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Waiting for Lott's CWC choice

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On national security, is Senate Majority Leader Trent Lott a Reaganite or a Bushite? The debate over ratification of the Chemical Weapons Treaty (CWC) poses this question. Mr. Lott will have to answer by the last week of April.

Mr. Lott has successfully pressured Senate Foreign Relations Committee Chairman Jesse Helms into permitting a Senate floor vote on treaty ratification. But Mr. Lott has not announced whether he personally lines up with George Bush, who favors ratification without amendment, or with treaty critics, led by Mr. Helms and Sen. John Kyl - and including the core of the Reagan administration's national security team.

The treaty purports to ban possession and production of poison gas weapons. Most critics agree with the treaty's proponents that it would be desirable to eliminate chemical weapons from the world entirely and that the United States should continue to destroy its own such weapons, as we are already doing, whether or not the United States joins the CWC.

Both sides acknowledge that the treaty will not be global and will not cover a number of the states of greatest concern to us. They also agree that the treaty is not verifiable, if by "verifiable" we mean confidence that U.S. intelligence will detect illegal, clandestine stockpiling or production of chemical weapons. The verification problem here is not the lack of perfection. The problem is that chemical weapons production is so easy to do and conceal that it is inherently impossible to achieve any degree of confidence - let alone "high confidence" - that we could detect it, even regarding militarily significant quantities. As one commentator noted: The CWC is like an effort to ban hollandaise sauce without banning eggs and butter.

Everyone agrees that the treaty will not actually eliminate chemical weapons from the world. It is in essence a moral statement against chemical weapons.

Treaty critics contend that the treaty will not accomplish its purpose and will actually exacerbate the world's chemical weapons problem. They say it would not serve the anti-chemical cause for us to join a ban we know be ineffective, impossible to monitor properly and impossible to enforce.

The world would surely be a better place if the law in fact played a greater role in securing international peace and civilized behavior. But do we move toward this goal by promulgating patently ineffective new treaty?

According to the critics, a chemical weapons ban that states know they can sign cynically and violate without punishment will not shore up the international norm against such weapons. Creating a bad law is not the way to build respect for law. The CWC will cheapen the currency of international law. A wiser approach to arms control is

embodied in S 495, authored by Messrs. Kyl and Lott, among others, which would have the United States work to obtain international agreement on mechanisms for enforcing the existing treaty that bans initiation of chemical warfare. In other words, we should put teeth in the 1925 Geneva Protocol.

What of the point that we might as well ratify the CWC as we are destroying the U.S. chemical arsenal anyway? Treaty critics argue that is better than we destroy our arsenal unilaterally than to enter into a treaty that we know will not accomplish its purpose. By acting unilaterally, we produce some of the key benefits hoped for from the CWC without taking on undesirable baggage. Our action makes an impressive moral statement against chemical weapons without lending our name to the dishonest proposition that Iran, China or others have actually abolished their chemical weapons.

Any other chemical weapons state that wants to follow our lead can do so, also unilaterally. Each will have to work to persuade the world that it is doing what it has promised. This way, states will not obtain a clean bill of health simply by signing a treaty and subjecting themselves to an inspection regime that they know is easy to defeat.

But are we not, as treaty proponents argue, better off with the CWC's inspection and information rights than without? On balance, say the critics, we are better off without. The CWC will contribute little of any importance to what we already know about chemical weapons worldwide from our own national intelligence means.

The treaty's verification regime stands on two legs. The first is voluntary disclosure. Virtually all the inspections to be conducted under the CWC will be of so-called "declared facilities" - that is, locations that each party will itself declare to be subject to inspection. Nearly all the large budget of the new CWC organization based in the Hague will be allocated to inspecting "declared facilities" and processing parties' voluntary declarations. But does anyone expect a country like Iran or China or Russia to declare a facility at which it is planning to produce or store illegal chemical weapons?

Looking for chemical weapons at "declared facilities" brings to mind the joke about the drunk who looks for his keys under the street lamp rather than some ways off, where he dropped them, because there is more light under the lamp.

The CWC verification regime's second leg is challenge inspection - that is, inspection of a facility that was not "declared." This is often talked of as if it were a tool for adding to our knowledge or for finding violations. It is not.

One cannot spot-check a country the size of Iran, much less China, by means of challenge inspections. The purpose of challenge inspections is to try to embarrass a state that one has, by other intelligence means, caught in a violation.

So we will not learn much of substantive value through challenge inspections. Moreover, the CWC's challenge inspection provisions were watered down in the negotiations to the point where they are not even a useful tool for embarrassing cheaters. Parties will be able, within the treaty's terms, to delay and otherwise defeat the purposes of the challenge inspection provisions.

Moreover, harm to our intelligence capabilities will result from participation in the international inspection program by the unreliable states. Iraq in the 1970s and 1980s learned much about how to conceal its nuclear weapons program through participating in the inspection regime of the Nuclear Non-Proliferation Treaty. When rogue states learn how to inspect, they learn how to conceal.

CWC Articles X and XI have become the main focus of the critics' case that the CWC will do more harm than good. These provisions, modeled on the "atoms for peace" concept in the NNPT, aim to reward states that renounce chemical weapons by providing them with chemical technology and material "for peaceful purposes."

Article X obliges the parties to facilitate the exchange with the other parties of chemical weapons defense material and technology. To have an effective chemical war-fighting capability, one must have defense material and technology

to protect one's own forces. Article X will establish the right of Iran, for example, to obtain such items from Germany, France, China or some other state. And it will establish the right of would-be sellers to provide such items to Iran.

Similarly, Article XI prohibits -or at least expresses disapproval of - export restrictions in the chemical field among treaty parties. For export controls to be effective, they must have multilateral support, which is hard to organize. To return to the example above: If a German or a Chinese company arranges to sell an advanced chemical plant to Iran and the U.S. government protests that this would enhance Iran's chemical weapons program, we can expect the German or Chinese government to cite Article XI, arguing that the CWC not only permits but requires the sale, for Iran will be a treaty party in good standing (or, in any event, a party against whom no violation has been proved).

Whatever one thinks of the CWC overall, no one can deny it would be a better (or less bad) treaty if the "poisons for peace" provisions were fixed. Some treaty critics would be willing to withdraw their opposition if only the Senate would ensure that Articles X and XI are properly amended before U.S. ratification. Their argument is that, to be minimally acceptable, the CWC should at least not undermine the very interest - stemming chemical weapons proliferation - it aims to promote.

Administration officials counter with the argument that it would be embarrassing for the United States, at this late stage, to insist the treaty be amended. They say this would destroy our diplomatic credibility. While it would, to some extent, be embarrassing, it also is embarrassing to ratify a treaty with provisions as perverse as Articles X and XI.

As for our diplomats' credibility, the effect of forcing amendments of Articles X and XI could be powerfully positive. If the administration is correct that our allies interpret those provisions benignly, then the amendments should not be unduly difficult to arrange.

If they are so difficult, this would confirm that the provisions are a problem the United States should solve before ratification. If the administration, as is likely, then succeeds in getting the needed amendments, our diplomats' influence would be enhanced. The next time a multilateral forum proposes a treaty with a bizarre provision adverse to our interests, our negotiators would be able to declare credibly that that provision will preclude Senate approval of the treaty. This will strengthen American credibility.

Many states of concern to us -Syria, Libya, Iraq and North Korea - have not signed the CWC. Although some such states - specifically Russia, China, Iran and Cuba - have signed, none of these latter four has yet ratified. The administration insists it is crucial that the United States ratify the CWC before April 29, when the new treaty organization will be inaugurated. If we do, however, we shall be the only state party that actually has a significant chemical weapons capability.

The treaty is an academic exercise unless and until the United States, Russia, China and other weapons states are parties.

April 29 is an artificial deadline. Any time the United States might decide to become a party, it will, because of its military and financial status, be afforded an appropriate position of influence in the treaty organization. This is true because we are to pay 25 percent of the new organization's total budget and also because the other major states in this field are waiting for the United States before they decide whether to ratify. If the Senate is ready to act before April 29, then well and good. But the Senate need not feel compelled to hasten its deliberations simply to make a meaningless deadline.

Some senators have concluded that the CWC is so rife with important flaws it cannot be fixed and should be rejected outright. Others believe that, the treaty's admitted flaws notwithstanding, the Senate should support ratification without amendment. Mr. Lott appears to be exploring the middle ground, working to identify two or three important fixes on the basis of which he could support the treaty and without which he could easily justify opposing the treaty.

All the CWC critics who recently testified before the Senate Foreign Relations Committee - former Defense

Secretaries Rumsfeld, Schlesinger, and Weinberger, former U.S. Ambassador to the United Nations Jeane Kirkpatrick and former senior Pentagon officials Fred Ikle, Richard Perle, and the author - warned of the dangers inherent in CWC Articles X and XI. Unless Mr. Lott casts his lot with the Bush-ites, he will demand, as the minimum price for his support for CWC ratification, a treaty amendment to fix those provisions. If he tells President Clinton that the choice is between killing the treaty or fixing it, he will put the president in a box. Senators backing Mr. Lott on this approach would be able to explain to their constituents that they did not oppose the treaty, but supported it with a necessary fix. If accused of relying on a "killer amendment," these senators can point out that an amendment aiming to kill the treaty would insist on fixing a dozen major flaws, not simply the one or two biggest.

The CWC's critics have the intellectual high ground on this CWC issue and the Senate Republican leadership has put forward a good chemical weapons arms control bill of its own. The Republicans have an opportunity to strike a blow against junk arms control and to uphold the Reagan legacy on national security policy. All eyes are on the majority leader.

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