

June 13, 1994

## THE CHEMICAL WEAPONS CONVENTION: A BAD DEAL FOR AMERICA

### INTRODUCTION

The Clinton Administration wants the Senate to ratify quickly the Chemical Weapons Convention, a treaty negotiated during the heady early days of the "new world order" and signed by the United States on January 13, 1993. So far, the Chemical Weapons Convention has been signed by 157 countries. It will enter into force and become recognized international law when 65 countries have ratified it and deposited the signed and ratified documents with the Office of the United Nations Secretary General in New York.

Hearings before the Senate Foreign Relations Committee have begun, and Chairman Claiborne Pell (D-RI) has said he hopes for a full Senate vote by July 15. But there is cause for concern that the Chemical Weapons Convention will not fulfill its promise of eliminating chemical weapons worldwide. No country is required to join the convention. Syria and North Korea, two suspected chemical weapons developers, have indicated they will not. Further, the treaty's verification procedures, although highly intrusive, are still inadequate to catch governments determined to cheat. In the end, the Chemical Weapons Convention will only deceive law-abiding countries like the United States into believing the chemical weapons threat has been eliminated.

Worse, the treaty creates a large international bureaucracy with the authority to conduct highly intrusive inspections for chemical weapons on the territory of treaty participants. This bureaucracy, likely to be a cross between the International Atomic Energy Agency and the U.S. Environmental Protection Agency, will be granted unimpeded access to American chemical manufacturing plants and facilities, even if they are not suspected of producing chemical weapons. For example, inspections may be performed on facilities that process or consume, as well as produce, certain types of chemicals that may be used in weapons. Some of these chemicals are found in fertilizers and pesticides. Thus, an agricultural facility that uses certain types of fertilizers or pesticides may be subject to inspection. Dealing with these inspections undoubtedly will impose heavy additional costs on U.S. chemical companies.

In fulfilling its constitutional role of advice and consent for international treaties, the Senate should answer a series of basic questions before determining the value of this or any treaty. For example, does the agreement:

- ① **contribute to U.S. national security?**
- ② **reduce the risk of war?**
- ③ **leave America with a military force commensurate with its global obligations?**
- ④ **lend itself to verification?**
- ⑤ **have adequate enforcement mechanisms?**

In the case of the Chemical Weapons Convention, none of these questions can be answered with enough certainty to justify the risk of ratifying it. In order to protect the interests of the United States, the Senate should:

- ✓ **Demand a new treaty be drafted that is modeled on the Nuclear Non-Proliferation Treaty.** The Nuclear Non-Proliferation Treaty designates certain countries, such as the U.S., as states that are permitted to deploy nuclear weapons. The Senate should press the Administration to withdraw the Chemical Weapons Convention and begin a new round of negotiations at the United Nations Conference on Disarmament to draft a new Chemical Weapons Convention. The new agreement should permit the U.S. to maintain a chemical stockpile as a deterrent to such known chemical weapons states as Russia, Iraq, and North Korea. Taking this approach also would exempt the U.S. from intrusive inspections by international bureaucrats.
- ✓ **Establish a new policy for deterring chemical weapons strikes.** In May 1991, President George Bush announced a decision to halt U.S. production of new chemical munitions, eliminate existing U.S. chemical weapons stockpiles, and forswear the use of chemical weapons under any circumstances. This step reversed existing U.S. policy of threatening to respond in kind to a chemical attack. The U.S. should declare a new deterrence policy toward chemical weapons that resembles the one that existed prior to Bush's announcement. This will require that the U.S. retain chemical munitions. Further, the U.S. should declare that under extraordinary circumstances it reserves the right to respond to a chemical attack with nuclear weapons.
- ✓ **Improve U.S. defenses against chemical weapons.** The Chemical Weapons Convention will not protect U.S. forces against chemical attack. Outlaw nations will continue to produce and stockpile such weapons. Given these circumstances, the U.S. will need not only to maintain a chemical deterrent, but also to possess defenses against chemical weapons. These should include sensors capable of detecting the presence of chemicals in the atmosphere, gas masks and protective clothing, missiles and aircraft capable of destroying chemical weapons delivery vehicles, and training for troops who may have to operate in a contaminated environment.

- ✓ **Enhance the U.S. ability to destroy not only chemical weapons on the battlefield, but their production and storage facilities as well.** In addition to relying on deterrence and defenses to counter chemical weapons, U.S. armed forces need to be able to destroy chemical weapons production and storage facilities. The same pertains to enemy forces deployed with chemical munitions. Thus, Air Force and Navy attack forces must have enhanced capabilities to conduct strike missions against chemical forces and facilities in ways that limit contamination.
- ✓ **Strengthen arms control enforcement mechanisms.** One of the reasons that arms control agreements can pose such a threat to U.S. security is that a policy of strict enforcement is lacking. Absent such a policy, the Chemical Weapons Convention is likely to be unenforceable. In part, this is because the convention puts enforcement powers in the hands of the United Nations Security Council. The impact of this weakness could be lessened by designating the five permanent members of the Security Council as weapons states under the convention. Otherwise, full enforcement of the convention will require that these states, each of which has the power to veto any enforcement resolution, find themselves in violation of the convention's terms.

## THE DECADES-LONG EFFORT TO BAN CHEMICAL WEAPONS

It has long been the aim of diplomats to curtail both the use and stockpiling of chemical weapons. Among the earliest attempts in modern times to ban the use of chemical weapons was the 1907 Hague Convention. Approved by the European powers, the convention prohibited the use of weapons containing poison, but the widespread use of chemical weapons in World War I proved that this prohibition had little effect.<sup>1</sup> After the war, a League of Nations conference convened in Switzerland to approve the 1925 Geneva Protocol, which prohibited the use of both biological and chemical weapons in war, but not their development, production, and stockpiling. Among the countries signing the Geneva Protocol were the U.S., France, Germany, Britain, Italy, and Japan. Unlike the 1907 Hague Convention, the Geneva Protocol was successful once war broke out. Chemical weapons were not used widely during World War II, but this success was due to implicit threats by allied leaders, particularly President Franklin Roosevelt, to respond in kind to any chemical attack.<sup>2</sup> It is one of history's clearest examples of a successful deterrence policy.

The Geneva Protocol is still in force, and the U.S. honors its terms, although it did not ratify the protocol until 1975. It is, however, a weak agreement. If countries violate

1 Mark C. Storella, *Poisoning Arms Control: The Soviet Union and Chemical/Biological Weapons* (Washington, D.C.: Institute for Foreign Policy Analysis, 1984), pp. 4-5.

2 Roosevelt stated the following on June 8, 1943, when there were reports that the Axis powers were considering the use of poison gas: "Use of such weapons has been outlawed by the general opinion of civilized mankind. This country has not used, and I hope that we never will be compelled to use them. I state categorically that we shall under no circumstances resort to the use of such weapons unless they are first used by our enemies."



it, they remain unpunished, and there are no established procedures for determining the veracity of reported claims of biological or chemical weapons use. It is sometimes referred to as the “no first use” agreement because participating states agreed to comply with its terms so long as biological or chemical weapons were not used against them first. Some states, including the U.S., ratified the agreement with the reservation that it would cease to be binding if they were attacked first.

Violations of the Geneva Protocol have occurred on several occasions since the end of World War II. The Soviet Union and its clients, for example, used mycotoxins, commonly referred to as “yellow rain,” against civilians in Afghanistan and Southeast Asia in the 1970s and 1980s,<sup>3</sup> and Iraq used chemical weapons during its eight-year war with Iran in the 1980s.<sup>4</sup>

Negotiations leading to the Chemical Weapons Convention began in 1971 when the U.N. Conference on Disarmament’s predecessor organization, the Eighteen-Nation Disarmament Committee, voted to conduct separate talks on banning biological and chemical weapons. This allowed for the conclusion of the Biological Weapons Convention, which banned the production and stockpiling of biological and toxin weapons in 1972, but put negotiations to ban chemical weapons on the back burner for well over a decade.

By the mid-1980s, the Reagan Administration, expressing concern over the large-scale Soviet chemical weapons program, began producing a new generation of chemical munitions for the U.S. military. The subsequent U.S. program was legal because the 1925 Geneva Protocol outlawed only the use, not the development, production, and stockpiling, of chemical munitions.

Diplomatic efforts in the 1980s focused on stopping the spread of chemical weapons to Third World countries. In 1984, Australia proposed to establish controls on the export of ingredients that could be used to manufacture chemical weapons. This proposal was made to the Organization for Economic Cooperation and Development (OECD), an organization of the industrialized states to coordinate economic development policies for the Third World. The Australians wanted participating countries to coordinate export control policies to stem the transfer of chemical weapons-related technologies to the Third World. Specific restrictions and enforcement mechanisms were left to individual governments. The “Australia Group” now has 20 members, including such prominent nations as the U.S., France, Britain, and Japan.<sup>5</sup>

The informal and voluntary nature of the Australian proposal has limited its effectiveness. For example, the enforcement of the export restrictions falls to individual member governments, but industrialized nations have a spotty record on how vigorously they enforce export restrictions. In the 1980s, a Phillips Petroleum Company subsidiary in Belgium delivered the chemical thiodiglycol (used in manufacturing mustard gas) to Iraq.<sup>6</sup>

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3 Alexander M. Haig, Jr., *Chemical Warfare in Southeast Asia and Afghanistan* (Washington, D.C.: Department of State, 1982).

4 W. Seth Carus, “Chemical Weapons in the Middle East,” *Policy Focus*, The Washington Institute for Near East Policy, December 1988, p. 4.

5 The Australia Group includes Australia, Austria, Belgium, Canada, Denmark, France, Germany, Great Britain, Greece, Holland, Ireland, Italy, Japan, Luxembourg, New Zealand, Norway, Portugal, Spain, Switzerland, and the United States.

6 Gary Thatcher and Timothy Aepfel, “The Trail to Samarra,” *The Christian Science Monitor*, December 13, 1988, p. B-1.

and Britain is reported to have sold thiodiglycol and thionyl chloride to Iraq in 1988 and 1989.<sup>7</sup> Both transfers were contrary to the commitments made by Belgium and Britain in the Australia Group. Export control policies, while useful to pursue, by themselves cannot stop the spread of chemical weapons.

**Bush's Drive to Ban Chemical Weapons.** George Bush came to office determined to ban chemical weapons. Bush and Soviet President Mikhail Gorbachev signed an agreement on June 1, 1990, in Washington to reduce the chemical stockpiles of the U.S. and the Soviet Union to 5,000 metric tons each. No accord, however, was reached outlining inspection procedures for confirming the destruction of these weapons. That was left to subsequent negotiations which were supposed to be completed by December 31, 1990. This deadline passed without agreement between Moscow and Washington. The failure was, to some extent, due to the turmoil in the Soviet Union, which was collapsing politically. Further, both sides were aware that progress was being made on the Chemical Weapons Convention at the U.N. Conference on Disarmament, and that this convention would have extensive inspection procedures and ban the weapons entirely.

Nevertheless, Bush announced on May 13, 1991, in the flush of America's post-*Desert Storm* success, that the U.S. would agree to a complete ban of chemical weapons even if other nations did not eliminate their arsenals. Bush also pledged that the U.S. would forego the use of chemical weapons under any circumstances, including situations in which U.S. forces are attacked with such weapons first.<sup>8</sup>

Until that time, Washington had reserved the right to use chemical weapons if attacked with them first and to maintain a chemical weapons stockpile for the purpose of deterrence and possible retaliation. This unilateral concession by the U.S., along with another to drop the demand for stringent "any time, anywhere" inspections of possible chemical weapons facilities, put the Chemical Weapons Convention negotiations on the fast track. The final draft of the convention was completed on September 3, 1991, in Geneva and was signed in Paris by more than the required 65 countries. Assuming these 65 countries ratify the convention by July 1994, it will take effect on January 13, 1995. Thus far, only seven (Albania, Australia, Fiji, Mauritius, Norway, the Seychelles, and Sweden) have ratified the convention; many are waiting for the U.S. to ratify before they act.

## PROVISIONS OF THE CHEMICAL WEAPONS CONVENTION

The purpose of the convention is to ban all existing chemical weapons and forbid their production, stockpiling, and use. It would do so by establishing elaborate procedures for eliminating all chemical weapons no later than ten years after the convention enters into force and by requiring the elimination of chemical weapons production facilities within the same ten-year period. The convention, however, does not require the destruction of toxic chemicals, their precursors (chemicals that can be combined to form toxic chemicals), or facilities or precursors that are used for peaceful purposes. Like-

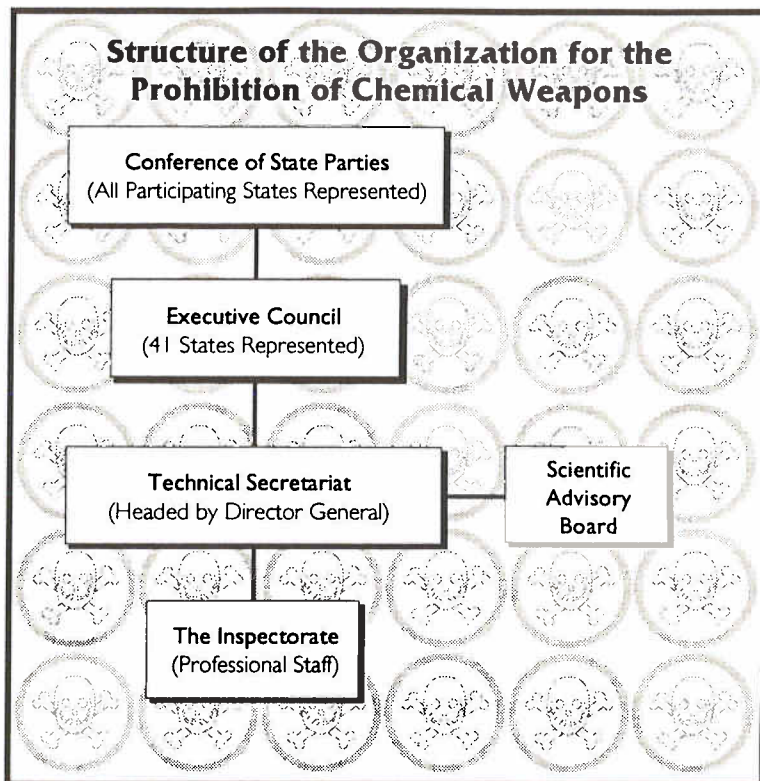
<sup>7</sup> Ralph Atkins, *et al.*, "Britain Exported Poisonous Gas Ingredients to Iraq," *The Financial Times*, July 29, 1991, p. 1.

<sup>8</sup> The White House, *The Weekly Compilation of Presidential Documents*, Vol. 27, No. 20 (May 20, 1991), pp. 599-600.

wise, small stockpiles of lethal chemicals may be retained for developing defenses against chemical weapons. These chemicals, precursors, and production facilities are subject to verification measures to detect any attempt to convert them into weapons. The convention is of unlimited duration, which is designed to make the destruction of chemical weapons permanent.

Overseeing the implementation of the agreement will be a large international bureaucracy that in many ways resembles the International Atomic Energy Agency (IAEA), a U.N. agency that fosters cooperation among nations in the peaceful uses of nuclear power. In a similar vein, a new chemical weapons bureaucracy will be created and called the Organization for the Prohibition of Chemical Weapons.

Headquartered at The Hague, this organization will have three parts. The first will be the Conference of State Parties, consisting of the representatives of all states participating in the convention. It will establish general policies for implementing the convention and oversee the functions of the organization. The second will be the Executive Council, the executive arm of the organization, consisting of the representatives of 41 participating states picked to achieve geographic balance. The third will be the Technical Secretariat, led by a Director General, which will be responsible for carrying out the inspections to verify compliance.



The first meeting of a commission preparing the groundwork for the chemical weapons organization took place on February 8, 1993, at The Hague. Since that meeting, the Preparatory Commission has focused on building the Provisional Technical Secretariat, the forerunner of the monitoring agency that will be created after the convention comes into force. Activities of the Preparatory Commission thus far have included finding a building to house the agency, establishing inspection procedures, drafting inspection manuals, procuring and testing inspection equipment, and hiring and training inspectors. The 1994 budget for the Preparatory Commission is almost \$30 million, of which the U.S. will pay 25 percent.<sup>9</sup> Once up and running, the Organization for the Prohibition of Chemical Weapons will operate at a minimum cost of \$500 million annually—but

9 Keir A. Lieber, "Highlights of the Fifth PrepCom Plenary," *The CWC Chronicle*, January 1994, p. 1.



### **The Eight Types of Inspection Required by the Chemical Weapons Convention**

1. Inspections required to verify the destruction of chemical weapons.
2. Inspections required to verify the destruction or conversion of chemical weapons production facilities.
3. Inspections required to detect the diversion of Schedule I Chemicals (those most easily weaponized) to weapons purposes.
4. Inspections required to detect the diversion of Schedule II chemicals (those not as easily weaponized) to weapons purposes.
5. Inspections required to detect the diversion of Schedule III chemicals (those least easily weaponized) to weapons purposes.
6. Inspections of chemical facilities producing chemicals not found in any of the three schedules.
7. Challenge inspections to determine whether a state or states accused of not complying with the terms of the convention is/are in fact in violation.
8. Inspections of sites where it is suspected chemical weapons have been used.

could wind up costing three to four times this amount, depending on the number of employees it hires.

The verification responsibilities of the Technical Secretariat are vast. The convention's Annex on Implementation and Verification (Verification Annex), over 100 pages long, establishes a long list of inspections to verify that chemical weapons and chemical weapons production facilities are destroyed. The Technical Secretariat also is tasked with ensuring that commercial chemical production facilities are not used to develop and produce weapons. The Verification Annex outlines a number of inspection procedures, including the timing of inspections, the appointment of inspectors, the privileges and immunities that governments must extend to inspectors, and the equipment inspectors may bring with them.

The Verification Annex establishes eight different kinds of inspection regimes, all of which must be carried out by the Technical Secretariat. The first kind of inspection verifies whether chemical weapons are destroyed. The second is to verify the destruction or conversion of chemical weapons production facilities. The third, fourth, and fifth detect whether certain types of chemicals have been used in building chemical weapons.<sup>10</sup>

The sixth kind of inspection pertains to production facilities that produce chemicals not found in any of the first three schedules. The seventh is the most sensitive insofar as it involves short-notice inspections of states suspected of violating the terms of the con-

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<sup>10</sup> Detecting the so-called diversion of chemicals for use in weapons is complex. First of all, chemicals are broken into three categories called schedules. Schedule I chemicals are those most easily used in weapons and therefore subject to the strictest types of inspections. Schedule II and Schedule III chemicals are more difficult to turn into weapons and therefore subject to less strict inspections.

vention. The final kind of inspection requires investigating sites where chemical weapons may have been used.

At first, the U.S. demanded that so-called challenge inspections be allowed anywhere and at any time a violation was suspected. It ultimately abandoned this approach in favor of a British proposal for so-called managed access to suspect sites. Under this provision, the inspected state may take steps to guard its national security, as long as it does not involve evading the convention's terms. In order to protect its security, an inspected state may remove sensitive papers, shroud displays and equipment, log off computers, restrict the types of analyses that may be carried out on air, soil, and effluent samples, and even limit which inspectors may gain access to particular areas at a suspect site.

The inspection process is long and involved. It starts with OPCW officials inspecting the locations declared by a member state as weapons sites. The declaration must be filed with the Technical Secretariat no later than 30 days after the convention enters into force. Work on destroying the chemical weapons at the sites must begin within two years. They must be completely destroyed within ten years.

Once on a weapons site, inspectors will place seals and monitoring devices to guard against a violation. Similar procedures, such as placing cameras, exist for monitoring whether or not the chemical weapons, production facilities, and non-weapons chemical production facilities have been destroyed. As many as 1,000 inspections a year may be required.

The Chemical Weapons Convention also contains a provision on compliance. The Executive Council bears the responsibility for demanding that a participating state redress a violation. If corrective action is not taken, the Conference of State Parties may suspend the offending state's privileges under the convention. This could include terminating cooperative programs to assist states in developing chemicals for peaceful purposes or denying the offender the right to vote in the Conference of State Parties. In more serious cases of violation, stricter countermeasures would be taken. For example, trade in all chemicals with the offending state could be shut off. In cases where violations pose a threat to the security of other states, the Conference of State Parties may refer the matter to the United Nations General Assembly and the United Nations Security Council. Ultimately, the Security Council serves as the court of final appeal in the enforcement process.

## FIVE FLAWS IN THE CHEMICAL WEAPONS CONVENTION

There are five flaws in the Chemical Weapons Convention which must be considered as the Senate gives its advise and consent.

### **FLAW #1: The CWC does not enhance U.S. national security.**

Arms control is one of several means for achieving the goal of national security. It should never be thought of as an end in itself. Reduced arsenals are not always better. A comprehensive security strategy will make room for the tools of deterrence, defenses, and even offensive military operations, as well as arms control. In short, any arms control agreement must serve the supreme purpose of foreign policy, which is protecting the nation's security.



The Chemical Weapons Convention does not meet this most basic test. The convention requires that the U.S. completely abandon its chemical deterrent, but this will not enhance U.S. security. Since no country is compelled to join the convention, it will be perfectly legal for those that do not join to retain chemical weapons. And since it is unrealistic to expect countries which want to retain chemical weapons to join, the result cannot possibly be global chemical disarmament. It makes no sense for America to give up its chemical weapons if other nations still possess them.

**FLAW #2: The CWC will not reduce the risk of war.**

Reducing the level of armaments is not the most important goal of arms control. Reducing the risk of war is far more important. Arms control agreements should not be destabilizing. It is counterproductive to achieve an arms control agreement that, by reducing arms, only invites attack.

Yet this is precisely what the Chemical Weapons Convention will do. The CWC is the product of a policy that equates reduced levels of armaments, in this case reduced to zero, with greater security, but the experience of World War II shows that having chemical weapons can deter a chemical attack. If the U.S. bans all of its chemical weapons, outlaw states that retain them will have a military advantage.

Almost as important as reducing the risk of war is the goal of preventing the escalation of an existing conflict to a higher level of violence, but the Chemical Weapons Convention will encourage escalation in two ways. First, a chemically armed enemy, knowing that the U.S. and its allies do not possess chemical weapons, will have little incentive to refrain from using such weapons. They will enjoy a unilateral advantage over the U.S., and in time of war they are likely to use it. Second, the convention may increase the likelihood that nuclear weapons will be used. Lacking chemical weapons, the U.S. will be forced to rely on nuclear weapons to deter a chemical attack on U.S. forces. While it is prudent to reserve the right to use nuclear weapons, it is certainly unwise to take steps that lower the threshold of nuclear war.

**FLAW #3: The CWC ignores America's global responsibilities.**

With the Cold War over, the U.S. is the world's sole superpower. Superpower status imposes important global responsibilities which the U.S. can fulfill only by maintaining armed forces capable of projecting overwhelming force around the globe. Because America has these special responsibilities, it is treated as an exceptional case in the Nuclear Non-Proliferation Treaty. This amounts to an international stamp of approval for America's nuclear arsenal.

The same principle should apply to America's chemical weapons arsenal. In Europe, Asia, the Middle East, and elsewhere, the U.S. has proved on numerous occasions that it exercises its unmatched power in a manner that is both responsible and respectful of the legitimate interests of other states. But America's global responsibilities also mean that its forces are the most likely to be engaged in major conflicts. The more dangers America faces, the greater the likelihood that chemical weapons will be used against U.S. forces.

The Chemical Weapons Convention ignores the special responsibilities of the U.S., treating all countries in the same manner. It assumes that U.S. troops face the same likelihood of chemical attack as the tiny constabulary force fielded by Costa Rica,

which has the same rights and obligations under the treaty. In this way it contrasts sharply with one of the more successful arms control agreements of the post-World War II era, the Nuclear Non-Proliferation Treaty in which the U.S. and four other nations (Britain, China, France, and Russia) are treated in a manner fundamentally different from all other nations. The NPT accounts for the special responsibilities and broad political roles played by these five acknowledged nuclear weapons states in world affairs. The Chemical Weapons Convention should do so as well, by naming the same five countries as weapons states.

**FLAW #4: Compliance with the CWC cannot be verified.**

The Chemical Weapons Convention is not adequately verifiable. Many lethal chemicals are common and have peaceful uses, and trying to keep track of all these chemicals throughout the world is an impossible task. In a devastating report prepared for the Defense Nuclear Agency in 1991, contractors stated: "Detecting most types of cheating [possible under the Chemical Weapons Convention] will be highly unlikely, if not impossible."<sup>11</sup>

Unable to verify whether a hostile country is cheating, the U.S. would never know with certainty what kind of chemical weapons threat it faced. As a result, the U.S. would run the risk of high combat casualties as it was surprised by attacks with chemical weapons U.S. leaders did not even know existed.

**FLAW #5: Violations will go unpunished.**

Verification of compliance with an arms control agreement is not enough. The U.S. also must be able to do something if other countries are caught violating the agreement.

The Chemical Weapons Convention makes only a feeble attempt to address the question of enforcement. It states that unspecified sanctions can be imposed on a state that is violating the convention either by the Organization for the Prohibition of Chemical Weapons or by the United Nations. Ultimately, the United Nations Security Council would have to impose penalties severe enough to change the behavior of an outlaw state.

The history of the Biological Weapons Convention provides an object lesson in what can go wrong with this agreement. Starting in the early 1980s, the U.S. acknowledged that it suspected the Soviet Union of violating the BWC. Yet the U.S. never lodged a complaint with the U.N. Security Council, which is charged with resolving the BWC's enforcement problems. The reason for this inaction is clear: If the U.S. had lodged a complaint against the Soviet Union, Moscow simply would have vetoed any enforcement resolution brought before the U.N. Security Council.

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11 Kathleen Bailey, *et al.*, "Noncompliance Scenarios: Means By Which Parties To The Chemical Weapons Convention Might Cheat," August 1991. The same report outlines several scenarios for future cheating under the convention. One posits that a country possessing a commercial plant that produces hydrogen cyanide, a lethal chemical, diverts some to underground tanks as a strategic reserve for later weaponization. Another scenario posits that a country builds a clandestine facility to produce the nerve agent tabun, stores the agent in bulk, and then destroys the facility and decontaminates the site.

The Chemical Weapons Convention would have the same flaws as the Biological Weapons Convention, and international politics would make it impossible to enforce its provisions.

## TOWARD AN EFFECTIVE COUNTER-PROLIFERATION POLICY: THREE PRINCIPLES

The U.S. has a clear interest in stopping the proliferation of chemical weapons around the world, but an effective counter-proliferation policy cannot depend on arms control alone. A truly effective policy will balance arms control with deterrence, effective chemical defenses, and, if necessary, military options for destroying chemical weapons facilities. As the Senate considers the merits of the Chemical Weapons Convention, it should ask whether it is part of an overall counter-proliferation policy that rests on these three principles.

### **PRINCIPLE #1: The need to deter a chemical attack.**

Deterrence requires maintaining a credible threat to retaliate for chemical attacks against the U.S. or its allies. This retaliatory threat must be able to convince any potential aggressor that he has nothing to gain by attacking the U.S. with chemical weapons.

By requiring the destruction of chemical weapons, the Chemical Weapons Convention would deny the U.S. the capability to retaliate in kind for a chemical attack. America would be left with only two options in case of a chemical attack: 1) to escalate the conflict by launching large-scale counter-attacks with conventional (non-chemical and non-nuclear) arms or 2) to retaliate with nuclear weapons. But the Clinton Administration has not made the adjustments necessary to deal with these options. Not only is it cutting the conventional forces needed to deter chemical attacks; it also has not declared that nuclear weapons have any role in deterring chemical weapons attacks.

### **PRINCIPLE #2: The need for defenses against chemical weapons.**

There are no guarantees, however, that deterrence will always work. Such dictators as Saddam Hussein and Muammar Qadhafi may not act rationally in a crisis or exhibit restraint. Therefore, the U.S. needs some insurance against chemical attack if deterrence fails; it needs defenses against chemical weapons and their delivery systems. U.S. forces need to be outfitted with garments, masks, and decontamination kits, and the American people need to be defended as well from aircraft and missiles which may carry chemical munitions.

There is certainly room for improvement in chemical defenses. The General Accounting Office's Director of Army Issues, Richard Davis, testified before Congress on April 16, 1991, that America's soldiers were neither adequately trained nor equipped to conduct operations in an environment contaminated by chemical weapons.<sup>12</sup> As for defenses against missiles armed with chemical weapons, the Clinton Ad-

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12 Richard Davis, "Soldiers Not Adequately Trained or Equipped to Conduct Operations on a Chemical Battlefield," testimony



ministration has cut funding for the nation's missile defense program by more than 50 percent.

Furthermore, if history is any guide, the Chemical Weapons Convention will make it politically difficult to field better defenses. In 1969, President Nixon announced that the U.S. would forswear the use or development of biological weapons in preparation for the Biological Weapons Convention in 1972. After the Nixon decision, the U.S. biological defense program withered. This outcome was not a result of a provision in the Biological Weapons Convention outlawing defenses; it was a result of constant criticism of these programs by arms control advocates who viewed them as contrary to the spirit, although not the letter, of the Biological Weapons Convention.

The unintended consequences of the Biological Weapons Convention surfaced during the Persian Gulf War. An interim report to Congress on the results of the Gulf War stated that America's biological defense capabilities were so weak that if the Iraqis had used biological weapons, which later evidence shows they possessed, the casualty levels would have overwhelmed the military medical care system.<sup>13</sup>

This same sort of vulnerability to chemical attack is likely to be the unintended consequence of the Chemical Weapons Convention. The CWC does not outlaw defensive programs, yet arms control advocates are sure to lobby against defenses, arguing that they will not be needed because chemical weapons have been banned, at least legally.

### **PRINCIPLE #3: The need for offensive capabilities.**

Defensive systems are not the sole means for countering a chemical attack. U.S. armed forces can preemptively destroy an enemy's chemical weapons with air strikes and other forms of offensive combat operations. Targets for such strikes should include chemical production facilities and storage depots, as well as forces armed with chemical munitions. Destruction of the production facilities and storage depots would limit the enemy's supply of weapons, and targeting enemy forces armed with chemical munitions would lessen the chances chemical munitions will be used against U.S. and allied forces.

The Clinton Administration should devise a comprehensive strategy for destroying enemy weapons and facilities in time of war. It can do so by continuing and improving a Pentagon program already underway. The Defense Department's Advanced Research Projects Agency (ARPA) has a program called *Warbreaker*, the aim of which is to devise a comprehensive system for directing Air Force, Army, and Navy attacks against enemy chemical forces within minutes. The *Warbreaker* program also needs to include among the targets it is being designed to destroy those that support, either directly or indirectly, chemical attacks.

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before the House Armed Services Committee Subcommittee on Readiness, April 16, 1991.

13 Department of Defense, *Conduct of the Persian Gulf Conflict, An Interim Report to Congress* (Washington, D.C.: Department of Defense, 1991), p. 6-6.

## REDRAFTING THE CHEMICAL WEAPONS CONVENTION

The Chemical Weapons Convention is a flawed agreement. Likewise, the existing U.S. policy to counter chemical attacks also is flawed. Neither is the fault of the Clinton Administration. The decisions to conclude and sign the convention and to change U.S. policy toward countering chemical attacks were made by the Bush Administration.

Nevertheless, the Clinton Administration apparently does not plan to alter the policies begun by the Bush Administration. As the Clinton Administration proceeds down the same path, it will be up to the Senate, as it considers the Chemical Weapons Convention, to adopt a different approach. It can do so through the advice and consent process established by the United States Constitution for approving the ratification of treaties. As it does so, it should consider that:

✓ **A chemical weapons treaty should be modeled on the Nuclear Non-Proliferation Treaty.**

Two treaties serve as models for agreements on weapons of mass destruction throughout the world: the Nuclear Non-Proliferation Treaty of 1968 and the Biological Weapons Convention of 1972.

The Biological Weapons Convention is a discredited treaty. It seeks to ban biological weapons in their entirety by requiring all participating states, including the U.S., not to develop and deploy biological weapons. But it is now known that the BWC has been violated by the Soviet Union since its inception. Further, a report issued by the Arms Control and Disarmament Agency in January 1993 states that China, Egypt, Iran, Iraq, Libya, and Taiwan either definitely have or may have violated the terms of the convention.<sup>14</sup> In most of the listed cases, it is impossible to determine with absolute precision because compliance with the convention cannot be verified. However, while other countries retained biological weapons, the U.S. completely destroyed its biological deterrent.

The Nuclear Non-Proliferation Treaty, by contrast, has been relatively successful. While it has not prevented the spread of nuclear weapons, it has limited proliferation significantly. Today only a handful of countries outside the five declared nuclear states have nuclear weapons. More important, the Non-Proliferation Treaty did not require the elimination of the U.S. nuclear deterrent.

The Clinton Administration could have resolved many of the problems with the Chemical Weapons Convention by referring the treaty to the United Nations Conference on Disarmament to be redrafted. The Administration, unfortunately, chose not to take this step. The Senate has the option of concluding that the treaty is flawed. If this conclusion were reached, the Senate could request that the Clinton Administration renegotiate the terms of the CWC.

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<sup>14</sup> Arms Control and Disarmament Agency, "Adherence To and Compliance With Arms Control Agreements and the President's Report to Congress on Soviet Noncompliance With Arms Control Agreements," January 14, 1993, pp. 14-15.

If the Clinton Administration resists, there is a second alternative available to the Senate. The advice and consent process used by the Senate to grant permission to ratify a treaty is not limited to approving or disapproving ratification. The Senate can amend the text of a treaty. Through this amendment process, the Senate can re-draft the Chemical Weapons Convention itself so that it resembles the Nuclear Non-Proliferation Treaty. Doing so will require amending the convention in several articles. After adopting these amendments, the Senate then could approve its ratification. The practical effect would be that the Clinton Administration would have to ask other treaty signatories to accept the changes made by the Senate. Thus, the net effect would be a demand to renegotiate the treaty.

✓ **A new policy is needed for deterring chemical weapons strikes.**

Changing the Chemical Weapons Convention itself, however, will not address the threat to U.S. security posed by chemical weapons. This would require changing the overall chemical weapons policy adopted by the Bush Administration. The policy established by President Bush on May 13, 1991, committed the U.S. to the unconditional elimination of its chemical arsenal. This policy should be dropped, and the U.S. should announce that it will reserve the right to retaliate with nuclear weapons if it or its allies are attacked with chemical weapons. Such a response should be considered only in the most extreme circumstance when it clearly would save the lives of many U.S. and allied troops and civilians.

While it would be preferable that the Clinton Administration make these changes in U.S. chemical deterrence policy, the Senate also can take actions that could result in the same changes. First, the Chemical Weapons Convention would have to be amended to permit a U.S. chemical deterrent. Second, the Senate could adopt a reservation—a means by which the Senate can qualify its approval of ratification—that declares that the U.S. reserves the option of retaliating against a chemical attack with nuclear weapons.<sup>15</sup>

✓ **U.S. defenses against chemical weapons need to be improved.**

Pursuing an effective defense program is not prohibited by the Chemical Weapons Convention, even as currently drafted. In fact, the convention explicitly allows for the continuation of defensive programs. The danger is that the implementation process will be hijacked by arms control advocates who oppose such programs and who will undermine them with calls for budget cuts.

The Clinton Administration can counter these pressures on U.S. chemical defense programs in three ways. First, it can request adequate funding levels for chemical defense programs. At a minimum, the Administration should pledge to hold chemical defense funding levels in real terms at the fiscal 1993 level of \$600

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<sup>15</sup> Adopting such a reservation would require that the Senate strike Article XXII of the treaty. Article XXII prohibits reservations of this sort. Striking Article XXII, however, may be something the Senate has an interest in doing whether or not it adopts the reservation concerning nuclear retaliation. The tool most frequently used by the Senate in its advice and consent process is adopting reservations, and Article XXII represents a direct assault on the prerogatives of the Senate.



million in each of the next five years. This will send a message that adoption of the Chemical Weapons Convention, in whatever form, does not mean weakening this country's commitment to fielding defensive systems. The money could be used to develop such defensive equipment as improved gas masks, protective garments, and chemical detectors.

Second, the Administration should move to improve training for U.S. soldiers, so they are better prepared to conduct operations in a contaminated environment. This requires that military officers follow the recommendations made by Richard Davis of the General Accounting Office in testimony before Congress.<sup>16</sup> These include meeting minimum chemical training standards set forth in service regulations and properly integrating chemical defense training into the overall training program for U.S. troops.

Third, the Administration should pledge to improve U.S. defenses against delivery vehicles used to launch chemical attacks. In most cases, these delivery vehicles are aircraft and missiles. Living up to this pledge will require moving toward deployment of the Corps Surface-to-Air Missile (SAM) air defense system and the F-22 fighter and fielding effective defenses against short-range missiles by 1996 and long-range missiles by 2002. The Senate could force these outcomes by adopting reservations requiring the Administration to meet these goals as the price for ratifying the convention.

✓ **The U.S. capability to destroy chemical weapons production and storage facilities, as well as deployed forces with chemical weapons, should be improved.**

Defensive systems cannot meet all the requirements for defending U.S. and allied forces and civilians against chemical attack. These can be met only by maintaining offensive capabilities for striking at enemy positions. For example, countering enemy artillery firing chemical munitions requires an offensive response with opposing artillery or air strikes, as does interrupting enemy command and control networks and destroying chemical production and supply facilities.

The U.S. proved during the Persian Gulf War that it has an effective deep strike capability. Many command and control centers, for example, were destroyed by U.S. air power in and around Baghdad. But this is not to say that improvements cannot be made. For example, the U.S. had trouble countering Iraqi mobile *Scud* missiles with air power. To deal with this problem, the Pentagon launched the *Warbreaker* program, which is focused on enhancing the U.S. ability to strike quickly and accurately at enemy forces and facilities. While recognizing that this program's applications go far beyond countering chemical attacks, the Clinton Administration should announce that it backs *Warbreaker* in part as a way to strike preemptively at weapons capable of delivering chemical munitions. The Senate again has the option of adopting a reservation during its advice and consent process that will force

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16 Davis, *op. cit.*

the Administration to continue the *Warbreaker* program and gear it to meeting the chemical weapons threat.

✓ **The Chemical Weapons Convention's arms control enforcement mechanisms need to be strengthened.**

There are three problems with U.S. policy for enforcing compliance with the Chemical Weapons Convention. First, the Chemical Weapons Convention has a built in conflict of interest in terms of enforcement. By establishing the U.N. Security Council as the court of last appeal in its enforcement process, the convention will allow the U.N. Security Council's five permanent members to veto any pending resolution ordering sanctions against it for an alleged violation. Any attempt to impose sanctions—on China, for example—for violating the convention are doomed to failure at the outset.

This problem can be resolved through a proposal to redraft the Chemical Weapons Convention along the lines of the Nuclear Non-Proliferation Treaty. Since the redrafted convention would establish declared chemical weapons states, it would be logical that these states be the five permanent members of the U.N. Security Council, thereby eliminating the conflict of interest.

The second enforcement problem is that the U.S. historically has been reluctant to take action to remedy a violation by an arms control treaty partner. Despite clear evidence of Soviet violations of the Biological Weapons Convention and the 1972 Anti-Ballistic Missile Treaty, the U.S. did not in either case take the proportionate steps allowed to it under international law. Thus, the violations effectively went unpunished.

Solving this problem will require a change in the government process for handling these issues. Currently, the Arms Control and Disarmament Agency reports annually on arms control treaty violations, but there is no requirement for follow-up. Ultimately, the law could be changed to require that the President propose a proportionate response to a reported treaty violation no later than 60 days after the report is issued. This would guarantee a substantive response once a violation is discovered.

The third problem is addressing the actions of states that refuse to ratify or accede to the Chemical Weapons Convention. This can be dealt with only by retaining a strong military posture that can deter and, if necessary, retaliate against a chemical attack.

## CONCLUSION

Meeting the chemical weapons threat requires redrafting the Chemical Weapons Convention to declare that a few countries, including the U.S., are weapons states. It also requires a policy under which the U.S. reserves the right and capability to respond to chemical attack either in kind or with nuclear weapons.

Perhaps the best example of a successful deterrence policy in history came during World War II. Despite the existence of chemical arsenals, chemical weapons were not used during that conflict. The reason: the Allied powers, including the United States, convinced the Axis that the use of such weapons would result in swift retaliation.

The U.S. is now throwing away this successful policy. By adopting the Chemical Weapons Convention, the U.S. would eliminate its chemical arsenals, even though it could never be sure that potential enemies have done so. U.S. national security interests demand that this process be reversed. The U.S. must not abandon its ability to defend itself against chemical attack—and to deter such attacks in the first place.

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