

in accordance with paragraph 5, if proposed changes are related only to matters of an administrative or technical nature. All changes to the Annex on Chemicals shall be made in accordance with paragraph 5. Sections A and C of the Confidentiality Annex, Part X of the Verification Annex, and those definitions in Part I of the Verification Annex which relate exclusively to challenge inspections, shall not be subject to changes in accordance with paragraph 5.

5. Proposed changes referred to in paragraph 4 shall be made in accordance with the following procedures:

(a) The test of the proposed changes shall be transmitted together with the necessary information to the Director-General. Additional information for the evaluation of the proposal may be provided by any State Party and the Director-General. The Director-General shall promptly communicate any such proposals and information to all States Parties, the Executive Council and the Depositary;

(b) Not later than 60 days after its receipt, the Director-General shall evaluate the proposal to determine all its possible consequences for the provisions of this Convention and its implementation and shall communicate any such information to all States Parties and the Executive Council;

(c) The Executive Council shall examine the proposal in the light of all information available to it, including whether the proposal fulfills the requirements of paragraph 4. Not later than 90 days after its receipt, the Executive Council shall notify its recommendation, with appropriate explanations, to all States Parties for consideration. States Parties shall acknowledge receipt within 10 days;

(d) If the Executive Council recommends to all States Parties that the proposal be adopted, it shall be considered approved if no State Party objects to it within 90 days after receipt of the recommendation. If the Executive Council recommends that the proposal be rejected, it shall be considered rejected if no State Party objects to the rejection within 90 days after receipt of the recommendation;

(e) If a recommendation of the Executive Council does not meet with the acceptance required under subparagraph (d), a decision on the proposal, including whether it fulfills the requirements of paragraph 4, shall be taken as a matter of substance by the Conference at its next session;

(f) The Director-General shall notify all States Parties and the Depositary of any decision under this paragraph;

(g) Changes approved under this procedure shall enter into force for all States Parties 180 days after the date of notification by the Director-General of their approval unless another time period is recommended by the Executive Council or decided by the Conference.

Article XVI: Duration and Withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention if it decides that extraordinary events, related to the subject matter of this Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal 90 days in advance to all other States Parties, the Executive Council, the Depositary and the United Nations Security Council. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

3. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law, particularly the Geneva Protocol of 1925.

Article XVII: Status of the Annexes

The Annexes form an integral part of this Convention. Any reference to this Convention includes the Annexes.

Article XVIII: Signature

This Convention shall be open for signature for all States before its entry into force.

Article XIX: Ratification

This Convention shall be subject to ratification by States Signatories according to their respective constitutional processes.

Article XX: Accession

Any State which does not sign this Convention before its entry into force may accede to it at any time thereafter.

Article XXI: Entry Into Force

1. This Convention shall enter into force 180 days after the date of the deposit of the 65th instrument of ratification, but in no case earlier than two years after its opening for signature.
2. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the 30th day following the date of deposit of their instrument of ratification or accession.

Article XXII: Reservations

The Articles of this Convention shall not be subject to reservations. The Annexes of this Convention shall not be subject to reservations incompatible with its object and purpose.

Article XXIII: Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention and shall, *inter alia*:

- (a) Promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession and the date of the entry into force of this Convention, and of the receipt of other notices;
- (b) Transmit duly certified copies of this Convention to the Governments of all signatory and acceding States; and
- (c) Register this Convention pursuant to Article 102 of the Charter of the United Nations.

Article XXIV: Authentic Texts

This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Summary of the Senate Resolution of Ratification To the Chemical Weapons Convention

On April 24, the Senate approved a resolution of advice and consent to ratification (Senate Executive Resolution 75) of the Chemical Weapons Convention (CWC) by a vote of 74-26. The resolution contained 28 "conditions" for Senate approval of the treaty, agreed upon by CWC supporters and opponents, who also agreed to eliminate five "killer" conditions that would have prevented the president from formally ratifying the convention. Several presidential certifications were required by the resolution and were made (in an April 25 message to Congress) before the U.S. instrument of ratification was deposited with the UN secretary-general. The text of these conditions, which is almost as long as the treaty itself, is summarized below with explanatory comments in italics.

Condition 1: The Senate reserves the right to include reservations in its advice and consent to ratification, notwithstanding the explicit ban in Article XXII on reservations to the convention. Although this right was not exercised in the resolution of ratification, the Senate restates its constitutional right to do so in the future when considering amendments to the convention.

Condition 2: The executive branch is prohibited from providing any payment or assistance (including the transfer of in-kind items) to the Organization for the Prohibition of Chemical Weapons (OPCW) without formal authorization and appropriation by Congress. This condition also mandates statutory authorization and appropriation for potential expenses such as the cost of challenge inspections should the treaty's Executive Council assess such a cost.

Despite this condition, under the convention, failure of the United States to meet its financial obligations would lead to the revocation of its right to vote in the organization after its arrears exceed the amount due in the preceding two years (Article VIII, Paragraph 8). Condition 20 (see below) seeks to address this issue, but does not appear to resolve it.

Condition 3: Requires establishment by the OPCW of an independent, internal oversight office by the end of 1997 to investigate and report on the activities of the OPCW and perform annual audits of the handling of classified information and the laboratories designated in the convention's verification annex (Part II, Paragraph 55). This condition mandates cooperation by the OPCW with the oversight office, and an annual evaluation of OPCW compliance with oversight office recommendations. If, after April 28, 1998, the president has not certified to Congress that such an office has been successfully created, 50 percent of the U.S. assessment for the OPCW budget will be withheld.

If this institutional change is not acceptable to the OPCW, the withheld U.S. assessment would eventually lead to the loss

On April 25, President Bill Clinton informed the secretary-general that the United States would become an original party to the convention by ratifying the treaty before its April 29 entry-into-force deadline (180 days after the 65th signatory deposited its instrument of ratification).

With these conditions, the Senate sought to reassert its constitutional role in the treaty-making process, influence the interpretation of various treaty provisions and provide advice on various policy issues. Numerous requirements were placed on the executive branch, including certifications to be made prior to the deposit of the U.S. instrument of ratification and periodically thereafter.

of the U.S. vote in the organization.

Condition 4: A cost-sharing arrangement with the OPCW will be required before the United States undertakes new research or development expenditures to improve CWC verification, and the president shall provide Congress with an annual report on cost sharing.

This reflects Senate concerns that the United States might have to assume the bulk of the cost for improving the verification system, but does not affect unilateral U.S. efforts to improve U.S. verification capabilities.

Condition 5: Before U.S. intelligence is provided to the OPCW, the president must certify to Congress that the Director of Central Intelligence (DCI), in consultation with the secretaries of state and defense, has established procedures to protect intelligence sources and methods. Periodic presidential reporting to appropriate congressional committees on the implementation of these measures is required. The DCI may ask for a waiver if he deems that providing certain information to the OPCW is vital to U.S. national security.

This condition addresses congressional concerns about safeguarding intelligence sources and methods in cases where the treaty requires disclosure of information to the OPCW for purposes of verification or inspection (Article IX, Paragraph 9).

Condition 6: Requires Senate advice and consent to any amendment to the CWC, in accordance with its constitutional treaty powers.

Condition 7: Requires presidential certification, prior to deposit of the U.S. instrument of ratification, that the convention does not require the United States to weaken its national export controls, which are understood to be compatible with all the convention's provisions, including Article XI, Paragraph 2. The president is also

required to certify that each member of the Australia Group (an informal forum of 30 states including the United States that have established common chemical and biological weapons export control measures) has informed the United States at the "highest diplomatic levels" of its understanding that its export control measures are compatible with the convention, including Article XI, Paragraph 2, and "its commitment to maintain in the future such export controls and nonproliferation measures against non-Australia Group members." The president must also make an annual certification that the body "remains a viable mechanism" and that its effectiveness has not been undermined. In the event this certification cannot be made in the future, "the president shall consult with the Senate for the purposes of obtaining a resolution of continued adherence to the convention, notwithstanding the fundamental change in circumstance."

Condition 8: Requires the president to submit to Congress within 180 days a classified review of U.S. policy on "negative security assurances" (assurances that it will not use nuclear weapons against non-nuclear-weapon states) in the event that such countries employ chemical or biological weapons against the United States, its allies or third parties. The study will include a determination of the appropriate response to such an attack in the absence of a U.S. retaliatory chemical weapons capability.

Condition 9: Requires the president to certify before the deposit of the U.S. instrument of ratification, and annually thereafter, that the "legitimate commercial activities" of the U.S. chemical, biological and pharmaceutical industries are not being "significantly harmed" by convention limitations on access to and production of chemicals and toxins listed in Schedule 1 in the treaty Annex On Chemicals.

Schedule 1 chemicals are advanced chemical weapon agents and their precursors and most are not relevant to "legitimate commercial activities."

Condition 10: Requires the executive branch to offer regular briefings at least four times per year to Senate and House committees to describe all compliance issues relating to the convention and a report on U.S. efforts to resolve them, particularly with reference to actions to be considered by the OPCW. In addition, the president must submit to the Senate and House both classified and unclassified annual reports on compliance on a country-by-country basis and on steps the United States is taking to deal with any non-compliance issues.

Condition 11: Requires the secretary of defense to ensure that U.S. forces are effectively equipped, organized and trained to carry out military missions in chemically or biologically contaminated environments. It further mandates that the secretaries of defense and state begin talks with key allies and likely coalition partners to determine the necessary steps to ensure that allied and coalition forces, as well as critical civilian personnel, are equipped and prepared to operate in such environments. It also imposes detailed, annual reporting requirements on the administration regarding the progress of these negotiations and on past, current and planned chemical and biological weapons defense activities.

Condition 12: States that nothing in the convention requires or authorizes legislation, or other action, by the United States prohibited by the U.S. Constitution, as interpreted by the United States.

Condition 13: Requires the president to consult with the Senate and take specified enforcement actions—both unilateral and multilateral—should he determine that "persuasive information exists" that a state-party is violating the convention so as to threaten U.S. national security interests. Should the state of non-compliance continue for more than one year, the president shall consult with the Senate about seeking a resolution of support for continued convention adherence.

Condition 14: Requires the U.S. government not to accept any effort by Russia to condition the deposit of its instrument of ratification on U.S. financial guarantees to pay for Russia's chemical weapons destruction obligations under the 1990 U.S.-Soviet Bilateral Destruction Agreement or the CWC.

This condition does not affect current U.S. support for Russian destruction of chemical weapons or future support, provided such financial assistance is not linked by Russia as a precondition to its adherence to the convention.

Condition 15: Requires the president to certify to Congress, before deposit of the U.S. instrument of ratification, that the United States will not contribute to the voluntary fund for defense assistance in Article X, and will not provide assistance to states-parties that are ineligible for certain types of U.S. assistance (for example, state sponsors of international terrorism as determined by the United States) other than the provision of medical antidotes and treatment.

This condition responds to the concern that the United States would be required to assist states (such as Iran and Cuba) with defensive equipment and capabilities that convention opponents argued would enhance their potential offensive chemical weapon capabilities, or that other countries would take advantage of this provision to assist such states in this manner.

Condition 16: Requires the president to notify Congress whenever he determines there is "persuasive evidence" that an OPCW employee has willfully disclosed confidential U.S. business information that resulted in financial harm to a U.S. entity. If the president is unable to certify to Congress that immunity from jurisdiction has been waived by the OPCW for any such individual, the United States shall withhold the disbursement of half of the U.S. annual contribution to the OPCW's regular budget until the president certifies that such immunity has been waived or that the situation has been resolved.

Condition 17: States the "Sense of the Senate" that the Senate should not approve in future treaties any article or provision that would prohibit the Senate from giving its advice and consent to ratification subject to amendment or reservation. It further states that U.S. negotiators should not agree to any such convention provision in the future, and that Senate approval of past treaties with similar provisions are not precedent-setting.

Condition 18: Requires the president to certify to the Senate, before the deposit of the U.S. instrument of ratification, that no samples collected in the United States (for example, soil samples obtained during an on-site inspection) will be "transferred for analysis" to any laboratory outside the United States. Such samples would have to be analyzed in U.S. laboratories.

Condition 19: Expresses the Senate's finding that the CWC would not have prevented the 1995 Aum Shinrikyo cult's sarin gas attack in the Tokyo subway, and that in the future terrorists will view chemical weapons with increasing interest.

The condition fails to note that the CWC requires (Article VII) all parties to take steps, including national legislation, to prevent individuals under their jurisdiction from undertaking acts banned by the convention. Prior to the Tokyo attack there was no legislation permitting Japanese police action even though the Aum Shinrikyo cult was suspected of chemical weapon activity.

Condition 20: States the "Sense of the Senate" that the United States should not lose its vote in the OPCW if it is more than two years in arrears in its assessment as required by Article VIII, Section A, since voting is permitted in the OPCW despite financial payments owed, as long as such non-payment "is due to conditions beyond the control of the member." The Senate's declared view is that U.S. non-payment would fall under this exception, and the United States should be allowed to vote in the OPCW in the event that Congress does not appropriate the full amount of U.S. financial assessments for the OPCW, since the Congress is beyond the control of the executive branch.

By this condition, the Senate seeks to build a case against U.S. loss of its voting privileges as a consequence of several Senate conditions within the resolution of ratification that require dues to be withheld in certain circumstances.

Condition 21: States the "Sense of the Senate" that the On-Site Inspection Agency (OSIA) of the Department of Defense should provide assistance in advance of all routine and challenge inspections in the United States, with the consent of the owner or operator of the inspected facility.

Condition 22: This provision sets a \$25 million financial cap on the regular annual U.S. contributions to the OPCW, adjustable for inflation at three year intervals notwithstanding the provisions on financing in Article VIII, Section A, Paragraph 7. This cap may be waived by a joint resolution of Congress if the president certifies in a statement to Congress that national security interests or the OPCW's ability to conduct challenge inspections are at stake. Costs of U.S. chemical weapons disposal are not included in this cap.

Condition 23: Requires presidential notification, with a subsequent report to the Senate Foreign Relations Committee, whenever additions to the treaty's list of scheduled chemicals are proposed. The report will detail the impact of the change on U.S. industry, including a cost-benefit analysis and an assessment of the impact of the CWC verification process on the United States. The condition also requires the president to consult with Congress as to whether the United States should object to the proposed addition.

Condition 24: Reaffirms the applicability to all treaties of the constitutionally based principles of treaty interpretation that the "shared understanding" between the executive branch and the Senate remains binding and unalterable unless the convention is resubmitted to the Senate.

Beginning with its 1988 ratification of the Intermediate-Range Nuclear Forces Treaty, the Senate has included this as a

condition, termed the "Biden Amendment," in all the subsequent arms control treaties it has ratified.

Condition 25: The Senate declares its intent to consider for approval all international agreements that obligate the United States to reduce or limit the armed forces or armaments in a militarily significant way pursuant only to the treaty powers set forth in the Constitution.

This condition has been attached to major arms control treaties in recent years to discourage the executive branch from using the option for amending the treaty by executive agreements approved by a majority of both the House and Senate.

Condition 26: Requires the president to certify to Congress that the United States is not restricted by the CWC in the use of riot control agents, including against combatants in a number of circumstances, including: (1) the conduct of peacetime military operations when the United States is not a party to the conflict (such as recent use of U.S. forces in Somalia, Bosnia and Rwanda); (2) consensual peacekeeping operations when the use of force is authorized by the receiving state, including operations pursuant to Chapter VI of the UN Charter; and (3) peacekeeping operations when force is authorized by the Security Council under Chapter VII of the UN Charter.

The language of this condition has been crafted in an attempt to avoid a direct conflict with the language of Article I, Paragraph 5, which states: "Each State Party undertakes not to use riot control agents as a method of warfare." This is a gray area and some parties to the convention may question whether this condition is consistent with the convention.

Condition 27: Requires presidential certification prior to deposit of the U.S. instrument of ratification that the United States is continuing to pursue alternative technologies for chemical weapons destruction, "in order to ensure that the U.S. has the safest, most effective and environmentally sound" method to meet its destruction obligations and that the deadline for destruction of chemical weapons, set by previous legislation for 2004, is superseded by the CWC deadline of April 29, 2007. This condition declares that the United States may change its destruction technology at any time, and that the president, after consultation with Congress, may request an extension from the Executive Council if additional time is needed for destruction utilizing alternative technologies.

Condition 28: Requires the president to certify to Congress that a criminal search warrant will be obtained for any U.S. facility subject to challenge inspection, if consent of the owner or operator has been withheld. For routine inspections of declared facilities where consent has been withheld, an administrative search warrant from a U.S. magistrate judge is required.

This responds to concerns that U.S. citizens and businesses might be subject to unreasonable searches and seizures by the OPCW, that would contravene their rights under the Fourth Amendment to the Constitution.

ACT

The complete text of the resolution can be found on ACA's home page at: <http://www.armscontrol.org>.