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# THE CHEMICAL WEAPONS CONVENTION: A BAD DEAL FOR AMERICA

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## THE DECADES-LONG EFFORT TO BAN CHEMICAL WEAPONS

The history behind the Chemical Weapons Convention is a long and tortuous one. 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. 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 United States, 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. 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 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.

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<sup>1</sup> Substantial portions of this were given in testimony before the Senate Foreign Relations Committee on March 12, 1996.

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, and Iraq used chemical weapons during its eight-year war with Iran in the 1980s.

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 in 1992 of the Biological Weapons Convention, which banned the production and stockpiling of biological and toxin weapons, 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 29 members, including such prominent nations as the U.S., France, Britain, and Japan.

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, and Britain is reported to have sold thiodiglycol and thionyl chloride to Iraq in 1988 and 1989. 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.

President George Bush came to office determined to ban chemical weapons. President 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, and the "bilateral destruction agreement" has yet to be brought into force. This failure, to some extent, was 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 would ban the weapons entirely.

Despite the setbacks at the bilateral level with Russia, President Bush announced on May 13, 1991, that the U.S. would agree to a complete ban of chemical weapons even if some other nations did not eliminate their arsenals. Bush also pledged that the U.S. would forswear the use of chemical weapons under any circumstances, including situations in which U.S. forces are attacked with such weapons first.

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. It was signed in Paris by more than the 65 countries required for ratification to bring the convention into force, including by the United States. Now the Senate, in fulfilling its role to advise and consent to all treaties, must decide whether the United States will ratify the Chemical Weapons Convention.

## PROVISIONS OF THE CHEMICAL WEAPONS CONVENTION

I think it would be useful to review the content of the Chemical Weapons Convention. The purpose of the convention is to ban chemical weapons and forbid their production, stockpiling, and use by participating states. 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 that are used for peaceful purposes. Likewise, small stockpiles of lethal chemicals may be retained for the development of 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, 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 will 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. According to the Arms Control and Disarmament Agency, the 1995 budget for the Preparatory Commission was roughly \$17 million, of which the U.S. paid 25 percent. Once up and running, the Organization for the Prohibition of Chemical Weapons will operate at a cost of about \$200 million annually. On the basis of a 25 percent contribution, U.S. taxpayers could be expected to pay \$50 million annually to support this international organization.

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 kinds of inspections are to detect whether certain types of chemicals have been used in building chemical weapons, based on how easily each of three categories (schedules) of chemicals can be turned into weapons.

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 convention. 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 they do 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 and must be completed within ten years.

Once on a weapons site, inspectors will place seals and monitoring devices to guard against a violation. Similar procedures, such as for placing cameras, exist for monitoring whether chemical weapons, production facilities, and non-weapons chemical production facilities have been destroyed. As many as 1,000 inspections a year may be required.

Operating this complex arrangement of inspection regimes will prove costly to U.S. industry and the government. According to expert David Evans of Analytic Services, Inc., of Arlington, Virginia, U.S. industry can be expected to incur costs of between \$20 million and \$200 million annually to support the inspection process. The higher costs are more likely in the early stages of implementation of the Chemical Weapons Convention. But this general cost to industry assumes that everything goes as planned. If the mechanism in the convention to protect proprietary and other sensitive business information fails, Mr. Evans estimates that the cost to business could exceed \$1 billion annually. The U.S. government will have its responsibilities for implementing the convention as the national authority serving as an intermediary between industry and the Organization for Prohibition of Chemical Weapons. The cost of these activities to the U.S. government is estimated to be \$25 million annually.

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.

## **A FIVE-PART TEST OF ARMS CONTROL AGREEMENTS AND THE CHEMICAL WEAPONS CONVENTION**

To deserve the support of the Senate, any arms control agreement should pass a five-part test. This test should serve to determine whether a particular arms control agreement meets the minimum standards necessary to serve the national interest. The test consists of five questions, all of which must be answered affirmatively when applied to a particular agreement to insure that it does not contain a fatal flaw. These five questions are: 1) Does the agreement reduce the risk of war? 2) Are the agreement's requirements consistent with U.S. global security responsibilities? 3) Is the agreement adequately verifiable? 4) Is the agreement enforceable? and 5) Does the agreement enhance national security? The Chemical Weapons Convention fails to pass this test in all five particulars.

**QUESTION #1: Will the Chemical Weapons Convention reduce the risk of war?**

**ANSWER #1: By undermining the U.S. chemical deterrent, the Chemical Weapons Convention may increase the likelihood of war or result in the escalation of an existing conflict.**

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 Chemical Weapons Convention 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. The Chemical Weapons Convention, although unintentionally, will encourage escalation in two ways. First, chemically armed enemies, 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 for the employment of nuclear weapons.

**QUESTION #2: Are the Chemical Weapons Convention's requirements consistent with America's global responsibilities?**

**ANSWER #2: The Chemical Weapons Convention, by treating all nations alike, fails to acknowledge America's special role in global security.**

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 under the Nuclear Non-Proliferation Treaty.

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, under 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 Nuclear Non-Proliferation Treaty accounts for the special responsibilities and broad political roles played by these five acknowledged nuclear weapons states in world affairs. The Chemical Weapons Convention also could have done so, simply by adopting the same discriminatory approach established by the Nuclear Non-Proliferation Treaty.

**QUESTION #3: Is the Chemical Weapons Convention adequately verifiable?**

**ANSWER #3: Despite elaborate and burdensome verification provisions, compliance with the Chemical Weapons Convention cannot be adequately 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." This committee itself was notified of the problems with verification during a June 23, 1994, hearing. At that hearing, then-Director of Central Intelligence James Woolsey stated: "But, still, 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."

**QUESTION #4: Are the provisions of the Chemical Weapons Convention enforceable?**

**ANSWER #4: Violations of the Chemical Weapons Convention are likely to 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 Biological Weapons Convention. Yet the U.S. never lodged a complaint with the U.N. Security Council, which is charged with resolving the Biological Weapons Convention's enforcement problems just as it would under the Chemical Weapons Convention. 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. China and Russia will have an equivalent veto authority against enforcing the provisions of the Chemical Weapons Convention as they pertain to their programs.

**QUESTION #5: Does the Chemical Weapons Convention enhance U.S. national security?**

**ANSWER #5: By making arms control an end in itself, the Chemical Weapons Convention will not serve to protect U.S. national security.**

This question establishes the most important test of arms control. 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 requirement 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, as a practical matter, other nations still possess them. By way of analogy, would it be in the U.S. interest to conclude a similar agreement relative to nuclear weapons? Such an agreement would require the U.S. to dispense with its nuclear arsenal even though some other countries may retain nuclear weapons. This is no longer an academic question. India, among other nations, is demanding that the U.S. commit to such an agreement in principle at the negotiations over banning nuclear tests at the Conference on Disarmament in Geneva. The precedent set by U.S. ratification of the Chemical Weapons Convention would indicate that the U.S. is willing to accept a similar agreement attempting to ban nuclear weapons.

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

The Chemical Weapons Convention is not just an arms control agreement; it is also a non-proliferation agreement. As such, it carries important implications for U.S. non-proliferation policy. While the U.S. has a clear interest in stopping the proliferation of chemical weapons around the world, 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 and 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 the following 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 therefore 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 a 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 they need to be defended as well from aircraft and missiles which may carry chemical munitions.

There certainly is 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. Although some progress has been made in improving the chemical defense posture of U.S. forces during the intervening years, it is unlikely that all the vulnerabilities cited by Mr. Davis in 1991 have been eliminated. As for defenses against the delivery systems used to launch chemical attacks, the Clinton Administration 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 the result of a provision in the Biological Weapons Convention outlawing defenses; it was the 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.

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

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

Defensive systems are not the sole means for countering a chemical attack. U.S. armed forces can destroy preemptively an enemy's chemical weapons and weapons facilities 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 be required to devise a comprehensive strategy for destroying enemy weapons and facilities in time of war. It can do so by continuing and improving Pentagon programs already underway. The Air Force has conducted "sensor to shooter" experiments with the aim of devising a system for directing attacks against enemy forces within minutes of detection. The Navy has an equivalent concept called the "cooperative engagement capability." These programs need to be coordinated and focused on destroying the weapons and forces capable of delivering chemical munitions.

## **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 solely 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 has chosen not 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:

**① A chemical weapons treaty should be modeled on the Nuclear Non-Proliferation Treaty.**

Two treaties serve as models for agreements on controlling 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 Biological Weapons Convention was violated by the Soviet Union from the beginning. Further, a report issued by the Arms Control and Disarmament Agency on May 30, 1995, states that China, Iran, Iraq, Libya, Russia, and Taiwan either definitely have or may have violated the terms of the convention. In most of the listed cases, it is impossible to determine with absolute precision because compliance with the convention cannot be verified. Further, the report states that Egypt and Syria may have biological weapons programs. These two countries have signed but not ratified the Biological Weapons Convention. Thus, despite the evidence that other countries retained biological weapons, the U.S. has 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 sending the treaty back 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 Chemical Weapons Convention so that it is modeled on the Nuclear Non-Proliferation Treaty.

If the Clinton Administration resists, there is a second alternative available to the Senate. The advice and is not limited to approving or disapproving ratification. The Senate can amend the text of a treaty. Through this amendment process, the Senate itself can redraft the Chemical Weapons Convention so that it resembles the Nuclear Non-Proliferation Treaty. Doing so would 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.

**② A new policy is needed to deter 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, essentially committed the U.S. to the unconditional elimination of its chemical arsenal. This policy should be dropped, and the U.S. should state it will preserve the broadest possible array of responses to a chemical attack, including retaliation with conventional military means, an in-kind response, and, in the most extreme circumstances, a nuclear response. Further, it should not describe the specific circumstances under which it will resort to any particular response, in order to retain the greatest deterrent effect possible.

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 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. It must be acknowledged, however, that in order to adopt such a reservation the Senate may first be required to strike Article XXII of the convention. Article XXII bars reservations. Striking Article XXII is something that should be of general interest to the Senate in any event. Barring reservations narrows the freedom of action of the Senate in terms of its advice and consent role. The Senate should not accept any provisions in this convention or any future treaty that so limits its freedom of action.

**③ 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 defense 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 Senate can counter these pressures on U.S. chemical defense programs in three ways. First, it can provide adequate funding levels for chemical defense programs in the annual authorization and funding bills for the Department of Defense. But since the funding question is under the jurisdiction of other Senate committees, the Foreign Relations Committee may prefer to focus on establishing clearly defined standards for the military in terms chemical defense preparedness. A condition could be attached to the resolution of ratification that requires the Secretary of Defense to certify that the Department of Defense has met the requirements for improving chemical defense preparedness made by Richard Davis of the General Accounting Office in testimony before Congress. 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.

The Senate should also set requirements for improving U.S. defenses against delivery vehicles used to launch chemical attacks, particularly ballistic missiles. This must include a requirement for the development and deployment of missile defenses capable of effectively destroying chemically armed ballistic missiles in the boost phase. The Senate could force this outcome by adopting a condition requiring the Administration to propose such a boost-phase defense for deployment by a specific date.

**④ 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 military services, and the Air Force and Navy in particular, have launched programs which are focused on enhancing the U.S. ability to strike quickly and accurately at enemy forces and facilities. The Senate should direct the Department of Defense to coordinate these programs and focus them on countering weapons of mass destruction and their delivery systems, including chemical weapons. The Senate again has the option of adopting a condition during its advice and consent process that forces the Clinton Administration to continue these programs and gear them to meeting the weapons of mass destruction threat.

## ⑤ 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 by redrafting 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 take the proportionate steps allowed to it under international law. Thus, the violations 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. This is the ultimate insurance policy, but it can be maintained over the long term only by the actions of a Congress determined to fund and supervise America's defense programs.

## 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, in addition to conventional means.

Perhaps the best example in history of a successful deterrence policy came during World War II. Despite the existence of chemical arsenals, chemical weapons were not used widely 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. may now be throwing away this successful policy. By adopting the Chemical Weapons Convention and declaring a unilateral policy of neither maintaining nor using chemical weapons, even in retaliation, the U.S. would eliminate its chemical deterrent even though it could never be sure that potential enemies have taken equivalent steps. U.S. national security interests demand that this process be reversed. The U.S. must not abandon its ability to deter attacks with chemical weapons.



