programs: **China, Egypt, India, Iran, Iraq, Israel, Libya, North Korea, Pakistan, Syria, Taiwan, Vietnam,** Ethiopia, Myanmar/Burma

*NOTE: Countries in **bold** either have or are developing ballistic missiles.

FALSE PROMISES

"The CWC would likely have the effect of leaving the United States and its allies more, not less, vulnerable to chemical attack. It could well serve to increase, not reduce, the spread of chemical weapons manufacturing capabilities. Thus we would be better off not to be party to it."

—James Schlesinger, Caspar Weinberger, and Donald Rumsfeld, Former Secretaries of Defense

The Clinton Administration and other supporters of the CWC acknowledge that the Convention is "no panacea" in addressing the threat of chemical weapons. The truth, however, is that the CWC is far more ineffective than supporters contend.

- Several of the states most likely to pose a chemical weapons threat, including Iraq, North Korea, Libya, and Syria, have no intention of becoming parties to the CWC. Even states that have signed the CWC, most notably Russia and China, are unlikely to respect its provisions—least of all rid themselves of their current arsenals—if they indeed ratify it. Russia alone has already developed chemical programs designed to evade inspections or utilize agents not addressed by the Convention.
- The CWC does not ban most chemical weapons agents, because most agents are used extensively for non-military purposes. Indeed, chemical weapons remain the easiest weapons of mass destruction to develop and produce in significant quantities without detection, largely due to the widespread non-military use of their ingredients.
- US intelligence officials have acknowledged that significant difficulties exist in detecting covert chemical weapons programs. As a National Intelligence Estimate concluded in 1993, "The capability of the intelligence community to monitor compliance with the Chemical Weapons Convention is severely limited. * * * The key provision of the monitoring regime—challenge inspections at declared sites—can be thwarted by a nation determined to preserve a small, secret program using the delays and managed access rules allowed by the Convention."
- Procedures exist for producing ready-to-use chemical agents within so short a time that inspections prior to a conflict or crisis could be meaningless. A recent Pentagon report details Russia's development of chemical agents that could be produced in a matter of weeks.
- The CWC's provisions for punishing violators are exceptionally vague. The UN Security Council would be charged with addressing violations. In addition to the traditional ineffectiveness of sanctions and other punitive actions ordered by the Security Council, Russia and China could be expected to limit or veto outright punishment of their client states and allies.
- While the Chemical Manufacturers Association (CMA) supports the CWC, it represents only a small fraction of the companies that would be affected by the Convention. Indeed, thousands of companies potentially affected are not even aware of their exposure to CWC provisions.
- The Chemical Manufacturers Association's support is likely based on hopes for increased trade in dangerous chemicals due to the elimination of restrictions in accordance with the materiel and technology sharing mandated by the Convention.

FATAL FLAWS

*"The United States is abandoning * * * one of the most effective deterrents to chemical use against itself and its allies: the right to an extant and mature offensive chemical weapons program. * * * [T]he Senate should understand that it will contribute to the weakening of deterrence, not to its strengthening, by eliminating the ability of the United States to respond in kind to chemical attack. A weakening of deterrence means * * * that American * * * soldiers are more, not less, likely to be attacked with chemical weapons."*

—J.D. Crouch, Former Principal Deputy Assistant Secretary of Defense

Beyond the ineffectiveness of the CWC in meeting its purported goals, its provisions would actually do great harm to the strategic and economic interests of the US.

- The CWC requires materiel and technology sharing with states that would otherwise be denied such assistance; the CWC would actually spread chemical weapons know-how to parties, such as China and Iran, and their client states. Similar arrangements regarding nuclear technology have contributed to the development of nuclear weapons programs across the globe.
- The CWC would require the US to destroy its entire chemical weapons arsenal, while leaving untouched the substantial arsenals of rogue states like Iraq, Libya, North Korea, and Syria, which are not party to the treaty. Even potential parties such as Russia have persistently violated chemical weapons reduction requirements of past agreements and are already engaged in programs designed to defy and evade the CWC.
- The US relies upon a strategy of retaliation to deter chemical attacks. The CWC, however, would limit US options to costly conventional operations or a

nuclear strike. Contrasted with a limited in-kind chemical-for-chemical exchange, these two options are politically difficult to pursue and therefore not very credible deterrents to a would-be aggressor.

- As interpreted by the Clinton Administration and Congressional backers of the Convention, the CWC would prohibit the use of non-lethal chemicals such as tear gas, leaving US troops with no effective response other than bullets to threatening crowds or the use of civilian shields—such as occurred in Somalia.
- Almost 8,000 US businesses, even non-defense industries utilizing potential chemical agents, would have to shoulder significant reporting and other compliance costs and expose themselves to the well-precedented risk of industrial espionage during inspections. Realistic yearly costs related to CWC compliance run as high as $200 million in government expenditures and perhaps billions in costs to businesses. In addition, Russia has already begun to link its ratification of the CWC to billions of dollars in economic assistance, some of which would be only tangentially—if at all—connected to compliance with the Convention.
- The inspection provisions of the CWC could lead to serious violations of the Constitution's protection of due process and privacy as international teams attempt to investigate private US companies and their employees.
- The well-precedented tendency of governments to ignore or downplay violations of arms control agreements so as to preserve the overall regimes, as well as the extensive political and diplomatic capital that has been invested thus far in the CWC, are likely to inhibit enforcement of the Convention and the pursuit of more effective initiatives.

Letters and Other Material Submitted in Support of Ratification of the Chemical Weapons Convention

AMERICAN EX-PRISONERS OF WAR,
Watauga, Tennessee,
February 20, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC 20510.

DEAR SENATOR LOTT: As National Commander of the American Ex-Prisoners of War, I wish to express my support for the ratification of the Chemical Weapons Convention Treaty. This is an important step in reducing the price that Americans who serve their country on the field of battle must pay in defense of our freedom. Those captured in prior wars know all too well the enduring price of those sacrifices even without chemical weapons and their life-long disabling consequences.

While there may, of course, be some risk in adopting this treaty, Americans must play a leadership role in international efforts to reduce this price to the extent possible. These risks have been thoroughly weighed by Presidents Reagan, Bush and Clinton, and the Joint Chiefs of Staff, and all have supported this treaty.

Sincerely,

WM. E. "SONNY" MOTTERN,
NATIONAL COMMANDER

NEWS RELEASE,
Veterans of Foreign Wars of the U.S.,
Washington, DC 20002.

FOR RELEASE: VFW SUPPORTS CHEMICAL WEAPONS TREATY

WASHINGTON, DC, FEBRUARY 13, 1997.—The Veterans of Foreign Wars today announced its support for ratification of the Chemical Weapons Convention Treaty which would halt the manufacture, stockpiling and use of chemical weapons.

VFW Commander in Chief James E. Nier, of El Paso, Texas, in calling for support for the treaty's ratification said, "The treaty will reduce world stockpiles of such weapons and will hopefully prevent our troops from being exposed to poison gases as we believe happened in the Gulf War."

Noting the support of three Presidents for the treaty—it was initiated by President Reagan, negotiated by President Bush, and submitted for ratification by President Clinton—and that the treaty is supported by the Joint Chiefs of Staff, Nier said the VFW would support efforts calling for the treaty' ratification.

"There are risks in adopting this treaty. However, the Chairman of the Joint Chiefs of Staff believes the advantages outweigh the shortcomings and Defense Secretary Cohen has assured me these risks can be greatly reduced with the ongoing improvements in the defense posture of our troops against chemical warfare," Nier said.

The VFW leader noted that, "As combat veterans we support this treaty, but in the future if we perceive that this treaty puts our country and our troops at a disadvantage, we will be out front and lead the way in calling for withdrawal from the treaty."

PROPOSED RESOLUTION NO. 97–TS4
Reserve Officers Association of the United States,
Washington, DC.

CHEMICAL WEAPONS CONVENTION

WHEREAS, the Chemical Weapons Convention (CWC), which would ban the development, production, and stockpiling, as well as the use and preparation for use of chemical weapons was negotiated by both the Reagan and Bush administrations; and

WHEREAS, 65 countries, including virtually all of our friends and allies, have already ratified the CWC; and

WHEREAS, under a law signed in 1985 by then-President Reagan, all U.S. chemical weapons (many of which are nearly 50 years old) are to be destroyed by the year 2004; and

WHEREAS, the Congress has repeatedly refused to authorize the funds necessary to modernize our chemical weapons arsenal, leading us to abandon that effort in 1991; and

WHEREAS, the CWC will go into force, with or without United States' ratification, on April 29, 1997; and

WHEREAS, United States' failure to ratify the CWC will place us among the great outlaw states of the world, including Libya, Iran, and North Korea; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Reserve Officers Association of the United States, chartered by Congress, urges the Senate to quickly ratify the Chemical Weapons Convention.

Attest:

ROGER W. SANDLER,
MAJOR GENERAL, AUS (RETIRED),
National Executive Director

NOTE: This is not an official ROA resolution until adopted by the National (Convention/Council).

NEWS RELEASE,
Jewish War Veterans of the U.S.A.,
Washington, DC 20004.

FOR IMMEDIATE RELEASE: JWV SUPPORTS RATIFICATION OF CHEMICAL WEAPONS TREATY

WASHINGTON, DC, FEBRUARY 5, 1997.—The Jewish War Veterans of the U.S.A. (JWV) calls for the ratification of the Chemical Weapons Convention (CWC) which was signed during the Bush Administration. The need for the treaty is more critical today than ever before.

JWV National Commander Bob Zweiman stated, "The events related to the Gulf War Syndrome revealed that when it comes to chemical warfare, there may either be an incapacity to recognize the dangers to our troops in the field or, once shown to exist, there can be a penchant to cover up the embarrassment for the failure to so recognize. But for the actions of the Veterans Administration, our Gulf War veterans would have found themselves without any current avenue of possible relief and, even now, we must still be concerned with claim time limitations.

"While the CWC may not be perfect in all terms, it provides an aura of international cooperation into the arsenal of the United States protecting our national interests without compromising our freedom of action. There are meaningful provisions in the CWC which will afford and opportunity to impose economic restrictions and sanctions against those who develop chemical weapons or deal with the threat of or use of such chemical warfare.

"As is readily recognizable from the U.N. monitoring of the Iraqi facilities, there can be no assurances for a security or for a real defense capability against the use of chemicals by rogue nations or terrorists without controls as may additionally be made available to us by the CWC. We are honor bound to protect our Nation and our troops by minimizing the chances from all obvious or hidden means of chemical attack in the future."

Founded in 1896, JWV is the oldest, active national veterans' organization in America and is known as the "Patriotic Voice of American Jewry." JWV is currently celebrating its centennial year which included JWV's hosting of Veterans Day ceremonies at Arlington Cemetery on November 11, 1998.

PREPARED STATEMENT OF BRAD ROBERTS, INSTITUTE FOR DEFENSE ANALYSES

In hearings before this committee a year ago, I had the opportunity to address a number of specific concerns about the benefits, costs, and verifiability of the Chemical Weapons Convention and, in so doing, to argue that the U.S. national interest is well served by ratification of the Convention and U.S. participation in the new regime. Rather than again offer a defense of the Convention, I would like to take the opportunity to help to bring into better focus the nation's stake in the pending CWC vote. Toward that end, I would like to describe five messages that would be sent by your rejection of the CWC.

The first message would be that America's elected officials remain firmly in the grip of the Cold War when it comes to arms control

The current debate about the CWC was in fact scripted in the early 1980s, when most of the protagonists staked out their positions (although at that point the treaty itself was nothing more than a glimmer in the eye of negotiators). On the one hand were those who saw arms control as a dangerous delusion—a sell-out to the Soviets. On the other were those who saw any arms build-up as a dangerous folly—a false remedy to Cold War confrontation. For each, the CWC was but one front in the larger ideological battle. Today, CWC opponents savage the treaty as fatally flawed, while administration supporters defend it as useful for ridding the world of evil weapons. Moderates in both parties, on the other hand, seem for the most part to have lost interest and to have anticipated U.S. ratification as a "no-brainer."

The antipathy to CW arms control in the Cold War had much to do with the specific strategic context in Europe. With NATO forces overmatched by Warsaw Pact forces, if war came it seemed likely that the West would have to rely on early use of its tactical nuclear weapons. The Soviets quite possibly could have denied NATO a carefully considered and effective use of its nuclear weapons with chemical warfare. Sustained chemical attacks on NATO forces without fear of reprisal would have enabled the Warsaw Pact to maintain high tempo attacks with conventional forces and without themselves suffering the consequences of chemical warfare—namely the cumbersome work of fighting inside gas masks and chemical protection suits. Hence NATO needed some in-kind retaliatory capability for the Soviet chemical threat, which was provided by the United States with its chemical arsenal. Hence the opposition to a chemical ban because of the belief that even small-scale cheating on any such ban could have been sharply destabilizing not just in Europe but to the central strategic balance.

But that strategic landscape is gone. Today, no country of proliferation concern has the ability to deliver the quantities of chemical agents with precision for days and weeks against U.S. forces or to exploit the tactical circumstances created by their use to inflict operational or strategic defeat on U.S. military forces. It would take a great deal of cheating to create a chemical arsenal with potential military significance when used against well-protected U.S. forces, a scale of cheating that is beyond the reach of these states so long as they must keep the program secret and underground. Even if they were somehow able to create a massive chemical arsenal despite international inspections, none of these states has the Soviet-vintage capacity to overwhelm U.S. forces by conventional means or to escalate to tactical and strategic nuclear attack. Their chemical attacks would have nuisance value—perhaps high nuisance value—but they do not promise to create the strategic predicament created by the Warsaw Pact. Thus the United States need not concern itself with detecting any and all acts of noncompliance by parties to the CWC, but only with militarily significant cheating—so long as it sustains strong antichemical defenses. Of course, it will not rely on the CWC to understand the CW capabilities of potential enemies—that's why a great deal of money is spent on proliferation-related intelligence capabilities.

Moreover, the United States does not need to stoop to chemical retaliation to punish the use of chemical weapons against its forces. In the current environment, U.S. military interests are best served by minimizing the role chemicals might play on the battlefield, so that the superior conventional weaponry of the United States can be used to best advantage. In fact, the United States has forsworn the right to use chemical weapons under any circumstance, even in retaliation, in the wake of the Persian Gulf war. Norman Schwartzkopf is only the latest of many military commanders to say that the United States does not need a chemical deterrent for the chemical threats it faces in the proliferation era. This makes it possible for the United States to trade its aging stockpile of chemical weapons, the vast majority produced in the 1950s and 1960s, for a global ban.

This points to the conclusion that the critics' case against the CWC has been made on the wrong national security criteria. Cold War thinking says that only the

strictest verification and compliance standards are suitable for arms control and that chemical disarmament weakens deterrence. Both judgments are wrong for the post-cold war era, so long as the arms control in question does not touch on the fundamentals of strategic nuclear stability. The CWC is neither panacea nor folly. It is not a substitute for all of those other things that must be done to meet the proliferation challenge. It does not eliminate chemical weapons nor the risks of cheating. But it does meet strict national security criteria. And it helps to keep the CW problem manageable while adding new political tools to the arsenal of political, economic, intelligence, and military measures that must be used synergistically if the proliferation threat is to be kept in check.

I for one am grateful that the debate on the CWC has not turned out to be a "no-brainer", for we now have the chance to rise above the tired debate of the past and to think through the larger questions of arms control standards, national interests, and U.S. leadership in terms suitable for the post-Cold War era. If the administration and the Congress cannot come to a clearer agreement on these issues, the national interest seems likely to suffer badly. At the very least, disagreement will doom the six other arms control measures currently awaiting U.S. ratification—and with them, some of the few tools available to the United States for building future political coalitions.

A second message is that the United States does not understand what is at stake in stopping the proliferation of chemical weapons.

Chemical weapons proliferated dramatically in the 1980s, to more than 20 countries. They have appeared, moreover, in precisely those regions where the United States offers security guarantees and in the hands of those states that sponsor terrorism. Stemming their proliferation is essential to dealing with the more general problem of the proliferation of nuclear and biological weapons, missile delivery systems, and advanced conventional weaponry. If rogues can use NBC weapons as trump cards against U.S. military action, or to conduct attacks on American civilians, our world will change fundamentally—and for the worse. If the end of the Cold War is what made the CWC possible, proliferation is what made it necessary.

It would be nice if the CWC were to rid the world completely of chemical weapons, but it won't (at least, as long as renegade states exist). So what other interests might it serve vis-a-vis the proliferation problem? The United States has an interest in preventing the continued proliferation to ever more states. It has an interest in getting out of the chemical warfare business those who are only dabbling (intrigued by Iraq's use of chemical weapons in its war against Iran). It has an interest in keeping the stockpiles of those who remain in the business small and unsophisticated. It has an interest in isolating by political and economic means those states that remain in the business. And it has an interest in not being isolated politically when it comes time to deal militarily with those chemically-armed states that pose real and immediate military dangers.

The CWC will do a good job of safeguarding these interests. Its verification provisions are sufficient to deter all but the most committed CW producers. The charge that the CWC will be ineffective because some important CW possessors are nonsignatories misses an essential point—by self-selecting out of the regime, these states identify themselves as problem cases and make themselves objects of suspicion and trade restraints. In each of these ways, the CWC promises a tangible benefit to U.S. security (which is an answer to those critics who allege that the CWC offers no such benefits for the United States).

A third message of non-ratification is that the United States is going to be irrelevant to the international effort to stem CW proliferation.

Treaty opponents have offered up a number of substitutes. One is "reinvigoration" of the Geneva Protocol of 1925, whose signatories agree not to use chemical weapons (although some states have reserved the right to use such weapons in retaliation). The Protocol is certainly in dire need of help—it was dealt a crippling blow by the failure to respond to Saddam Hussein's use of chemical weapons throughout the 1980s in his wars against both Iranians and Iraqis. Reinvigoration would presumably entail the addition of compliance and verification provisions—just like those that turned the Protocol into the CWC! Reinvigoration would also presumably entail some renewed political commitment to the Protocol. But the United States can hardly expect others to line up with it behind the Protocol as an alternative to the CWC when even its closest friends and allies are moving on to the CWC. Moreover, the United States carries the added burden of lingering international resentment over its particular failure to uphold the Protocol in the 1980s because of its grievances against Iran.

Their second alternative is to supplement the protocol with a new treaty analogous to the Nuclear Non-Proliferation Treaty. The NPT is unique in the history of multilateral arms control measures in that it grants to a set of states certain rights that are denied to others—in this case, the right to possess nuclear weapons. Under the proposed chemical parallel, the United States and presumably Russia would be allowed to keep their chemical weapons while they try to police other states from acquiring their own. But no countries would join with the United States in this endeavor—all see U.S. and Russian disarmament as essential to the political bargain embodied in the chemical control regime. To suggest that a new treaty could be made without this cornerstone, or simply imposed, is either naive or disingenuous.

Their third alternative is reliance on unilateral, domestic measures, such as those detailed in SB495. In fact, most if not all of those measures would be necessary adjuncts to CWC implementation. But as a substitute for the CWC, SB495 leaves much to be desired. One noteworthy, example is in the area of export controls: the United States can anticipate growing friction with its partners in the Australia Group process, most of whom will be among the original states parties to the CWC, if it attempts to rely on economic sticks and carrots while sitting aside from the CWC. Another example is in the area of CWC compliance challenges: by walking away from the CWC, the United States leaves its allies and other prospective coalition partners to fend for themselves when it comes to dealing with noncompliance by states parties to the CWC. The United States may be there when the chips are down militarily, but for circumstances short of war it will leave its friends and allies to manage largely on their own the political and economic instruments of risk management. Despite its many merits, SB495 is little more than window dressing on American retreat from the CW proliferation problem. Its primary short-term benefit would probably be in making some Americans feel good about walking away.

In short, these alternatives are not viable. To reject the CWC is to consign the United States to irrelevance to the international effort to manage the CW proliferation problem. This is a course of action of dubious political merit. The notion that somehow America should sit aside while others do the hard work of dealing with proliferation will be an insult to many Americans. Americans are not bystanders. But rejection of the CWC will marginalize U.S. influence and turn us into free-loaders on the efforts of others to implement the CWC despite our having walked away. This is an insult to Americans rightly proud of the nation's historic role of a power with both military strength and a vision of a better world—and the will to lend its political prestige to bring it into being. It is also an insult to the integrity of American diplomacy—having given our word to participate as a party to the convention, in the form of then-Secretary Eagleburger's signature, non-ratification will erode the strength of American political promises more generally. Others will rightly ask how America can expect to hold others to their promises when it breaks its own?

A fourth message that would be sent by non-ratification is that America is going to dish out some vigilante justice when it comes to dealing with CW-armed proliferators.

Whether or not the United States ratifies the CWC, it enters into force as international law on April 29. By walking away from the law it helped to create, the United States will be relegating itself to the role of vigilante whenever it chooses to undertake military actions against CW-armed states—as one who professes a commitment to the rule of law, but places itself above the law when it comes to dealing with outlaws. By working from outside rather than inside the CWC normative framework, the United States will turn military acts against chemically-armed states into solitary exercises of U.S. military prowess, rather than coalition campaigns to punish transgressors. The United States will have no one to blame but itself for the political isolation it will suffer.

This too is a course of action of dubious political merit. America does not belong above the law—indeed, central to our national conception is a belief in the moral basis of our politics and power, and our mission to expand the rule of law. In our *de facto* role as "world's policeman," will others think of us as a respectful steward of the common weal or an unreliable bully whose lip service to the rule of law is cynical and abandoned when it does not suit his needs? To reject the CWC is to put us on the wrong side of history, especially our own, and on the side with Iraq, Libya, and North Korea.

A fifth message is that America does not trust itself—more specifically, that the Senate does not trust itself to do its oversight job.

One of the arguments used by CWC opponents to persuade freshmen Senators to join their cause is the so-called lulling effect of arms control. The argument runs as follows: tyrants will get the better of arms control with democracies because de-

mocracies want to believe that others are Good and will go far to delude themselves that the tyrant is living up to his promises. This delusion paralyzes democracies, which then ignore real military vulnerabilities and, by looking duped, embolden the tyrant. By this logic, arms control may lead to war.

This is a view of arms control derived from a rather peculiar interpretation of the genesis of fascist aggression in the 1930s, one which flies in the face of the experience of the Cold War when democracies stood firm against totalitarianism for half a century. Anyone who today thinks that chemical arms control will lull a sleepy republic must overlook the huge sums of money invested annually in chemical preparedness, the existence of an intelligence community charged with monitoring arms control compliance, and a host of "friendly critics" who scrutinize arms control implementation.

For Senators to align themselves with a point of view that is distrustful of democratic process would be especially odd. Should we infer that they themselves believed that they are dupes—that they are not confident that they can or will perform their oversight responsibilities, by asking the right questions at the right times about U.S. military readiness and compliance findings by U.S. intelligence?

Like it or not, this is what the Senate will signal to the world—and to the American voter—if it rejects the CWC. America as nostalgic for the Cold War. America as ignorant of its special stake in stopping NBC proliferation. America as free-loader. America as dupe of foreign tyrants, timid and unreliable. An America enjoying unparalleled military strength, but unable to bank on its strengths to take small risks for large payoffs. An America that says no to change, that has lost its bearings and its mission to promote the change that makes a better world possible.

In short, the vote on the CWC comes down to a vote about U.S. leadership. It presents the Senate with a basic choice. The United States can lead, by safeguarding common interests and protecting U.S. national interests by exercising a political-military influence commensurate with the nation's weight and moral compass. It can follow, by freeloading on the efforts of others while pretending that domestic, unilateral measures are enough to meet its needs. Or it can get out of the way, as a new wave of proliferation occurs and fuels the ambitions of those who would try to use their weapons of mass destruction to intimidate U.S. allies and to veto the use of U.S. military power to honor its security guarantees.

Many on this panel had the privilege to serve with one of the great American leaders of this century. Ronald Reagan's special gifts as a leader, it seems to me, were his intuitive understanding of the American public myth—our view of ourselves as a people with a certain historic mission and a strong moral compass—and his ability to translate the decisions of current moment into this larger framework. He understood that Americans expect their country to stand tough against aggressors—and to know how to safeguard that essential part of the nation's political power that flows not from the barrels of American guns but from its traditions and values. A vote for the CWC would be consistent with this sense of national purpose. A vote against would be an insult.

Brad Roberts is a member of the research staff at the Institute for Defense Analyses in Alexandria, Va. The views expressed here are his own.

Letters Submitted in Opposition to Ratification of the Chemical Weapons Convention

STERLING CHEMICALS,
April 15, 1997.

Hon. JESSE HELMS,
Chairman, Foreign Relations Committee,
United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: Sterling Chemicals, Inc. strongly supports a worldwide ban on the production, possession and use of chemical weapons, but we are concerned about the mechanics and cost impacts associated with the proposed Chemicals Weapon Convention (CWC). We have made our concerns known to the Honorable Senator Kay Bailey Hutchison last August. Highlights of our concerns are:

1. We have serious misgivings about the ability to protect confidential business information. Having a foreign inspection team inside our facility with almost unlimited access to process knowledge and data is not acceptable to Sterling.
2. Cost impact will be significant! We project the costs just to prepare for, manage, conduct and complete an inspection to be at least $200,000–$300,000. This doesn't include performing duplicate sampling and analysis, as well as calibration and verification of process instrumentation.
3. We cannot comply with the treaty provisions within our current annual budget and headcount. Sterling has reduced headcount to maintain our competitiveness. We are doing more with less. We believe the additional data record-keeping and paperwork burden associated with this treaty cannot be managed with existing resources.
4. The EPA and OSHA, while participating as part of the inspection team, may become over zealous with their enforcement philosophy and begin citing violations as part of their own agenda—while they're supposed to be monitoring the foreign inspection team.

Sterling Chemicals is not a foreign policy expert, yet we have serious misgivings about the foreign policy implications of the proposed CWC. For example:

1. How will chemicals weapon control be enforced in other countries (Mexico, Columbia, North Korea, Iran, Iraq, Jordan, Libya, Croatia, etc.)? Since they probably will not cooperate, how does this treaty produce a "worldwide ban"?
2. How will international security and foreign policy issues related to protection of trade secrets be handled?
3. Will the cost and implementation of the treaty put American industry at a competitive disadvantage with foreign industry whose compliance is less regulated?

Sterling emphasizes its desire to see a worldwide ban on chemical weapons. We hope this submittal provides the information you seek for an informed decision which is best for America.

Sincerely,

ROBERT W. ROTEN,
PRESIDENT AND CEO.

SMALL BUSINESS SURVIVAL COMMITTEE,
April 14, 1997.

Hon. JESSE HELMS,
Chairman, Foreign Relations Committee,
United States Senate, Washington, DC.

DEAR SENATOR HELMS: On behalf of the Small Business Survival Committee (SBSC) and its more than 40,000 members across the nation, I wish to express our opposition to the Chemical Weapons Convention (CWC) treaty due to be voted upon soon by the U.S. Senate. Also, I apologize for not being able to testify before the Foreign Relations Committee due to severe time constraints.

It seems to us that a wide array of defense and foreign policy experts have raised legitimate questions about the CWC, including several former U.S. Secretaries of Defense. They see the CWC as non-verifiable, non-enforceable and not serving U.S. national interests, and SBSC agrees.

Though the CWC offers nothing in terms of improving U.S. security interests, the CWC accomplishes much by way of raising regulatory costs on already over-regulated U.S. businesses. For example, the CWC would inflict the following on U.S. entrepreneurs and businesses:

- For the first time, U.S. private industry would be subject to foreign inspection as a result of a treaty. Inspectors would come from a new international agency in the Hague, Netherlands.

- Businesses must prove to the U.S. government and international inspectors that they are not producing or stockpiling chemical weapons, with noncompliance fines reaching as high as $50,000 per incident. Forms would have to be filed on chemical types each year and changes in a process using certain chemicals would have to be reported five days in advance. Noncompliance could result in a $5,000 fine. And of course, with government bureaucrats issuing fines, the threat that fines shift from a means of deterrence or punishment to a source of revenues always looms.
- Firms would be open to a real threat from international industrial espionage. The loss of proprietary information could seriously weaken international competitiveness. The treaties protections are frivolous, and any court challenge likely would come after the horse left the barn.
- U.S. firms producing, processing, or consuming a scheduled chemical will carry a paperwork/declaration burden. The U.S. Department of Commerce estimated that it will take companies 9 hours to fill out paperwork for every Schedule I chemical, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, and 5.3 hours for each Discrete Organic Chemical. Estimates range from 2,000 to more than 10,000 U.S. companies that will be forced to bear these paperwork burdens.
- Congress's Office of Technology Assessment estimated that inspections will cost U.S. firms anywhere from $10,000 to $500,000 per visit.
- Smaller businesses will be hit hardest by increased regulatory burdens. Interestingly, the Chemical Manufacturers Association (CMA) supports ratification of the CWC, apparently claiming that the new regulations would not be a burden. However, the CMA is a group of generally large chemical manufacturers, and reportedly more than 60 percent of the facilities likely affected by the CWC are not CMA members. Large companies possess far greater resources and experience in dealing with regulators of all kinds. Indeed, new regulatory burdens can perversely give large firms a competitive edge over smaller companies due to such resource and experience factors. As economist Thomas Hopkins has shown, the per employee cost of federal regulation runs almost 50 percent higher for firms with fewer than 500 employees vs. companies with more than 500 employees—$5,400 per employee vs. $3,000 per employee, respectively.
- Chemical companies would not be the only types of businesses subject to CWC regulations. Firms in the food processing, pharmaceutical, paint, petroleum, biotech, electronics, textiles, fertilizers, rubber, brewing, and distilling industries would be impacted as well.
- Significant legal questions arise for U.S. businesses as well. Distinct possibilities exist that rights of due process could be violated in relation to warrantless searches and personnel being compelled to answer questions, and provide information and access; and a "takings" could occur when government reveals information harming a business.

There are CWC supporters who would have the public believe that treaty supporters do not care about chemical weapons and U.S. security; in fact, the exact opposite is true. Anyone who really cares should stand up and oppose this deeply flawed, dangerous and costly treaty.

SBSC believes the Chemical Weapons Convention to be a deeply flawed treaty that will do nothing to enhance and may indeed weaken U.S. national security, while imposing new regulatory burdens on U.S. businesses. The Chemical Weapons Convention should be rejected by the U.S. Senate.

Sincerely,

RAYMOND J. KEATING,
Chief Economist, Small Business Survival Committee.

Statement by Ronald F. Lehman Before the U.S. Senate Foreign Relations Committee, June 9, 1994

Mr. Chairman, Distinguished Members of this Committee: In Islamabad, Pakistan, last week, I received your invitation to appear before the Committee to discuss ratification of the Chemical Weapons Convention. It was an honor to be asked to appear before you once again, and I am particularly pleased to join several close and valued friends who made major contributions to the revolutionary national security and arms control achievements which took place during the Reagan and Bush administrations. It is in that same spirit of public service that they are here today.

The best friends of real arms control are those who have demanded the highest standards. Better is not really the enemy of the good. In particular, the U.S. negotiating position is always strengthened when we negotiators are reminded that one-third of the Senate plus one might someday decide that the treaty we conclude falls short of their expectations for advancing the national interest.

During the negotiation of the Chemical Weapons Convention, I and others consulted regularly with members of the United States Congress including the members of this Committee. We sought your advice on how to negotiate the best possible treaty. A process of consultation, however, must never substitute for a rigorous examination of the final product such as is now underway, taking into account the contributions of critics as well as proponents.

For my part, I am a proponent. I speak today as a private citizen; the views I express are my own and not necessarily those of any institution or administration. Let me make clear up front where I stand. I urge the Senate to give its consent to the ratification of the Chemical Weapons Convention and to move quickly to complete a process of careful deliberation. I say this, not because of my personal involvement in its negotiation, but on its merits. I won't repeat the many arguments which have already been made on behalf of the treaty, but I would like to present a few additional considerations.

The negotiation and completion of the Chemical Weapons Convention in the twilight of the Cold War was a valuable element in a bigger, balanced strategy to increase the security of the United States and to promote political change around the world. We negotiated from a position of economic, political, and military strength. We energized our technology and economy, while reducing subsidies to the Communist bloc. We recognized the "evil empire" for what it was and rejected attitudes of "moral equivalence", which undermine our resolve and strengthen our adversary. We modernized our defenses, including our chemical weapons deterrent, even as we made arms control an integral part of that overall foreign and national security strategy.

One can see this, in one small example, even in the way our pursuit of a ban on chemical weapons reinforced our commitment to the spread of democracy. We sought intensive verification measures so that we might reduce the threat posed by the Warsaw Pact, but also because we knew that totalitarian regimes cannot long survive when their citizens are exposed to contradictory information. The requirement for detailed information on chemical weapons stocks and facilities before reaching agreement, at the time an innovative negotiating step which led to the December 1989 U.S./Soviet Phase I data exchange and the recent Phase II exchange, sparked a controversy which continues in Russia even today over the history of the Soviet chemical and biological weapons programs.

Our demand for trial inspections prior to completion of negotiations aided in crafting a better treaty, but it also caused Soviet citizens to ask why they themselves could not see what Americans were allowed to see. Our insistence, first in the U.S./Soviet Bilateral Destruction Agreement (BDA) of 1990, and later in the CWC, that destruction of chemical weapons stocks be done in a safe and environmentally sound manner has created a grassroots political process of "NIMBY"—not in my backyard—which has complicated agreement on a chemical weapons destruction plan but also complicates a return of the old system. One should not exaggerate the role that arms control has played in promoting our national agenda, but one should not ignore it either.

Arguably, the CWC is more important in today's violent and changing world than it was when it was being negotiated during the Cold War. The end of the Warsaw Pact, America's sole superpower status, its changing global military missions, and its advanced conventional munitions have reduced the circumstances under which the United States would decide to deploy chemical weapons into an operational theater as a deterrent. Increasingly circumstances are such that it is more important to reduce the likelihood that others will use them than that we have them.

The Chemical Weapons Convention plays an essential role in our efforts to curb the proliferation of weapons of mass destruction and their means of delivery. In the long run, our non-proliferation, counter-proliferation, or anti-proliferation efforts may be doomed to failure if we cannot bring about political change and greater stability around the globe. As I have suggested, the CWC continues to be a small, but important part of that effort. In the near term, however, the CWC may actually play its most important role.

We will fall dangerously short in our efforts to stop the proliferation of more destructive nuclear and biological wcapons if we cannot even codify and build upon the international norms which emerged in the negotiation of the ban on chemical weapons. At a time when we must build support for long term monitoring of Iraq and "special inspections" by the International Atomic Energy Agency in North Korea and elsewhere, entry into force of the CWC will commit ever more of the international community to the unprecedented openness increasingly necessary if we are to prevent disaster. At a time when the global economy reduces trade barriers, but also undermines controls on proliferation-related technologies, the CWC codifies the principle that no nation should trade in dangerous materials with those who will not accept international non-proliferation norms. At a time when threats to international security may require military forces of the United States to be deployed within range of the weapons of outlaw regimes, the CWC can reduce the dangers our troops will face and help provide the basis in international law and public opinion for strong measures that we and others may be forced to take.

These are important external effects of the CWC, but what of the substantive workings of the Convention itself? They are revolutionary. Given the inherent technical difficulty of achieving a meaningful ban on chemical weapons, they need to be. The text of the Chemical Weapons Convention has pushed the envelope of multilateral arms control far beyond what was once believed negotiable. It may be that the special circumstances at the end of the Cold War and the Gulf War made it possible for a very experienced international and American team to achieve what otherwise could never have been done. But more than opportunity was involved. Years of careful preparation and experience led the way. The former Reagan and Bush officials here today played a key role in that process.

Important lessons learned from the on-going arms control process were applied over the course of the negotiation of the Chemical Weapons Convention. In negotiation, we were not afraid to ask for far more than an acceptable bottom line. Great emphasis was placed on more precise draftsmanship, more detailed data exchanges, greater openness and interaction, an organization with the power to conduct intrusive inspections and recommend sanctions.

Every effort was made to make cheating by parties less attractive, more difficult, more likely to be discovered, and more certain to result in a stiff penalty. Nations which refused to become parties to this new international norm would also pay a heavy economic and political price. Nations which joined could expect reasonable assistance if threaten by chemical weapons.

Although our process was not perfect, careful study came before making most decisions. A marketplace of ideas often resulted in disagreements, especially when facts were few and concepts vague. In the end, however, a vigorous interagency process which ensured that all of the relevant information was considered and that senior officials were exposed to key technical information and alternative views resulted in better decisions. Sometimes a consensus developed, sometimes difficult, divisive decisions had to be made.

Diplomatic and political considerations often influenced fine tuning and presentation, but I think the record will show that in the CWC, as in the INF treaty, the START I and II treaties, and in the Verification Protocol which made possible a 98–0 vote in the Senate for consent to ratify the Threshold Test Ban Treaty, national security was the overwhelmingly central determinant.

One example from the Chemical Weapons Convention is that of challenge inspections. Everyone knows that no magic telescope exists which will tell us where in the world on any given day someone will be violating some provision of the CWC. But everyone also knows who are the most likely threats and where potential threats to our forces must be considered most seriously. Information is gathered, intelligence estimates are made, and military precautions taken. In the past, it has usually stopped there for lack of more intrusive measures including challenge inspections which might provide a basis for international action without compromising sensitive sources and methods. A verification and enforcement regime for the CWC needed a challenge inspection mechanism.

At the same time, we recognized that challenge inspections were not magic either. They may or may not find the evidence you need, depending on circumstances, procedures, and skill. Worse, such intrusive inspections could be abused or backfire revealing important proprietary information or national security secrets. Constitutional questions related to property and privacy also needed to be addressed.

No technical challenge in arms control over the twelve years of the Reagan and Bush administrations received more careful consideration at all levels than that of implementation of a challenge inspection regime. Working with professionals and experts inside and outside of government, we sought to find a path which would maximize the effectiveness of inspections while minimizing costs including the risk to sensitive information.

We learned much along the way. More often than not, the real problems and real solutions were to be found in the field and among the operators rather than within the Washington-based bureaucracy. We found that different sites and activities posed different problems. We discovered that some sensitive information was less vulnerable than we had believed, but that some was more vulnerable. We learned that with or without a CWC, some security measures should be strengthened. We discovered that at many sensitive sites concern about illegal chemical activity could be dispelled without much risk. We also feared that at a few sites we could offer little meaningful access without great risk.

Out of this continuous process, we developed an approach which can work and which gives us what we need to protect highly sensitive information. Conceptually, the approach was simple. Access would be granted to any challenged site, but access would be managed at that site to protect sensitive information. If, at a particular site, timeliness or intrusiveness were not considered sufficient to resolve legitimate concerns, then the inspected party had an obligation to resolve those concerns by other means.

To meet diverse concerns, however, the desired U.S. package involved some complexity. Moreover, it involved far more intrusiveness than some nations desired and more rules for managed access than other nations favored. The more nations studied the proposal, the more they understood that it could work. To obtain the U.S. position as an outcome was made easier because it could be portrayed as a natural compromise between opposing views. In the end, however, I had no doubt that we would get our position because we had made it clear that we would not join consensus on a treaty that did not meet our security concerns. Other nations understood that we had done our homework and that we meant what we said.

Still, the conclusion of the CWC does not come without a price, and its contributions to our security will not be fully achieved without effective implementation not only of the CWC itself but also of a sound foreign policy and national security strategy. One of the inherent dangers of engaging in arms control negotiations is that success will have a soporific effect on the nation's attention to its national defense and that of its friends, allies, and interests around the world.

When treaties are seen as solutions to our security challenges rather than tools to be used to help address those challenges, danger grows. When the Biological Weapons Convention was concluded, too many people assumed the threat of biological warfare had been eliminated. Research on defenses received inadequate support, and we saw too much of the "Sverdlovsk" phenomenon—a propensity to explain away what one does not want to be so. One hopes that we are not seeing this again with respect to North Korea and the NPT.

Some would argue that this danger that arms control will lull us into neglecting our defenses means that we should never negotiate or at least never reach agreements. The problem with that conclusion is that it assumes we cannot trust our own nation to negotiate in its own interest or provide for its own defense. When this becomes a problem, it is a problem the American people and its representatives have the power to solve. We must make certain they get the facts. Hearings like this are an important means for doing that.

For my part, I believe that the arms control and non-proliferation tools can be used to promote our national security, and we must ensure that they do. The Chemical Weapons Convention is clearly a tool which can enhance our national security. I believe that the successful conclusion of arms control agreements need not result in the neglect of our defenses, but it often has. In giving its consent to ratification of the Chemical Weapons Convention without reservations, the Senate should take real steps to support implementation of the treaty, fund a strong defense program, and promote a balanced national security strategy which recognizes that the United States must be the leader in a very dangerous world.

The world has undergone dramatic change, and arms control trains have been rushing by. In such a world, if we do not shape the arms control process to serve our interests, we can be certain that some nations will be pressing in directions that are not in our interest. The Chemical Weapons Convention before this committee is in our interest. Again, Mr. Chairman, Distinguished Members of the Committee, I believe that the United States Senate should give its consent to ratification of the Chemical Weapons Convention. Thank you.

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