

No. 12-158

IN THE
Supreme Court of the United States

CAROL ANN BOND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

**BRIEF OF *AMICI CURIAE* CHEMICAL WEAPONS
CONVENTION NEGOTIATORS AND EXPERTS
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*

The issue in this case is whether the criminal provisions enacted by the Chemical Weapons Convention Implementation Act, 18 U.S.C. §§ 229–229F, fall within the power of Congress to carry out the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, *opened for signature* Jan. 13, 1993, S. Treaty Doc. No. 21, 103d Cong., 1st Sess., 1974 U.N.T.S. 45 (“Convention” or “CWC”). Any analysis of this question must begin with an understanding of the requirements of the CWC. Yet the Petitioner’s brief and the briefs supporting Petitioner largely ignore those requirements.

Amici, who are listed in the Appendix to this brief, are experts in the field of international law who specialize in international arms control agreements and have extensive knowledge of the CWC.¹ Several of the *amici* are former U.S. or foreign diplomats who participated directly in the negotiation or implementation of the CWC. *Amici* respectfully submit this brief to explain the CWC’s requirements in light of its text, structure and history and the shared understanding of the 189 states parties to the CWC, to explain the treaty’s importance for the United States and the rest of the world, and to explain the reasons why the terms of the treaty were intentionally made expansive.

1. Both parties have consented in writing to the filing of amicus briefs in this case. No party or counsel for a party, nor any other person other than *amici curiae* and their counsel, authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Ending the scourge of chemical weapons has long been a pressing humanitarian problem. The Chemical Weapons Convention, opened for signature in 1993, established for the first time a comprehensive prohibition on the use, development, production, stockpiling, acquisition and transfer of chemical weapons, applicable in peacetime and in war, and applicable both to the states parties and to non-state actors.

Because chemicals with commercial uses can readily be adapted to weapons use, the Convention takes a deliberately comprehensive approach. Under the Convention, *all* toxic chemicals constitute chemical weapons and must be banned for both state and non-state use unless they are possessed and used for certain enumerated purposes and in quantities consistent with those purposes. The permitted uses listed in the Convention are ones considered necessary for science, commerce, or other purposes regarded as beneficial or appropriate. The states parties did not negotiate, and would not have wanted to include, an exception allowing the use of toxic chemicals for private criminal purposes.

For the CWC's comprehensive ban to be effective, it had to be adopted with the aim of universal implementation. Currently, the Convention has been ratified by countries accounting for over 98% of the world's land mass, population, and chemical industry. The United States has been active in pushing for worldwide accession and implementation. To that end, the United States, like numerous other nations, has enacted implementing legislation coextensive with the Convention's requirements.

Bond's suggestion that the Convention's reference to "other peaceful purposes" permits all "nonwarlike" uses is inconsistent with the Convention's plain terms. An assault is not "peaceful" in any ordinary sense of the word. The context in which the phrase "other peaceful purposes" occurs—as well as the use of identical language elsewhere in the Convention and the recitals in the Convention's preamble—further demonstrates that it is intended to encompass beneficial purposes only. The history of the Convention confirms that the negotiating parties carefully considered and deliberately rejected the idea of limiting the Convention's prohibitions to warlike purposes.

The fact that Bond's crime was motivated by a desire for revenge is irrelevant. Nothing in the Convention turns on whether Bond was motivated by anger, greed, jealousy, political or religious zealotry, or any of the other complex human motives that can lead someone to commit a crime. Nor does it matter that Bond's victim suffered only minor harm; the Convention prohibits unsuccessful as well as successful uses of chemical weapons and expressly applies even to chemicals that cause only temporary incapacitation.

The fact that Bond targeted only one victim is likewise irrelevant. Nothing in the Convention limits its application to weapons of mass destruction; it prohibits targeted as well as broad-based chemical attacks. For example, the negotiators of the Convention specifically discussed the murder of a Bulgarian dissident with a poisoned umbrella in London in the 1970s as an example of a chemical weapons use that would be prohibited.

Significantly, Bond concedes that terrorism is within the scope of the CWC. But nothing in the CWC singles out terrorism; the negotiating history cites terrorism only to illustrate why private misuse of toxic chemicals could be a problem. Moreover, the ability to prosecute an individual's stockpiling of dangerous chemicals can be critical to preventing a terrorist attack even if the government cannot prove the individual's reason for stockpiling. Bond's interpretation would open the door for anyone to stockpile potential chemical weapons on the pretext that they might be needed for a violent but nonterrorist purpose or for no disclosed purpose at all.

Contrary to what Bond suggests, it is not problematic that a cabinet of household chemicals can potentially be a "weapons cache." It already is familiar U.S. law that ordinary household items can constitute "dangerous weapons" if used as such. In any event, Bond used no ordinary household chemicals; she acquired dangerous industrial chemicals for the purpose of causing harm.

Finally, reliance on the varying laws of the 50 U.S. states would be wholly inadequate to the task of implementing U.S. obligations under the CWC. The CWC requires states parties to enact criminal prohibitions that apply not only to use of chemical weapons but also development, manufacture, possession and transfer—acts that state law generally leaves unregulated. Even if all 50 states could be persuaded to enact compliant implementing legislation, the laws must apply not only within the country but to U.S. nationals located abroad. Moreover, the U.S. Congress saw uniform federal legislation as protecting legitimate commerce in chemicals and serving important national law-enforcement goals. Requiring the United

States to rely on the laws and law-enforcement officials of the 50 states to implement the CWC and other arms control treaties could negatively impact public safety. It also would severely damage the United States' ability to negotiate other important treaties serving its national interest in the future.

The Convention's comprehensive approach was designed to minimize the need for line-drawing to avoid circumvention by rogue states and private actors alike. It may reach what appear to be local acts, but it addresses a problem of global scope. Allowing judicially crafted exceptions to the CWC for perceived "local" criminal activities would undermine the Convention's effectiveness in the United States and around the world.

ARGUMENT

I. THROUGH THE CWC, THE UNITED STATES AND ITS TREATY PARTNERS CREATED A COMPREHENSIVE REGIME TO PREVENT THE USE OF CHEMICAL WEAPONS.

A. The CWC Requires a Complete Ban on Use of Chemical Weapons, Even by Private Parties.

The Chemical Weapons Convention, opened for signature in 1993 and in force since 1997, is the culmination of decades of efforts to negotiate a comprehensive ban on chemical weapons. After the horrific suffering that chemical weapons inflicted on soldiers in the trenches during World War I, ending the use of chemical weapons has been a priority of the United States and its allies and, indeed, of humankind. Iraq's use of chemical weapons

during the Iran-Iraq War in the 1980s, with appalling human consequences, brought renewed urgency to the project. The risk from chemical weapons, whether from a state like Syria or an individual armed with sarin or other dangerous substances, remains a serious global concern today.

The CWC establishes a comprehensive system under which the states parties agree, in peacetime and during war, “to exclude completely the possibility of the use of chemical weapons.” CWC preamble para. 6. To achieve this goal, the CWC prohibits the use, development, production, stockpiling, acquisition and transfer of chemical weapons. CWC art. I. The CWC requires states parties to make these prohibitions effective against not only state actors but also private persons. CWC art. VII(1).

To combat the widespread proliferation of chemical weapons capabilities and control global trade in chemicals that can potentially be used as weapons, the Convention includes a verification regime, with elaborate provisions for reporting and inspection, to monitor private-sector activity. CWC Arts. IV–VI & Annex on Implementation and Verification. These provisions aim to exclude circumvention of the ban on the development and production of chemical weapons, as well as the possible diversion of legitimately produced chemicals for illicit uses. *See, e.g.,* Daniel Feakes, *Keeping Peaceful Uses Peaceful: Article VI, in The Creation of the Organisation for the Prohibition of Chemical Weapons* 179, 179–82 (Ian R. Kenyon & Daniel Feakes eds., 2007).

B. The CWC Prohibits All Use of Toxic Chemicals and Their Precursors Except for Specified Permissible Purposes.

By the nature of chemical weapons, there can be no fixed list of permissible and impermissible chemicals, because new chemicals can be developed and existing chemicals can be repurposed for weapons use. Accordingly, the approach that the United States and the other CWC negotiators took was intentionally comprehensive: the CWC defines “chemical weapons” to include all “[t]oxic chemicals and their precursors.” CWC art. II(1). “Toxic chemical” also is defined broadly to include “[a]ny chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm ... regardless of [its] origin or of [its] method of production.” CWC art. II(2).

The possibility of limiting the Convention’s scope to particularly lethal chemicals was considered and deliberately rejected by the negotiators because nearly any chemical can be harmful in sufficient quantity. Walter Krutzsch & Ralf Trapp, *A Commentary on the Chemical Weapons Convention* 24 n.6 (1994). Notably, the Convention does *not* limit the definition of “chemical weapons” to “[m]unitions and devices designed to cause death or other harm through ... toxic chemicals.” CWC art. II(1)(b). That is only one subpart of the definition; the definition also includes toxic chemicals and precursors themselves. CWC art. II(1)(a).

The CWC’s comprehensive approach is necessary to address the “dual use” nature of potentially harmful chemicals. Because toxic chemicals can have both a

weapons use and a non-weapons use, they are easy for both states and non-state actors to get their hands on—in contrast to, for example, nuclear weapons materials like plutonium, which are difficult to obtain. In fact, most chemicals that can be weaponized originated in the chemical industry and not the military establishment. Feakes, *supra*, at 179. Zyklon B, used by the Nazis to exterminate their victims, had been a commonly used cyanide-based pesticide. *See The Zyklon B Case (In re Tesch)*, 13 I.L.R. 250 (British Military Ct. 1946). In addition, the CWC addresses precursor chemicals, which are not themselves toxic but can be used to make toxic chemicals. CWC art. II(1)(a), (3).

Under the CWC, toxic chemicals and their precursors must be banned *unless* they are developed, produced, possessed and used for purposes that fall within the definition of “Purposes Not Prohibited Under th[e] Convention.” CWC art. II(1)(a), (9); *see* Krutzsch & Trapp, *supra*, at 26. Moreover, the “types and quantities” of the chemicals produced, possessed or used must be “consistent with such purposes.” CWC art. II(1)(a). The CWC negotiators considered this approach necessary to avoid proliferation of chemical weapons to those who might use them improperly and to prevent the development, manufacture or stockpiling of chemical weapons under the guise of commercial activity.

To ensure that its prohibitions are effective, the Convention limits the definition of “purposes not prohibited” to certain carefully limited exceptions, consisting of those activities that the negotiating parties considered necessary for legitimate economic, scientific or domestic security purposes. For example, the Convention

recognizes that toxic chemicals have beneficial uses and accordingly permits use of toxic chemicals for “[i]ndustrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.” CWC art. II(9)(a). But the Convention requires such uses to involve only “types and quantities” of chemicals consistent with those peaceful purposes, CWC art. II(1)(a), and subjects those uses to the Convention’s rigorous verification regime. *See* CWC art. VI & Annex on Implementation and Verification. The drafters of the Convention intended to preserve the peaceful chemical industry, which participated directly in developing the verification regime. *See, e.g.,* Feakes, *supra*, at 180–87; 143 Cong. Rec. S1586 (daily ed. Feb. 25, 1997) (letter from Fred Webber, President and CEO of the Chemical Manufacturer’s Association). Thus, the Convention sets forth clear and carefully considered requirements that make it possible for the chemical industry to operate lawfully.

Other “not prohibited” purposes include uses that the negotiating parties agreed were permissible in connection with defense and law enforcement. These include “purposes directly related to protection against toxic chemicals and to protection against chemical weapons,” “[m]ilitary purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare,” and “[l]aw enforcement including domestic riot control purposes.” CWC art. II(9)(b)–(d). The exceptions were necessary to allow the military to use toxic chemicals for reasons other than their toxic properties (for example, as fuel or explosives). They also were necessary to allow the police to use chemicals in domestic law enforcement situations, such as tear gas for riot control. All other violent uses are prohibited. In

keeping with the approach of defining “not prohibited” to include only purposes considered beneficial or necessary, the governments that negotiated the Convention did not include a provision permitting use of toxic chemicals for criminal purposes.

C. Success of the CWC Depends on Universal Accession and Implementation, Including Adoption of Legislation Penalizing Use of Chemical Weapons.

The Convention establishes a regime that universally applies to all possible actors, whether states, companies, nongovernmental organizations or individuals. Given its goal of establishing a comprehensive ban on chemical weapons, the Convention’s success depends on universal accession and implementation, including by states that have no history or intention of developing chemical weapons. The Convention has been remarkably successful in obtaining ratifications: to date, the parties to the Convention already represent “about 98% of the global population and landmass, as well as 98% of the worldwide chemical industry.”²

2. Org. for Prohibition of Chem. Weapons, *OPCW Member States*, <http://www.opcw.org/about-opcw/member-states/>. Only seven UN member states—Angola, Democratic People’s Republic of Korea, Egypt, Israel, Myanmar, South Sudan, and Syria—are not yet parties. Org. for Prohibition of Chem. Weapons, *Non-Member States*, <http://www.opcw.org/about-opcw/non-member-states/>.

As noted, the CWC requires each party to the CWC to

Prohibit natural and legal persons ... from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity....

CWC art. VII(1). Penal legislation is an essential part of the scheme of the CWC to prevent wrongful use, and universal enactment of such legislation is essential to enable the prohibition to operate globally.

Since the adoption of the Convention, the United States has advocated as a matter of its foreign policy the importance of universal penalization of wrongful development, manufacture, stockpiling and use of chemical substances. For example, in its role as a permanent member of the UN Security Council, the United States worked for the adoption of Security Council Resolution No. 1540, UN Doc. S/RES/1540 (Apr. 28, 2004), which requires all nations to fully implement their obligations under chemical, biological and nuclear weapons treaties, with a particular focus on preventing the use of such weapons by “non-State actors.” The United States also unilaterally issues an annual report on countries’ compliance with their CWC obligations, including their obligation to enact penal legislation.³ At the urging of the United States, the Organisation for the Prohibition of Chemical

3. See U.S. Dep’t of State, *Compliance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Condition (10)(C) Report* (January 2013), available at <http://www.state.gov/documents/organization/212108.pdf>.

Weapons (“OPCW”), the international organization that administers the Convention, adopted an Action Plan for full implementation of Article VII obligations, which declared it “imperative” that all states parties to the CWC swiftly finalize compliant implementing legislation and establish mechanisms meant to encourage and assist with full compliance.⁴

D. Consistent with the Goal of Universal Implementation, the United States Implementing Legislation Is Coextensive with the CWC’s Requirements.

The United States cared about the universal adoption of national penal legislation because, among other reasons, it creates continuity with the United States’ own implementing legislation. The United States also understood that its own adoption of implementing legislation was vital to encouraging universal participation.⁵ In fact, the United States’ implementing legislation has served as a model for similar legislation around the world

4. Org. for Prohibition of Chem. Weapons, *Plan of Action Regarding the Implementation of Article VII Obligations*, OPCW Doc. No. C-8/DEC.16, ¶ 11 (Oct. 24, 2003), available at http://www.opcw.org/index.php?eID=dam_frontend_push&docID=423.

5. See, e.g., S. Exec. Rep. No. 104-33, at 28 (1996) (“a strong U.S. commitment to the enforcement of the CWC will be essential to the effectiveness of the Convention. It may, in fact, be possible to achieve a measure of both enforcement and deterrence, but only if the United States is prepared to make compliance with the CWC a major element of its foreign policy stance toward each State Party to the Convention.”).

and has influenced the template for legislation that the OPCW has published.⁶

The penal provisions of the United States implementing legislation track almost verbatim the requirements of the CWC. The CWC provides that each state party shall not “develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone,” or “use chemical weapons,” CWC art. I(1)(a)–(b), and requires each State Party to extend this prohibition to private persons through penal legislation, CWC art. VII(1). The U.S. implementing legislation does precisely what the Convention requires, by providing:

[I]t shall be unlawful for any person knowingly ... to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon....

18 U.S.C. § 229(a).

The definition of “chemical weapon” in the U.S. implementing legislation, 18 U.S.C. § 229F(1), is word-for-word identical to the definition in the Convention, except for immaterial differences in capitalization and punctuation:

6. Org. for Prohibition of Chem. Weapons, *National Legislation Implementation Kit for the Chemical Weapons Convention* (Aug. 2010), available at <http://www.opcw.org/our-work/national-implementation/implementing-legislation/models-checklists-questionnaires/>.

“Chemical Weapons” means the following, together or separately:

(a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;

(b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;

(c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).

CWC art. II(1).

Thus, for all purposes relevant to this case, the scope of the U.S. implementing legislation is coextensive with the scope of the Convention. So too is the implementing legislation adopted by numerous other states parties to the CWC.⁷ According to the OPCW, 115 states parties as

7. See Org. for Prohibition of Chem. Weapons, *CWC National Implementing Legislation Database*, <http://www.opcw.org/our-work/national-implementation/implementing-legislation/legislation-database/>.

of 2007 had enacted legislation establishing penalties for the acts covered by Article I of the CWC.⁸

II. THE CONVENTION APPLIES TO INDIVIDUAL MALICIOUS USE OF TOXIC CHEMICALS.

“The interpretation of a treaty, like the interpretation of a statute, begins with its text.” *Abbott v. Abbott*, 560 U.S. 1, 130 S. Ct. 1983, 1990 (2010) (quoting *Medellín v. Texas*, 552 U.S. 491, 506 (2008)). Unlike a statute, however, a treaty is “a contract between nations,” *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243, 253 (1984), and must be given “a meaning consistent with the shared expectations of the contracting parties,” *Air France v. Saks*, 470 U.S. 392, 399 (1985). Additionally, in interpreting treaties, this Court traditionally gives “great weight” to the views of the Executive. *Abbott*, 130 S. Ct. at 1993.

Under international law, and consistent with this Court’s precedents, a treaty is to be “interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Vienna Convention on the Law of Treaties art. 31(1), *opened for signature* May 23, 1969,

8. Org. for Prohibition of Chem. Weapons, *Report to the Conference of the States Parties at Its Twelfth Session on the Status of Implementation of Article VII of the Chemical Weapons Convention as at 22 August 2007*, OPCW Doc. No. C-12/D.G.6, Annex at 7 (Oct. 9, 2007), *available at* http://www.opcw.org/index.php?eID=dam_frontend_push&docID=12137.

1155 U.N.T.S. 331 (“VCLT”);⁹ see *Air France*, 470 U.S. at 399; *Jordan v. Tashiro*, 278 U.S. 123, 127 (1928). The treaty’s “context” includes the preamble and any annexes. VCLT art. 31(2). Treaty interpretation may also take into account “[a]ny subsequent practice in the application of the treaty” which establishes the parties’ agreement as to how it should be interpreted. VCLT art. 31(3)(b); see *Abbott*, 130 S. Ct. at 1993–95; *El Al Israel Airlines v. Tsui Yuan Tseng*, 525 U.S. 155, 167 (1999); *Air France*, 470 U.S. at 396–97. To confirm a treaty’s meaning, or to determine the meaning where it is otherwise “ambiguous or obscure,” the Court may consult the treaty’s “preparatory work” (*travaux préparatoires*) and consider the “circumstances of [the treaty’s] conclusion.” VCLT art. 32; see *El Al*, 525 U.S. at 167; *Air France*, 470 U.S. at 396–97.

In this case, the plain text, structure and context of the CWC make clear, and the *travaux* confirm, that the CWC’s prohibitions reach Bond’s conduct. Petitioner’s contrary interpretation is inconsistent with the Convention’s plain text and structure and its internationally accepted understanding.

9. Although the United States has not ratified the VCLT, Articles 31 and 32 of the VCLT codify customary international law on treaty interpretation, as the State Department has consistently recognized. See, e.g., *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 308–09 (2d Cir. 2000). Thus, the “shared expectation[] of the contracting parties,” *Air France*, 470 U.S. at 399, is that a treaty such as the CWC will be interpreted in accordance with the VCLT.

A. The CWC Requires States Parties to Prohibit Both Governmental and Private Use of Toxic Chemicals Except for the Enumerated “Purposes Not Prohibited.”

The Convention extends its central prohibition to non-state actors, including a verification regime to ensure compliance, and requires states parties to enforce that prohibition. Specifically, Article VII(1)(a) requires each state party to the Convention to “[p]rohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction ... from undertaking any activity prohibited to a State Party.” In other words, as the Senate Foreign Relations Committee explained, the Convention “requires states parties to develop implementing legislation ... to make sure that private individuals and non-governmental organizations anywhere on a State Party’s territory or under its jurisdiction are prohibited from the same activities as the State Party.” S. Exec. Rep. No. 104-33, at 4 (1996).

Thus, whether the possession or use of toxic chemicals is “intended for purposes not prohibited under this Convention,” CWC art. II(1)(a), determines whether an act must be prohibited by legislation, regardless of who committed the act. The purposes “not prohibited under this Convention” are limited to those specifically defined in the Convention as “not prohibited.” CWC art. II(9). Any interpretation that dilutes this requirement would create ambiguities and weaknesses ripe for exploitation by criminals, terrorists and rogue states that seek to acquire and potentially use toxic chemicals as weapons. *See, e.g.,* Jean Pascal Zanders, *The Chemical Weapons Convention and Universality: A Question of Quality over Quantity?* 4 CWC Review Conf. 1, 26 (2002).

B. Intentionally Poisoning an Individual Is Not a Purpose That the CWC Authorizes.

Petitioner argues that poisoning her neighbor is a “purpose not prohibited by the Convention” because, she says, it falls within the exception for “[i]ndustrial, agricultural, research, medical, pharmaceutical or other peaceful purposes.” CWC art. II(9)(a). Specifically, petitioner argues that poisoning one’s neighbor fits under the “other peaceful purposes” item at the end of that list because, in her view, the “most natural reading” of the exception is that it permits uses of toxic chemicals so long as they are not “warlike.” Pet’r Br. 53. Petitioner is wrong.

First, by the ordinary meaning of the word “peaceful,” assaulting someone is not “peaceful.” “Peaceful” means “devoid of violence or force.”¹⁰ That description plainly does not apply to an attempt to harm others through the use of toxic chemicals.

This use of the term “peaceful” also appears in other arms-control treaties. For example, the Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (“NPT”), repeatedly uses the term “peaceful purposes” to refer to nonviolent uses of nuclear energy. *Id.* arts. III(2)–

10. *Merriam-Webster’s Collegiate Dictionary* 911 (11th ed. 2005). Other senses include “PEACEABLE” (*i.e.*, “disposed to peace : not contentious or quarrelsome” or “quietly behaved”), “untroubled by conflict, agitation, or commotion : QUIET, TRANQUIL”, and “of or relating to a state or time of peace.” *Id.* “Peace” refers not only to an absence of war but also to the “state of security or order within a community provided for by law or custom,” as in the phrase “a breach of the peace.” *Id.*

(3), IV(1)–(2) & preamble paras. 7–8. The NPT contrasts “peaceful uses” of nuclear energy with “nuclear weapons or other nuclear explosive devices.” *Id.* art. III(1). This contrast makes clear that the drafters of the NPT would not have considered the manufacture or use of a nuclear bomb to be “peaceful,” even if its intended use was local and unconnected with actual war. Nothing in the CWC suggests any different meaning.¹¹

Second, the other permitted activities listed in CWC Article II(9)(a) are incompatible with Petitioner’s argument that violent or malicious uses of toxic chemicals fall within the range of permitted “peaceful” activities. Under the *ejusdem generis* rule, general terms like “other peaceful purposes” at the end of a list of specific terms “are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001). This principle applies to treaty interpretation as well as statutory interpretation. *See, e.g., Grimm v. Iran*, 2 Iran-U.S. Cl. Trib. Rep. 78, 79 (1983). In this case, the specific terms—“[i]ndustrial, agricultural, research, medical, [or] pharmaceutical ... purposes,” art. II(9)(a)—refer to nonviolent and potentially beneficial purposes. Petitioner’s purpose, intentionally causing

11. For another example, two interrelated bilateral instruments—the Threshold Test Ban Treaty, U.S.-U.S.S.R., July 3, 1974, 1714 U.N.T.S. 216 and the Peaceful Nuclear Explosions Treaty, U.S.-U.S.S.R., May 28, 1976, 1714 U.N.T.S. 432—apply separately to nuclear weapon tests and “nuclear explosions for peaceful purposes.” No one would suggest that a test of a nuclear weapon could be brought under the “peaceful purposes” rubric merely by claiming the weapon was intended for violent use outside of war.

harm to another human being, is of an entirely different kind than the purposes enumerated. It therefore cannot be within the intended scope of the final, general term “other peaceful purposes.”

Third, the structure of the CWC’s definition of “Purposes Not Prohibited Under th[e] Convention” further demonstrates that “other peaceful purposes” is not limited to excluding “warlike” purposes but also excludes other violent purposes. The CWC permits some potentially violent uses of toxic chemicals, but it includes them as other explicit exceptions, separate from the provision on which petitioner relies.

For example, the “domestic law enforcement” exception, in Article II(9)(d), allows the use of tear gas and similar riot control agents by police. As reflected in the U.S. implementing legislation, the United States views the provision as also permitting use of toxic chemicals for capital punishment. *See* 18 U.S.C. § 229F(7)(D). The U.S. Congress also inserted a provision in the implementing legislation that the statute does not prevent the use of pepper spray or other individual self-defense devices. *Id.* § 229C. If the “other peaceful” purposes enumerated in Article II(9)(a) already encompassed all violent purposes short of war as Bond argues, then these exceptions in the treaty and statute, among others, would be wholly superfluous. This would fly in the face of the interpretive principle that all provisions of a treaty or a statute should be given practical effect. *See Air France*, 470 U.S. at 398.

Fourth, the words of Article II(9)(a) must be read in the context of the treaty as a whole. *See* VCLT art. 31(2). Where similar words appear multiple places in

the text, the words should normally be given the same interpretation in both places. *See, e.g., Wash. Metro. Transit Auth. v. Johnson*, 467 U.S. 925, 936 (1984). Here, the key phrase in CWC Article II(9)(a)—“[i]ndustrial, agricultural, research, medical, pharmaceutical or other peaceful purposes”—also appears in Article XI(2)(c), in a context that is wholly incompatible with Petitioner’s interpretation of the phrase. Article XI(2)(c), in keeping with the Convention’s recognition of the generally beneficial purposes of the chemical industry, prohibits parties from maintaining any agreements

which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or *other peaceful purposes*.

CWC art. XI(2)(c) (emphasis added). This provision is complementary to the requirement that states must prohibit trade in chemicals for nonpermitted purposes. CWC art. VII(1).

Article XI(2)(c) obviously was not meant to *require* states to permit trade in chemicals intended for poisoning civilians and other violent acts. The only sensible reading is that those violent purposes are not within Article XI(2)(c) because they are not “peaceful purposes.” There is no reason to read Article II(9)(a), which uses the exact same words, any differently.

Fifth, the Preamble to the CWC, which provides insight into the intent of the drafters, *see* VCLT art.

31(2), recites that a purpose of the CWC is to ensure that “achievements in the field of chemistry should be used exclusively for the benefit of mankind.” CWC preamble, para. 8. Reading the words “other peaceful purposes” to allow malicious uses, such as poisoning one’s neighbor, would be inconsistent with that purpose.

Sixth, although there is no need to resort to the *travaux préparatoires* because the CWC is unambiguous, the *travaux* confirm that the drafters of the Convention were concerned with the use of chemical weapons by criminals as well as in the context of war. A 1981 draft of the Convention permitted the use of toxic chemicals for “non-hostile” purposes,¹² a term that could be read as prohibiting only use in actual war. But in 1982, the scope of “non-hostile purposes” was limited by defining it as “industrial, agricultural, research, medical or other peaceful purposes, law-enforcement purposes or purposes directly connected with protection against chemical weapons.”¹³ In 1987, the term “non-hostile purposes” was dropped altogether.¹⁴ Through this series of changes, the CWC’s drafts evolved from permitting all “non-hostile” uses of toxic chemicals to permitting only the enumerated purposes now listed in Article II(9). Petitioner’s approach,

12. Report of the Committee on Disarmament, U.N. Doc. A/36/27, at 46 (Sept. 23, 1981).

13. Views of the Chairman of the Ad Hoc Working Group on Chemical Weapons on Possible Compromise Wordings of the Elements of a Future Convention, U.N. Doc. CD/CW/WP.44, at 3 (Sept. 14, 1982), *in* Report of the Committee on Disarmament, U.N. Doc. CD/335, Appx. II, Vol. IV (Sept. 17, 1982).

14. Report of the Conference on Disarmament, U.N. Doc. A/42/27, at 45 (Sept. 14, 1987).

which would construe the Convention's prohibitions as limited to warlike uses, ignores the deliberate choice to eliminate the prospect of any such reading.

C. Petitioner's Motivation and the Fact That She Targeted One Individual Are Irrelevant.

Petitioner appears to concede that the Convention reaches some private crimes, such as those committed by "terrorists," but she argues that it does not apply to "local" crimes, such as those committed for "revenge on a romantic rival." Pet'r Br. 46. In particular, Bond argues, the CWC only requires prohibition of acts that a state could engage in, and she asserts "nation-states do not poison romantic rivals." *Id.* at 47. The relevant act that the CWC prohibits, however, is "[t]o use chemical weapons." CWC art. I(1)(b). A toxic chemical is a "chemical weapon" unless it is intended for one of the purposes identified in Article II(9). *See* CWC art. II(1). The fact that Bond was out for revenge or that her victim was a "romantic rival" is irrelevant; it may explain her subjective motivation for committing the crime, but it is not an element of the crime itself.

Fundamentally, Bond's argument confuses *intent* with *motive*. The Convention states that a toxic chemical is a weapon "except where *intended* for purposes not prohibited." CWC art. II(1)(a) (emphasis added). That is, whether the actor has the *intent* to use chemicals for a prohibited purpose dictates whether or not the Convention applies. *See, e.g.,* Kruttsch & Trapp, *supra*, at 25. But the Convention says nothing about the actor's *motive*. From the standpoint of the Convention, it makes no difference whether someone who uses chemical weapons is motivated

by a desire to propagate mass terror, wipe out a business rival, eliminate a political or military leader, overthrow a government, rob a bank, extort money, promote a political agenda, oppress a minority group, hasten an apocalypse predicted by religious beliefs, exact personal revenge, or kill or harm for another reason or no reason at all. What is relevant is that Bond intended to use a toxic chemical as a weapon rather than for one of the purposes permitted by Article II(9) of the CWC.

Bond's reading of Article II(9)(a) as encompassing all non-"warlike" purposes would open the door for anyone—including foreign states, terrorist groups, criminal organizations and their proxies—to begin acquiring, manufacturing and stockpiling large quantities of chemical weapons on the pretext that they might be needed for a violent but nonmilitary purpose. The need to foreclose those kinds of loopholes is precisely why the drafters of the CWC chose the comprehensive approach that the CWC requires.

Contradicting her own argument about motive, Bond suggests that compliance with the Convention should be judged by the *effect* of her crime, arguing that her victim suffered only minor injuries.¹⁵ Pet'r Br. 19. But the CWC bans all uses of chemical weapons regardless of result.

15. The absence of serious injury in this case was a matter of chance. Petitioner spread potentially lethal chemicals on her neighbor's belongings on at least 24 different occasions and had stockpiled several additional pounds of the chemicals in her own garage. Had Petitioner not been arrested, she might have succeeded in seriously injuring or killing her neighbor, her neighbor's young child or others.

Indeed, the CWC specifically defines chemical weapons to include toxic chemicals that “can cause ... temporary incapacitation” as well as those that can cause permanent harm or death. CWC art. II(2).

Bond also suggests that the Convention is focused on “weapons of mass destruction” and does not apply to her because she targeted a particular victim. Pet’r Br. 56. But again Bond is inventing a limitation on the Convention that appears nowhere in the Convention itself. The Convention requires the parties to prohibit the use of chemical weapons, regardless of the number of people targeted. And in any event, Bond offers no judicially manageable test for distinguishing “mass” attacks from small-scale ones, nor could she.

Moreover, contrary to Bond’s argument, governments have engaged in individual, targeted attacks using chemical weapons. For example, in a case that received widespread publicity at the time, Georgi Markov, a defector from communist Bulgaria, was killed in London in 1978 by someone wielding a ricin-loaded umbrella.¹⁶ The Markov killing was discussed in the CWC negotiations as

16. Unfortunately, the Markov attack was not an isolated incident. The same year, Bulgarian dissident journalist Vladimir Kostov was attacked in the Paris Métro with a device similar to the one that killed Markov but survived. *See, e.g.*, W. Seth Carus, *Bioterrorism and Biocrimes* 60 (1998, rev. 2001), available at http://www.ndu.edu/centercounter/full_doc.pdf. Reportedly, in 2012, a man in Hanover, Germany, died almost a year after having been stabbed on the street with a mercury-filled syringe, apparently without state involvement. *See, e.g.*, *Mann stirbt ein Jahr nach Spritzenattacke*, *Hannoversche Allgemeine*, May 10, 2012.

a use of chemical weapons that the CWC would prohibit, regardless of whether it was carried out by Bulgarian state actors or private individuals. The Markov killing also played a role in the decision to list ricin as an example in an annex to the Convention. The OPCW has continued to highlight the Markov attack on its website as an example of a use of ricin as a chemical weapons agent.¹⁷ While the umbrella that killed Markov was clearly not a “weapon of mass destruction,” it has been universally understood to be a “chemical weapon.”

If Markov, instead of being a political dissident, had been poisoned because he had had an affair with the Bulgarian premier’s wife, that motive (“romantic rivalry”) would not excuse the Bulgarian communist government’s decision to use a chemical weapon. As Bond apparently concedes, the prohibition does not become narrower when a private individual rather than a state actor commits the crime. Again, the CWC requires parties to the Convention to “[p]rohibit natural and legal persons ... from undertaking any activity prohibited to a State Party.” CWC art. VII(1)(a).

Bond also attempts to argue that terrorism is the only private act that the CWC covers because terrorism is a “warlike” act. But as discussed at length above, *see supra* Part B, the CWC does not limit “prohibited” purposes to warlike ones. To be sure, the Convention’s negotiators were concerned that chemical weapons

17. Org. for Prohibition of Chem. Weapons, *Toxins: Potential Chemical Weapons from Living Organisms*, <http://www.opcw.org/about-chemical-weapons/types-of-chemical-agent/toxins>. Like many chemicals, ricin is widely available and easy to produce, and a tiny amount is enough to kill an adult.

might be used by terrorists, but that concern was merely emblematic of the types of risks posed by non-state actors. Furthermore, acts of terrorism are not inherently warlike. For example, the recent, individually targeted attacks on U.S. politicians with ricin-laced letters may be terrorist attacks, and they clearly are attacks with a chemical weapon, but it would be hard to characterize them as resembling war. The Convention requires states to prohibit all use of chemical weapons by all individuals and entities, not just warlike uses or uses by terrorists. The U.S. implementing legislation strictly complies with this mandate, as discussed above. *See supra* Parts I.C, I.D.

Neither the United States nor, to our knowledge, any of its treaty partners has applied the limitations that Bond now suggests. Throughout the world, chemical weapons-related investigations and prosecutions have involved not only attempted mass terrorist attacks but also extortion attempts, attacks on individual politicians, thefts of chemicals for commercial resale, attempted killings for personal motives, and cases in which the offender's motive could not be determined. Lisa Tabassi & Robert Silvers, *Enforcement of the Chemical Weapons Convention: Investigations and Prosecutions of Offences*, Chem. Disarmament Q., Dec. 2004, at 18, 19–23, available at http://www.opcw.org/index.php?eID=dam_frontend_push&docID=10369.¹⁸ The United States, too, has

18. These include, for example, a case from Turkey involving sale of mustard gas for profit, a case from Mexico involving the hijacking of a truck containing cyanide for commercial resale, cases from several countries involving the mailing of toxic chemicals to politicians, a case from the Czech Republic involving an attempt to extort money by threatening to poison hospitals with cyanide, and a case from the United Kingdom involving a suspicious purchase of large quantities of a precursor chemical for undisclosed purposes. *Id.* at 19–23.

prosecuted individuals for possessing dangerous chemicals for undisclosed purposes. *See id.* at 22 (discussing cases of William Krar and Hessem Ghane).

If the government had to prove beyond a reasonable doubt a terrorist motive, as opposed to the absence of a legitimate purpose, many of those cases could not have been prosecuted, including cases involving large stockpiles of toxic chemicals presenting a grave danger to public safety. Indeed, the absence of a comprehensive ban on possession of chemical weapons in Japan before that country implemented the CWC apparently hindered Japanese authorities from preventing the 1995 sarin attack on the Tokyo subway, which killed 12 people and injured 5,500. *See id.* at 19. Similar weaknesses in West German law prior to implementation of the CWC contributed to the failure of the prosecution against a major supplier of chemicals weaponized by Iraq in the 1980s. *See* Philip Shenon, *Declaration Lists Companies That Sold Chemicals to Iraq*, N.Y. Times, Dec. 21, 2002; Frederick Kempe, *How German Firms Built Up Iraq's Arsenal*, Seattle Times, Oct. 4, 1990.

Bond argues that the legislation implementing the CWC, if applied to her crime, would “turn[] every ‘kitchen cupboard and cleaning cabinet in America into a potential chemical weapons cache.’” Pet’r Br. 15 (quoting *United States v. Bond*, 681 F.3d 149, 154 n.7 (3d Cir. 2012)); *see also id.* at 8, 44. But there is nothing problematic or unfamiliar about treating common household items as “weapons” when they are used as such. For example, it is long settled and uncontroversial that under the federal assault statute, 18 U.S.C. § 113, ordinary household items like shoes, chairs, bottles and the like can be “dangerous

weapons” if used in an assault.¹⁹ An individual’s household cabinets will become a “weapons cache,” Pet’r Br. 8, 15, 44, only if the individual intends to use their contents as weapons.

Moreover, Bond’s argument has nothing to do with the facts of her own case. Bond, a professional biochemist, committed her crime not with ordinary household chemicals but with two dangerous industrial chemicals that she acquired specifically for their toxic properties. Bond stole one of the chemicals from her employer, a licensed chemical manufacturer. As the government notes in its brief, the chemical Bond selected was one that the U.S. military had investigated after World War II for possible use in warfare. U.S. Br. 4. Bond purchased the other chemical over the Internet from a supplier who sold it for its use in photographic laboratories. Both of these acts directly implicate the CWC’s core concerns about diversion of toxic chemicals from the chemical industry to illicit uses.

Bond’s conduct falls squarely within the range of acts that Article VII of the CWC requires states parties to prohibit. Because the prohibitions in the U.S. implementing legislation are coextensive with the CWC’s prohibitions in all relevant respects, *see supra* Part I.D, her conduct violated the implementing legislation as well.

19. *See, e.g., United States v. Steele*, 550 F.3d 693, 699 (8th Cir. 2008) (tennis shoes); *United States v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994) (belt and shoe); *United States v. Schoenborn*, 4 F.3d 1424, 1432–33 (7th Cir. 1993) (metal part from gym equipment); *United States v. Guilbert*, 692 F.2d 1340, 1343 (11th Cir. 1982) (pool cue and beer bottle); *United States v. Johnson*, 324 F.2d 264, 266 (4th Cir. 1963) (chair); *Thornton v. United States*, 268 F.2d 583, 584 (D.C. Cir. 1959) (wine bottle).

III. INTERFERING WITH U.S. ENFORCEMENT OF THE CWC IMPLEMENTING LEGISLATION WOULD UNDERMINE U.S. DOMESTIC AND FOREIGN POLICY IMPERATIVES.

The political branches of the U.S. government determined that the obligation under CWC Article VII to impose penal sanctions, including on private parties, should be implemented in the United States through federal criminal legislation. The Executive and Congress were fully aware of the breadth of the CWC, which they subjected to careful constitutional scrutiny.

During the negotiating process, the United States devoted substantial effort to ensuring that it would be able to ratify the Convention and comply with its obligations consistent with U.S. constitutional constraints. The United States did not want to produce a treaty after many years of negotiation that it could not adhere to itself. As early as 1980, the United States insisted that the draft Convention's implementation requirements take account of constitutional considerations. *See Joint US-USSR Report on Progress in the Bilateral Negotiations on the Prohibition of Chemical Weapons*, U.N. Doc. CD/112, ¶ 18 (July 7, 1980), in *Report of the Committee on Disarmament*, U.N. Doc. CD/139, Appx. II, Vol. II (Aug. 9, 1980).

In light of longstanding treaty practice, as reflected in this Court's decision in *Missouri v. Holland*, 252 U.S. 416 (1920), the United States concluded that there were no serious federalism concerns with the Chemical Weapons Convention. Rather, the United States' concerns hinged primarily on whether the Convention's mandatory

inspection requirements for industrial facilities would violate the Fourth Amendment.

In the 1990s, when the Convention was submitted to the U.S. Senate for advice and consent to ratification, the Senate Foreign Relations Committee again carefully considered its constitutionality. S. Exec. Rep. No. 104-33, at 211–12. The Convention’s supporters in the Senate went to great lengths to assure that the Convention complied with the Constitution, concluding that “nothing in the convention conflicts in any way with the fourth amendment or any other provision of the U.S. Constitution.” 143 Cong. Rec. S1585 (daily ed. Feb. 25, 1997) (statement of Sen. Biden); *see also id.* at S1587 (letters from Prof. Abram Chayes and Prof. Louis Henkin). On April 24, 1997, the Senate gave its advice and consent to ratification by a vote of 74 to 26. 143 Cong. Rec. S3651 (daily ed. April 24, 1997).

Compliance with the Convention specifically requires the passage of legislation with national and international reach that prohibits and prescribes penalties for violations. The Senate understood that even potential use of chemical weapons is dangerous, and the goals of the Convention can be achieved only if chemical weapons are kept out of private as well as governmental hands. *See* S. Exec. Rep. No. 104-33, at 170–71. The Senate also recognized that the Convention reached private criminal acts and embraced the Convention as a way of “provid[ing] American law enforcement officers the tools they need to ... improve the prospects for early detection and prosecution.” 143 Cong. Rec. S1583 (daily ed. Feb. 25, 1997) (statement of Sen. Biden). Congress subsequently enacted the required implementing legislation, which the President signed on October 21, 1998. U.S. Br. App. 76a–145a.

Bond contends that although the treaty regime is valid, Congress should have been required to rely on state and local law to secure compliance. Reliance on a patchwork of state and local laws would have been unworkable for a number of reasons.

First, existing state laws did not uniformly or specifically prohibit all acts that must be prohibited under the Convention. For example, while assaults with chemical weapons may have been crimes under general state laws, few if any individual U.S. states had—or have today—laws that prohibit developing, manufacturing, stockpiling, acquiring or transferring chemical weapons. Yet the United States had an obligation under Article VII of the CWC to prohibit precisely those acts. Congress could not force the individual states to legislate, *see, e.g., Printz v. United States*, 521 U.S. 898 (1997), and coordinating all 50 states to enact new legislation voluntarily could take decades, if it succeeded at all. Having determined to comply with the Convention, the U.S. Congress had no workable choice but to implement the Convention through federal legislation.

Second, state laws do not ordinarily reach the conduct of U.S. citizens overseas, but the CWC specifically requires parties to the Convention to “[e]xtend” to their nationals abroad the same legislation enacted domestically. CWC art. VII(1)(c); *see* 18 U.S.C. § 229(c). Again, only the U.S. Congress was capable of acting effectively.

Third, the goal of preserving legitimate commerce in chemicals, *see* CWC art. XI, was crucial to the drafters of the Convention, to the U.S. Congress, and to the chemical

industry that supported the Convention. An industry-friendly implementation of the Convention requires a uniform regime of requirements and penalties to provide certainty to U.S. chemical companies operating in multiple U.S. states and overseas.

Finally, Congress recognized that national and international consistency in CWC implementing legislation had significant law enforcement benefits for the United States. S. Exec. Rep. No. 104-33, at 210–11. The Senate Report underscored that the CWC implementing legislation “contains the clearest, most comprehensive and internationally recognized definition of a chemical weapon available,” which would facilitate early detection, prosecution and prevention, help with obtaining search warrants, and raise public awareness. *Id.* Reliance on the priorities of individual state legislators, law enforcement officers and prosecutors, who were not attuned to the challenges of implementing an effective regime abolishing chemical weapons, would make it impossible for the United States to take a coordinated approach to the national—and international—problem of preventing the diversion and misuse of dangerous chemicals by non-state actors. Uniform national legislation, backed up by national law enforcement, was considered essential. Although Bond suggests that local law enforcement should have sufficed, local police were unwilling in this case itself to devote resources to the complaints of Bond’s victim. Bond was caught only when the federal authorities became involved. U.S. Br. 5–6.

Other states parties to the Convention with federal systems of government have implemented the Convention through national legislation, including Australia, Canada,

Germany, Mexico, Switzerland and others.²⁰ Requiring the United States to rely on the laws of the 50 states would have made it extremely difficult for the United States to negotiate and ratify the CWC, would make it impossible as a practical matter for the United States to comply fully with the CWC, and would severely hobble the ability of the United States to exert diplomatic power and influence in order to secure uniform global implementation and compliance with the CWC. Judicially created limitations on the United States' ability to implement the CWC could also adversely affect other arms control treaties, including those related to biological and nuclear weapons, that mandate adoption of domestic legislation to subject individual conduct to penal measures.²¹

20. See *CWC National Implementing Legislation Database*, *supra*.

21. For example, like the CWC, the Biological Weapons Convention (“BWC”) obligates states parties to “prohibit and prevent” the development, retention, etc., of biological weapons, which it defines as including “[m]icrobial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.” Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *opened for signature* Apr. 10, 1972, Art. IV, 26 U.S.T. 583, 1015 U.N.T.S. 163. Accordingly, the U.S. implementing legislation for the BWC subjects to criminal penalties “[w]hoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same.” 18 U.S.C. § 175(a). Similar requirements to prevent private conduct appear in the Convention on the Physical Protection of Nuclear Material, *opened for signature* March 3, 1980, S. Exec. Doc. H, 96th Cong., 2d Sess., 1456 U.N.T.S. 101, and Congress has implemented them as well, *see* 18 U.S.C. § 831(a).

For these reasons, the power to implement non-self-executing treaties nationwide is essential if the United States is to function as a single nation in negotiating important international agreements like the CWC. *See Missouri v. Holland*, 252 U.S. at 435. Under the U.S. Constitution and this Court’s precedents, that national implementation power squarely belongs to the U.S. Congress. *See id.* at 432; *Medellín*, 552 U.S. at 1368–69.

Bond argues that failure to prosecute her individual case would not bring down any international consequences on the United States. That might be true if her case were taken in isolation; after all, the Convention requires the adoption of suitable penal legislation, but it does not preclude the appropriate exercise of prosecutorial discretion in individual cases. *See* CWC art. VII(1). But judicially carving out a whole category of cases from the scope of the Convention’s implementing legislation, as Bond’s counsel proposes, would be another matter altogether. The strategy adopted by the CWC negotiators was to adopt broad, general prohibitions as much as possible to avoid the need for line-drawing in particular cases. The point of having an all-encompassing treaty was to minimize the existence of borderline cases and judgment calls that could lead to circumvention.

As this Court has explained, where Congress has enacted a “comprehensive legislation”—in this case, to implement a globally-agreed prohibition—the Court cannot “excise individual components” without undermining the integrity of the larger scheme. *Gonzales v. Raich*, 545 U.S. 1, 22 (2005). The fact that any one defendant’s “own impact” may be “trivial by itself” is “not a sufficient reason for removing [her] from the scope of federal regulation.” *Id.* at 20 (quoting *Wickard v. Filburn*,

317 U.S. 111, 127 (1942)). If this Court were to create an unwritten exception to the Convention's implementing legislation for non-terrorists, revenge-takers or "local" criminals, then the Convention's carefully negotiated and clear-cut test, and the statute that adopts that test, will be replaced with a difficult line-drawing exercise that has no basis in the Convention or its implementing legislation. Perhaps even more damaging, allowing a judicially crafted exception in this case would open the door for parties to seek creative expansions of that exception, or wholly new exceptions, in future cases in the U.S. and abroad.

CONCLUSION

Amici curiae respectfully submit that the judgment should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX — LIST OF *AMICI CURIAE*

Dr. **Ralf Trapp** served as a member of the German delegation to the Organisation for the Prohibition of Chemical Weapons (“OPCW”), the organization established by the Chemical Weapons Convention (“CWC”) to coordinate and oversee compliance globally. He subsequently served in the Secretariat of the OPCW and as Secretary of the Scientific Advisory Board of the OPCW. Together with Walter Krutzsch, Dr. Trapp authored *A Commentary on the Chemical Weapons Convention*, a leading resource on the interpretation of the CWC. He currently is an international disarmament consultant.

Former U.S. Ambassador **Donald A. Mahley** was closely involved in negotiating on behalf of the United States the CWC as well as a number of other international agreements, including the proposed Protocol to the Biological Weapons Convention, the Arms Trade Treaty, the 1989 Wyoming Memorandum of Understanding on Chemical Weapons, the 1992 Bilateral Destruction Agreement, and the Comprehensive Test Ban Treaty.

Professor **Julian Robinson** is now retired from the University of Sussex, England, after forty years conducting research and teaching on arms limitation and technology governance, principally in regard to chemical and biological weapons. He also served for many years as an advisor to the UK National Authority for the Chemical Weapons Convention.

Appendix

Former U.S. Ambassador **Thomas Graham Jr.** served as Special Representative of the President for Arms Control, Non-Proliferation and Disarmament. Ambassador Graham participated in a senior capacity in every major arms control and disarmament policy development and international negotiation in which the United States was involved from 1970 to 1997, including the development of policy and negotiating strategy for the CWC. He currently is the Chairman of Lightbridge Corporation.

Professor **Graham S. Pearson** is a Visiting Professor of International Security in the Division of Peace Studies of the University of Bradford, England. He was previously the Director-General of the Chemical and Biological Defence Establishment at Porton Down from 1984 until his retirement in 1995. He has been involved in working on chemical and biological weapons arms control for almost thirty years.

Guy Roberts was the Deputy Assistant Secretary General for Weapons of Mass Destruction Policy for the North Atlantic Treaty Organization. Before that, he was Acting Deputy Assistant Secretary of Defense responsible for developing U.S. Defense Department policies on all arms control and non-proliferation issues. While a staff officer on the Defense Department Joint Staff, Mr. Roberts participated in the Conference on Disarmament negotiations on the CWC and was responsible for reviewing legal and policy issues regarding the CWC which might have adversely impacted defense interests. He currently is an independent consultant on national security and non-proliferation issues.

Appendix

Amy E. Smithson, PhD, is a Senior Fellow at the James Martin Center for Nonproliferation Studies. Dr. Smithson is a twenty-year veteran in in-depth field research about chemical and biological weapons nonproliferation topics, including the challenges facing the implementation of the Chemical Weapons Convention. Her scholarship and practical threat-reduction recommendations have resulted in testimony before several Congressional committees.

Professor **David A. Koplow** served as Special Counsel for Arms Control to the General Counsel of the U.S. Department of Defense and as Deputy General Counsel for International Affairs at the Department of Defense, where he was involved in the implementation and interpretation of the Chemical Weapons Convention. He was previously involved in the negotiation of the CWC as a consultant to the Arms Control and Disarmament Agency. He is a professor at the Georgetown University Law Center, where he teaches and writes in the fields of international law, national security, and arms control.

Professor **Barry Kellman** is Director of the International Weapons Control Center at DePaul University College of Law. He was the Chair of the Group of Experts that prepared the *Manual for National Implementation of the Chemical Weapons Convention*. Professor Kellman testified to the Senate Foreign Relations Committee on the constitutionality of the CWC preceding consent to ratification and again on the constitutionality of the CWC implementing legislation.

Appendix

Professor **David P. Fidler** is the James Louis Calamaras Professor of Law at the Indiana University Maurer School of Law. Professor Fidler has published and worked extensively on national and international legal issues involving chemical, biological, nuclear, “non-lethal,” and cyber weapons. His work on the CWC includes a focus on the Convention’s application to the development and use of incapacitating chemical weapons for law enforcement purposes.