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## SIX FAULTY REASONS FOR SUPPORTING THE CHEMICAL WEAPONS CONVENTION

### INTRODUCTION

**T**his week the Senate will vote on ratification of the Chemical Weapons Convention (CWC). The vote will be a defining moment for this venerable institution to see if it will carry out its constitutional role properly in safeguarding the country's security.

The Clinton Administration, with its allies and surrogates in the arms control community, has exerted immense pressure on the Senate leadership, and for a time it looked as though the CWC was headed for approval. But CWC opponents have focused the debate effectively on the convention's egregious flaws, and now the tide seems to have turned. Opponents and supporters of the CWC now agree that the prospects for ratification are no better than 50-50.

The outcome of the CWC vote will depend largely on the actions of Senate Majority Leader Trent Lott (R-MS), and on 10 or 12 undecided Senators, mostly conservative Republicans. If he cannot muster 34 votes to resist this unprecedented assault on American liberty, sovereignty, and national security by the Clinton Administration—including the possible illegal use of federal funds for direct lobbying of Congress—it is difficult to imagine on what other issue he and conservatives in the Senate could be expected to prevail.

### WHY WOULD CONSERVATIVES VOTE FOR THE CWC?

In speaking with Senators who remain undecided on the CWC, a pattern emerges. Their responses can be aggregated and distilled down to a few basic reasons for remaining undecided or for leaning toward an affirmative vote on the CWC. Unfortunately, these reasons do not stand the test of rigorous analysis. The following are the most common of the faulty reasons.

## **Faulty Reason #1: "My constituents don't care about the CWC."**

This is mostly true. Americans in the heartland are not clamoring for ratification of this treaty. It is also true that the vast majority of voters respond affirmatively when asked the open-ended question, "Do you favor a treaty that would end the global threat of chemical weapons?" And who would not? Americans of every party and persuasion abhor chemical weapons. This is why the United States ended its chemical weapons program unilaterally, and will spend billions of scarce defense dollars to destroy its stockpile.

But many Senators in the undecided column have concluded that, because their constituents do not care about it, the CWC is not worth falling on their swords. But that is exactly the wrong conclusion to reach. If constituents are indifferent, why agree to ratify it? Senators voting against the CWC are not likely to suffer a political penalty at home, any more than the Senators who opposed the Strategic Arms Limitation Treaty (SALT) II back in the 1980s—especially because, in this case, there is a credible alternative, S. 495, the Chemical and Biological Weapons Threat Reduction Act, which passed the Senate on April 17. A vote for S. 495 certainly will immunize Senators against the baseless charge that they are "in favor of poison gas."

Moreover, the CWC represents a startling new dimension in arms control. In the past, arms treaties were a matter between governments, and the only Americans affected were perhaps workers in weapons programs that were ended or scaled back under the treaty. But now, for the first time, in an unprecedented fashion, arms control will reach inside the United States and touch individual Americans in ways one cannot possibly foresee. Constituents will come to care, greatly, and with growing anger, when the CWC inspector shows up and demands an exhaustive look at their plants, their products, and their files and databases.

Indeed, the word is starting to filter out to the voters that the CWC may affect them in the following ways:

- **It will jeopardize their constitutional rights.**

The CWC undermines the Fourth Amendment right against unreasonable search and seizure. True, the Clinton Administration was compelled to agree to compromise language of Senators Lott and Jesse Helms (R-NC) that was not in the CWC's original inspection provisions. Organization for the Prohibition of Chemical Weapons (OPCW) inspectors now will have to obtain a criminal search warrant for challenge inspections not agreed to by the targeted company or organization, and an administrative search warrant for routine inspections not agreed to. Companies under contract with the U.S. government, however, which presumably would include a large number of firms targeted for chemical inspection, would not have the right to object and could be subjected to warrantless searches.

The CWC also undermines the Fifth Amendment protection against the taking of private property for public purposes without due compensation. Businesses are subject to having their physical and intellectual property, including proprietary data and trade secrets, seized by chemical weapons inspectors without compensation.

- **It will impose a costly new reporting and regulatory burden on U.S. businesses.**

The direct and indirect costs of United Nations (U.N.) inspections, including the time and expense of filling out forms and the possible costs due to loss of proprietary data, could be enormous. The CWC contains three lists, or “schedules,” of chemical agents and precursor chemicals subject to the treaty. The U.S. Department of Commerce estimates that businesses subject to inspection will need from 2.9 to 9 hours to complete the reporting paperwork for each chemical it handles, depending on its schedule classification. When Americans learn just how intrusive and costly this burden could be, support for the treaty drops precipitously.

Under Article VI of the U.S. Constitution, treaties duly ratified are part of the “supreme Law of the Land.” Ratifying a treaty thus should be considered a matter of great import. The presumption should not be automatically in favor of a new treaty, especially one as sweeping and uncertain in its impact as the CWC, unless the American people are demanding its ratification overwhelmingly.

### **Faulty Reason #2: “I’m not interested in foreign policy. Other issues are making more important demands on my time.”**

As part of the supreme law of the land, a treaty should be considered as carefully as a constitutional amendment—especially because the U.S. government, which operates in a highly legalistic and litigious culture, has a tendency to bind itself more tightly by treaties than is necessary. In effect, the American way of arms control has spawned a new doctrine of “unilateral imposed obligation.” U.S. arms control officials often find ways of complying with treaties that were never intended, seeking emanations and penumbras and limits that are not in the plain text.

In the case of SALT II, the United States complied with it for years even though the Senate never consented to ratification. But a more dramatic example is the 1972 Anti-Ballistic Missile (ABM) Treaty with the former Soviet Union, which prohibits the United States from deploying an effective defense against strategic or intercontinental ballistic missiles.

The acolytes of arms control call the ABM Treaty the “crown jewel of arms control.” The Clinton Administration says it is the “cornerstone of strategic stability.” The arms control establishment has pursued observance of the ABM Treaty doggedly, despite material breaches of the treaty by the Soviets, even to the point of self-imposed limits on U.S. defenses against shorter-range or theater ballistic missiles, which the treaty was not intended to cover. The arms control community and the Clinton Administration are invoking the ABM Treaty to impede the most promising new sea-based and space-based theater missile defenses (TMD). This form of excessive and unnecessary treaty observance leaves U.S. forces and allies overseas vulnerable to the proliferation of advanced theater ballistic missiles among rogue regimes like Iran, Iraq, Libya, and North Korea. These states may also possess or be developing chemical, nuclear, or biological weapons with which to arm their missiles.

It is true that Senators have many items on their agenda and many demands competing for their time; and, regrettably, the CWC is complex. It requires a fair amount of study and analysis to understand its full ramifications. But the CWC is a serious matter,

potentially part of the supreme law of the land, and cannot be responsibly dismissed on grounds that Senators are too busy or uninterested. Would Senators approve a constitutional amendment they had not read and fully understood?

### **Faulty Reason #3: "It won't hurt, and perhaps it will help."**

When the Utopian claims and grandiose rhetoric of the President regarding the CWC are stripped away, this is the essence of the Administration's case for the CWC: that it will not hurt and it might help. This reason tempts some Senators faced with what they believe will be a tough vote. Although it may appear to be an easy solution, it is fundamentally in error; and the error is twofold.

The first error is that this thinking implicitly accepts the Clinton Administration's claims. Senators, however, should ask themselves first: Why should they accept the President's word on this issue without question?

Even if this Administration had a better reputation for truthfulness, its assertions on behalf of the CWC do not meet the test of sound analysis or even common sense. For example, on April 18 the President made the incredible statement that the United States "will be joining the company of pariah states" if it does not ratify the CWC. But failing to sign a piece of paper that even CWC supporters concede is largely symbolic does not make the United States a "pariah" state. Conversely, signing such a document does not convert an outlaw state into a law-abiding and civilized one. It is blatant demagoguery to suggest otherwise.

The President should have considered the case of Iraq before making such an irresponsible statement. Signing the Nuclear Non-Proliferation Treaty (NPT) did not make Iraq a responsible member of the international community. In fact, Iraq actually used its membership in the NPT to circumvent International Atomic Energy Agency inspections and conceal its nuclear weapons efforts.

Civilized nation-states are characterized by observing international norms and behaving in an enlightened and responsible manner. Joining or not joining the CWC will not change that fundamental truth. When it comes to chemical arms, the United States is not a pariah, but is, in fact, leading the way. As mentioned above, the United States will spend billions to destroy its stockpile of chemical weapons and is not manufacturing any more chemical agents. Statements like this one show the fatuous and shallow reasoning emanating from the White House.

The second error is an error of fact. The CWC may actually make matters worse, and in the following ways:

- **It will create the illusion that the global threat of chemical weapons has been solved, and enshrine self-delusion and wishful thinking as national policy.**

The intelligence community concedes the CWC is neither effectively verifiable nor enforceable. It does nothing about the chemical threat of rogue states that do not join. Moreover, rogue states that do join actually may use CWC membership to learn how to conceal their chemical weapons programs, just as Iraq used membership in the NPT to cover its secret nuclear weapons program. Indeed, chemical weapons are far easier to manufacture and conceal than nuclear weapons. In a

still dangerous and volatile world, the United States cannot afford to base its security on falsehoods.

- **It will lead to complacency and neglect of U.S. chemical defenses as the Pentagon reallocates its shrinking budget elsewhere—because the CWC will have “taken care of the chemical weapons problem.”**

The chemical defense gear in use by U.S. troops today is becoming outdated. It will not counter the threat of new chemical weapons, for example, the *novichuk* agents reportedly under development in Russia (in violation of U.S. expectations under the U.S.–Russian Bilateral Destruction Agreement).

- **As the effectiveness of U.S. chemical defenses inevitably declines, the risk of chemical weapons use by a future adversary actually will increase.**

The United States is eliminating its chemical weapons arsenal, as already discussed. This means the United States will have no credible means to deter a chemical attack by responding in kind; it can only defend. But Pentagon spending on chemical defenses—improved protective masks and suits, improved detection devices and antidotes—is already in decline, due in large part to anticipation of the supposed benefits of the CWC.

- **It will open, rather than close, the door to proliferation of chemical warfare capabilities.**

Under Article X, states parties are required to share chemical defensive technology with other members. Rogue states who have joined in bad faith thus would gain access to U.S. chemical defenses. And Article XI requires cooperation among states parties in the peaceful use of chemicals, in effect, facilitating trade and transfer of chemicals among members, again including rogue regimes that have joined in bad faith.

- **It will spawn a costly and intrusive new U.N.-style bureaucracy, the OPCW, without a commensurate benefit in security.**

In fact, the CWC appears to be the leading edge of the Clinton Administration’s globalist agenda, which is surrendering piecemeal U.S. sovereignty and constitutional safeguards. The CWC symbolizes the Administration’s commitment to big government, but on a global scale.

If Senators think the CWC is better than nothing, they had better review these and others flaws in the CWC, which suggest that it will not make the chemical threat better, but worse.

#### **Faulty Reason # 4: “I feel like I have to support arms control and get the arms control establishment off my back.”**

Senators who are contemplating a vote against the CWC need not feel any debt to the arms control establishment, a self-aggrandizing elite whose delusions and falsehoods have harmed rather than enhanced U.S. security. Arms control as practiced by today’s elites is the mentality of welfare-statism writ large and applied to foreign policy. It does on a national scale what welfare does locally and individually. It kills responsibility and initiative by attempting to make others—the U.N. or multilateral entities or treaty

partners—responsible for U.S. security and not Americans themselves. In so doing it also undermines the sovereignty of the country just as welfare does to families. It leaves the United States defenseless at home and U.S. troops overseas in danger in the same way welfare leaves families and individuals demoralized, weakened, and in state or permanent dependency and near-poverty.

If the Senate agrees to the ratification of an unverifiable and unenforceable treaty like the CWC, it will give undeserved legitimacy to the arms control delusion and open the floodgates to a spate of new treaties, equally unverifiable and unenforceable. The CWC will legitimize arms control agreements of any type. At least the old days of “trust but verify” paid lip service to verification, compliance, and enforcement (although, in reality, the United States seldom followed through). But the CWC represents an abandonment of “trust but verify” in favor of “blind trust,” and ends any pretense to verification and compliance.

Approving the CWC will not placate the arms control crowd and get them off Senators’ backs. It only will whet their appetite for more such agreements. If the CWC goes through, the Senate will have no principled or rational basis to oppose the blizzard of arms control agreements proposed at the recent Helsinki Summit, including:

- **The Comprehensive Test Ban Treaty**, which will push forward the Clinton Administration’s de facto denuclearization of the U.S. strategic deterrent;
- **The Land Mine Ban**, which will deprive shrinking U.S. ground forces of needed defenses in conventional land warfare;
- **Revisions to START II and ratification of START III**, even though Russia has not ratified START II and appears unlikely to do so in the future; and
- **Relief from the “flank limits” of the Conventional Forces in Europe Treaty** for Russia, making it easier for an irredentist Russia to threaten its former possessions in the “near abroad.”

Like the CWC, most of or all these proposed agreements will be unverifiable and unenforceable. But if history is any guide, even when violations are detected, the myrmidons of arms control will suppress any evidence that their precepts are not working. They will do anything to keep the process going so that the process becomes the end in itself, divorced from reality and from the end of securing U.S. strategic interests. But the Senate has the obligation to safeguard U.S. security, and that security is inconsistent with the failed and fraudulent dogmas of arms control.

#### **Faulty Reason #5: “It’s the Senate’s job to ratify treaties; why not ratify this one?”**

The Senate’s treaty-making role under Article II, Section 2, of the Constitution is not to rubber-stamp a treaty simply because the executive branch proposes it. Senators must understand and recover their proper constitutional role in consenting to the ratification of treaties, a function that embodies the principle of checks and balances.

Individual voters do not have the time or the expertise to study proposed treaties and make a judgment. This is why they elect Senators and send them to Washington: to act, in effect, as their fiduciary agents; and to protect them from bad agreements that would leave them vulnerable or intrude on their liberty (or both). Every Senator has a solemn

moral as well as political obligation to study, analyze, and subject the claims of the arms control proponents to close scrutiny, and make sure the proposed treaty truly serves the interests of the United States and the American people, and not just the narrow interests of the arms control elites. The Clinton Administration is pursuing an arms control agenda that is out of control. It is up to the Senate to impose a little sobriety on behalf of the American people.

**Faulty Reason #6: "I'll be severely criticized if I don't vote for the CWC; they'll say I'm in favor of poison gas."**

Yes, they will. Unfortunately, a vote against the CWC will generate a flurry of criticism from Washington pundits. But Senators have several ways to counter this criticism. One is the vote for S. 495 on April 17. Another opportunity is the vote on the full Helms Resolution (Executive Resolution Number 75), which will come to a vote first under the Unanimous Consent Agreement propounded on April 17. The Helms Resolution contains 33 revisions of the objectionable features of and serious flaws of the CWC. Another defense from criticism is the good offense—to be able to expose the false claims of CWC supporters and its negative impact on U.S. citizens.

## CONCLUSION

It is incredible to think that the most conservative Senate in recent memory, led by the most conservative majority leader in decades, actually could approve the worst arms control treaty since 1972 (when the United States ratified the ABM Treaty).

Perhaps some Senators have been swayed by the President's agreement to reorganize the State Department, as Senator Helms has been demanding during negotiations over bringing the CWC to a vote. But State Department reorganization is too cheap an exchange for such a flawed treaty. To Senator Helms's credit, he has been advocating these changes for a long time. But they should be implemented anyway. At the same time, it has to be acknowledged they will not alter U.S. foreign policy fundamentally. The White House already has said it will not cut back on State Department positions and spending. The same people will be in charge of the foreign policy apparatus, and policies at the Arms Control and Disarmament Agency and the Agency for International Development will not change because the organizational chart has been redrawn. To seize on this deal as a justification for approving the CWC is like the homeowner who is preoccupied with changing a few shingles on the roof while the foundation is being undermined and the entire house is crumbling.

The American people are not clamoring for this treaty. There are only two constituencies that the Senate will be gratifying if it agrees to ratification of the CWC: the Clinton Administration and the arms control establishment.

If economic and social issue conservatives in Congress can end welfare as we know it, with its vast and deeply entrenched constituency, then cracking the arms control monolith should be at least as easy. But first someone has to be brave enough to stand up and say, like the hero of Hans Christian Andersen's fable, that the emperor is naked.

Thomas Moore  
Deputy Director of Foreign Policy  
and Defense Studies

