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 Resolution of Ratification (SJR) 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 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 retains its constitutional rights 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. This condition also mandates statutory authorization and appropriation for potential expenses such as the cost of challenge inspections the treaty's Executive Council assesses such a cost.

Despite this condition, under the convention, the United States and its financial obligations would lead to the recoupment of its ratification costs the annual audit of the OPCW's financial management, and the OPCW's annual audit of the organization's financial management, and the OPCW's annual audit of the organization's financial management.

Condition 3: Requires establishment by the OPCW of an independent, international 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, 1996, the president has not certified to Congress that the OPCW has been successful in more than 90 percent of the U.S. assessment for the OPCW budget will be withheld.

If this institutional change is not acceptable to the OPCW, the unilateral U.S. assessment would eventually lead to the loss 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 any new research or development expenditures in connection with 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 a bulk of the costs for the OPCW. (The Senate approved a cost-sharing arrangement incorporated into the CWC verification, and the president shall provide Congress with an annual report on cost sharing.)

Condition 5: Before U.S. intelligence is provided to the OPCW, the president must certify to Congress that the OPCW is conducting its own research and development as 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. In the case of this treaty, the Senate's advice and consent was required if the treaty was to be ratified by the president.

Condition 7: Requires presidential certification, prior to deposit of the U.S. instrument of ratification, that the president certifies that the convention would not enable 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 has established a common framework for export control measures) has informed the United States at the "highest diplomatic levels" of its understanding that its export control measures are comparator to or more stringent than those in the United States. The 1992 Convention also makes an annual certification that the body "remains a viable mechanism" and that its effectiveness has not been undermined. In this event the certification cannot be revised, so the president shall consult with the Senate for purposes of obtaining a resolution of continued adherence to the convention, notwithstanding the fundamental change in circumstances."  

Condition 8: Requires the president to submit to Congress within 180 days a classified review of U.S. policy on "nonproliferation assurance," assuring that it will not use nuclear weapons against non-nuclear weapon states, and in the event that countries employ chemical or biological weapons against the United States, is allowed to make an annual certification with the Senate for the purposes of obtaining a resolution of continued adherence to the convention, notwithstanding the fundamental change in circumstances."  

Condition 9: Requires the president to certify before the de- pot of the U.S. instrument of ratification, and annually thereafter, that the "legitimate commercial activities" of the United States, chemical, biological and pharmaceutical industries are not being "signifi- cantly harmed" by convention limitations on access to and pro- duction 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 report regular briefings at least four times per year to Senate and House commit- tees who describe all activities related 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 shall 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 all 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 the convention's provisions "not be observed in a manner which actually endangers the United States" or "exist in a state that is-party violating the convention so as to threaten U.S. national security interests." Should the state of non- compliance exist 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 for any 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 required by Russia as a condition 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 assis- tance 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 argue would violate the 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 member state is using or using to develop chemical weapons and information that resulted in financial harm to a U.S. entity. If the president is unable to certify to Congress that immunity from jurisdiction, and in the event that immunity has been waived or revoked, the United States shall hold the debarment 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 renegotiation. It further states that U.S. negotiators should not agree to any such convention provision in the future, and that Senate ap- proval 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 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 Am Shirikyo cult's sarin gas attack in Japan. It also notes that future terrorist activities may involve chemical weapons with increasing interest.

The condition fails to note that the CWC requires (Ar- ticle VII) all parties to take steps, including national legis- lation, to prevent individuals under their jurisdiction from using chemical weapons. Prior to the 1995 Tokyo attack there was no legislation prohibiting Japanese police action even though the Am Shirikyo cult was suspected of chemical weapons activity.

Condition 20: States the "Sense of the Senate" that the United States will not become a party to the CWC until the OPCW is in operation for at least two years in arrears in its assessment as required by Article VIII, Section A, since voting is permitted in the OPCW despite financial pay- ments 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 pay the arrears in the OPCW in the event the United States is not a party to the conflict (such as recent use of U.S. forces in Somalia, Bosnia and Rwanda); (2) conservation, peacetime operations when the use of force is authorized by the receiving state, including operations pursuant to Chapter VI of the UN Charter; and (3) peacetime 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 or allow its territory to be used as a military base of any of such warfare." This is a gray area and some part to the convention may question whether this condition is consistent with the convention.

Condition 21: Provides a $25 million annual financial cap on the regular annual U.S. contributions to the OPCW, adjustable for inflation by 3% annually. It further provides that the deadline for destruction of chemical weapons is not extended by the use of financial weapons, except by previous legislation for 2004, is super- ceded by the CWC deadline of April 29, 2007. This condition declares that U.S. 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 measures are needed for destruction utilizing alternative technologies.

Condition 22: 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 obtained. For consensual facilities, declarations of declared facilities that are not inspected because consent has been withheld, an administrative search war- rant from a U.S. magistrate judge is required.

The response to concerns that U.S. citizens and busi- nesses might be subject to unreasonable searches and seizures by the OPCW, that would contravene their rights under the Fourth Amendment to the Constitution.

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