United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, FIRST SESSION

Vol. 143 WASHINGTON, THURSDAY, APRIL 24, 1997 *No. 50*

Senate

The Senate met at 10 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, who calls us to seek peace and not war, but who has blessed us in victory in just wars fought for the righteous cause of freedom and justice, we seek Your guidance for the crucial decisions about the Chemical Weapons Convention. Our hearts and minds are united with You in abhorrence and judgment on the use of chemical weapons. Thank You for the diligence with which the Senate has debated the issues of ratification of the treaty. The research and clear communication on both sides of these issues have brought illuminating discussions. Sharp differences remain about ratification. Now the hour of decision approaches.

Father, fuel with Your presence and glory this Chamber and then the Old Senate Chamber during the executive session. May the Senators seek Your guidance, clarify their convictions, and then cast their votes with a sense that they have done their very best. When the votes are counted and the result is declared, unite the Senators in the unbreakable bond of unity rooted in a mutual commitment to patriotic leadership of our Nation.

Dear God, guide this Senate and bless America. In the name of our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, of Mississippi, is recognized.

Mr. LOTT. Mr. President, I thank you for the recognition. And I want to thank the Chaplain, as always, for his very thoughtful and helpful prayers.

SCHEDULE

Mr. LOTT. For the information of all Senators, today, at 10:30 a.m., the Senate will begin a closed executive session in the Old Senate Chamber to continue the debate on the Chemical Weapons Convention so that Members can be briefed on certain classified information. This is the first time in several years that we have had such a briefing. I urge all Senators to attend. I think they will find it very interesting. They need to know what will come out of this briefing before they make a final decision.

The closed session is expected to last until approximately 12:30. After the expiration of time for the closed session, the Senate will then immediately resume consideration of the treaty in this Chamber. By previous consent, the Senate will continue the debate with respect to the treaty until all time is expired or is yielded back under the time agreement. I think there is something like 1 hour 40 minutes or 2 hours of general time remaining, something about that amount.

In addition, by consent, the five motions to strike will be in order at any time following the closed session. Separate votes on each of the motions are expected. Therefore, Senators can expect votes throughout the day and into the evening in order for the Senate to complete action on the treaty today. It would appear to me that the final vote will come sometime between 8 and 9 o'clock probably, perhaps a little earlier, but that is the way it looks at this point.

Again, I encourage all Members to participate in this important debate beginning in a few minutes in the Old Senate Chamber.

PRIVILEGE OF THE FLOOR

Mr. LOTT. Mr. President, I ask unanimous consent that the following individuals, in addition to those officers and employees referred to in standing rule XXIX, be granted floor privileges during today's closed session, and I send the list to the desk.

The PRESIDING OFFICER (Mr. SMITH of New Hampshire). Without objection, it is so ordered.

The list is as follows:

Kathleen Alvarez.
Steven Biegun.
Marshall Billingslea.
Joel Breitner.
Romie Brownlee.
Charles D'Amato.
Michael DiSilvestro.
Jeriel Garland.
Lorenzo Goco.
Frank Jannuzi.
Taylor Lawrence.
Edward Levine.
David Lyles.
Mary Jane McCarthy.
Sheila Murphy.
James Nance.
John Roots.
Randall Scheunemann.
Christopher Straub.
Puneet Talwar.
Peter Flory.

CONFIDENTIALITY OF EXECUTIVE SESSIONS

Mr. LOTT. Mr. President, I would like to call the attention of all Senators and staff to rule XXIX of the Standing Rules of the Senate which addresses the confidentiality of executive sessions. Paragraph 5 of standing rule XXIX reads as follows:

> Any Senator, officer, or employee of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer or employee, to dismissal from the service of the Senate, and to punishment for contempt.

I urge my colleagues to keep this in mind when approached by the media for comments on these proceedings.

[ORDER FOR RECESS]

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate stand in recess until the hour of 10:30 a.m. following brief remarks by Senator HAGEL

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

and Senator BINGAMAN, at which time the Senate will then reconvene in the Old Senate Chamber for a closed executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Does the Senator seek recognition?

Mr. BIDEN. Only to recognize Mr. HAGEL.

Mr. LOTT. I yield the floor, Mr. President.

EXECUTIVE SESSION

CHEMICAL WEAPONS CONVENTION

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I ask, how much time do I have remaining?

The PRESIDING OFFICER. First we will have the clerk report the pending business.

The assistant legislative clerk read as follows:

Treaty Document No. 103–21, the convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction.

The Senate resumed consideration of the convention.

The PRESIDING OFFICER. The Senator from Delaware has 1 hour 30 minutes remaining.

Mr. BIDEN. Mr. President, I yield 7 minutes to my distinguished colleague from Nebraska, and if he needs more time, let me know. We are kind of tight on time. Then, in accordance with the unanimous-consent request by the majority leader, I will yield 7 minutes of my time to the distinguished Senator from New Mexico, [Mr. BINGAMAN].

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 7 minutes.

Mr. HAGEL. Mr. President, I thank you.

Mr. President, it was 30 years ago this week that I joined the U.S. Army. It was 29 years ago this week, with my brother Tom, that I was first wounded in Vietnam. This is an important week of reflection for me as we take up the final hours of debate on the Chemical Weapons Convention.

I rise this morning to say that I will vote for the Chemical Weapons Convention. America's national security interests are better served with this treaty than without it. Our men and women in uniform are better served with this treaty than without it.

There are few Senators who have put as much time in on this issue than I have, studying this treaty over the past few weeks. As a freshman Senator, I began with very limited knowledge about this convention. I had to understand it totally before I could make an intelligent vote on the treaty.

This treaty is much improved from the form in which it was first submitted to the Senate. I would have voted against this treaty in its original form.

But as the Framers of our Constitution intended, the Senate has worked its will and has substantially strengthened the final agreement. Because of the strong leadership and negotiation, in my judgment, the balance has tipped strongly in favor of ratification of this convention.

The people of this country should recognize the important roles that Majority Leader LOTT, Chairman HELMS, and Senators BIDEN, LUGAR, and KYL played in this debate. They allowed the Senate the opportunity to listen, to learn, and to understand this treaty, to debate this treaty, and they have brought a more informed Senate together to vote on this treaty as we will throughout the day.

That is what this body, the Senate, should be about, debating important issues that have consequences for all Americans. This convention will have consequences for all peoples around the globe.

Under the leadership of Majority Leader LOTT, Senator BIDEN, the administration, and others, the Senate made 28 substantial changes to the original treaty to address major problems in the treaty, several of which were key to improving it, in my opinion. The majority leader held a news conference 45 minutes ago and read a letter from the President—as far as I know, unprecedented in arms control conventions—laying out some of the concerns that this President has and this body has about issues in this convention. I think that, too, further strengthens this treaty.

We fully protected the constitutional rights of our businesses against unlawful searches and seizures by ensuring that international inspection teams must obtain a search warrant before entering any American facility. This means no challenge inspection will occur unless a U.S. Federal judge finds probable cause to believe a violation of law has occurred at that facility. The rights guaranteed under our Constitution will continue to reign supreme.

We ensured that the American military will be able to use nondeadly riot control agents, such as tear gas. As military operations become increasingly complex and involve more areas with civilian populations, it is imperative that our military commanders have the maximum flexibility to employ a range of force, including nondeadly force.

We made clear that our existing national and international export controls will remain in place. The United States simply will not transfer chemical technology in any manner that would weaken our existing controls or military defense capabilities, or would tend to allow dangerous chemical technology to fall into the hands of pariah regimes.

We put in place safeguards to ensure that American intelligence data is protected whenever it is shared with the international organization that will oversee operations of the convention. We also prohibited chemical samples taken at American laboratories from being transferred off American soil—an important provision that helps protect proprietary and security information.

And, we took steps to ensure that the new international organization set up to monitor and enforce the convention will not become an ill-managed bureaucracy that burdens the American taxpayer. We put a cap on the American contribution to that organization, and we required the organization to establish and maintain an independent inspector general.

I should like to close with this. As I have referenced, there are a number of improvements that have been made to this treaty. We have five more proposed conditions that remain in disagreement that we will vote on yet today. I will vote to strike at least four of those conditions because they would effectively prevent American participation in the convention and would undermine the very purpose of this treaty.

This treaty, however, is no magic instrument that will guarantee Americans and our troops safety from chemical attack. No treaty can substitute for unwavering American strength, determination, vigilance, and leadership. But this treaty is one more tool we can use to make chemical attacks less likely. It does improve our eyes.

With or without this treaty, the United States years ago decided never again to use chemical weapons and is committed by law to completely destroy our stockpile of chemical weapons by early in the next century. That decision was made during the Reagan administration and was reaffirmed by the Bush administration.

The important question now is, what can we do to give ourselves more leverage to press other countries to do the same? It is a very important question. Ratifying this treaty is not the end of our efforts to make chemical attacks on Americans less likely. To the contrary, it is only the beginning. As President Reagan's top arms control negotiator, Ronald Lehman, said last week before our Foreign Relations Committee:

Ratification is essential to American leadership against proliferation of weapons of mass destruction, but ratification alone is not enough. Strong follow-up involving all branches of Government will be vital.

We must now use the tools of this treaty effectively. The treaty tools give us, I believe, the most effective way to deal with the proliferation of chemical weapons. We must keep America strong. We must keep America vigilant. The Senate has an important and ongoing role to play in making sure this treaty is implemented properly, and I am committed as a Senator to making that happen.

For me, this has never been a political issue, Mr. President. This vote is not about Republicans. It is not about Democrats. It is not about conservatives, not about liberals. It is not

about Bill Clinton. It is not about TRENT LOTT. This vote is about America's national security interests. It is about our young men and women in uniform all over the world who may someday face an adversary with chemical weapons. It is about each Senator doing what he or she thinks is in the best interests of our country.

For those reasons, Mr. President, I urge our colleagues to vote for ratification of the Chemical Weapons Convention.

I yield my time.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Before the Senator yields back all his time, if he will yield to me for a comment.

Mr. HAGEL. Yes.

Mr. BIDEN. Mr. President, I am obviously very pleased with the decision the Senator from Nebraska made, but I want to state on the record that I would have been comfortable with whatever decision he made, and I say that for the following reasons. I have been here for 24 years. It has been a long time since I have been a freshman Senator, but I remember how overwhelming it was and the pressures that are exerted, legitimate pressures, when major issues confront someone. I have watched the Senator from Nebraska from the day he got here, because we serve on the same committee, attack with a seriousness of purpose I have seldom seen one of the most complicated issues that is going to come before this body this year. It was not merely determining what groups, what party, what factions of parties were for and against the treaty. He wanted to know what article X meant in the language. He wanted to know whether article I trumped article X. He wanted to know the details of it, and he addressed it.

He indicated that this is the eve of an anniversary. It seems appropriate and totally consistent, I am going to say for the record—I hope I do not embarrass him—what I said to him privately. I have also observed another feature about him. This is a man whose conduct on the battlefield is mirrored by his conduct in politics, in that when he thinks he is right he is not afraid to do whatever it is he thinks he should do. And that comes through. That is what I mean when I say I would have been comfortable and assured that he had given it every consideration had he concluded to vote the other way. I want to publicly compliment him, not for the decision he made, but the way he made the decision. I hope that does not cost him politically, for someone on this side of the aisle to compliment my colleague.

There is another freshman Senator I serve with, Senator GORDON SMITH, who may not come to the same conclusion, but he has addressed it with the same kind of alacrity and commitment. So I just say it is a pleasure to serve with the Senator and our colleague, Senator SMITH. But as I said, I am happy he came out the way he did. Regardless of how the Senator came out, I would have been comfortable.

I yield the floor.

Mr. HAGEL. I thank the Senator.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized for 7 minutes.

Mr. BINGAMAN. Mr. President, thank you.

I thank the manager of the bill, the Senator from Delaware, for yielding me time.

I also commend my colleague from Nebraska. I sat through a meeting with him and the Senator from Delaware at the White House where he asked some very penetrating questions. The President and the Vice President were there. The Secretary of State was there. Our Ambassador to the United Nations and a great many individuals who studied this treaty were there. And I am very pleased to see the decision that our colleague from Nebraska has made.

Mr. President, a point that was made by the Senator from Nebraska I think needs to be foremost in our minds, and that is that this is different from all other treaties that have come before the Senate since I have been here, in that this does not ask us to give up any military capability that we have not already decided to give up.

Most treaties involve an agreement by us to give up military capability in return for other nations giving up military capability. But we have decided unilaterally during the Reagan administration and have maintained the policy ever since then that we are going to renounce the use of chemical weapons, destroy our stockpile of chemical weapons. What this treaty does is try to find ways to bring other nations to that same decision.

President Reagan did commit to that in the 1980's. President Bush reiterated that position. President Clinton has certainly done so as well. That is a central part of this discussion that needs to be kept in mind.

A second part of the discussion that needs to be kept in mind is that by going ahead and ratifying this treaty, we give up no other tools that we have to prevent chemical attack or to retaliate against someone who might begin a chemical attack.

This is not: Do you want to have the ability to retaliate, or, on the contrary, do you want the treaty? We are going to retain in the future all capabilities to retaliate which we presently have. We stated very definitively in one of the conditions that is attached to this treaty that we will use a massive force to respond to any chemical attack. We do not consider a chemical weapons attack by a potential adversary or adversary to be comparable to a conventional attack; therefore, people need to know that we are not giving up any of our abilities or resolve in that regard.

I think these two factors are persuasive. We have chosen to destroy our own chemical weapons anyway, whether this treaty goes into effect or not. And, second, we maintain the ability to retaliate against any chemical weapons attack with all the strength that we have today.

So what does the treaty buy us?

It buys us an international agreement with other nations that will, hopefully, bring them also to give up their chemical weapons stockpiles. And it puts in place mechanisms to ensure that they do that.

It buys us a guarantee that other nations which might have chosen to build chemical weapons will find it much more difficult to do so.

It buys us a likelihood that if anyone decides to cheat on the treaty, we will have the ability to detect that. It enhances our intelligence-gathering capability substantially. As the Director of the CIA testified—he said this treaty gives us tools that we do not now have to look into places where we cannot now look.

There have been some concerns raised. I will not go into those. I think they have been addressed extensively in the various conditions that have already been added to the treaty.

Let me just say a few words about the amendments that are being proposed.

The first amendment calls for us to withhold ratification until the Russian Duma agrees to the ratification and agrees to comply with an earlier statement about the destruction of chemical weapons.

Mr. President, what this does is essentially make our foreign policy and our national policy hostage to what the hard-liners in the Russian Duma decide to do. It gives the Russians an excuse for not ratifying the treaty if we do not. I think it would be contrary to our best interests.

A second amendment that will be offered, which I will oppose—or second effort to strike that I will support, deals with an amendment that would destroy the potential benefits of the Chemical Weapons Convention. It would require us to withhold ratification until various other countries, such as China, North Korea, Libya, and others, have ratified the treaty.

Again, this provision would essentially shift to others the ability to define what is in our own best national interest. That cannot be a good thing for the United States.

A third amendment deals with requiring us to reject inspectors from countries that have supported terrorism.

Mr. President, we have the ability under the treaty to reject any inspectors we do not want to permit to come into this country and inspect. But it does not serve our interest to require, put into law a requirement, that certain inspectors be rejected at this early stage because, clearly, that will give them the same ability to reject our inspectors. That is not in our best interest.

We will have the ability to decide any information that we will exchange with other countries. That has been a confusion about this treaty, Mr. President, that needs to be cleared up.

When all the debate is concluded at the end of the day today, I believe it serves our national interest to go ahead and ratify the treaty. I believe it will contribute to a more peaceful world. Like all treaties, it lacks perfection. But the acid test is: Will this generation of Americans and future generations of Americans be less likely to confront chemical weapons on the battlefield or in a civilian context if this treaty is ratified? In my view, it is clear that they will be less likely to confront chemical weapons if we go ahead today. I hope very much my colleagues will join in supporting the treaty.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The time of the Senator has expired.

Will the Senator withhold the quorum request?

Mr. BINGAMAN. I withhold.

RECESS UNTIL 10:30 A.M. FOR A CLOSED SESSION IN THE OLD SENATE CHAMBER

The PRESIDING OFFICER. Under the previous order, the Senate will recess and reconvene at the hour of 10:30 a.m., in the Old Senate Chamber.

Thereupon, the Senate, at 10:22 a.m., recessed under the previous order and reconvened in closed session at 10:32 a.m., in the Old Senate Chamber; whereupon, at 12:50 p.m., the Senate recessed the closed session, and the Senate reassembled in open session, under the previous order, at 1 p.m., when called to order by the Presiding Officer (Mr. ENZI).

CHEMICAL WEAPONS CONVENTION

The Senate continued with the consideration of the convention.

The PRESIDING OFFICER. The pending business before the Senate is ratification of the Chemical Weapons Convention.

The Senator from North Carolina has 1 hour and 20 minutes. The Senator from Delaware has 46 minutes.

Mr. HELMS. Mr. President, I yield 7 minutes to my friend from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I thank the Chair.

May I ask my good friend if he didn't wish that the time be charged to the Senator from Delaware?

The PRESIDING OFFICER. The time will be charged to the Senator from Delaware.

Mr. MOYNIHAN. I thank the Chair. I thank my dear friend, the chairman.

Mr. President, I rise in support of the resolution of ratification. I will take just a moment of the Senate's time to put this matter in a historical context.

Since its development by 19th century chemists, poison gas—as it was known—has been seen as a singular evil giving rise to a singular cause for international sanctions.

In May 1899, Czar Nicholas II of Russia convened a peace conference at The Hague in Holland. Twenty-six countries attended and agreed upon three conventions and three declarations concerning the laws of war. Declaration II, On Asphyxiating or Deleterious Gases stated:

> The Contracting Parties agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.

Article 23 of the Annex to the Convention added:

> In addition to the prohibitions provided by special Conventions, it is especially forbidden:
>
> (a) To employ poison or poisoned weapons * * *

Our own Theodore Roosevelt called for a second peace conference which convened in 1907. This time, 45 countries were in attendance at The Hague, and reiterated the Declaration on Asphyxiating Gases and the article 23 prohibition on poisoned weapons.

The Hague Conventions notwithstanding, poison gas was used in World War I. Of all the events of the First World War, a war from which this century has not yet fully recovered, none so horrified mankind as gas warfare. No resolve ever was as firm as that of the nations of the world, after that war, to prevent gas warfare from ever happening again.

Declaring something to be violation of international law does not solve a problem, but it does provide those of us who adhere to laws mechanisms by which to address violations of them. In June 1925, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare was signed in Geneva. This reaffirmed the Hague prohibition and added biological weapons to the declaration.

In the Second World War that followed, such was the power of that commitment that gas was not used in Europe. It was expected, but it did not happen.

Then came the atom bomb and a new, even more important development in warfare. In time it, too, would be the subject of international conventions.

As part of the peace settlement that followed World War II, President Roosevelt, with the British, Chinese, and French, set up the United Nations. In 1957, within the U.N. system, the International Atomic Energy Agency was established. The new agency fielded an extraordinary new device, international inspectors, who began inspecting weapons facilities around the world to ensure compliance. This was enhanced by the Nuclear Non-Proliferation Treaty (NPT), which came into force in 1970, allowing inspectors to monitor declared nuclear sites. This was an unheard of compromise of traditional sovereignty. It has not worked perfectly. The number of nuclear powers, or proto-nuclear powers, has grown somewhat. But only somewhat: around 10 in a world with some 185 members of the United Nations. And never since 1945 has a single atomic weapon been used in warfare.

The Chemical Weapons Convention incorporates the advances in international law and cooperation of which I have spoken; it extends them. Its inspections can be more effective than the IAEA because of the ability to conduct challenge inspections when violations of the CWC are suspected.

If the Senate should fail—and it will not fail—to adopt the resolution of ratification, it would be the first rejection of such a treaty since the Senate in 1919 rejected the Treaty of Versailles, with its provision for the establishment of the League of Nations. It would be only the 18th treaty rejected by the Senate in the history of the Republic.

Every living Chairman of the Joint Chiefs of Staff over the past 20 years has called for ratification of the Chemical Weapons Convention.

Our beloved former colleague, Senator Bob Dole, has given his support and asked us to do what I think we can only describe as our duty. The President pleads.

Here I would note a distinction. In 1919, Woodrow Wilson could have had the Versailles Treaty, we could have joined the League of Nations, if only he had been willing to make a modicum of concessions to then-chairman of the Foreign Relations Committee and majority leader, Henry Cabot Lodge of Massachusetts. Wilson was too stubborn; in truth, and it pains an old Wilsonian to say so, too blind. Nothing such can be said of President Clinton. In a month of negotiations with the current chairman of the Foreign Relations Committee and the current Republican leader, the administration has reached agreement on 28 of 33 conditions. Only five proved unacceptable. And, indeed, sir, they are. The President could not in turn ratify a treaty with those conditions.

Again to draw a parallel with 1919. During consideration of the Treaty of Versailles, the Senate was divided into three primary camps: those who supported the treaty; those who opposed the treaty, no matter what shape or form it might take—known as ''irreconcilables'' or ''bitter enders''—and those who wanted some changes to the treaty, most importantly led by Senator Lodge.

There are some modern day irreconcilables who oppose this Treaty for the same reason they eschew international law: viewing it as an assertion of what nice people do. Such a view reduces a magisterial concept that there will be enforced standards to a form of wishful thinking. A position which runs counter to a century of effort. Today I would appeal to those Republicans who might compare themselves with Senator Lodge. Unlike 1919, this President has heard your concerns and

worked carefully to address them in the form the resolution of ratification containing 28 conditions which is now before the Senate.

To fail to ratify the CWC would put us on the side of the rogue states and relieve them of any pressure to ratify the convention themselves. As Matthew Nimitz has argued, the United States has a unique interest in international law because it cannot ''match the Russians in deviousness or the Libyans in irresponsibility or the Iranians in brutality * * *. [It is the United States] which stands to lose the most in a state of world anarchy.''

The Chemical Weapons Convention builds on the laws of The Hague: a century of arms control agreements. It bans chemical weapons—hideous and barbaric devices—completely. International law can never offer perfect protection, but we are primary beneficiaries of the protection that it does provide. I urge my colleagues to support this important treaty.

I thank the Chair. I yield the floor.

Might I ask? Does time run consecutively and is it divided equally?

The PRESIDING OFFICER. Yes. It will be divided equally.

Mr. MOYNIHAN. I thank the Chair.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I yield 3 minutes to my friend from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I ask unanimous consent that a congressional fellow from my office, Ashley Tessmer, be allowed in the Chamber during the Chemical Weapons Convention debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, the Chemical Weapons Convention goes into force April 29 with or without U.S. participation. This, after more than 100 years of international efforts to ban chemical weapons, including the Hague Convention of 1889 and the Geneva Protocol of 1925 which placed restrictions on the use of chemical weapons. The history of chemical weapons use is a long one—from 1915 with the German use of chlorine gas in Belgium during World War I, to the Iraqi use of poison gas to kill an estimated 4,000 people in the Kurdish village of Halabja in 1988, and the very recent threat of chemical weapons use in the Persian Gulf war.

These chemical weapons are dangerous—not only because of intentional, but also accidental use. In Minnesota, I've listened to many gulf war veterans who've told me about their experiences during the conflict. Much is still unknown about chemical weapons use in the gulf and there is great concern throughout the Minnesota veterans community. I've seen the tragic effects of this when I've met with gulf war veterans who went to the gulf in perfect health but became seriously ill after they returned. While many are uncertain about the causes of their illnesses, they suspect that exposure to toxic chemical agents was a factor.

Mr. President, I want to tell my colleagues about a story I recently heard concerning veterans who were part of the 477th Ambulance Company who may have been exposed to toxic chemicals. After the war, a couple of company members went exploring the area nearby and noticed a spill on the floor of a warehouse. There's no way of knowing now exactly what the substance was, but they are concerned about possible exposure to a nerve agent. They were alarmed because even this kind of low-level exposure can be a serious threat to our soldiers' safety and health. The plea from the Minnesotan who told this story is, ''Please! Get everyone to stop using this junk!'' Well, that is exactly what we are trying to do, and ratifying the CWC is a vital step in that direction. If we don't sign up, America's soldiers—and indeed, all Americans—will be the worse for it.

Another Minnesotan who was a nuclear-biological-chemical warfare specialist during the war talked about the panic and incorrect use of protective equipment that occurred when there were scud alerts accompanied by CBW alerts. There were soldiers who just couldn't handle the threat of possible chemical attacks. And why should we be surprised? The use of chemical weapons is inhuman and even the perceived threat has to be psychologically damaging. These stories just strengthen my resolve to do all I can to push for ratification of this treaty.

Mr. President, we face a decision between taking a lead role in this effort or standing on the sidelines—this decision should not be difficult for the United States which historically has taken the lead in arms control, seeking agreements that are in the national interest, verifiable, and contribute to world peace. I repeat in the national interest, verifiable, and contribute to world peace. And there is no question in my mind that the CWC fully meets these standards.

To me, it is a great mystery why this treaty is not already ratified. After all, Congress directed in 1985 that all U.S. chemical munitions be destroyed by 1999—since amended to 2004. Subsequently in 1993, the United States became one of the original signatories of the CWC, now awaiting ratification by this body. It would seem that there's nothing so dramatic as waiting until the last minute to make an obvious and sensible decision. This international treaty takes a major step forward in the elimination of the scourge of chemical weapons. As the world's only superpower and leader in the fight for world peace, we must be out front on this convention.

This treaty itself has a very interesting and solid bipartisan history as well as strong popular support, and I am mystified as to why some of my colleagues want to reject a treaty for which we are largely responsible. The CWC was conceived during the Reagan administration, crafted and signed during the Bush administration and further negotiated during the Clinton administration. Former President Bush has continued to proclaim strong support for ratification. Its bipartisan creditials are thus impeccable. Legislators and national security experts from both parties firmly support it. Former Secretary of State James Baker argues that it is outrageous to suggest that either Presidents Bush or Reagan would negotiate a treaty that would harm national security. President Clinton sees the accord as building on the treaty than bans nuclear tests in the atmosphere that President Kennedy signed more than three decades ago. The Senate now needs to complete the weapons-control work to which Presidents Kennedy, Reagan and Bush and Clinton were and have been committed.

By at least restricting the manufacture, sale, and possession of toxic chemicals capable of being used as weapons, the United States makes it more difficult for rogue nations or terrorist organizations to obtain the raw material for weapons. Ultimately, we then better protect our soldiers and civilians. We should help lead the world away from these graveyard gases, and not pretend they are essential to a solid defense. Do we plan to use chemical weapons? No. Then do we lack the courage to lead? I certainly hope not.

Mr. President, according to Secretary of State Madeleine Albright, the United States is the only nation with the power, influence, and respect to forge a strong global consensus against the spread of weapons of mass destruction.

There is also support for this treaty from the armed services. I have the unique perspective of serving on both the Foreign Relations Committee and the Committee on Veterans' Affairs. I know that many veterans organizations support this treaty—VFW, VVA, Reserve Officers Association of U.S., American Ex-prisoners of War, AMVETS, Jewish War Vets to name a few. What better testimony to its value? The treaty will reduce world stockpiles of weapons and will hopefully prevent our troops from being exposed to poison gases. And, for my colleagues who are still not convinced on the merits of the treaty—over three quarters of the American public—as much as 84 percent in a recent poll, favors this treaty.

But why then are there opponents to this treaty? I cannot answer that. I can only say that it is always easier to tear something down than it is to build it. Ask ethnic minorities in Iraq—who

were the victims of Saddam's chemical attacks—why there are opponents. Ask Generals Schwartzkopf and Powell why there are opponents. According to General Powell, this treaty serves our national interest—to quote his comments at last week's Veterans' Affairs Committee hearing: ''For us to reject that treaty now because there are rogue nations outside the treaty is the equivalent of saying we shouldn't have joined NATO because Russia wasn't a part of NATO.'' If we don't sign this treaty, their will still be rogue nations. Ask the State Department, the intelligence community, the chemical manufacturers who stand to lose as much as $600 million in sales, why there are opponents to this treaty. And ask our own gulf war veterans who lived with the fear of chemical attack and may now be suffering the effects of exposure to chemicals why there are opponents. They and I will never understand it.

Mr. President, ratification of the Chemical Weapons Convention is crucial to all nonproliferation efforts. If America's message to the world is that the United States is not deeply concerned about the production of weapons of mass destruction, then it will encourage rogue states to either continue clandestine projects or to begin producing these weapons that could imperil U.S. troops in future conflicts. Lack of U.S. resolve on the CWC and the unraveling effect it would have on other arms control treaties, would make it easier for rogue states in two ways: they could more easily acquire chemical weapons materials and more effectively hide their production programs. How can we best protect the future of our children, our soldiers, our trade, our country's position in the world? By ratifying this treaty.

I'm deeply puzzled as to why, when at long last the Senate is on the verge of giving its advice and consent to CWC ratification, we are being asked to consider treaty-killer conditions. Again, I remind my colleague, this treaty has been more than 15 years in the making with two Republican Presidents and one Democratic President involved in negotiating and crafting the final product. It is the result of years of bipartisan efforts. The CWC has been strongly endorsed by former Secretary of State James Baker and former National Security Adviser Brent Scowcroft—both of whom served Republican Presidents. It also enjoys the support of our top commanders during the Persian Gulf war, including General Schwarzkopf, who clearly recognize that it is in our national interest to ratify the treaty.

While I do not question the motives and integrity of my colleagues who support these four killer conditions, it is clear that they are not a result of insufficient Senate scrutiny and debate. In fact, the CWC has been before the Senate since November 1993, when it was submitted by President Clinton. During the past 3½ years, the Senate has held 17 hearings on the treaty and the administration has provided the Senate with more than 1,500 pages of information on the CWC, including over 300 pages of testimony and over 400 pages of answers to questions for the record. It is important to recall that in April 1996 the Senate Committee on Foreign Relations voted the treaty out of committee by a strong bipartisan majority, 13 to 5. Why then, only 1 year later, are we confronting four conditions, any of which will prevent us from ratifying the treaty by April 29 when it will automatically go into effect, and a fifth condition that is unacceptable and would undermine the treaty?

Mr. President, I hope that all of my colleagues realize that the United States will incur serious costs if we don't submit instruments of ratification by April 29. Unless we join the convention now, the United States will be barred from having a seat on the executive council, the key decisionmaking body of the convention, for at least a year and, perhaps, longer. We would thus be precluded from influencing vital decisions to be made by the executive council regarding the detailed procedures that will be followed under the convention. Moreover, sanctions against U.S. companies—the requirement that they obtain end-user certificates to export certain chemicals—will commence on April 29 if we are not a convention party. If we still haven't joined in 3 years, U.S. firms would be subject to a ban on trade in certain chemicals. In addition, U.S. citizens won't be hired as officials or inspectors by the body that will implement the convention until the United States becomes a party to the CWC. And, even more important than these costs to the United States, is the fact that failure to ratify the treaty, which was produced because of U.S. leadership, will have a negative impact on American leadership around the world.

While I will never understand why we have come to such a pass, it is crystal clear to me why we have to move to strike all five of these conditions. Mr. President, permit me to briefly summarize each of the five conditions and to spell out the key reasons why I'm unalterably opposed to them:

CWC condition No. 29 on Russia precludes the United States from joining the convention until Russia ratifies and satisfies other specified conditions. This is a killer condition that would hold hostage our ability to join the CWC to hardliners in the Russian Duma. As the President put it, ''this is precisely backwards [since] the best way to secure Russian ratification is to ratify the treaty ourselves.'' I couldn't agree more with the President, whose position parallels that of Vil Myrzyanov, a Russian scientist who blew the whistle on the Soviet Union's CW program and strongly backs the treaty. In a recent letter to my distinguished colleague, Senator LUGAR, he said ''Senate ratification of the convention is crucial to securing action on the treaty in Moscow.'' Unless, my colleagues join me in striking this amendment, we'll be permitting Russian hardliners to decide our foreign policy, while dimming prospects that Russia—which has the world's largest stockpile of chemical weapons—will ratify the CWC. How can this be in our national interest?

CWC condition No. 30 on rogue states bars the United States from ratifying the CWC until all states determined to possess offensive chemical weapons programs, including China, North Korea, Libya, Syria, Iran, and Iraq, and other states deemed to be state sponsors of terrorism, have ratified. This is a killer condition likely to prevent the United States from ever joining the CWC. If this condition is not struck we would be using the lowest common denominator as a principle for determining our foreign policy. The United States would be placed in the bizarre and embarrassing position of allowing the world's most recalcitrant regimes to determine when we join the CWC, if ever. As former Secretary of State James Baker has said: ''It makes no sense to argue that because a few pariah states refuse to join the convention the United States should line up with them rather than the rest of the world.'' Makes no sense at all, which is precisely why I strongly support striking this condition.

CWC condition No. 31 on barring CWC inspectors from a number of countries such as Cuba, Iran, Iraq, and North Korea, from ever entering the United States as part of CWC inspection teams. This is an unnecessary condition that has the potential to seriously hamstring CWC implementation. To begin with, the United States already has the right under the CWC to bar inspectors on an individual basis each year when the CWC proposes its list of inspectors. If this condition is not struck, it is likely to provoke reciprocity, resulting in other nations blackballing all American inspectors. This would have the perverse effect of undermining one of our main objectives in joining the treaty: to ensure American inspectors take the lead in finding violations. In addition, condition No. 31 would bar inspectors from a country like China even if United States national security might be better served by letting them confirm directly that the United States is not violating the CWC, but fails to require rejection of inspectors from other countries who might be known spies or have a record of improper handling of confidential data. Because of these serious flaws, I urge my colleagues to join me in voting to strike this condition.

CWC condition No. 32 which prohibits the United States from joining the CWC until the President certifies that the parties to the convention have agreed to strike article X and amend article XI. This provision is an outright killer that will prevent the United States from joining the Convention. Clearly the President can't make such a certification prior to April, and likely won't ever be able to do so since the

Convention permits a single State party to veto such amendments. Proponents of condition No. 32 wrongly contend that the Convention requires the United States and other parties to share sensitive technology that will assist such countries as Iran to develop offensive CW capabilities.

In fact, Mr. President, neither article X nor article XI have such requirements. Article X, which focuses mainly on assisting or protecting convention member countries attacked, or facing attack, by chemical weapons, provides complete flexibility for states to determine what type of assistance to provide and how to provide it. One option would be to provide solely medical antidotes and treatments to the threatened state. This is precisely the option the President has chosen under agreed condition No. 15 which specifies that the United States will give only medical help to such countries as Iran or Cuba under article X. Moreover, beyond medical assistance, the President has made clear the United States will be careful in deciding what assistance to provide on a case-by-case basis. In sum, there is no valid justification for scrapping article X.

Opponents of the CWC contend that article XI, which addresses the exchange of scientific and technical information, requires the sharing of technology and will result in the erosion of export controls now imposed by the Australia Group of chemical exporting countries, which includes the United States. While this is plainly not the case, the President under agreed condition No. 7 is committed to obtain assurances from our Australia Group partners that article XI is fully consistent with maintaining export curbs on dangerous chemicals. Condition No. 7 also requires the President to certify that the CWC doesn't obligate the United States to modify its national export controls, as well as to certify annually that the Australia Group is maintaining controls that are equal to, or exceed, current export controls.

Mr. President, one final point regarding the Condition's proponents concern that articles X and XI will require technology that will assist other countries to develop offensive chemical weapons programs. Exchanges of sensitive technology and information provided under terms of both articles would be legally bound by the fundamental obligation of treaty article I, which obligates parties never to ''* * * assist encourage, or induce, in any, anyone to engage in any activity prohibited to a State party under this convention.'' This would ban assisting anyone in acquiring a chemical weapons capability.

I strongly urge my colleagues from both sides of the aisle to join me in voting to strike this condition.

CWC condition No. 33 would prohibit the United States from ratifying the CWC until the President can certify high confidence U.S. capabilities to detect within 1 year of a violation, the illicit production or storage of one metric ton of chemical agent. Since this is an unachievable standard for monitoring the treaty, this is a killer condition that would permanently bar U.S. participation in the CWC.

Mr. President, no one can deny that some aspects of the CWC will be difficult to verify, nor can anyone affirm that any arms control agreement is 100 percent verifiable. And, as Gen. Edward Rowny, who was special adviser to Presidents Reagan and Bush, pointed out in the Washington Post any chemical weapons treaty is inherently more difficult to verify than a strategic arms treaty, under which missiles and bombers can be observed by national technical means. For one thing, chemical weapons can literally be produced in thousands of large and small laboratories around the world. But the bottom line is one made succinctly and clearly by General Rowny: ''If we are within the CWC, well-trained and experienced American inspectors, employing an agreed set of procedures, intensive procedures, will have an opportunity to catch violaters. Outside the CWC, no such opportunity will exist.'' I couldn't agree more. As in many other matters, the perfect is not only unattainable but is also the enemy of the good. I hope than many of my colleagues will see this issue in the same light and will join me in voting to strike condition No. 33.

In conclusion, I want to stress that America has always been a leader in international arms negotiations. America should continue this proud tradition of leading the way. We as a nation have the opportunity to be one of the world's leading guardians of the peace through the application of this treaty; we can participate in safeguarding our armed forces, our citizens, our children from the horrors of chemical weapons; we can lessen the likelihood of chemical weapons being used again in warfare.

But to make all this possible, we must have the perspicacity and foresight to grab this fleeting opportunity, this historic moment where we decide to join with other nations to improve the quality of life worldwide and assure a safer, saner world. We have just celebrated Earth Day—and I ask what better way to honor our planet is there than by now ratifying a treaty that will protect and safeguard her people?

Mr. President, there is not a lot of time to go through such an important issue, but I thought I would just draw from some very poignant and personal discussion back in Minnesota that we have had with gulf war veterans.

To quote one of the veterans who himself is really struggling with illness which he thinks is based upon some exposure to chemicals during his service in the war, he said, ''This is my plea. Please get everyone to stop using this junk.''

I really do think that the more I talk to veterans with their service in the gulf war fresh in their mind, many of whom are ill, many of whom are struggling with illness, who were fine before they served in the war and are not now and want to know what has happened to them, there are two different issues. I have the honor of being on both the Veterans' Committee and the Senate Foreign Relations Committee. One, on the Veterans' Committee, is to get to the bottom of this and make sure veterans get the care they deserve. But the other is when we have such an important treaty, such a historically important agreement which is in the national interest, which is verifiable and which contributes to world peace and helps us get rid of this junk and is so important not only to our soldiers-to-be but also to children and grandchildren, Mr. President, I do not think there is any more important vote that we can make than one of majority support for the Chemical Weapons Convention.

In my State of Minnesota, I know that people are overwhelmingly for this agreement. People are under no illusion. They do not think it is perfect, but they think it is an enormous step forward for all of humankind, an enormous step forward for people in our country, an enormous step forward for people in other countries as well. Since the United States of America has taken a leadership position in the international community, in the international arena, it would be, I think, nothing short of tragic if we now were on the sidelines, if we were not involved in the implementation of this agreement, if we were not involved in exerting our leadership in behalf of this agreement.

I urge full support for this agreement, and I really do think I speak for a large, engaged majority in Minnesota.

I thank the Chair.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. If there is no objection, time will be deducted equally.

Mr. BIDEN. Mr. President, I withhold my suggestion of the absence of a quorum. I yield 7 minutes to my friend from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, today the Senate will vote on the Chemical Weapons Convention. President Reagan began the negotiations on this treaty. President Bush signed it. And President Clinton sent it to the Senate for our advice and consent.

We do a lot of things in this Chamber. Some of them are small and rather insignificant. But we also do some very big and important things and make some big and important decisions. The vote this evening on this treaty is a very significant decision for the people of America and also people around the world.

There are some who have opposed virtually all efforts in all cases to limit arms. They vote against all of the arms

control treaties, believing that they are not in our country's best interests. I think they were wrong, and I think they have been proven wrong in a number of areas.

In previous arms control agreements, we have achieved significant success in reducing the nuclear threat against this country. I held up in this Chamber—in fact, somewhere right near this spot—not too many months ago a large piece of metal that I held up from that missile is metal that comes from the scrap heap because the missile does not exist any longer.

In the missile silo that existed, in the hole in the ground in the Ukraine, that hole in the ground which contained a missile with a warhead ensconced in that silo, there is now simply dirt. And in that dirt are planted sunflowers—no missile, no silo—sunflowers.

Now, why are sunflowers planted where a missile was once planted, a missile with a nuclear warhead aimed at the United States of America? Because of an arms control agreement which required that that missile be destroyed. So sunflowers exist where a missile once stood poised, aimed at our country.

Arms control agreements have worked. This particular convention which we will vote to ratify today would eliminate an entire class of weapons of mass destruction.

One could come to the floor of the Senate today and hold up a vial of sarin gas, and if one should drop that vial of gas on this desk and it would break, those in this room might not be leaving the room; they might not survive. If someone came here with a vial and a gas mask and wore the mask and appropriate protective clothing, then they would suffer no consequences.

My point is, who are the most vulnerable in our world when there is a poison gas or chemical weapon attack? The population of ordinary citizens is the most vulnerable. There are armies, if forewarned, that can defend themselves against it, but the mass population of citizens in our countries is extraordinarily vulnerable to the most aggressive poison gas and chemical weapons known to mankind.

There are a lot of arguments that have been raised against this convention, but none of them make much sense. Our country has already decided to destroy our stockpile of poison gas and chemical weapons. We have already made that decision. President Reagan made that decision. We are in the process of finishing that job. The question before the Senate is whether we will join in a treaty ratified already by over 70 other countries, whether we will decide to work to eliminate chemical weapons and poison gas from the rest of the world, to decide that if ever American men and women who wear a uniform in service of our country go abroad or go somewhere to defend our country, they will not be facing an attack by chemical weapons or poison gas.

That is what this debate is about. This is not a small or an insignificant issue. This is an attempt by our country and others to join together to ban an entire class of weapons of mass destruction.

Mr. President, I have spoken several times in this Chamber about the vote that we are to take today. This vote is late. This debate should have taken place long ago, but it did not. We pushed and agitated and pushed and pushed some more to get it to the floor of the Senate because we face a critical end date of April 29.

I commend those who finally decided to join with us and bring this to the floor for a debate, but now as we proceed through several amendments and then final passage, it is important for the future of this country, for my children and the children of the world, that this Senate cast a favorable vote to ratify the treaty that comes from this convention. It will be a better world and a safer world if we do that.

I want to commend those who have worked on this in Republican and Democratic administrations, those whose view of foreign policy is that it is a safer world if we together, jointly, reduce the threats that exist in our world. Yes, the threat from nuclear weapons. We have done that in arms control treaties. Those treaties are not perfect, but we have made huge progress. And now, also, the threat of chemical weapons and poison gas.

I am proud today to cast a vote for a treaty that is very significant, and I hope sufficient numbers of my colleagues will do the same. I hope that the news tomorrow in our country will be that the United States of America has joined 74 other countries in ratifying this critically important treaty for our future.

Mr. President, I yield the floor and I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The time will be divided equally.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Senator from Vermont, who has an hour under the agreement.

Mr. LEAHY. Mr. President, I yield myself such time as I may need under the hour reserved to the Senator from Vermont.

Mr. President, today the Senate will exercise its advice and consent authority under article II, section 2, clause 2 of the United States Constitution. We have to decide whether we will advise and consent to the Chemical Weapons Convention that has been the product of negotiations conducted by the Reagan, the Bush and the Clinton administrations. If we advise and consent to it, then President Clinton will be free to ratify the convention. If we do not, of course, he does not have that power to do so.

Last week I did not object to the unanimous-consent agreement by which the Senate is now finally able to consider the Chemical Weapons Convention. I did comment at that time on the manner in which we are proceeding. We have been forced to take the unusual step of discharging this important treaty from the Foreign Relations Committee without the benefit of committee consideration or a committee report. And, what is most extraordinary, is that it is the Republican leadership for the Republican majority that has insisted on this extraordinary procedure.

Last week we were required to discharge the Judiciary Committee from any consideration of S. 495, a bill that was taken up last Thursday with no committee consideration, no committee report, and an absolute minimum of debate. In fact, the Senate was asked to consider a revised, unamendable substitute version of the bill that was not made available to us until that very afternoon. I raised concerns that it might, in fact, serve to weaken criminal laws against terrorism. I daresay at least 90 out of the 100 Senators who voted on S. 495 last week had not read it and probably did not have much idea of what was in it.

I mention this because we have taken a lot of time for recesses this year but we did not come up with a budget on April 15, even though the law requires us to do so. The leadership decided not to bring one before the Senate to vote on. Each one of us had to file our taxes on April 15, or the IRS would have come knocking on the door, but even though the law requires the leadership to bring up a budget bill, none was. I am not suggesting we not bring up the Chemical Weapons Convention now. It should have been brought up last September. But I worry that the Senate is suddenly doing this, launching into issue after issue, not following the kind of procedures that would enable us to really know what we are talking about. I suggest that we should be looking at the way we have done this.

In 1988 I chaired hearings on the threat of high-tech terrorism. I continue to be concerned about terrorist access to plastique explosives, sophisticated information systems, electronic surveillance equipment, and ever more powerful, dangerous weapons. With the sarin nerve gas attack on the Tokyo subway system 2 years ago, we saw the use of harmful chemicals to commit terrorist acts.

In our Judiciary hearings in 1988, 1991 and 1995, we heard testimony on easily acquired, difficult to detect chemical and biological weapons and explosions. On April 17, 1995, the date of the bombing of the Murrah Federal Building in Oklahoma City, we all learned how easy it is for somebody, intent on terrorism, to concoct a lethal compound out of materials as easily available as fertilizer.

So, for more than a decade I have raised issues about the threats of nuclear, biological and chemical terrorism. I have worked with Members on both sides of the aisle to minimize those threats. We have cooperated on measures included in the Violent Crime Control and Law Enforcement Act of 1994, and the Antiterrorism Act, passed in April of last year. We have concurred on those. Assuming we advise and consent today, and I think now that we will—I think some who wanted to hold it up realize that this is not the kind of posture they want to be in, especially as a party going into elections next year—but, assuming that we advise and consent and the President can ratify it, I look forward to working with Senator HATCH to promptly consider and report implementing legislation that will continue the progress we are making today.

I look forward to hearings in the Judiciary Committee on S. 610, having that committee consider that measure and report it to the Senate before the Memorial Day recess.

I do not expect the distinguished senior Senator from Utah, chairman of the Judiciary Committee, to bottle up this measure or to deny the Senate the benefit of our committee's views. I am going to try to get something approaching regular order. We have not on anything else yet this year, but maybe on this issue we could.

We have had the Chemical Weapons Convention before us since November 1993. As the April 28, 1997, deadline approaches—after which our lack of ratification risks economic sanctions against our chemical industry that would actually cost U.S. chemical companies hundreds of millions of dollars—I hope the Republican majority will join with the President and ratify it, and allow him to sign this treaty. I understand all Democrats will vote for it. I hope enough Republicans will, too.

In fact, our good friend and former colleague, Senator Bob Dole, endorsed ratification yesterday. I hope others are now going to follow him, because, really, we are deciding whether the United States will be a member of a treaty that goes into effect on April 29, with or without us. No matter what we do on the floor of the Senate, this treaty goes into effect on April 29. If we do not advise and consent, the United States will be left on the outside of the world community, with states like Iraq and Libya, which have refused to become parties to this important arms control measure. It is a fascinating situation, Mr. President. If we do not advise and consent, we can say we are standing shoulder to shoulder with Iraq and Libya because we did not join the chemical weapons treaty. This is one of the most ambitious treaties in the history of arms control. It bans an entire class of weapons, which have been one of the great scourges of the 20th century. In fact, this, along with antipersonnel landmines, have been among the greatest scourges of 20th century warfare. This treaty prohibits a full spectrum of activities associated with the offensive use of chemical weapons, including the development, production, acquisition, stockpiling and assistance to anyone engaging in these activities.

The convention creates a comprehensive verification regime which makes it easier to detect and monitor emerging chemical weapons threats. The vigorous verification procedures established in this treaty will help deter countries from developing chemical weapons, and will make it more likely that cheaters are detected. Those nations that do not ratify it, and we could be among them, will be subject to trade sanctions. Nonparticipating nations will also face increasing international pressure to comply, as their number dwindles to an unsavory few. I hope the United States will not be one of those unsavory few.

In the last day, I have heard preposterous statements from the Senate floor about what damage this treaty will do to our national security, about what a burden it will be on American business—the same businesses that are hoping that we will advise and consent to it; about how rogue states will suddenly produce unconstrained amounts of chemical weapons to use on our soldiers. Others eloquently exposed these charges for what they are: flat-out false.

What this debate is really about is how we monitor the rest of the world to ensure the use of these weapons is deterred and minimized. For we all know, the United States by law is committed to destroying our own chemical stockpiles by 2004. We are doing this because we know that these weapons have limited military utility and because civilized people around the world agree their use is morally wrong. And the United States is not going to use them.

So, how do we encourage other states to do what we are going to do anyway? Should we go at it unilaterally or multilaterally? Do we want American inspection teams to mount short notice inspections of potential violators or not? Do we want international penalties to apply to those who flout this treaty or not? Are we safer if the Russians destroy their 40,000 tons of chemical weapons, or not? Do we join with the 74 nations who have ratified this treaty, and the 162 countries that have signed it, or not? Or, does the United States, the most powerful nation in the history of the world, choose, somehow, to go it alone, with all the problems that would entail?

Let us not forget that the United States had a primary role in designing and shaping this treaty, from the time it was first proposed by President Reagan. In recent weeks, the ranking member of the Foreign Relations Committee, working in concert with the Clinton administration, has worked very hard to address the concerns that some Members of this body have. Yesterday we passed 28 declarations to the resolution of ratification that provide even greater protections to U.S. business, and our soldiers, and those who are concerned about constitutional violations.

Shortly, we are going to vote to strike five other conditions that opponents of the treaty say are necessary to address their concerns. I hope that, rather than addressing their concerns, we address the concerns of the United States. Those five conditions should be seen for what they are, treaty killers, designed by those who have no desire to see us participate in this treaty, no matter how many modifications we make.

I want to speak briefly about two of the amendments. The distinguished chairman of the Foreign Relations Committee, Senator HELMS, has been very insistent on them. They are important with respect to this treaty, and also with respect to the issue of antipersonnel landmines. That is a matter of special importance to me.

Proposed condition 29 would, among other things, prohibit the United States from ratifying the treaty until Russia has done so. Proposed condition 30 would prohibit the United States from ratifying the treaty until all States having chemical weapons programs, including China, North Korea, and Iraq, have ratified the treaty. In other words, we would say that China, North Korea, and Iraq would determine the timetable for the United States. Can you imagine that in any other context? We would be screaming on this floor. Of course we would not allow that to happen. These conditions would effectively prevent the United States from ratifying the Chemical Weapons Convention and allow the world's most recalcitrant regimes to decide the rules of international conduct.

To its credit, the administration strongly opposed these amendments. It argues, and I agree, that we should ratify the treaty even before Russia does, and even assuming that rogue States like Iraq and Libya and North Korea do not. In other words, even if these other nations which could easily produce chemical weapons do not join the treaty, the United States should still do so. Why? Because, by ratifying the treaty we isolate the rogue nations, we make it harder for them to produce and use chemical weapons. And, were they then to do so, if all of us had joined in this convention and they moved outside the convention, they would suffer international condemnation and sanctions.

In support of this argument the administration has turned to some of our most distinguished military and national security leaders. Let me quote what they are saying about linking our ratification to Russia's or to the actions of such nations as China and Iraq.

Gen. Brent Scowcroft and former CIA Director John Deutch say:

> [U.S. failure to ratify] gives Russia—which has the world's largest stock of chemical weapons—an easy excuse to further delay its own accession to the CWC.

Former Secretary of State James Baker says:

[S]ome have argued that we should not contribute to the treaty because states like Libya, Iraq and North Korea, which have not signed it, will still be able to continue their efforts to acquire chemical weapons. This is obviously true. But the convention . . . will make it more difficult for these states to do so. . . . It makes no sense to argue that because a few pariah states refuse to join the convention, the United States should line up with them, rather than the rest of the world.

Secretary of Defense William Cohen says:

[T]he CWC will reduce the chemical weapons problem to a few notorious rogues. . . .

And last, but certainly not least, Gen. Norman Schwarzkopf has said:

We don't need chemical weapons to fight our future wars. And frankly, by not ratifying that treaty, we align ourselves with nations like Libya and North Korea, and I'd just as soon not be associated with those thugs in that particular battle.

I agree with General Schwarzkopf. I do not want to have the United States lumped in with Libya and North Korea on the CWC.

By ratifying the treaty, we and the overwhelming majority of nations establish the rules by which the conduct of nations is measured.

Will some nations violate the treaty? Perhaps. But that is no more reason to oppose ratification than it would be to oppose passage of other laws outlawing illegal conduct. We pass laws all the time, criminal laws in this country, and treaties, that say what shall be a crime or a violation of the treaty. We do not withhold passing them because somebody might break that law. It is one of the main reasons we do pass a law, to try to deter unacceptable conduct.

And by isolating the rogue nations, we pressure them to refrain from producing or using chemical weapons. When they tire of being branded outlaws, they may even join in ratifying the treaty and complying with it themselves.

The arguments we hear on the floor from some today in opposition to this also apply to the Nuclear Test Ban Treaty. Not all nuclear powers are signatories to that treaty. But the effect of the treaty is a powerful disincentive on any state, signatory or not, from testing nuclear weapons. We know there are some countries today that have nuclear weapons. They have not signed the Nuclear Test Ban Treaty, but because the major countries have, it limits their own scope of activity.

These treaties were the subject of many, many years of negotiations, negotiations that went nowhere until the United States said that it would renounce the use of chemical weapons, and stop nuclear testing. And once the United States said that, then negotiations were pursued vigorously. The treaties were signed within a few years time.

I commend the administration and other proponents of the CWC for arguing so strongly and effectively in favor of ratification. The President has made the case very, very well, and members of his administration have too.

I would say with some irony though, this is precisely the argument that I have been using on antipersonnel landmines. I could repeat verbatim what the President, the White House staff, the Secretary of Defense, General Schwarzkopf, and former Secretary Baker have said. These arguments apply lock, stock, and barrel to the problem of antipersonnel landmines. We all want Russia and China to be part of a treaty banning antipersonnel landmines. But that is not going to happen any sooner than Iraq is going to sign the chemical weapons treaty.

Their failure should not be used as an excuse for the United States not to sign a treaty banning antipersonnel mines when 100 other nations, including many that have produced and used landmines or have been devastated by their effects, are ready to sign such a treaty.

When the administration on the one hand says we have to go forward with the Chemical Weapons Convention—and I agree—even though some countries, the worst ones have not yet joined, it is unfortunate that the administration then turns around and says we cannot do the same thing with antipersonnel landmines until everybody joins in.

No treaty is universal. In fact some treaties have taken effect with only 20 signatories. But by establishing the international norm, the rogue nations are isolated and pressure builds on them to sign. And that is the only way.

So I ask, Mr. President, why does the administration argue one way on chemical weapons but not follow through on its argument when it comes to antipersonnel landmines? Landmines are just as indiscriminate.

Why, when many more American soldiers and many more innocent civilians, Americans and others, have been killed and horribly maimed by landmines than by chemical weapons?

The reason, of course, is we pushed for the Chemical Weapons Treaty because we have already renounced our own use of chemical weapons, just as we pushed for the Test Ban Treaty because we had renounced our own nuclear tests. But we have not yet renounced our use of antipersonnel landmines.

If we did do so, if the United States were to renounce its use of antipersonnel mines, as so many other nations have done, including many of our NATO allies, I guarantee that the administration would make exactly the same arguments in support of a treaty banning those weapons as it is making in support of the CWC.

They would say that we should not allow Russia, China, and others to decide what the rules of international conduct should be. They would say it makes absolutely no sense that because a few pariah nations refuse to join a landmine ban the United States should line up with them rather than the rest of the world. And they would say that a treaty banning antipersonnel landmines would reduce the landmine problem to a few notorious outlaws and make the world safer for all its people. These are the arguments they made on the Chemical Weapons Convention. They are right. They also would be right in making these same arguments in support of a treaty banning antipersonnel landmines.

In fact, Mr. President, in a letter to the New York Times today by Robert Bell, the Senior Director for Defense Policy and Arms Control, National Security Council, Mr. Bell wrote:

We will be in a much stronger position to make sure other parties to the Chemical Weapons Convention do the same if we are inside, not outside a treaty.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Apr. 24, 1997]

U.S. WOULD BENEFIT FROM CHEMICAL TREATY

(By Robert G. Bell)

To the Editor:

Re A.M. Rosenthal's ''Matter for Character'' (column, April 22), on the Chemical Weapons Convention, which the Senate will vote on April 24:

Mr. Rosenthal says that Article 10 of the treaty should be a ''deal breaker'' because it allegedly would give ''terrorist nations'' access to defensive technology that would help them evade the defenses of responsible states.

Only countries that have joined the Chemical Weapons Convention, renounced chemical weapons and destroyed their stockpiles can request defensive assistance—and then only if they are threatened with or under chemical attack. Further, President Clinton has committed to the Senate in a binding condition that the United States will limit our assistance to countries of concern, like Iran or Cuba—should they ratify and comply with the treaty—to emergency medical supplies.

And we will be in a much stronger position to make sure other parties to the Chemical Weapons Convention do the same if we are inside, not outside a treaty that will compel other nations to do what we decided to do years ago: get rid of chemical weapons.

Mr. LEAHY. I agree with Mr. Bell, and I know he worked tirelessly on the CWC. But unfortunately, Mr. Bell, who I am sure is well motivated, has not been willing to apply that same argument to antipersonnel landmines. The Vice President will not apply that argument. Many of the same people who are up here arguing for the Chemical Weapons Convention make one argument for the Chemical Weapons Convention and turn that argument completely around when it comes to antipersonnel landmines even though we face a grave danger, every day, from antipersonnel landmines.

There are 100 million of antipersonnel landmines in the ground in 68 countries, where every few minutes somebody is maimed or killed by them. This is, in many ways, a greater danger

to innocent people than chemical weapons. And I wish the administration, I wish Mr. Bell, I wish the Vice President, I wish others who have not made their same arguments on antipersonnel landmines that they do on chemical weapons will reconsider. Because, like chemical weapons, antipersonnel landmines are weapons we do not need.

What we do need are defenses against them, because, like chemical weapons, they are easy and cheap to produce. They pose a grave threat to our troops. They are the Saturday night specials of civil wars. They kill or maim a man, woman or child every 22 minutes every day of the year. They are aptly called weapons of mass destruction in slow motion. In fact, they are the only weapon where the victim pulls the trigger. They are a weapon where one Cambodian told me, in their country they cleared their landmines with an arm and a leg at a time.

I am proud to support the President, the Vice President, and the rest of the administration on the Chemical Weapons Convention. But I hope that they will soon take the same position on antipersonnel landmines and say, let us bring together the like-minded states—and there are many who are ready to join in a treaty to ban them, join with them, and then put the pressure on the other countries like Russia and China and so on who will take longer to do it.

If American children were being torn to pieces every day on their way to school, or while playing in their backyards, we would have made it a crime long ago. It is an outrage that should shock the conscience of every one of us.

So I am going to vote to advise and consent to the Chemical Weapons Convention so the President can ratify it and to exert the leadership necessary to help rid the world of the scourge of chemical weapons. I look forward to ratification and to the implementation legislation to make the treaty a reality.

And I will also continue to work to convince the administration this is the kind of leadership we need if we are to rid the world of antipersonnel landmines—a scourge every bit as horrifying as chemical weapons, frankly, Mr. President, a scourge that is killing more people today and tomorrow and last year and next year, and on and on, than chemical weapons. We should be leading the world's nations to end the destruction and death caused each day by landmines, not sitting on the sidelines.

I will conclude, Mr. President, by quoting from a letter to President Clinton signed by 15 of this country's most distinguished military officers, including Gen. Norman Schwarzkopf; former Supreme Allied Commander John Galvin; former Chairman, Joint Chiefs of Staff, David Jones, and others. They said:

> We view such a ban [on antipersonnel landmines] as not only humane, but also militarily responsible.

I quote further:

> The rationale for opposing antipersonnel landmines is that they are in a category similar to poison gas. . . . they are insidious in that their indiscriminate effects . . . cause casualties among innocent people. . . .

They said further:

> Given the wide range of weaponry available to military forces today, antipersonnel landmines are not essential. Thus, banning them would not undermine the military effectiveness or safety of our forces, nor those of other nations.

Mr. President, every single argument the administration has made in favor of us joining the Chemical Weapons Convention could be made to ask us to go to Ottawa to sign a treaty banning antipersonnel landmines. Because by doing that, we would have 90 percent of the nations of this world pressuring the remaining 10 percent, and that pressure would be enormous.

I reserve the balance—

Mr. President, how much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. Twenty-seven minutes.

Mr. DODD. May I inquire, Mr. President, from the Senator from Vermont, there are a couple of us here who have requested some time. In fact, I know my colleague from California has made a similar request. My colleague from Maryland also has. I ask if our colleague from Vermont would be willing to yield us some time off his time. We could make some remarks and maybe expedite this process.

Mr. LEAHY. Mr. President, I intend to be speaking again further on this. I have 27 minutes remaining.

The PRESIDING OFFICER. There is a correction of the time. You actually have 32 minutes left.

Mr. DODD. I needed 10 minutes.

Mrs. BOXER. If I could have 7 minutes, I would ask the Senator.

Mr. LEAHY. I will yield 10 minutes to the Senator from Connecticut, 7 minutes to the Senator from California, and withhold the balance of my time.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much.

I appreciate my friend from Connecticut allowing me to proceed. I may not use the full 7 minutes. I will try to be very concise.

Mr. President, I rise in strong support for ratification of the Chemical Weapons Convention. And I base my support on four main facts.

First, the Chemical Weapons Convention is in the national security interests of the United States of America because it reduces the likelihood that American soldiers or civilians will ever face a chemical weapons attack.

We should not lose sight of why this is so important. The effects of chemical weapons are so barbaric, so devastating, that we must do all we can to ensure that they are never used again.

Chemical weapons are among the most horrible devices ever conceived. If they do not kill their victims instantly, chemical weapons invade the respiratory system making it unbearably painful to breathe. When chemical weapons were used in Iraq by Saddam Hussein, against the Kurds, eyewitnesses reported that the pain was so great that many victims submerged themselves in nearby rivers to escape the spreading gas.

Mr. President, we are a civilized Nation here. We must do all we can to prevent this torture. And approving the CWC is a major step. I know many of my colleagues had questions. I know that Senator BIDEN and others have worked tirelessly to address those problems. And I feel what we will have before us, if we defeat the killer amendments, the five killer amendments, will lead us to a far more civilized world.

All signatory nations of the CWC agree never again to manufacture chemical weapons, nor to use them in war. They agree to destroy all existing stockpiles of chemical weapons. They agree to allow inspections of chemical plants to verify that no weapons are being manufactured illegally.

To those who say there are some nations who may not sign on, we know that is so. I will say this: If we sign this treaty and we are a party to it, it will be far more difficult for nonsignatory nations to develop chemical weapons. This is the case because rogue states will find it far more difficult to import the raw materials and manufacturing equipment they need to develop chemical weapons.

Another reason, the second reason: If the United States fails to ratify the convention, it will still go into effect, but it will be weaker. It will be weaker because many nations will stay off this treaty and, therefore, there will be fewer who are actually bound by it. Also, our inspectors will not be on the team to go and search for possible CWC violations. Our inspectors are among the best in the world, and they will give us confidence as to the true state of chemical weapons production. Why would we want to stay off a treaty that will go forward that will not have our inspectors on those teams?

Third, failure to ratify will hurt American business. The CWC imposes trade sanctions against nonsignatory nations that limit the ability of their chemical industries to export many of their products overseas. It could cost our companies hundreds of millions of dollars every year. Now, opponents say that the CWC would impose additional regulations on an already heavily regulated industry, our chemical industry. They argue the convention will result in vast new compliance costs. But when you take the compliance costs of $250,000 to $2 million for the entire industry, that is a small price to pay compared to the hundreds of millions of dollars that would be lost if sanctions were imposed.

The vast majority of the chemical industries strongly supports the CWC. U.S. chemical companies advised the

Reagan and Bush administrations throughout the original CWC negotiations. Leading U.S. chemical trade associations support the CWC. They know the costs of compliance are small and the risks to industry are great if we fail to ratify.

Fourth, failure to ratify will undermine our credibility, America's credibility, in the world. Imagine a treaty that was brought forward by Ronald Reagan, continued toward the goal line by George Bush, and now a Democrat President, following a legacy of those two Republican Presidents, wanting to take this over the goal line, and suddenly we are going to back off. It seems to me our credibility is absolutely at stake here. I believe we should not back away from this treaty. We should pass it and defeat the killer amendments.

Mr. President, to those who raise all sorts of flags about this treaty, we should understand this: We could always exercise our right to withdraw from the convention on 90 days' notice. This right to withdraw is guaranteed to all signatory nations by article XVI of the CWC.

Mr. President, in closing, I thank the Senator from Vermont for his generosity, and my friend from Connecticut. I join with them. The CWC is in our national interests. It will enhance national security, protect American jobs; it will help maintain our position of global leadership; and, my friends, most important of all, it really will protect the world from the most horrible, horrible weapons of our time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Thank you, Mr. President. I thank my colleague from Vermont for his generosity in yielding time.

Mr. President, yesterday I included some extensive remarks in the RECORD regarding the overall treaty. I let those remarks speak for themselves today.

First, I begin by commending our colleagues, the chairman of the Foreign Relations Committee, Senator HELMS; the ranking Democrat on the committee, Senator BIDEN; the majority leader, Senator LOTT; and the minority leader, Senator DASCHLE, for working out the arrangements of this treaty so we can come up for a vote prior to the April 29 deadline.

Let me also say, Mr. President, while there are disagreements—and there will be over the ultimate decision of whether or not to support the treaty—I think the debate and the process we have gone through has been healthy. I suspect those who are deeply involved in the workings of this treaty have improved it. So I commend all of our colleagues for the work they have done on this particular effort. I think it is how the Senate of the United States ought to conduct its business when it comes to matters dealing with obligations to commit our country for many years to come. It was no mistake that our Founding Fathers required supermajorities to commit this Nation to international arrangements, and the fact that we require supermajorities for treaties, I think, is worthwhile.

Mr. President, I want to focus my attention, if I can, on the first amendment that will be raised here. The amendment will strike a condition in the treaty that has been included by Senator HELMS. I am going to oppose condition 30, which I believe will be the first vote we will cast. This is the rogue states condition. I will explain what that means and express why I think it ought to be struck from this treaty in the brief time I have available to me.

Mr. President, we must ask only one question today. We must ask: Is this treaty in the best interests of our country? That is our obligation as Members of the U.S. Senate. That is the question which we must address. This condition 30, the rogue states condition, I think, is not in the best interests of the United States. I think it would prohibit the United States from ratifying the Chemical Weapons Convention. It would prohibit us, of course, from ratifying the convention until nations such as North Korea, Libya, Syria and Iraq ratify the treaty.

More than any of the other conditions we will vote on, Mr. President, later today, this condition would delay indefinitely, in my view, the ratification of this treaty. The so-called rogue states condition would force the United States of America to wait until all of the pariah states of the world ratify before we, ourselves, would accept the treaty that we, ourselves negotiated.

There is a reason, Mr. President, that we use the words rogue and pariah to describe these countries such as North Korea, Libya, Iran. These are the nations that are the loners in the international arena and who routinely disregard international opinion in pursuing their own interests. These rogue nations, these renegade nations, have never given weight to world opinion. There is no reason to expect that they will have a change of heart any time soon. Waiting for these rogue states to accept this treaty is literally like waiting for Godot.

Let it be known, then, that a vote against striking this condition is, in my view, without any question whatever, a vote to prohibit U.S. participation in the Chemical Weapons Convention. If we include, Mr. President, this condition 30, the rogue states condition, we might as well include a condition that requires ratification by every single nation on Earth before we ratify, for these are, indeed, the very last nations that would ever accept this treaty. That is because these nations, these rogue nations, fear this treaty and the international determination that it demonstrates.

Our country, Mr. President, has decided unilaterally to destroy its aging chemical weapons stockpile by the year 2004. That is a decision we have already made. Regardless of what other nations do, we have decided to take ourselves out of the chemical weapons business unilaterally, and yet the assumption under this faulty condition is that we must not disarm until other nations with chemical weapons or chemical weapons capability disarm as well.

We must be clear, Mr. President, that having agreed, ourselves, to destroy our chemical weapons, this treaty deals with whether or not we can act with the backing of the world to bring other nations to do the same. As Secretary Albright has said very simply, ''This treaty is about other nations' chemical weapons, not our own.'' We will destroy, Mr. President, our weapons because they are no longer needed. So this idea that we must wait for other nations to ratify this treaty, I believe, is fatally flawed.

This convention would establish an international norm that will allow us to pressure rogue states who decide they would rather keep and enhance their chemical weapons stockpile. On the basis of what we now know about the Persian Gulf war, that many thousands of this Nation's troops may have been exposed to chemical agents, we must not pass up the chance, in my view, to establish a norm that would have made it far more difficult for Iraq to have the weapons in the first place. Remember, Mr. President, there is no law that bars a nation from building, stockpiling, upgrading, or transferring their chemical weapons. In fact, when Iraq used chemical weapons against the Kurds, as heinous an act as it was, the Iraqis did not even violate the Geneva Protocol because they did not use the agents in an international conflict.

What we need today, Mr. President, is a new agreement. This convention goes much farther in establishing a basis for international action against chemical weapons themselves.

I further object, Mr. President, to this rogue states condition because we should not allow our foreign policy decisions to be dictated by rogue states—by a Libya, a North Korea, and an Iraq. Let us remember that the negotiating teams of President Reagan and President Bush anticipated the likelihood that rogue nations would not accept this treaty. That is why President Reagan's and President Bush's teams included sanctions, when they wrote this treaty, against nations that remained outside of this treaty. This condition 30, the rogue states condition, insults those negotiating teams that worked so hard and with such great foresight on this very treaty. It assumes that they were so shortsighted that they did not anticipate that rogue nations would oppose it. That is not the case. The truth, again, is that the negotiators knew very well that these rogue nations would look upon this treaty as something that they would have to oppose, so we and other nations demanded that these renegade nations be penalized.

How ironic it is, Mr. President, that unless the United States strikes this

rogue states condition, we now will be penalized ourselves. Germany, I point out, has already indicated its intent to impose the sanctions against nonparticipants that this treaty mandates.

Let us be aware, Mr. President, we live in a new world. Scholars use the words ''multipolar'' and ''post-nationalist'' to describe today's world. Other nations are increasingly capable of taking action without our leadership, regretfully I might add. Those who think this treaty will not go into effect without our ratification are thinking of an older world, of the days when the United States declined to participate in the League of Nations and it failed as a result. Mr. President, that was over three-quarters of a century ago. Let me assure my colleagues that to the extent we isolate ourselves today, our country will pay a price tomorrow.

The question before us this hour with this condition that will come up shortly, is, will we allow a group of rogue, renegade nations to disengage the United States from the international community on this issue of chemical weapons?

Mr. President, when this Nation allows itself to be held back by the shortsightedness, the evil of other nations, we make a huge mistake indeed. President Reagan did not wait for other nations when he took the first step forward on the matter of chemical weapons by declaring that the United States would unilaterally destroy its chemical weapons stockpile. President Reagan did not wait for other nations when he initiated negotiations to ban chemical weapons from this Earth. President Bush did not wait for other nations to sign this treaty. Presidents Reagan and Bush did not follow others in making those critical decisions. We led, as great nations must, and others have fallen in behind us. Our Nation set the example. Now it is time for us to set the example once again.

Finally, Mr. President, we must keep in mind that opponents of this treaty argue both sides of the issue. On the one hand, they argue that rogue states will reap great benefits from the technology and intelligence available to them as participants in this treaty.

That argument assumes that these nations can't wait to participate in this treaty. Yet, on the other hand, this condition that we will vote on assumes that rogue states will avoid participating in this treaty.

If parties to this treaty pick up such a technological advantage, why aren't these rogue nations crawling over themselves to ratify the treaty? They should be the first in line if that is the case. Why then do we need this condition?

The truth is, Mr. President, that rogue nations fear this convention and this treaty. Waiting for them to ratify is absurd. No one expects them to ratify, so we should at least become a party to a treaty that will severely restrict the flow of chemicals to those nations, rather than assisting them by a reluctance to move forward.

Mr. President, I urge the adoption of the amendment to strike, and I urge the adoption of the treaty itself.

I yield the floor.

The PRESIDING OFFICER. The chair recognizes the Senator from New Mexico and asks, who yields time?

Mr. BIDEN. Mr. President, I yield 7 minutes to my friend from New Mexico.

Mr. DOMENICI. Mr. President, first let me say that I believe the Senate has done itself proud with reference to the debate and participation of our Members in this series of debates and discussions regarding this treaty. When you add to it the closed session we had today, I think every Senator has had an ample opportunity to thoroughly understand this situation. I believe when the day ends and you have heard all of that, the overwhelming majority of the U.S. Senators are going to vote to ratify this treaty. I believe they are going to do that not because it is perfect, but because the world is better off and we are better off if we have this treaty than if we don't.

Having said that, while the world has set about to perfect chemical weapons, there is nothing new about this. In fact, I can remember, as a very small boy, a great uncle who was a totally disabled American veteran. He was an Italian immigrant taken into the First World War. He served in the U.S. Army, and he was the victim of mustard gas. In that war, the Germans used mustard gas, a chemical weapon on the front, on the lines. Many Americans received toxic doses. In fact, this great uncle of mine, as I indicated, collected veteran benefits for his entire life for a total disability because of the mustard gas being used in World War I.

Science has perfected weapons beyond mustard gas, and the world lives under three scourges today. One is the possible proliferation of nuclear weapons; another is the proliferation of chemical weapons, and the third is the proliferation of biological weapons. Now, we have attempted in the past, starting with President Eisenhower, to do something about the proliferation of nuclear weapons. While we haven't succeeded in totality, we have clearly succeeded beyond anything men of that day thought. It was not perfect. There were those who wanted to argue about it because it was not perfect, but we could not have ended an entire era without Atoms for Peace and everything that came with it. Having said that, let me suggest that we probably won't find a way to enter into an international treaty on biological weapons. They are principally weapons of terrorists.

Let me talk about this treaty and tell the Senate in my own way why I am for it. First of all, I think it is an imperative. Even though it was said before, I say this one more time. Frankly, the reason this treaty exists is because we are trying—the United States of America—to set in motion in the world a security and arms control treaty, and the overreaching question is: Will we be better off or worse off if we commit to its terms?

Now, this is not a treaty that is going to prevent terrorists from using chemicals as weapons if they see fit. This is more of a treaty that addresses itself to the military use of these kinds of drastic weapons. Now, it is not perfect, but let me suggest the second principle that everybody should know, including those Americans who worry about this treaty: America has already committed to totally destroying all of its chemical weapons. President Ronald Reagan, many years ago, said, let's get rid of one kind of weapon, leaving only one left over. President Bush also agreed to get rid of them. America is now on a path to get rid of them in 10 years. All of this discussion has not changed that. So when we talk about the dangers to America, it should be understood that we have already decided that on our own. We want to get rid of them either because we think that is in our best interest—I would assume that is the case—and/or we think it is better for the world that we not have any because we think the world may follow our example.

Having said that, it seems to me that, with the United States having agreed to destroy all of their weapons of this type, we ought to look at the treaty and ask, is it apt to work its will on the rest of the world quicker and better than if we didn't have it? In everything I hear, everything I have read, in discussions with scientists that worked on it, including some of the top scientists who negotiated this agreement, they have all said that, even with its defects, the CWC is more apt than not to bring the rest of the world to the same conclusion that America has come to. They support that we might get to a point where there are none of these weapons around sooner rather than later if we have this treaty, as compared with no treaty.

There are all kinds of nuances that one can talk about as you look at something as complicated as this. But I think, fundamentally, the issue is: what is best for the United States after we have committed to destroy our chemical weapons, is it better that we have the treaty or not? From everything I can tell, the 28 conditions that have been agreed upon are good clarifying language and many contain protections to our private property rights that we may have assumed early on would not be violated. But then we got concerned with the CWC and properly so. Now, there is going to be some judicial process to be required before inspections can occur. I believe we now will protect private facilities as well as public facilities like our national laboratories through requirements for search warrants as part of the language that Senator HELMS agreed on with our staff.

In summary, it seems to this Senator that if we join with other countries and begin moving to implement this treaty,

that we are better off with it than without it. Will it be difficult to get everyone in the world to agree with our position—the civil position of moral, decent leaders? I am not sure. But the question is, will it be any easier, or are we apt to succeed better, without the treaty? I am convinced that such is not the case.

Now, Mr. President, there are so many Senators to thank, but I say to JON KYL, whose position I don't agree with, that I don't believe anybody has done a better job on something as complicated as this since I have been in the Senate, which is now 25 years. I compliment him for that.

I yield the floor.

Mr. BIDEN. Mr. President, I yield 5 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I thank the able Senator from Delaware, and I commend him for his extraordinary leadership with respect to the Chemical Weapons Convention. I know personally of the time and effort he has devoted to this cause. We are all in his debt.

Mr. President, it is now less than a week before a landmark treaty—one which the United States led the world in negotiating—goes into effect internationally. The Chemical Weapons Convention, signed by President Bush on January 13, 1993, has now been ratified by 74 countries. The eyes of the world are upon the United States as we decide whether or not to join them.

It would be a major mistake if this treaty were to go into effect without us. Worse yet, if we fail to ratify, we could be jeopardizing our best chance to eliminate the chemical weapons that some day would be used against us.

This is a treaty that was advanced, negotiated, and signed by Republican Presidents, with the encouragement, in 1989, of some 75 U.S. Senators. What a mistake it would be if the Senate were to forfeit this opportunity to protect American security, promote American interests and preserve American leadership.

If we fail to ratify the CWC, we will have done just that. If the Senate does not approve this historic treaty, our economic and security interests will suffer. Despite widespread and continuing bipartisan support for this treaty, despite support from some of our Nation's outstanding military leaders—such as General Shalikashvili and former Chairmen of the Joint Chiefs of Staff Colin Powell, Admiral Crowe, General Vessey, and General Jones—some of my colleagues argue that this convention does not serve our security interests.

The Chemical Weapons Convention is an unprecedented international agreement designed to eliminate an entire class of weapons of mass destruction. Unlike earlier protocols that prohibit only the use of chemical weapons, this convention aims at stopping their production, transfer, and storage by providing incentives for participation, verification of compliance, and penalties for violation. The United States is the only major industrialized country not to have ratified it yet. Our participation is critical to its ultimate success.

This convention will not make the threat of chemical weapons automatically disappear from the face of the Earth. But it will constrain their proliferation and make it harder for rogue regimes and terrorists to gain access to them. By increasing the legal, moral, and financial costs of acquiring chemical weapons, it will deter covert chemical weapons programs and increase the likelihood they will be discovered.

There are three major reasons why this treaty will serve American interests and why a failure to ratify it could have severe repercussions.

First, the convention requires other nations to do something we already plan to do—destroy chemical arsenals. Under a law first signed by President Reagan, the United States will eliminate our current stockpile of chemical weapons by the year 2004, independent of what happens in this treaty. Our own military thinks that is a wise thing to do, even on a unilateral basis. The convention will simply ensure that others do the same.

In other words, this is not a debate over eliminating our own chemical weapons. We are already programmed to do so. This is a question of whether we can establish a regime that will require other countries to destroy their chemical weapons and stop building new ones. That is why Admiral Zumwalt had stated, militarily, this treaty will make us stronger.

It is not enough, however, to ask other nations to ratify the treaty. We must do so ourselves. Today, we have an opportunity to lead the world in abolishing these terrible weapons, rather than providing others with an excuse not to do so. If we do not adopt this treaty, or if we add crippling amendments, we will have singlehandedly undermined the hope of ridding the world of this deadly scourge and of reducing the threat to our own citizens.

The second major reason to ratify this treaty is that it will provide us with better information about what other countries are doing in the realm of chemical weapons. We know the verification regime is not perfect. The verification regime is never perfect in any treaty. There may be states that try to cheat on this agreement and others that refuse to sign it. But if we are party to the treaty, we will have an opportunity to investigate and sanction potential violations. We will take part in the organization established to monitor implementation, and we will help enforce its rules and procedures. As former CIA Director James Woolsey noted, ''We will know more about the state of chemical warfare preparations in the world with the treaty than we would know without it.''

Moreover, once we ratify the treaty we will be in a better position to do something about noncompliance. The CWC throws the force of world public opinion behind the identification and exposure of violators. Any violations that are discovered will be made widely known and receive universal condemnation. We will be able to punish violators through multilateral action, rather than going it alone, or trying to convince the world that our suspicions are correct without revealing our intelligence sources. As former Secretary of State Christopher explained, ''By ratifying the Convention, we will add the force and weight of the entire international community to our efforts.''

The third reason we must ratify this treaty is that a failure to do so will put U.S. chemical manufacturers at a serious competitive disadvantage. Once the CWC enters into force—which will happen next Tuesday, with or without U.S. participation—chemical manufacturers in countries that have not ratified will find themselves faced with international economic sanctions. These companies will be required to obtain end-user certificates for the sale of certain chemicals abroad, and after 3 years, they will not be able to export those chemicals at all. The United States will be treated on a par with rogue states, who will no longer be trusted to conduct normal, commercial trade in chemicals.

These dismal scenarios were certainly on the minds of the chief executives of 53 of the Nation's largest chemical firms last August, when they expressed their concern in a joint statement, warning: ''Our industry's status as the world's preferred supplier of chemical products may be jeopardized if the United States does not ratify the Convention. If the Senate does not vote in favor of the CWC, we stand to lose hundreds of millions of dollars in overseas sales, putting at risk thousands of good-paying American jobs.'' American chemical companies have indicated a willingness to comply with inspections under the treaty because they are not conducting illegal activity, and because they helped to design the treaty's inspection regime so that it would not threaten legitimate business secrets or compromise proprietary information.

Earlier this year, President Bush reaffirmed his support for ratification, telling reporters the treaty should transcend partisanship. ''I think it is vitally important for the United States to be out front, not to be dragged, kicking, and screaming to the finish line on that question. We do not need chemical weapons, and we ought to get out front and make clear that we are opposed to others having them.''

The CWC has been before the Senate for consideration for nearly 4 years now, providing ample opportunity for examination. Last year, after exhaustive hearings and review, it was reported favorably by the Senate Foreign Relations Committee, but not brought to a vote on the floor of the Senate.

Over the past few weeks a new series of hearings has been held, in open and in closed session, and all perspectives have been thoroughly aired. The administration has worked in good faith to negotiate a new resolution of ratification that addresses the earlier concerns and more, including 28 agreed conditions, declarations, statements, and understandings. The remaining five conditions that have been proposed will undercut and place in jeopardy the effectiveness of this treaty, and I urge my colleagues to reject them.

The conditions to which the administration has already agreed will resolve every legitimate concern that has been raised. I would urge my colleagues not to vote for pending amendments that would require renegotiation, delay, or abrogation of the CWC. If we don't take this opportunity to begin abolishing these terrible weapons, we will rue the day and have only ourselves to blame.

Mrs. FEINSTEIN. Mr. President, I rise today to express my strong support for the Chemical Weapons Convention. I believe it is very much in our national interests to ratify this treaty, after we strike five conditions in the resolution of ratification.

Let me first express my respect and appreciation for the distinguished ranking member of the Foreign Relations Committee, Senator BIDEN. He and his staff have really done the heavy lifting in getting this treaty to the floor, including many long hours of negotiations on the package of 28 agreed conditions.

I also want to express my respect for the opponents of this treaty, including the distinguished chairman of the Foreign Relations Committee and the Senator from Arizona, Senator KYL. I have worked well with Senator KYL on many issues, including, at the moment, our strong effort to pass a Victims' Rights Amendment to the Constitution.

I know that in this debate these Senators are motivated by their genuine and deeply felt concern for America's national security. However, I must disagree with the view that we would be better off without this treaty, or by passing a resolution of ratification that essentially renders the treaty meaningless.

Mr. President, the threat of chemical weapons falling into the hands of terrorists, or being used as a weapon of war by a rogue state, has increased dramatically in recent years.

One need only reflect on the dangers faced by our military by Iraq's incipient chemical weapons program during the gulf war, or the tragedies our Nation has suffered with the bombing of the World Trade Center, the Federal building in Oklahoma City, and the Olympic Park in Atlanta, to fully appreciate the dangers posed by the proliferation of chemical weapons. In each of these cases, the tragedy and loss of life could have been magnified significantly had chemical weapons been used.

The people of Japan know this firsthand. The deadly sarin gas attack carried out in the Tokyo subway system by the Aum Shunrikio cult was testimony to the power of even a relatively small amount of chemical weapons.

Chemical weapons are among the most barbaric of mankind's inventions. They are so awful, that the United States, by act of Congress, has decided to eliminate our own stocks of these weapons by 2004. They are designed to kill and incapacitate by causing such effects as skin blistering, blindness, lung damage, choking, nervous system disruption, paralysis, or oxygen starvation. Because of the ease of their dispersal over a wide area, chemical weapons are especially useful for targeting civilian populations.

The Chemical Weapons Convention is the most far-reaching attempt ever by the international community to control the spread of chemical weapons. It bans for the first time the development, production, and possession of chemical weapons and reinforces the international norm against their use. Since we are destroying our own chemical weapons, it only makes sense that we should want other nations to do so as well.

The convention requires all signatory states to declare and destroy any chemical weapons and the facilities used to produce them. It requires member states to submit annual reports on the production and use of certain sensitive chemicals. This information, combined with our own intelligence resources, will significantly improve our ability to monitor and prevent illegal transfers and uses of such chemicals.

Once the CWC takes effect, it will make it much harder and more costly for proliferators and terrorists to acquire chemical weapons. An intrusive verification system will be set up to detect violations. Sanctions will be imposed against nations that refuse to participate, making it more difficult for them to acquire precursor chemicals for poison gas and easier to monitor their efforts to do so.

The intelligence-sharing and global verification network that will result from this treaty will increase the chances that terrorist attacks involving chemical weapons can be prevented before they ever occur—a net gain in the security of our troops and our citizens.

Now, a number of very serious concerns have been raised about the CWC. I myself have shared some of these concerns. I will not speak to every criticism of the treaty, but I want to address some of these concerns now, because I believe very solid answers have been provided to virtually all of them.

Verification: Critics of the CWC have complained that it is not verifiable, and that it will be easy for nations who sign up to the treaty to cheat without getting caught.

We must start with the proposition that no arms control agreement is 100-percent verifiable. But with the CWC, we will know far more about who is trying to develop chemical weapons, where, and how than we would without the treaty. That is why the intelligence community has consistently testified that, while the treaty is not completely verifiable, they regard it as a highly desirable tool that will enhance our knowledge of chemical weapons programs and our ability to stop them.

The CWC's verification regime requires routine inspections of all declared facilities working with significant amounts of chemicals listed by the treaty. In addition, any site, declared or not, may be subject to short-notice challenge inspections if there are suspicions that it is being used to produce or store banned chemicals.

The CWC also establishes significant trade restrictions on precursor chemicals. These restrictions will make it more difficult for nations who are not parties to the treaty to acquire these chemicals, and will provide us with much more information than we currently have about who is seeking to import such chemicals, and in what amounts.

So the concern about verification, while valid, I believe has been more than adequately addressed. We must go into this treaty with our eyes open, aware that it will not detect every violation. But why would we deprive ourselves of the extremely useful tools and information this treaty would provide on the grounds that they are not foolproof? It would be incredibly shortsighted to do so.

Sharing Defense Technologies: During one of the hearings in the Senate Foreign Relations Committee earlier this month, the concern was raised that Article X of the CWC would require the United States to share advanced chemical defense technologies with rogue nations like Iran, who may sign and ratify the treaty. If indeed the treaty required that, there would be significant grounds for concern. But I believe the concern is overstated.

In an April 22 letter to me, National Security Adviser Sandy Berger makes it very clear that Article X of the CWC would impose no obligation on the United States to assist Iran with its chemical weapons defense capabilities.

I ask unanimous consent that Mr. Berger's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. Berger makes clear that paragraph 7 of Article X, which spells out the obligations of States Parties to assist others threatened by chemical weapons, would require the United States to provide nothing more than medical antidotes and treatments to any state we deemed unreliable. We have the option to provide more advanced assistance to those nations we trust, but no obligation.

The administration is so comfortable with this reading of the treaty, that, in their negotiations with Senator HELMS

and with the Majority Leader's task force on the CWC, they have agreed to a binding condition (number 15) that would ensure that the United States will not provide any assistance other than medical assistance to any rogue nation that becomes a party to the treaty.

Another concern about Article X is that paragraph 3, which calls for parties to ''facilitate . . . the fullest possible exchange'' of information and technology on protection against chemical weapons, would require the United States to share such equipment with rogue nations who sign and ratify the treaty.

The administration has made clear that the use of the words ''facilitate'' and ''possible'' in this paragraph mean that we will determine whether any specific exchange is appropriate, and we will not pursue those we deem inappropriate. In making these decisions, we will do nothing to undermine our national export controls.

With these assertions in hand, I am satisfied that the United States will in no way be obligated to provide chemical weapons technology to any nation we deem to be untrustworthy.

Some have also raised the concern that Article X might induce other, less conscientious nations, to supply rogue states with defense technologies. But there is nothing that prevents those sales from taking place today, with no CWC in effect.

With the CWC, the countries who make exchanges allowed in Article X are legally bound by the treaty's overriding principle, stated in Article I, that they can do nothing to ''assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.''

In addition, the CWC would provide us with far more ability to scrutinize any exchanges than we have today. The result is a net increase, not decrease, in our knowledge of defense exchanges with rogue nations, and our ability to address any compliance concerns that may arise from these exchanges.

Cooperation on Chemical Technology: Another concern that has been raised involves Article XI. Some have suggested that Article XI, which deals with cooperation in chemical activities not prohibited by the treaty, would require the United States to provide other nations with access to our dual-use technologies and manufacturing secrets. Here again, the concern is unwarranted.

Article XI does aim to ensure that parties to the treaty can conduct legitimate chemical commerce, which is reasonable. But in his April 22 letter, Mr. Berger explains that this article does not require the United States, or any U.S. company, to provide any confidential business information to any foreign party.

As to the concern that Article XI will undercut export controls, indeed, the reverse is true. Mr. Berger makes clear that the all U.S. export controls now in effect are fully consistent with the CWC. In addition, our allies in the Australia Group, all 28 of them, have pledged to maintain all existing multilateral export controls, which they agree are fully consistent with the CWC.

Here again, the problem identified by critics of the CWC would actually be worse without the treaty. The CWC will allow us to better monitor chemical commerce that occurs today without our knowledge. It will also provide the basis for further multilateral efforts to control exports, above and beyond our own existing export controls and those of the Australia Group.

To address the concerns raised about Article XI, the Administration has agreed to a binding condition (number 7) that the President must certify now and on an annual basis that the Australia Group is continuing to effectively control chemical exports and remains a viable mechanism for doing so.

According to this condition, the President must also certify that nothing in the CWC obligates the United States to weaken our own export controls, and that each member of the Australia Group remains committed to maintaining current export controls.

With this condition added to the resolution of ratification, I believe concerns about Article XI can be laid aside.

In fact, the negotiations between the Administration and Senator BIDEN on the one hand, and Senator HELMS and the Lott task force on the other, have been remarkably successful in addressing the concerns that have been raised about the treaty.

In all, 28 conditions have been agreed to in these negotiations, on subjects ranging from verification and Articles X and XI, to Congressional prerogatives in providing funding for the OPCW; the establishment of an inspector general at the OPCW; safeguards on intelligence sharing; the Senate's role in reviewing future treaty amendments; constitutional protections in the inspection of U.S. facilities; our armed forces' continued ability to use non-lethal riot control agents, such as tear gas; and maintaining robust U.S. chemical defense capabilities.

With all of these conditions agreed to, there are only five areas remaining in dispute. One would think we were near the point of a virtually unanimous vote to ratify the CWC.

And yet, we still hear charges that the administration is ''stonewalling.'' That is simply not the case. Far from stonewalling, the administration has worked very hard to address the Senate's concerns. But it appears that some people simply do not to want to take yes for an answer.

And so, we have five conditions in this resolution of ratification which the Administration has identified as ''killer'' conditions. These conditions would make our ratification of this treaty meaningless, because they would either gut central provisions of the treaty, or set up unachievable goals that must be met for us to deposit our instruments of ratification. They should all be defeated.

Let me briefly address each of these killer conditions:

Condition 29 would prohibit the United States from ratifying the CWC until Russia ratifies it and takes a series of other actions to comply with past agreements.

Besides holding United States foreign policy hostage to a group of hardliners in the Russian Duma, this condition ignores the fact that the CWC provides precisely the tools that would be helpful in detecting Russian violations of this and past treaties. It also gives Russia an easy excuse to delay ratification itself. On the grounds of self-interest, this condition shoots ourselves in the foot.

Condition 30 would prohibit the United States from ratifying the CWC until rogue states such as North Korea, Libya, Syria, Iran, and Iraq have ratified it. By accepting this treaty, we allow these rogue regimes to set the standards of international conduct. It is the equivalent of saying that we should not outlaw drug smuggling because some people will still smuggle drugs.

By ratifying the CWC, the United States will make it easier to forge international coalitions aimed at eliminating the chemical weapons programs of these regimes, even through military force when necessary. It will also set a standard for those nations to meet if and when their current regimes are replaced by more responsible ones.

Condition 31 requires the United States to reject all CWC inspectors from countries like Iran and China. This condition is unnecessarily rigid. It would prevent us from allowing suspect states from seeing for themselves that we are not violating the treaty. It would also certainly result in American inspectors being excluded from inspections in these countries.

A better approach would be to strike this language and enact implementing legislation that would allow Congress a role in determining which inspectors should be barred, which the CWC allows the United States to do on a case-by-case basis.

Condition 32 would prohibit the United States from ratifying the CWC until Article X is eliminated and Article XI is amended. This is completely unrealistic and completely unnecessary. Articles X and XI were included to reassure countries who signed the treaty that they would not be prevented from developing chemical weapons defenses or engaging in legitimate chemical commerce.

None of the 160 nations who have signed or 74 nations that have ratified the treaty will agree to renegotiate these provisions at the eleventh hour. It will simply result in our exclusion from the CWC—which is clearly the intent.

As Gen. Brent Scowcroft, National Security Adviser to President Bush,

testified before the Foreign Relations Committee on April 9, 1997: ''Starting over. . .is pure fantasy. If we reject this treaty, we will incur the bitterness of all our friends and allies who followed us for 10 years in putting this thing together. . . The idea that we can lead out again down a different path I think is just not in the cards. We have got to deal with the situation we face now, not an ideal one out in the future.''

The concerns raised about Articles X and XI—which I shared—have been more than adequately addressed by the agreed conditions. This is what I mean about not wanting to take yes for an answer.

Condition 33 would prevent the U.S. from ratifying the treaty unless the President can certify with ''high confidence'' that we would be able to detect the production or storage of a single metric ton of chemical agent.

This is an absurdly high standard. The intelligence community has consistently said it could detect ''militarily significant'' cheating, but the production of one ton of agent does not qualify.

But the tools created by the CWC will only enhance our abilities to detect these violations. It would be foolish to kill the treaty with a condition like this that makes the perfect the enemy of the good. This condition is not about verification—it is about killing the treaty.

Tomorrow, each of these five amendments will be subject to a motion to strike. Failing to strike them would be tantamount to killing the treaty. I urge my colleagues to vote for each motion to strike. Those who do not are essentially voting against ratification of the entire CWC.

Mr. President, I think this debate really comes down to whether or not one supports international arms control agreements. Many of the criticisms of the CWC—such as that it would lull us to sleep, or that it is not verifiable—were levied against all previous successful arms control treaties, such as the Nuclear Non-Proliferation Treaty, and the START treaty.

Those who worry that the United States will weaken its vigilance in our efforts to guard against the threat of chemical weapons have actually done us a service. I believe the intensity of this debate has helped to ensure that we will never allow ourselves to believe that the treaty by itself is enough. We will follow the course that President Reagan did—a strong national defense and arms control agreements with verification.

The CWC is not a panacea, and none of its proponents believes it is. It will not by itself banish chemical weapons from the earth, but it would result in the destruction of much of the world's chemical weapons stocks, and provide us with a valuable set of tools that would significantly strengthen our ability to monitor and defend against the threat of chemical weapons.

Our failure to ratify this treaty would be a grave mistake. The treaty will enter into force on April 29, with or without us. This is the only treaty that there is, and it requires U.S. leadership to make it work. Only by being a party to this convention can we make it function to its fullest possible extent.

I believe every Member on this side of the aisle supports this treaty. I urge my Republican colleagues to vote for ratification, after voting to strike the five killer amendments.

EXHIBIT 1

THE WHITE HOUSE,
Washington, April 22, 1997.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am pleased that we were able to talk last week about ratification of the Chemical Weapons Convention, including the concerns which have been raised about Articles X and XI of the treaty. I would like to take the opportunity to elaborate further on these issues and set the record straight.

Regarding Article X, concern has been expressed that this provision might force us or other treaty parties to share advanced chemical defense technologies and equipment with rogue nations like Iran and to assist in the development of CW defense capabilities. This simply is not the case.

First, only countries that have joined the CWC and renounced CW can request assistance and only then if they are threatened or attacked with CW. Indeed, the very purpose of Article X is to encourage countries to join the CWC and eliminate their CW programs by providing an assurance of international assistance in the event that they are threatened or attacked with CW by a non-party. For states in good standing under the CWC that do qualify for Article X aid, there is no requirement to provide high tech defenses or even gas masks. The obligation to assist can be satisfied with medical or humanitarian aid. Indeed, the President has committed in an agreed condition on the Resolution of Ratification (Condition #15) that the United States will only give medical help to certain countries of concern, such as Iran or Cuba, under Article X.

Second, with regard to the actions of other states, let me point out that countries contemplating any exchanges under Article X are legally bound by the fundamental obligation in Article I of the treaty never ''to assist, encourage or induce in any way anyone to engage in any activity prohibited'' under the Convention. This means that all relevant transfers must be subject to very close scrutiny, especially with countries whose compliance may be in doubt. We will use every instrument of U.S. diplomacy and leverage at our disposal to ensure that transfers do not occur which could undermine U.S. national security interests, including the extensive verification and compliance provisions in the Convention. As Secretary Cohen said on ''Meet the Press'' on Sunday, we will be in a much better position to do this if we are inside the treaty rather than outside. Frankly, other countries will have little incentive to work with us to ensure that inappropriate transfers do not occur if we have not ratified ourselves.

Article XI encourages free trade in non-prohibited chemicals among States that join the CWC and renounce any CW capability. Some have charged that this provision might force us or our chemical industry to share dual-use technologies and manufacturing secrets with other countries. Such an interpretation is totally at odds with the plain language of the treaty. It also defies logic to suggest that a treaty expressly devoted to eliminating chemical weapons somehow requires its parties to facilitate the spread of chemical weapons.

First, Article XI is explicitly subject to the fundamental ban in Article I on assisting anyone in acquiring chemical weapons. Moreover, in order to reinforce the treaty's constraints against the transfer of dangerous technology, the President has committed in agreed condition #7 in the Resolution of Ratification to obtain official assurances from our Australia Group partners at the highest diplomatic levels that Article XI is fully consistent with maintaining strict export controls on dangerous chemicals and that they are committed to ensuring the Group remains an effective mechanism for dealing with CW proliferation. I would note that this condition also requires annual certification.

Second, with the CWC the countries undertaking exchanges are legally bound by the fundamental obligations in Article I. As Ron Lehman, former Arms Control Director under President Bush, recently stated in testimony before the Senate Foreign Relations Committee: ''We made it very clear throughout the negotiations that all of this was subject to Article I, which is the fundamental obligation not to assist. . . . But the most important, I think, telling fact in support of the U.S. interpretation is the fact that after the Convention was done so many of the usual list of suspects were so unhappy that they did not get what they wanted in these provisions.''

I would note, in conclusion, that renegotiation of Articles X and XI of the CWC, as the Helms condition (#32) in the Resolution of Ratification would require, is not a realistic option. This treaty was intensively negotiated for more than 10 years. It has been signed by 162 countries and ratified by 74. As Brent Scowcroft recently testified, ''Starting over . . . is pure fantasy. If we reject this treaty, we will incur the bitterness of all of our friends and allies who followed us for 10 years in putting this together . . . the idea that we can lead out again down a different path I think is just not in the cards. We have got to deal with the situation we face now, not an ideal one out in the future.'' This is why the Senate must vote to strike this Helms Condition.

I hope this information facilitates the Senate's consideration of the CWC and look forward to a successful vote in the coming days.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President for National Security Affairs.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll. The time will be equally divided.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 47

(Purpose: To strike condition no. 30, relating to chemical weapons in other states)

Mr. BIDEN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 47.

On page 63, strike lines 8 through 20.

Mr. BIDEN. Mr. President, this is condition No. 30. As was indicated at the outset of the unanimous-consent agreement, the Senate has now agreed to 28 of the 33 conditions that were attached to the treaty that is before us today.

As I indicated at that time that I would be moving to strike five of the conditions, any one of which—at least four of which—if adopted, would essentially vitiate the treaty; would make our ratification useless.

They are killer amendments. This is one of those amendments. Mr. President, condition No. 30 would hold hostage our joining the Chemical Weapons Convention to the condition that rogue states—several rogue states, such as Iraq, Libya and North Korea—would have to sign and ratify the treaty before we became party to the treaty.

This has a very perverse impact. The first impact is we wouldn't be in the treaty. We would not have ratified the treaty, if we ratified this condition. Second, it has a perverse impact. It would prevent the United States from participating in the convention until a band of 2-bit regimes that specialize in flaunting norms of civilized behavior decide for us when we should be a member of this treaty. Seventy-four nations have already signed onto it.

This condition turns the present global arrangement on its head. Instead of the civilized nations of the world setting the rules, this condition effectively let's the villains determine the rules of the road and American policy. This condition ignores the critical fact that regardless of what the rogue states do, regardless of whether we join the CWC, or not, we have decided unilaterally to destroy our chemical weapons stockpile.

We will not use chemical weapons to respond to a chemical weapons attack. That is a judgment our military and our last Commander in Chief and this one has made. Instead, we will rely on what General Schwarzkof said, and General Powell, General Shalikashvili, and others will rely upon our overwhelming nonchemical military capabilities to deter and retaliate against the use of chemical weapons.

The best way to affect the behavior of these rogue states is to bring to bear the combined weight of the civilized nations of the world to isolate, sanction, and target those nations who would continue to produce chemical weapons in defiance of the creation of this international norm. But, Mr. President, first we have to establish the norm. If the United States of America says we will not join unless the bad guys join, then there is no reasonable prospect that such a norm will be established.

As Secretary of State Madeleine Albright has noted, to say that we should not have a CWC because there will be people out there who will continue to produce chemical weapons, or who will cheat, is a little bit like saying we should not have laws because people will break them. We should not have laws against murder because we know people are going to murder people. So have no laws against murder.

The point is that today there is nothing illegal—let's get this straight—under international law about producing chemical weapons, developing chemical weapons, or stockpiling chemical weapons. The purported Libyan chemical weapons program is completely legal today. The Iraqi chemical stockpile is completely legal today. In fact, there is nothing in international law that prohibits the use of chemical weapons internally. Like Saddam Hussein's poison gas attack against the Kurds within Iraq, there is nothing illegal about having or using these weapons in your own country. That will change once the CWC is in force.

To quote Gen. Colin Powell, ''For us to reject this treaty now because there are rogue states outside that treaty is the equivalent of saying that we should not have joined NATO because Russia wasn't part of NATO.'' That is former Chairman of the Joint Chiefs Colin Powell—not me.

This treaty will establish standards by which to judge others. If it is violated—that is, if the treaty is violated—it will provide the basis for harsh action to punish and bring violators into compliance. The opponents will say that norms are meaningless unless there is a will to enforce those norms. They are right. But on that point, I would point out that without a norm there is nothing to enforce.

The bottom line is this: With the treaty we will have more tools and greater flexibility to act against those countries that threaten us and their neighbors. Should we choose military action we would be able to justify it as a measure taken to enforce the terms of a treaty to which we and 160 other nations who are signatories—only 74 ratified—are parties. North Korea is not. Libya is not. But 160 other nations have signed, and we are going to say that we will not join unless North Korea joins. As Gen. Colin Powell said, I am glad these folks weren't around when NATO was starting up to say we are not going to have NATO because Russia can't be a part.

Mr. President, I reserve the remainder of my time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, there is a lot of misunderstanding about this treaty. It has been advertised implicitly—not explicitly, of course—as a cure-all; as an end to the perils of chemical warfare. And a lot of people think it will all be over, and we will not have any more danger. The truth of the matter is that they will not do a thing in the world to help the situation because the Chemical Weapons treaty—Convention, as it has been called—is not a comprehensive ban. This treaty contributes to the national security of the United States and the American people, and that is what I am primarily interested in.

This treaty, it seems to me, must at a minimum affect those countries possessing chemical weapons which pose a threat to the United States. Accordingly, the United States should not become a party to this treaty—many Senators feel—until those countries are also participants. And no effort has been made to encourage them to come in. We are standing alone, and they are going to go about their little deviltry unmolested. Rogue states—like Iran, Iraq, Libya, Syria, and North Korea—clearly represent a threat to United States security and the security of key United States allies. And not one of these countries has ratified the CWC, and not one of them is likely to ratify.

First, the intelligence people in our own country—we call it the intelligence community—reported that all of these governments have active aggressive programs to develop and produce chemical weapons.

In March 1995, I believe it was, regarding the nonproliferation treaty, the Central Intelligence Agency released an unclassified estimate that gave a troubling assessment of the likely impact that the CWC would have upon the proliferation of chemical weapons.

This report said:

A number of states continue to pursue the development or enhancement of a chemical weapons capability. Some states have chosen to pursue a chemical weapons capability because of relatively low cost, and the low technology required for chemical weapons production. Moreover, they believe that a CWC ability can serve as both a deterrent to enemy attack and as an enhancement of their offensive military capability.

I am quoting. The report says:

Currently, at least 15 countries have an offensive CWC program in some level of development, and the most aggressive chemical weapons programs are in Iran, Libya, and Syria. The CWC will continue to be a serious threat for at least the remainder of this decade despite a number of armaments control efforts, such as the Chemical Weapons Convention. Several countries have expressed concern, excluding Libya, Syria and Iraq, which have so far refused to sign the CWC, and some CW-capable countries that have signed the treaty show no signs of ending their programs.

That was our intelligence community's assessment of the situation as of 1995.

Mr. President, while the intent of the CWC is good, what it proposes is to create a global chemical weapons ban, and it will not do any such thing. It simply will not achieve any other of the goals. Thirty percent of the countries with chemical weapons programs, including all of those with what is called aggressive programs, have not yet signed the treaty, let alone ratified it. Yet, these

countries have been and will continue to be the paramount chemical weapons threat to the United States.

About 6 years ago, during Operation Desert Storm, the United States was so concerned about Iraq's chemical weapons program that we focused a huge percentage of long allied air attacks upon Saddam Hussein's chemical weaponry. A facility 65 miles north of Baghdad was the nucleus of Iraq's chemical weapons program, and a priority target during the early days of the gulf war. I was amazed then that no one seemed to pay much attention. And I am amazed now that no one seems to remember General Schwarzkopf's remarks during a press briefing at that time in Saudi Arabia. It was on February 27, 1991. Here is what he said:

> The nightmare scenario for all of us would have been to go through the Iraqi tank barrier, get hung up in this breach right here and then have the enemy artillery rain chemical weapons on the troops that were in the gaggle, in the breach right here.

Pointing to specific points.

Well, the point is this. That nightmare scenario exists today since Iraq has neither signed nor ratified this treaty.

Let us look at another rogue regime, North Korea. On March 18, 1996, the Director of the Defense Intelligence Agency, Lt. Gen. Patrick Hughes, forwarded to me a DIA assessment of North Korea's military capabilities which underscored United States concern with the war-fighting uses to which chemical weapons can be put.

Now, according to that study, and I am quoting, ''In any attack on the South, P'yongyang could use chemical weapons to attack forces deployed near the DMZ, suppress allied air power and isolate the peninsula from strategic reinforcements.''

Now, in boasting that this treaty will make American soldiers free from the threat of chemical weapons, the administration either has forgotten or deliberately ignored the fact that North Korea has neither signed nor ratified the CWC and the threat posed by North Korea and Iraq and others here. Now over 30,000 United States troops face North Korean troops armed and extensively trained with chemical weapons. Key airfields and ports are within striking distance of North Korean missiles, and with just a handful of chemical weapons North Korea could force United States aircraft to withdraw from the Korean Peninsula to Japan, and in fact in the near future North Korea may be even able to strike air bases in Japan with chemical munitions. Without air support and reinforcement, our ground forces and our South Korean allies would be overwhelmed within days.

The threat to the United States forces in the Persian Gulf being rotated from Iran and Iraq is no less troubling, Mr. President. The bottom line, I guess, is that rogue states—if you will look at the chart—see chemical weapons as the best means to offset the superior conventional forces of the United States and its allies. These countries continue to develop plans to use chemical weapons in the event of war, and we must remember I think, Mr. President, that each of these countries are state sponsors, Government sponsors, of terrorism and may supply chemical weapons to terrorist groups.

So when the CWC enters into force, our troops will be no safer from chemical attacks than they are today because the countries of greatest concern have not acceded to this treaty. For the CWC to offer any improvement, however modest, to the national security of the United States, it must at a minimum, I think, affect those countries with aggressive chemical weapons programs, those countries which have hostile intentions toward the United States and the American people.

I urge Senators, please, to oppose this motion to strike this key provision.

Have the yeas and nays been ordered on the motion?

The PRESIDING OFFICER. They have not.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there is a sufficient second?

Is there a sufficient second?

There is a sufficient second.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield the distinguished Senator from Massachusetts up to 10 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts for 10 minutes.

Mr. KERRY. I thank the Chair. I thank the distinguished minority manager.

We have now finally arrived at the first of a series of real confrontations on this treaty, and we will vote shortly on this striking of the first reservation. It really is not possible to overemphasize the importance of each of these votes. There are four votes, each of which would cripple this treaty. If there are 100 Members of the Senate prepared to vote for this treaty—and we know there are not—but if there were and we subsequently were to adopt one of these reservations, those 100 votes would be absolutely meaningless because we would have denied ourselves the capacity for this treaty to go into effect if we do not strike these reservations.

The fact is that the United States would be simply unable to ratify now or at any time in the immediate future, and quite possibly never, if the effort to strike any one of these four fails. That is the gravity of what we are going to be doing in this Chamber in the course of this afternoon.

The first of these conditions, condition 30, which the Senator from Delaware has ably discussed, has been called, somewhat antiseptically, ''Chemical Weapons in Other States.'' The text is very short, and I just want to quote it verbatim. It says:

> Prior to the deposit of the United States instrument of ratification, the President, in consultation with the Director of Central Intelligence, shall certify to the Congress that countries which have been determined to have offensive chemical weapons programs, including Iran, Iraq, Syria, Libya, the Democratic People's Republic of Korea, China, and all other countries determined to be state sponsors of international terrorism have ratified or otherwise acceded to the convention.

Let me translate that into simple English. Under the terms of that condition, we will hold ourselves hostage to the very outlaw, rogue states that we seek to control by passing this convention. Under the terms of that condition, we would in fact do nothing to change the status quo.

The distinguished chairman of the committee said we have to hold on to this amendment and defeat the treaty essentially because Iraq, Iran, Libya, these countries have chemical weapons today. Well, if we do not pass this treaty, nothing whatsoever will change with respect to the threat versus the United States. Each and every one of those countries will continue to produce and we will continue on the path that we have been on for some years which is destroy our chemical weapons stocks. Why? Because we have decided, and appropriately I believe, that we do not need and do not intend to fight a war with chemical weapons.

Now, this particular reservation has a noble objective. I do not think any of us would argue, the real objective is to get those rogue states to get rid of their chemical weapons. We are all in favor of that, if that is the real objective. But I respectfully suggest the real objective is to come around through the back door and do through the back door what they may not be able to do through the front door. There is no Senator in this Chamber who does not hope that Iran, Iraq, Syria, Libya, North Korea, China, Cuba, and Sudan, in fact, every nation on Earth, is going to someday ratify the CWC. If that was the case or it was about to happen or had happened, there would be a lot less concern about how we are going to go about clarifying, inspecting, or challenging during the course of this treaty. But that is not the case. There is not one of those Senators who has drafted this resolution who can look any other Senator in the eye in this Chamber and say today that they believe that any of those rogue states are about to ratify tomorrow, the next day, or the next day. That is not going to come as any surprise to anybody here in the Chamber, Mr. President.

There is not one who would do that. In fact, during most of the 10 years during which the Reagan administration and the Bush administration negotiated over exhausting amounts of time and developed this treaty, they developed it to structure sanctions that would apply to trade in chemicals conducted by nations that do not ratify the treaty.

Let me be clear about that. The primary purpose of the strict requirements for challenge inspection and the process of tracking precursor chemicals is not necessarily to keep track of the people that we know are going to live up to this treaty. It is precisely to keep track of the people that are most likely to break the treaty, and every one of the experts has suggested that with respect to the rogue states you are better off having that tracking process, the declarations of sales, the ability to be able to track the fingerprint of chemicals through the globe in order to be able to hold those countries accountable.

That is the purpose of this treaty. So we have sort of a double negative here. If we allowed this particular reservation to stand, not only would we hold ourselves hostage to the very countries that we want to have eliminate the weapons, but we also would eliminate the means that we have created to be able to get them to eliminate those weapons.

So, Mr. President, I respectfully suggest this treaty was negotiated and crafted precisely to apply the pressure of world opinion, the diplomatic pressure, the economic pressure on the recalcitrant nations whose leadership flaunts the civilized norm.

The Senator from North Carolina is absolutely correct. These nations do have these materials. These nations will, I am convinced, in a number of cases continue to produce them. But the issue is how you best try to pressure them to reform their behavior. How do you make it as difficult as possible for those nations to do that? How do you isolate them in the greatest manner possible? Plainly speaking, the authors of this amendment have to know the distinction between having those mechanisms in place, which the Defense Department and others have all said will help them more to be able to do the tracking, than not to have them.

I want to emphasize also that there is an irony in this because some of the people who are advocating that we wait until the rogue nations turn around and change their mind are, frankly, the very same people who usually say never give up any sovereignty of the United States to another nation. Here we are turning over the entire sovereignty of the United States to make a decision in our best interests to the very rogue states that have indicated already no willingness to try to adhere to these standards.

Second, the condition either fails to recognize or ignores purposefully the reality that at midnight of next Tuesday, April 29, no matter what the Senate does today, the Chemical Weapons Convention takes effect with or without U.S. participation.

So the question of whether or not this convention is foolproof, is absolutely the best convention in the world, really begs the issue. The real question before the United States is are we better off with this treaty in terms of protecting our security interests by being part of the convention, within its organization able to change it, which has already been ratified by 74 nations and signed by over 160? If we fail to ratify, or if we fail to ratify by not taking out this reservation, then where are we? We have joined the outlaw nations. We will have joined the very nations that we want most to affect the behavior of.

I think it is important to note that some of our most respected voices in this country with respect to military affairs and national security affairs have all agreed that it is significant for the United States to be able to not align itself with those nations. General Schwarzkopf said:

> I am very, very much in favor of the ratification of the treaty.

And he said:

> We don't need chemical weapons to fight our future wars. And frankly, by not ratifying that treaty, we align ourselves with nations like Libya and North Korea and I would just as soon not be associated with those thugs in this particular measure.

I think that is a pretty strong statement about precisely what this reservation would have the effect of doing.

General Powell, who has already been quoted by my colleague, made it very clear that we should not do this and made the analogy to NATO, to our not joining NATO simply because Russia was not a member.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. I yield my colleague another 30 seconds.

Mr. KERRY. Former Assistant to President Reagan and Secretary of State Jim Baker said:

> Some have argued that we shouldn't commit to the treaty because states like Libya, Iraq and North Korea, which have not signed it, will still be able to continue their efforts to acquire chemical weapons. This is obviously true, but the convention, which will go into effect in April whether or not we ratify it, will make it more difficult for those states to do so by prohibiting the sale of materials to nonmembers that can be used to make chemical weapons.

He said:

> It makes no sense to argue that because of a few pariah states refusing to join the convention, the United States should line up with them rather than the rest of the world.

This is a bipartisan sentiment, Mr. President, and I hope the Senate will recognize the gravity of the vote we are about to take.

The PRESIDING OFFICER (Mr. KEMPTHORNE). Who yields time? The Senator from North Carolina.

Mr. HELMS. I have here, Mr. President, a group of editorial comments, making, as Sam Ervin used to say, uncommon good sense, in opposition to this treaty. I ask unanimous consent they be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 5, 1997]

NO TO THE CHEMICAL ARMS TREATY

(By James Schlesinger, Caspar Weinberger, and Donald Rumsfeld)

The phrase ''damning with faint praise'' is given new meaning by the op-ed by Brent Scowcroft and John Deutch on the Chemical Weapons Convention [''End the Chemical Weapons Business,'' Feb. 11]. In it, the authors concede virtually every criticism made by those who oppose this controversial treaty in its present form.

They acknowledge the legitimacy of key concerns about the Convention: its essential unverifiability; its lack of global coverage; the prospect that it will inhibit non-lethal use of chemicals, including tear gas; and its mandating the transfer of militarily relevant chemical offensive and defensive technology to untrustworthy countries that become parties. It is our view that these problems are inherent in the present treaty.

Take, for example, Scowcroft and Deutch's warning against cutting investment in chemical defensive measures. Unfortunately, treaties such as the Chemical Weapons Convention (CWC)—which promise to reduce the menace posed by weapons of mass destruction but which cannot do so—inevitably tend to diminish the perceived need and therefore the support for defenses against such threats.

In fact, in December 1995, the then-vice chairman of the Joint Chiefs of Staff recommended a reduction of more than $800 million in investment on chemical defenses in anticipation of the Convention's coming into force. If past experience is a guide, there might also be a reduction in the priority accorded to monitoring emerging chemical weapons threats, notwithstanding Scowcroft and Deutch's call for improvements in our ability to track chemical weapons developments.

Scowcroft and Deutch correctly warn that the ''CWC [must] not [be] exploited to facilitate the diffusion of CWC-specific technology, equipment and material—even to signatory states.'' The trouble is that the Chemical Weapons Convention explicitly obligates member states to facilitate such transfers, even though these items are readily exploitable for military purposes. What is more, the treaty commits member states not to observe any agreements, whether multilateral or unilateral, that would restrict these transfers.

In short, we believe that the problems with the Chemical Weapons Convention in these and other areas that have been identified by Brent Scowcroft and John Deutch clearly demonstrate that this treaty would be contrary to U.S. security interests. Moreover, in our view these serious problems undercut the argument that the CWC's ''imperfect constraints'' are better than no constraints at all.

The CWC would likely have the effect of leaving the United States and its allies more, not less, vulnerable to chemical attack. It could well serve to increase, not reduce, the spread of chemical weapons manufacturing capabilities. Thus we would be better off not to be party to it.

Notably, if the United States is not a CWC member state, the danger is lessened that American intelligence about ongoing foreign chemical weapons programs will be dumbed down or otherwise compromised. This has happened in the past when enforcement of a violated agreement was held to be a greater threat to an arms control regime than was noncompliance by another party. The United States and the international community have been unwilling to enforce the far more easily verified 1925 Geneva Convention banning the use of chemical weapons—even in

the face of repeated and well-documented violations by Saddam Hussein. What likelihood is there that we would be any more insistent when it comes to far less verifiable bans on production and stockpiling of such weapons?

As a non-party, the United States would also remain free to oppose dangerous ideas such as providing state-of-the-art chemical manufacturing facilities and defensive equipment to international pariahs such as Iran and Cuba. And the United States would be less likely to reduce investment in chemical protective capabilities, out of a false sense of security arising from participation in the CWC.

In addition, if the United States is not a CWC party, American taxpayers will not be asked to bear the substantial annual costs of our participating in a multilateral regime that will not ''end the chemical weapons business'' in countries of concern. (By some estimates, these costs would be over $200 million per year.) Similarly, U.S. citizens and companies will be spared the burdens associated with reporting and inspection arrangements that might involve unreasonable searches and seizures, could jeopardize confidential business information and yet could not ensure that other nations—and especially rogue states—no longer have chemical weapons programs.

Against these advantages of nonparticipation, the purported down-sides seem relatively inconsequential. First, whether Russia actually eliminates its immense chemical arsenal is unlikely to hinge upon our participating in the CWC. Indeed, Moscow is now actively creating new chemical agents that would circumvent and effectively defeat the treaty's constraints.

Second, the preponderance of trade in chemicals would be unaffected by the CWC's limitations, making the impact of remaining outside the treaty regime, if any, fairly modest on American manufacturers.

Finally, if the United States declines to join the present Chemical Weapons Convention, it is academic whether implementing arrangements are drawn up by others or not. In the event the United States does decide to become a party at a later date—perhaps after improvements are made to enhance the treaty's effectiveness—it is hard to believe that its preferences regarding implementing arrangements would not be given considerable weight. This is particularly true since the United States would then be asked to bear 25 percent of the implementing organization's budget.

There is no way to ''end the chemical weapons business'' by fiat. The price of attempting to do so with the present treaty is unacceptably high, and the cost of the illusion it creates might be higher still.

[From the Weekly Standard, Mar. 24, 1997]

JUST SAY NO TO A BAD TREATY

The United States Senate must decide by April 28 whether to ratify the Chemical Weapons Convention. The press, the pundits, and the Clinton administration have treated the debate over the treaty as another in a series of battles between ''internationalists'' and ''isolationists'' in the new, post-Cold War era.

It isn't. What we really have here is the continuation of one of this century's most enduring disputes. In the first camp are the high priests of arms control theology, who have never met an international agreement they didn't like. In the second camp are those who take a more skeptical view of relying on a piece of watermarked, signed parchment for safety in a dangerous world.

The case for ratifying the Chemical Weapons Convention is a triumph of hope over experience. It is an attempt to reform the world by collecting signatures. Some of the most dangerous nations—Iraq, Syria, Libya, and North Korea—have not ratified the convention and, for all we know, never will. Some of the nations that are signatories, like Russia, China, Iran, and Cuba, are manifestly unreliable and are already looking for ways to circumvent the convention's provisions.

The convention's most prominent American defenders admit that the agreement is probably not verifiable. And it isn't. Chemical weapons can be produced in small but deadly amounts in tiny makeshift laboratories. The nerve gas used by terrorists to poison subway riders in Japan in 1995, for instance, was produced in a 14 ft.-by-8 ft. room. No one in the American intelligence community believes we would be able to monitor compliance with an international chemical weapons regime with any reasonable degree of confidence.

The Washington Post opines that these failings in the convention—the very fact ''that the coverage of this treaty falls short and that enforcement is uncertain''—are actually arguments for ratifying it. Presumably, signature of a flawed treaty will make all of us work harder to perfect it.

Great.

At the end of the day, the strongest argument proponents of ratification can offer is that, whatever a treaty's manifest flaws, it is better to have one than not to have one. How could it be bad to have a treaty outlawing production of chemical weapons, no matter how full of holes it may be?

Well, actually, such a treaty could be worse than no treaty at all. We have pretty good evidence from the bloody history of this century that treaties like the Chemical Weapons Convention—treaties that are more hortatory than mandatory, that express good intentions more than they require any actions to back up those intentions—can do more harm than good. They are part of a psychological process of evasion and avoidance of tough choices. The truth is, the best way of controlling chemical weapons proliferation could be for the United States to bomb a Libyan chemical weapons factory.

But that is the kind of difficult decision for an American president that the Chemical Weapons Convention does nothing to facilitate. Indeed, the existence of a chemical weapons treaty would make it less likely that a president would order such strong unilateral action, since he would be bound to turn over evidence of a violation to the international lawyers and diplomats and wait for their investigation and concurrence. And as Richard Perle has recently noted, even after Saddam Hussein used chemical weapons in flagrant violation of an existing prohibition against their use, the international bureaucrats responsible for monitoring these matters could not bring themselves to denounce Iraq by name. In the end, it would be easier for a president to order an air strike than to get scores of nations to agree on naming one of their own an outlaw.

The Chemical Weapons Convention is what Peter Rodman calls ''junk arms control,'' and not the least of its many drawbacks is that it gives effective arms control a bad name. Effective treaties codify decisions nations have already made: to end a war on certain terms, for instance, or to define fishing rights. Because they reflect the will of the parties, moreover, the parties themselves don't raise obstacles to verification.

But treaties whose purpose is to rope in rogue nations that have not consented, or whose consent is widely understood to be cynical and disingenuous, are something else again. They are based on a worldview that is at best foolishly optimistic and at worst patronizing and deluded.

One of the important things separating Reaganite internationalism from the more starry-eyed Wilsonian version is the understanding that treaties must reflect reality, not hope. The Chemical Weapons Convention turns the clock back to the kind of Wilsonian thinking characteristic of the Carter administration. It is unfortunate that among its strongest backers are some prominent Republicans who have served in key foreign-policy positions. It is true that the origins of the Chemical Weapons Convention date back to the Reagan years, and the convention was carried to fruition by the Bush administration. But let's be candid. In the Reagan years, the treaty was mostly a sop to liberals in Congress, an attempt to pick up some points for an arms control measure at a time when Reagan was trying to win on more important issues like the defense buildup and the Strategic Defense Initiative. And President Bush pushed the treaty in no small part because he had disliked having to cast a tie-breaking vote in the Senate as vice president in favor of building chemical weapons. Republicans today are under no obligation to carry out the mistakes of their predecessors.

In one respect, the debate over the Chemical Weapons Convention calls to mind the struggle for the party's soul waged in the 1970s between Kissingerian détente-niks on one side and the insurgent forces led by Ronald Reagan on the other. Back then, conservative Republicans like Senate majority leader Trent Lott knew without hesitation where they stood. They should stand where they stood before, foursquare with the ideas that helped win the Cold War, and against the Chemical Weapons Convention.

[From the Arizona Republic, Mar. 9, 1997]

CHEMICAL PACT

SAY NO TO THIS TREATY

Make no mistake about it.

Those were the words of President Bill Clinton, referring to the Chemical Weapons Convention in his State of the Union address.

He said ratification of the CWC ''will make our troops safer from chemical attack . . . we have no more important obligations, especially in the wake of what we now know about the Gulf War.''

Although all civilized nations can embrace the notion of eliminating chemical weapons, it would, nevertheless, be a mistake to ratify the CWC, signed by more than 160 nations—including the United States during the Bush administration.

The treaty requires the destruction of chemical weapons that signatories to the treaty own or possess, or weapons anywhere under their jurisdiction; the destruction of chemical weapons abandoned on the territory of another state; the destruction of chemical-weapons production facilities; the prohibition of riot-control agents as a method of warfare—all reasonable and worthy goals.

Ever since 1675, when a French-German agreement not to use poison bullets was concluded in Strasbourg, nations have struggled with how to limit the terribly destructive nature of chemical weapons, though none of the subsequent international agreements prevented the use of chemical weapons by warring factions.

In the 1980s, Iraq used chemical weapons, including nerve gas, against Iran, clearly violating the 1925 Geneva Protocol. But an international conference in Paris failed to enforce or fortify the Geneva Protocol, proving the difficulty is not a lack of law, but the failure to enforce it.

Under terms of the CWC, for the first time in U.S. history, private industry will be subject to foreign inspection, with inspectors

being dispatched from an agency based in the Netherlands. In addition, businesses must prove to the U.S. government and international inspectors that they are not producing or stockpiling chemical weapons, with non-compliance fines reaching as high as $50,000 per incident.

Tucson's Sundt Corp. estimates that ''with five major offices/warehouses/shops in two states, up to 35 job-site offices utilizing subcontractors and suppliers in eight states, the complete and final determination of what we have in the way of compounds and their derivative, the interactive relationships (with the list of chemicals) could involve the cost of a chemist's or consultant's time amounting to $50,000–$100,000 per annum, not including Sundt Corp.'s administrative time.''

Under the terms of the treaty, inspections may be conducted at any facility within a state party without probable cause, without a warrant. Inspectors will be authorized under the treaty to collect data and analyze samples. This could result in the loss of proprietary information, or ''based upon the depth of inspection, e.g. interviews with corporate personnel, employees, vendors, subcontractors; review of drawings, purchase orders, subcontracts; inspection and review of internal and external correspondence; we feel that it could be difficult to safeguard confidential business information during this inspection,'' says the Sundt Corp.

The obligation to open on-site inspections raises clear Fourth and Fifth Amendment concerns, inasmuch as no probable cause need be shown while a foreign state will have the right to a challenge inspection of a U.S. facility without the grounds that are essential for a search warrant.

As Sen. Jon Kyl, R-Ariz., has pointed out, the CWC may actually contribute to the proliferation of chemical technology because of its requirement that the United States share information with rogue nations, once they sign onto the CWC.

Further, American technology that might actually enhance the safety of U.S. troops—such as non-lethal immobilizing agents—could be prohibited if the Senate ratifies the convention in its present form.

The forces on both sides of this issue in Washington are men and women of good will. But the CWC is not a good deal for the United States. That is the message the Senate should continue to send to Bill Clinton, in unmistakable terms.

[From the Wall Street Journal, Apr. 1, 1997]

THE BUM'S RUSH

The debate over the Chemical Weapons Convention looks like it's about to turn into a slugfest, notwithstanding last week's spectacle of Jesse Helms and Madeleine Albright holding hands. Intimations of the battle to come were heard the week before last, when Democrats threatened to stall all Senate actions unless a ratification vote is scheduled. The Administration, meanwhile, is hyping April 29 as the drop-dead date for ratification in the hope of getting the Senate to short-change the ''advise'' part of its advise-and-consent responsibilities and rush to a vote before it has a chance to review it properly.

Majority Leader Trent Lott, who hasn't let on how he will vote, is the point man here. How he handles the treaty's passage through the Senate will be an important test of his leadership. While he has pleased Democrats by promising to bring the treaty up when the Senate returns from recess in a few days, that doesn't mean that he's going to ram a vote down the Senate's throat, as the Administration hopes. Senator Lott is perfectly capable of spotting a bum's rush when he sees one, and he expressly made no promise for a vote before April 29, the date the treaty goes into effect with or without U.S. ratification. Despite Chicken Little warnings from the White House, there is no deadline for ratification; the U.S. can join as a full member at any time.

Before a ratification vote, there is plenty of time for a vigorous, public examination. The best place to start is with hearings, which Foreign Relations Committee Chairman Helms has scheduled to begin on April 9. Senators, especially the 15 new ones who missed last year's hearings, deserve a chance to understand exactly what they are being asked to vote on. At the moment the focus is on political maneuverings instead of where it should be: the content of the treaty.

For starters, Senator Helms could call the four former Defense Secretaries who adamantly oppose the CWC: James Schlesinger, Donald Rumsfeld, Casper Weinberger and Dick Cheney. Ask them about the treaty's verifiability, and they'll tell you it's impossible. (So, for that matter, will the treaty's supporters, whose best argument is that the treaty is flawed, but we ought to sign it anyway.) Douglas Feith, a Reagan Administration chemical weapons negotiator, likens enforcement to a drunk searching for his keys under a lamppost because that's where the light is. Under the CWC, members could look for chemical weapons in New Zealand or the Netherlands, but not in North Korea or Libya or Iraq, which have no intention of joining.

The former Defense Secretaries could also talk about Articles X and XI, which would require American chemical manufacturers to share their latest technology with fellow signatories—including the likes of Iran and Cuba. Legal scholars could offer some thoughts on the treaty's requirement that American companies open their doors to surprise inspections as to whether that squares with the Constitution's protection of property rights and its ban on search and seizure. CEOs could testify on the treaty's regulatory burdens, not to mention the threat of industrial espionage as inspector-spies snoop around their factories and troll through their files. Intelligence experts could discuss the impact on national security.

All this and more should emerge in hearings. In recent days, Republicans and Democrats have come to agreement on 21 of 30 points of contention over the treaty. That progress (which comes after weeks of Administration stonewalling, by the way) is on relatively minor issues and doesn't extend to the key concerns on verifiability, constitutionality or national security. The Administration would like nothing better than a perfunctory day or two of hearings on these crucial matters followed by a quick transfer to the Senate floor for a vote billed as ''for'' or ''against'' poison gas. It should come as no surprise if it doesn't want Senators to take too close a look: if they do, there's a good chance they might not like what they see.

Mr. HELMS. I yield to the distinguished Senator from Arizona [Mr. KYL], such time as he may require. Does he have an estimate?

Mr. KYL. Mr. President, 10 minutes.

Mr. HELMS. Take a shot at it. I want to be through along about 3:30, so we can vote.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I also ask unanimous consent to have printed in the RECORD a number of op-ed pieces.

There being not objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Mar. 4, 1997]

DON'T RUSH THE CHEMICAL WEAPONS TREATY

George Bush, James Baker, Brent Scowcroft—this is not exactly a lineup one would expect to find on the side of the Clinton White House. However, in the past few weeks, the administration has drawn upon all available resources in the hope of prevailing upon Congress to ratify the Chemical Weapons Convention—and to do it at once. A deadline of April 29 looms ominously on the horizon, so we are told, by which time the treaty goes into effect, having already been ratified by the necessary 65 countries. If the United States does not ratify by then, we will be left out in the cold with other nonsigning ne'er-do-wells, and the world will laugh at this failure of American leadership. For heavens' sake, this is a treaty the United States itself negotiated! How can we possibly not ratify it?

Hold the horses here. As critics of the treaty including four past secretaries of defense have pointed out, it's not at all clear that it is in the interest of the United States to ratify the CWC, at least not until a number of problems associated with it have been resolved. The famous deadline of April 29 is basically of the administration's own making and ought not intimidate anyone. Of the 65 countries needed to trigger the treaty to take effect, the last one, Hungary, did so in November, and only after consultation with the White House, which told Budapest to go ahead.

In point of fact, as Michael Waller notes on today's Op-ed page, Russian Prime Minister Victor Chernomyrdin specifically warned Vice President Gore in a letter against rushing the process with other countries before ratification by the two most important signatories, Russia and the United States. Disregarding Mr. Chernomyrdin's warning, the Clinton administration pressed ahead in order to try to force the Senate's hand.

President Clinton and Secretary of State Madeleine Albright argue that non-ratification by the United States by April 29 will mean that we will be shut out from the regime's executive board. This is highly unlikely to happen, especially given that the United States is being asked to pony up a full 25 percent of the budget for enforcement. That's $52 million this year.

The fact of the matter is that the CWC may be in just as much trouble in the Senate now as it was back in the fall, when then-secretary of State Warren Christopher decided to postpone the debate for lack of support. For one thing, this Senate is more conservative than the previous one, and for another, numerous concerns have not been addressed. It redounds to the credit of Republicans that they have declared themselves willing to work with the administration to iron out these difficulties, but there is a very long way to go. Sen. John Kyl of Arizona tells The Washington Times' editorial page, ''I believe we have an obligation to try to get as close as possible to making the treaty workable. And we'll see how far we can get.''

Mr. Kyl, however, points to some serious problems. For one thing, it is not global. Iran and Libya, for instance, have not signed, and China and Russia have not ratified it. Should we be concerned about chemical weapons in Belgium and Holland? Of course not. They are not the problem. For another, the treaty is not adequately verifiable. Even the Clinton administration admits as much. And third, much like the Atoms for Peace program, it will spread the knowledge of a potentially lethal technology to countries that could make dangerous use of it. Add to these concerns the huge regulatory burden the treaty will impose on American chemical companies, in effect an

unfunded mandate, as well as the constitutional problems with spot checks by international inspectors.

There may be ways out of these problems without sending the treaty back to the drawing board. One would be for the Senate ratification resolution (a document that accompanies all international treaties ratified by the Senate) to posit a set of conditions that must be fulfilled before the United States formally joins the CWC regime. A creative solution might be, for instance, to say that the CWC regulatory burden should not be imposed on American companies at least until such a time as the treaty has been ratified by countries that are key to its effectiveness—say, Russia, China and Iran.

On Friday, Senate Majority Leader Trent Lott informed administration negotiators that they will have to deal directly with the staff of Sen. Jesse Helms' Foreign Relations Committee, which is indeed where the responsibility belongs. Mr. Helms has some other issues outstanding with the administration, including State Department reorganization. If the CWC is truly as important as the White House claims it is, there's little time to be lost in getting the White House to work on the legitimate problems of this treaty.

[From the Wall Street Journal, Feb. 13, 1997

THE CHEMICAL WEAPONS COVERUP

(By J. Michael Walker)

President Clinton had hardly completed his first year in office when Sen. William Cohen (R., Maine) suspected that the administration was covering up ominous Russian military developments. Mr. Cohen introduced legislation requiring the president ''to tell us and the American people what the Russian military was doing and what the implications were for American and Allied security.'' The Pentagon made the information available to Congress—but withheld it from the public. Mr. Cohen complained that the report ''was classified from cover to cover, even though much of the report did not warrant being restricted by a security classification.''

''Perhaps,'' Mr. Cohen surmised in a speech on the Senate floor, ''the administration was worried about being embarrassed given its acquiescence to Russian military adventures.'' Whatever the reason, he said, ''the decision to classify the report from the cover to cover has prevented Congress from conducting a complete public debate about Russian actions and the administration's policy toward Russia, and it has prevented the American people from becoming fully informed on these matters.''

EERILY RESONANT

Mr. Cohen's criticisms of the administration to which he now belongs seem eerily resonant. The issue today is the administration's campaign to win Senate ratification of the Chemical Weapons Convention. Intended to abolish all chemical weapons world-wide, the CWC contains many loopholes, legal discrepancies and weak enforcement mechanisms that render it ineffective. In particular, there is every reason to believe that Russia has continued work to develop deadly new chemical weapons that would skirt the treaty's requirements.

Hungary recently became the 65th country to ratify the CWC, tripping a mechanism that puts the treaty into effect April 29 with or without the ratification of Russia, China and the U.S. Thus the administration is pushing hard for ratification by that date, though it had put the CWC on hold last September over concerns that the CWC might unnecessarily burden U.S. industry. American companies would be subject to new regulations and would be compelled to open their records to foreign inspectors. Firms having nothing to do with chemical weapons—wineries, breweries, distilleries, food-processing companies and manufacturers of electronics and soaps—could be forced to reveal trade secrets to the inspectors, to the benefit of foreign competitors.

In its zeal to ratify the CWC, the administration has been distorting and even concealing vital information about the treaty. Written exchanges between key senators and the executive branch show grave inconsistencies and worse in the selling of the CWC:

Verification questions

Many senators are worried that the U.S. lacks the capability to verify other countries' compliance with the CWC. This disquiet is fueled in part by the rather vague assessments by Arms Control and Disarmament Agency Director John Holum and other officials, who repeatedly have reassured the Senate that the CWC is ''effectively verifiable.'' Indeed, proponents say CWC will provide an added tool for intelligence collection.

But intelligence reports demonstrate it is insufficient, even though intelligence chiefs have given the CWC their obligatory endorsement. In 1994, then-CIA Director R. James Woolsey told senators that ''the chemical-weapons problem is so difficult from an intelligence perspective that I cannot state that we have high confidence in our ability to detect noncompliance, especially on a small scale.'' And a May 1995 National Intelligence Estimate stated that production of new classes of chemical weapons ''would be difficult to detect and confirm as a CWC-sponsored activity.''

Clandestine production

Several countries—notably including Russia—maintain clandestine chemical weapon programs designed to elude detection. The administration virtually ignored reports of Moscow's continuing covert development and production of binary nerve agents, and made no visible attempt to induce Moscow to terminate the programs—until last week, when the Washington Times made public a classified Pentagon report. The report described Foliant, the code name of a super-secret program begun under the Soviets to develop nerve agents so lethal that microscopic amounts can kill. One of those substances is A–232 of the Novichok class of binary weapons, which were designed to circumvent future bans on such agents.

The Pentagon report says the chemical formulas are not defined in the CWC lists. Therefore, Novichok weapons technically are not banned under the treaty. The administration counters that they are banned ''in spirit,'' but as with all its arms control agreements, Moscow has been banking on the technicality and the camouflage.

Russian military scientists and journalists revealed the program, but Russian officials were not alone in trying to cover it up. The leaked Pentagon report's low level of classification—secret as opposed to top secret—suggests that protecting intelligence sources and methods was not the objective of the secrecy. Rather, it appears the facts were simply too inconvenient for the administration's purposes.

Nearly all the leaked information had appeared in the press long before. In September 1992, Vil Mirzayanov, a dissident Russian scientist who worked for 26 years on the clandestine programs, wrote an article in Moscow News describing the existence and nature of Novichok, and the specific intent to circumvent the CWC. More details emerged over the next two years as authorities persecuted—but never disputed—Mr. Mirzayanov. One of Russia's top binary weapons scientists, Vladimir Ugiev, revealed the existence of A–232—which he personally developed—in an interview with the magazine Novoye Vremya in early 1994. And in May 1994 Mr. Mirzayanov wrote about A–232 and other substances in an article for this page. Along with these first-person accounts came additional revelations of both programs in the Baltimore Sun and other publications.

Backed by letters from Sens. Bill Bradley (D., N.J.) and Jesse Helms (R. N.C.), U.S. Ambassador Thomas Pickering held a Moscow news conference in January 1994 defending Mr. Mirzayanov for ''telling the truth about an activity which is contrary to treaty obligations.'' Yet in Washington, officials kept silent. Only the embarrassment of last week's Washington Times report has spurred the administration to ask Russia to stop.

Weapons destruction

The U.S. and other nations have repeatedly offered to help Moscow destroy the tens of thousands of tons of declared chemical agents in its arsenals. A legal base toward this goal in the 1990 Bilateral Destruction Agreement. Visiting Bonn last spring, Mr. Holum of the Arms Control and Disarmament Agency learned that Moscow was planning to withdraw from the BDA, and wrote a May 21 cable to Washington with the news. Lawmakers who asked to see the cable were told for weeks that it did not exist. Senate sources say. Sen. Jon Kyl (R., Ariz.), a member of the Select Committee on Intelligence, wasn't allowed to read the cable until the eve of the expected September ratification vote, when he was shown only a redacted version.

Chernomyrdin letter to Gore

Russian Prime Minister Viktor Chernomyrdin sent a letter to Vice President Al Gore on July 8, 1996, warning that if the CWC went into effect before Russia's ratification, Moscow probably wouldn't ratify it. The letter was faxed all around Washington, but when Sen. Helms, chairman of the Foreign Relations Committee, asked the administration for a copy, the administration classified it.

STRATEGY BACKFIRED

The Clinton administration had hoped to present the Senate with a fait accompli: that's why it encouraged Hungary and other nations to ratify the treaty and automatically trigger its implementation. Yet the White House strategy seems to have backfired. After Hungary set the CWC in motion, the upper house of the Russian Parliament voted down a long-awaited law that would establish the legal basis for chemical-weapons destruction. Just as the administration began its new CWC sales pitch, the Pentagon was forced to explain why it had done nothing for four years to convince Moscow to terminate its clandestine binary weapons program. And with former Sen. Cohen settling in at the Pentagon, others in the administration still hide behind their paper shield of secrecy.

[From the Wall Street Journal, Feb. 19, 1997]

A DANGEROUS TREATY

Among the many good reasons why the Senate should not ratify the Chemical Weapons Convention is a substance known as A–232. This highly lethal nerve agent was concocted by a Russian scientific team precisely for the purpose of circumventing the terms of the CWC, which both the U.S. and Russia have signed but not yet ratified. A–232 would escape scrutiny under the treaty because it is made from agricultural and industrial chemicals that aren't deadly until they are mixed and therefore don't appear on the CWC's schedule of banned chemicals.

The world has known about A–232 since the May 1994 publication on this page of an article by a Russian scientist, who warned how his colleagues were attempting to camouflage their true mission. It is now the subject of a classified Pentagon paper, reported in the Washington Times earlier this month, on the eve of what is shaping up to be an escalation of the battle joined in September over ratification of the Chemical Weapons Convention.

The Administration was forced to sound the retreat then, pulling the treaty from consideration when it became clear that the Senate was preparing to vote it down. Now it's trying again, this time in full cry about the urgency for U.S. ratification before April 29, the date it goes into effect. For now, Senator Jesse Helms has kept the treaty tied up in the Foreign Relations Committee, making the sensible argument that the new Senate ought first to focus on matters of higher priority than ramrodding through a controversial treaty that merits careful deliberation.

The Administration, meanwhile, is mounting a full-court press, with the president offering a plea for ratification in his State of the Union address ''so that at last we can begin to outlaw poison gas from the earth.'' This is an admirable sentiment—who isn't against making the world safe from the horrors of poison gas?—but it's far from the reality. In fact, ratification would more likely bring the opposite result.

Article XI is one of the key danger areas. It would obligate U.S. companies to provide fellow signatories with full access to their latest chemical technologies, notwithstanding American trade or foreign policy. One country delighted at the prospect of upgrading its chemical industry is China, which, upon signing the CWC, issued a declaration saying, ''All export controls inconsistent with the Convention should be abolished.'' No doubt Cuba and Iran, to name two other signatories, share the same sentiment. The Russian team that came up with A–232 no doubt could accomplish much more with the help of the most up-to-date technology from the U.S.

Verification is an insurmountable problem, and no one—not even the treaty's most ardent supporters—will promise that the treaty can be enforced. In the administration's obfuscating phrase, the CWC can be ''effectively verified.'' Yet if chemical weapons are easy to hide, as A–232 proves, they are also easy to make. The sarin used in the poison-gas attack on the Tokyo subway was created not in a fancy lab but in a small, ordinary room used by Aum Shinri Kyo's amateur chemists. The treaty provides for snap inspections of companies that make chemicals, not of religious cults that decide to cook up some sarin in the back office. The CWC wouldn't make a whit of difference.

Those snap inspections, by the way, could turn into a huge burden on American businesses, which would have to fork out millions of dollars in compliance costs (though the biggest companies no doubt would watch the heaviest burden fall on their smaller competitors).

More than 65 countries have already ratified the CWC, including most U.S. allies. But somehow we don't think the world is more secure with Australia and Hungary committed to ridding the world of chemical weapons when such real threats as Libya, Iraq, Syria and North Korea won't have anything to do with the CWC. How can a treaty that professes to address the problem of chemical weapons be credible unless it addresses the threat from the very countries, such as Syria and Iraq, that have actually deployed these weapons?

With or without the CWC, the U.S. is already committed to destroying its chemical weapons by 2004. That doesn't mean the rest of the world shares any such commitment; what possible peaceful purpose does Russia have in the clandestine production of A–232? Instead of pushing a treaty that can't accomplish its impossible goals, the Administration would be better advised to use its clout, rather than that of some planned U.N.-style bureaucracy, in getting the Russians to stop making nerve gas.

It's hard to find a wholehearted advocate of the treaty. The gist of the messages from most of its so-called champions is that it's a poor deal, but it's the best on offer. But their cases have acknowledged so many caveats that it's hard to see how they've reached such optimistic conclusions. The biggest danger of ratification is that it would similarly lull the U.S. and other responsible nations into the false belief that they are taking effective action against the threat of chemical weapons. The case for this treaty strains belief too far.

Mr. KYL. Mr. President, the condition we have before us right now is whether or not the United States will be a party to a meaningful treaty, that is to say a treaty that covers nations that it needs to cover. It will not do us any good if we are a party to a treaty, paying 25 percent of the costs, to inspect ourselves. Right now, the countries that have ratified this treaty are not the countries that are of concern to us. They do not have weapons. As a matter of fact, right now the countries that are parties have nothing to inspect. The United States, if it believes this treaty is ultimately going to have any positive effect, that is to say if it has significant verification features, and if it is global in the sense that most of the countries of the world that have chemical weapons are parties to it, and if it is enforceable—at that point in time the United States presumably could get something out of this treaty. In the meantime, the only thing we get out of it is the opportunity to pay a lot of money, as I say, to inspect ourselves. Because the countries that need to be inspected are not yet in it.

Specifically, 74 countries have ratified the treaty and they are the countries of least concern to the United States. The three countries that have the largest amount of chemical weapons in the world—Russia and China and the United States—are not parties, nor are any of the so-called rogue countries of the world.

Many of these countries have no intention of signing onto the treaty. North Korea, Iraq, Libya, Syria, and Sudan have all refused to sign the treaty. Others, such as Cuba and Iran, have signed the treaty but have not yet ratified it. In the meantime, some of these countries, such as Iraq, continue to stockpile and develop chemical weapons.

So, the question is, will the United States enter this treaty at a time when it is meaningless, or will we, instead, use our entry as a prod to cause other countries of the world that need to be parties to be parties. For the treaty to offer any potential improvement, however modest, to the national security interests of the United States, I think at a minimum it must affect those countries with aggressive chemical weapons programs and which have hostile intentions toward the United States. Let me just outline briefly who these—who some of these countries are.

North Korea—North Korea's program involves the stockpiling of a large amount of nerve gas, blood agents, and mustard gas. And it is capable of producing much more, according to our intelligence sources. Its armed forces have the ability to launch large-scale chemical attacks using mortars, artillery, multiple rocket launchers, and Scud missiles. And it is presently developing a new generation of medium-range ballistic missiles that will be able to carry chemical warheads. North Korea has neither signed nor ratified the Chemical Weapons Convention.

Iraq—despite the most intrusive inspection and monitoring regime in the history of the world, Iraq has retained a chemical weapons production capability and continues to hide details and documents related to its chemical weapons program. The U.N. Special Commission believes that Iraq continues to hide chemical agents, precursors, and weapons. Iraq admitted in 1995 that it had produced over 500 tons of a lethal nerve gas agent before the Gulf war. The U.N. inspectors had previously been unable to uncover evidence of this, despite a more rigorous inspection regime than even those mandated by the Chemical Weapons Convention verification regime. As noted, Iraq has neither signed nor ratified the Chemical Weapons Convention.

Iran—Iran has been producing chemical weapons at a steadily increasing rate since 1984 and now has a stockpile of choking, blister and blood agents of over 2,000 tons. It also may have a small stockpile of nerve agent. It has the ability to produce an additional 1,000 tons of chemical agents per year.

It has signed but not ratified the CWC. Even so, and this is critical, Iran's chemical weapons program is among the largest in the Third World. It has continued to expand, even since Tehran signed the CWC. And the Central Intelligence Agency believes that Iran has no intention of abiding by the terms of the CWC.

Iran is making improvements to its chemical capabilities that suggest it has made a long-term commitment to its chemical program. I repeat, the CIA believes that Iran has no intention of abiding by the terms of the CWC. It is the most active state sponsor of international terrorism. It is directly involved in planning and directing terrorist attacks. And it could supply chemical weapons to a number of terrorist groups. Iran has not ratified the Chemical Weapons Convention.

Syria has produced chemical weapons since the mid-1980's. The CIA believes that it is likely that Syria's chemical weapons program will continue to expand. Syria can indigenously produce

nerve agents and mustard gas, and is stockpiling both agents. It may have produced chemical warheads for its Frog and Scud missiles for use against Israeli cities. Syria has not signed nor ratified the Chemical Weapons Convention.

Libya—Libya has produced at least 100 tons of chemical agents, including mustard and nerve gas. Libya is capable of delivering its chemical weapons with aerial bombs, and may be working to develop a chemical warhead for ballistic missiles. It also possesses cruise missiles. Libya has neither signed nor ratified the Chemical Weapons Convention.

Mr. President, the point is, unless these countries are party to this treaty, whatever benefits the treaty has are essentially meaningless. This is one of the reasons why former Defense Secretary Dick Cheney said this, in a letter he wrote about a week ago. He said:

> Those nations most likely to comply with the Chemical Weapons Convention are not likely to ever constitute a military threat to the United States. The governments we should be concerned about are likely to cheat on the CWC, even if they do participate.
>
> In effect, [he wrote] the Senate is being asked to ratify the CWC even though it is likely to be ineffective, unverifiable, and unenforceable. Having ratified the convention, we will then be told we have ''dealt with the problem of chemical weapons'' when in fact we will have not. But, ratification of the CWC will lead to a sense of complacency, totally unjustified given the flaws in the convention.

Finally, to the point. The Senator from Massachusetts said that we are somehow holding ourselves hostage to the rogue states. Precisely the opposite is the case. We decide when to join this convention, not because the administration says there is an automatic deadline under which we have to do so, but when we say it will matter. When we are not having to pay 25 percent of the costs of a meaningless convention, in effect 25 percent of the costs to inspect ourselves. Mr. President, $200 million a year to help this U.N.-style bureaucracy, in addition to putting the businesses of the United States through all the hoops they are going to have to go through in order to comply with this convention.

I have written to my constituents the names of companies on the list supplied to us by the Government as potentially required to comply with the reporting requirements of the convention. They write back to me saying it would cost them $50,000, $70,000, or more than $100,000 a year, just to fill out the forms.

What we are saying is, instead of putting our businesses through the expense and hassle of having to comply with this when nobody in the United States has any intention of violating this treaty—these companies back in Arizona have no intention of producing chemical weapons—instead of submitting ourselves to that intrusive bureaucratic regulation and expense, not to mention the expense to the U.S. taxpayer, let us be involved in this when it means something; that is to say, when the countries we really care about are involved in it.

Finally, to the point that we are somehow associating ourselves with thugs by not joining, I find that really an argument that is, really—

Mr. HELMS. Insulting?

Mr. KYL. Mr. President, I don't want to use the word insulting, but it has no persuasive force, let's put it that way.

Does this mean if a country like Iran or Cuba, for example, signs up, that we would be associating with lesser thugs? Actually, don't the proponents of the treaty want us to associate with thug nations, if this is going to mean anything? Don't we want all of those countries in the treaty with us?

Somehow, under their logic, we don't want to associate with these thugs. Yet, they want to pass a treaty that, presumably, if it is going to mean anything, has these thugs in it, in which case we are associating with them.

Obviously, the point is not whether we are associating with thugs. I don't think that any of us can fail to make appropriate distinctions here. The fact of the matter is, those thug nations, if this treaty is to mean anything, ought to be part of the organization and, at that time, the United States then could participate in a meaningful way. Until those thugs are a part of this treaty, we are just wasting our time and money and putting a lot of our citizens to an awful lot of unnecessary hassle.

The point of this condition is to make a point, to make the point that the countries that really matter are not even going to be governed by this treaty. It is one of the reasons why this treaty, in the end, cannot be supported.

The PRESIDING OFFICER. Who yields time? The Senator from North Carolina.

Mr. HELMS. Mr. President, allow me to inquire of the distinguished colleague, does he have somebody ready to go now? I do, if he does not.

Mr. BIDEN. Why don't you go ahead?

Mr. HELMS. I believe I have an hour and 6 minutes that I saved a while ago. I yield 10 minutes of that to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee for his leadership on this issue, for talking about this treaty so that all of America is beginning to see what the issues are.

I hope to be able to support the Chemical Weapons Convention as strengthened by the resolution of ratification introduced by the chairman of the Foreign Relations Committee.

Before I address this resolution, I want to draw our attention to the remarkable events in Lima, Peru. The Peruvian Armed Forces and police conducted a bold, daytime raid and rescued 71 of the 72 hostages being held by a terrorist group for 4 months. As part of the operation, the Peruvian Army used riot control agents to stun the terrorists and rescue the hostages.

I would caution my colleagues, regardless of where they come out on this treaty, that the actions of the Peruvian Armed Forces that resulted in minimal loss of life among the hostages were quite possibly a violation of the Chemical Weapons Convention, which expressly forbids the use of riot control agents as a method of warfare.

I make this point because this treaty has many things in it that we must think about very carefully. I believe the proposals the distinguished Senator from North Carolina has offered in the resolution before us will turn a flawed treaty into an effective, verifiable tool of American foreign policy. We are talking about safeguards that ensure the treaty will be something that America can support, knowing that we are protected, both in our constitutional rights and in the security of our country.

One of the amendments before us today would take away one of the very important elements of protection about which I speak. The amendment I am referring to does not require that the Director of the CIA certify that the countries which have been determined to have offensive chemical weapons, like Iran, Iraq, Syria, Libya, North Korea, China—have ratified the convention. We want to make sure that those countries are going to come under the auspices of this convention. I think it is important that we have those safeguards.

So, I hope my colleagues will support the resolution, the underlying resolution, rather than the amendments that are being put forward.

I am glad the Senate is taking the opportunity to improve this treaty. Our constitutional responsibility to advise and consent on treaties is one of the most important that we have. Unfortunately, we have gotten into the bad habit of all consent and no advice. When it comes to that, we cannot let that happen. That is why we are here. That is why the Constitution requires two-thirds of our body to ratify any treaty that America would participate in.

Mr. President, international treaties extend the full faith and credit of the United States, and they become the law of our land when they are ratified. So the United States cedes a little sovereignty with every treaty the Senate ratifies. That is why the framers of our Constitution wanted to be very careful that two-thirds of the Senate would be needed to ratify any treaty that would become the law of our land.

Like no other treaty before it, the Chemical Weapons Convention will make this loss of sovereignty apparent to thousands of Americans at thousands of companies who will be faced with new Government regulations or be subject to searches and seizures of

their property by teams of international inspectors. These are the practical effects this treaty will have on ordinary Americans.

As many as 670 companies in my home State of Texas will be directly affected by this treaty. Only a handful of these companies are actually in the chemical industry. Many others use small amounts of chemicals for legal, nonmilitary purposes. But according to this treaty, they will be required to submit business information to a new United Nations-style international organization that will monitor this treaty, or they will have to open their property to inspections by teams of international inspectors.

Because of the way this treaty will affect ordinary Americans, it is a profound departure from previous arms control treaties which were really limited to military contractors and installations. That is why we must look so carefully at this treaty. If we are going to impose this burden on ordinary Americans, then we must make sure that the benefits outweigh the costs.

First, let me say, without qualification, that chemical warfare is reprehensible and it deserves uniform condemnation. I am proud that the United States has already decided to destroy any chemical weapons that we might have with or without this treaty. But, Mr. President, it is also our responsibility to make sure that we have defenses against any country that might use chemical weapons in order to be sure that we are not unilaterally disarming ourselves.

I support the 1989 and 1990 agreements between the United States and Russia that ban the production of chemical weapons and require both countries to destroy their stockpiles. Those two agreements were backed up by tough onsite inspections in which each side can watch the other destroy the weapons.

Unfortunately, neither the Geneva Protocol against chemical weapons use nor the two agreements that we have signed with Russia are actually being enforced.

When the Government of Iraq used chemical weapons against its own citizens in the 1980's, the United Nations could not even agree upon a resolution condemning Iraq.

The two Russian agreements are dead, too. The Russian Prime Minister told Vice President Gore in July 1996 that both agreements have outlived their usefulness. It appears that the Russians do not intend to honor these agreements. I remind my colleagues that Russia has the world's largest stockpile of chemical weapons, and this is not a trivial matter.

So, Mr. President, we have three good, tough, supposedly enforceable international agreements to restrict the use of and destroy chemical weapons. But those agreements have failed. So now we are here today to consider another agreement, even tougher, that involves more countries, and we hope it will work where others have failed.

Mr. President, I think we have to address three key questions when we are talking about not only destroying our chemical weapons but sharing the technology that we have for defending against them.

My first question: Will this treaty achieve the desired objective, an objective we all want, and that is to rid the world of chemical weapons?

I do not think so. Even the most ardent supporter of the treaty knows that this is not going to rid the world of chemical weapons. We know that there are outlaw regimes producing chemical weapons as we speak that have no intention of signing or ratifying this treaty.

Iraq is one example. Iraq makes a mockery of international agreements. The Government of Iraq has used chemical weapons against its own people, for Heaven's sake. Who among us believes that a government that would do this would honor an agreement when it has already used these weapons on its own people?

Even worse, this treaty as written actually encourages the spread of chemical weapons technology among the countries that are parties to it because articles X and XI require treaty participants to share their chemical weapons defense technologies and prohibits countries from placing restrictions on commerce in chemicals that can be used for weapons purposes.

Mr. President, I think what we see here is good-intentioned, but we are talking about restricting ourselves from producing chemical weapons, which we want to do, and we are talking about sharing our defenses against chemical weapons with countries that may be represented in international inspection groups that would come into our businesses and could easily give this information back to the countries who are not signatories.

That is why these amendments are so important, so that every one of these countries that has chemical weapons will be a party to this agreement, so that at least we would know that we have some ability to sanction these countries when they are not able to show us that they are complying.

Mr. President, my second question is: Can we determine with reasonable accuracy that the other countries that have signed the treaty will honor it, as we certainly will? We all remember President Reagan's words, ''trust but verify.'' We need the ability to verify.

This is a treaty that I am afraid there is no way we could really verify. In fact, even the supporters admit that you cannot really verify it. We are trying to strengthen it so that we will have at least some ability. But then it comes into question, are we going to exercise those abilities?

I think one of the concerns that I have is that we know that countries with whom we trade, countries with whom we have good relations, are actually selling the equipment to make nuclear weapons to these countries that are rogue nations, that are terrorist states, right now as we speak. Germany is. Russia is. China is.

What are we doing about it? What are we doing? We are not standing up and saying, there are consequences to that action, because we do not want to rock the boat in some other area of foreign policy.

Mr. President, if we are not going to stand up when countries with whom we are trading and with whom we have friendly relations are this very day selling nuclear weapons or nuclear capabilities to rogue nations, like Iran and Iraq, how could we ever say that this treaty would be verifiable and that all of the signatories would comply with this treaty and that we would in fact do anything if they were not?

Mr. President, my third question is: Can we protect the constitutional rights of ordinary Americans affected by the treaty who are engaged in activities that have nothing to do with the production of chemical weapons? I think this is one of the most important issues—the constitutional right against an unreasonable search or seizure.

The protections offered by the chairman of the Foreign Relations Committee, Mr. HELMS, is a first step. But we are going to have to hold on to the protections that have been put in the bill by the committee because the fourth amendment to the Constitution is a pillar of the Bill of Rights. It protects the rights of our people against unreasonable searches and seizures. Yet this agreement, the chemical weapons treaty, would allow people to come in, international groups, to inspect our companies, not companies that are making chemical weapons—we do not do that—but companies that use chemicals for any other myriad of purposes, to get their trade secrets or our defense mechanisms against the chemical weapons that we may have to face one day.

Mr. President, I am just very worried that we would disarm ourselves and lose the ability to protect ourselves against a rogue nation that will not sign and ratify this treaty.

The amendments offered today would take away the protections that are now in the resolution against that happening because the resolution says all of these rogue nations must be a party to the agreement so that at least we would have the mechanisms to go in and try to find these chemical weapons. Yet, you know even the best effort that we have been able to make in finding chemical weapons in Iraq have failed. Right now our international agreements allow us to look in Iraq for chemical weapons. We have not found any. And yet all of the inspectors in the international group that are trying to find those weapons have not been able to do it, but they say they know they are there. They are sure that they are there. So the verifiability becomes a real issue.

Mr. President, I think that the committee has done an excellent job of protecting the interests of Americans in this treaty. I hope that we can keep the safeguards so that all of us can vote for this treaty. I would like to because I respect the people who are for the treaty.

I have the greatest regard for President Bush. I think he is a wonderful man. He would never leave the United States of America defenseless. But you know, if Senator KYL and Senator HELMS had not stood up, one of the safeguards that President Bush put in the treaty would have been taken out, and that is the use of tear gas by our forces in wartime, because President Bush made sure that we said right up front, yes, we will use tear gas because we would rather use tear gas than bullets.

President Clinton disagreed with that. He said, no, we would not use tear gas. But because of the efforts of Senator HELMS and Senator KYL, we have been able to agree on that issue.

So, Mr. President, I hope to be able to support this treaty. I thank the distinguished chairman of the committee for allowing me to speak and for his leadership. I would like to be able to support it, but I will not support this treaty without the safeguards to the security of America. That is my first responsibility.

Thank you, Mr. President.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 10 minutes to my colleague from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 10 minutes.

Mr. LUGAR. I thank the Chair.

I thank the distinguished Senator from Delaware.

Mr. President, the objective of the Chemical Weapons Convention, the debate that we are involved in now, is leadership, a question of leadership by our country.

We can take a look at all the exceptions and the negative views, but the very positive force I think we want to stress in framing this issue is, the United States of America, our statesmen, President Ronald Reagan, George Bush, now President Bill Clinton, and many who have worked with them in the Armed Forces and in statecraft, recognize that our country has a very substantial problem in the world; namely, that of chemical weapons.

We came to a determination on our part that these weapons were unreliable, unstable, dangerous, and so dangerous, as a matter of fact, that we did not wish to employ them—we wished to destroy them. We have been doing that as a nation.

Our dilemma is that other nations, primarily Russia, with substantial stores much greater than our own, but a variety of other nations, purportedly have these weapons. Our problem is to convince other nations in the world that we all ought to be about the task of ending production of these weapons, ending possession, storage, ending any vestige of them.

Now, in order to do that, we have to bring other nations into this with us. Therefore, we have offered leadership now for many years. We have convinced 74 other nations that have already ratified the Chemical Weapons Convention that they ought to be with us in this quest. I make that point at the outset, Mr. President, because the motion before the Senate is to strike a condition added, at least to this treaty, that would say we ought to forgo our leadership, we ought to really forget what our objective has been for years. I presume we ought to forget we are in the process of destroying all of our own chemical weapons and simply hope that others might proceed.

As a matter of fact, if we do not ratify this convention this evening, others will proceed, but they will proceed without us. Our diplomacy with Russia will be severely impaired. As a result, even though we are working with Russia now—as a matter of fact, to help them destroy chemical weapons—through reasons the world will find hard to understand, we will have denied the very treaty we have asked others to join us in. It makes no sense.

Let me say with all due respect to those who formulated the idea that we should not ratify the Chemical Weapons Convention unless the so-called rogue states—named as North Korea, Libya, Syria, Iran, and Iraq—join, must have really stayed up nights trying to think of some way to throw us off course. I presume they felt that our antipathy to some of these states would be such that we would say if they are not going to be a part of it, we ought not to be a part of it, we ought to simply go after them in a unilateral way. Let me examine that for a moment, Mr. President.

The Senator from Delaware and the Senator from Massachusetts have talked about law, about legitimacy. As a matter of fact, our Nation does have the mobility to be an enforcer. In the event we feel our security is threatened, our President might, in fact, consider a military action against a nation that offered a security threat to us. But let us examine the implications if our President decides to do this. If he is going to act unilaterally without benefit of international law—and international law does count because other nations understand the implications of that cooperation and the binding that brings—if we are going to contemplate solo strikes without benefit of international law, then we will have to think about overflight rights, about the problems of our pilots if our aircraft are down, about a number of implications in which we count upon cooperation of nation-states. International law does count. It makes a difference that there is a law against this, and that the United States acts with other nations and with their backing to enforce that, and that we shall have to do.

Much has been said about lack of military will or lack of political will, but, Mr. President, I have seen very little of that in this Chamber during this debate. We are serious about this.

Mr. President, let me add just as a topical matter, because the Members of the Senate who have been watching local television at least in the last half-hour appreciate that in northwest Washington, in the downtown area near the B'nai B'rith headquarters, a vial of chemical material or biological material is present that authorities of the police and fire department and special persons in the Washington, DC, area have now picked up this material, and people in the B'nai B'rith headquarters are being decontaminated. A suggestion is that it may be anthrax, a very deadly biological weapon.

It was not long ago on this floor, Mr. President, that the Nunn-Lugar-Domenici Act was debated and we talked then in terms of attempting to bring Department of Defense resources into play with the cities of this country—Washington, DC, being prominent among them, Atlanta, GA, Denver, CO, and 23 other cities have been named—so that in the event there should be anthrax, which was specifically mentioned in the debate, we were prepared to move. That is leadership, Mr. President. We saw the threat and we prepared to move upon it. We have done so.

Now, we will do so with regard to the international scene. But the treaty gives us the basis of international law. To suggest for a moment, Mr. President, we ought to be deterred from our leadership by whether Iraq joins, whether Iran is involved, whether North Korea should ever be involved, is to stretch credibility really to the breaking point. These nations are irrelevant to our membership and our leadership. They are irrelevant to our standing for international law and our ability to act, and to act decisively. That must be our standard, Mr. President. With imagination, one will think of all sorts of hobgoblins that can be thrown up to make an interesting debate, but debate is leadership, and debate is decisive political will, and the debate is our ability to convince other nations of the world they should come with us, that we are reliable, that we stay the course, that our word is good, administration after administration.

Mr. President, this is the reason we should vote to strike this amendment, this condition, from the convention immediately, decisively. It has been a point, clearly, a parliamentary procedure, and that our failure to do so, as a matter of fact, jeopardizes the entire treaty. It is improbable, if not impossible, our Nation would ever join, would ever follow through on our leadership, if we were to wait upon states

that are irrelevant to the whole proposition.

I conclude, Mr. President, by saying obviously, threats in those states are not relevant. We must be decisive. We need going for us international law, enhancement of our intelligence that the intrusive inspections and all of the trade accounts will give to us, so that when we strike, we will strike accurately and completely and bring the security to the world that this treaty attempts to promote.

Mr. HELMS. I yield such time as the Senator from Arizona may consume.

Mr. KYL. I will be very brief to a matter of news interest here in the Washington, DC, area. People might be watching this on a different channel of their television, viewing the ambulances and people attempting to assist, and at least two people who appear to have been exposed to some kind of chemical agent. My understanding is that Senator LUGAR has just discussed this matter briefly, as well. This occurred at or near a B'nai B'rith facility here in Washington, DC.

I think that while neither side in this debate would want to use an unfortunate incident to bolster their case, and while our first concern ought to be for the people who may have been exposed to some agent here—and we all certainly hope there is no harm done and that if, in fact, it was not accidental that the perpetrators are dealt with in the appropriate fashion—I think it is also an inappropriate place to make the point that contrary to those who assert that the Chemical Weapons Convention deals with this problem, it does not. We should be very, very clear about that.

There are reasons for proponents to suggest that this Chemical Weapons Convention should be supported. There are arguments of opponents as to why that should not be the case. But I hope that we do not have people arguing on the floor of the Senate here that the Chemical Weapons Convention will deter terrorists, that somehow this will make us safer from terrorist attack, because it cannot fulfill that noble goal. We will literally be buying on to something that cannot come to pass if the treaty proponents try to sell it on that basis.

As a matter of fact, there is specific declassified intelligence information directly on this point. I will quote that before the chairman resumes his time. A declassified section of the Defense Intelligence Agency document of February 1996, with specific reference to the Tokyo subway attack by terrorists at that time said:

> Irrespective of whether the Chemical Weapons Convention enters into force, terrorists will likely look upon CW as a means to gain greater publicity and instill widespread fear. The March 1995 Tokyo subway attack by Aum Shinrikyo would not have been prevented by the Chemical Weapons Convention.

In May of 1996, another CIA report, a portion of which has been declassified, contains this statement:

> In the case of Aum Shinrikyo the Chemical Weapons Convention would not have hindered the cult from procuring the needed chemical compounds used in the production of sarin. Further, the Aum Shinrikyo would have escaped CWC requirement for an end use certification because it purchased the chemicals within Japan.

There are some additional things we can quote. The point I am making is that reasonable people can differ about the pros and cons of this treaty. That will be reflected in the vote on the treaty here. I hope that Americans do not get the idea that we will be safe from terrorist attack or even significantly safer by the adoption of this Chemical Weapons Convention. Terrorist attacks are not what it was designed to deal with. I hope that point is crystal clear.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Senator for that explanation. I think it was very timely.

I yield 12 minutes to the distinguished Senator from Oklahoma [Mr. INHOFE], following which I suggest we vote.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

The Senator from North Carolina has 4½ minutes remaining on the amendment.

Does the Senator wish to yield from your resolution time?

Mr. HELMS. In that case, I misunderstood the statement of the Parliamentarian.

The PRESIDING OFFICER. The Senator from North Carolina, do you yield the remaining time of the amendment or from the resolution time?

The Senator from Oklahoma is recognized for 12 minutes.

Mr. INHOFE. Thank you, Mr. President. I will probably not take the 12 minutes.

The Senator from Arizona is exactly right. I think even the strongest opponents of the ratification of the Chemical Weapons Convention have said this is not going to affect terrorist activities. Obviously, by the very title ''terrorists'' they are not going to be complying with this.

I have to say I feel the same way about these countries that we are discussing right now. The condition which is under debate at this time is whether or not to strike that portion with regard to Iran, Syria, Libya, North Korea, and China. It would be, if we were only concerned about those countries that have signed or have ratified or have an expressed intention to ratify, that would be very nice, because we would be talking about Canada, the Fiji Islands, Costa Rica, and Singapore, Iceland. That is not where the threat is. The threat is the rogue nations. That is what we are talking about right now.

I will for a moment bring this up to date by quoting a couple of things. General Schwarzkopf, during a press conference in Riyadh said:

> The nightmare scenario for all of us would have been to go through this [the Iraqi tank barrier], get hung up in this breach right here, and then have the enemy artillery rain chemical weapons down on the troops that were in the gaggle in the breach right here.

General Hughes said:

> In any attack in the south, Pyongyang could use chemical weapons to attack forces deployed near the DMZ, suppress allied air power, and isolate the peninsula from strategic reinforcement.

Four days ago in a Seoul, North Korea, newspaper there was an article quoting very high North Korean officials as saying they now have adequate chemical weapons to annihilate South Korea. This is going on as we speak. So we are talking about nations that are not going to be our friends. These are the ones that, whether they are signatories, or whether they ratify or not, it doesn't make too much difference. It tickles me when they talk about, ''Russia is going to do that.'' Last night, I was on a talk show and we finally agreed that on the 1990 Bilateral Destruction Agreement, they have been found in noncompliance of that, and of the START I, of the Conventional Forces in Europe. Even though my opponent denied it was the INF, in fact, they were. In the 1995 Arms Control Disarmament Agency report, it says they were not in compliance with that; the ABM Treaty, they have not been in compliance with that.

But let's assume if a country like Russia doesn't comply when they ratify, what about these rogue nations? I can tell you for sure that those proponents of the ratification have gone to every extent possible to make it look like—or to make us believe that the Reagan administration, if they were here today, would be in support of this Chemical Weapons Convention. I can assure you that they would not. Coincidentally, I happened to be on a talk show—''Crossfire''—with a very fine gentlemen, Ken Adelman. He had been in the Reagan administration. We found out, after he gave his testimonial as to why we should ratify—and he admitted it was not verifiable nor is it global, but he still thought we should do it—that Mr. Adelman might be prejudiced by his membership on two boards of directors, the International Planning and Analysis Center and on Newmeyer and Associates. These companies, which he directs, have clients in many foreign countries, including China and Japan, and they represent companies that deal in chemicals such as those from the UpJohn Co. People say this is just chemicals. It is not just chemical companies we are talking about. In this chemical association that gets so much attention, it represents 192 chemical companies. These are the large ones, the giants. There are some 4,000 other companies, and you can expand it beyond purely chemical companies to some 8,000 other companies, most of whom are opposed to this, because they would be shut out in the competition.

I think the whole thing on this particular amendment is whether or not this would have any positive effect on the rogue nations if we should ratify

the Chemical Weapons Convention. I don't think there is anybody here who is so naive to think that, voluntarily, if they are a part of it, they would reduce their chemical behavior. I think those of us in this room can argue and debate that.

So I go back to the people who are the real authorities. You have heard Dick Cheney quoted several times on the floor, in his letter that we have quoted several times. He said, ''Indeed some aspects of the present convention—notably, its obligation to share with potential adversaries, like Iran, chemical manufacturing technology that can be used for military purposes in chemical defense equipment—threaten to make this accord worse than having no treaty at all.'' That is Dick Cheney, not some guy that read a couple of articles and determined it was wrong. What is he talking about? He is talking about something that will be debated here shortly, and we will get into that in more detail. Part of article X says, ''The technical secretariat shall establish not later than 180 days after entry into force of this contract, and maintain for the use of any requesting state party, a data bank containing freely available information concerning various means of protection against chemical weapons, as well as such information as may be provided by states' parties.''

Well, I can remember in the Armed Services Committee when Schwarzkopf was here. I said:

> General, you are in support of the Chemical Weapons Convention.

I read that, and then I will read a transcript, because I think everybody who might be basing their vote on what General Schwarzkopf said, here is a transcript from that meeting:

> Senator INHOFE. Do you think it wise to share with countries like Iran our most advanced chemical defensive equipment and technology?
>
> General SCHWARZKOPF. Our defensive capabilities?
>
> Senator INHOFE. Yes.
>
> General SCHWARZKOPF. Absolutely not.
>
> Senator INHOFE. Well, I'm talking about sharing our advanced chemical defensive equipment and technologies, which I believe under article X (they) would be allowed to (get). Do you disagree?
>
> General SCHWARZKOPF. As I said, Senator, I'm not familiar with all the details—you know—you know, a country, particularly like Iran, I think we should share as little as possible with them in the way of our military capabilities.

I am not critical of General Schwarzkopf. It is a very complicated thing. I don't know how many people read the whole thing. I haven't, but I read enough to know, as far as our treatment with rogue nations, I would not want to be ratifying this contract unless they ratified it. Then I would not trust them any more than we would trust Russia, and if they do ratify, I question if they will honor it.

One of the other conditions we are going to talk about is, should we do it, should we put in a requirement that they would have to ratify before we will. Well, we had that requirement 2 years ago when I voted against the START II treaty. They said we have to do it before Russia because they won't ratify unless we do. Guess what, Mr. President, they still haven't ratified.

Lastly, to kind of express the urgency of this, former Secretary of Defense, James Schlesinger, said, ''To the extent that others learn from international sharing of information on chemical warfare defenses, our vulnerability is enhanced rather than diminished. Finally, this treaty in no way helps shield our soldiers from one of battlefield's deadliest killers. As indicated earlier, only the threat of effective retaliation provides such protection.''

What he is saying there is not that we would use chemical weapons, but by the fact that we are not a party to this treaty is one that would at least offer some type of a deterrent. So I think, Mr. President, when you look and read of the hostility that is over there—James Woolsey said, in 1993:

> More than two dozen countries have programs to research or develop chemical weapons, and a number have stockpiled such weapons, including Libya, Iran, and Iraq—

Three of the countries we are talking about:

> The military competition in the always volatile Middle East has spurred others in the region to develop chemical weapons. We have also noted a disturbing pattern of biological weapons development following closely on the heels of the development of chemical weapons.

Mr. President, the threat is there, and we know that other countries can sell their technology, as well as their systems, to rogue nations. We know Russia has done this, to specifically Iran and other nations, not when they sold their technology, but also their equipment. So it is a very scary thing to think that we might be putting ourselves in a position that would increase our exposure to the threat of chemical warfare and would increase the proliferation of chemical weapons in the Middle East.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I believe time has expired. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. If the Chair will refresh my memory, a motion to table is not in order, is that correct?

The PRESIDING OFFICER. All time would have to be yielded back on the amendment in order for a motion to table to be in order. The unanimous-consent agreement does not appear to preclude a motion to table.

Mr. HELMS. How much time remains, Mr. President?

The PRESIDING OFFICER. Currently, the Senator from North Carolina would have 4 minutes 27 seconds on the amendment. The Senator from Delaware would have 2 minutes 37 seconds.

Who yields time?

Mr. BIDEN. Mr. President, how much time remains for me?

The PRESIDING OFFICER. The Senator controls 2 minutes 37 seconds.

Mr. BIDEN. I yield myself the remaining time. I will speak to a couple of points. With regard to Ken Adelman, I am sure our colleague from Oklahoma didn't mean to impugn his motivation by suggesting for whom he worked. I would not suggest that of Mr. Rumsfeld because of where he works now, that it caused him to have that view. Ken Adelman—although I disagree with him most of the time, he was an able member of the administration. He was viewed as a hawk at the time he was here. For the record, I am sure there was no intention to do that?

Mr. INHOFE. If the Senator will yield, I made it very clear before my remarks that I hold him in the highest of esteem. However, the fact remains that he does work for those companies that have an interest, and that could be a conflict of interest. I think that could be drawn by anyone.

Mr. BIDEN. I thank the Senator for making clear what he meant. I didn't think that's what he meant. I was hoping that is not what he meant, but it is what he meant. That could be said about almost everybody who testified before our committee, for and against this treaty, and I really, quite frankly, think that the leaders for and against this treaty in the last two administrations are men and women of integrity who would have no conflict. They are consistent with what they did within those administrations.

Let me point out a few things. It seems interesting to me that here we are, the very people—our very colleagues who want to have a provision saying that we want all these rogue nations in the treaty before we get into the treaty, argue in the alternative, that these nations in the treaty mean the treaty is worthless. Translated, very simply, they are not for this treaty under any circumstance, whether or not these nations are in the treaty or out of the treaty. I also point out that—in the interest of time, I will not be able to point it out in detail—every argument against this treaty made thus far on the floor today, I respectfully suggest, is made worse by not being in the treaty, by not having the treaty. I find it, quite frankly, interesting.

My time is up. I hope my colleague will not move to table. We agree not to attempt to amend any of these conditions. I hope we will have a vote up or down. Apparently, it is not in the agreement. If he chooses to do it, I guess he has the right.

Mr. HELMS. Mr. President, I shall not move to table. I will yield back such time as I may have.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to amendment No. 47.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 71, nays 29, as follows:

[Rollcall Vote No. 46 Ex.]

YEAS—71

Abraham	Feingold	Lugar
Akaka	Feinstein	McCain
Baucus	Ford	Mikulski
Biden	Frist	Moseley-Braun
Bingaman	Glenn	Moynihan
Bond	Gorton	Murray
Boxer	Graham	Nickles
Breaux	Gregg	Reed
Bryan	Hagel	Reid
Bumpers	Harkin	Robb
Byrd	Hatch	Roberts
Chafee	Hollings	Rockefeller
Cleland	Inouye	Roth
Coats	Jeffords	Santorum
Cochran	Johnson	Sarbanes
Collins	Kennedy	Smith Gordon H
Conrad	Kerrey	Snowe
D'Amato	Kerry	Specter
Daschle	Kohl	Stevens
DeWine	Landrieu	Torricelli
Dodd	Lautenberg	Warner
Domenici	Leahy	Wellstone
Dorgan	Levin	Wyden
Durbin	Lieberman	

NAYS—29

Allard	Gramm	Mack
Ashcroft	Grams	McConnell
Bennett	Grassley	Murkowski
Brownback	Helms	Sessions
Burns	Hutchinson	Shelby
Campbell	Hutchison	Smith Bob
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thompson
Enzi	Kyl	Thurmond
Faircloth	Lott	

The amendment (No. 47) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Delaware.

Mr. BIDEN. Parliamentary inquiry.

The PRESIDING OFFICER. May we please have order.

Mr. BIDEN. Mr. President, I withdraw my inquiry I did not make.

The PRESIDING OFFICER. The Senator from Delaware withdraws his inquiry. Who seeks time?

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi, the majority leader.

Mr. LOTT. Mr. President, can I get time off the manager's time from the bill?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I do still have my leader time. If I need that, we can use that also.

Mr. President, I had planned on and had hoped to be able to speak after all of the votes on the motions to strike because I did not in any way want to distract from those motions to strike. I have hopes that at least some of them might actually be defeated, particularly the one with regard to inspectors coming into the United States from some of the so-called rogue countries, but I think it is important we go ahead and state our positions at this point. Everybody has made their case. It is time to make decisions and to move on. I want to start by thanking Senator HELMS for his cooperation. Without his cooperation, we would not be here today. His cooperation guaranteed that we were able to develop a process that was fair, that allowed us to get S. 495 up and voted on last week, that all of the remaining issues in disagreement would have an opportunity to be debated, considered and voted upon.

He really has done an excellent job. There is no question that he continues to have great reservations about this legislation. But his efforts and the efforts of Senator KYL from Arizona have been nothing short of heroic. They have been tenacious. They have done their homework. They have made excellent statements both here and in our closed session earlier today. I think they should be commended for what they have done. In fact, their work and their success has contributed greatly to the likelihood that this treaty actually will pass. That had not necessarily been their intent, but they wanted to make sure, if it did pass, they wanted it to pass in the best possible form.

I also thank the Democratic leader for his courtesies as we worked through a very complicated unanimous-consent agreement. We were watched over very carefully by the Senator from West Virginia. I thank the Senator from Delaware, [Mr. BIDEN] for his cooperation and his patience, and I think the fact that we have all sort of kept cool heads and been careful how we proceeded has served us well.

Mr. President, our Constitution is unique in the power it grants the Senate in treaty making. Article II, section 2 states the President ''shall have the power, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur.''

The Senate's coequal treaty making power is one of our most important constitutional duties. All 100 Senators have approached this duty very seriously in examining the Chemical Weapons Convention, as we should. We have participated in and we have listened to hearings laying out the arguments for and against the convention. We have looked closely at many provisions of the convention and have sought the advice and counsel of experts and former policymakers. We read many articles and we have heard the arguments making the case for and against it.

Before addressing my views on the convention itself, I should like to share with my colleagues a brief history of the Senate's action on this convention, how we got to where we are today.

The Chemical Weapons Convention was signed by the United States as an original signatory on January 13, 1993, in the last days of President Bush's administration. For reasons that remain unclear, it was 10 months before President Clinton sent the convention to the Senate. In his transmittal letter, dated November 23, 1993, President Clinton wrote:

> I urge the Senate to give early and favorable consideration to the convention and to give advice and consent to its ratification as soon as possible in 1994.

Let me remind my colleagues that for the next 11 months, until the 103d Congress adjourned on December 1, 1994, the Senate majority leader was George Mitchell and the chairman of the Foreign Relations Committee was Claiborne Pell.

Despite Democratic control of the White House and the Senate, the Senate did not consider the Chemical Weapons Convention in 1994.

In late 1995, Senate Democrats began a filibuster on the State Department authorization bill to force action on the CWC. On December 7, 1995, an agreement was reached providing for the convention to be reported out of the Foreign Relations Committee by April 30, 1996. The committee honored that agreement, and the convention was placed on the Executive Calendar.

That is where matters stood when I became majority leader on June 12, 1996. Only 6 days later, before I had a chance to get my sea legs at all, there began a filibuster once again by the Senate Democrats to force Senate action on the convention.

To allow critical national defense legislation to proceed, we worked with Senators on both sides of the aisle, and again we reached an agreement guaranteeing a vote by September 13, 1996.

In the weeks preceding the vote, opponents and proponents of the convention made their case to Senators. On September 6, 1996, I requested the declassification of certain key judgments of the intelligence community relating to key aspects of the convention. On September 10, the administration partially complied with that request, and certain intelligence judgments were made public. I ask unanimous consent that the exchange of letters on the intelligence judgments be printed in the RECORD.

Mr. President, I understand the Government Printing Office estimates it will cost $1,288 to print these letters in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, September 6, 1996.

President WILLIAM JEFFERSON CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am writing to ask your cooperation and support for Senate efforts to obtain information and documents directly relevant to our consideration of the Chemical Weapons Convention.

As you know, the Senate is currently scheduled to consider the Convention on or before September 14, 1996 under a unanimous consent agreement reached on June 28, 1996. Immediately prior to the Senate agreement on the Convention, I stated, ''With respect to the Chemical Weapons Convention, the Majority Leader and the Democratic Leader

will make every effort to obtain from the administration such facts and documents as requested by the Chairman and ranking member of the Foreign Relations Committee, in order to pursue its work and hearings needed to develop a complete record for the Senate . . .''

I regret to inform you that your administration has not been fully cooperative in Senate efforts to obtain critical information. Chairman Helms wrote to you on June 21, 1996—prior to the Senate setting a date for a vote on the Convention—and asked eight specific questions. Chairman Helms also requested the provision and declassification of documents and a cable relating to critical issues of Russian compliance with existing chemical weapons arms control agreements and with the Chemical Weapons Convention.

On July 26, 1996, having received no response to his earlier letter, Chairman Helms reiterated his earlier request and asked additional questions concerning the apparent Russian decision to unilaterally end implementation of the 1990 U.S.-Russian Bilateral Destruction Agreement on chemical weapons. Chairman Helms also asked for specific information and documents concerning Russian conditions for ratification of the Chemical Weapons Convention, as well as other information important to our consideration of the Convention. While Chairman Helms did receive responses to his letters on July 31 and on August 13, his request for declassification of documents was refused and the answers to many of his questions were incomplete.

During a Senate Select Committee on Intelligence hearing on June 17, 1996, Senator Kyl asked for a specific document—a cable written in Bonn, Germany by Arms Control and Disarmament Agency (ACDA) Director Holum concerning current Russian government positions on the Bilateral Destruction Agreement, ratification of the Chemical Weapons Convention and on U.S. assistance for the destruction of Russian chemical weapons. On numerous occasions, Senator Kyl was told the document did not exist. Finally, on July 26, Senator Kyl was able to see a redacted version of the document under tightly controlled circumstances but the document has not been made available to Chairman Helms or other Senators.

Mr. President, the unanimous consent agreement of June 28, 1996, was entered into in good faith, and based on our understanding that the administration could and would be fully forthcoming in the provision of information and documents to enable the Senate to fulfill its constitutional responsibilities. Numerous judgements of the United States intelligence community deserve as wide a circulation as possible—particularly since they are distinctly different than some public statements made by officials of your Administration concerning the Convention.

Accordingly, I respectfully request that you reconsider your refusal to declassify critical documents and consider the declassification of important intelligence community judgements—consistent with the need to protect intelligence sources and methods. Specifically, I request that you act immediately to declassify the May 21, 1996, cable written by ACDA Director Holum and the July 8, 1996, letter from Russian Prime Minister Chernomyrdin to Vice-President Gore, and consider immediately declassification of the paragraphs from which the attached statements are excerpted—all drawn from documents produced by the Central Intelligence Agency and the Defense Intelligence Agency on the Russian chemical weapons program, the verifiability of the Chemical Weapons Convention, the effect of the Convention on the chemical weapons arsenals of rogue states, and the relevance of the Convention to acts of terrorism committed with chemical weapons.

I make these requests to enable the Senate to fully prepare for its consideration of the Chemical Weapons Convention. I am certain you would agree it is necessary for the Senate to have complete and usable information in order fulfill our constitutional obligations and to responsibly meet the terms of the current unanimous consent agreement. Because the unanimous consent agreement calls for the Senate to vote on the Chemical Weapons Convention by September 14, 1996, I respectfully request that you respond to my declassification requests no later than the close of business on Tuesday, September 10, 1996. With best wishes, I am

Sincerely,

TRENT LOTT.

THE WHITE HOUSE,
Washington, September 10, 1996.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: The President has asked that I respond to your letter regarding Senate consideration of the Chemical Weapons Convention (CWC).

On behalf of the President, I would like to thank you for your cooperation and leadership in scheduling a Senate vote on this vital treaty which, as you know, has been before the Senate since November 1993. The CWC, which was negotiated under President Reagan and concluded and signed under President Bush, is an important element of our bipartisan efforts over the years to address two of the most important threats facing us in the post Cold War era: the proliferation of weapons of mass destruction and terrorism.

I was concerned by your letter and regret that you believe that the Administration has not been fully cooperative with Senate efforts to obtain critical information. I want to assure you that the Administration remains eager and committed to continuing to assist the Senate in developing a complete record for its consideration prior to floor action on the CWC, as stated in the June 28, 1996, unanimous consent agreement.

During the almost three years the Convention has been before the Senate, the Administration has worked very hard to ensure that the Senate has been fully informed on the Convention and that all its questions have been answered. Our efforts to inform the Senate have included testimony at 13 hearings, including testimony by many Cabinet officials. We have conducted dozens of briefings for members and staff by representatives of key agencies, including yesterday's productive session with the Arms Control Observer Group. The President has appointed two Special Advisors on the CWC, to address Senate questions and concerns as part of the ratification process. Former Representative Martin Lancaster served in this capacity in 1995 and Dr. Lori Esposito Murray currently holds this position. On behalf of the President, they have personally briefed every Senate office, offered individual briefings to every member of the Senate and personally briefed over 40 Senators.

In addition, we have answered over 300 questions for the record. Senator Helms has asked many of these questions and we have always responded to his concerns. For example, we have not only provided Senator Helms our database of companies likely to be affected by the CWC, but we have also provided him a list of chemical companies we have determined unlikely to be affected by the CWC. Overall, the Administration has provided the Senate with over 1500 pages of information on the CWC—over 300 pages of testimony, over 500 pages of answers to Senate letters and reports, over 400 pages of answers to Senate questions for the treaty record and over 300 pages of other documentation.

With regard to Senator Helms' most recent letters, the President and I both personally responded to Senator Helms, first on July 31 and then again on August 13; these responses included detailed attachments that answered a series of specific questions asked by Senator Helms.

The Administration has repeatedly offered to make relevant classified information available to the Senate through classified briefings and reports. I explained to Senator Helms in my response to his most recent letters that, while I regretted we could not declassify the documents he requested, we remained eager to brief the Senator and any of his colleagues, as well as cleared staff, at the earliest possible time, both on those documents as well as on other concerns. Such a briefing was provided to Senator Kyl but, to date, Senator Helms has not responded to these offers.

We have carefully reviewed your request for declassification of the May 21, 1996 cable written by ACDA Director Holum, the July 8, 1996 letter from Russian Prime Minister Chernomyrdin and selected paragraphs from various intelligence community documents. I regret that we cannot declassify the May 21, 1996 Holum Cable or the letter from Russian Prime Minister Chernomyrdin to Vice President Gore because these documents have been properly classified pursuant to E.O. 12958; they contain sensitive diplomatic information regarding high-level, ongoing negotiations, the disclosure of which may affect our ability to negotiate in confidence. In addition, the correspondence you requested is between the highest levels of the United States and Russian governments, and was exchanged with the expectation that it would be kept in the strictest confidence. As you know, an essential element of the Executive Branch's conduct of foreign relations is the protection of the confidentiality of high level, sensitive diplomatic discussions and correspondence.

After a careful review of the paragraphs of the intelligence documents that you requested be declassified, we have determined they were properly classified. However, we have been able to declassify a portion of the material without risk to sources and methods and it is attached. The sentences and paragraphs that are still classified remain so because they contain information which could place sources and methods at risk. In several cases, declassification of requested materials also would reveal information about U.S. force vulnerabilities. The paragraphs from which most of the judgments were extracted remain classified because it is difficult to identify clearly the source paragraphs. Therefore, granting paragraph release authority could inadvertently permit release of intelligence which would be damaging to declassify.

I would like to reaffirm personally the Administration's commitment to brief you or any other Senator and cleared staff on the documents discussed above under appropriate classification at any time before the Senate debate on the CWC. As you know, a high-level Administration team briefed Senators and staff on the CWC, including many of the issues raised in your letter, on Monday, September 9, 1996. We remain committed to continuing to assist the Senate as it prepares to vote on advice and consent to ratification on this vital Convention.

As part of this continuing effort, I have attached a detailed response which includes the declassified material.

Sincerely,

ANTHONY LAKE,
Assistant to the President for National Security Affairs.

RESPONSES TO ISSUES RAISED BY MAJORITY LEADER LOTT

The issues addressed in the attachment to your letter concern chemical weapons proliferation challenges we must address, with or without the CWC. The CWC provides concrete measures that will raise the costs and risks of engaging in CW-related activities. The CWC also will improve our knowledge about CW activities worldwide. This is why the CWC has been strongly supported by both President Bush and President Clinton.

Since the CWC was submitted to the Senate in 1993, the Intelligence Community has kept the Senate fully informed of its judgments regarding the Convention. During the past three years, the Intelligence Community has produced two NIEs and numerous other reports, testified in numerous public and executive session hearings, answered dozens of intelligence questions for the record and provided a number of briefings on precisely the issues you raise in the attachment to your letter, as well as many others.

Intelligence Community judgments on the CWC are not at odds with Administration policy. In fact, Intelligence Community judgments play an integral role in the formation of policy regarding the Chemical Weapons Convention. The following responses regarding the issues raised in the attachment to your letter may help clarify this.

1. NOVEL AGENTS

New chemicals of concern and novel agents are covered under the CWC; it is incorrect to assert that because an agent is not on the Schedules it is not subject to the CWC. The CWC captures new chemicals of concern and novel agents under the definition of a ''chemical weapon'' and prohibits the development, production, acquisition, stockpiling, retention, use and direct or indirect transfer to anyone of chemical weapons. Concerns that new chemicals of concern and novel agents were being used to violate the CWC would provide a basis for bilateral consultation and challenge inspection under Article X of the Convention. It would not be necessary to show that such chemicals are listed in the Schedules of the Convention to exercise this option.

Furthermore, the CWC explicitly provides for expanding the lists of chemicals subject to declaration and verification as new CW agents are identified and to improve verification procedures and equipment as new technology emerges and experience is gained.

As regards our chemical defense capabilities, the Department of Defense Counterproliferation Program is, with Congress' support, already aggressively pursuing an effective response to ensure that our troops are the best protected and best equipped fighting force for operations in a nuclear, biological, or chemical environment. The National Defense Authorization Act for FY 94 led to the formation of the Joint Nuclear Biological and Chemical (NBC) Defense Board, the Joint Services Integration Group and the Joint Services Material Group. These boards, which have representatives from the Services, Joint Staff and OSD, are working to identify the needs of the military for chemical/biological defense and are providing input to the Defense Acquisition Board process through the Secretary of Defense.

The U.S. military is well aware that it may be called upon to operate in a hostile environment in which chemical weapons may be used or threatened to be used. Though U.S. chemical equipment is second to none, we understand the need to continually improve our capabilities. Through the Defense Acquisition Board process, the military is taking steps to ensure these improvements continue. The Administration's budget request for FY 97 for our chemical defense programs is $505 million.

In this context, the following paragraph from NIE 95–9/I of May 1995 is hereby declassified: ''Production of new binary agents would be difficult to detect and confirm as a CWC-prohibited activity.''

2. RUSSIAN INTENTIONS REGARDING CHEMICAL WEAPONS

It is important to keep in mind, when discussing Russian intentions regarding chemical weapons, that there is not yet in force a treaty obligation prohibiting the possession of chemical weapons against which we can measure compliance. The CWC will establish such a prohibition and, most importantly, the new tools to pursue any concerns we may have about suspected CW activities, whether in Russia or any other State Party. As the Intelligence Community has testified, the CWC will provide us with access to information not otherwise available which will help us in our efforts to detect, deter and, if necessary, punish violations of the CWC.

Regarding the views of the Russian leadership, President Yeltsin and other senior government officials have repeatedly expressed support for the CWC. We will expect Russia and all other Parties to adhere to all the Convention's provisions including those concerning CW development and production. The Russian Government has recently reaffirmed its commitment to become an original Party to the CWC and announced it is seeking speedy submission of the Convention to the Parliament for ratification.

In this context, the following paragraph from NIE 95–9/I of May 1995 is hereby declassified:

''President Yeltsin has publicly endorsed CW disarmament and supported ratification and implementation of CW arms control agreements to which Russia is a signatory. The extent to which Yeltsin has attempted to enforce his will on the bureaucracy is not clear. He may not be aware of the scope of ongoing CW activities, or if he is aware, he may be unable to control them. We cannot exclude the possibility that Yeltsin approves of an offensive CW capability and will support a covert program once the CWC enters into force. He may accept the military's argument about the need to retain a CW capability. Moreover, being subjected to far more bureaucratic pressure to sustain the program than to do away with it, he may find it easier to give way to military arguments.''

It should be noted, however, that detailed information on the views of key individuals is limited and insufficient to document with confidence their current personal and professional positions for maintaining CW programs.

3. VERIFICATION

No treaty is 100 percent verifiable. While the Intelligence Community has indicated that CW development and production is and will remain difficult to distinguish from legitimate commercial activities, they have simultaneously noted the importance of acquiring the CWC as a new collection tool to aid their efforts to monitor CW proliferation, which we must do, with or without the CWC.

The CWC's verification provisions constitute the most comprehensive and intrusive verification regime every negotiated, covering virtually every aspect of a CW program, from development through production and stockpiling.

The CWC's declaration provisions will improve the U.S. ability to obtain information about other countries' CW efforts. These provisions will facilitate detection and monitoring of prohibited activities by providing the U.S. access to certain information about declarations of CW production facilities and storage sites as well as relevant chemical industry facilities and activities.

The CWC's inspection provisions permit access to both declared and undeclared facilities and locations, thus making clandestine CW production and stockpiling more difficult, risky and expensive. Routine inspections will enhance deterrence and detection of clandestine product by monitoring activities and relevant chemical industry facilities. These inspections will increase the cost and the risk of carrying out illicit chemical weapons activities.

Challenge inspections will further enhance deterrence and detection of prohibited activities by providing States Parties with the right to request an international inspection at any facility or location in another State Party in order to clarify and resolve a potential compliance concern. As the scope and size of a program increases, it is more likely that illicit activities will be detected. Challenge inspections are but one part of the CWC's comprehensive verification regime which, in its totality, complements our ongoing intelligence monitoring effort in this area. As former DCI Woolsey testified before the Senate Foreign Relations Committee on June 23, 1994:

''The CWC will, however, strengthen our ability to deal with the problem that we confront with or without the Convention: the requirement to discover what states are developing and producing chemical weapons when these activities are difficult to distinguish from legitimate commercial endeavors. The isolation and adverse attention that nonsignatories will draw upon themselves may spur greater multinational cooperation in attempting to halt offensive CW programs.

''In sum, what the Chemical Weapons Convention provides the Intelligence Community is a new tool to add to our collection tool kit. It is an instrument with broad applicability, which can help resolve a wide variety of problems. Moreover, it is an universal tool which can be used by diplomats and politicians, as well as intelligence specialists, to further a common goal: elimination of the threat of chemical weapons.''

In this context, the following paragraphs from NIE 93–32J/I of August 1993 are hereby declassified:

''The capability of the Intelligence Community to monitor compliance with the Chemical Weapons Convention is severely limited and likely to remain so for the rest of the decade.''

''The key provisions of the monitoring regime—challenge inspections at undeclared sites—can be thwarted by a nation determined to preserve a small, secret program using the delays and managed access rules allowed by the convention.''

4. TERRORISM

The CWC will increase the difficulty for terrorists and proliferators of acquiring chemical weapons and significantly improve our law enforcement ability to investigate and prosecute chemical terrorists even before chemical weapons are used. Japan serves as an example of the importance of this treaty and its implementing legislation in combating the terrorist threat. Within 10 days of the poison gas attacks in the Tokyo subways, the Japanese enacted the CWC implementing legislation. The Japanese completed ratification of the CWC a month later.

No treaty is foolproof. However, the CWC and its implementing legislation will provide

significant benefits in dealing with the threat of chemical terrorism. Implementing legislation will strengthen our legal authority to investigate and prosecute persons who commit acts prohibited by the treaty. It will also make the public more aware of the threat of chemical weapons and of the fact that the acquisition of such weapons is illegal .

The following are among it significant benefits:

Investigation. The proposed U.S. implementing legislation contains the clearest, most comprehensive and internationally recognized definition of a chemical weapon available. The definition contained in the implementing legislation will enable an investigator to request a search warrant on the basis of reasonable suspicion of illegal chemical weapons activity (such as production of chemical weapons agent), rather than suspicion of an attempt or conspiracy to use a weapon of mass destruction, as under current U.S. law. By providing law enforcement officials and prosecutors an actionable legal basis for investigating the development, production, transfer of acquisition of chemical weapons, CWC implementing legislation improves prospects for detection, early prosecution and possibly even prevention of chemical terrorism in the United States.

Prosecution. The proposed U.S. implementing legislation will also aid prosecution. Because possession of a chemical weapon (whether or not it is intended to be used) would be prohibited under the Convention, it would also be illegal under the CWC implementing legislation and thus would provide a sufficient basis for prosecution. Currently, prosecutors must rely on legislation intended for other purposes, such as a law against conspiracy to use a weapon of mass destruction.

Penalties. Under the proposed U.S. implementing legislation, any person who knowingly engages in prohibited CW-related activities far short of actual use of a chemical weapon could be subject to the maximum punishment of life in prison or any term of years. In contrast, under existing U.S. legislation, equivalent penalties require proof of use or an attempt or conspiracy to use a weapon of mass destruction. Thus, it would be difficult under current law for prosecutors to prove that a violation of the law has occurred unless a scheme to use chemical weapons is well advanced.

Trade Controls. The proposed U.S. implementing legislation would also supplement existing export/import control laws and regulations by strictly controlling the import and export of those chemicals posing the greatest risk (listed in Schedule 1 of the CWC) and also regulating the production, acquisition, retention, transfer or use of such chemicals within the U.S. Fines of up to $50,000 could be imposed for unlawful production, acquisition, transfer, etc. of such chemicals.

Emergency Authority. The proposed U.S. implementing legislation contains authority to seize, forfeit and destroy chemical weapons. This important provision protects the constitutional rights of property owners while allowing law enforcement officials to seize and destroy a chemical weapon under exigent circumstances (i.e. where harm is imminent or likely). This provides additional authority to prevent a potential catastrophe and save lives.

Public Awareness. Tips by concerned private citizens are the lifeblood of successful police investigations. Ratification of the CWC and enactment of its implementing legislation will ensure, due to reporting and inspection requirements and penalties for violations, that private companies and concerned citizens are more alert to and more likely to report any suspected chemical weapons-related activities.

The nonproliferation provisions of the CWC will deny terrorists easy access to chemical weapons by requiring Parties to eliminate national stockpiles and by controlling international transfers of certain chemicals than can be used to make chemical weapons. In particular, the CWC requires Parties to cease transfers of certain CW agents and CW precursor chemicals to non-Parties and restrict such transfers to Parties. In addition, reporting is required on anticipated production levels of Schedule 1, 2 and 3 chemicals and anticipated imports and exports of Schedule 1 and 2 chemicals. These measures will help restrict access to key chemicals, while also helping to alert law enforcement and other government officials to suspicious activities.

Finally, one of the key tools in combating terrorism is early intelligence. The CWC will provide access to international declaration and inspection information and will strengthen the intelligence links between the United States and the international community that will help us detect and prevent chemical attacks. By tying the United States into a global verification network and strengthening our intelligence sharing with the international community this treaty can be an early warning that is essential for combating terrorism.

In this context, the following paragraph from DIA PC–1563–4–96 of February 1996 is hereby declassified:

''Irrespective of whether the CWC enters into force, terrorists will likely look upon CW as a means to gain greater publicity and instill widespread fear. The March 1995 Tokyo subway attack by the Aum Shinrikyo would not have been prevented by the CWC.''

I would also invite your attention to the following conclusions concerning the impact of the CWC contained in the May 1996 report issued by the Director of Central Intelligence Interagency Committee on Terrorism entitled ''Aum Shinrikyo: Insights to the Chemical and Biological Terrorist Threat'':

''The Chemical Weapons Convention (CWC) is designed to regulate and monitor the procurement, production, and use of some chemicals used in CW production with varying degrees of intrusiveness, depending on which of the three Schedules of Chemicals a compound is listed. Within five years of the CWC's entry into force, transfer of all Schedule 1 and 2 chemicals to non-States Party will be banned, and transfer of Schedule 3 chemicals to non-States Party will require end-use certificates. In addition, all sites within a State Party are subject to challenge inspections initiated by another State Party with substantive information that illegal activities are taking place by the government or any other group. The Convention's provisions probably would make it more difficult and costly for terrorists to acquire CW by increasing the risk of detection, but a determined group could circumvent the provisions.

''The CWC mandates that each State Party establish national laws to prohibit anyone on its territory or any citizen abroad from developing, producing, stockpiling, acquiring or using CW. Each State Party must develop and pass national legislation to ensure the implementation of all CWC obligations and provisions. Depending on the quality of the legislation and its enforcement, the institution of these laws would help establish a political and legal basis for the prosecution of a terrorist group.

''In the case of Aum Shinrikyo, the CWC would not have hindered the cult from procuring the needed chemical compounds used in its production of sarin. Further, the Aum would have escaped the CWC requirement for an end-use certification because it purchased the chemical within Japan.''

5. ROGUE STATES

The Administration recognizes the possibility that not all States Parties may comply with their CWC obligations immediately upon the Convention's entry into force. However, information acquired through the CWC's declaration and inspection provisions will supplement our national intelligence resources and place us in a better position than we are now to deter and detect clandestine chemical weapons programs. Moreover, unlike any previous arms control agreement, the CWC provides a range of punitive measures including trade sanctions that can be imposed against a Party to the treaty who fails to meet its treaty obligations.

In short, as former DCI Woolsey and other intelligence officials have pointed out, the CWC will provide a useful tool in our inventory of means to stem the worldwide expansion of chemical weapons capabilities and to assist in monitoring CW programs worldwide, whether inside or outside the CWC.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, January 8, 1997.

Hon. WILLIAM JEFFERSON CLINTON,
President of the United States,
The White House, Washington, DC.

DEAR MR. PRESIDENT: Following our phone conversation, I arranged a meeting later today with your Acting National Security Adviser, Sandy Berger, to discuss the Chemical Weapons Convention. Before that meeting however, I wanted to inform you personally of how your Administration's actions on critical arms control issues have complicated efforts to work cooperatively.

As you know, many Members of the 104th Congress have expressed concern over the security implications of certain arms control positions taken by your Administration. The security concerns are aggravated by your Administration's unwillingness to seriously consider our views on the appropriate Constitutional role of the Senate in providing advice and consent on treaties. I would point to three important issues: demarcation limits to the Anti-Ballistic Missile Treaty of 1972 (ABM Treaty); multilateralization of the ABM Treaty; and flank limits to the Conventional Armed Forces in Europe Treaty of 1990 (CFE Treaty). In each of these cases, your Administration has negotiated substantive modifications of the treaties, and then taken questionable legal positions that render Senate advice and consent an option that can be ignored rather than a constitutional obligation that must be fulfilled.

Congress has legislated on the proposed demarcation limits and the proposed multilaterization of the ABM Treaty. Section 232 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103–337) addresses both issues. It states ''the United States shall not be bound by any international agreement entered into by the President of the United States that would substantively modify the ABM Treaty unless the agreement is entered into pursaunt to the treaty making power of the President under the Constitution.''

Section 235 of the National Defense Authorization Act for Fiscal Year 1996 (P.L. 104–106) addresses demarcation and states ''any international agreement that would limit the research, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles in a manner that would be more restrictive than the compliance criteria specified in paragraph 1 should be entered into only pursuant to the treaty making powers of the President under the constitution.''

The position of Congress concerning the substantive modifications your Administration has sought to the ABM Treaty is clear:

Senate advice and consent is needed for their entry into force. Despite this clear position, your Administration continues to argue that Senate advice and consent is not necessary in the case of multilateralization, and is but one among several options you might choose in the case of demarcation. This is unacceptable.

With specific reference to the Agreed Statement on Demarcation reached last summer, section 406 of the Department of State and Related Agencies Appropriations Act, 1997 (P.L. 104–208) prohibits expending funds on the Standing Consultative Commission ''unless the President provides to the Congress a report containing a detailed analysis of whether * * * the Agreed Statement regarding Demarcation agreed to by the Standing Consultative Commission on June 24, 1996 * * * will require the advice and consent of the Senate of the United States.'' The report submitted on your behalf did not answer this question.

Finally, the May 31, 1996 Conventional Forces in Europe flank agreement contains negotiated amendments and significant changes to the 1990 CFE Treaty. Yet, again your Administration has taken the legal position that Senate advice and consent is not necessary.

Mr. President, I have pledged to work with you in a bipartisan fashion on a wide range of challenges facing our country. Nowhere is such cooperation more important than in foreign policy and national security. But bipartisanship must be a two-way street. Your Administration has now re-started a public campaign to gain Senate advice and consent for the Chemical Weapons Convention. As you seek bipartisan cooperation, you must understand our expectation for such cooperation on ABM multilateralization, ABM demarcation, and CFE flank limits.

Senate advice and consent arms control treaties after their negotiation and after their substantive modification is not an option—it is a requirement of our Constitution. I am sure you understand that it will be very difficult to explore the possibility of Senate action on the Chemical Weapons Convention without first addressing legitimate security and Constitutional concerns on other important arms control issues. I stand ready to work with you and your national security team in a comprehensive manner to address arms control issues in the 105th Congress. With best wishes, I am,

Sincerely,

TRENT LOTT.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, March 18, 1997.

Hon. WILLIAM JEFFERSON CLINTON,
President of the United States, The White House, Washington, DC.

DEAR MR. PRESIDENT: As you know, we have been working in good faith to try to establish a process under which the Senate might consider a resolution of ratification for the Chemical Weapons Convention (CWC).

As we consider the next steps in this process, I want to remind you of two problems that remain unresolved. First, on January 8, 1997, I wrote to you expressing concerns about your administration's approach to a number of critical arms control issues, including demarcation limits and multilateralization of the Anti-Ballistic Missile Treaty of 1972 (ABM Treaty) and about the flank limits to the Conventional Armed Forces in Europe Treaty of 1990 (CFE Treaty). To date, I have not received a response. Each of these significant treaty modifications are subject to the constitution's shared treaty making power and, accordingly, cannot enter into force until receiving the advice and consent of the United States Senate.

Second, I have repeatedly pointed out that the CWC is currently under consideration by the Committee on Foreign Relations. Accordingly, it is essential that you and your administration honor the publicly-stated commitments to work closely and expeditiously with Chairman Helms on issues before the Committee, including the presentation of a plan to reorganize U.S. foreign affairs agencies. Until that occurs, Chairman Helms has made it clear to me that he is unlikely to consider next steps in the CWC process.

As I have said privately and publicly, bipartisanship must be a two-way street. I look forward to hearing from you soon on these important issues. With best wishes, I am,

Sincerely,

TRENT LOTT.

THE WHITE HOUSE,
Washington, March 25, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: The President has asked me to reply to your letter concerning the Chemical Weapons Convention (CWC) and the role of the Senate under the Constitution in giving its advice and consent to treaties. Our staffs have held some discussions on this matter, but I want to address in more detail each of the three treaty issues you raise in the letter: the CFE flank agreement, ABM multilateralization and ABM/TMD demarcation.

CFE FLANK AGREEMENT

On May 31, 1996, the United States, our NATO allies, Russia and the 13 other States Party to the CFE Treaty approved a document in Vienna culminating more than two years of intensive negotiations on the CFE flank issue. The centerpiece of this agreement was a realignment of the CFE map (depicting the territory of the former USSR in the CFE area), which has the effect of reducing the size of the flank zone. The CFE parties had deliberately not included this map as part of the Treaty when it was signed in 1990, and the Bush Administration did not submit the map to the Senate in 1991 as part of the formal documents for advice and consent. Accordingly, legal counsels in the Clinton Administration's national security agencies determined last year that a change to the map does not constitute a formal amendment to the Treaty.

At the same time, we determined that a realignment of the map did constitute a change in a ''shared understanding'' formed with the Senate at the time the Senate gave its advice and consent to the Treaty. That ''shared understanding'' established that the Treaty would be applied and interpreted on the basis of the original map. According to the 1988 ''Biden Condition'' on treaty interpretation (which was attached by the Senate to its resolution of ratification for the INF Treaty), Senate consent or congressional approval is required to change a shared understanding.

When the Administration submitted the CFE flank document for legislative approval last August, we were faced with a time-urgent situation: by its own terms, the document required all States parties to confirm their approval by December 15; yet very little time remained before the adjournment *sine die* of the 104th Congress. In this circumstance we chose to seek statutory approval by both houses, as is explicitly permitted under the Biden Condition.

We now face a complex situation. At the Lisbon OSCE Summit in December, the 30 States party to the CFE Treaty agreed to extend the deadline for confirmation of approval to May 15, 1997. In recent months, it has become evident that the flank agreement underpins the new negotiations in Vienna on ''CFE adaptation,'' which in turn underpins NATO's efforts to define the new security environment in Europe as NATO enlarges. In addition, both adaptation of the CFE Treaty and the admission of new states to NATO will be effected through agreements that will be submitted for the advice and consent of the Senate. The situation and timing is therefore different from when the Administration submitted the CFE flank agreement for legislative approval last August. Accordingly, the Administration is prepared, without prejudice to its legal position vis-a-vis the approval options we believe are available to us, to seek Senate advice and consent to the flank Document provided the Senate will act on this crucial matter before May 15.

MOU ON ABM SUCCESSION

As noted in the President's November 25, 1996 report to Congress submitted in accordance with Section 406 of the FY 1997 State Appropriations Act (the ''Livingston Report''—hereafter referred to as ''the Report''), executive agreements recognizing the succession of new States to the treaty rights and obligations of their predecessors have traditionally not been treated as treaty amendments or new treaties requiring Senate advice and consent. Rather, they have been treated as the implementation of existing treaties, which is recognized as an exclusively Presidential function under the Constitution. The Report elaborates the specific reasons why this conclusion applies in the case of the June 24, 1996 Memorandum of Understanding (MOU) on ABM Succession reached ad ref between the United States, Russia, Ukraine, Belarus and Kasakstan in the Standing Consultative Commission (SCC). It also explains why the MOU does not constitute a substantive modification of the ABM Treaty.

In dealing with matters of succession, a key U.S. objective has been to reconstitute the original treaty arrangement as closely as possible. This was true with respect to the elaboration of the ad ref MOU as well and, accordingly, the MOU works to preserve the original object and purpose of the ABM Treaty. We hope that the breakthrough on ABM/TMD demarcation achieved at the Helsinki Summit will set the stage for a meeting at which all parties would sign this MOU. The Administration continues to believe that the agreement does not require the advice and consent of the Senate, or any other form of congressional approval, to enter it into force.

THE WHITE HOUSE,
Washington, April 24, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: During Senate ratification proceedings on the Chemical Weapons Convention (CWC), concerns have been raised over Article X, which provides for certain types of defensive assistance in the event that a State that has joined the treaty and renounced any chemical weapons (CW) capability is threatened with or suffers a chemical weapons attack, and Article XI, which encourages free trade in non-prohibited chemicals among states that adhere to the CWC. Some have suggested that these Articles could result in the CWC promoting, rather than stemming, CW proliferation despite States Parties' general obligation under Article I ''never under any circumstances . . . to assist, encourage or induce, in any way, anyone to engage in any

activity prohibited to a State Party under this Convention.''

To respond to these concerns, the Administration has worked closely with the Senate to develop conditions relating to both Articles that have now been incorporated in the resolution of ratification (Agreed Conditions #7 and 15). These two conditions would substantially reinforce and strengthen the treaty by: prohibiting the United States under Article X from (a) providing the CWC organization with funds that could be used for chemical weapons defense assistance to other States Parties; and (b) giving certain states that might join the treaty any assistance other than medical antidotes and treatment; and requiring the President to (a) certify that the CWC will not weaken the export controls established by the Australia Group and that each member of the Group intends to maintain such controls; (b) block any attempt within the Group to adopt a contrary position; and (c) report annually as to whether Australia Group controls remain effective.

With respect to the latter condition, I am pleased to inform you that we have now received official confirmations from the highest diplomatic levels in each of the 30 Australia Group nations that they agree that the Group's export control and nonproliferation measures are compatible with the CWC and that they are committed to maintain such controls in the future.

While supporting these guarantees and safeguards, you expressed the concern on Sunday that nations might still try to use Article X or XI to take proscribed actions that could undercut U.S. national security interests, notwithstanding the best efforts of U.S. diplomacy to prevent such actions. I am, therefore, prepared to provide the following specific assurance related to these two Articles:

In the event that a State Party or States Parties to the Convention act contrary to the obligations under Article I by:

(A) using Article X to justify providing defensive CW equipment, material or information to another State Party that could result in U.S. chemical protective equipment being compromised so that U.S. warfighting capabilities in a CW environment are significantly degraded;

(B) using Article XI to justify chemical transfers that would make it impossible for me to make the annual certification that the Australia Group remains a viable and effective mechanism for controlling CW proliferation; or

(C) carrying out transfers or exchanges under either Article X or XI which jeopardize U.S. national security by promoting CW proliferation:

I would, consistent with Article XVI of the CWC, regard such actions as extraordinary events that have jeopardized the supreme interests of the United States and therefore, in consultation with the Congress, be prepared to withdraw from the treaty.

Sincerely,

BILL CLINTON.

Mr. LOTT. On September 12, the day the Senate was scheduled to begin debate on the convention, Secretary of State Christopher called me and asked that the vote be canceled. I quizzed him. I wanted to make sure that was what the administration was asking and that I would be able to come out to the floor of the Senate and explain that is why it was being done. It was canceled because it was clear, in my opinion, the convention was likely to be rejected at that time by the Senate.

I acceded to the Secretary's request. We canceled the vote, and it went back to the Foreign Relations Committee calendar at the end of the 104th Congress.

In January of this year, the President and his national security advisers made it clear that the Chemical Weapons Convention remained a top priority. On January 8, 1997, I wrote to the President explaining some of our arms control priorities, including the submission of three significant treaty modifications for advice and consent: The ABM Demarcation Agreement, the ABM Multilateralization Agreement and the flank agreement to the Conventional Forces in Europe Treaty. The administration had previously refused to submit these treaties for Senate ratification.

I wrote at that time.

Bipartisanship is a two-way street. Your administration has now restarted a public campaign to gain Senate advice and consent for the Chemical Weapons Convention. As you seek bipartisan cooperation, you must understand our expectation for such cooperation on ABM multilateralization, ABM demarcation and CFE flank limits.

On March 18, I again wrote the President reminding him that I had not received a response to that January 8 letter. I also pointed out that ''it is essential that you and your administration honor the publicly stated commitments to work closely and expeditiously with Chairman HELMS on issues before the committee, including the presentation of a plan to reorganize the U.S. foreign affairs agencies.

From the beginning of the 105th Congress, I made clear as best I could to all who would listen in the administration that bipartisanship could not mean forcing the Senate into acting on administration-chosen priorities if we did not likewise have an opportunity to consider issues that are important to the Senate, in fact, issues we think have long since been sent to us for action with regard to arms control treaties.

We stated that we thought it was vital that we get State Department reorganization and real reform at the United Nations. This was not a quid pro quo but a simple statement of reality. Working in a cooperative fashion, as we must, means that both sides have to be forthcoming on issues in these foreign policy very important, critical areas.

Let me briefly review the status of each of these three related issues. On the arms control treaties, the administration did reconsider their positions very carefully and they came back and agreed to send the Conventional Forces in Europe Flank Agreement to the Senate for advice and consent. Hearings have already been scheduled on this treaty, and I expect a resolution of ratification to be before the full Senate in the near future. President Clinton agreed to submit the agreed statement on demarcation to the Senate for advice and consent. This treaty, agreed to in principle between Presidents Clinton and Yeltsin at the Helsinki summit, will provide the Senate an opportunity to consider the administration's approach toward negotiating constraints on our defensive systems pursuant to the administration's interpretation of the ABM Treaty. I am sure we will have quite an interesting and lively debate on that, but certainly we should take advantage of our responsibilities to do just that. Along with many of my colleagues, I have expressed grave doubts about the wisdom of this administration's approach in that area. Now, however, we have a full opportunity to debate the policy and this treaty in the ratification process.

The President still does not agree that they should send forward the treaty dealing with multilateralization. We think the Constitution requires it; his lawyers disagree. We will continue to press the administration to accept our position in this area, and they understand we should keep talking about it.

If this provision is contained in the final agreement that is submitted to the Senate for advice and consent in connection with demarcation, it will give us an opportunity to debate it.

On U.N. reform, our now Secretary of State Madeleine Albright asked that we begin to actually meet and talk about U.N. reform; that we meet with a U.N. presiding officer; that he come and visit with us. He did. We have started a process between the House and Senate, Republicans and Democrats, our chairmen and ranking members, to take a look at what should be done with regard to the arrearages we may or may not owe, how can we deal with the U.S. assessment at the United Nations that could be fairer, and we are working from a comprehensive Republican document as a basis for the discussions. I think we see some action already occurring. The Secretary General has been working at it, and I think he understands we are very serious about U.N. reform.

On State Department reorganization, I am very pleased that the administration has proposed, I think, some major changes. Chairman HELMS, and many others, have worked to streamline our foreign policy bureaucracy, and now it looks like we are going to have a chance to do that.

The Agency for International Development, the Arms Control and Disarmament Agency and the U.S. Information Agency were started and organized during the cold war. Barely more than a year ago, President Clinton vetoed a bill which would have mandated the dismantling of only one foreign affairs agency. Last week, however, thanks to the efforts of Secretary of State Madeleine Albright and the involvement of the President, the President agreed to abolish both the USIA and ACDA and to fold many of AID's functions into the State Department. This will make our scarce resources go farther, increase coordination and help ensure American interests, not bureaucratic interests, are behind our foreign policy decisionmaking.

On each of these parallel issues—and I call them parallel, that is the way they have always been discussed—we have made progress. I think it is important that we realize that. Thanks to the persistence of the chairman and thanks to a Secretary of State that is working with us now, we have made progress with U.N. reform, with State Department reorganization, and the fact we will be able to consider these treaties. No serious observer can claim that we have not moved forward in these areas.

There have been important changes in the Chemical Weapons Convention over the past few months. Last September, I worked closely with Senators HELMS, KYL and others in opposition to the treaty. Had we not canceled the vote, I would have voted against it, and I believe that it would have failed.

In the aftermath of that debate, some in the White House blamed political motivations. The President said it was partisan politics involving America's security. But, fortunately, calmer heads have prevailed this year. The administration did come to the table and they have negotiated with us. They recognize the legitimate concerns that were ignored last year. So we have engaged in a process of member-and-staff-level discussions that have had a major impact on this convention.

There are 28 agreed items in this resolution of ratification that were not there last September. Senator KYL, Senator HELMS, and Senator BIDEN have been working together on this. They reached agreements. Some of them Senator BIDEN said, ''Yes, we should do this,'' and the administration didn't particularly agree. Others in the administration said, ''Yes, we should do it,'' and some of our colleagues did not agree with it. There has been a give and take, but real progress has been made.

Many of these items have addressed the concerns that have been cited by opponents as reasons to oppose the CWC last year. I have gone over some of the letters, some of the memos I have received—and I have received a lot of them—and point by point has been addressed, maybe not 100 percent, maybe not to their total satisfaction, but progress has been made. I will not go down the whole list of 28, but I want to list some of the more critical ones where real progress has been made.

First, on search and seizure, condition 28 requires search warrants for all involuntary searches of American facilities. We were worried about a constitutional problem here. Now it has been addressed.

Second, on our ability to use riot control agents, condition 26 ensures that the U.S. policy since 1975 remains in effect. Our military can use nonlethal agents, such as tear gas, to rescue downed pilots. Certainly, that should have been in there all along. I don't know why there was resistance to it, but it has been addressed.

Third, on intelligence sharing, condition 5 places strict limits on all U.S. intelligence shared with the international organization established under the CWC.

Fourth, on maintaining robust chemical defenses, condition 11 mandates a series of steps including negotiations with our allies, planning for chemical weapons in war game scenarios and high-level leadership of the U.S. Army's Chemical School.

Fifth, on information sharing, an area that has worried me the most and right up until this very moment, progress has been made in two ways. First, with regard to these articles X and XI, condition 7 makes crystal clear that nothing in the CWC undermines U.S. export control laws, and that the informal Australia Group export controls will continue. Condition 15 helps to ensure that defensive assistance under the convention will be strictly limited. So I invite my colleagues who may still have some doubts to look at these conditions—conditions 7 and 15—dealing with information sharing and how we have restrictions on the defensive assistance.

Sixth, on financing Russian implementation, which I think is a ridiculous idea personally on its face, but condition 14 precludes the United States from making any commitment to finance Russia's chemical weapons destruction program in an effort to secure Russian ratification of CWC.

Seventh, conditions 1, 17, 6, and 20 preserve Senate prerogatives in this and in future treaties. They preserve our right to pass reservations to treaties, to ratify future amendments to the CWC and to make clear the executive branch cannot commit to appropriations in advance of congressional action.

Eighth, on noncompliance, condition 13 requires a series of steps to be taken by the United States in the event of noncompliance by a party to the convention. Condition 13 mandates unilateral actions and requires the United States to seek a series of multilateral actions to deal with CWC violations.

Ninth, conditions 3 and 22 address financial concerns about the Organization for the Prohibition of Chemical Weapons set up under this convention. One sets a binding limit on the U.S. assessment to ensure we are not creating another international entitlement program, and the other requires an independent inspector general be created to increase accountability of the OPCW.

Finally, condition 10 requires an annual report of condition that, for the first time in arms control, shifts the burden of proof to making the administration certify compliance. As previous experience has demonstrated, the arms control bureaucracy has refused to find clear evidence of noncompliance. This condition will change and will ensure our vigilance on monitoring issues.

Each of these conditions makes the resolution before us today a better document, there is no doubt about it, certainly better than the document we were considering last fall. Each of these changes addresses concerns raised by treaty opponents last year and addresses my own concerns. In addition, the Senate is considering this convention in a manner agreed to by all 100 Senators. We first considered, and passed, as I said earlier, S. 495, the Chemical and Biological Weapons Threat Reduction Act of 1997 sponsored by Senator KYL. We are considering the resolution of ratification drafted by Senator HELMS. Think about that. We are considering that resolution that he drafted and that he had in the committee. That is what we brought to the floor, and the process requires that motions to strike be offered to take provisions out. Much progress has been made, and many Senators have been cooperative.

But there should be no mistake, serious problems remain with this convention. Unfortunately, key protections in the resolution of ratification may be stricken out in our debate today, and we will have some more votes in a few minutes.

Condition 33 on verification requires the President to certify the same standard of verification developed under the Reagan-Bush administrations—high confidence in detecting militarily significant violations in a timely manner. Detecting the production and stockpiling of chemical weapons may be more difficult than detecting the existence, obviously, of nuclear-armed warheads.

But I will vote to retain the verification standard that has served our country well in previous arms control agreements. I understand why my colleagues might not agree with that and they might vote in a way that would lower this verification standard, but it is a serious problem.

Condition 30, which we just voted on, I think should have been kept in the document.

Condition 29 conditions U.S. participation in the convention upon demonstrated actions by the country with the largest chemical weapons arsenal on Earth—Russia. Russia has not implemented the Bilateral Destruction Agreement signed in 1990. Russia has not submitted accurate data on chemical weapons. That is a real concern, and we have reason to believe they are devoting resources now to develop new chemical agents which are outside the scope of CWC. I support retaining this condition because I believe it makes sense to expect Russia to live up to past agreements before entering into new ones.

I strongly support condition 31 which would require the President to exercise the power given in the verification annex to the convention to bar inspectors from terrorist states and from states which have violated U.S. proliferation law, particularly, I hope and think that we can defeat the motion to strike here. It is not a killer amendment and we ought to retain the right to bar those inspectors.

Finally, there is the most serious question of articles X and XI, whether

these provisions on information sharing will increase the likelihood of, in fact, chemical weapons proliferation. Over the past few weeks, I made it clear to the administration as best I could the legitimate concerns about the impact of articles X and XI had to be addressed more than what was in the condition. I support delaying our ratification until the CWC is renegotiated to deal with these articles. For obvious reasons, the administration does not want to do that, and probably the majority of the Senate would not want to do that.

But this very morning, I received a letter from President Clinton which I think is significant. The President made specific assurances that the United States would exercise its right to withdraw from the convention if any one of three things occurred: If countries used ''article X to justify providing defensive chemical weapons equipment, material, or information to another state party that could result in U.S. chemical protective equipment being compromised. . .'';

If countries use article XI to justify chemical transfers which undermine the Australia Group.

If countries carried ''out transfers or exchanges under either article X and XI which jeopardize U.S. national security by promoting chemical weapons proliferation;

These are specific and probably unprecedented. Yes, it is a letter. It is not in the document, but it is signed by the President of the United States in very strong language that, frankly, I was pleased but somewhat surprised that he agreed to say, I will withdraw after consultation with the Senate. If any one of these things happen, he is the President and his assurances in foreign policy must make a difference. They address countries even justifying transfers where there is concern. They address transfers which promote chemical weapons proliferation.

Mr. President, I think this is a very important document. I have made that letter available to our colleagues. I have more copies.

Every Member has struggled with one fundamental question: Are we better off with or without this convention? In my mind, there is no easy answer. I want to know that my children and our country will be better off, and that we will be better able to deal with chemical weapons with it, but I have my doubts.

Experts, whose opinions I respect deeply, are divided on the question. Over the last 2 weeks, I have had many conversations to discuss this convention. I spoke with Presidents Bush and Ford. I talked with my good friend, former Secretary of Defense Dick Cheney, former Secretary of Defense Cap Weinberger, Steve Forbes, former Secretary of State James Baker, Jim Schlesinger, Colin Powell, uniformed military officers—a great variety of people. I met with leaders of groups that are deeply opposed and well informed about the treaty's flaws. I talked with President Clinton, Secretary Albright, and Joint Chiefs of Staff Chairman Shalikashvili.

Republican Senators, with long experience in national security matters, are divided. On this issue, reasonable people can and do disagree, and reasonable people will vote on opposite sides.

After our negotiations, hearings, and discussions, it is time to make decisions—decisions that will be important to the future of our men and women in uniform, and the future security of our country.

I have decided to vote in support of the Senate giving its advice and consent to the Chemical Weapons Convention. I will do so not because I believe it will end the threat posed by chemical weapons or rid the world of poison gas. I will do so not because I believe this treaty is verifiable enough or even enforceable enough. And I will not do so because I believe there are no additional proliferations concerns related to articles X and XI.

I will vote for the convention because I believe there will be real and lasting consequences to the United States if we do not ratify the convention. In a very real sense, the credibility of commitments made by two Presidents of our country—one Republican and one Democrat—is at stake.

I will vote for the convention because the judgment of the most senior former and current military commanders believe it will make our soldiers, sailors, airmen, and marines more safe in potential battlefields and less likely to face the horrible prospect of chemical weapons.

I will vote for the convention because I believe the United States is marginally better off with it than without it. It will provide new tools to press signatories for compliance. It will enable us to gain access to sites and information we are currently unable to examine.

Through the important and enlightening debate we have had over the past few months, I am convinced the convention will bring new focus and energy to this administration's nonproliferation efforts. We have certainly heightened the awareness and knowledge of the concerns we have. One year ago, few of us even knew about the Australia Group. Now we have committed ourselves and the administration to keeping the Australia Group as a viable tool to limit access to chemicals and technology.

Yes, the CWC may give legal cover to proliferators in Teheran or in Beijing. But they have undertaken such efforts in the past and no doubt will do it again in the future.

I believe our allies in Europe are more likely to join with us in isolating Iran if we are a party to this convention than if we reject it tonight. They have made it clear that they hope we will ratify it, whether it is Canada or whether it is Britain or our European allies or Japan.

I believe this convention will increase the cost of covert chemical weapons programs, and it will increase our chances of detecting such programs.

I think there is a long list of good reasons why we should do this today. I have struggled with it. I would like to take just a minute, if I can, to talk on a personal note.

Many people in the media have tended to say, well, you know, this is going to determine the fate of various and sundry Senators and tell a lot about leadership. It has been exaggerated.

I have talked to a lot of Senators one on one. Not one of them—not one of them—has said that they would vote on it on any basis other than what is best for our country.

The way the Senate works, we debate these issues—we read, we study, we argue, we go back and forth. We set up a fair process, and then we come to a conclusion. We make a decision. We vote on it. And I do not think it is fair to exaggerate any one Senator's role in this whole effort.

I think the Senate should be complimented today for the way it has handled this. I think that Madison, and others, placed their faith in this institution. And I think it has worked well.

The efforts of Senator HELMS and Senator KYL have been heroic. They have done a magnificent job. Others that have supported the convention have done their part, too.

I think that this process has helped the Senate as an institution to exercise the leadership assigned to it by the Constitution. And that, I submit, is the only real test of leadership that truly matters.

I urge the adoption and ratification of this treaty.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. We have a small difficulty which can be remedied in short order. Without going into a great deal of detail, we are trying to adjust the time back to have accommodated the majority leader and his remarks.

So I ask unanimous consent that—how much time did we agree to?

Mr. BIDEN. That the remaining time that the chairman have be 35 minutes, the remaining time under the control for the Senator from Delaware be 15 minutes, and I believe Senator LEAHY has 14 minutes anyway, and that be the remaining time on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. Who seeks time?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. How many minutes?

Mr. BURNS. Ten or less.

Mr. HELMS. Ten minutes.

Mr. BURNS. Or less.

Mr. HELMS. I yield 10 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 10 minutes.

Mr. BURNS. Mr. President, I thank Senator HELMS, the chairman of the Senate Foreign Relations Committee.

History has to be recorded that this has probably been the most ever-changing and cloudy situation that we have faced here in the U.S. Senate. Some in this body have changed their minds as they have tried to read the public opinion polls, and even some of those who have served in the administration have done the same—the history, as it was articulated here by the majority leader, of getting caught up in Presidential politics in 1996.

But basically what it was, it was most of us sitting down and reading the words and trying to make a decision based on what we think is best for our country. No matter the winds that blow in politics or in public opinion, this issue must be considered and decided on its merits. There is just too much at stake. The President has written a letter to the majority leader. If you will read the words real carefully, you could even say you could argue both sides of the issue on that letter alone.

But I rise today to express my opposition to this Chemical Weapons Convention treaty.

There are several reasons why I have chosen to oppose the treaty. Some would say that it is verifiable. I am not fully convinced of that, yet. Some would say that it does not hinder or break the Constitution. I think I would question that. When it comes to sovereignty of the United States, I would say that very much was in jeopardy. However, I will focus my concerns with article XI and my fears that this article will compromise both the United States and the citizens that live here.

Article XI of the Chemical Weapons Convention treaty prohibits countries from denying others access to dual-use chemicals—that means chemicals that can be used in any manner—processes, and technology. In effect, mandating access to and sharing of materials and the methods of making chemical weapons. By legitimizing commerce in dangerous, dual-use chemicals and processes the CWC will increase, not reduce, the ability of countries to acquire chemical weapons.

Second, Mr. President, article XI gives states the treaty right to:

> Facilitate and have the right to participate in, the fullest possible exchange of chemicals, equipment, and scientific and technical information relating to the development and the application of chemistry for [peaceful] purposes . . .

Have we not had enough experience over nuclear problems of this world, just with one country that is on this planet?

Third, transferring chemical-related technologies and material to members of the CWC such as Cuba, Iran, India, Pakistan, and China will help them establish and/or improve their chemical weapons programs. This is because there is very little difference between the legitimate commercial chemical processes and those processes used to make chemical weapons.

Article XI also legitimizes trade in dangerous dual-use chemicals. The treaty right will be used by countries such as China, India, and Russia to override Western objections to their provision of sensitive chemicals and production technologies to countries such as Iran. China and India already supply Iran with such chemicals, but the CWC will legitimize this trade and allow these countries to expand the volume of commerce conducted in dual-use chemicals.

Mr. President, I take a moment to focus on the fact that by ratifying this treaty, Iran will be permitted to have access to our chemical secrets, to have the ability to obtain chemical information from other rogue nations. If ratified, we are allowing a nation that we have confirmed, we have confirmed as a terrorist nation, one that is the primary suspect in numerous terrorist attacks against the United States, and one that calls for the destruction of this country to get more information, not less, on deadly chemicals.

How many in this body think that if allowed this information, Iran will, of its own accord, destroy these potentially deadly weapons and not use them against United States citizens around the world? I think that is a legitimate question. How many in this body really think that the United States will be in a more secure position? Finally, how can we in clear conscience give them this information when American men and women have been murdered by their actions?

Mr. President, for this reason, I cannot vote for the passage of this treaty.

I have heard all the reasons why we would be just a tiny bit better off being part of the convention. Well, this Senator thinks you have to be a bigger part. It falsely promises security to our Nation, and would betray those U.S. citizens who have died by the hand of terrorists. I urge my fellow colleagues to contemplate what I have stated here. I urge a ''no'' vote on ratification of this treaty. This is not an easy decision but is a decision where the majority of people who serve in this body have read and have made their decision on what is actually in it and not the emotion of the times. I urge them to read it and vote accordingly.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I yield to the Senator from Oklahoma.

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Jeff Severs be permitted privileges of the floor for the duration of the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 48

(Purpose: To strike condition no. 29, relating to Russian elimination of chemical weapons)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

> The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 48.
>
> Beginning on page 61, strike line 21 and all that follows through line 7 of page 63.

Mr. BIDEN. Mr. President, this amendment strikes condition 29. I will speak to this in a moment, but I yield as much time of the half-hour that I control as my friend from Indiana desires to discuss this.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, I thank the Chair and I thank the distinguished Senator from Delaware. The condition that we move to strike, condition 29, would prohibit the United States from ratifying the Chemical Weapons Convention until the President certifies that Russia has done the following:

> Ratified the CWC, complied with the 1990 bilateral destruction agreement, fulfilled its obligations under the 1989 Wyoming memorandum of understanding, and ceased all chemical weapons activities.

Mr. President, two arguments against this condition prevailed, at least on the last vote that we had. I cite the first important argument is simply that this is a killer amendment. Senators need to know that a vote to leave this in the convention effectively terminates the convention. Senators cannot have it both ways.

I simply indicate, in his very important statement, the majority leader, Senator LOTT, referencing a particular condition that he found appealing, indicated it was not a killer amendment. But, in fact, this one is a killer amendment. Therefore, there is a crucial reason to vote to strike it.

Second, Mr. President, once again we are talking about American leadership. It is in our interest, clearly, to get Russia's attention to the chemical weapons problem. We have decided unilaterally in this country that chemical weapons are not useful to us in our defense, largely because we cannot necessarily guard our own troops against the fallout and against the problems they create. So we are destroying them.

Russia always had greater stocks than we have. They still do. It has been in our interest to work with the Russians. In the Cooperative Threat Reduction Act, so-called Nunn-Lugar-Domenici Act, we have worked with the

Russians in a first instance to assist them in the techniques of destroying chemical weapons in Russia. There are seven very large sites that need to be dealt with. We are dealing now with the Russians at the first.

Mr. President, I speak today from a personal experience of last October when it was my privilege to accompany the then Secretary of Defense, William Perry, and my colleagues Senator Sam Nunn and Senator JOE LIEBERMAN, in a visit to Russia, specifically to the Defense Department of Russia and to military persons involved in weapons of mass destruction. Perhaps equally importantly, Mr. President, it was my privilege to go with my colleagues from America to the Russian Duma. On that particular day, our first attempt was to attempt to gain some understanding by members of the Duma about the importance of the START II treaty and its ratification. While we were there, we visited with the relevant committees comparable to our Foreign Relations and our Armed Services Committee about the Chemical Weapons Convention.

The Russians—in what we characterize as the Russian administration, the executive branch, and the legislative branch, the Duma—made identical points to us, that the START II treaty was coupled in consideration with the expansion of NATO. They said this is a political issue. These two are joined together.

With regard to the Chemical Weapons Convention, they made the clear distinction that it was not political, it was not involved with either NATO or START II or other arrangements. As a matter of fact, they perceived it was in the interests of Russia to ratify the treaty. They also pointed out that Russia has very little money, that at this particular point in history Russian taxes are not being paid with regularity. The soldiers are not being paid, or at least their paychecks are often delayed. As a result, they pointed out that arms control expenses were a very great problem for them. I think we understand that. That is not a sufficient reason for Russia to dodge its responsibilities. But it was a reason offered as to why they had postponed consideration.

In addition, Mr. President, they have postponed consideration because despite our leadership from the very beginning, our leadership to destroy our own chemical weapons, then to try to sign up all the nations of the world to destroy theirs, and to make this an international law project, the Russians read our press and they understood that we had had difficulty last December in ratifying this convention. So they simply were curious as to whether we were serious now. Well, we are, Mr. President. I simply say that the question that is before the Senate should not be delay or perhaps failure to ratify the treaty, because we are waiting on Russia. Our leadership is imperative. We are the country that is leading the world. We are the country that is leading Chemical Weapons Convention matters. Our citizens of the United States take that seriously. Mr. President, a large majority of Americans want us to act. They believe the U.S. Government ought to do everything possible, and they recognize, as do most Senators, that this convention is unlikely to get that job done very swiftly but they do recognize it is an advance, it is a constructive step. To offer as a reason why we would not proceed that we are waiting for Russia, or hoping that two agreements that are specified in the condition might somehow come to fulfillment is to miss the entire point of the leadership that is involved and the persuasion we must have.

Mr. President, I believe it is important, as soon as we ratify this convention, for the President of the United States to press on President Yeltsin his responsibility to gain ratification. At the Helsinki summit meeting recently, President Yeltsin assured our President he would offer that leadership. He assured our President he understood the responsibility of the Russians. He also asked our President to do his duty to help get the job done here. In fairness, our President has been fulfilling that responsibility, as did Senator Dole yesterday, as have President Bush and President Ford, as they have come forward as Presidents who understand, and as the majority leader understands. In his statement today, he mentioned one reason for voting for this treaty is the fact that two Republican administrations have made a commitment. An American word means something. Our leadership has continuity and staying power. It does not flip one way or another, depending upon Iraq or Russia.

Mr. President, I simply say, once again, American leadership is at stake. We are looking at a killer amendment. This condition must be struck. I ask Senators to vote aye when the roll is called.

I thank the Chair.

Mr. HELMS. Mr. President, before I plead on this amendment, I have been around this place for quite a while. Before I came to the Senate as a Senator, I had the honor of serving with two Senators as administrative assistant. Time after time, at the conclusion of long arduous debate and votes on various issues, a parting ''thank you'' is made to the staff people who did most of the work. I talked to Senator BIDEN and told him I want to do it now before we begin to sign off. He suggested that I go first.

Admiral Nance, sitting back there, with the white hair, that young man, he and I were boyhood friends back in Monroe. Adm. James W. Nance, the chief of staff of the Foreign Relations Committee; Tom Klein; Mark Theissen; Steve Biegun; Marshall Billingslea—particularly Marshall Billingslea—Colleen Noonan; Beth Wilson, and the rest of the Foreign Relations Committee staff.

Senator KYL has three remarkable young people: David Stephens, John Rood, and Jeanine Esperne. Senator CRAIG has Yvonne Bartoli and Jim Jatras.

I want to thank, in particular, some people from the outside who helped enormously in our trying to build a case to protect the American people from the extravagances of this treaty. But that is neither here nor there, but I want to thank those four great former Secretaries of Defense who came up—Dick Cheney; Cap Weinberger; Don Rumsfeld; James Schlesinger; the marvelous Jeane Kirkpatrick; Steve Forbes, who came down from New York; Richard Perle; Frank Gaffney; Doug Feith, and Fred Clay. I also want to include the retired flag and general officers.

I know that when I am driving home in a few hours from now, I will think of others. Just speaking for all of us, I want to thank them all. I know Senator BIDEN wants to do the same thing on his side.

I yield the floor.

Mr. BIDEN. Mr. President, I thank the chairman. I apologize because I may have to augment this. Although it is a very good idea to do it now, I was preparing to do it later, so I may leave somebody out, and I may amend this.

Let me begin by thanking a young man, who came over from my personal staff to the Foreign Relations Committee and I think maybe Mr. Billingslea may have thought he was his cousin, they spent so much time together in the last couple of months, and that is Puneet Talwar. He has done a great deal of the heavy lifting for me on this, along with Ed Levine, from the Intelligence Committee, who is now working with me. Ed Hall, the minority staff director; John Lis; the young man—well, he has been with me so long that he is getting old—Brian McKeon, who is counsel for the minority; Frank Januzzi; Dawn Ratliff; Kathi Taylor; Ursula McManus, who we kept up late at night writing memos and other things on our behalf; Casey Adams; Bill Ashworth, a former long-time staff member of the Foreign Relations Committee and Senator Pell's staff; David Schanzer, who worked with me on the Judiciary Committee; Mary Santos; Kimberly Burns; Jennette Murphy; Larry Stein; Randy DeValk; Sheila Murphy, all leadership staff persons who have worked with me.

I have left out some, but I will augment this with the staff members of the Intelligence Committee, the Appropriations Committee, the Judiciary Committee, and the Armed Services Committee. They all played major rolls.

The hearings that the distinguished chairman had on this treaty this time around were, I think, among the best hearings—even though I didn't always agree with the witnesses—that I have participated in in my 25 years. The cast of characters were the luminaries of previous administrations, as well as

this administration. We had the who's who of the foreign policy establishment, literally. These people were particularly helpful to me, which is going to sound strange. He was up in the gallery, but I am referring to General and former Ambassador Rowny, a close friend and, I think, neighbor of the chairman. I know he is much more philosophically compatible with the chairman than with me, but we found ourselves on the same side of this issue. Everybody wondered why Bob Dole changed his mind—not changed his mind, but why Bob Dole concluded that the conditions that were added to the treaty sufficiently corrected its defects. It is my understanding that General Rowny bumped into Bob Dole in a coffee shop at the Watergate Hotel. I can see the distinguished Senator from Arizona wishing he had been at that coffee shop. But there was Gen. Brent Scowcroft, one of the most respected people in this town, Adm. Elmo Zumwalt; John Deutch; Fred Webber and his staff at the Chemical Manufacturers Association; Gen. Colin Powell; Amy Smithson of the Stimson Center; John Isaacs; Brad Roberts, Institute for Defense Analysis; Barry Kellman, DePaul Law School; Ron Lehman of the Reagan and Bush administrations. I am leaving a number of people out who I will add later.

I thank them all for contributing to this debate. I want to make a personal thanks, if I may, Mr. Chairman and Mr. President, to one of the most competent staff people I have ever dealt with in the administration, Bob Bell, who works for Sandy Berger and who also, I think, did an incredibly good job here, and Lori Murray, also of that staff. Bob Bell is a walking encyclopedia, who negotiated with the Lott committee. He is a man who has the ability to understand very complex notions and put them into language everybody can understand. He has done an admirable job. There are other people to thank.

Mr. LUGAR. Will the Senator yield?

Mr. BIDEN. Yes.

Mr. LUGAR. I would like to ask if he would include Kenneth Myers and Kenny Myers, on my staff and the staff of the Intelligence Committee, who have been invaluable.

Mr. BIDEN. The answer is I would absolutely like to do that. The statement I was going to introduce has a paragraph about that.

I express my deep appreciation to Senator LUGAR, with whom I have talked every day for the past few months as we have tried to move the ball forward in this treaty. He was very committed. He is truly the Senate's leading expert on the treaty and, I think, one of the leading experts in this country on foreign policy. We would not have gotten this far without his efforts. Perhaps the reason he is as good as he is that he has a father and son team working for him, Kenneth and Kenny Myers. I envy Ken Myers, Senator LUGAR's long-time staff aide, because he gets to work with his son, Kenny Myers, every day. The only thing I found, Mr. Chairman, in my meetings with them is that, like with my sons, I occasionally observe that the son knew more than the father. So my compliments to both of them.

The bottom line of all this—and I assume this was one of the intentions of the Senator from North Carolina, the chairman—is that regardless of the final outcome of each of these remaining amendments and the treaty, this has been done fairly and honorably. Everyone has kept their word. We said we would negotiate in good faith; we both did. All of the staff members involved acted in the same way.

Lastly—and I hope this doesn't come out the wrong way—I want to thank the chairman of the full committee for the honorable way in which he has dealt with this entire matter. I mean that sincerely.

I yield the floor.

Mr. HELMS. I thank the Senator. I will add two things. One, I hope Bob Dole stays out of those coffee shops from now on. I am going to see if the distinguished ranking member would mention probably the most prominent player in this game. He didn't, but I will, because I had the honor of escorting her to North Carolina—the new Secretary of State, Madeleine Albright. I don't always agree with her, nor she with me. But she is a great lady and she is doing a good job for this country. I thank her.

Mr. President, one of the many fine people who contributed to the Chemical Weapons Convention is no longer among us. Mrs. Sherry Stetson Mannix, a retired U.S. Air Force lieutenant colonel, joined the U.S. Arms Control and Disarmament Agency in 1984 and became its top expert on chemical weapons. She helped negotiate the treaty, and then she became a resource person for Members and staff of the Senate as we began to consider whether to give our advice and consent to ratification.

Lieutenant Colonel Mannix was dying of cancer in 1994, when the Foreign Relations and Intelligence Committees first held hearings on the CWC. Despite being in terrible pain, Lieutenant Colonel Mannix faithfully and effectively managed the process of responding to our committees' questions for the Record.

Sherry Mannix was only 44 years old when she died in early 1995. She had hoped to live long enough to see this convention ratified. We were unable, Mr. President, to grant that last wish. But Sherry Mannix kept faith with us, with her comrades in the U.S. Armed Forces, and with her country. Now we have the opportunity to keep faith with her, and with all our military personnel who long for ratification of this convention as a step toward curbing the menace of chemical weapons.

Mr. HELMS. What is the pending business, Mr. President?

The PRESIDING OFFICER. The amendment offered by the Senator from Delaware.

Mr. HELMS. Which is?

The PRESIDING OFFICER. No. 48.

Mr. HELMS. I yield to the distinguished Senator from Arizona [Mr. KYL] for whatever time he may require.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will, at a later time, join in thanking the various staff and other people who have been so useful in ensuring a good debate. I think the Senate has gotten very serious about this matter. As the majority leader said earlier, as a result of the application of various Members of the Senate, a great deal of progress has been made in trying to bring the sides closer together in getting a treaty that, if it is entered into, will be more in the interest of the United States than as originally submitted.

There are a couple of conditions, however, in the resolution of ratification which we believe ought to be a part of this treaty before the President submits those articles for ratification, signifying the U.S. entry into the treaty. One of the most important is the one before us at this moment. There is a motion to strike this condition from the resolution of ratification. We believe that this condition should remain. As the majority leader earlier said, he believes this condition should remain. Here is what it provides: Prior to depositing the U.S. instrument of ratification, the President must certify four things: First, that Russia is making reasonable progress on implementing the 1990 bilateral destruction agreement entered into between the United States and Russia. Second, that outstanding compliance related to the 1989 Wyoming memorandum of understanding have been resolved to U.S. satisfaction. Third, that Russia has deposited its articles of ratification of the conventional weapons agreement. Fourth, that it is committed to foregoing any weapons development.

Those are four important conditions, if our partner, Russia, and the United States are to effectively utilize the Chemical Weapons Convention. The reason is, first of all, because Russia is the world's largest possessor of chemical weapons. It has anywhere from 60 to 70 percent of the world's chemical stocks. For the Chemical Weapons Convention to be global, in the sense that it covers the weapons, and to be effective, it should involve the country with the largest inventory of chemical weapons.

Now, Russia has signed the Chemical Weapons Convention, but has indicated that it will not ratify, at least at this time and, as a matter of fact, in a communication to the Vice President of the United States, one of the Russian leaders, Chernomyrdin, said, in effect, that Russia would prefer that the two parties, if they are going to come into the treaty, come in at the same time rather than one preceding the other, -

and, therefore, said that it would be integral to Russian entry that the United States entered first, which is what we are about to do.

I think these four commitments by Russia are integral to the success of the Chemical Weapons Convention if we are to have a truly global ban. That is why this condition 29 should remain a part of the resolution of ratification.

Quickly, to the four points: First, reasonable progress in implementing the 1990 Bilateral Destruction Agreement. Reasonable progress simply means that we are continuing to work on complying with it. That is what the Russians agreed to do when they entered into this agreement in June 1990. This is an agreement between President Bush and President Gorbachev.

By the way, when proponents of this treaty speak of it as a Reagan-Bush-Clinton treaty, I point out the fact that the treaty was different in the Reagan and early Bush years than it is now. One of the underpinnings of the treaty was that this bilateral destruction agreement between Russia and the United States would be in place and would be enforced and would be complied with by the two parties. This agreement was designed specifically to ban the production of chemical weapons, their agents, the destruction of chemical weapons agents, to provide for onsite inspections of CW facilities, and require data declarations.

The Bilateral Destruction Agreement is central to the CWC before us today. Without it the Chemical Weapons Convention is a much weaker treaty than it would otherwise be. The CWC was negotiated with the assumption that the United States and Russia would both destroy and verify destruction of their stockpiles under the Bilateral Destruction Agreement. But Russia has not implemented the Bilateral Destruction Agreement, and it appears that it has no intention of doing so.

Russian Prime Minister Chernomyrdin, in this letter to Vice President GORE that I mentioned before, essentially stated that the Bilateral Destruction Agreement and the 1989 Wyoming Memorandum of Understanding have outlived their usefulness insofar as Russia is concerned.

The Chemical Weapons Convention before us today is no substitute for the Bilateral Destruction Agreement. Under the Bilateral Destruction Agreement, the inspectors of Russian facilities would not be international inspectors. They would be U.S. professional inspectors, and there would be more frequent inspections. The United States would have guaranteed access to data declarations, none of which would be the case under the CWC.

So it is important that Russia at least indicate to us that it is making reasonable progress to implement the BDA before we enter into force CWC.

Second, the resolution says there should be compliance with the 1989 Wyoming Memorandum of Understanding. Without getting into a lot of detail, I will simply note that this memorandum of understanding was essentially an agreement between the two states that we would exchange data on how much chemical weapons we had and to provide the information on the status for binary weapons programs.

To comply with this declaration, the United States has given information to the Russians. Russia declared a 40,000 metric ton agent stockpile. However, present reports and other information allege that the Defense Intelligence Agency estimates that the former Soviet—now Russian—stockpile could be as large as 75,000 tons. Russia has refused to provide information on the status of its binary weapons program. And, according to the former Director of Central Intelligence Jim Woolsey, ''The data we have received from Russia makes no reference to binary chemical weapons or agents. That is contrary to our understanding of the program that was initiated in the former Soviet Union.''

There are additional indications of activity on the part of the Russians, all of which suggest that they are not in compliance with this 1989 memorandum of understanding.

Our second point in this condition is getting compliance with that.

Third, we want the Russians to ratify this treaty at the same time that we do. That is what they want to do. We believe that will be a preferable course of action to the United States entering into the treaty causing the Russians to be concerned that we would set up the rules of the treaty, in effect, in a way that would be amicable to their interests, thus perhaps causing them never to enter into the treaty.

A CWC without Russia, furthermore, means that over 50 percent of the world's known chemical weapons stockpile will be outside of the treaty regime. Should the United States ratify the CWC absent Russian participation or the involvement of other states that have weapons, the treaty's intrusive verification schemes would, for all intents and purposes, be focused solely on the United States, the only nation likely to declare integral weapons inventory. In effect, we would be paying 25 percent of the cost of the treaty to verify our own compliance.

Finally, Russian commitment to forego a chemical weapons capability. This is central to the meaning of the CWC. If Russia is not willing to do this, obviously their intentions are not to comply with CWC.

We have evidence of the so-called Novichok class of nerve agents that is more lethal than any other known chemical agent in the world.

According to Jane's Land-Based Air Defense 1997–98, Russia is developing three new nerve agents, two of which are eight times as deadly as the VX nerve agent stockpiled by Iraq.

Mr. President, Russia's new chemical agents do not depend on stockpiles that are on the CWC list of scheduled chemicals, according to sources. Thus, inspectors will neither be prepared nor allowed to look for them, nor will Russia be precluded from importing these components. A declassified portion of a May 1995 national intelligence estimate states ''Production of new binary agents would be difficult to detect and confirm as a CWC-prohibited activity.''

In conclusion, in light of these ongoing activities and related United States intelligence estimates, it is reasonable to condition United States ratification of the CWC to the President certifying that Russia is committed to foregoing chemical weapons capability or other activity contrary to the purpose of the convention weapons treaty.

For those reasons, Mr. President, I join the distinguished majority leader and the chairman of the Foreign Relations Committee in urging that we not strike this condition from the resolution of ratification.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, parliamentary inquiry: How much time is under the control of the Senator from Delaware?

The PRESIDING OFFICER. Seventeen minutes.

Mr. BIDEN. I yield 5 minutes to the distinguished Senator from Michigan. Next, I will let people know that I understand Senator INHOFE is going to speak in opposition to this motion to strike. Then I would like to yield, just to let people know, 5 minutes to the distinguished Senator from Virginia.

That is for informational purposes. I am not asking UC.

I now yield 5 minutes to the Senator from Michigan.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, it isn't always that our top military officials so strongly and jointly agree that an arms control treaty is in our national security interest. But in the case of the chemical weapons treaty before the Senate today, that strong support has been expressed over and over and over again.

The Chairman of the Joint Chiefs, General Shalikashvili, speaking on behalf of the Chiefs of each of the services and the combatant commanders, urged the Senate to ratify this treaty because it would make it less likely that our troops will face chemical weapons. Their position is not based on politics or public opinion polls; it is based on their military judgment.

The acting head of Central Intelligence, George Tenet, has said that this treaty will give us additional tools to inspect for chemical weapons that we otherwise would not have.

The United States, under former President Bush, led the way to the negotiation of this treaty. It would represent a tragic blow to American leadership were the Senate to reject a treaty negotiated and supported by three Presidents. If we don't lead the way, if and when the day comes that we must act militarily to eliminate a country's chemical weapons, the credibility of and support for, that effort will be undermined by our lack of clean hands and our refusal to ratify a treaty that makes it less likely those weapons will be created to begin with.

The CWC destroys stockpiles that could threaten our troops; it significantly improves our intelligence capabilities, and it creates new international sanctions to punish those states that remain outside of the treaty. If we fail to ratify the convention, we will imperil our leadership in the entire area of nonproliferation, perhaps the most vital security issue of the post-cold-war era.

Relative to condition 29 that is before us, there is a motion to strike this condition that has been made by the Senator from Indiana. It is based on many grounds. But the first ground that he points out, which seems to me is the foremost ground even before we get to the details of this condition, is that this condition is a killer condition. If this condition stays in this resolution, it kills this ratification resolution because it makes it conditional on somebody else ratifying.

Do we want to make our ratification conditional upon these other events? Do we want to give Russia the power to decide our participation in the leadership of this crucial treaty? The President has said—I am here quoting him—''This is precisely backwards. The best way to secure Russian ratification is to ratify the treaty ourselves. Failure to do so will not only give hard-liners in Russia an excuse to hold out but also to hold onto their chemical weapons.''

Do we want Russia to ratify? Clearly we do. General Shalikashvili, who has so strongly supported the ratification of this treaty, has testified before us in the Armed Services Committee as follows: ''The most significant advantage derived from the convention is the potential elimination of chemical weapons by state parties.'' He went on to say, ''Eventual destruction of approximately 40,000 tons of declared Russian chemical weapons will significantly reduce the global chemical threat.''

That is why General Shalikashvili has said, among other reasons, that the ratification of this treaty will make it less likely that our troops would ever face chemical weapons because the largest declared stockpile by Russia must be destroyed under this treaty. General Shalikashvili, Chairman of our Joint Chiefs, speaking for each of the chiefs and our combatant commanders, says that destruction of 40,000 tons of declared chemical weapons by Russia is the most significant advantage to this treaty.

What does our ratification have to do with Russian ratification? I would suggest here that we listen to a number of voices. But one of them is a Russian voice—a Russian scientist who blew the whistle actually on the Soviet Union chemical weapons program. His name is Vil Myrzyanov. He is a high-level Russian scientist. This is what he said about the relationship in a letter that he wrote to Senator LUGAR. ''Senate ratification of the convention is crucial to securing action on the treaty in Moscow.''

Our ratification, he is telling us—this is an inside voice—is critical to getting the Duma to ratify this treaty. And getting the Duma to ratify this treaty is, in the eyes of General Shalikashvili, the single most important advantage of the treaty because then 40,000 declared tons of chemical agents, the largest stockpile in the world, will be destroyed and less available for leakage, less available to any potential sale or disposition to others adversely or inadvertently.

So our leadership is important to a safer world. This is a treaty that we helped to draft, negotiated, and now it is before us to ratify. But our leadership is also important to ratification of this treaty inside of Russia.

The decision of whether the United States ratifies this convention is for this body, the United States Senate to decide—not the Russian Duma. We should strike this killer condition.

The purpose of both the Bilateral Destruction Agreement and the Wyoming MOU was to help make progress towards achieving a CWC.

Now that we have the CWC complete, the BDA and the Wyoming MOU are less relevant. We can enter the CWC without the BDA being implemented.

The BDA does not go as far as the CWC. BDA would permit both sides to keep 5,000 tons of chemical agent. The BDA does not permit challenge inspections.

The CWC requires complete destruction of all chemical weapons, and provides for challenge inspections to any facility suspected of a violating suspected of violating the CWC.

If the CWC is ratified by the United States—which this killer condition would prohibit—and by Russia—it is entirely possible that the United States and Russia can finish negotiations on the BDA and let it enter into force.

If the United States does not ratify this convention, there is little chance Russia will ratify it and there is no chance for this BDA ever entering into force.

If we want Russia to ratify the CWC—and surely we must—then we should ratify the CWC—which, in turn requires us to strike this condition.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

Mr. President, I am going to abbreviate my statement in the interest of time, hoping that we can help Senators get out a little bit earlier, including the distinguished occupant of the Chair.

Mr. President, this condition is very important. It forbids the deposit of the United States instrument of ratification until Russia has made significant progress in implementing the 1990 Bilateral Destruction Agreement and has resolved concerns over its incomplete data declarations under the Wyoming memorandum of understanding, ratified the convention and has committed to forgo the clandestine maintenance of chemical weapons production capability.

That sounds like a lot but more than anything else it is a measurement of how Russia is playing games in terms of not doing things to live up to its agreement.

I have the highest hope that Russia one day will have a free enterprise economy and all the rest of it, but such commitments by Russia are absolutely imperative and essential to the success of this CWC, this treaty, in securing a truly global ban on possession and use of chemical weapons. If Russia continues to drag its feet, this convention will be worth almost nothing. And for my part, as one Senator, I am extremely concerned that Russia, the country that possesses the largest and the most sophisticated chemical weapons arsenal in the world, has refused consistently to agree to implement its commitments to eliminate its chemical weapons stockpile despite the 1990 United States-Russian Bilateral Destruction Agreement.

Now, put any face on it you want, but if Russia fails to do that, then Russia is telling this Senate, this Government, the American people, we don't care what you want; we are going our way. And that is a pretty dangerous position for Russia to take in terms of world peace.

This coupled with the Russian withdrawal from the BDA and the Russian Parliament rejection of the chemical weapons destruction plan portend ominous things to come in terms of Russia's ratification of this treaty.

Now, I hope Senators are aware, and if they are not aware, that they will become aware, that Russia is by far and away the world's largest possessor of chemical weapons. If the United States in eliminating its own chemical stockpile could assure that Russia also destroyed its stockpile through the Bilateral Destruction Agreement, 99 percent of the world's chemical arsenal would be eliminated independently of this treaty. So that gives you some idea of the enormity of this situation which has been passed over and over and over. I think enough is enough.

Now, of course, Russia has signed the CWC but it has not ratified this treaty. Evidence has come to light recently, by the way, suggesting that Russia may not pursue ratification of this treaty in the near term and does not intend to abide by the CWC even if it ratifies it.

I just want Senators to understand what they are doing. It is all very well

and good to succumb to the imaginative suggestion that we are doing something about chemical weapons when we pass this treaty. We are not. It is not going to do one bit of good until the United States is able to persuade some other people to do things that they have already agreed to do. So the danger is how the American people are being misled by those who have endorsed this treaty into believing that something is being done about chemical weaponry.

I hope, if we do nothing else in our opposition to this treaty, we can make the American people aware that nothing is being done for their safety by this treaty. I wish it were different. I wish I did not have to stand here and say this. But those are the facts. This treaty is absolutely useless in terms of giving the American people any security at all.

According to a May 6, 1996, letter from the DIA, the Defense Intelligence Agency, to the chairman of the Senate Select Committee on Intelligence:

There are several factors affecting Russia's actions regarding its CW programs and arms control commitments. Russian officials probably believe they need a CW capability to deter other nations from chemical warfare. They cite a potential threat from purported CW programs in the United States, other Western nations, and several countries on or near Russia's borders.

Now, the DIA continued:

In addition, Russian officials believe that dismantling the CW program would waste resources and rob them of valuable production assets. They maintain that the CW production facilities should not be destroyed but be used to produce commercial products.

Well, la-de-da. Every nation that has some ulterior motives with chemical weapons can say the same thing.

Moreover, these officials do not want to see their life's work destroyed, their jobs eliminated, and their influence diminished.

And here we are probably going to ratify this treaty in spite of the great concern about the views of Russia's senior military leadership on the Chemical Weapons Convention and on the elimination of Russia's chemical warfare capability in general.

On numerous instances, the United States has received indications that key elements within the Russian Government staunchly oppose the CWC. Back in 1994, October 25, Dr. Lev Fyodorov—I never met him, do not know how to pronounce his name—head of the Union for Chemical Security, told Interfax news service that key officers from the Russian Ministry of Defense had spoken against the treaty during the Russian Duma defense committee's closed hearings on October 11 1994.

Now, my concerns about the two Russian generals responsible for Russia's chemical warfare elimination program have been well documented in a series of letters to President Clinton, and I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, October 25, 1995.

The PRESIDENT,
The White House
Washington, D.C.

DEAR MR. PRESIDENT: I take no offense at your declaration to the effect that I am irresponsibly delaying consideration of the Chemical Weapons Convention. Both of us know that this is not so. Moreover, the CWC is a treaty which in my view must not be seriously considered by Congress unless and until the issue of verification can be resolved.

There is no disagreement that the production stockpiling and use of chemical and biological weapons is inherently abhorrent, and especially by rogue regimes. Yours is the second Administration with which I have raised compelling questions about verification, Russian compliance, Russian binary weapons programs—and the cost of the Chemical Weapons Convention.

If and when we receive satisfactory answers to these concerns, there would be a substantial increase in the probability of this treaty's being reported out of the Foreign Relations Committee for formal consideration by the Senate.

I was astounded to learn, as surely you were, that the former Chairman of the [Russian] President's Committee on Conventional Problems of Chemical and Biological Weapons, Lieutenant General Anatoliy Kuntsevich, is now under the house arrest for his having delivered 1,800 pounds of military chemicals to terrorists in the Middle East in 1993. What's more, the Russian intelligence service asserts that General Kuntsevich attempted to sell 5 tons of military chemicals to the same buyers a year later, in 1994. He was caught in the act.

Needless to say, the arrest of this key Russian negotiator of the Chemical Weapons Convention on trafficking charges—for dealing in the very same chemical agents he was supposedly trying to control—calls into question the integrity of every provision of the Chemical Weapons Convention. It certainly lends credibility to concerns about he trustworthiness of Russian declarations regarding its own current chemical and biological programs, its stockpiles, and the sincerity of the Russians' willingness, and ability, to abide by the CWC and other agreements.

General Kuntsevich's role in chemical weapons dates to the 1980s. As Deputy Commander of Soviet Chemical Forces, he was honored as a hero of Socialist Labor in 1981. In 1988, he became a member of the Soviet delegation to the United Nations Conference on Disarmament, which negotiated the CWC. In 1991, he received the Lenin Prize for his work on binary chemical weapons. Through his many years as a negotiator for the Soviet/Russian governments, Kuntsevich won a number of concessions on the Chemical Weapons Convention and follow-on provisions to the Bilateral Destruction Agreement. Moreover, he was responsible for Russia's dubious declarations under the Wyoming Memorandum of Understanding.

While General Kuntsevich is said to have been removed by President Yeltsin in April 1994, concern remains that the General may have conspired to negotiate significant loopholes in the agreements with the obvious intent of enabling him and others to engage in chemical trafficking with impunity—and possibly to permit Russia to evade its obligations.

I respectfully request a thorough analysis of the negotiating record of the CWC and the Bilateral Destruction Agreement in order to review the role of General Kuntsevich in securing various provisions and concessions. I regard this analysis to be essential to any credible review.

Furthermore, I need to know General Kuntsevich's role in the provision of questionable data declarations under the Wyoming Memorandum. Has he been allowed to retain contacts with the Yeltsin government since his removal?

There are three other questions, Mr. President, that simply must be answered:

(1) When did the U.S. government learn of General Kuntsevich's role in trafficking chemical weapons and other corrupt practices?

(2) Were you aware of his activities, and his arrest, while you were urging the Congress to move forward on the ratification of the CWC?

(3) If General Kuntsevich has been under house arrest since April 1994, what could explain the timing of the Russian government's revelations regarding his activities?

The Russian government should be urged to accelerate and complete its investigation of General Kuntsevich. I do hope you will obtain from the Russian government a full accounting of precisely what was sold and to whom, and how Russian export controls were circumvented. Additionally, what precautions, if any, have been taken to prevent such future incidents from occurring?

Obviously, unless and until these concerns and those raised previously have been addressed, it would not be fair to the security and safety of the American people even to consider moving the Chemical Weapons Convention out of Committee.

Respectfully,

JESSE HELMS.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, October 30, 1995.

DEAR COLLEAGUE: I am confident that you were astonished, as I was, that Russia's former chief negotiator for the Chemical Weapons Convention is now under house arrest for trafficking in the very military chemicals he purportedly was seeking to control. Apparently, General Kuntsevich in 1993 sold 1,800 pounds of chemical agents to terrorists in the Middle East. He was caught attempting to sell another 5 tons a year later.

Many of us have consistently raised concerns regarding the verifiability and enforceability of the Chemical Weapons Convention. This most recent incident makes it demonstrable that the CWC, even had it been in effect, would have been helpless to interdict illicit trade in chemicals. (General Kuntsevich is alleged to have transferred chemicals not listed in the chemicals annex of the CWC, and those chemicals went to a country that was not even a signatory to the Convention. He was caught red-handed by traditional, national law enforcement means, not by some global policing mechanism.)

Furthermore, had General Kuntsevich not been caught, it is conceivable that he and/or his cronies may have worked their way into

the administrative body of the CWC, and would then have access to a plethora of information regarding the chemical programs of all signatories, and forewarning of all short-notice inspections to be conducted under the Convention.

The attached letter that I sent to President Clinton underscores my concerns arising from the arrest of General Kuntsevich. Given Kuntsevich's influence over the negotiating process of the CWC, and his responsibility for overseeing the destruction of his own personal empire under the U.S.-Russian Bilateral Destruction Agreement, I have requested a thorough review of the negotiating record of both agreements.

I bring this new incident to your attention as the Senate continues its discussion of issues surrounding the Chemical Weapons Convention. General Kuntsevich's activities and arrest highlight the many legitimate concerns we all share regarding how best to guard against the threat that chemical weapons pose to our nation's security.

Respectfully,

JESSE HELMS.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, June 21, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I was gratified to note your Administration's decision to impose sanctions against Lieutenant General Anatoliy Kuntsevich, former Chairman of the [Russian] President's Committee on Conventional Problems of Chemical and Biological Weapons. (I had written to you on October 25, 1995 regarding his having been arrested on charges of selling military chemicals to Middle East terrorists.)

Disturbing information about General Kuntsevich's activities prompted my concerns about whether the U.S. can believe Russian declarations regarding: (1) its current chemical and biological programs and stockpiles; (2) its willingness to abide by the 1990 U.S.-Russian Bilateral Destruction Agreement (BDA); and (3) its intent to ratify the Chemical Weapons Convention.

General Kuntsevich was, after all, one of the most senior officers in Russia's chemical weapons program. Indeed, in 1994 it was he who signed, in conjunction with Colonel General S.V. Petrov, the U.S.-Russian work plan for the destruction of Russia's chemical weapons.

At that time, your National Security Advisor assured me that General Kuntsevich was acting independently of the Russian government. I was also told that his actions in no way called into question the willingness of Russia to abide by its commitments to eliminate its stockpile of chemical weapons. However, it subsequently came to my attention that yet another high-ranking Russian general, General Petrov, has openly alluded to the desirability of maintaining a chemical weapons capability. General Petrov, the other signatory to the 1994 Work Plan, expressed his views in the November-December 1994 edition of the official Russian Military Journal, Military Thought. Such a belief, stated publicly by a key Russian officer, prompts concern that key elements within the Russian government may not even intend to implement the BDA, ratify the CWC—or abide by either agreement.

Most troubling to me, however, are rumors that have begun to circulate that Russia no longer favors implementation of the six-year old Bilateral Destruction Agreement. I further understand that Russia will not seek to ratify the Chemical Weapons Convention in the near future, and that the United States has been told to delay its own ratification indefinitely—or risk the possibility that Russia will never ratify the CWC.

I am concerned that nearly a month has elapsed and the Senate Foreign Relations Committee has yet to be notified of such an ominous change in Russian policy towards the destruction of its chemical arsenal.

Accordingly, I respectfully request immediate declassification of any documents or cables pertaining to the aforementioned issues, including cable number 607329 dispatched from Bonn on May 21, 1996, and their being provided to the Committee. I also respectfully request detailed, and unclassified responses to the following questions:

(1) Has the intelligence community conducted any assessment identifying Russian officials believed to oppose dismantlement of Russia's chemical weapons stockpile, or who oppose Russian ratification of the CWC? Please declassify these reports provide them to the Committee.

(2) The Central Intelligence Agency stated in a report in March, 1995, that ''some CW-capable countries that have signed the CWC show no signs of ending their programs.'' Does the intelligence community believe that Russia intends to forgo all aspects of its chemical weapons program?

(3) Is it the case that Russia has not yet constructed even a pilot chemical weapons destruction facility? Is it also true that the Shchuch'ye Implementation Plan exists only on paper, and that the plan does not yet even include such rudimentary components as baseline data, engineering survey data, or a site feasibility study? How many years will finalization of these critical elements of the Russian destruction program take?

(4) On June 23, 1994, the then-Director of Central Intelligence, R. James Woolsey, stated that the U.S. had ''serious concerns over apparent incompleteness, inconsistency and contradictory aspects of the data'' provided to the United States by Russia regarding its chemical weapons program. How will Russian withdrawal from the BDA affect U.S. efforts to resolve questions regarding ''contradictions'' in Russia's declarations about its chemical weapons stockpile? Is the Administration prepared to challenge immediately the veracity of Russian reporting under the CWC if Russia provides data which mirrors that provided to the United States under the 1989 Wyoming Memorandum of Understanding?

(5) Dr. Vil Mirzayanov, former chief of counterintelligence at the State Union Scientific Research Institute for Organic Chemistry and Technology, has alleged that Russia has produced a new class of binary nerve agents five to eight times more lethal than any other known chemical agent, and that work may be continuing on these chemical weapons. Is the Administration satisfied that the Russian Federation has indeed ceased the development and/or production of all offensive chemical weapons agents?

I will appreciate your assistance in resolving these questions which concern issues which so directly impact on the national security of the United States.

Respectfully,

JESSE HELMS.

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, July 26, 1996.

The PRESIDENT,
The White House
Washington, DC.

DEAR MR. PRESIDENT: When I wrote to you on June 21 regarding perhaps the most significant, ominous shift in Russian arms control policy since the end of the Cold War, I respectfully requested, among other things, information from the Administration concerning reports that Russia will not implement the six-year old U.S.-Russian Bilateral Destruction Agreement (BDA) or pursue ratification of the CWC in the near future.

Mr. President, since writing to you, my concerns as to whether Russia intends to implement the BDA and ratify the CWC have been confirmed beyond peradventure. To be specific: Russian Prime Minister Chernomyrdin wrote to Vice President Gore on July 8, stating officially that both the BDA and the Wyoming Memorandum of Understanding (MOU) have outlived their usefulness to Russia. Moreover, it has been established that Prime Minister Chernomyrdin (1) linked Russian ratification of the CWC to U.S. agreement to a Joint Statement linking ratification by the United States to Russian ratification, (2) stated that the American taxpayers must pay the cost of the Russian destruction program, and (3) linked ratification to U.S. acquiescence to Russia's position on conversion of its chemical weapons facilities.

Even more disturbing is the report that the Prime Minister declared that if the CWC enters into force without Russia, it will be impossible for Russia ever to ratify the treaty.

Mr. President, the Russian Federation appears to anticipate that due to intense U.S. diplomatic lobbying the CWC may enter into force this summer. I am concerned that U.S. efforts at inducing nations to ratify the treaty, and bring it into force before the views of the United States Senate have been expressed on the CWC, have virtually ensured that neither the United States nor Russia will have a hand in finalizing the 37 uncompleted implementation procedures of the treaty. Once 65 countries have ratified, all manner of detailed guidelines affecting the CWC's verification regime, ranging from the conduct of inspections to the safeguarding of samples transferred for analysis offsite, will be finalized rapidly.

Prime Minister Chernomyrdin's letter was clear: ''Speaking candidly,'' he wrote ''I shall say that the Convention's entry into force without Russia would hamper its ratification with us.'' On July 22, 1996, the Russian delegation in The Hague repeated this position, stating that ''the entry into force of the Convention without Russia, to be perfectly candid, would hamper its ratification in our country.''

Since Russia is bound to know that the treaty will enter into force without Russia's participation, is it not evident that Russia is preparing a diplomatic exit strategy from the CWC?

The Senate needs to be informed by the Administration precisely how Russian withdrawal from the BDA and the Wyoming MOU will affect U.S. efforts to resolve questions concerning Russia's various declarations about its chemical weapons stockpile.

The Director of Central Intelligence, James Woolsey, testified on June 23, 1994, that the U.S. had ''serious concerns over apparent incompleteness, inconsistency and contradictory aspects of the data'' submitted by Russia under the Wyoming MOU.

So, Mr. President, if Russia is now refusing to answer any more questions about the size of its chemical weapons stockpile or its binary weapons program (which it has failed to mention at all), does this not cast doubt as to whether Russia will ever fully disclose its chemical weapons activities? Is the Administration prepared to challenge immediately the veracity of Russian reporting under the CWC if Russia provides data which mirrors that provided to the United States under the Wyoming MOU?

Additionally, given that the bilateral inspection regime (under the BDA) was to have substituted for multilateral inspections under the CWC, does Russian withdrawal

from the BDA lower the intelligence community's already poor level of confidence in its ability to monitor Russian treaty compliance?

Mr. President, I respectfully reiterate my request for detailed, and unclassified responses to the questions I asked of you on June 21, 1996. I also will appreciate your providing to the Committee:

(1) the Chernomyrdin letter of July 8, 1996, which I understand must be unclassified since it was transmitted by facsimile around Washington on unsecured lines;

(2) all assessments by the intelligence community discussing the views of Prime Minister Chernomyrdin towards the BDA, the CWC, and any assessments as to whether he favors complete elimination of Russia's chemical weapons arsenal;

(3) the draft Joint Statement and all relevant documents supplied by Russia to Vice President Gore prior to the President's Moscow Summit;

(4) a detailed assessment of discrepancies in Russia's Wyoming MOU data and the results of any bilateral discussions regarding those discrepancies;

(5) a detailed assessment by the intelligence community of the impact that nonimplementation of the BDA and Wyoming MOU will have upon the U.S. ability to monitor Russian compliance with the CWC;

(6) a detailed estimate of the additional cost to the United States of implementing the CWC without the BDA in place;

(7) an estimate of the total cost of destroying Russia's chemical weapons stockpile; and

(8) all documents relating to any discussions with or assurances made to Russia by the Administration regarding U.S. assistance to the Russian destruction program.

In closing, Mr. President, I should note for the record that the unanimous consent agreement in the Senate (to proceed to consideration of the CWC on or before September 14, 1996) is predicated entirely upon the administration's providing ''such facts and documents as requested by the Chairman and ranking minority member of the Foreign Relations Committee.''

I hope we can work together on this matter. I will appreciate your assistance in resolving these questions concerning issues which so directly impact on the national security of the United States and the American people.

Respectfully,

JESSE HELMS.

Mr. HELMS. Mr. President, we are all aware of how the administration has refused, refused to provide the Senate, despite my repeated requests, my repeated entreaties to them, to give us an updated assessment of the Russian position regarding the BDA and the CWC.

Russian Prime Minister Chernomyrdin wrote to Vice President GORE on July 8, 1996 stating that both the BDA and the 1989 Wyoming memorandum of understanding have outlived their usefulness to Russia, don't you see. Moreover, the Prime Minister, one, tied Russian ratification of this treaty, the CWC, to United States agreement to a joint statement linking ratification by the United States to Russian ratification; two, stated that the American taxpayers—get this—the American taxpayers must pay the cost of the Russian destruction program; and three, he linked ratification to United States acquiescence to Russia's position on conversion of its chemical weapons facilities. The shift in Russian arms control policy, you see, will have important ramifications.

First, the minimalist approaches taken by Russia in its data declaration on the Wyoming memorandum of understanding will go unresolved. Russia has stated that the total size of its stockpiled chemical weapons is equivalent to 40,000 tons of agent. This declaration is absolutely untrue. The Director of Central Intelligence, James Woolsey, testified before the Foreign Relations Committee on June 23, 1994, that the United States had ''serious concerns over apparent incompleteness, inconsistency and contradictory aspects of the data'' submitted by Russia under the Wyoming MOU. On August 27, 1993, Adm. William Studeman, Acting Director of Central Intelligence, wrote to Senator GLENN stating:

> We cannot confirm that the Russian declaration of 40,000 mt is accurate. In addition, we cannot confirm that the total stockpile is stored only at the seven sites declared by the Soviets...

Articles in both the Washington Post and the Washington Times alleged that the Defense Intelligence Agency has estimated the Soviet stockpile could be as large as 75,000 metric tons.

Omissions in Russia's MOU data declarations have clear implications for how Russia will interpret the various provisions of the CWC. Because the BDA mandates annual updates to the Wyoming MOU, Russian withdrawal from the BDA may also signal that Russia will henceforth refuse to entertain any additional United States questions about the size of its chemical weapons stockpile or its binary weapons program. Senators should be concerned that Russia may intend to provide to the OPCW data which mirrors that provided under the Wyoming MOU. This would, in this Senator's view, serve as a clear indicator that Russia intends to violate the CWC.

Second, Russia has consistently refused to provide information on the status of its binary chemical weapons program. On June 23, 1994, then-Director of Central Intelligence James Woolsey declared that ''the data we have received from Russia makes no reference to binary chemical weapons or agents. That is contrary to our understanding of the program that was initiated by the former Soviet Union.''

Dr. Vil Mirzayanov, former chief of counterintelligence at the State Union Scientific Research Institute for Organic Chemistry and Technology, has stated that the Russian Federation may continue work on novel nerve agents far more lethal than any other known chemical agents—substance A–230, substance 33, and substance A–232. In an article in the Wall Street Journal on May 25, 1994, Dr. Mirzayanov wrote:

> It is very easy to produce binary weapons without detection under the guise of agricultural petrochemicals. The products easily pass all safety tests and become registered with the government as legitimate commercial products. The plant receives a license for production and goes into operation. Neither the firm's leaders, its staff, nor international inspectors know that the chemicals are a component of a new binary weapon.
>
> As the public talks toward banning chemical weapons progressed, the more intense became Russia's secret development and testing of binary weapons... our laboratories created Substance A–230, a weapon about which I can only say that its killing efficiency surpassed any known military toxin by a factor of five to eight.
>
> ...Two more major achievements took place in 1990 and 1991. First, a binary weapon based on a compound code-named Substance 33 passed site tests and was put into production for the Soviet army.
>
> ...The second development was the synthesis of a binary weapon based on Substance A–232, a toxin similar to A–230. This new weapon, part of the ultra-lethal ''Novichok'' class, provides an opportunity for the military establishment to disguise production of components of binary weapons as common agricultural chemicals; because the West does not know the formula, and its inspectors cannot identify the compounds.
>
> ...Fifteen thousand tons of Substance 33 have been produced in the city of Novocheborksarsk... But our generals have told the U.S. that Novocheborksarsk is turning out another substance known as VX.

Dr. Mirzayanov and other dissident Russian scientists have claimed that Russia's binary weapons program has been specifically crafted to evade detection under the verification regime of the CWC. They allege that components for the binary agents have been given legitimate commercial applications, that they are not covered under the CWC's schedules, and that OPCW inspectors will not know what they are examining when they come across such chemicals. The United States should not ratify the CWC until Russia agrees to forgo this abhorrent program.

Third, the BDA provides for United States on-site inspections of Russian storage, destruction and production facilities, combined with data declarations. The United States can expect to gain real monitoring benefits from the CWC only if the Bilateral Destruction Agreement [BDA] is implemented. This agreement provides for United States on-site inspections of Russian storage, destruction and production facilities. Without the BDA, the United States will be forced to verify Russian CWC compliance based upon a smaller number of inspections than anticipated under the bilateral arrangement, with inspections of Russian sites by the OPCW rather than by United States personnel, and with no guaranteed United States access to detailed inspection data. In other words, the intelligence community's already poor confidence level in its ability to monitor Russian treaty compliance will fall even lower.

Fourth, Russian insistence on excluding several of its chemical weapons-related facilities from the BDA's definition of ''chemical weapons production facility,'' and hence from the CWC's definition, relates directly to its desire to maintain a clandestine chemical weapons production capability. The

United States refusal to accede to the Russian position, which would have—in turn—strengthened the Russian case for facility conversions under the CWC, may be a primary reason that Russia has refused to implement the BDA. We should not, under any circumstance, allow Russia to exclude its chemical weapons facilities from inspection.

Moreover, without the bilateral agreement the OPCW will increase the size of its international inspectorate and purchase of additional equipment. This will drive up vastly the expected costs of the regime. Further, the CWC requires States Parties to pay for monitoring of their chemical weapons production, storage, and disposal facilities.

Mr. President, I guess we ought to respond once more—it is an exercise in futility, but we ought to keep responding to that old litany that we have heard this day about making the United States ratification of the CWC contingent upon Russia's acting first.

Let us look at a little bit of history. This Senate approved the START II treaty amidst a clamor of claims by the administration that a failure to act was preventing Russian approval of that treaty. Does anybody hear anything familiar about that? More than 15 months have passed and the Russian Duma still has not approved START II. Instead, the Russian leadership rendered ratification of the START II treaty contingent upon United States acquiescence to Russian interpretation of, get this, the 1972 Anti-Ballistic Missile Treaty and now the Chemical Weapons Convention is being tied to NATO enlargement and other issues.

Mr. President, surely, surely, Senators will not fail to refuse such linkages, and the best way to do it is to require, to stipulate unmistakably that Russia must act in good faith and ratify the Chemical Weapons Convention first. Indeed, in his letter to Vice President Gore, the Prime Minister of Russia stated that the United States should wait for Russia.

I urge Senators to reject that motion to strike.

I yield the floor. I do not know who has been waiting the longest.

Mr. WARNER. I think the Senator from Oklahoma, Mr. President, has been waiting longer than I. I will follow him.

Mr. HELMS. I did not see anybody over here.

Mr. LEVIN. Senator WARNER is going to get part of our time.

Mr. INHOFE. I think Senator WARNER should go ahead since we are going back and forth across the aisle.

Mr. LEVIN. I yield 5 minutes to Senator WARNER.

The PRESIDING OFFICER. The Senator from Michigan yields to the Senator from Virginia.

Mr. WARNER. Mr. President, I was asked by a reporter my view of the distinguished majority leader's role in this very important debate, and I replied, without hesitation, that the tougher the issue, the closer the division within the ranks of the Senate and most particularly within our party, the tougher the leadership challenge. I am proud to join others in saying our leader has met that challenge.

Likewise, my distinguished colleague and friend from day one in the Senate, the senior Senator from North Carolina, together with Senators KYL and SMITH and INHOFE, have met the challenge. They have ensured that the Senate has conducted a full and thorough debate on this treaty, and they have been instrumental in achieving the 28 conditions which have been adopted by the Senate. Those conditions have improved the document which the President submitted to the Senate in 1993.

There is a clear division within the ranks of Republicans on this issue, and it has been a conscientious and thoughtful process by which each has reached his or her position.

Now, Mr. President, to go to the subject itself. I will not go into the details of this treaty. I would like to speak to the broader issue.

I first learned of chemical weapons at the knee of my father who was a surgeon in the trenches in World War I. He described to me in vivid detail how he cared for the helpless victims of that weapon.

On through my years on the Armed Services Committee, where I was the point man in the 1980's to drive through the legislation for binary chemical weapons because I wanted this country to be prepared to deter the use of those weapons. And, then, through the Reagan-Bush era, our Nation has come full circle, and decided to lead in the effort to eliminate these weapons. Whether that can be done I know not, nor does anyone. But we cannot turn back now from that leadership role.

This treaty does not meet my full expectations. But I think we can fight better in the arena, in the ring, to improve this treaty than were we to stay outside and peer over the ropes. It is for that reason that I shall cast my final vote in support of this convention.

I recall the ABM Treaty. I was in Moscow as a part of President Nixon's team, as Secretary of the Navy. The drafters of that treaty put their minds to dealing with the threat at that period of time. They never envisioned, nor could they envision, a decade or two decades hence, what the scientific community might produce. Therein we have made a mistake as a nation by not adapting that treaty over time to deal with technological developments. I shall continue to fight very vigorously to see that that treaty does not become written in stone so as to block the efforts of our Nation to properly defend itself against attack from short-range missiles.

I cite that as an example, because technology is outpacing what the best minds in this Nation can draft—whether it is a treaty or a law. We have to look upon this treaty—as we should look upon all treaties—as a living document, a document that must be changed by the conscientious efforts of the signatories to this treaty. It must be changed to meet the advancements of technology in the area of chemical weapons; it must be changed to address the concerns that have been raised during this debate.

Like our Constitution—a document that has lived and survived so that we, the United States, are the oldest continuously functioning form of democratic republic on Earth—this convention must be a living document. Our Constitution has been amended. It shall be amended, perhaps, in the future. Because it is a living document. It has adapted to the many changes we have witnessed as a nation.

This treaty must be regarded as a living document and it is incumbent upon this President and his successors thereafter to work conscientiously, within the arena, to see that it is strengthened.

The work in this debate has gone far to show that it is a living document. Under the leadership of Senator HELMS and Senator LOTT we have already brought about a number of changes. The Senate may effect further changes as the evening progresses. But the important thing we must keep in mind is that this document must be regarded as one that has to be improved. And it is the leadership of the United States that must step forward to achieve that goal.

I yield the floor.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from North Carolina.

Mr. HELMS. May I ask the distinguished Senator from Oklahoma how much time he believes he will need?

Mr. INHOFE. May I have 6 minutes?

Mr. HELMS. I yield 7 minutes to the Senator.

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes remaining on the amendment.

The Senator is recognized for the remainder of the time.

Mr. INHOFE. I inquire of the Senator from North Carolina if he has other Senators requesting time?

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes remaining.

Mr. HELMS. Yes. I think I have some time over in one corner.

The PRESIDING OFFICER. The Senator has time on the resolution, if he wishes. There are 5 minutes remaining on the motion.

Mr. HELMS. I understand that. I have 5 minutes. Then he would like 2 minutes. So take it out of the other pot.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for up to 2—up to 7 minutes.

Mr. INHOFE. Are you sure that's right?

The PRESIDING OFFICER. Yes.

Mr. INHOFE. I thank the Senator from North Carolina. I do want to address this particular amendment. Before I do, I have three articles, and I ask unanimous consent to have them printed in the RECORD after my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. INHOFE. The first one is a Wall Street Journal editorial of September 9, 1996. I will just read the last paragraph.

Ultimately the treaty's most pernicious effect is that it would lull most responsible nations into the false belief that they'd ''done something'' about the chemical weapons problem and that it now was behind them. Yes, the world would be a better place without chemical weapons. But this treaty's attempt to wave them away isn't going to make that happen.

The other two, one by Frank Gaffney, Jr. and the other by Douglas Feith, address the regulation problems that would come from this to literally thousands of companies throughout America. In fact, the Commerce Department guidance on recordkeeping for affected businesses runs more than 50 pages.

Mr. President, you have run companies. You know one of the major reasons we are not globally competitive here in the United States is that we are overregulated. There is a tremendous cost to these regulations. If the requirements exceed 50 pages, imagine what the companies would have to do.

Mr. President, in a way I think the other side of this has perhaps used the wrong argument. There is an argument they are overlooking, and that is it does not seem to make a lot of difference whether Russia ratifies this or not because, as we have said several times during the course of this debate, they ratified a lot of treaties, including the 1990 Biological Weapons Destruction treaty, the ABM Treaty—that goes all the way back to the 1970's—the START I, CFE, INF. And while they have ratified these, they have not complied.

There are three steps you go through. One is you have to sign them. Second, you ratify them. But, third, you have to comply. And they have been found out of compliance. I cannot imagine why we would expect that they would comply with this one if they ratified it if they have not complied with the previous ones.

The distinguished Senator from Michigan quoted, somewhat extensively, Gen. John Shalikashvili, the Chairman of the Joint Chiefs of Staff, as saying that this would have the effect of reducing the proliferation of chemical weapons.

I would only say, trying not to be redundant, if that is the case, then you are taking his word over four previous Secretaries of Defense: Dick Cheney, James Schlesinger, Don Rumsfeld, and Cap Weinberger, all four of whom said this would have the effect of increasing the proliferation of chemical weapons and their use in the Middle East.

But, one of the statements that was made by the distinguished Senator from Michigan I thought was interesting. He said, if I got it right, and correct me if I am wrong: ''The single most important reason to ratify the treaty is to encourage Russia to ratify it.'' Again, if they do, it really does not seem to make that much difference because of their past history on what they have done.

I would like to clear up something because I think we have gone through a lot of debate on this issue. It has been clearly implied by both Republicans who are supporting the ratification of the Chemical Weapons Convention as well as Democrats who are supporting it that this was started in the Reagan administration and that Ronald Reagan was in support of a chemical weapons treaty.

I happened to run across something here that I am going to read. These are the conditions—I am going to save the best one until last—the conditions under which Ronald Reagan said he would agree to the ratification of a chemical weapons convention.

First, the condition was that strategic defense initiative and theater missile defense systems would be deployed and operational as one safeguard against cheating.

As we know, currently we do not have those in place.

No. 2, that the Chemical Weapon Convention's international executive council would consist of 15 members, including the United States as one of the five permanent members, just like the U.N. Security Council. The current treaty gives us a 41-member executive council, each with 2-year terms, and no permanent members; hence, no veto.

Third, that the United States would have absolute veto power over all CWC decisions. Obviously, in this one there is no veto power. Obviously, the President would not have supported this.

President Reagan also, even though it is not on my list, verbally indicated on more than one occasion that one of his conditions would be that we would not have to incur the financial responsibility, in the United States, of other countries complying with it. In fact, right now our compliance costs on this convention appear to be, according to the Foreign Relations Committee report, $13.6 billion and the cost of Russia complying with this would exceed that.

It has been stated on this floor many times that Russia has somewhere between 60 and 70 percent of all the chemical weapons in the world, so, obviously it would be more than that. What is Russia going to do? Are they going to comply? Let us say they go ahead and ratify. If they ratify it, you know, everyone in this Chamber knows, that they are going to look to the United States to pay for their obligation under the treaty. That is what they are doing on START II. In fact, I have to go back and make that statement also, that we are hearing this same argument all over again right now that we heard 2 years ago. Mr. President, 2 years ago we stood in this Chamber and they said: If we don't ratify this, Russia won't ratify it. Here it is 2 years later and Russia has not ratified it.

So I think this is a very significant requirement, the fact that Ronald Reagan said—and this is a direct quote, coming out of his committee at the time—for ratification, ''All Soviet obligations of previous arms control agreements would have to be corrected.'' And we have five such agreements that have not been corrected to date.

So, I hope no one stands on the floor the rest of the evening and talks about how Ronald Reagan would have ratified this Chemical Weapons Convention.

EXHIBIT 7

[From the Wall Street Journal, Sept. 9, 1996]

POISONS FOR PEACE

The greatest misperception about the Chemical Weapons Convention, which comes before the Senate this week for ratification, is that it can't do any harm and might do some good. Former Reagan defense official Fred Ekle aptly calls this mind-set ''poisons for peace.'' Who could possibly be against making the world safe from the horrors of poison gas? In fact, this treaty would make the horrors of poison gas an even greater possibility.

The first problem is that many of the nations we have cause to worry about most aren't about to sign. What good is a treaty that doesn't include Iraq or Libya or Syria or North Korea? Somehow knowing that New Zealand and the Netherlands have both ratified it doesn't help us sleep more soundly.

Worse, the treaty would give all signatories access to our latest chemical technology, since Article XI enjoins signatories from keeping chemicals, information or equipment from one another. This means not only countries such as China and Russia, but also Cuba and Iran, which have both signed. In other words, forget about the trade embargoes and forget about foreign policy. The treaty would require the U.S. to facilitate the modernization of the chemical-weapons industry in a host of countries that just might use them.

The second problem is verification. No one, not even its most ardent supporters in the Administration, is naive enough to claim that the treaty is verifiable. Chemical weapons are easy to make and easy to hide. The sarin that was used in the attack in the Tokyo subway last year was concocted in an 812 room. Instituting snap inspections of companies that make or use chemicals isn't going to stop a future Aum Shinri Kyo. Nor is it going to stop a determined government.

In addition, the inspection and reporting procedures required under the treaty would be a huge burden on American business, which of course would become even more nervous about industrial espionage. Senator Jon Kyl estimates that up to 10,000 American companies would be affected at a cost approaching $1 billion a year. Every company that uses or produces chemicals would fall under the long arm of the treaty—companies like Pfizer and Quaker Oats and Strohs Brewery and Maxwell House Coffee and Goodyear Tire. Dial Corp., which uses 5,000 different chemicals to produce an array of household products, estimates that it will have to spend $70,000 a year to meet the treaty's reporting requirements.

The small number of chemical companies that make the lethal stuff would of course be covered, too, and much has been made of the

treaty's endorsement by the Chemical Manufacturers Association, which represents just 190 member companies and had a hand in formulating the treaty's verification procedures. The industry is already very heavily regulated, and the treaty's inspection and reporting requirements wouldn't be much of an additional burden. It also can't hurt that the treaty would increase its members' trading and sales opportunities thanks to Article XI.

The list of problems with the treaty goes on and on. Constitutional scholar Robert Bork raises the possibility that the verification requirements might violate the Constitution's ban on search and seizure, and its property rights guarantees. The Pentagon isn't happy with it since, under the Clinton Administration's interpretation, it would prohibit the military from using non-lethal chemical agents. It's not hard to imagine a scenario in which the Army is forced to shoot people because it's not permitted to use tear gas.

Ultimately the treaty's most pernicious effect is that it would lull responsible nations into a false belief that they'd ''done something'' about the chemical weapons problem and that it now was behind them. Yes, the world would be a better place without chemical weapons. But this treaty's attempt to wave them away isn't going to make that happen.

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[From the Washington Times, Sept. 4, 1996]

IMPENDING CWC DEBATE

(By Frank Gaffney, Jr.)

There is a certain irony to the timing of the looming Senate debate on the Chemical Weapons Convention. After all, in a sense this treaty was the direct result of one of Saddam Hussein's earlier genocidal operations against the Kurds of Northern Iraq. It came about after the abysmal 1989 conference in Paris where scores of nations could not being themselves even to cite—let along condemn or sanction—the Iraqi government for its use of chemical weapons against its own people, let alone the Iranian military. Such attacks directly violated the existing ''international norm'' on chemical warfare: the 1925 Geneva Protocol banning the use of chemical weapons.

In a bid to deflect criticism for the international community's failure to enforce one relatively verifiable arms control treaty, the politicians and diplomats decided to negotiate a new, utterly unverifiable agreement. After four years of further negotiations in Geneva, a brand new ''international norm'' against chemical warfare was minted: the Chemical Weapons Convention (CWC).

Now, readers of this column learned last week that, quite apart from the problems with this treaty from the standpoint of its verifiability and enforceability, there are a number of questions that have been posed about how the CWC has been affected by Russian bad faith and other changed circumstances since the United States signed up in 1993. Such questions were supposed to have been answered before the Senate considered this accord on or before Sept. 14. As the answers are inconvenient (for instance, confirmation that Moscow is welching on a 1990 Bilateral Destruction Agreement and demanding that the West pay the estimated $3.3 billion it will take Russia to dismantle its vast chemical arsenal), it has employed its favorite tactic with regard to congressional information requests: Stonewall.

Since that column was written, however, the administration's machinations on behalf of the Chemical Weapons Convention have, as Alice said of Wonderland, become ''curiouser and curiouser.'' This is particularly evident in the Clinton teams's efforts to dissemble about what the CWC won't do—and what it will.

For example, the administration convened a series of briefings for Senate staffers over the August recess. In these lopsided sessions, a gaggle of 15 or more executive branch officials harangued three of four folks from Capitol Hill, in some cases for hours on end. Unfortunately, the briefers repeatedly misled the staffers—notably with respect to the costs of the CWC to American taxpayers and to thousands of American companies. Among other things, the administration is significantly low-balling the U.S. portion of the expenses associated the new U.N.-style international bureaucracy created to gather data and conduct inspections. Clinton officials have also minimized the likely loss of proprietary data when a company's sensitive facility is gone over for up to 84 hours by inspectors who will be, likely as not, detailed from foreign commercial espionage organizations.

Incredibly, even some of the companies at greatest risk appear to be susceptible to the administration's disinformation on this score. Take, for example, an Aug. 7 letter to Sen. Richard Lugar from the Pharmaceutical Research and Manufacturers of America (PhARMA), a trade association for some of the nation's most cutting-edge biotech firms. Clinton officials reportedly induced PhARMA's president to tell the treaty's top Senate cheerleader that it supported the CWC with the promise that the administration would not allow the CWC's verification protocol to be extended to the existing (and similarly unmonitorable) Biological Weapons Convention.

PhARMA's members clearly understand an important reality: If, under the biological weapons treaty, America's pharmaceutical manufacturers were subjected to a reporting and inspection regime similar to that of the CWC, they could lose their shirts. After all, on average these companies invest 12 years and some $350 million to produce a new breakthrough drug. Trial inspections suggest that a single on-site, inspection by a trained intelligence operative could greatly reduce, if not wipe out, the competitive advantage acquired at such a high price.

The only problem with PhARMA's stance is, that many of its member companies will find themselves subjected to precisely that danger under the terms of CWC. So might a great many other companies having nothing to do with chemical weapons and in industries as diverse as automotive, food processing, electronics, alcohol distilling and brewing, oil refining, soap and detergents, cosmetics, textiles and paint and tire manufacturers. Among the companies listed on a recent Arms Control and Disarmament Agency list of businesses ''likely'' to be affected by the CWC's various requirements are: Eli Lilly, Sherwin-Williams, Nutrasweet, Jim Beam, Archer Daniels Midland, Lever Brothers, Kaiser Aluminum, Goodyear Tire and Rubber, Xerox Raythoen and Conoco. If the trade associations representing these major American businesses are operating under illusions similar to PhARMA's their member companies may wish to join the call for a ''time-out'' on Senate action on the CWC.

Some senators may be tempted to ignore the administration's stonewalling of legitimate and troubling questions relevant to the CWC that have been posed by their own leadership. Some may consider the administration's understanding of the treaty's associated costs and its inflating of the claims benefits to be business as usual for the Clinton team. It is, however, very much to be hoped that at least 34 members of the U.S. Senate will refuse to tolerate such behavior and, insist that consideration of the Chemical Weapons Convention be postponed until corrective action can be taken and, failing that, that the convention be defeated outright.

[From the San Diego Union-Tribune, Sept. 8, 1996]

''OPEN UP IN THE NAME OF THE . . . ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS?''

(By Douglas J. Feith)

The Chemical Weapons Convention would be the first arms control agreement to reach into the lives of non-military U.S. businesses and impose costs and regulatory burdens.

It would oblige the government to adopt implementing legislation to compel a wide range of American businesses—including tire, paint, pharmaceutical, fertilizer and electronics manufacturers, distillers, food processors and oil refiners—to keep special records. (The Commerce Department guidance on record-keeping for affected businesses runs more than 50 pages.)

Affected businesses would be forced to submit to routine and possibly ''challenge'' inspections by officials of an international organization—the Organization for the Prohibition of Chemical Weapons. The warrantless inspections, which may run afoul of U.S. constitutional rights under the Fourth and Fifth Amendments, could jeopardize important private proprietary information.

The regulatory cost is just one of a number of flaws. In the final analysis, what the CWC amounts to is a general declaration, a statement of disapproval of chemical weapons that would be made sincerely only by the world's law-abiding nations. The treaty would accomplish little more than the typical United Nations General Assembly resolution. Such rhetorical exercises are not necessarily bad or useless, but they do not amount to a whole lot.

We would favor paying a substantial price for a ban on chemical weapon possession if such a ban covered the relevant countries and it could be made effective through reliable detection of illegal production and stockpiling. But such results hardly seem likely. We tend to think of the Chemical Weapons Convention this way: Even a price you may be willing to pay for a new car will appear ridiculously high if you learn that the car cannot be made to drive.

Mr. LEVIN. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I strongly support this treaty, and I strongly urge the Senate to ratify it.

In a sense, this debate is as old as America. Two centuries ago, with our independence newly won, the Founding Fathers urged us to beware of ''entangling foreign alliances.'' They wrote into the Constitution a requirement that any treaty with foreign nations must be confirmed by a two-thirds vote of the Senate.

By any rational standard, this treaty meets that test.

Nevertheless, the treaty is being opposed by an entrenched band of foreign policy ideologues and isolationists who think the United Nations is the enemy and who say the arms race should be escalated, not restricted. History proved their ilk wrong once before, when they sank the League of Nations in the 1920's. And it will prove them wrong again with far more drastic consequences than World War II, if they prevail today.

We cannot let that happen. The Senate should reject the remaining killer

amendments, and give this treaty the two-thirds vote it needs and deserves.

The 29-year-old pursuit of a chemical weapons treaty has finally reached its moment of truth in the U.S. Senate. Few votes cast in this Congress or any Congress are likely to be more important.

The effort to achieve this treaty was launched in 1968, and its history is genuinely bipartisan. It has moved forward under Republican and Democratic Presidents alike. In 1968, the final year of the Johnson administration, international negotiations began in Geneva to build on the 1925 Geneva Protocol and try to reduce the production of chemical weapons.

In the 1970's, President Gerald Ford had the vision to take that initiative a major step forward during intense international negotiations.

President Ronald Reagan advanced it to the next stage with his efforts on arms control in the 1980's. And President Bush deserves high praise for embracing the ideal of eliminating chemical weapons, for making it a serious worldwide effort, and at long last bringing it to the stage where it was ready to be signed. In one of his last acts in office, George Bush signed the treaty, on January 13, 1993.

President Clinton formally submitted the Chemical Weapons Convention to the Senate for its advice and consent later that year. Now, it's our turn. Today, the Senate can and should join in this historic endeavor to rid the world of chemical weapons. We can bestow a precious gift on generations to come by freeing the world of an entire class of weapons of mass destruction.

The chemical weapons treaty bans the development, production, stockpiling, and use of toxic chemicals as weapons. Previous agreements have merely limited weapons of mass destruction. But the Chemical Weapons Convention sets out to eliminate them from the face of the earth.

The United States has already taken many steps unilaterally to implement a ban of our own. As long ago as 1968, this country ordered a moratorium on chemical weapons production.

When President Bush signed the treaty on behalf of the United States, he also ordered the unilateral destruction of the U.S. stockpile of these weapons. Regardless of the treaty, the United States is destroying its chemical weapon stockpile.

Today culminates many years of work and compromise. The Senate has held 17 hearings on the convention. Every issue has been exhaustively analyzed. The result is the shoot-out that the leadership has arranged today on this series of killer amendments.

Bipartisan negotiations have achieved agreement on 28 amendments to the treaty, none of which go to the heart of the treaty and many of which help to clarify it.

But five major issues have not yet been settled. The five amendments, on which we are voting today, seek to settle differences of opinion the wrong way. They are killer amendments. I hope the Senate will note ''no'' on all of them. If any of them passes, it will doom our participation in the treaty, and relegate us to the company of outlaw regimes like North Korea and Libya, who also reject the treaty.

Two of the killer amendments condition our participation on whether other nations—Russia, Iran, Iraq, Syria, and China—have already become participants. Essentially, they would hand over U.S. security decisions to those nations.

A third killer amendment arbitrarily excludes all representatives from certain other countries from participating in verification inspections. This amendment ignores the ability that the treaty already gives us to reject any inspectors we believe are not trustworthy.

A fourth killer amendment omits and alters other key parts of the treaty that deal with the export of certain materials. Its proponents fear that rogue nations may gain valuable technology from us.

Nothing in the convention requires the United States to weaken its export controls. Experts in the chemical industry, trade organizations, and government officials have worked to ensure that nothing in the treaty threatens our technology and industrial power.

The fifth killer amendment places an unrealistically high standard of verification on the treaty. It requires the treaty verification procedures to accomplish the impossible, by being able to detect small, not militarily significant, amounts of dangerous chemical meterials.

No international agreement can effectively police small amounts of raw materials that might possibly be used in chemical weapons production. Every effort is being made and will be made to make the detection procedures as effective as possible. It is hypocritical for opponents to attempt to scuttle this treaty because they feel it does not go far enough.

The overwhelming majority of past and present foreign policy officials, military leaders, large and small businesses, Fortune 500 companies, Nobel laureates, veterans organizations, religious groups, environmentalists and public interest groups are united in their strong support of the convention. It is a practical international agreement with practical benefits for the United States, and the United States should be a part of it.

Mr. BIDEN. Mr. President, how much time do I have on this amendment?

The PRESIDING OFFICER. The Senator from Delaware has 5 minutes 45 seconds.

Mr. BIDEN. Mr. President, unless there is someone in opposition, I yield as much time of the remaining time that my colleague from Pennsylvania would like to the Senator from Pennsylvania, Senator SPECTER.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. BIDEN. Mr. President, I would like to reserve 30 seconds of whatever my time is.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

Mr. SPECTER. I thank my colleague from Delaware for yielding the time.

Mr. President, on the pending issue, having studied the conditions as to what is sought here by way of preliminary action by Russia before ratification should occur by the United States, it is my strong view that we really ought not to play Gaston and Alphonse with the Russians to require them, as article C does, for Russia to deposit their ratification before the United States ratifies.

I think that that sets up a condition which is just not reasonable. If they took the same position, as Alphonse and Gaston, no one would ever enter the door.

With respect to the other conditions which are set forth here, all of the substantive matters would be superseded by the Chemical Weapons Convention, that the requirements set forth in this treaty would impose more obligations on Russia than are contained in these instruments.

And under instrument A, where it is talked about, an agreement between the United States and Russia, that was never formalized into an agreement because all terms were never agreed to by the parties, so that this is not a condition which adds any measure of safety to the United States since all of the requirements imposed on Russia in these collateral arrangements would be superseded and more stringent requirements would be added by the Chemical Weapons Convention.

Mr. President, I compliment my colleagues on both sides for what I believe has been a very, very constructive debate in the highest tradition of the U.S. Senate. I compliment the distinguished chairman of this committee, Senator HELMS, for his determination.

And it is noted that some 28 of the 33 conditions have been agreed to. Even beyond those conditions, the President today, in writing to the distinguished majority leader, has articulated further safeguards which would be present so that in sum total we have an agreement which, while not perfect, advances the interest of arms control.

In my capacity as the chairman of the Senate Veterans Committee, I have chaired hearings on the issue of the gulf war syndrome where there is evidence that our veterans in the gulf were damaged by chemical substances, not conclusively, but that is the indication, and that had such a treaty been in effect, again, not conclusive, but a strong indication, that our troops might have been saved to some extent.

And certainly if we intend to take a firm stand on a moral plane, the United States has to be a part of this covenant to try to reduce chemical weapons. And this treaty goes a substantial way.

And the search and seizure provisions are adequate to protect constitutional rights, a field I have had substantial experience with as a district attorney, so that there will have to be a criminal standard of probable cause.

Taken as a whole, with the additions by the President today—even though it had been made a part of the RECORD, I ask unanimous consent that, following my comments, the President's letter to Senator LOTT be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. All factors considered, this is a treaty which ought to receive Senate ratification.

EXHIBIT 1

THE WHITE HOUSE,
Washington, April 24, 1997.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: During Senate ratification proceedings on the Chemical Weapons Convention (CWC), concerns have been raised over Article X, which provides for certain types of defensive assistance in the event that a State that has joined the treaty and renounced any chemical weapons (CW) capability is threatened with or suffers a chemical weapons attack, and Article XI, which encourages free trade in non-prohibited chemicals among states that adhere to the CWC. Some have suggested that these Articles could result in the CWC promoting, rather than stemming, CW proliferation despite States Parties' general obligation under Article I ''never under any circumstances . . . to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.''

To respond to these concerns, the Administration has worked closely with the Senate to develop conditions relating to both Articles that have now been incorporated in the resolution of ratification (Agreed Conditions #7 and 15). These two conditions would substantially reinforce and strengthen the treaty by:

Prohibiting the United States under Article X from (a) providing the CWC organization with funds that could be used for chemical weapons defense assistance to other States Parties; and (b) giving certain states that might join the treaty any assistance other than medical antidotes and treatment.

Requiring the President to (a) certify that the CWC will not weaken the export controls established by the Australia Group and that each member of the Group intends to maintain such controls; (b) block any attempt within the Group to adopt a contrary position; and (c) report annually as to whether Australia Group controls remain effective.

With respect to the latter condition, I am pleased to inform you that we have now received official confirmations from the highest diplomatic levels in each of the 30 Australia Group nations that they agree that the Group's export control and nonproliferation measures are compatible with the CWC and that they are committed to maintain such controls in the future.

While supporting these guarantees and safeguards, you expressed the concern on Sunday that nations might still try to use Article X or XI to take proscribed actions that could undercut U.S. national security interests, notwithstanding the best efforts of U.S. diplomacy to prevent such actions. I am, therefore, prepared to provide the following specific assurance related to these two Articles:

In the event that a State Party or States Parties to the Convention act contrary to the obligations under Article I by:

(A) using Article X to justify providing defensive CW equipment, material or information to another State Party that could result in U.S. chemical protective equipment being compromised so that U.S. warfighting capabilities in a CW environment are significantly degraded;

(B) using Article XI to justify chemical transfers that would make it impossible for me to make the annual certification that the Australia Group remains a viable and effective mechanism for controlling CW proliferation; or

(C) carrying out transfers or exchanges under either Article X or XI which jeopardize U.S. national security by promoting CW proliferation:

I would, consistent with Article XVI of the CWC, regard such actions as extraordinary events that have jeopardized the supreme interests of the United States and therefore, in consultation with the Congress, be prepared to withdraw from the treaty.

Sincerely,

BILL CLINTON.

The PRESIDING OFFICER. The Senator from Delaware has 1 minute remaining.

Mr. BIDEN. Mr. President, let me just take the minute to say the following: If you do not like this treaty and you are not for it, vote against it. If you think this treaty makes sense, vote for my amendment, because if this treaty contains this provision, it is dead. This is a so-called killer amendment.

So those of you who have concluded you are not going to vote in the final analysis for this treaty, vote no. Those of you who have decided you want to vote for this treaty—to cut through it all—vote yes. I mean, it really is that basic, because if my motion fails to strike, this treaty is dead.

I yield back the remainder of my time, if my colleague from North Carolina is prepared to yield back his time. I am prepared to vote.

Mr. HELMS. The yeas and nays have been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered. All time has expired.

The question occurs on agreeing to amendment No. 48 offered by the Senator from Delaware. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 66, nays 34, as follows:

[Rollcall Vote No. 47 Ex.]

YEAS—66

Akaka	Cochran	Ford
Baucus	Collins	Frist
Biden	Conrad	Glenn
Bingaman	D'Amato	Gorton
Boxer	Daschle	Graham
Breaux	DeWine	Gregg
Bryan	Dodd	Hagel
Bumpers	Domenici	Harkin
Byrd	Dorgan	Hatch
Chafee	Durbin	Hollings
Cleland	Feingold	Inouye
Coats	Feinstein	Jeffords
Johnson	Lugar	Rockefeller
Kennedy	McCain	Roth
Kerrey	Mikulski	Sarbanes
Kerry	Moseley-Braun	Smith Gordon H
Kohl	Moynihan	Snowe
Landrieu	Murray	Specter
Lautenberg	Reed	Stevens
Leahy	Reid	Torricelli
Levin	Robb	Wellstone
Lieberman	Roberts	Wyden

NAYS—34

Abraham	Gramm	Murkowski
Allard	Grams	Nickles
Ashcroft	Grassley	Santorum
Bennett	Helms	Sessions
Bond	Hutchinson	Shelby
Brownback	Hutchison	Smith Bob
Burns	Inhofe	Thomas
Campbell	Kempthorne	Thompson
Coverdell	Kyl	Thurmond
Craig	Lott	Warner
Enzi	Mack	
Faircloth	McConnell	

The amendment (No. 48) was agreed to.

Mr. LEAHY. I move to reconsider the vote.

Mr. BIDEN. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, how much time is reserved for the Senator from Vermont?

The PRESIDING OFFICER. The Senator has 14 minutes remaining on the resolution.

Mr. LEAHY. Mr. President, for the benefit of my colleagues, I will be very brief. Mr. President, I appreciate efforts of the Senator from Utah to get order, and that is no more than I could expect for somebody that bears certain similarities to the Senator from Vermont.

Earlier, the distinguished Senator from Delaware read a long list of staff and Senators and others who deserve praise for getting us as far as we are. The name of the distinguished Senator from Delaware is notably absent, and I think that those who support the CWC owe a debt of gratitude to the Senator from Delaware. In the customary practice, he left his own name off, but if I might add his name to the record and put it in.

Mr. President, I am, as you know, a supporter of the CWC. Again, I compliment what we have done. As in the test ban treaty, when countries were not coming forward, the United States unilaterally banned their own tests and then other countries joined us—not every country that has nuclear capability, but other countries did join us—and we brought the pressure forward for a test ban treaty.

The United States took an initiative with chemical weapons. We banned our own use, unilaterally. When we did that, other countries joined us. Not all countries, but other countries, most countries, joined us.

Now if we vote to advise and consent on this treaty we will have pressure, the pressure of the most powerful Nation on Earth, joined by all these other countries, pressure on the few rogue countries who have not done that. I say that, Mr. President, because there is one other weapon, a weapon that kills

and maims far more people than chemical weapons. That is the weapon of antipersonnel landmines. There are 100 million landmines in over 65 countries today. As one person told me, in their country, they clear these landmines an arm and a leg at a time. Every 22 minutes an innocent civilian—almost always a civilian—is killed or injured by an antipersonnel landmine. The United States should now do the same thing they did.

The United States should do the same thing we did with chemical weapons. We should move unilaterally, ban our own use, ban our own export, ban our own production of antipersonnel landmines, expand on the Leahy legislation already passed by the House and Senate. Do that and then join with like-minded nations. There are tens of like-minded nations that have already done that.

Join with them, agree, together, that this is what we will do. It will not be every nation. It will not be some of the nations most needing to do this like Russia and China, but we will have the same moral suasion that we have with the chemical weapons convention. We can do it with chemical weapons and should. Now let us follow exactly the same step, join with the Canadians and others and do it with antipersonnel landmines. This country is capable of it. It would be a moral step. It would be a dramatic step that would help the innocent civilians who die from that.

I withhold the balance of my time and yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, we all know full well that this administration has already testified that the CWC is ''effectively verifiable.'' The Director of the Arms Control and Disarmament Agency, John Holum, testified on March 22, 1994, that ''the treaty is effectively verifiable'' and that the Deputy Under Secretary of Defense for Policy, Walter Slocombe, made similar claims on May 13, 1994. However, just because administration officials have declared the CWC to be ''effectively verifiable'' does not make it so.

Indeed, by making such claims the Clinton administration has done great violence to the standard of ''effective verification'' developed and refined by the Reagan and Bush administrations as a key criteria for arms control treaties. The definition of ''effective verification'' was first offered to the Foreign Relations Committee by Ambassador Paul Nitze during hearings on the INF Treaty in 1988 and subsequently further refined on January 24, 1989, by ACDA's Director, Maj. Gen. William Burns, and again in January 1992 by Secretary of State James Baker. The components of effective verification, as defined during testimony, are: (1) a ''high level of assurance'' in the intelligence community's ability to detect (2) a ''militarily significant'' violation in (3) a ''timely fashion.'' That definition is the one used in this condition.

This yardstick of ''effective verification'' has been the standard against which every arms control treaty for the last decade has been measured. It should be the standard against which the CWC is measured as well.

For any arms control treaty to be effective it must be verifiable. When Vice President George Bush put forward the first U.S.-sponsored text for the CWC, he told negotiators in Geneva on April 18, 1984, that:

> For a chemical weapons ban to work, each party must have confidence that the other parties are abiding by it. . . . No sensible government enters into those international contracts known as treaties unless it can ascertain—or verify—that it is getting what it contracted for.

I could not agree more.

In my view, this standard cannot be met by the CWC. On March 1, 1989, then-Director of Central Intelligence [DCI] William Webster stated that monitoring the CWC ''is going to be costly and difficult, and, presently, the level of confidence is quite low.'' On January 24, 1989, Director Burns noted that ''verification of any chemical ban is going to be extremely difficult.'' ACDA's section 37 report on the CWC, submitted on March 18, 1994, states that the CWC's verification provisions, together with National Technical Means [NTM], ''are insufficient to detect, with a high degree of confidence, all activities prohibited under the Convention.'' Then-DCI Woolsey testified on June 23, 1994 that ''I cannot state that we have high confidence in our ability to detect noncompliance, especially on a small scale.''

Most significantly, declassified portions from the August 1993 NIE note:

> The capability of the intelligence community to monitor compliance with the Chemical Weapons Convention is severely limited and likely to remain so for the rest of the decade. They key provision of the monitoring regime—challenge inspections at undeclared sites—can be thwarted by a nation determined to preserve a small, secret program using the delays and managed access rules allowed by the Convention.

With respect to military significance, General Shalikashvilli testified on August 11, 1994 that:

> In certain limited circumstances, even one ton of chemical agent may have a military impact . . . With such variables in scale of target and impact of chemical weapons, the United States should be resolute that the 1 ton limit set by the Convention will be our guide.

The bottom line is that a stockpile of 1 ton of chemical agent can prove of military significance. Unclassified portions of the NIE on U.S. monitoring capabilities indicate that it is unlikely that the United States will be able to detect or address violations in a timely fashion, if at all, when they occur on a small scale. And yet, even small-scale diversions of chemicals to chemical weapons production are capable, over time, of yielding a stockpile far in excess of a single ton. Moreover, few countries, if any, are engaging in much more than small-scale production of chemical agent. For example, according to today's Washington Times, Russia may produce its new nerve agents at a pilot plant in quantities of only 55 to 110 tons annually.

In other words, the intelligence community has low confidence in its ability to detect in a timely fashion the covert production of chemical weapons which could produce militarily significant quantities. We should not cheapen the norm of effective verifiability by claiming that the CWC meets this standard—for it patently does not.

In conclusion, verification of the CWC is plagued by the fact that too many chemicals are dual-use in nature. Chemicals used to make pen ink can be used to make deadly agent. It is impossible to monitor every soap, detergent, cosmetic, electronics, varnish, paint, pharmaceutical, and chemical plant around the world to ensure that they are not producing chemical weapons, or that toxic chemicals are not being diverted to the production of weapons elsewhere. Countries such as Russia are well aware that if they ratify the CWC, they can cheat with impunity. Indeed, on May 6, 1996 the Defense Intelligence Agency informed the chairman of the Senate Select Committee on Intelligence that Russia intends to maintain the capability to produce chemical weapons, regardless of whether or not it ratifies the CWC.

The Senate, therefore, should not agree to this treaty until U.S. intelligence capabilities have caught up with President Clinton's Wilsonian idealism.

Finally, I will say a word or two about the counter-arguments we have heard on this condition. Patently ignoring the conclusions of the Joint Chiefs, the administration has claimed that the right standard for detecting violations is not 1 metric ton, but a ''large-scale, systematic effort by a potential adversary to equip its armed forces with a militarily significant chemical warfare capability * * *'' It is absurd to say that if the intelligence community has high confidence in its ability to detect ''any large-scale, systematic effort by a potential adversary to equip its armed forces with a military significant chemical warfare capability * * *'' the CWC is effectively verifiable.

I have no doubt that it would be difficult to conceal the existence of a program the scope and size of the former Soviet Union's for example. But not one of the countries that currently envisions a need for chemical weapons intends to wage World War III and conquer Western Europe. Not one.

Again, let me reiterate just how ridiculous this argument is. Nobody—not Russia, China, Iran, Iraq, Libya, Syria, India, Pakistan, Egypt, or North Korea—is engaged in a large scale effort.

Indeed, such a certification is inherently contradictory since a country desirous of developing a militarily significant stockpile of chemical agent

need not engage in a large-scale, systematic effort. The Chairman of the Joint Chiefs of Staff, General John Shalikashvilli, testified before the Armed Services Committee on August 11, 1994, that:

> Even one ton of chemical agent may have a military impact . . . With such variables in scale of target and impact of chemical weapons, the United States should be resolute that the 1 ton limit set by the Convention will be our guide.

In other words, the production of 1 militarily significant ton of agent does not require a large-scale program. To knock-out every key logistical node in Saudi Arabia, Saddam Hussein needs only a handful of SCUD's with chemical warheads. He does not need an elite force of infantry trained in chemical-environment combat.

Accordingly, the intelligence community's confidence in its ability to detect the annual production of 1 metric ton in a timely fashion is the benchmark question by which the Senate should assess the verifiability of the CWC. I urge the Senate to reject this motion to strike and to uphold President Reagan's standard of effective verifiability.

Mr. President, I ask that Senator SHELBY of Alabama be recognized next for 10 minutes. Does the Senator have somebody?

Mr. BIDEN. Mr. President, if I could ask a parliamentary inquiry. A lot of our colleagues are looking to determine when the final vote will take place. It is my understanding that the Senator from Delaware has the option to move to strike three more conditions—one relating to intelligence verification, one relating to inspectors, and one relating to articles X and XI. On each of those motions of the Senator from Delaware, there is an hour reserved, equally divided, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BIDEN. The attempt is being made, as we speak, to reduce the time on those amendments. I respectfully suggest that on the next amendment that I am going to move—my intention was to move to strike the intelligence provision—or verification, I should say, No. 33, and that instead of an hour equally divided on that amendment, I respectfully suggest we have 20 minutes equally divided on that amendment. Is that all right with the Senator?

Mr. HELMS. That will be fine, from this point. I will consume a few minutes.

Mr. BIDEN. In other words, the Senator has already spoken on the intelligence issue. The time he has spoken on it would be taken out of the 10 minutes that we are about to agree to on the amendment I have not yet sent to the desk. The Senator was under the impression I already sent the amendment to strike.

AMENDMENT NO. 49

(Purpose: To strike condition No. 33, relating to effective verification)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 49.
>
> Beginning on page 65, strike line 25 and all that follows through line 3 of page 67.

Mr. BIDEN. Mr. President, I ask unanimous consent that the time consumed by the Senator from North Carolina in his previous speech be deducted from the 10 minutes of time allotted to his side, and that 10 minutes remain on the side of the Senator from Delaware on this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object.

Mr. BIDEN. I ask unanimous consent that there be a total of 20 minutes on this amendment equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. BIDEN. Mr. President, on this amendment, of my 10 minutes, I will yield 7 minutes to the Senator from Rhode Island. But prior to doing that, let me say briefly what this amendment does.

This amendment strikes a condition in the treaty that sets a verification standard that, if it were in the treaty, would not be able to be met; therefore, it would kill the treaty. I will not speak more at this time.

I yield to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. HELMS. Mr. President, just a moment. I must leave the Chamber for a few minutes. After the Senator from Rhode Island has concluded, I ask unanimous consent that the Senator from Alabama be recognized to consume our 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I strongly support the Chemical Weapons Convention, a treaty which serves our national security interests in a number of ways. U.S. ratification would help set an international standard that would put political pressure on outlaw nations to rid themselves of chemical arsenals. This treaty will also give our intelligence community valuable new tools to combat illicit production of deadly chemicals, even among nations that do not ratify the convention.

Mr. President, ratification of the Chemical Weapons Convention by the Senate this evening would continue our Nation's proud tradition of leadership in the field of international security. We took the lead in the formation of NATO, on the containment of communism, and on the defeat of Iraqi aggression in the Persian Gulf. This evening, we can again assert our irreplaceable leadership by participating in an effort to ban chemical weapons around the world.

Mr. President, condition No. 33, which we are now debating, must be stricken in order for the United States to participate in the CWC. Condition No. 33 requires that the President—these are the conditions of condition No. 33—the President of the United States must certify with ''a high degree of confidence'' that our intelligence community can detect ''militarily significant'' violations of the convention.

Now, Mr. President, what does ''militarily significant'' mean? It is defined as 1 metric ton or more of these chemical weapons.

Mr. President, this condition is simply impossible to achieve. This condition would bar the U.S. participation in the CWC forever. We must understand that the convention seeks to ban chemical weapons. These weapons, by their very inherent composition, are extremely difficult to detect in relatively small quantities, such as a ton. This truth has been known from the beginning, and no one, Mr. President, has alleged that the CWC will eliminate chemical weapons from the face of the Earth.

If an individual wants to build a chemical weapon somewhere in a small shack or a cave in some remote area of the world, he or she will always be able to do so, regardless of the outcome of this vote. No treaty, no matter how it is written, will ever be able to stop such an occurrence. Our inability to verify fully the CWC is not a result of any flaws in the convention. It is due to the innate difficulty in monitoring chemical weapons and their components.

Mr. President, I also question the definition of ''militarily significant quantity,'' as being 1 metric ton or more of chemical weapons agent. Although 1 metric ton can certainly do a lot of damage, particularly in a terrorist attack, I will defer to military experts to consider what is military significant. In testimony to the Senate, Gen. John Shalikashvili stated that tonnage is not the only factor to consider in assessing the military capacity of these weapons. To transform an illicit chemical stockpile into something militarily useful, an adversary must have vast supplies of these weapons, and he must have an infrastructure for handling them and must have troops trained in the use of these weapons.

It is these more complex activities—the training of the troops, for example—that the Chemical Weapons Convention, together with our intelligence resources, will be able to verify. As Gen. Brent Scowcroft has testified to the Foreign Relations Committee, under the CWC, it will no longer be possible for a country to buy a few pounds of these chemicals from

various sources around the world to amass an abnormal supply of chemicals. Our intelligence community has, in fact, indicated on a number of occasions that this convention will provide another tool to the U.S. inventory of ways to stem worldwide expansion of chemical weapons capabilities. In brief, the Chemical Weapons Convention will supplement—it will not replace, but it will add to—ongoing efforts to monitor chemical weapons production worldwide.

Now, critics of this treaty claim it is unverifiable, that we will not be able to catch adversaries abroad who cheat. But they also allege that the CWC's verification regime, while too weak to catch those cheaters abroad, is too intrusive for American industry. In other words, it won't let us find anything abroad, but it is too intrusive for other nations as far as inspection in the United States. They can't have it both ways.

The fact is that the Chemical Weapons Convention's verification tools—in other words, how to determine whether there are weapons in other countries—go beyond those of other arms control treaties that we have approved in the Senate in the past. No treaty will ever be able to verify totally a ban on chemical weapons. Condition No. 33 is impossible to meet. The condition that is in this, which we are seeking to strike, is an impossible condition to meet. It serves no purpose other than to prevent U.S. participation in the Chemical Weapons Convention treaty. So I urge my colleagues to support the motion to strike this amendment.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. Mr. President, I rise to address the issue of verification, and in opposition to the motion to strike condition No. 33 contained in the resolution of ratification, relating to effective verification.

I have a number of serious concerns with respect to the Chemical Weapons Convention.

As chairman of the Senate Intelligence Committee, however, I have a particular responsibility to ensure that any treaty ratified by this body can be effectively verified by the intelligence community.

If it cannot be verified, the CWC could become the means by which CWC member states, such as China and Iran, expand and enhance—rather than renounce—their CW capabilities.

In negotiating the INF Treaty, ratified in 1988, President Reagan set forth an eminently reasonable standard to guide the negotiation and implementation of arms control agreements. ''Trust,'' he said, ''but verify.''

But I am afraid that the critical, second part of President Reagan's formula seems to have been forgotten with respect to this treaty. The CWC, and especially the verification regime, is based on the triumph of hope and trust over experience and history.

In its efforts to obtain ratification, the administration has—if I may borrow a phrase from a former vice-chairman of the committee, Senator MOYNIHAN—''defined verification down.''

Condition No. 33 to the resolution of ratification seeks to correct that problem.

It conditions deposit of the U.S. instrument of ratification on a Presidential certification to Congress that the treaty is effectively verifiable.

This term, as used in the resolution, contains the following elements, based on the traditional definition of ''effective verification'':

A ''high degree of confidence'' in our ability to detect,

''Militarily significant violations''—meaning one metric ton or more of chemical agent—

''In a timely fashion,''—meaning detection within 1 year—and

Detection of ''patterns of marginal violation over time.''

Effective verification is ultimately a political judgment that must be made by the President and his national security advisors. However, a key input to this decision is the judgement of the intelligence community.

It is currently impossible to reconcile the above definition of ''effective verification'' with the intelligence community's own statements over the past 4 years, which is why condition 33 calls for a new Presidential certification.,

I would like to briefly restate the intelligence community's key conclusions as to the verifiability of the CWC, as set forth in recently declassified material from the National Intelligence Estimate of August 1993:

> The capability of the Intelligence Community to monitor compliance with the Chemical Weapons Convention (CWC) is severely limited and is likely to remain so for the rest of the decade.

Our intelligence community is the most capable in the world today. It enjoys extensive resources, and employs an impressive variety of assets to collect information affecting our national security.

Yet with all of the sophisticated assets at our disposal, we cannot be confident of verifying this treaty.

And some of the most promising new intelligence methods which might have improved this score over the last 4 years, have been significantly underfunded by this administration.

We should look to the certification required by condition 33 as an opportunity for the President to tell us of his plans to invest in improvements to our technical collection capabilities to enable effective verification.

Therefore I strongly support condition 33 of the resolution of ratification, and oppose the motion to strike.

While most will acknowledge that we do not have the technical intelligence capabilities currently in place to provide effective verification, the proponents of the treaty place great stock in the contribution of the verification mechanisms contained in the treaty.

For example, the creation of the Organization for the Prohibition of Chemical Weapons [OPCW], and the ability of OPCW inspectors to carry out challenge inspections of suspected violations, are cited as evidence for a mechanism of effective verification.

Yet in an unclassified excerpt from the 1993 NIE on verification, the intelligence community states that:

> The key provision of the monitoring regime—challenge inspections at undeclared sites—can be thwarted by a nation determined to preserve a small, secret program by using the delays and managed access rules allowed by the convention.

Those, Mr. President, are not my words. Those are the words of the intelligence community describing its ability to monitor compliance with the treaty before us.

I should point out to my colleagues, in light of the fact that the National Intelligence Estimate from which I have quoted is dated August 1993, that the Acting Director of Central Intelligence, George Tenet, and other intelligence officials have confirmed on numerous occasions that the key judgments cited above are unchanged.

In an open hearing on February 5 of this year, I asked George Tenet, the acting Director of Central Intelligence, about the verifiability of the CWC. Our discussion went, in part, as follows:

Acting Director Tenet said: ''We can never guarantee that a power that signs up to this agreement won't cheat. These . . . chemical and biological developments are small, they are easily hidden. They are not like big nuclear developments that have big signatures that everybody understands.''

I replied: ''In other words, it will be fairly easy to cheat some, wouldn't it?''

Acting Director Tenet responded: ''It will be easy to cheat, Mr. Chairman.''

Mr. President, the treaty before us today is deficient in many respects: both in what it does, and in what it fails to do.

As chairman of the Senate Intelligence Committee, I must therefore conclude that the greatest flaw with the CWC is that, absent a certification of effective verification, we cannot even know if it is doing what it is supposed to be doing, and we cannot know the extent to which it is failing to do what it should do: This treaty is unverifiable.

Therefore, I support condition No. 33, and oppose the motion to strike.

If I have any time left, I yield it to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I thank the chairman for yielding to me.

Mr. President, I rise in opposition to the motion to strike condition 33, relating to effective verification.

As a member of the Senate Select Committee on Intelligence, I believe I have a responsibility to ensure that this treaty can be effectively verified by the intelligence community.

If the CWC cannot be verified to ensure that it will, in fact, eliminate the scourge of chemical weapons, then what is the point of ratifying it?

In fact, the CWC may well make things worse, not better, Some signatory countries like China and Iran will use the technology-sharing provisions of titles X and XI, combined with the cloak of international respectability they gain by joining the CWC, to advance their CW programs and exports.

Condition 33 of the resolution of ratification seeks to address the verifiability problem, by requiring the President to certify to the Congress that the CWC is effectively verifiable before submitting the U.S. instrument of ratification.

Mr. President, we have all heard what the intelligence community said about the verifiability of the CWC in its National Intelligence Estimate of August 1993, but I think this judgment is worth repeating:

> The capability of the Intelligence Community to monitor compliance with the Chemical Weapons Convention (CWC) is severely limited and likely to remain so for the rest of this decade.

If that judgment has changed, the President should be able to provide the necessary certification. But as we well know, and as the Acting Director of the CIA George Tenet has confirmed on several occasions, that judgment has not changed. With all the assets at our disposal, the intelligence community still cannot verify compliance with this treaty.

The Senate has already discussed the classified aspects of our intelligence and verification capabilities in considerable detail in closed session, and I cannot add anything to that debate now.

What I would like to do, is provide an example of the way in which a determined proliferator can evade, and deflect, what is perhaps the most extensive scrutiny ever imposed on an unoccupied nation in peacetime. I am referring, of course, to Iraq.

Iraq is exhibit A for a number of propositions. First, Iraq is the very model of a rogue state. It is a country that has not only developed chemical and biological weapons [CBW], and come within a hair's breadth of producing a nuclear device, but has actually used chemical weapons against Iran, and against its own citizens.

Second, as a nonsignatory to the CWC, Iraq is an example of those countries that will not be constrained by the CWC, and will proceed apace with the production of chemical weapons.

Third, and this is the point I wish to focus on, Iraq is the most current example of the effectiveness—or the lack thereof—of even the most intrusive international monitoring.

Treaty supporters point to the Organization for the Prohibition of Chemical Weapons [OPCW]—and especially the ability of OPCW inspectors to carry out challenger inspections of suspected violations—as a means of effective verification.

Yet the intelligence community concludes, in an unclassified excerpt from the 1993 NIE, that:

> The key provision of the monitoring regime—challenge inspections at undeclared sites—can be thwarted by a nation determined to preserve a small, secret program by using the delays and managed access rules allowed by the convention.

Acting CIA Director Tenet reiterated that judgment in a letter to Senator KYL, dated March 26, 1997.

In the 6 years since the end of the Persian Gulf war, weapons inspectors from the U.N. Special Commission [UNSCOM] have combed Iraq in search of nuclear, chemical, biological, and missile production and storage sites—inspectors armed with powers far greater than those of OPCW inspectors, I might add.

Despite this extraordinary level of scrutiny, Iraq is believed to retain: chemical weapon precursors and production equipment, and possibly large quantities of deadly VX agent and munitions; BW cultures, production equipment, agent and weapons. These stocks can be used to create a large stockpile in a matter of days; and an operational SCUD missile capability, including support vehicles, launchers, fuel, operational missiles, and, most alarming of all, possible chemical or biological warheads.

Last, Iraq retains nuclear weapons blueprints, machine-tools, and know-how; is believed to be continuing its nuclear weapons design work; and probably has the ability to create a nuclear weapon—if it obtains fissile materials—with very little warning.

Mr. President, I am not reciting this information in order to criticize UNSCOM. I commend Ambassador Rolf Ekeus, and the dedicated UNSCOM inspectors, for their persistence in the face of determined Iraqi resistance and intimidation.

But if these are the results of 6 years of international monitoring of Iraq—a pariah country, defeated in war, and subjected to massive invasions of its national sovereignty—then I wonder what the OPCW inspectors, with their far more limited powers, can realistically hope to accomplish in other countries?

As a final note, I should remind my colleagues that before the gulf war, Iraq was a member in good standing of the International Atomic Energy Commission, or IAEA, subject to all the usual IAEA inspections and safeguards.

Yet Saddam Hussein was within months of having a nuclear weapons capability on August 2, 1990, when he invaded Kuwait. Had Saddam waited until he had a nuclear device, Kuwait might yet be the 19th province of Iraq—and tens of thousands of people, including thousands of American soldiers, might have died.

Mr. President, I believe that our experience with Iraq demonstrates the intractable problems posed by the verification of the CWC. Supporters of the treaty say, ''But we have learned from our experience with Iraq, and we will do better next time.'' I cannot join them in that optimistic conclusion.

If the President of the United States cannot certify that this treaty can be effectively verified, as defined in condition 33, then the Senate should not ratify this treaty.

I oppose the motion to strike condition 33.

Mr. BIDEN. Mr. President, I yield the remainder of the time to the Senator from Nebraska.

Mr. KERREY. Mr. President, I rise today in support of striking condition 33 from the resolution of ratification of the Chemical Weapons Convention. Condition 33 would bar the United States from ratifying the convention until the President can certify with high confidence that we have the capability to detect, within 1 year of a violation, the illicit production or storage of a single metric ton of chemical agent. As the authors of this condition fully realize, this standard is unattainable and would effectively bar the United States from participation in the CWC forever.

Mr. President, I do not come to the floor as the vice chairman of the Intelligence Committee to say to my colleagues that this treaty is absolutely verifiable. The distinguished chairman of the committee indicated that Mr. Tenet, Acting Director of Central Intelligence, said it will be difficult to verify and quoted him as saying it would be easy to cheat. What he did not do, regrettably, is go on with the follow-on quote. The next sentence in his answer was, ''But, in the absence of the tools the convention gives us, it will be much harder for us to apprise you''—meaning the committee—''and apprise the military and policymakers of where we think we are in the world with regard to these developments.''

Let me be clear. The United States has made a decision that we are going to destroy our chemical weapons and try to lead the world in the elimination of chemical weapons. That is what this policy is all about. We didn't have this treaty presented to us. We made a conscious decision to eliminate our own chemical weapons and then try to develop a regimen that enables us to identify and detect as much as possible. Our Director of Central Intelligence, as well as our military, has indicated to us that this treaty will increase the identification that we are able to do and increase the likelihood that we will be able to end up with the result being that we have no chemical weapons in any military arsenal on this planet.

No treaty is absolutely verifiable. Condition 33 make verification more difficult by setting a level of identification, we do not need to benefit from the convention. Far more important to our security are the improvements to our identification efforts we stand to gain under the CWC.

Verification is a political decision made by policymakers. To make this

decision, our intelligence agencies will need to provide evidence to support a conclusion made by policymakers. The benefits we will receive under the CWC come from our increased ability to identify whether a nation is developing, producing, and storing chemical weapons. Under the CWC's routine and challenge inspections, we will be better able to identify the storage and destruction of declared chemical weapon stocks. We will also be better able to identify a nation's attempt to develop the infrastructure to handle chemical weapons and any military training in the use of these weapons.

U.S. intelligence officials have stated that the CWC will add to their monitoring tools to counter the chemical weapons threat. Data declarations will provide evidence of compliance or noncompliance, routine inspections make it more difficult and costly to use legitimate facilities to produce chemical weapons, and challenge inspections will give the United States the opportunity to seek further indications and evidence under the CWC.

In addition, the CWC will help stymie chemical weapons development by nonsignatory, rogue nations by restricting trade in key precursor chemicals to non-parties. Acquisition efforts for chemicals, technology, and equipment by non-signatories will provide tip-offs to pursue compliance concerns with parties who may be the source of the materials.

These are real benefits to our identification efforts that will help ensure the safety of our troops and citizens. However, if we impose an impossible standard of verification and fail to ratify the CWC, we will lose these benefits.

Further, condition 33 creates an arbitrary definition of what is a ''militarily significant'' amount of chemical weapons. This condition deems one metric ton of chemical weapons to be a threat to our military. But General Shalikashvili, Chairman of the Joint Chiefs of Staff, has testified that ''a militarily significant quantity of chemical weapons is situationally dependent.'' It depends on the terrain, the weather, the number of troops, the type of chemicals used, how the chemicals are delivered, and the chemical weapons defensive system of the targeted forces. He stated that, ''The quantity is totally scenario dependent, and it would be difficult to cite a specific amount as militarily significant.''

During the Iran-Iraq war, both sides used tens of tons against each other without altering the course of the war. The Defense Department found that it would take several hundred to a thousand tons to seriously disrupt U.S. logistics in a war; and the United States's own stockpile of chemical weapons, which we are committed to destroy with or without the CWC, is about 30 thousand tons. One metric ton of chemical weapons, while still posing a horrible threat under some conditions, in no way is a militarily significant threat to our national security.

Without the CWC, chemical weapons production and stockpile on a small or grant scale will still be an acceptable practice. Under the CWC, not only will this no longer be acceptable, but we will have additional tools in our arsenal to identify chemical weapons programs. Since we will have to monitor this threat whether or not we join the CWC, our security interests are improved under the treaty rather than without it.

This condition must be removed from the resolution if the United States is to participate in the Chemical Weapons Convention. Therefore, Mr. President, I support striking condition 33 from Executive Resolution 75.

Mr. President, and colleagues, I believe strongly that this particular condition, regardless of how you feel about the treaty, sets an unrealistic level of requirement for verification, and under no circumstances are we going to be able to verify a ton of chemical weapons under the evaluations of the military. We do not need to accept this kind of arbitrary standard.

Mr. President, regardless of whether or not you are going to vote for or against this treaty in the end, I urge my colleagues to vote to strike condition 33.

Mr. BIDEN. I yield myself 1 minute on the time left.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Delaware.

Mr. BIDEN. Mr. President, let's get this straight. Verification is about whether or not we can know whether or not our security interests are going to be put in jeopardy. A useful chemical weapons capacity requires a lot more than just whether or not you can produce illicit chemical weapons. It requires a delivery system, infrastructure, storage, and use of chemical weapons. It includes defense preparations, extra security around the storage areas, and training and exercising of troops who will use those weapons. It goes on and on.

The ability to put together a chemical weapons capability to go undetected that will diminish our security is not real.

I yield back the time and ask unanimous consent that we defer a vote on this amendment at this moment, that we turn to my next motion to strike, which will relate to inspectors, condition 31, that there be 10 minutes equally divided on condition 31, that vote on condition 33 and on condition 31 be stacked after the conclusion of the debate on condition 31, with 15 minutes on the first vote, 10 minutes on the second vote, and with 1 minute intervening.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 50

(Purpose: To strike condition no. 31, relating to the exercise of right to bar certain inspectors)

Mr. BIDEN. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 50.

Beginning on page 63, strike line 21 and all that follows through line 4 of page 65.

Mr. BIDEN. Mr. President, let me also say for the benefit of my colleagues that we are trying to accommodate schedules. I thank the Senators from Arizona and Georgia, who were running around trying to get their agreement. At the completion of the two rollcall votes—we are trying to get additional time on one amendment relating to articles X and XI, and we have an hour set aside for it now and we hope to reduce that time. At the conclusion of that vote we would then go to final passage, although there probably may be a few minutes intervening because each has some time left. That is the objective. Some are trying to catch planes and trains and the like.

Mr. President, let me suggest quickly what this does. The amendment that I sent to the desk strikes a condition which unilaterally says at the front end we will not allow any inspector from such states as China, Iran, and Iraq, et cetera, if they are signatories to the treaty. If they have deposited their instruments of ratification, now they are in the deal. We are saying, if they are in, we will not allow any inspector from their countries to be any part of a team that would inspect U.S. facilities.

The intention is obvious, and it is laudable. The intention is to keep the bad-guy inspectors out because we are worried that what they would do is send over an intelligence officer as part of that inspection team, learn all secrets from us and take them back home. It is not likely that can happen anyway. But let's assume it did.

The intelligence community says this is a very bad idea. The reason it is a bad idea if we do that, Mr. President, is every other country will issue a blanket rejection of any U.S. inspectors. We are the class of the field. You have heard all day—and in the closed session—my colleagues expressing their concern about verification. The more we have American inspectors involved, the more likely we are to be able to detect wrongdoing because we are the class of the field. We don't want to be excluded across the board from being on any inspection team. So, therefore, this is intended to do something good but is extremely counterproductive. It is counterproductive, and the intelligence community says so as well.

But beyond that, it is unnecessary. There is a provision. In the interest of time—we were going to have an hour of debate; I was going to put all of this out to you—but in this treaty there is a provision now that says the United States, or any other country, can at any time strike an inspector. The way this works, as most of our colleagues

know, is when there is going to be a challenge inspection, or a routine inspection, there is a list of inspectors. They give the names. As few as 3 and as many as 15 inspectors are going to show up on the doorsteps of X, Y, Z company, and they list their names and their country. Guess what? Our intelligence community from the time those names are given—it is like a jury pool. The Presiding Officer was a Federal prosecutor. It is like a grand jury. Every country submits inspectors that they want participating. Their committee picks inspectors from each of the countries. They sit in one town and one city. When an inspection comes up, they say ''You, you, you, and you, go and inspect.'' They have to submit those names. Our intelligence community, when that pool is picked, will do a background check on every one of those guys and women. They know their names. So they can, in fact, go out there and say—we can say, or the intelligence community can say—''Look, he is on that inspection group. Strike him. We don't want him.'' You can do that. The only time we can't strike is when—I have a smart staff here. In the late hours they think they are humorous.

You are fired.

[Laughter.]

I am only kidding. That is a joke; a little levity at this time.

As my distinguished friend on the Intelligence Committee, formerly of my staff, wrote, ''They can't strike when they are on the plane.'' You have to give 24 hours notice you don't want So and So in there.

So the point is you can already strike anybody. We do this in a blanket way. We knock the class of the field out of the inspection process. We don't want to do that. With all due respect, this is not a thoughtful amendment. This is counterproductive.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Mr. President, have the yeas and nays been ordered on the previous amendment? If not, I would ask for the yeas and nays on the previous amendment as well.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Mr. President, if I have any time left on this, I reserve it, and I will yield the floor now for my colleague from Arizona.

Mr. KYL. I thank the Senator.

Mr. President, Senator HELMS had intended to present these remarks, and he cannot be here right at this moment. Therefore, I am going to proceed to deliver his remarks and then also yield to the majority leader should he wish to make a remark or two about this condition.

If ratified, Mr. President, the Chemical Weapons Convention would provide inspectors from foreign countries unprecedented access to U.S. facilities, both commercial and Government-related. Inspectors would be permitted to interview site personnel, inspect records, photograph onsite apparatus, take samples, record readings of plant equipment, and use instruments to monitor processes. The risk that trade secrets or national security secrets could be stolen during inspection is very high.

First, proprietary information is often the basis for a chemical company's competitive edge. Industrial espionage can enable a competitor to obtain at a minimal cost information that its originator acquired only through an enormous investment of time and money, thereby erasing the company's competitive advantage. For this reason, the theft of trade secrets can cripple even a giant company and can be fatal to a smaller enterprise.

Second, because chemicals covered by the CWC are used in a variety of aerospace activities, from the manufacture of advanced composites and ceramics to additives for paints and fuels, dozens of defense contractors are targeted for routine inspections under the CWC. That means that when we are talking about proprietary information, we may also be talking about national security information.

A company such as Lockheed Martin, Courtalds Aerospace, Hercules, Raytheon, and the Hexcel Corp. will be forced to allow foreign nationals access to their facilities, employees, and records. Our national laboratories further could be inspected under this treaty, as will Government facilities.

Previous national trial inspections conducted in the United States in preparation for the CWC revealed that inspections under the treaty are an extremely dangerous threat to sensitive information. Soil and water samples were collected in the vicinity of rocket propellant production facilities on one such inspection. They were analyzed at the Lawrence Livermore National Laboratory. Using modern techniques, analysts were able to discern classified information about the formulation of the rocket propellant and the process used to make it.

Finally, Mr. President, China and others likely intend to use CWC inspections for espionage purposes. They should not be allowed to do that. The officials of the preparatory commission for the Organization of the Prohibition of Chemical Weapons, the OPCW, have stated that all of the Chinese inspectors were directed to volunteer for the organization and that these inspectors have direct ties to China's defense chemical warfare program. Accordingly, and the point of this condition, the Senate should uphold this provision which would direct the administration to exercise a United States treaty right—as the Senator from Delaware pointed out, we have this right under the treaty—we are simply directing the President to exercise this right to bar inspectors from China, which has an active industrial espionage program and has violated United States nonproliferation laws, from entering the United States to engage in these inspections. In addition, it would prevent inspectors from countries which are hostile to the United States and are state sponsors of terrorism—Iran, Iraq, Syria, Libya, Sudan, North Korea, and Cuba—from participating in these inspections.

Mr. President, I do not think this is an unreasonable provision. There is no downside to the provision, only the positive potential that fewer trade and national security secrets would be handed over to countries that are openly hostile to the United States.

Therefore, I urge the Senate to reject the motion to strike.

At this time I yield the remaining time to the distinguished majority leader.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Could I inquire about how much time is remaining?

The PRESIDING OFFICER. There are 1½ minutes.

Mr. LOTT. Mr. President, I have already stated my position. I do think we should vote to ratify this convention, but I think we should defeat this motion to strike. This is not a killer amendment. This is very serious, where we are just saying that we should have the ability, the President should have the ability, to bar these inspectors from these countries that have violated U.S. nonproliferation laws. You are talking about inspectors from so-called, as the Secretary of State has called them, ''rogue nations'' that want to come in here and get into finding information that could help them to further contribute to proliferation.

So I urge the Senate on this motion to vote to defeat the motion to strike. We should have the ability, we should as a matter of fact I think require that we bar these inspectors from coming into this country when they are contributing to the problem all over the world. So I yield the remainder of my time.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield myself 30 seconds off my time on the bill.

The PRESIDING OFFICER. The Senator is recognized for 30 seconds.

Mr. BIDEN. Mr. President, two very quick points. The companies named by my distinguished friend, including Hercules, which is headquartered in my State, that are supposedly worried, they support this treaty. Hercules supports this treaty. They are not worried about this being trouble.

Second, this is not a killer, but it rips the heart out of our inspection regime, and I would not be objecting, I say to the majority leader, I would not be seeking to take it out if it gave the President the option. It gives the President no option. It requires him—it

requires him—to ban. And what it does again, I say to my colleagues, it then says they will ban us. We have the class of the field doing the inspection. It is not a smart thing to do, in my humble opinion.

I yield the floor.

VOTE ON AMENDMENT NO. 49

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 49. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 66, nays 34, as follows:

[Rollcall Vote No. 48 Ex.]

YEAS—66

Akaka	Feingold	Lieberman
Baucus	Feinstein	Lugar
Biden	Ford	McCain
Bingaman	Frist	Mikulski
Boxer	Glenn	Moseley-Braun
Breaux	Gorton	Moynihan
Bryan	Graham	Murray
Bumpers	Hagel	Reed
Byrd	Harkin	Reid
Chafee	Hatch	Robb
Cleland	Hollings	Roberts
Coats	Inouye	Rockefeller
Cochran	Jeffords	Roth
Collins	Johnson	Santorum
Conrad	Kennedy	Sarbanes
D'Amato	Kerrey	Smith (OR)
Daschle	Kerry	Snowe
DeWine	Kohl	Specter
Dodd	Landrieu	Stevens
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—34

Abraham	Gramm	McConnell
Allard	Grams	Murkowski
Ashcroft	Grassley	Nickles
Bennett	Gregg	Sessions
Bond	Helms	Shelby
Brownback	Hutchinson	Smith (NH)
Burns	Hutchison	Thomas
Campbell	Inhofe	Thompson
Coverdell	Kempthorne	Thurmond
Craig	Kyl	Warner
Enzi	Lott	
Faircloth	Mack	

The amendment (No. 49) was agreed to.

AMENDMENT NO. 50

The PRESIDING OFFICER. Under the previous order—the Senator from Delaware.

Mr. BIDEN. I am sorry to interrupt the Chair. You were going to say 1 minute for explanation, is that correct, equally divided?

The PRESIDING OFFICER. That is correct.

Mr. BIDEN. Mr. President, the purpose of my amendment is to strike a provision in the bill that requires the President to disallow an inspector from any of a number of countries, from Russia to Iran.

There is in the treaty already the ability of the United States to strike any inspector. The inspectors must be named before an inspection takes place. The reason why we do not want a blanket exemption is, if we blanket exempt all those folks, they will blanket exempt any U.S. inspector.

We want inspectors in the bad guy's country. We do not want to do this. It is counterproductive.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let met summarize the argument the majority leader and I made in opposition to the motion to strike this condition.

The treaty currently provides for the President to say that he does not want inspectors from certain countries coming into the United States. There is a reason for that. What we are doing is directing him only in two cases to, in advance, say, these are the countries covered: Those countries that sponsor state terrorism, pursuant to our definition of that, and China because of its violation of another law.

So it is only those countries that have violated American law and who are the state-sponsored terrorists who can be denied inspectors in the United States.

The PRESIDING OFFICER. The time has expired. Under the previous order, the question now occurs on agreeing to the Biden amendment No. 50. They yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 56, nays 44, as follows:

[Rollcall Vote No. 49 Ex.]

YEAS—56

Akaka	Feingold	Lieberman
Baucus	Feinstein	Lugar
Biden	Ford	Mikulski
Bingaman	Frist	Moseley-Braun
Boxer	Glenn	Moynihan
Breaux	Graham	Murray
Bryan	Harkin	Reed
Bumpers	Hollings	Reid
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Cleland	Johnson	Roth
Cochran	Kennedy	Sarbanes
Collins	Kerrey	Snowe
Conrad	Kerry	Specter
D'Amato	Kohl	Stevens
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NAYS—44

Abraham	Gorton	McCain
Allard	Gramm	McConnell
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Santorum
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Coats	Hutchinson	Smith Bob
Coverdell	Hutchison	Smith Gordon H
Craig	Inhofe	Thomas
DeWine	Kempthorne	Thompson
Domenici	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	Mack	

The amendment (No. 50) was agreed to.

Mr. HELMS. I move to reconsider the vote.

Mr. BIDEN. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. As I understand, there is 1 hour remaining on the last amendment of the Senator from Delaware to strike condition 32, is that correct?

The VICE PRESIDENT. The Senator is correct.

Mr. BIDEN. It is my understanding the Senator from Delaware has control of an additional 8 minutes on the bill?

The VICE PRESIDENT. Fifteen minutes.

Mr. BIDEN. Mr. President, I have spoken to the majority on this. The distinguished Senator from Virginia has been waiting around patiently all day and I keep bumping him. I want to yield up to 5 minutes of my time on the bill to him at this moment, and then I will move, with permission of the chairman, to the last condition.

I yield to the Senator from Virginia.

The VICE PRESIDENT. The Senator from Virginia.

Mr. ROBB. I thank my friend and colleague from Delaware.

Mr. President, there's not much left to say about ratification of the CWC—even here in the Senate. We've had seventeen formal hearings on the topic over the last two years—both open and closed—and as a member of all three national security committees, I have participated in most of them. In addition, the salient features have been discussed in countless meetings and fora that have that have been widely reported in both print and broadcast media. Finally, for everyone involved, the moment of truth has arrived and we will cast what will certainly be one of the most important votes of the 105th Congress.

Mr. President, I have been committed to ratification for some time, but I know some of our colleagues have had reservations. There is no question that respected opponents of ratification have raised important and legitimate questions. But those questions have been thoroughly and painstakingly answered by the proponents, including and I believe that our failure to ratify this chemical weapons convention today would represent a serious setback for the United States and the entire international community and unquestionably would be viewed as a failure of leadership by the world's indispensable nation.

I will not repeat all of the arguments that have been made. In his news conference earlier today the majority leader framed the essential question. And he repeated it here on the Senate floor earlier this afternoon. And I certainly commend him for the way he responded. He asked will we be better off with or without the treaty—for me that is not a close call.

I believe we will be much better off, by any measure I can think of, if we ratify the convention.

I hope that the 28 conditions that we agreed to yesterday, and the additional reassurances provided by the President today, will insure that at least two-thirds of our colleagues reach the same conclusion.

The United States is getting out of the chemical weapons business with or without an international agreement—and because over 70 other nations have already ratified the convention, it goes into effect on April 29th, regardless of

what we do. The only matter we'll decide tonight is whether we'll be able to participate and shape banning the use, development, production, and stockpiling of chemical agents, or be cast with the pariah states that will face increasing difficulty due to permanent trade restrictions on non-CWC members.

If we want to play a leading role in at least reducing the likelihood that poison gas will be used against us or the rest of the international community, we have no choice but to ratify this convention.

Of course, there are no absolutes when it comes to arms control verification, but through the most far-reaching, extensive, and intrusive inspection procedures ever agreed to, the CWC represents a clear step in the right direction.

I do not question the patriotism of any of our colleagues who oppose ratification, but I belive we owe a special debt of gratitude to those statesmen who might find some partisan or ideological advantage in opposing ratification, but who put our country's interest first in supporting it.

In that regard, I'd like to single out our former colleague and Majority Leader, Bob Dole, who now joins the Presidents of both parties who negotiated, signed, and submitted the convention for ratification, as well as a distinguished galaxy of present and past top-level national security leaders.

And, I would like to conclude by commending Senator BIDEN, the ranking member of the Foreign Relations Committee, and Senator LUGAR, a longstanding expert in the area of arms control, for their leadership and tenacity these last few weeks. Due to their tireless efforts, I hope we will have the votes to ratify the CWC and signal to the world our continuing leadership, by example, to eliminate these weapons of mass destruction from the face of the earth.

Mr. President, I yield the floor.

AMENDMENT NO. 51

(Purpose: To strike condition no. 32, relating to stemming the proliferation of chemical weapons)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ENZI). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment number 51.

On page 65, strike lines 5 through 24.

Mr. BIDEN. Mr. President, we now turn to the last condition that I am seeking to strike which will require the President, before he deposits the instrument of ratification, to certify that the Chemical Weapons Convention has been amended by striking article X and article XI in several respects.

Mr. President, I apologize for the shorthand, because it does not do justice to the arguments of my friends who oppose this, but this is what we call in the trade a killer amendment. Were this to pass, there is no treaty. I will speak to that later.

With permission of the chairman of the committee, I yield to the Senator from Arizona, Senator MCCAIN, who, as the old saying goes, has forgotten more about this treaty than most people know. I yield such time as he consumes.

Mr. MCCAIN. Mr. President, failure to approve the amendment proposed by the Senator from Delaware would require the United States to delay ratification of the Chemical Weapons Convention until we obtain the agreement of other CWC parties to delete one of the treaty's articles and significantly alter another.

I believe the issue of technology transfer is a serious one because it is the one argument that seeks to demonstrate that ratifying the CWC will actually harm the United States national security.

The critics argue because of article XI of the CWC we will have to eliminate our national controls on chemical technologies and disband the Australia Group, a multilateral framework for restraining transfers of sensitive chemical technology. This interpretation of the treaty is contradicted not only by the text of the treaty which subordinates Article XI on the basic undertakings in Article I for parties not to acquire chemical weapons or to assist another state in doing so, but also by our experience with other nonproliferation treaties and the agreed consensus conditions included in the resolution of ratification before us.

First of all, Mr. President, our experience with essentially similar language in the Nuclear Non-Proliferation Treaty shows that we need not weaken our national or multilateral export controls. The Nuclear Suppliers Group, the counterpart of the Australia Group, was actually founded after the NPT went into force. Nor has the NPT obliged us to curtail our national controls on the transfer of nuclear technology, even to other NPT parties. The United States enacted the Nuclear Non-Proliferation Act of 1978, 10 years after the NPT was signed.

Moreover, beyond the text of the CWC itself we have condition 7 of the resolution of ratification before us. This requires the President to certify not only that the United States believes that the CWC does not require us to weaken our export controls but also that all members of the Australia Group have communicated at the highest diplomatic levels their agreement that multilateral and multinational controls on sensitive chemical technology are compatible with the treaty and will be maintained under the CWC.

We also have condition 15 obliging the United States to share only medical antidotes and treatment to countries of concern if they are attacked with chemical weapons.

Finally, we have received today from the majority leader a letter which President Clinton has sent to him committing the administration to withdraw from the CWC if other parties misuse articles X and XI of the treaty. In the words of the majority leader, this commitment is unprecedented and ironclad.

Let me just remind my colleagues, Mr. President, that the President of the United States in this letter states:

In the event that a State Party or States Parties to the Convention act contrary to the obligations under Article I by:

(A) using Article X to justify providing defensive CW equipment, material or information to another State Party that could result in U.S. chemical protective equipment being compromised so that U.S. warfighting capabilities in a CW environment are significantly degraded;

(B) using Article XI to justify chemical transfers that would make it impossible for me to make the annual certification that the Australia Group remains a viable and effective mechanism for controlling CW proliferation; or

(C) carrying out transfers or exchanges under either Article X or XI which jeopardizes U.S. national security by promoting CW proliferation:

I would, [the President of the United States] consistent with Article XVI of the CWC, regard such actions as extraordinary events that have jeopardized the supreme interests of the United States and therefore, in consultation with the Congress, be prepared to withdraw from the treaty.

Mr. President, I do not know how we could be any clearer than that letter from the President of the United States.

Conversely, if the United States rejects ratification, I doubt that we will be able to play our traditional leadership role in attempting to persuade other chemical suppliers to exercise restraint.

The world will blame the United States for undermining a chemical weapons ban that the vast majority of other countries were willing to sign. If we reject ratification, where will we get the moral and political authority to persuade other Australian Group participants to block exports to countries of concern?

Mr. President, the supporters of this condition portray renegotiating the CWC to change these two articles as a feasible undertaking. We are talking about a new treaty with more than 160 other signatories, more than 70 of which already ratified. In this context, retired Gen. Brent Scowcroft, former National Security Adviser, recently testified:

Starting over, as was suggested this afternoon, I think it is pure fantasy. If we reject this treaty, we will incur the bitterness of all our friends and allies who followed us for ten years in putting this together. The idea that we can lead out again down a different path I think is just not in the cards. We have got to deal with the situation we face now, not an ideal one out in the future.

I think that the CWC, as we have it now and as strengthened by the 28 agreed conditions, is good enough. I urge my colleagues to adopt the amendment of the Senator from Delaware.

Mr. President, I don't—to the relief of most—intend to speak again. I want to congratulate Senator HELMS for his leadership on this issue, for his willingness to bring this treaty, which he opposed, to the floor. I congratulate Senator BIDEN for his consistent leadership. He just said that I knew more about the treaty. I know of nobody who knows more details of the treaty than the Senator from Delaware, unless it is the Senator from Indiana, Senator LUGAR, who has consistently led on this and is also responsible in the Senate for ratification of this issue along with Senator BIDEN.

I congratulate my colleague from Arizona, Senator KYL, who fought long and hard in this cause. He has done a masterful and admirable job in articulating his position on this issue. Our majority leader, Senator LOTT, has been through hundreds of hours of meetings and has had tough negotiations with the administration. Senator LOTT got from the President of the United States a letter which he calls unprecedented. I agree. I believe that it is something that can assure all of our citizens that if there are violations of this treaty, the United States of America will leave, and leave immediately. Senator LOTT has done a job unequaled by any in his leadership on this issue. I am grateful for it.

Finally, I also want to express my appreciation to the former majority leader, Senator Dole, who, of course, decided that this issue was important enough for him to inform our colleagues.

Finally, Mr. President, sometimes the Senate doesn't have great days, and sometimes the Senate has moments of which we can all be proud. I believe, watching carefully this debate for the last 2 days and what has transpired here on the floor of the Senate, I think the opponents and proponents of the treaty can be proud of the level of debate, both in its comity and also in its content. I congratulate my colleagues on a hard-fought debate, one of which I think every Member, whether we are on the winning or losing side, can be proud.

I yield the floor.

Mr. ENZI. Mr. President, one of the charges made consistently during the weeks of debate over this treaty is the charge that supporters of this treaty desired to see chemical weapons abolished from the earth, while opponents have no such interest. Nothing could be further from the truth. Opponents of the treaty also desire to see these heinous weapons abolished. We have simply contended that a poorly drafted treaty will not only fail to achieve that worthy end, but could even lead to their increased proliferation.

I am pleased to report that, as of this morning, opponents of the original treaty draft have prevailed in our efforts to add teeth and additional safeguards to what was heretofore an unacceptable document. To begin with, the Senate yesterday voted to add twenty-eight additional provisions to the CWC. These provisions tighten our intelligence sharing procedures to keep classified information out of the wrong hands, would maintain the stricter exporting restrictions as outlined in the ''Australia Group'' protocol, would enhance monitoring and verification of compliance, and would greatly beef up our military's chemical warfare defense capabilities. In addition, the Senate leadership this morning received a letter from the President committing him to withdrawing from the convention if it leads to the degradation of our chemical weapons defenses, or leads to chemical weapons proliferation.

I believe this treaty is now worthy of ratification and will vote accordingly. Rest assured, however, that a treaty is only as reliable as the offices administering it. Consequently I have every intention of continuously evaluating the performance of the administration and the United Nations relative to their implementation of these treaty provisions. Should any party come up short in their verification and enforcement duties, we will be right there to set them straight.

Mr. HELMS. Mr. President, I suppose, at this point, it would be an exercise in futility to go into great detail about why the Senate should reject this chemical weapons treaty. But let me touch on it. I ask the Chair to notify me when I have talked for 8 minutes.

Mr. President, this treaty won't touch—won't touch—terrorist states like Libya, Iraq, Syria and North Korea. The administration admits this itself. The administration also admits that this treaty is unverifiable. The fact that Russia is already cheating, even before this treaty goes into effect, and the rather incredible refusal by the administration to bar inspectors from hostile nations, such as Iran and China, to come and ''inspect'' the businesses of the United States of America. It seems to me that each of these defects, in and of themselves, are reason enough to oppose the treaty.

But one in the Senate often has to face reality. Let me say this. There is one issue that has raised the greatest concern among Senators, I believe—the issue on which the ratification vote should hinge—and that is the administration's refusal to modify Articles X and XI of this treaty.

Now, these controversial provisions require the transfer of dangerous chemical agents, defensive gear and know-how to any nation that joins the CWC, including—get this—terrorist states like Iran and Cuba, and known proliferators, such as Russia and China. Now, think of the implications of that. If anybody is out there in televisionland, I hope you will contemplate what is going on here on the Senate floor and watch who votes how when the roll is called up yonder in just a little while.

Former Secretary of Defense, Dick Cheney, during the previous public administration, the Bush administration, by the way, told the Foreign Relations Committee earlier this month that Articles X and XI amount to what he said are ''a formula for greatly accelerating the proliferation of chemical warfare capabilities around the world.''

Now, this condition is an essential protection in the Senate's resolution of ratification. It would make approval of this treaty absolutely contingent upon the administration's agreement to seek modifications of Articles X and XI. You have heard me say that over and over again for the past several weeks and months. Now, I have urged Senators to oppose efforts to strip out that key protection. But here we go again. If this motion to strike prevails, it will be an invitation to the Senate to reject the treaty entirely. But I don't think the Senate is going to accept that invitation.

In any case, why should we modify Articles X and XI? The administration argues that, in spite of all its flaws, the CWC is better than nothing. Well, to the contrary. With Articles X and XI unmodified, this treaty is far worse than nothing. Instead of halting the spread of poison gas, this treaty will be aiding in its proliferation by helping countries like Iran modernize their chemical arsenals, giving them access to our secrets for defending against poison gas attack, and giving a United States imprimatur to third country transfers of dangerous chemicals and defensive technology to rogue states.

Anybody who needs a road map or wants one for how this will work doesn't have to go to a lot of trouble. Just examine how Russia has taken advantage of similar provisions in the Nuclear Non-Proliferation Treaty. Russia is, at this very moment, using that treaty to justify its sale of nuclear reactors to Iran, under a provision known as ''Atoms for Peace,'' if you can believe that. Under this CWC treaty's Articles X and XI—again, I have to chuckle when I say it—dubbed ''Poisons for Peace''—if Russia or China decide, for example, to build a chemical manufacturing facility in Iran, giving that terrorist regime the chemical agents and high technology it needs to modernize its chemical weapons program, Russia and China not only could argue that they are allowed to give Iran this technology, but that they are obliged to do so under a treaty, mind you, ratified by the Senate of the United States.

In short, ratifying the chemical weapons treaty sends a signal to the world that something has been done about the proliferation of chemical weapons when, in fact, we would not have done anything at all except make bad matters worse, because Articles X and XI of this treaty—this dangerous, dangerous treaty—assure that the Chemical Weapons Convention will increase the spread of chemical weapons rather than stop it.

So in this next to the last vote of the evening, Senators have a choice. In

making that choice, I for one cannot imagine that the U.S. Senate would reject the advice of four former distinguished Secretaries of Defense, who testified that unless Articles X and XI are modified, the Senate should refuse to ratify this treaty.

Mr. President, I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I note that the ranking member is not present on the floor at the moment, Mr. President. I will yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I want to express my strong support for the motion to strike condition 32 from the resolution of ratification.

I strongly support the Chemical Weapons Convention. I believe it is very much in our national interests to ratify this treaty.

The pending motion is to strike condition 32 from resolution of ratification of the CWC. It is essential that this motion pass, because if it does not, our decision to ratify the treaty will be meaningless.

During the debate over this treaty, a number of serious concerns have been raised over Articles X and XI. I myself have shared some of these concerns. But I want to address these criticisms of the CWC now, because I believe that very solid answers have been provided to virtually all of them.

I met at the White House last Friday with National Security Adviser Sandy Berger and Special Assistant to the President for Defense Policy and Arms Control Robert Bell, who explained these answers to me in detail, and I found their explanations persuasive.

Sharing Defense Technologies: During the April 9, 1997 hearing in the Senate Foreign Relations Committee, the concern was raised by several witnesses that Article X of the CWC would require the United States to share advanced chemical defense technologies with rogue nations like Iran, who may sign and ratify the treaty.

If indeed the treaty required that, there would be significant grounds for concern. But I believe the concern is unwarranted and unfounded.

In an April 22 letter to me, National Security Adviser Sandy Berger makes it very clear that Article X of the CWC would impose no obligation on the United States to assist Iran with its chemical weapons defense capabilities.

I ask unanimous consent that Mr. Berger's letter be included in the RECORD at the conclusion of my remarks.

Mr. Berger makes clear that paragraph 7 of Article X, which spells out the obligations of States Parties to assist others threatened by chemical weapons, would require the United States to provide nothing more than medical antidotes and treatments to any state we deemed unreliable. We have the option to provide more advanced assistance to those nations we trust, but no obligation.

The Administration is so comfortable with this reading of the treaty, that, in their negotiations with Senator HELMS and with the Majority Leader's task force on the CWC, they have agreed to a binding condition (number 15) that would ensure that the United States will not provide any assistance other than medical assistance to any rogue nation that becomes a party to the treaty.

Another concern about Article X is that paragraph 3, which calls for parties to ''facilitate * * * the fullest possible exchange'' of information and technology on protection against chemical weapons, which some here have said would require the United States to share such equipment with rogue nations who sign and ratify the treaty.

The Administration has made clear that the use of the words ''facilitate'' and ''possible'' in this paragraph mean that the United States will determine whether any specific exchange is appropriate, and we will not pursue those we deem inappropriate. In making these decisions, we will do nothing to undermine our national export controls.

With these assertions in hand, I am satisfied that the United States will in no way be obligated to provide chemical weapons technology to any nation we deem to be untrustworthy.

Some have also raised the concern that Article X might induce other, less conscientious nations, to supply rogue states with defense technologies. But there is nothing that prevents those sales from taking place today, with no CWC in effect.

Within the CWC, the countries who make exchanges allowed in Article X are legally bound by the treaty's overriding principle, stated in Article I, that they can do nothing to ''assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.'' Any country's failure to uphold this obligation would enable the full force of over 160 nations to coalesce in support of sanctions, and possibly military action.

In addition, the CWC would provide us with far more ability to scrutinize any exchanges of chemical defense equipment than we have today. The result is a net increase, not decrease, in our knowledge of defense exchanges with rogue nations, and our ability to address any compliance concerns that may arise from these exchanges.

Cooperation on Chemical Technology: Another concern that has been raised involves Article XI. Some have suggested that Article XI, which deals with cooperation in chemical activities not prohibited by the treaty, would require the United States to provide other nations with access to our dual-use technologies and manufacturing secrets. Here again, the concern is unwarranted.

Article XI does aim to ensure that parties to the treaty can conduct legitimate chemical commerce, which is reasonable. But in his April 22 letter, Mr. Berger explains that this Article does not require the United States, or any U.S. company, to provide confidential business information to any foreign party.

As to the concern that Article XI will undercut export controls, indeed, the reverse is true. Mr. Berger makes clear that all U.S. export controls now in effect are fully consistent with the CWC. In addition, our allies in the Australia Group, all 28 of them, have pledged to maintain all existing multilateral export controls, which they agree are fully consistent with the CWC.

Here again, the problem identified by critics of the CWC would actually be worse without the treaty. The CWC will allow us to better monitor chemical commerce that occurs today without our knowledge. It will also provide the basis for further multilateral efforts to control exports, above and beyond our own existing export controls and those of the Australia Group.

Furthermore, with the CWC, the countries undertaking exchanges are legally bound by the fundamental obligations in Article I—the overriding Article of the treaty—never ''to assist, encourage or induce in any way anyone to engage in any activity prohibited'' under the convention. It must be remembered that Article I supersedes all subsequent articles of the Convention. It is disingenuous to suggest that the treaty would undercut its central prohibition so blatantly.

To address the concerns raised about Article XI, the Administration has agreed to a binding condition (number 7) that the President must certify now and on an annual basis that the Australia Group of 30 nations is continuing to control chemical exports effectively and remains a viable mechanism for doing so.

According to this condition, the President must also certify that nothing in the CWC obligates the United States to weaken our own export controls, and that each member of the Australia Group remains committed to maintaining current export controls.

With this condition added to the resolution of ratification, I believe concerns about Article XI can be laid aside.

In fact, the negotiations between the Administration and Sen. BIDEN on the one hand, and Sen. HELMS and Sen. LOTT's task force on the other, have been remarkably successful in addressing the concerns that have been raised about the treaty.

If the Administration is willing to meet the concerns of the critics of Articles X and XI, as it has, and those critics still insist on the removal of those articles as their price for ratifying the treaty, it is clear that the intent is to kill the treaty altogether.

It is completely unrealistic to suggest that we try to drop Article X and amend Article XI of the CWC at this point. These two articles were included

to reassure countries who signed the treaty that they would not be prevented from developing chemical weapons defenses or engaging in legitimate chemical commerce.

None of the 160 nations who have signed or 74 nations that have ratified the treaty will agree to renegotiate these provisions at the eleventh hour. It will simply result in our exclusion from the CWC—which is clearly the intent.

As Gen. Brent Scowcroft, National Security Adviser to President Bush, testified before the Foreign Relations Committee on April 9, 1997:

> Starting over * * * is pure fantasy. If we reject this treaty, we will incur the bitterness of all our friends and allies who followed us for 10 years in putting this thing together * * *. The idea that we can lead out again down a different path I think is just not in the cards. We have got to deal with the situation we face now, not an ideal one out in the future.

The concerns raised about Articles X and XI—which I shared—have been more than adequately addressed by the agreed conditions.

Failing to strike this condition would be tantamount to killing the treaty. I urge my colleagues to vote for this motion to strike. Those who do not are essentially voting against ratification of the entire CWC.

The CWC is not a panacea, and none of its proponents believes it is. It will not by itself banish chemical weapons from the earth, but it would result in the destruction of much of the world's chemical weapons stocks, and provide us with a valuable set of tools that would significantly strengthen our ability to monitor and defend against the threat of chemical weapons.

So, reiterating, Mr. President, during the April 9 hearing in the Senate Foreign Relations Committee, the concern was raised by several witnesses that Article X would require the United States to share advanced chemical defense technologies with rogue nations like Iran, who may sign and ratify the treaty. If indeed the treaty required that, there would be significant grounds for concern. But I believe the concern is unwarranted.

In an April 22 letter to me, National Security Adviser Sandy Berger makes it very clear that Article X of the CWC would impose no obligation on the United States to assist Iran with its chemical weapons defense capabilities.

Mr. Berger makes clear that paragraph 7 of Article X, which spells out the obligations of States Parties to assist others threatened by chemical weapons would require the United States to provide nothing more than medical antidotes and treatments to any state we deem unreliable. We have the option to provide more advanced assistance to those states we trust, but no obligation.

Another concern about Article X is that paragraph 3, which calls for parties to * * * ''facilitate * * * the fullest possible exchange'' of information and technology on protection against chemical weapons.

Now, I understand the concern there. But the administration has made it clear that the use of the words ''facilitate'' and ''possible'' in this paragraph mean that the United States will determine whether any specific exchange is appropriate, and we will not pursue those we deem inappropriate. In making these decisions we will do nothing to undermine our national export controls.

With these assertions in hand, I am satisfied that the United States will in no way be obligated to provide chemical weapons defense technology to any nation we deem untrustworthy. And the President's point A in his letter to the majority leader points this out as one of the three conditions under which the United States would withdraw from the treaty if it turns out any other way.

Some have also raised the concern that Article X might induce other, less conscientious, nations to supply rogue states with defense technologies. But there is nothing that prevents these sales from taking place today, with no CWC in effect.

With the CWC, the countries who make exchanges allowed in Article X are legally bound, as Senator MCCAIN pointed out, to the treaty's overriding and superseding principle, stated in Article I, that they can do nothing to ''assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.'' Any country's failure to uphold this obligation would enable the full force of 160 nations to coalesce in support of sanctions, and possibly military action.

In addition, the CWC would provide us with far more ability to scrutinize any exchanges of chemical defense equipment than we have today. So the result is a net increase, not a decrease, in our knowledge of defense exchanges with rogue nations and our ability to address any compliance concerns that may arise from these exchanges. For me, it was very helpful to be present in the closed session of this Senate. I very much appreciate the information shared. But I think the bottom line is really this point.

Let me turn to article XI, which deals with cooperation in chemical technology.

Another concern that has been raised involves the article XI provisions on cooperation in chemical activity not prohibited by the treaty. Some fear that these provisions would require the United States to provide other nations with access to our dual-use technologies and manufacturing secrets. Here again, I truly believe the concern is unwarranted. Article XI aims to ensure that parties to the treaty can conduct legitimate chemical commerce. It is reasonable.

In his April 22 letter to me, Mr. Berger explains that this article does not require the United States nor any U.S. company to provide confidential business information to any foreign party. As to the concern that article XI will undercut export controls, indeed, the reverse is true. Mr. Berger makes clear that all U.S. export controls now in effect are fully consistent with the CWC.

In addition, our allies in the Australia Group—all 29 of them—have pledged to maintain all existing multilateral export controls, which they agree are fully consistent with the CWC. Here again the problem identified by critics, I think, would be worse without the treaty. The CWC allows us to better monitor chemical commerce that occurs today without our knowledge. It will also provide the basis for further multilateral efforts to control exports, above and beyond our own existing export controls and those of the Australia Group. And, once again, Article I supersedes this article with the overriding obligation never ''to assist, encourage or induce in any way anyone to engage in any activity prohibited'' under the convention.

To address the concerns raised about article XI, the administration has agreed to a binding condition No. 7 that the President must certify now and on an annual basis that the Australia Group of nations is continuing to control chemical exports effectively and remains a viable mechanism for doing so. The President must also certify that nothing in the CWC obligates the United States to weaken its own export controls. The President, in his point B on page 2 in his letter to the majority leader, clearly points out that, if that happens, we would withdraw from the treaty.

The negotiations between the administration and Senator BIDEN on the one hand, and Senator HELMS and Senator LOTT's task force on the other, I think have been remarkably successful in addressing concerns raised by the treaty.

So we see here that the administration has been willing to meet the concerns of critics of articles X and XI, and it has. It seems to me completely unrealistic to suggest that we try to drop articles X and XI at this late stage. These two articles were included to reassure countries who sign the treaty that they would not be prevented from developing chemical weapons defenses or engaging in legitimate chemical commerce.

None of the 160 nations who have signed, nor the 74 nations who have ratified this treaty will agree to renegotiate these provisions at the eleventh hour. It will simply result in our exclusion from the CWC. And that would truly be too high a price to pay. I urge all my colleagues to support this motion to strike condition 32 from the resolution of ratification.

I thank the Chair. I yield the floor.

Mr. HELMS. Mr. President, I yield as much time as I may have to Senator KYL.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, first of all, let me say that I do not like to disagree with my friend and colleague

from California, Senator FEINSTEIN. And I find that I rarely disagree with my colleague from Arizona, Senator MCCAIN. This is a treaty which has caused division among reasonable people. I respect their views immensely. We find that even former members of the same administration, the Bush and Reagan administrations, now find themselves on opposite sides of this issue. So it is a matter upon which reasonable people can differ. As I said, I respect the views of those who have disagreed with me, and they have certainly shown a respect for my views, which I appreciate.

These two articles are among the most important in the treaty, and I think a little bit of background is important for us to understand the reason we believe that it is important that they not be included in the treaty when we enter into force.

We have said initially that this treaty is not global. It doesn't cover countries that it should. It is not verifiable. It is fairly well acknowledged there are no sanctions. But supporters have said it is better than nothing. There are some advantages to it. Our response is that in some respects it is not better than nothing.

In particular, these two sections, articles X and XI, make it worse than nothing, and we ought to get rid of them. It is true that to get rid of them, the states parties to the convention have to agree. That will take some time. But we believe it is better, before the United States enters, when we have the leverage to cause that renegotiation to occur, to have it occur at that time. Therefore, the resolution of ratification is passed, but prior to the President actually depositing those articles, the President certify to us that articles X and XI have been removed, or fixed.

Why is this so important? Secretary of Defense Cheney was quoted by the distinguished chairman of the committee, and I think he succinctly said it. Therefore, I will summarize these thoughts by quoting Secretary Cheney in his letter of April of this year.

He said:

> Indeed, some aspects of the present Convention—notably, its obligation to share with potential adversaries like Iran chemical manufacturing technology that can be used for military purposes and chemical defensive equipment—threaten to make this accord worse than having no treaty at all. In my judgment, the treaty's Articles X and XI amount to a formula for greatly accelerating the proliferation of chemical warfare capabilities around the globe.

Mr. President, I ask unanimous consent that Secretary Cheney's letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DALLAS, TX, *April 7, 1997.*

HON. JESSE HELMS,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter inviting me to join several other former Secretaries of Defense in testifying in early April when the Foreign Relations Committee holds hearings on the Chemical Weapons Convention. Regrettably, other commitments will preclude me from participation. I hope that this correspondence will be sufficient to convey my views on this Convention.

During the years I served as Secretary of Defense, I was deeply concerned about the inherent unverifiability, lack of global coverage, and unenforceability of a convention that sought to ban production and stockpiling of chemical weapons. My misgivings on these scores have only intensified during the four years since I left the Pentagon.

The technology to manufacture chemical weapons is simply too ubiquitous, covert chemical warfare programs too easily concealed, and the international community's record of responding effectively to violations of arms control treaties too unsatisfactory to permit confidence that such a regime would actually reduce the chemical threat.

Indeed, some aspects of the present Convention—notably, its obligation to share with potential adversaries like Iran chemical manufacturing technology that can be used for military purposes and chemical defensive equipment—threaten to make this accord worse than having no treaty at all. In my judgment, the treaty's Articles X and XI amount to a formula for greatly accelerating the proliferation of chemical warfare capabilities around the globe.

Those nations most likely to comply with the Chemical Weapons Convention are not likely to ever constitute a military threat to the United States. The governments we should be concerned about are likely to cheat on the CWC, even if they do participate.

In effect, the Senate is being asked to ratify the CWC even though it is likely to be ineffective, unverifiable and unenforceable. Having ratified the Convention, we will then be told we have ''dealt with the problem of chemical weapons'' when in fact we have not. But, ratification of the CWC will lead to a sense of complacency, totally unjustified given the flaws in the convention.

I would urge the Senate to reject the Chemical Weapons Convention.

Sincerely,

DICK CHENEY.

Mr. KYL. Mr. President, what is it about articles X and XI that cause Secretary Cheney and so many others to conclude that they should be removed? I will quote to you the language of both. They are on the chart behind me.

Article X provides that ''* * * each state party undertake to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material, and scientific and technological information concerning means of protection against chemical weapons.''

In other words, in plain English, those parties which have defensive capability will undertake to facilitate the fullest possible exchange of that technology, equipment, and so on, to the countries that don't have them. They shall have the right to participate in the fullest possible exchange of that equipment.

Article XI is the article that says that the states parties shall: ''(b) undertake to facilitate, and have the right to participate in, the fullest possible exchange of chemical equipment, and scientific and technical information relating to the development and application of chemistry for purposes not prohibited under the convention.''

That is to say, peaceful purposes. And, second, that the state parties ''shall not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this convention, which would restrict or impede trade and the development and promotion of scientific and technological knowledge in the field of chemistry for industrial and agricultural research, medical, pharmaceutical, and other peaceful purposes.''

These two provisions were inserted in the treaty essentially as inducements to get the parties to join the treaty, in effect, saying, ''If you will join the CWC, those of us who have this technology and these chemicals will provide them to you. We will sell you the chemicals for peaceful purposes—not for chemical weapons. And we will provide you the defense technology so that you can defend against any possible use against you.'' Of course, the price for having that right is not developing chemical weapons.

In this respect, the treaty was compared to the Nuclear Non-Proliferation Treaty, and the so-called ''Atoms for Peace,'' which said that if the countries would forswear the development of nuclear weapons building that the developed countries of the world would provide them peaceful nuclear technology. For some countries this worked. But sadly we know that a couple of other countries used the peaceful technology to build their nuclear weapon capability.

So, Secretary Cheney, and many others, fear that these sections, these articles, would permit countries—since they have been induced to come into the treaty with these commitments—to then call upon those commitments from the countries that have this equipment.

Is this an unreasonable assumption? Today, we are basically hearing statements that suggest that that is not the way it was intended at all.

That is a very recent phenomenon. As a matter of fact, right after the CWC was signed, it was very clear to all states parties that they begin to dismantle the trade restrictions they had in place on chemicals in order to come into compliance with the CWC.

According to the administration in testimony before the Senate, and I am quoting now, ''Australia Group members''—these are the countries that have agreed not to sell chemicals to terrorist states—''in August 1992 committed to review their export control measures with a view of removing them for CWC states parties in full compliance with their obligations under the convention.''

They knew that those trade restrictions were incompatible with the new commitments they had undertaken in articles X and XI of the convention, and the Australia Group itself issued a

formal statement which concluded again that states parties were reviewing this, and I am quoting, ''with the aim of removing such measures for the benefit of states parties to the convention acting in full compliance with the obligations under the convention.''

The point being that when the treaty went into effect the parties knew full well that trade restrictions they had were no longer compatible with the convention, with articles X and XI, and that they were going to have to review limiting those trade restrictions, and the Australia Group is a very successful group of countries that has trade restrictions against trade in chemicals to these terrorist states.

Well, we then began raising the questions about articles X and XI. The administration position changed 180 degrees, Mr. President. The administration began to say, well, actually, we could continue our restrictions under these two articles. And we said, well, it will not do any good unless everybody else does it. They said, we could even persuade the Australia Group countries to do that. In other words, to do exactly the opposite of what they had originally decided they had to do to be in compliance.

So the administration has made much of and my colleagues have spoken of the fact that the United States will now interpret the Chemical Weapons Convention as not requiring us to provide this equipment and as enabling us to maintain trade restrictions even despite articles X and XI. Moreover, that we have even tried to get our fellow Australia Group countries to maintain their restrictions in place.

That is laudable. We have at least pushed the rock that far up the mountain. We have got them to agree these two sections should not operate the way they plainly say they will. I think it is a little unseemly to be signaling before we have entered the convention that we are going to violate it up front and convince many of our friends to violate it, because, frankly, it is the right thing to do because articles X and XI ought to be violated by us. They have no place in this treaty.

The problem is the administration has also glossed over the fact that while we may interpret the treaty this way, there are others who do not. For example, China does not. Iran does not. And there are other countries that we heard about in our classified session this morning that do not. They explicitly understand that the treaty means what it says. And therefore two parties that have signed, not yet ratified but signed the agreement have indicated that they intend to continue their trade. And this is China selling chemicals to Iran, for Iran's chemical weapons program. That is the problem. And it is true that nothing prevents that trade from occurring today, Mr. President, but the problem is that the Chemical Weapons Convention gives them the color of law, the legal authority to be able to say: Look, we are parties to the treaty. The treaty says we can do it, so stop complaining and, by the way, don't impose any restrictions on us because of what we are doing.

I do not know how long it will be before chemical companies in other countries are going to say wait a minute, why should the Chinese have all the action here; we would like to have a piece of that action, too, and therefore when one country breaks an embargo it begins to fall apart. That is why I submit that just focusing on United States action under the treaty is not going to solve the problem.

There is also the idea—and this is really not a proper legal argument, but some have said that article I supersedes the specific articles of the convention. Now, for those who are lawyers, they recognize this is not true. The specific always governs over the general. Article I is a general prohibition. The very specific articles such as articles X and XI will control. They are the specific implementation of the treaty.

But to conclude now, Mr. President, the President of the United States has said given the fact that there are concerns, continuing concerns about articles X and XI, I am going to write a letter which maybe will put your mind at ease, and that letter has been referred to here by some of my colleagues. I do not doubt the sincerity of the President in sending the letter and certainly do not doubt the sincerity of my colleagues in believing that letter provides some solace, but I would like to make five points with respect to that letter.

If the things under articles X and XI happen that we think will, it does not solve anything for the United States to pull out of the treaty as the President says he might do. The time to exercise leverage is now before we are a party to the treaty. And what we are saying is prior to the United States getting into the treaty, we should make sure that articles X and XI are removed so that these bad things do not happen. Once they happen, there is no point of the United States pulling out of the treaty. That does not solve anything. So what the President says he is willing to do, frankly, is not an inducement.

Moreover, there is the argument that it is better to be inside the treaty than outside the treaty. And believe me, once we are inside it is going to be much harder to leave than it is to get in in the first place.

Third, certifications of the kind that the President indicated he would be willing to make are very, very hard to do. There are a whole series of certifications that have to be made under U.S. law. They are too hard. We end up not doing them. The certification of Mexico is a good example, to certify that they are cooperating with us in the war on drugs. Most people believe that that was not an honest certification. But the desire to cooperate with Mexico was so strong that it overrode the point of being honest in the certification. The same thing is true with the Arms Control Disarmament Act, the annual Pell report, section 51. We know that Russia is not in compliance with the Biological Weapons Convention or with the Wyoming Memorandum of Understanding or with the Bilateral Destruction Agreement, but the most this administration has ever done is to conduct high-level discussions with the Russians. It is too hard to certify that they are in noncompliance and therefore take the action that is required.

The same thing is true under the Export-Import Ban Act with respect to violations by China and several other laws that China has violated with respect to its chemical weapons transfers to Iran. These certifications are simply too hard. And while I agree, I am sure the intentions of the President are appropriate in this regard, those certifications I submit are not going to be done.

The time line here is important, too. This is a commitment by President Clinton. It is between 2 and 3 years before any action can be taken under this convention. That means that this President's term will almost be expired before he would have the opportunity to even consider the issues that are set forth in his letter. So it is not an effective commitment.

And finally, Mr. President, the letter only deals with United States actions, the point that I made in the beginning. The question here is not United States actions. The question has always been what are we going to do with those countries of the world that seek an offensive chemical weapons capability, a capability that we would like to deny them, countries like Iran, the one I have been talking about here. This commitment, the President's commitment in his letter does absolutely nothing with respect to the sales of chemicals and chemical technology from a country like China to a country like Iran. It doesn't affect it at all.

So while it is a nice commitment to have made with respect to the United States participation and attempting to keep the Australia Group together, the fact is it does not deal with part of the problem that has concerned us from the very beginning.

I conclude with this letter to simply make this point. As I said, reasonable people can differ, and I respect the views of those who disagree with me. They have sincere belief that this treaty is better than nothing. And if they believe that way, they should vote yes on this treaty. There are also those of us who disagree with that proposition. But I urge my colleagues, if you believe that this letter provides the basis for support for the treaty, I honestly believe that is incorrect. If you are going to vote yes on this treaty, do it for grounds other than this letter because it does not provide a satisfactory response to the very real problem that

has been discussed by Secretary Cheney, by Secretary Weinberger, by Secretary Rumsfeld, by Secretary Schlesinger, and a host of other people who have all said that the fundamental problem is articles X and XI. Unless they are removed, we are looking for more proliferation, not less, under this treaty. And it is for that reason the motion to strike should be defeated, Mr. President.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. From my general debate time I yield 10 minutes to the assistant majority leader.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. NICKLES. Mr. President, first I would like to compliment my colleague from Arizona, Senator KYL, for an excellent statement. I happen to think that this amendment we are debating is the key amendment of the entire debate. I certainly compliment all Senators for their involvement in this debate. I think it has been one of the best debates we have had in the Senate for a long time. It is also one of the most important issues we have had where we have seen so many colleagues, particularly on this side of the aisle, who have been undecided and probably because of this language dealing with article X and article XI.

This is the language we have heard former Defense Secretary Cheney, former Secretary of Defense Schlesinger, and Cap Weinberger, really speak out against in their statements before the Senate Foreign Relations Committee.

Also, I note that President Clinton has a letter addressing this issue. But I looked at it a little bit more. I certainly concur with the goals and objectives; we want to reduce chemical weapons. And we have taken a laudatory step of saying we are going to ban them in this country and we want to encourage other countries to ban them, and I think that is great. And that is in article I. I see article I is over here, and if one reads article I it looks great. But I think it is incumbent upon us as Senators to read the balance of the treaty.

When you read article X, and it is in the treaty, it says:

> Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.

Share defensive technology. I know the administration said, well, we are not going to do that. But it is in the treaty that we are going to. I find that a little contradictory, we are going to limit what we are going to share. This says to the fullest extent possible. The language is very contradictory in what the administration says they are going to do in subsequent letters and what the language of the treaty is. I think maybe the language of the treaty will supersede.

If we are signing a treaty, don't we mean to comply with all of it. And then again we are not just talking about the United States, because I hope that we don't just give our technology away to some countries, some countries that will sign this convention and will not comply. We know that. We have had some experience. We have seen it not only with the Geneva Protocol on chemical weapons, but we also have seen it with the biological weapons convention which a lot of countries signed but they have not complied with and we know that. Our intelligence community has done a pretty good job, and in many cases we know a lot of countries are not complying.

But I think it is legitimate to ask, are we better off with it or without. And I have heard good debate on both sides. But this language says to me we have to share this technology. Not only do we have to but also other countries, including countries like China, would be sharing this technology with Iran. Under the treaty, they would be obliged to, or certainly that is what they will be saying. Does that increase the likelihood and the dangers of chemical weapons? I am afraid it does.

And then looking at article XI, and again just looking at the treaty and looking at the language of the treaty—every once in a while I think it is important we do it—under article XI, section 2(c) it says:

> Not maintain among themselves any restrictions, including those in any international agreements, incompatible with the obligations undertaken under this convention, 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.

In other words, we want a lot more trade in other chemicals that aren't banned by this treaty.

There is an editorial in the Wall Street Journal that I ask unanimous consent to have printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Apr. 24, 1997]

CHEMICAL REACTIONS

Before today's vote on the Chemical Weapons Convention, we hope that some Senator will twist his tongue around the 20 chemicals listed here and read their names into the record. This list makes two important points about what's wrong with the treaty.

First is that many ordinary chemicals can be put to deadly use. The chemicals on this list can be used in such mundane products as laundry soaps, ink and fumigation agents—or they can be used in lethal weapons. Bear this in mind when you hear the President assert that the CWC will ''banish poison gas from the Earth.''

The second point is that the CWC not only will permit trade in these 20 potentially deadly chemicals, it will *require* it. American companies currently are restricted from exporting these dual-use chemicals under the terms of an organization called the Australia Group, which is made up of 29 Western countries committed to ensuring that their exports don't contribute to the spread of chemical weapons.

But Articles X and XI of the CWC require member countries to transfer chemicals and technology to any other member country that asks. This goes a long way toward explaining why the Chemical Manufacturers Association is so loud in its support of the treaty.

Senators who are still considering how to vote might consider whether selling such chemicals to China or Iran or Cuba will help make the world safe from chemical weapons—or make the world a more dangerous place.

MUSTARD GAS FOR SALE

Trade in these 20 precursors for chemical weapons agents, now regulated, would be permitted under the Chemical Weapons Convention:

3-Hydroxy-1-methylpiperidine
Potassium fluoride
2-Chloroethanol
Dimethylamine (DMA)
Dimethylamine hydrochloride
Hydrogen fluoride
Methyl benzilate
3-Quinuclidone
Pinacolone
Potassium cyanide
Potassium bifluoride
Ammonium bifluoride
Sodium fluoride
Sodium bifluoride
Sodium cyanide
Phosphorus pentasulfide
Diisopropylamine (DIPA)
Diethylaminoethanol (DEAE)
Sodium sulfide
Triethanolamine hydrochloride

Source: Senate Foreign Relations Committee

Mr. NICKLES. This article lists about 20 chemicals that are not prohibited by this treaty, that basically this section of article XI says you will be able to sell those chemicals. As a matter of fact, no restriction. This language says that countries cannot maintain amongst themselves any restrictions including those in any international agreements. It does not say some. It says any international agreements. That sounds pretty open. A lot of those chemicals can be used to develop chemical weapons. They can also have a dual purpose. It can be kind of confusing.

I understand the President in his letter today said, well, he would try to end the confusion. And so I looked at his letter, and in his letter on page 2 he says—dealing with article X, he said:

> Using article X to justify providing defensive chemical weapon equipment, material or information to another State Party that could result in U.S. chemical protective equipment being compromised so that U.S. war fighting capabilities in a chemical weapons environment are significantly degraded.

If that is the case, he wants out. What is ''significantly degraded''? How do you reach that level. I do not know that you would ever reach—since he has ''significantly degraded,'' I do not know, because the word ''significantly'' is there that it would ever be treated. And then in (b) he talks about where it would be impossible for him to make a certification on the Australia Group. But in the final language he says we would get out if the implementing of this convention carries out transfers or

exchanges under either article X or XI which jeopardize U.S. national security by promoting chemical weapons proliferation. When is that going to be triggered?

His final conclusion is kind of interesting. I read the AP story that said, well, because of the President's letter, he said if these things happen, we are out of there, we are going to walk away from the treaty. I do not read that in his language. It says I would be prepared to withdraw. It did not say he would withdraw. So if it really jeopardizes our national security, he might be prepared, but it did not say he would withdraw, after consulting with Congress.

In other words, I do not find a lot in this letter that gives me any real comfort or assurance that article X or XI has really been addressed. And I appreciate the fact that a lot of our colleagues have addressed this issue, but to me treaties are important. And we have had a lot of significant discussion over various sections of the treaty, maybe none more than article X and XI, but it happens to still be in the treaty. And the President's letter notwithstanding, at the conclusion of his letter he said if all these things happen or any of these things happen, I would be prepared to withdraw.

Frankly, Senator KYL is right. That is not going to happen in 2 or 3 years. It is not going to happen under President Clinton's term. I do not know that this letter would be binding on succeeding or successors of the President.

So, Mr. President, this language is vitally important. I would tell my colleague from North Carolina my vote on final passage depends on this amendment. If we are able to make this change by the Senator from North Carolina, I will vote maybe for final passage. I think this is a killer amendment, having it in the treaty. I think it is that important. We are ratifying the entire treaty including article X, including article XI. And again I compliment my colleagues. I have the greatest respect for Senator LUGAR. I know he has worked hard on this. I have the greatest respect for Senator MCCAIN and a lot of other people on both sides of the aisle. They have conducted an excellent debate. I have made a long list of pluses and minuses on this treaty. I could debate either side of the treaty, I have spent just that amount of time on it. But I happen to think that this article X and article XI do a lot of damage. Since we are ratifying not just article I, but the entire treaty, I urge my colleagues to vote to delete the section. I urge my colleagues to vote no on this. I think this is the most important amendment and discussion that we will have to date.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, have the yeas and nays been ordered on this amendment?

The PRESIDING OFFICER. They have not.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. Mr. President, how much time remains under the control of the Senator from Delaware?

The PRESIDING OFFICER. Eleven minutes.

Mr. BIDEN. Mr. President, I suggest my colleague and I divide that time. I yield 5 minutes to my friend from Indiana.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the condition we are discussing, all Senators by this time, I am certain, understand, requires the President to certify that the parties to the convention have agreed to strike article X of the convention and amend article XI of the convention. That means, in simple language, that the United States would simply say a treaty negotiated by 160 countries, now ratified by, apparently, 74—unilaterally, we simply knock out article X and severely amend article XI.

As all Senators who have addressed this will admit, this means effectively the end of the treaty, at least in terms of our participation, because, clearly, the other nations of the world are under no obligation to renegotiate the entire treaty at that point. This is the reason it is strictly a killer amendment. It simply knocks out material parts of the convention.

If those who are advocating this had a point, there might be reason to pause at this point and not ratify the treaty. But by and large it appears to me that most of us want to ratify the treaty and we do so with assurance, first of all, that as a country we have our wits about us. There is no possibility this President, the next President, Members of the Senate, any responsible American is going to furnish material to countries that are rogue states that are going to jeopardize our security. The treaty does not call for that, as again and again we pointed out. This was a generous interpretation that the Iranians gave because, at least from that standpoint, they would like to have the material. But why we should ever be that gullible escapes me. There is no mandate to give anything away.

Those of us who advocate the treaty have been saying we will not. The President of the United States has been asked for assurance, and he said that he will not. He has sent letters to the majority leader and to individual Senators affirming this in any number of ways.

Furthermore, the question arises, ''Fair enough, Mr. President, or Mr. Senator, if you will not give things away to the Iranians, how about the French or the Germans or some other nation? Perhaps they will do so.'' As Secretary Cohen replied on Meet The Press on Sunday—and Secretary Albright, likewise, who was sitting beside him responded to this question—they pointed out that is a very good reason for us to be around the table with the other countries from the beginning, setting the rules.

If Senators are seriously concerned that other countries are going to give away the store, we had better be there to help restrain them, to offer our leadership. It comes back to that, our leadership. We were the ones that started the whole process—President Reagan, President Bush, President Clinton. We are the ones who had a good idea: If we were getting rid of our chemical weapons, others ought to get rid of theirs.

This is our treaty, as Secretary Albright said, ''Made in the USA.'' And we ought to be there to set the rules, to be the governing board, to assert our leadership at the moment that it is crucial after April 29.

So I say simply to those who have qualms about articles X and XI, we are not going to give away the store, any of us, as patriotic Americans. We would like to be at the table to make sure no one else entertains that thought. But I say again, whether we are there or not, the treaty is going to happen after April 29. We better be there and, hopefully, with affirmative votes to strike this fifth situation we have discussed this evening, this fifth condition, and for final passage, to vote for the treaty. These are very important for the foreign policy and security of our country.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes 11 seconds.

Mr. BIDEN. Mr. President, I yield myself 5 minutes and I ask to be informed at the end of those 5 minutes. I am not going to take the time to speak to why this is a killer amendment and why this is so important, because I could not improve upon what the Senator from Indiana said. I mean that sincerely.

It is real basic. This gets down to real basic considerations. Anybody who has the capacity to transfer technology can do that right now. They can do it right now. If they are in the treaty, the treaty does not require them to transfer that technology, but they, theoretically, could transfer technology. If we are not in the treaty we are not there to modulate their attitudes, their activities. We are out of the game.

This seems to me to be so simplistic and basic. But let me put on the hat I have been wearing for the past 5 years. I have been teaching constitutional law at Widner University on Saturday mornings, a three-credit course. You know the old joke is, if you want to learn a subject, teach it. If I had spent nearly as much time studying it when I was in law school, as much time as I have spent teaching it, I would have

ended up in the top of the class, not the bottom. I don't think I would have the record the Senator from Indiana had, but it would be better.

But all kidding aside, there is something, to quote Elliot Richardson, our former Attorney General, and Abe Chayes, Harvard Law School professor, and a number of other professors, which I will submit for the RECORD, there is, as the letter to me says, regarding article X and article XI, it says:

As it is axiomatic that all treaty provisions must be interpreted in view of the purposes and objectives of the treaty and that a subsidiary obligation should never be read out of context to authorize behavior that would contravene a primary obligation, nothing in article X or XI may undermine article I . . ..

But the first part of that sentence—maybe I spent too much time in law schools. There is no legal scholar in America who will tell you that you can read a subsidiary provision in a treaty, a document, a contract or anything else, that contravenes the stated purpose of the treaty—the stated purpose of the contract. You cannot do that.

Think about it. Forget being a lawyer, just think about it. How could you write a contract, make a deal that said, ''This is our purpose,'' and five paragraphs later say, ''but if you don't want to meet the purpose, you don't have to.'' It is bizarre. This is an absolute bizarre interpretation.

Let me also point out—I wish my friend had not taken down their chart. The Senator's chart, those in opposition to my amendment, a chart on article XI, is somewhat incomplete. The paragraph that sat up there for a half-hour or so, paragraph 2 in the chart, read, ''The state party shall—'' and then it goes on, and then the subparagraphs (b) and (c) were shown. But they left out the remaining part of that. The words that were missing are very key. They read as follows:.

Subject to the provisions of the convention and without prejudice to the principles and applicable rules of international law, the state party shall. . ..

That is the part they left out of article X and XI. What does article X and XI refer to? They are referring to article I.

I do not want to be overly technical here. This is not rocket science. What does article I of the treaty say? It says:

Each State party to this convention undertakes never under any circumstances:

(a) to develop or produce or otherwise acquire, stockpile or retain chemical weapons or transfer, directly or indirectly, chemical weapons to anyone;

(b) to use chemical weapons;

(c) to engage in any military preparation to use chemical weapons;

(d) to assist, encourage or induce in any way anyone to engage in any activity prohibited to a state party under this convention.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BIDEN. I yield myself 2 additional minutes under the bill.

Mr. President, what are we talking about here? Do you know what this debate on article X and article XI reminds me of, speaking of law school? The only thing I ever did do well in law school was moot court. I won that. Does that surprise you all? But I did.

It reminds me of what we used to do—maybe when my friend from Indiana was at Oxford. You would walk in and you would be presented a question. The question before the court or the question before the House is—and you got assigned a side and you came up with the best arguments.

This reminds me of that, as if we all got together earlier today and said, OK, one side has to argue that article X and article XI do all these terrible things. I am glad I did not get that side to argue. The reason is, it is much harder to make the case. My friend from Arizona, who is an able trial lawyer, is doing a very good job. But, look, you cannot avoid the central purpose of the treaty and that is: Never, under any circumstances, can any party assist, encourage, induce in any way anyone to engage in any prohibited activity.

I yield myself 2 more minutes on the bill.

So we are in a position here where I really understand the worry. But, even if there was any merit to the reading that is given by my friends, we have, in the conditions that we did support, we have two conditions which cover this—double cover it. We promise we are not going to transfer anything that is not medical in nature.

Mr. President, a party cannot do something in the treaty by transferring material which would have the effect these Senators are worried about, because if it had the effect they were worrying about, then it would be assisting, encouraging, inducing or in some way engaging in activity prohibited by the treaty. Chemical weapons are prohibited by the treaty.

To reiterate, Mr. President, this is a killer, pure and simple. This will prevent the United States from joining the Chemical Weapons Convention.

The condition requires the President to certify that he has achieved the impossible: that he has been able to substantially rewrite the treaty.

There is no chance—none—that he can achieve this by April 29, and it is highly unlikely that he can ever do so—because amendments may be blocked by any State party to the convention. If a party wants to keep us out—and thus render the treaty ineffective—it can easily do so.

Aside from the practical difficulties of rewriting a treaty that took nearly a decade to negotiate, there is no need to do so.

Let me start with article 10. The Senator from North Carolina wants to get rid of it completely.

Article 10 contains two paragraphs at issue. Paragraph three provides that:

[E]ach State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.

Note that this paragraph contains ambiguous terms like ''facilitate'' and ''possible.'' There's a reason for that—the negotiators did not want us to make a concrete commitment.

And the Administration has made clear that it interprets this paragraph to mean that it will have the flexibility to decide what exchanges, if any, will occur under this paragraph.

On April 15, Sandy Berger wrote to me to say that:

. . . any exchange which does occur is limited to that which we determine would be appropriate and permitted under the Convention and consistent with our national export controls on these heavily regulated items.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, April 15, 1997.

Hon. JOSEPH R. BIDEN, Jr.,
Washington, DC.

DEAR JOE: During the Senate Foreign Relations Committee's hearings last week, concerns were again raised about the impact of the Chemical Weapons Convention (CWC) on the ability of rogue states to acquire advanced chemical defense or chemical manufacturing technology. I would like to take the opportunity to elaborate further on these issues and set the record straight.

First and foremost, I would like to take issue with the charge that the Nuclear Non-Proliferation Treaty (NPT) and the Biological Weapons Convention (BWC), which have language similar to the CWC on promoting trade for peaceful purposes, have hastened the spread of these dangerous weapons and technologies. In fact, export controls in these areas have been made tougher and these controls, as well as the treaties themselves, have gained the support of more and more countries over the years. In the early 1960s, President Kennedy predicted that there would be 15–20 nuclear weapon states by the 1970s. Due largely to the NPT, that number if far lower today. Controls on biological weapons continue to be strengthened, including in 1992, when the Australia Group decided to add biological pathogens and related equipment to their list of controlled items.

The CWC, like the NPT and the BWC, will result in a strengthened export control regime on dangerous chemicals. The CWC allows for maintenance and strengthening of the controls already in place, while also formally expanding controls over a broad range of chemicals and precursors. The CWC also prohibits novel agents which are not currently covered. The informal Australia Group consists of 30 countries, while the CWC has been ratified by 72 countries and the list is growing. Furthermore, the CWC provides for trade restrictions against states who are not party to the treaty.

Regarding the specific CWC Articles in question, one area of concern has been whether Article X of the CWC might force us to share advanced chemical defense technologies and equipment with rogue nations like Iran and to assist in the development of CW defensive capabilities. Let me assure you that Article X does not require the U.S. or any other Party to the treaty to share its advanced chemical weapons defense technologies and equipment with countries such

as Iran or to assist them in the development of such capabilities.

Although Paragraph 7 of Article 10 obligates States Parties to provide assistance through the treaty organization in response to a request by a State Party that has either been threatened by the use of chemical weapons or has had chemical weapons used against it, assistance is broadly defined in the article as including medical antidotes and treatments. Article X provides complete flexibility to States Parties to determine what type of assistance they provide and how they provide it. A State Party's obligation under paragraph 7 of Article X may be met in one of three ways—by contributing monies to a voluntary fund (managed by the treaty organization); by concluding an agreement with the organization concerning the procurement, if requested, of specific types of assistance; or by declaring (within 180 days after the CWC's entry-into-force) the kind of assistance it might provide in response to an appeal by the organization.

To meet its obligations under Article X, therefore, the U.S. can choose from a variety of options and forms of assistance. In no case would we be required to share advanced chemical defense technology and equipment, or even to provide older model gas masks. During our extensive negotiations with Majority Leader Lott and the Task Force he established on the CWC, the Administration has agreed to a binding condition, regarding Article X, on the resolution of ratification that will ensure that no assistance other than medical antidotes and treatments is provided by the United States to any country of concern.

A particular concern has also been raised about Paragraph 3 of Article X. This paragraph states that ''Each Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.'' The inclusion of the words ''facilitate'' and ''possible'' underscores that no specific exchange is required and that any exchange which does occur is limited to that which we determine would be appropriate and permitted under the Convention and consistent with our national export controls on these heavily regulated items. Paragraph 3 of Article X does not override any other rights and obligations under international law, such as the right to have export controls.

The concerns about Article X also include whether other less scrupulous countries might seek to use this article as an excuse to profiteer by giving away defense secrets. This concern misses the main point, which is that any such unscrupulous exchanges can take place now without the CWC. With the CWC, the countries undertaking any exchanges in Article X are legally bound by the fundamental obligation of the treaty in Article I, which obligates Parties never to ''. . . assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.'' The Chemical Weapons Convention will mean not only that all relevant trade is subject to closer scrutiny, especially with countries whose compliance may be in doubt, but it will also provide the legal basis as well as the verification and compliance measures to redress those compliance concerns.

In this regard, concern has been raised specifically that Paragraph 6 of Article X could provide the basis for other Parties to argue that they must share defensive technologies. Paragraph 6 states that ''Nothing in this Convention shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally . . . concerning the emergency procurement of assistance.'' This paragraph does not require or obligate a Party to provide emergency bilateral assistance, but simply states that a party may choose to provide such emergency assistance. Again, I would underscore that with the CWC in force, any exchange of CW defense assistance takes place within the framework of the fundamental obligations of the treaty not to assist anyone in acquiring a chemical weapons capability.

A specific concern also has been raised that Paragraph 5 of Article X could be read to require the release of advanced and classified information about defensive capabilities and technologies. This is simply not the case. Paragraph 5 requires the international Technical Secretariat which will administer the Convention to establish and maintain ''for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against chemical weapons as well as such information as may be provided by States Parties.'' As stated in the Article-by-Article Analysis submitted to the Senate on November 23, 1993, ''freely available'' means ''from open public sources.'' Further, the CWC imposes no obligation on States Parties to contribute to this database. Hence, the provision does not require the release of classified or otherwise sensitive information about U.S. chemical defense capabilities.

A second area of concern has been whether Article XI of the CWC, which relates to cooperation in the field of chemical activities for purposes not prohibited by the CWC, might force our industry to share dual-use technologies and manufacturing secrets with other nations. This is not what the treaty says. Let me assure you that Article XI does not require private businesses to release such proprietary or otherwise confidential business information, nor does it require the U.S. Government to force private businesses to undertake such actions.

Article XI is explicitly subject to the fundamental ban in Article I on assisting anyone in acquiring a chemical weapons capability. Here again, far from undercutting export controls, the CWC will be a basis for stronger controls, enforced by more countries. I want to make clear that the export controls that we and other Australia Group members have undertaken, as well as our own national export controls, are fully consistent with the CWC and will further its implementation. This is not just a U.S. Government position. In recent weeks, we have instructed our embassies to confirm with our Australia Group partners that they agree that the Group's export control and nonproliferation measures are fully compatible with the CWC. Our partners have confirmed this and have also confirmed that they are committed to maintaining such export control and nonproliferation measures in the future.

In order to address the concerns raised about Article XI, the Administration has agreed to a binding condition in our negotiations with the Majority Leader's Task Force that would have the President certify prior to the deposit of our instrument of ratification that nothing in the Convention obligates us to accept any weakening of our export controls, that we maintain the right to impose export controls unilaterally or collectively on chemicals and chemical production technology, and that each member of the Australia Group agrees that its export controls and nonproliferation measures are consistent with the CWC and is committed to maintaining such controls in the future.

Furthermore, as prescribed in the condition, the President must certify on an annual basis that the Australia Group continues to maintain equivalent or more effective controls over exports and that it remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials. If this certification cannot be made, the President must consult with the Senate for the purpose of obtaining a resolution of continued adherence to the Convention.

I hope this information facilitates the Senate's consideration of the CWC. I look forward to continuing to work with you and other CWC supporters to ensure a successful vote on this vital treaty in the days ahead.

Sincerely,

SAMUEL R. BERGER,
Assistant to the President
for National Security Affairs.

Mr. BIDEN. Moreover, as with any treaty, this paragraph must be read in light of the object and purpose of the convention. The purpose of the treaty, quite obviously, is to ban chemical weapons.

And any nation which provides technology to a country of concern would find itself in violation of the overriding obligation of Article One of the treaty, which requires states ''never under any circumstance * * * to assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a state party under this Convention.''

This is an overriding obligation. It governs everything you do under the treaty.

Ronald Lehman, the head of the Arms Control and Disarmament Agency during the Reagan Administration, stated during a recent Foreign Relations Committee hearing that:

> We made it very clear throughout the negotiations that all of this was subject to [A]rticle I, which is the fundamental obligation [under the Convention] not to assist. So we reiterated that again and again and again. But the most important, I think, telling factoid in support of the U.S. interpretation is the fact that after the Convention was done so many of the usual list of suspects were so unhappy that they did not get what they wanted in these provisions.

On this point, I would also like to refer to a letter submitted to me by a group of eminent legal scholars, including Abe Chayes of Harvard Law School, former State Department legal adviser, and Elliot Richardson, former Secretary of Defense and former Attorney General.

They write that the language in paragraph three which discusses that each State Party has the right to ''participate in exchanges of equipment'' is axiomatic—that is, it ''merely reaffirms current trade policies that allow nations to exchange goods and services. Each State Party retains the right to participate in this trade at the level of its own choosing, including not to trade at all. There is no affirmative duty to trade * * *.''

I ask unanimous consent to have the letter printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

APRIL 23, 1997.

Hon. JOSEPH R. BIDEN, JR.,
U.S. Senate,
Washington, DC.

DEAR SENATOR BIDEN: You have asked us to state whether Articles X and XI of the Chemical Weapons Convention (CWC) require

States Parties to ''undertake to share everything that is hard to achieve in a chemical weapons capability'' thereby enabling States Parties to develop a ''militarily effective chemical weapons capability.''

Before analyzing Articles X and XI, we note that the CWC primarily obligates all States Parties, as set forth in Article I, ''never under any circumstances'' to ''assist, encourage or induce, in any way, anyone to engage in any activity'' prohibited under the CWC. This includes the obligations not to develop, produce, stockpile, acquire or retain chemical weapons, and not to engage in any military preparations to use chemical weapons. As it is axiomatic that all treaty provisions must be interpreted in view of the purposes and objects of that treaty and that a subsidiary obligation should never be read out of context to authorize behavior that would contravene a primary obligation, nothing in Article X or XI may undermine Article I by assisting a country in developing a chemical weapons capability.

Article X is titled ''Assistance and Protection Against Chemical Weapons.'' Paragraph (7) is the only provision in Article X which contains a specific obligation: each State Party must elect to take one or more of three specified measures of assistance. Under Agreed Condition 15 to the Resolution of Ratification of Advice and Consent, the United States, to meet its commitments, will only provide medical antidotes and treatment to states not eligible for assistance under the Foreign Assistance Act of 1961. Nothing in paragraph (7) can remotely be construed as requiring the United States to provide equipment or assistance that would enhance a rogue state's offensive or defensive chemical weapons capability; again, a proper reading of the treaty as a whole would prohibit the provision of assistance that would encourage such a result.

Paragraph 2 clarifies that the CWC does not restrict a State Party from researching chemical weapon protection capabilities for purposes not prohibited. Paragraph 6 clarifies that the CWC does not impede parties from providing assistance or entering into bilateral agreements concerning the emergency procurement of assistance. Neither of these paragraphs compels any conduct whatsoever but merely enables States Parties to pursue these activities without fear of being in breach.

Article X, paragraph 3, asserts that: ''Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons. In our view, nothing in paragraph (3) requires the United States to provide any particular matter or information. Accordingly, this paragraph would require the United States to withhold, either unilaterally or as part of a multilateral group, materials or information that could enhance the chemical weapons capability of any particular state.

That each State Party has the right to participate in exchanges of equipment, etc. regarding chemical weapons protection merely reaffirms current trade policies that allow nations to exchange goods and services. Each State Party retains the right to participate in this trade to the level of its own choosing, including not to trade at all. There is no affirmative duty to trade, but only a reaffirmation that States Parties wishing to trade may do so without fear of contravening the CWC. Under recognized principles of treaty interpretation, the use of the intentionally vague and weak verb ''undertakes to facilitate'' conveys no specific affirmative obligation nor would the refusal to trade in sensitive items support even the most tenuous claim that the United States has breached its obligations.

Article XI is titled ''Economic and Technological Development'' and seeks to balance free trade in chemicals, equipment and technology with the prevention of proliferation of chemical weapons. It is modeled on Article X of the Biological Weapons Convention and is analogous to Article IV of the Nuclear Nonproliferation Treaty (NPT) dealing with peaceful uses of nuclear energy. Subparagraphs (b), (c), (d), and (e) of paragraph 2 address the right of each State Party to participate ''in the fullest possible exchange'' of information; generally prohibits restrictions on trade; and prohibits using the Convention as grounds for measures not provided under the CWC. Only paragraph (2)(e) contains an affirmative obligation: each State Party must review its existing national regulations to make them consistent with the CWC. The remainder of its provisions clarify that the CWC should not restrict commercial and research activity that would be otherwise permissible. Moreover, these provisions are explicitly balanced against general provisions, including: (1) ''without prejudice to the principles and applicable rules of international law,'' (2) ''for purposes not prohibited under this Convention'', (3) ''other peaceful purposes'', and (4) to ''render them consistent with the objects and purpose of the Convention''.

Article XI, when read in its entirety and together with Article I, undoubtedly permits the United States to continue national security controls over exports of chemical weapons material, equipment and dual use items. We believe that Agreed Condition 7 to the Resolution of Ratification of Advice and Consent the continuing vitality of the Australia Group and national export controls is consistent with Article X and XI, and the CWC as a whole. Accordingly, we believe that Agreed Condition 7 should alleviate concerns raised by critics of the CWC concerning United States obligations under Articles X or XI. Furthermore, we would note that the United States has never been prevented (or seriously challenged) from legally pursuing unilateral and multilateral export controls on nuclear technology that it deems necessary on national security grounds, despite objections from certain states citing Article IV of the NPT. We do not believe that the CWC requires any different course.

Throughout the Chemical Weapons Convention is a manifest effort to balance the elimination of chemical weapons with the legitimate security requirements of States as well as their legitimate need to use, develop and trade chemicals for commercial purposes. The critical characterization of the CWC quoted in the first paragraph of this letter focuses on selected provisions of the CWC reflecting only one side of this balancing effort, misreads those provisions to render them obligatory instead of voluntary or conditional, and ignores the language of the treaty as well as principles of international law. We disagree. We do not believe Articles X and XI require the United States to take any steps contrary to its security interests. Accordingly, we do believe that Disagreed Condition 32, which would require an amendment to strike Article X and amend Article XI, is legally unnecessary to preserve U.S. security interests if the United States ratifies the CWC.

Respectfully,

ABE CHAYES,
Harvard Law School.
ELLIOT L. RICHARDSON,
Former Secretary of Defense and Attorney General, Nixon Administration.
MICHAEL MOODIE,
Former Bush Administration arms control negotiator.
JOHN B. RHINELANDER,
Former deputy legal advisor and arms control negotiator, Nixon Administration.
GEORGE BUNN,
Center for International Security and Arms Control, Stanford University.
BARRY KELLMAN,
DePaul University Law School.
DAVID KOPLOW,
Georgetown University Law School.

Mr. BIDEN. More to the point, even if we were obligated—which we're not, we maintain export controls on chemical defense equipment. In other words, we do not allow it to be sold to the rogue states.

The only specific obligation contained in Article Ten is in paragraph seven, which is where you provide assistance to nations facing attack by chemical weapons.

This provision also has much flexibility—it allows a nation to choose one of three methods for providing assistance.

But to ensure that this paragraph does not become a loophole, we have added a binding condition, condition number fifteen, which limits the type of assistance we will provide—at least when it comes to countries ineligible for economic or military assistance, which includes the rogue states—to medical antidotes and treatment.

Let me now turn to Article Eleven. The proponents of this condition contend that this article requires us to weaken our export controls under the CWC.

There is nothing in the CWC that requires us to weaken our export controls. But just to ensure that there isn't any doubt, we have agreed to a binding condition that addresses the problem.

Condition seven requires the President to certify that nothing in the Convention requires us to weaken our export controls, and that the Australia Group—an informal group of potential supplier states to which the United States belongs—will continue to maintain controls over chemical weapons precursors that are equal to, or exceed, those in effect today.

the Australia Group has already indicated, as a group, that it would maintain its export controls. On October 17, 1996—a little more recently than the statement read by the Senator from Arizona—the Australia Group stated that the ''maintenance of effective export controls will remain an essential practical means of fulfilling obligations under the CWC.''

But just to be sure, I asked the administration to ask each country—individually—whether it intended to maintain existing levels of controls. The answers have come back—all in

the affirmative—as the president stated today in his letter to the majority leader.

Finally, the President committed today, in the event that either Article Ten or Article Eleven to legitimate trade in a manner that endangers our security, the President will consult promptly with Congress on whether we should withdraw from the Convention.

This is an extraordinary commitment. So I hope it resolves everyone's concern.

Mr. President, I reserve the remainder of the time on the bill. I think I have used up all the time on the amendment.

The PRESIDING OFFICER. There is 1 minute remaining on the amendment.

Mr. BIDEN. Oh, there is 1 minute remaining on the amendment? Mr. President, in that case I have another 10 minutes.

No, if the majority is ready to yield back their time, I will yield back my minute.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. A bum deal, just like this treaty.

Mr. BIDEN. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I always enjoy holding court with my friend from Delaware. We have had some of these debates in the past, and this is the thing that lawyers like to argue about, but I believe that most lawyers will agree with me that what they learned in law school was that the specific provisions of the contract always prevail over a general statement at the beginning of the contract. There are a lot of rules of instruction. Later provisions generally govern over previous provisions on the theory that you later describe your intent, fully cognizant of what existed before. The same thing is true with specific provisions of the contract, and that is why article I is called, not ''CWC article I,'' but rather ''general article.'' ''Article I, General Obligations.''

Then article II is definitions, and after that are the specifics. This is the reason why the Australia Group itself issued a statement right after this convention was entered into undertaking to review, in light of the implementation of the convention, the measures that they take to ''prevent the spread of chemical substances and equipment for purposes contrary to the objectives of the convention with the aim of removing such measures for the benefit of states parties to the convention acting in full compliance with the obligations under the convention.''

Australia Group members would not have had to do this under the interpretation of the convention by my friend from Delaware. Rather, they began to do this because they read articles X and XI the same as the many experts do that I cited earlier as limiting our ability to impose trade restrictions on states parties to the convention. That is why it says we will undertake to facilitate, and the other states parties have the right to the fullest possible trade in these chemical weapons. This is not just my view. I read to you what Secretary Cheney said before, James Schlesinger, former Secretary of Defense and head of the CIA. It is plain that article X legitimizes such transfers.

The PRESIDING OFFICER. The Senator from Delaware has 33 seconds.

Mr. BIDEN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated October 17, 1996—speaking of superseding—which supersedes the statement referred to by my colleague about the Australia Group. It says:

In this context, the maintenance of effective export controls will remain an essential practical means of fulfilling obligations under the CWC and the BTWC.

Translated into ordinary English, it means that we adhere to the commitment we made in the Australia Group with export controls. We believe it is consistent with the CWC and required by the CWC.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AUSTRALIA GROUP MEETING

Australia Group participants held informal consultations in Paris between Oct. 14–17, to discuss the continuing problem of chemical and biological weapons (CBW) proliferation. Participants at these talks were Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, the European Commission, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom and the United States, with the Republic of Korea taking part for the first time.

Paticipants maintain a strong belief that full adherence to the Chemical Weapons Convention (CWC) and to the Biological and Toxin Weapons Convention (BTWC) will be the best way to eliminate these types of particularly inhumane weapons from the world's arsenals. In this context, the maintenance of effective export controls will remain an essential practical means of fulfilling obligations under the CWC and the BTWC.

All participants at the meeting welcomed the expected entry into force of the CWC*, noting that this long-awaited step will be an important, historic moment in international efforts to prohibit chemical weapons. Participants agreed to issue a separate statement on this matter, which is attached.

Participants also welcomed the progress of efforts to strengthen the BTWC in the negotiations taking place in the Ad Hoc Group of BTWC States Parties in Geneva. All Australia Group participating countries are also States Parties to this Treaty, and strongly support efforts to develop internationally-agreed procedures for strengthening international confidence in the treaty regime by verifying compliance with BTWC obligations.

Experts from participating countries discussed national export licensing systems aimed at preventing inadvertent assistance to the production of CBW. They confirmed that participants administered export controls in a streamlined and effective manner which allows trade and the exchange of technology for peaceful purposes to flourish. They agreed to continue working to focus these national measures efficiently and solely on preventing any contribution to chemical and biological weapons programs. Participants noted that the value of these measures in inhibiting CBW proliferation benefited not only the countries participating in the Australia Group, but the whole international community.

Participants also agreed to continue a wide range of contacts, including a further program of briefings for countries not participating in the Paris consultations to further awareness and understanding of national policies in this area. Participants endorsed in this context the importance of regional seminars as valuable means of widening contacts with other countries on these issues. In particular, Romania's plans to host a seminar on CBW export controls for Central and Eastern European countries and the Commonwealth of Independent States in Bucharest on Oct. 21–22 and Japan's plans to host a fourth Asian Export Control Seminar in Tokyo in early 1997 were warmly welcomed by participants. Argentina will also host a regional seminar on non-proliferation matters, in Buenous Aires, in the first week of December 1996. France will organize a seminar for French-speaking countries on the implementation of the CWC. This will take place shortly before entry into force of the Convention.

The meeting also discussed relevant aspects of terrorist interest in CBW and agreed that this serious issue requires continuing attention.

Participants agreed to hold further consultations in October 1997.

AUSTRALIA GROUP COUNTRIES WELCOME PROSPECTIVE ENTRY INTO FORCE OF THE CHEMICAL WEAPONS CONVENTION

The countries participating in the Australia Group warmly welcomed the expected entry into force of the Chemical Weapons Convention (CWC) during a meeting of the Group in Paris in October 1996. They noted that the long awaited commencement of the CWC regime, including the establishment of the Organization for the Prohibition of Chemical Weapons, will be an historic watershed in global efforts to abolish chemical weapons for all time. They also noted that all states adhering to the CWC are obliged to ensure their national activities support the goal of a world free of chemical weapons.

All of the participating countries reiterated their previous statement underlining their intention to be among the original States Parties to the CWC. They noted that 24 of the 30 countries participating in the Australia Group have already ratified the Convention. Representatives also recalled their previous expressions of support for the CWC, and reaffirmed these commitments. They restated their view that the effective operation and implementation of the CWC offers the best means available to the international community to rid the world of these weapons for all time. They called on all signatories to ratify the CWC as soon as possible, and on the small number of countries which have not signed the Treaty to join the regime and thereby contribute to international efforts to ban these weapons.

Representatives at the Australia Group meeting recalled that all of the participating countries are taking steps at the national level to ensure that relevant national regulations promote the object and purpose of the CWC and are fully consistent with the Convention's provisions when the CWC enters into force for each of these countries. They noted that the practical experience each

country had obtained in operating export licensing systems intended to prevent assistance to chemical weapons programs have been especially valuable in each country's preparations for implementation of key obligations under the CWC. They noted in this context, that these national systems are aimed solely at avoiding assistance for activities which are prohibited under the Convention, while ensuring they do not restrict or impede trade and other exchanges facilitated by the CWC.

Mr. BIDEN. We are ready to vote, Mr. President.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 51. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 66, nays 34, as follows:

[Rollcall Vote No. 50 Ex.]

YEAS—66

Akaka	Feingold	Lieberman
Baucus	Feinstein	Lugar
Biden	Ford	McCain
Bingaman	Frist	Mikulski
Boxer	Glenn	Moseley-Braun
Breaux	Gorton	Moynihan
Bryan	Graham	Murray
Bumpers	Hagel	Reed
Byrd	Harkin	Reid
Chafee	Hatch	Robb
Cleland	Hollings	Roberts
Coats	Inouye	Rockefeller
Cochran	Jeffords	Roth
Collins	Johnson	Sarbanes
Conrad	Kennedy	Smith (OR)
D'Amato	Kerrey	Snowe
Daschle	Kerry	Specter
DeWine	Kohl	Stevens
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—34

Abraham	Gramm	McConnell
Allard	Grams	Murkowski
Ashcroft	Grassley	Nickles
Bennett	Gregg	Santorum
Bond	Helms	Sessions
Brownback	Hutchinson	Shelby
Burns	Hutchison	Smith (NH)
Campbell	Inhofe	Thomas
Coverdell	Kempthorne	Thompson
Craig	Kyl	Thurmond
Enzi	Lott	
Faircloth	Mack	

The amendment (No. 51) was agreed to.

Mr. HELMS. I move to reconsider the vote.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that I be allowed to use the 5 minutes allocated to each leader for purposes of closing debate in addition to my 15 minutes for the leader in an effort to make my statement at this point in the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, let me begin by commending the distinguished majority leader for his leadership on this issue and for his eloquent statement earlier today. I think he spoke for a large number of the American people, both Republicans and Democrats in coming to the conclusion he did about this treaty. I rise to commend him and to support him in the decision that he made.

I also wish to commend the distinguished ranking member of the Foreign Relations Committee, the Senator from Delaware, for his leadership on our side of the aisle. No one could have managed this bill better. And we could not have come to this point were it not for the remarkable commitment he has made in the effort to pass this treaty. I thank him for his leadership in bringing us to this point tonight.

Under the terms of article II, section 2 of the Constitution, the Senate alone was granted the power to advise and consent to treaties made by the President. Our Founding Fathers also decided that approval by a simple majority was simply not sufficient for legislation of this magnitude. Instead, they established the requirement that two-thirds of the Senate must support a treaty for it to take effect.

This is as it should be. There is no more important or unique power assigned to the Senate by the Constitution than the authority to provide advice and consent on treaties. With this authority, however, comes obligations. Senators must examine a treaty not through a prism of narrow political pursuits, but rather from the perspective of broad national interests.

Put simply, the most important question we should ask ourselves when considering the Chemical Weapons Convention, or any other treaty, is, does this make sense for the Nation and are its citizens more secure?

Mr. President, after a thorough review of this treaty, its negotiating history, and the 28 conditions added by the Senate, I believe the answer to this question is a resounding and unqualified yes.

The Chemical Weapons Convention bans the development, production, stockpiling, and use of toxic chemicals as weapons. A look at the negotiating history of the CWC reveals that this treaty is truly a bipartisan product. Negotiations, as has been mentioned now on several occasions throughout the day, began with President Reagan in the early 1980s.

While the bulk of the negotiations and most of the difficult decisions occurred during the Bush administration, President Clinton finished the work started by his two predecessors and submitted the treaty to the Senate for consideration in November of 1993.

The Senate's counsel on crucial issues was sought and provided repeatedly throughout the course of the decade-long negotiations. Playing an especially important role in this regard was the Senate's Arms Control Observer Group, a bipartisan gathering of Senators with special interests and expertise in arms control matters. Currently, Senators STEVENS and BYRD lead the group.

In addition, since the treaty has been before the Senate for nearly 3 years, Members have had ample opportunity to request the information needed to reach their judgment, and more than sufficient time to carry out a thorough examination of the treaty's impact on our national security.

During that 3-year period, nearly 20 hearings have been conducted in several different Senate committees, including Armed Services, Foreign Relations, Intelligence, and Judiciary. In addition, the administration has made available over 1,500 pages of documentation on the Chemical Weapons Convention and answered over 300 questions from Senators and their staffs.

Moreover, as a result of intensive, around-the-clock negotiating sessions between the administration, Senator HELMS and Senator BIDEN, the resolution of ratification now contains 28 separate conditions on the U.S. Senate's resolution of ratification. That is 28 individual clarifications by the Senate about the terms and conditions under which the U.S. would enter into the Chemical Weapons Convention. These conditions were the product of over 100 hours of discussion. And I am told that the vast majority of the conditions address problems first raised by Republicans. I think it is safe to say that these list of conditions address virtually every legitimate concern that has been raised about the potential impact of the CWC on our national security and economy.

Mr. President, we must now evaluate what has been revealed during this process that has spanned three Presidential Administrations and includes numerous hearings, briefings and mounds of documents. What have we determined about the merits of the CWC in the nearly 3½ years since President Clinton submitted it to us?

First, officials from previous Administrations who were involved in the CWC negotiations support the treaty. General Brent Scowcroft, the National Security Advisor to Presidents Reagan and Bush, has said the following:

"The time has come for the Senate to uphold U.S. leadership in combating the proliferation of weapons of mass destruction by providing its consent to the [Chemical Weapons] Convention.

And President Bush himself, in a February meeting with Secretary of State Madeleine Albright and former Secretary of State James Baker, noted:

"I . . . strongly support efforts to get this chemical weapons treaty approved. This should be beyond partisanship. I think it is vitally important for the United States to be out front. . . . We don't need chemical weapons, and we ought to get out front and make clear that we are opposed to others having them."

Second, what are the views of America's chemical manufacturers—the industry that will be most directly affected by the provisions of the CWC? The chemical industry is America's largest export industry, posting $60 billion in export sales last year alone. Opponents of this treaty claim its ratification will lead to onerous and costly

restrictions and regulations on this industry as well as the exposure of confidential, proprietary information.

The chemical industry has repeatedly refuted these claims; yet, it appears that CWC's critics are so blinded by their ideological zeal to kill all arms control treaties that they cannot take no for an answer. One of the industry's best responses was contained in a letter sent late last year to the distinguished Majority leader, Senator LOTT. This letter is an important one, so I will quote it at length:

''The chemical industry has long supported the Chemical Weapons Convention. Our industry participated in negotiating the agreement and in U.S. and international implementation efforts. The treaty contains substantial protections for confidential business information. We know because industry helped to draft these provisions . . . In short, our industry has thoroughly examined and tested this Convention. We have concluded that the benefits of the CWC far outweigh the costs. . . . Indeed, the real price would come from not ratifying the CWC. . . . If the Senate does not vote in favor of the CWC, we stand to lose hundreds of millions of dollars in overseas sales, putting at risk thousands of good-paying American jobs.''

So says the chemical industry in a letter signed by the CEOs of 53 of America's preeminent chemical manufacturers. Signees include the ARCO Chemical Company, the Ashland Chemical Company, the Bayer Corporation, the B.F. Goodrich Company, the Dow Chemical Company, the Eastman Chemical Company, the E.I. Dupont Company, the Exon Chemical Company and the Monsanto Company. I should also note that these companies issued this statement before we agreed upon the 28 conditions I discussed earlier, several of which would further reduce the possibility that proprietary information from American businesses would fall into the hands of our adversaries.

Well, Mr. President, what about the military? After all, it is our men and women in uniform who must face, as they did in Desert Storm, the threat of an attack from lethal chemical weapons. Make no mistake. We are talking about invisible and instantaneous killers. What about our people in the Pentagon who have to make the decisions that may ultimately lead to the exposure of our troops to that insidious threat? General Shalikashvili, the Chairman of the Joint Chiefs of Staff, testified before the Senate Foreign Relations Committee:

''The potential benefits of the Chemical Weapons Convention will have a positive impact on the lives of our service people and how the U.S. military fulfills its responsibility to national security.''

In another appearance before the Foreign Relations Committee, General Shalikashvili noted:

''From a military perspective, the Chemical Weapons Convention is clearly in our national interest. The non-proliferation aspects of the convention will retard the spread of chemical weapons and, in so doing, reduce the probability that U.S. forces may encounter chemical weapons in a regional conflict.''

Some may argue that General Shalikashvili is but one general who was appointed by President Clinton. To those skeptics, let me say three things. First, General Shalikashvili's record of service to this country is unparalleled. Second, a comprehensive review of this record will not reveal a single instance where he failed to offer anything but than his objective, untarnished opinion. Third, he is not alone.

An April 3 letter to the President states the following:

The CWC destroys stockpiles that could threaten our troops; it significantly improves our intelligence capabilities; and it creates new international sanctions to punish those states who remain outside of the treaty. For these reasons, we strongly support the CWC.

Mr. President, that letter was sent on behalf of 16 three- and four-star generals and admirals, including Colin Powell, John Vessey, and Norman Schwartzkopf. This letter, in addition to an endorsement by David Jones, means that every occupant in the last 20 years of the position of chairman of the Joint Chiefs of Staff, this Nation's highest military office, has come out in support of the CWC.

The final group the Senate has heard from in its efforts to weigh the pros and cons of the Chemical Weapons Convention is the intelligence community. The task of verifying this treaty, like other arms control treaties, ultimately falls on the shoulders of the Central Intelligence and the other organizations within the intelligence community. Despite the most comprehensive, intrusive verification regime in the history of arms control, critics of CWC argue that it is unverifiable; if they had their way, the Senate would reject the CWC because the intelligence community will be unable to detect any violations of the treaty itself. But in this case, the perfect is the enemy of the good.

While the intelligence community has rightly acknowledged that it cannot detect any production of chemical agents—anywhere or at anytime—it has also said that it can effectively verify the provisions of this treaty. Moreover, the critics' argument ignores the fact that, with or without the Chemical Weapons Convention, our intelligence community will still seek to collect information on efforts by foreign nations to develop and produce chemical weapons. The more important question is whether our intelligence and nonproliferation efforts are helped or hindered by the adoption of the treaty.

According to James Woolsey, then director of the Central Intelligence Agency, and since confirmed by George Tenet, acting director of the CIA:

The Intelligence community has the broader mission—with or without the treaty—of detecting the existence and assessing the threat from chemical weapons programs of any country. This mission must be carried out regardless of whether we have the additional requirement to assess such activities against the provisions of the treaty. And it is to this broader mission that the CWC can make a significant contribution.

The Senate has heard from President Reagan's National Security Advisor, from President Bush, from the leading figures in the chemical industry, from the current chairman of the JCS, three of his predecessors and 14 other three- and four-star generals and admirals, and from the intelligence community. Each of these groups and individuals have looked at the CWC from their unique perspectives and interests and each has reached the same conclusion: the Senate should support this treaty and should do so promptly.

Mr. President, I would submit since the Senate received the CWC treaty for its advice and consent, one other group has spoken all too loudly to us: those who commit terrorist acts. In the 3½ years this treaty has been before the Senate, terrorist incidents have occurred with a sickening and disturbing regularity: the sarin gas attack in the Tokyo subway; the bombing of the Murrah Federal Building in Oklahoma City; the attack on Khobar Towers in Dharan, Saudi Arabia; the suspected bombing of TWA flight 800; the bombing in Olympic Park in Atlanta. Each incident has painfully dramatized the fact that we live in an age where, unfortunately, no one is inoculated against the threat of terrorism. No community stands outside the reach of determined terrorists. As President Clinton noted in a recent address, ''Terrorism has become an equal opportunity destroyer, with no respect for borders.''

This treaty is an opportunity to send a small message to those who threaten our families, our communities and our way of life with their unprovoked acts of violence.

The United States Senate has heard what terrorists have to say. Today, with our votes on this treaty, we determine how the United States Senate will respond to these acts. I hope we will send the message that we are going to do all we can to ensure that these deadly chemicals will never be the means terrorists employ to advance their cause. It is time we said to the terrorists, on the issue of chemical weapons, enough is enough.

Now the argument will be made that this treaty will not halt terrorism, will not shut down the private laboratories of insane extremists and will not halt the efforts of various rogue nations.

To a certain degree, that is probably true. But what this treaty will do is begin the orchestration of a concert of nations—an orchestration of civilized voices that speaks out forcefully against an unambiguous evil.

Tonight America has the opportunity to make the moral stand. We are destroying our own chemical stockpiles. We began that cleansing process under President Reagan and it continues today. Why should we oppose a treaty that demands the world to live up to a moral standard that we have already willingly accepted ourselves? Why deprive ourselves of the right to call upon our neighbors to live up to the example

that we in the United States are willing to act?

In summary, Mr. President, this is a necessary treaty. It has been endorsed by a bipartisan group of Senators who are experts on this issue, by advisors to Presidents Reagan and Bush, and President Clinton, by the U.S. military, by our chemical industry and by our intelligence community.

To all of this I would add two final points. First, over 80 percent of the American people have indicated their support for ridding the world of toxic agents by ratifying the CWC. Second, over 70 countries have already ratified this treaty and thereby forsworn the use of chemical weapons. Mr. President, this treaty is going to happen with or without us. I urge the Members of this body to set aside partisan differences, demonstrate leadership to our friends and enemies alike, join with those who have already ratified this treaty and take the first step toward eliminating these evil weapons. Mr. President, I ask that the Senate ratify this treaty.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. How much time remains?

The PRESIDING OFFICER. The Senator from North Carolina has 21 minutes, the Senator from Delaware has 7 minutes, the Senator from Vermont has 8½ minutes, and the majority leader has 5 minutes.

Mr. BIDEN. I yield myself such time as I may consume under the 7 minutes. I do not plan on using it all.

Mr. President, it has been a long road to this spot, this point. We have had not only extensive debate in the last 2 days, we have had an extensive debate on this floor, in committees, in the press, among foreign policy experts, think-tank types, for the past 3 years. We reached the point where we are constitutionally required to fulfill a duty of either giving our consent to ratification or withholding it. As both leaders have pointed out, it is maybe the most significant responsibility delegated to the U.S. Senate

I realize that we sometimes stand on this floor, particularly when any one of us and all of us have invested a significant amount of time in one issue or another where we feel that we have spent most of our waking hours for the past month, two, or three—everyone has experienced that on this floor—and we tend to think that since we put so much time into the passage of a piece of legislation, or in this case, a treaty, that maybe it is the most important thing that the Senate has done or could do because I guess we say to ourselves we would not invest that much of our time, our energy, our mind, our soul, into the effort if it was not so important.

Acknowledging that we all err on that side of thinking what we do is sometimes more important than what it is, I respectfully suggest that the vote each of us is about to cast on this treaty is likely to be the most significant vote any of us cast in this Congress.

Twice today I have been referred to as the senior Senator from Delaware. I want the record to show, I know I am the junior Senator. I am the second most senior junior Senator in the United States. I have been here 25 years, but that young man in the back there is the most senior junior Senator, the distinguished Senator from South Carolina, Senator HOLLINGS, because the most senior Senator of senior Senators is his colleague, Senator THURMOND.

Mr. President, I am not sure that there is any vote that I have cast in the last 4 or 5 years that I think is as significant for the future of the United States as this treaty. And as I said, and I will conclude with this, not merely because of what the treaty attempts to do—and that is, for the first time in the history of modern man, ban even the possession of an entire category of weaponry—but that is not the reason why this is the most important vote. We are at a juncture in our history, Mr. President, in my opinion, where the United States has an opportunity, which rarely comes to any nation in its history—it has come to us, in my opinion, on two occasions—where our actions and our leadership can literally, not figuratively—and it is not hyperbole—can literally shape, at least on the margins, the future of the world.

After World War II, we stepped up to the plate. My father's generation and my grandfather's generation and grandmother's and my mother's generation stepped up to the plate. They did things, when we look back on them, that must have taken incredible courage. Can you imagine having over 10 million men still under arms and standing up as a Senator, or as a President, or as a Secretary of State, and saying, by the way, I want us now to send billions of dollars to those people who killed our sons and daughters? That was the Marshall Plan. Can you imagine the foresight it took and how difficult it must have been to cast a vote to set up an outfit called NATO, of which Germany, our sworn enemy that killed our sons and daughters, were members? Those people had courage. But they did what the Senator from Indiana, Senator LUGAR, said: They led.

This is about leadership. This is about the role of the United States in leading the world. If we refrain from exercising that opportunity—and we will if we do not vote for this treaty—we will have passed up an opportunity that, as I said, rarely comes to any nation in the history of the world. We can affect, if we are wise, the behavior, activity and actions for a generation to come, not for what is contained in this treaty, but because of the leadership that was demonstrated in drafting this treaty, in ratifying this treaty and enforcing this treaty.

So, Mr. President, I realize that all of us—myself included—tend to engage in hyperbole and rhetoric that doesn't mean the substance of what we are talking about. But I honestly believe this is one of the most important votes, in terms of the future of this country and its ability to lead at a moment in history that seldom comes to any nation, that may be the most important vote that any of us will cast. If we embark on this path of continuing to engage the world and lead the world, we maintain the reasonable prospect that we can make the world—the world—a better place in which to live.

I yield the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. I am profoundly disappointed in the five votes of the Senate on the important, vital amendments. After all the debate, all the gallons of newspaper ink spilled, all of the negotiations—ultimately, I had hoped for better. But so be it.

There isn't a person in this room, rhetoric aside, who can believe that the amendments that we have just considered are ''killer amendments.'' The nature of international relations, and of treaties is that what is negotiated can be renegotiated, and if necessary, negotiated anew. If our aim is a better future, what are a hundred more meetings in Geneva, or Vienna or the Hague? These amendments would have ensured that this treaty did no harm, even if it did no good.

Now, we must vote on a treaty that, stripped of these key protections, four former Defense Secretaries have told us is contrary to the national security interests of the United States.

The truth is that I cannot abide the pretense of action on a matter as weighty as the proliferation of weapons of mass destruction. If we ratify this treaty today, the Senate, with the President, will announce to the world that we have done something about the scourge of chemical weapons. We will pat ourselves on the back and go home.

But, Mr. President, we will have done nothing. And, worse than nothing, we will have done harm. In the name of curbing the proliferation of these chemicals, we will allow rogue states to gain access to our most precious defense secrets. We will guarantee that rogue nations of the World—both those who have signed this treaty and those who have not—have the ability to manufacture chemical weapons and penetrate our Nation's most advanced chemical defenses.

Article X and XI—''Poisons for Peace''—will foster the proliferation of those very poisons. Anyone who doubts that need only look to how Russia has abused similar provisions in the Nuclear Non-Proliferation Treaty. The N.P.T.'s ''Atoms for Peace'' provisions allows Russia to transfer to Iran, a terrorist state, a nuclear reactor. Russia has argued that the sale is perfectly legal, and Russia is right. Iran, despite its nuclear weapons program and its chemical weapons program, is a nation

in full compliance with the Non-Proliferation Treaty. And so it will get one nuclear reactor from Russia, maybe more. And perhaps China will throw in a reactor or two as well. And we can do nothing to stop it.

The administration says that we will not sell Iran chemical technology or defensive gear under the similar provisions of the CWC. We are not selling them nuclear reactors either. Russia is.

And it will not be the United States which provides Iran the chemical technology. They will get it from Russia and China under ''Poisons for Peace.'' And Iran will give it to its terrorist allies Syria and Libya, who have not signed up to the treaty. And we will be powerless to protest—because if we ratify this treaty, here, today, in this body, we will have endorsed those transfers.

Now this morning the President has offered us some sweeteners for the hemlock he is asking us to swallow. He promises to keep an eye on any problems Articles X and XI may cause. I appreciate his willingness to recognize the legitimacy of the concerns my colleagues and I have expressed. However, I can't help but feel that this last ditch attempt to buy off opponents to this dangerous treaty is nothing more than empty promises.

I am a veteran of the counter-proliferation wars. Every week, I see more and more classified information about proliferation activities that should require the President, under existing law, to levy sanctions against Russia, China, or both. We never do, and we won't under the terms of the CWC with or without the assurances under Article X and XI. The President doesn't want to fight with those 800-pound gorillas. In much the same way as we will turn a blind eye while Russia helps Iran get a nuclear weapon, we will allow others to develop chemical weapons. And there won't be a darn thing we'll be able to do.

Should Articles 10 and 11 of the CWC be renegotiated? Yes. Did the Senate err by stripping out the protections we inserted that would have required the administration to do so? Yes. And I am deeply disappointed that I was unable to convince my colleagues of the danger to the people of the United States and our allies. We have made a terrible, potentially cataclysmic, mistake today in ignoring the desperate need to revise the terms of this treaty.

Without revision of Articles 10 and 11, this treaty is bad for America, and bad for the world. It must be voted down. For it we ratify this treaty, our children and our grandchildren will hold us accountable. They will hold us accountable when Iran or Syria or Libya or North Korea finally uses a chemical weapon—and they will do so—built with technology they acquired thanks to Articles 10 and 11 of the CWC. They will look back on this debate, look back on where each us of stood, and—mark my words—they will hold us accountable.

Mr. President, let us listen to the wisdom of the four former Secretaries of Defense, who have urged us to oppose this treaty. Let us listen to the mountain of evidence—classified and unclassified—that has been presented over the past two days as to the dangers posed by this treaty. And most important, let us listen to our consciences. Let us vote to reject the Chemical Weapons Convention.

AMENDMENT NO. 52

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for Mr. BIDEN, proposes an amendment numbered 52.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 18, strike ''payments'' and insert ''any payment''.

On page 6, line 3, strike ''the head of''.

On page 8, line 2, insert ''or such other organization, as the case may be,'' after ''nization''.

On page 8, line 10, insert ''or the affiliated organization'' after ''tion''.

On page 9, line 11, insert ''or the affiliated organization'' after ''Organization''.

On page 9, line 17, insert ''or the affiliated organization'' after ''Organization''.

On page 13, line 21, insert '', and any official or employee thereof'' after ''it''.

On page 14, line 5, insert '', and any official or employee thereof'' after ''functions''.

On page 15, lines 6 and 7, strike ''to United States ratification'' and insert ''affecting the object and purpose''.

On page 18, line 2, insert ''support for'' after ''resolution of''.

On page 20, line 12, strike ''citizens,'' and insert ''citizens and''.

On page 23, line 18, strike ''obligation'' and insert ''obligations''.

On page 25, line 19, strike the comma.

On page 32, line 13, insert ''of Representatives'' after ''House''.

On page 32, lines 19 and 20, strike ''Foreign Military Sales, Foreign Military Financing,'' and insert ''Foreign Military Sales and Foreign Military Financing under the Arms Export Control Act''.

On page 34, line 1, strike ''Committee'' and insert ''Committees''.

On page 34, line 3, insert ''the'' after ''and''.

On page 37, line 11, insert a comma immediately after ''games''.

On page 40, line 9, strike ''of'' and insert ''for''.

On page 41, line 16, insert ''of the Convention'' after ''ratification''.

On page 47, line 19, insert ''the ratification of'' after ''to''.

On page 49, line 5, move the margin of ''(i)'' 2 ems to the right.

On page 49, line 11, move the margin of ''(ii)'' 2 ems to the right.

On page 49, line 16, move the margin of ''(iii)'' 2 ems to the right.

On page 52, line 9, insert a comma after ''(D)''.

On page 53, line 21, strike the comma.

On page 55, line 4, insert ''a schedule of'' after ''to''.

On page 57, line 1, strike ''the'' the first place it appears and insert ''to''.

On page 59, line 15, strike the comma.

On page 61, line 11, strike ''on an involuntary basis''.

On page 61, line 12, insert ''where consent has been withheld,'' after ''States,''.

On page 8, line 8, insert '', if accepted,'' after ''provision''.

On page 25, line 19, insert ''on Intelligence'' after ''tee''.

On page 27, line 7, strike ''is'' and insert ''are''.

On page 27, line 22, insert ''on Intelligence'' after ''Committee''.

On page 57, line 15, strike ''Ruanda'' and insert ''Rwanda''.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 52) was agreed to.

Mr. KEMPTHORNE. Mr. President, it was President Ronald Reagan who said, ''Trust but verify.'' Sound advice I believe we should heed today.

Reluctantly, I rise in opposition to the Chemical Weapons Convention. Do I want to see the elimination of chemical weapons and deadly poisons? Absolutely. Will the proposed treaty actually prevent the use of chemical weapons? Not in my opinion. As I've listened carefully to all of the arguments, I have concluded the proposed treaty will not do what it is intended to do, and, in fact, may actually do more harm than good.

Again, trust but verify.

Like many Americans, I took notice when four recent Secretaries of Defense came out in opposition to the Chemical Weapons Convention. The opposition of Secretaries Schlesinger, Cheney, Rumsfeld and Weinberger is based, in part, on the fact that the treaty is not verifiable. In other words, we have no way of knowing if our ''partners'' in this agreement are living up to their end of the deal. Like the four former Secretaries of Defense, I am troubled by statements by CIA and Department of Defense officials that admit they do not have ''high confidence'' the treaty can be verified, key provisions ''can be thwarted'' and detection of small amounts of chemical weapons ''will admittedly be extremely difficult.'' In my mind, the admission of Clinton Administration officials that the treaty is not verifiable raises serious questions about the value of the agreement.

The Chemical Weapons Treaty also contains provisions, Articles X and XI, which mandate the sharing of all chemical equipment and technology, including chemical weapons defensive technology, with other countries. These provisions might allow countries like Iran and Iraq to acquire advanced defensive technologies so they can improve their chemical weapons combat capability. This exchange of technical information, mandated by the treaty, may also be used to develop ways to defeat our chemical weapons defensive technology. Because of these flaws in the treaty, Secretary Cheney wrote ''In my judgement, the treaty's Articles X and XI amount to a formula for greatly accelerating the proliferation of chemical warfare capabilities around the

globe.'' This mandated sharing of technology represents one example of how the treaty may actually do more harm than good.

I want to point out that one of the conditions removed from the Resolution of Ratification directed the U.S. to renegotiate Articles X and XI to ensure the treaty does not inadvertently increase the threat of chemical weapons. The Clinton Administration viewed the requirement to renegotiate the treaty as a ''killer amendment'' and encouraged the Senate to strike this condition. Under pressure from the President, the Senate voted to remove this condition so renegotiation of these important articles will not happen.

In addition, the President's letter to Majority Leader LOTT on the day of the vote acknowledges that there are legitimate security concerns regarding the flaws in Articles X and XI. I'm troubled because the letter is non-binding and it will be three years before we will discover if Articles X and XI lead to the proliferation of chemical weapons technology. The President says the U.S. could then withdraw from the Convention, but by then the damage will have been done.

If I believed this treaty by itself would stop chemical weapons, I would support it. During my own deliberations regarding the CWC, I had a thoughtful discussion with James Schlesinger, a former Secretary of Defense, Secretary of Energy and Director of the Central Intelligence Agency. Secretary Schlesinger made the point that although scores of nations ratified the Geneva Protocol which claimed to ''prohibit'' the use of poison gas, Iraq used mustard gas against Iran and its own citizens with impunity. In my mind, this episode demonstrates one of the weaknesses of international treaties which sound good on the surface but lack enforcement procedures in practice.

I am also concerned about the provisions of the Chemical Weapons Convention which will allow international inspectors access to chemical businesses and other important national security facilities. The idea that North Korea or Iraq can come into the United States and examine our facilities and then take that information home to help their own chemical and defense industries is wrong. The treaty makes no arrangement to compensate businesses for the loss of this sensitive data. This is another reason I believe the Chemical Weapons Convention will, in fact, do more harm than good.

As a member of the Senate Armed Services Committee, I understand the military threat posed by chemical weapons. I continue to support efforts to destroy the U.S. chemical weapons stockpile in a safe and environmentally sensitive manner. I oppose any use of these horrible weapons and I believe the United States should threaten massive retaliation against any nation that might consider using these weapons against our citizens or soldiers. I am also very proud of the leadership role of the United States in the fight to stop the spread of chemical weapons. Without a doubt, this leadership role will continue whether or not we ratify the CWC.

But we must also be honest with ourselves. The Chemical Weapons Convention cannot be verified. The treaty will not prevent countries or terrorists from acquiring or using chemical weapons. The treaty may in fact increase proliferation of advanced defensive technologies and the treaty may jeopardize proprietary information of U.S. companies.

As I weigh these facts, I conclude the Chemical Weapons Convention will do more harm than good and I will cast my vote against the ratification of this treaty.

Mr. DEWINE. Mr. President, I will vote today to ratify the Chemical Weapons Convention (CWC). I do so without any illusions. I have concluded that it will be of marginal benefit, but that its benefits do outweigh the risks. Clearly, no chemical weapons treaty can be 100% verifiable. Inside the CWC, there is at least a better chance of catching violators than if we remain outside the treaty.

I commend the Chairman of the Foreign Relations Committee, Senator HELMS, as well as Senator KYL, and others who have worked so hard to improve this treaty. As a result of their efforts, for example, we retain the right for our troops to use tear gas in hostage rescue operations; we require search warrants in cases where consent is not granted to protect 4th amendment rights; and we restrict U.S. assistance to rogue nations under Article X to medical antidotes and humanitarian assistance.

This is a historic agreement bringing together 74 countries that have ratified the treaty in a comprehensive, worldwide fight, to ban chemical weapons. The treaty requires all nations to follow America's lead to destroy all chemical stockpiles by 2007. The CWC also provides for sanctions against those who trade in chemical agents with nonparties to the treaty. These provisions will help to ensure that on a future battlefield our troops will be less likely to face chemical agents.

Passage of this treaty should not bring a false sense of security. A treaty alone will not protect our troops and citizens from chemical weapons. We should continue to devote attention and resources to improving our chemical weapons defenses. We should provide our troops with the equipment and training they need in combat situations. The parties to this treaty must also take action against violators who resort to using chemical weapons. As a member of the Intelligence Committee, I will work to ensure that the goals of this treaty are not lost in its implementation.

Mr. FEINGOLD. Mr. President, I rise today in support of the resolution of ratification of the Chemical Weapons Convention.

I am pleased that—more than 3 years after the administration sent this treaty to the Senate—the CWC is finally before us on the floor of this Chamber.

In these three years, Mr. President, three Senate committees have held numerous hearings—nearly 20 of them—on the efficacy of this treaty. As a Member of both the Foreign Relations and Judiciary Committees, I have been privileged to participate in several of these hearings and to hear numerous perspectives during this debate.

More recently, several Senators and Administration officials have spent a considerable amount of time negotiating the terms under which this treaty would come to the floor. And so I think we should all thank the Chairman of the Foreign Relations Committee [Mr. HELMS] and the Senator from Delaware [Mr. BIDEN], the ranking member of that committee, for the time they both have spent on this issue.

I would also like to recognize the efforts of the White House Working Group and the LOTT Task Force to come to a consensus on the aspects of this treaty on which we can agree. I know that the Members and Administration officials involved in these negotiations have spent hours reviewing countless technical details. It is because of these efforts that the resolution of ratification before us today contains 28 agreed-upon conditions. These conditions were carefully crafted by our colleagues to respond to Members' specific concerns. I am myself comfortable with these conditions, which, for the most part, duly exercise the Senate's prerogatives with respect to treaty ratification, and instruct the administration to undertake certain commitments. They also require greater reporting requirements which will help the Senate to monitor U.S. participation in the Convention in the future.

I am pleased that our colleagues have come to agreement on these points, because throughout the deliberations over this convention, I have made two observations: No. 1 the CWC is not a perfect document, and No. 2 notwithstanding that, the CWC is the best avenue available today for beginning to control the spread of chemical weapons, and leading, eventually, to the total elimination of such weapons.

Like any document arrived at through consensus, the Chemical Weapons Convention can not claim to address every party's concerns. But, it is my view that the 28 agreed-upon conditions in the resolution before us today serve to strengthen what we do have.

Let me speak first on my initial point—that the CWC is not a perfect document. There are real flaws that we all recognize, and that experts both pro and con acknowledge, related to the verifiability of the CWC. There may well be cheating, evasions, and attempts to disobey the spirit, as well as the letter, of the treaty. Some of this cheating may escape detection—although not enough, I believe, to pose a

legitimate threat to the security of the United States.

Nevertheless, I think we gain more by establishing an international regime that prohibits such behavior than we do by refusing to exercise U.S. leadership in that regime.

My second, and more important, point is this: The CWC is the best avenue available today for beginning to control the spread of chemical weapons, and leading, eventually, to the total elimination of such weapons.

Those countries that do ratify the treaty—and this group represents most of the responsible players on the international stage—recognize that through the CWC, the world firmly rejects the existence and use of chemical weapons. The treaty puts in place mechanisms to enforce its precepts and monitor its progress, and signatories are committed to complying with these mechanisms.

What of the handful of nations who flout international will, and will not sign on to this treaty?

First, defense experts at the very top of our military command structure are satisfied that the use of chemical weapons by these so-called rogue states does not pose a significant threat to our national security. In March 1996, then-Secretary of Defense William Perry told the Foreign Relations Committee that he was ''damm sure'' that the United States could respond massively and effectively to any chemical weapons challenge.

Moreover, the CWC will make it easier for the international community to track the chemical ingredients necessary for weapons production and to inhibit the flow of these materials to rogue or non-signatory states. The Convention will impose trade sanctions on non-signatory countries whether or not they are known to posses chemical weapons. This provision was devised by the Bush administration specifically to make it expensive for countries not to join this Convention.

As Secretary of State Madeleine Albright said in testimony before the Foreign Relations Committee earlier this month, ''These penalties would not exist without the treaty. They will make it more costly for any nation to have chemical weapons, and more difficult for rogue states or terrorists to acquire materials needed to produce them.''

Those states that we are most concerned about currently are unwilling to accept the norms that the treaty would establish. That is why they have thus far chosen not to ratify. But it is just as clear these states will never accept the treaty if the United States refuses to ratify.

This is why I plan to vote in favor of striking the so-called killer amendments that would tie the deposit of our instrument of ratification to the actions of these nations.

If the linkage were to remain in the resolution, the Senate would become responsible for painting the United States into a very uncomfortable corner, a corner from which we would be unable to exit. Such conditions would force the United States, which led the negotiations of this treaty, to engage in a game of chicken with other countries. It should instead join our allies in ratifying this treaty.

Mr. President, this treaty provides a solid start to limiting the flow of chemical weapons.

It urges the destruction of all chemical weapons. It will provide more information about the prevalence of chemical weapons than we have ever had before. And it will make the dissemination of such weapons—and the materials used to make them—more actionable than they have ever been before.

Mr. President, do I think the treaty could be improved? Of course. So I am pleased that the CWC has the provision for amendment after it comes into force.

But now is not the time to debate amendments to the treaty. One hundred sixty-one nations have signed the Chemical Weapons Convention and 74 of them have ratified it.

I think we can all assume that—just as we played a leading role in negotiating the existing treaty—the United States will again be at the forefront of efforts to make the treaty more effective after a period to test its utility. We have the technological means and the economic weight to do so. But only if we ratify this treaty prior to its entry into force on April 29. Only by that deadline—now less than a week away—will the United States be a full participant in the Organization for the Prohibition of Chemical Weapons [OPCW], the governing body that will have the responsibility for deciding the terms for the implementation of the CWC.

Would I like to see the enforcement provisions of the CWC written in a less ambiguous manner? Certainly.

Could sanctions against violators be spelled out more clearly? Absolutely.

But the CWC was laboriously crafted throughout three decades to meet the security and economic interests of States' Parties. The United States led this effort, and the treaty which we are voting on reflects our needs. As Secretary Albright has said, this treaty has ''Made in the USA'' written all over it. That is why the CWC has the blessing and enthusiastic support of our defense and business communities.

Mr. President, I would like to address an issue that is of particular importance to me, and that is the potential constitutional implications of this treaty.

In particular, the argument has been made, incorrectly in my opinion, that adoption of the CWC would subvert, in some way, the constitutional protections of the fourth amendment which—as Americans—we all enjoy. Let me say at the outset that preserving the fourth amendment is a responsibility that I take very seriously and very personally. My concern about preserving the protections of the fourth amendment does not end at the corners of this treaty. I have opposed in this Congress proposals to weaken the fourth amendment's protections, for example, in the area of wire taps.

In fact, I am pleased to see that throughout the debate over this treaty, many of my colleagues have taken an active interest in promoting the rights bestowed upon us by the fourth amendment. Indeed, I welcome the opportunity to work with these members on future initiatives related to this vital provision of our Constitution.

With respect to the claim that ratification of this treaty risks constitutional protections for Americans, I think three points need to be stressed.

First, this treaty, and in particular the inspection language therein, is the product of bipartisan efforts spanning many years. In fact, it was the Bush administration which rejected efforts to adopt overly broad, and undoubtedly unconstitutional inspection proceedings in favor of those in the treaty today.

Second, although the treaty itself acknowledges the supremacy of the constitutions of its signatories, this would be the case even without specific language. The Senate cannot, be it through signing a treaty or passing a law, subvert any of the protections guaranteed by our Constitution. That is the very essence of our Constitution: it is the bedrock of our freedoms and cannot be abrogated short of amendment to the Constitution itself.

Mr. President, during a Judiciary Committee hearing last September, I questioned Professor Barry Kellman of the DePaul Law School on various aspects of the constitutionality of this treaty and on each of the points I have raised here today. On each point, Professor Kellman was in agreement with me. In fact, Professor Kellman, who has dedicated many years, and much time and energy to reviewing the constitutional implications of the Chemical Weapons Treaty, testified that, ''every serious scholar'' who has looked into the issue has found this treaty to be constitutional.

Finally, to the extent there are concerns to be addressed, and there may be, the proper context for airing those concerns is during what I expect to be a lively discussion over the implementing legislation, which we will have a chance to debate in the next several weeks. It is in the implementing legislation—not the treaty itself—where these issues should be addressed and resolved.

I look forward to working with concerned colleagues as we consider implementation of the treaty, so I am pleased that the unanimous consent agreement arrived at regarding the resolution of ratification before us today included the intent to debate and vote on the implementing legislation prior to the Memorial Day recess.

As the debate over the implementing language continues, I will work with

my colleagues to ensure that the language we ultimately adopt fully and properly reflects the protections embodied in the United States Constitution.

In the interim, however, we should not become side-tracked by arguments that this treaty is unconstitutional or subverts the fourth amendment. The inspections conducted pursuant to this treaty will be conducted pursuant to the Constitution of this nation. Nothing in this treaty can, nor does it even attempt to, alter that simple, but fundamental fact.

Mr. President, I support the ratification of the Chemical Weapons Convention which I believe is in the best interests of the United States.

And if the Senate is to lend its support to this treaty, we must vote to strike each one of the five conditions before us. Four of these would pronounce the treaty dead on arrival by linking the deposit of the U.S. instrument of ratification to conditions that are simply impossible to achieve—by April 29, or at any time in the near future. The other condition would establish a precedent for the selection of inspectors that would greatly undermine the entire inspection process.

Mr. President, it is imperative that those of us who support this treaty help strike the language that would undermine U.S. participation in the Convention in this manner.

And, after doing so, Mr. President, I hope my colleagues will join me in voting for final passage of the resolution of ratification.

Mr. LAUTENBERG. Mr. President, I rise to urge my colleagues to ratify the Chemical Weapons Convention.

The Chemical Weapons Convention is a historic arms control treaty which will significantly enhance America's security. The treaty prohibits the development, production, acquisition, stockpiling, and transfer of chemical weapons by those countries that are signatories. It requires signatories to begin to destroy their chemical weapons within a year and to complete destruction of chemical weapons within ten years. Importantly, it prohibits the use of chemical weapons in combat, and it prohibits signatories from helping other countries to engage in any activity banned by the treaty. As such, the Chemical Weapons Convention is an important non-proliferation tool that will help slow the spread of dangerous chemical weapons and force the destruction of most of the world's chemical weapons stockpiles.

President Reagan recognized the wisdom of working to ban chemical weapons worldwide. Under his administration, negotiations on the terms of a chemical weapons treaty began. Those negotiations continued under President Bush, who signed the treaty. Now, five years after completion, with the full support of President Clinton, the Chemical Weapons Treaty is before the Senate for ratification.

There are many good reasons to support the Chemical Weapons Treaty. First, and foremost, this treaty will protect America's military from the threat of chemical weapons attack without requiring America to give up anything militarily. The United States has already decided to destroy its stockpile of chemical weapons and has vowed not to use chemical weapons in warfare. Because the Chemical Weapons Convention requires other nations to abandon chemical weapons as the United States has done, America gains from this treaty. We give up nothing, and our troops will be less likely to face poison gas in future conflicts.

Civilians in America and worldwide will benefit from Senate ratification of this treaty as well. Last year's terrorist attack in Japan, in which chemical weapons were used against innocent civilians, reminds us that none of us is safe from the threat of chemical weapons. As long as chemical weapons are produced and stockpiled, the possibility remains real that they will end up in the hands of terrorists. Because the Chemical Weapons Convention requires all countries to enact laws making it a crime to develop or produce chemical weapons, the treaty will make it harder for terrorists to obtain chemical weapons, making America's cities, streets, and schools safer.

Additionally, the Chemical Weapons Convention will help America and the intelligence community to better track and control the spread of chemical weapons and to punish violators. Through the verification regime established by the treaty, our country will have an easier time monitoring chemical weapons threats and establishing rigorous verification procedures to prevent cheating.

Already seventy countries have ratified the treaty, and it will go into effect with or without the United States. But if the Senate does not ratify the treaty, America will be siding with rogue nations like Iraq and Libya. If the Senate does not ratify the treaty, American industry will be sanctioned and will lose roughly $600 million in trade, a point I addressed more fully in an earlier speech to the Senate. If the Senate does not ratify the treaty, America will not be able to participate in the body that will determine the rules for implementing the treaty. And if the Senate does not ratify the treaty, America's credibility as a proponent of nonproliferation and arms control will be jeopardized.

Mr. President, there is no doubt in my mind that the United States should join a treaty we helped to shape and which enhances our security. With the Chemical Weapons Convention and our leadership, other nations will follow the lead America set years ago by giving up chemical weapons. Rogue nations and terrorist countries will have a harder time acquiring or making chemical weapons, and new tools will be available to prevent and punish them if they try. America is much better off with the Chemical Weapons Convention than without it, and I urge my colleagues to ratify it without delay.

Mr. GORTON. Mr. President, I have thought long and hard on whether I should vote to ratify the Chemical Weapons Convention. I must admit that as the Convention was originally presented, I was inclined to oppose it. But after three weeks of hard work with the Majority Leader and with the many thoughtful opponents of ratification, I believe we have resolved a significant number of issues in contention and now believe that ratification of the Chemical Weapons Convention will do more to reach our common goal of eradicating these deadly and detested weapons from the earth than will non-ratification.

First, I would like to commend my many constituents, and the thousands of Americans like them, who were relentless in raising their voices against many dangerous aspects of the treaty and its interpretation. Without their vigilance, we would never have reached the point we have today.

I also commend Senator HELMS, Senator KYL, and the Majority Leader for their work and negotiations with the Administration that has led to vast improvements in the Chemical Weapons Convention ratifying documents.

Since the beginning of the debate on the Chemical Weapons Convention, I have stated that the real question is not whether to support the cause of restricting the production, stockpile, and use of chemical weapons throughout the world, but whether the Chemical Weapons Convention itself advanced or inhibited this honorable cause.

As it was originally presented to the Senate for ratification, Mr. President, I believe the treaty did not advance our cause, but instead inhibited it by making sensitive information on chemicals and chemical weapons technology so readily available as to encourage the proliferation of these hideous weapons. But through the good work of Senator HELMS and Senator KYL, we were able to reach 28 agreements with the Administration. These 28 agreements went a long way toward advancing our cause. I think three of these agreements are particularly important.

First, I shared the concern of many of my constituents and several former Secretaries of Defense who testified before the Armed Services Committee that the convention would create a false sense of security, not only in the United States, but in nations around the world. It would be easy, Mr. President, for governments to believe that, because the Chemical Weapons Convention is in force, we no longer need to worry about the use of chemical weapons or to prepare ourselves to defend against them. I found this aspect of the treaty to be quite troubling.

No arms control treaty has yet proven to be perfect. And chemical weapons are far more difficult to detect than missiles or nuclear warheads. Thus, I originally feared that ratification of the treaty would lull us into a false sense of security in which our armed forces would not be properly prepared to deal with a chemical attack.

I now believe, however, that the agreement reached between Senator HELMS and the Administration that ensures our armed forces will continue to receive the equipment and training necessary to complete their missions in the face of chemical weapons is a major improvement which will guard against a debilitating false sense of security.

Second, I and many of my constituents had grave concerns about the treaty's impact on Fourth Amendment protections against unreasonable searches and seizures. The treaty, in its original form, did not go far enough to protect U.S. citizens and businesses from involuntary inspections. The treaty's provisions on challenge inspections of chemical producing facilities in the United States did not, in my opinion, comply with the Constitution.

I am pleased that the administration has agreed to a condition to protect the Fourth Amendment rights of all Americans and to conform the Chemical Weapons Convention to the United States Constitution. According to this condition, before the U.S. deposits its instrument of ratification, the President must certify to Congress that for any challenge inspection in the United States for which consent has been withheld, the inspection team must first obtain a criminal search warrant based upon probable cause, supported by oath or affirmation, and describing the place to be searched and the persons or things to be seized. For any routine inspection of a declared facility in the United States that is conducted on an involuntary basis, the inspection team must obtain an administrative search warrant from a United States magistrate judge.

I am now confident that this agreement will ensure that the constitutional rights of U.S. citizens and businesses will be protected under the treaty. I commend Senators HELMS and KYL and the administration for their work on this vitally important condition.

Third, I was troubled by the treaty's impact on the use of non-lethal riot control agents. Since the Chemical Weapons Convention was originally drafted, there has been a great deal of debate in the United States on whether the treaty language would preclude American armed forces from using nontoxic riot control agents. Tear gas and other such chemicals provide the United States military with an invaluable tool when conducting sensitive operations. Tear gas, for example, is an excellent means of rescuing downed pilots, or avoiding unnecessary loss of life when enemy troops and civilians are in the same area.

I am pleased with the agreement that has been reached on this issue. According to a condition the administration has now accepted, the President will certify to Congress that the United States is not restricted by the convention in the use of riot control agents in the following situations: (1) in the conduct of peacetime military operations within an area of ongoing armed conflict when the United States is not a party to the conflict; (2) in consensual peacekeeping operations when the use of force is authorized by the receiving state; and (3) in peacekeeping operations when force is authorized by the Security Council under Chapter VII of the United Nations Charter. The agreement also leaves in place Executive Order 11850 signed by President Ford which cites four cases where the use of riot control agents should be permissible under the Chemical Weapons Convention: avoiding unnecessary loss of life, subduing rioting enemy POWs, protecting supply convoys, and rescuing a downed pilot from enemy troops or a POW from behind enemy lines. I commend the administration for agreeing to this reasonable and necessary condition. It will ensure that the men and women of the United States armed forces have the tools necessary to do their jobs in precarious situations.

While the 28 agreements made did go a long way to improve the Chemical Weapons Convention, I still had one remaining concern, in my view the most important concern, until this morning. That concern relates to Articles X and XI of the convention and the proposition that they might well force the United States to share sensitive information on our chemical weapons defense capabilities and to eliminate our export controls on dangerous chemicals.

Article X of the treaty obliges all parties to provide assistance and protection to any State Party threatened by the potential use of chemical weapons, including information on chemical weapons defense and detection. Article XI of the treaty obliges all parties to freely exchange chemicals, equipment and scientific and technical information relating to the development and application of chemistry for purposes not prohibited by the Convention. It forbids parties to the treaty to maintain export controls that would restrict the trade and development of chemicals and chemical technology with other treaty parties.

Ironically, these provisions of the treaty, a treaty designed to eliminate the proliferation of chemical weapons, could in fact promote that very proliferation. If the United States is forced under the treaty to provide this sensitive technology to countries such as Iran, China, or Cuba, those countries could use that information to develop weapons against which we have no ability to defend.

It is my contention that Articles X and XI do more to inhibit the cause of eradicating chemical weapons than they do to promote it. Thus, they comprise a fatal flaw in the Chemical Weapons Convention. And, until today, I was inclined to vote against ratification because of my concerns on Articles X and XI.

I am pleased to say, however, that the distinguished Majority Leader was remarkably successful in his negotiations with the President on this most important aspect of the debate on the treaty. I commend him for his diligence and commend the President for his wisdom in responding to our concerns.

This morning, the President sent Senator LOTT a letter in which he extended a promise that the United States will withdraw from the Convention if Articles X and XI are used by other treaty parties to undermine the intent of the Convention. The specific circumstances under which the President agreed to withdraw from the treaty are as follows: (1) if Article X is used to justify actions that could degrade U.S. defensive capabilities; (2) if Article XI erodes the Australia Group export controls; and (3) if Article XI promotes increased proliferation of chemical weapons.

With this assurance from the President, I am now prepared to support the Chemical Weapons Convention and will vote for its ratification. With the 28 agreements Senator HELMS and Senator KYL were able to negotiate, and with this final commitment from the President, I am comfortable with the treaty. The Convention has been transformed from one doing more harm than good, to one promoting rather than inhibiting the cause of eradicating chemical weapons from the earth.

In closing, Mr. President, let me say that these changes could not have been made without the diligent and good-faith negotiating done by the majority leader, and without the voices raised by thousands upon thousands of Americans who went out of their way to draw attention to the treaty's many flaws. They should be given the lion's share of credit for the conditions and modifications we have made that make the Chemical Weapons Convention a more workable, more responsible treaty.

Mr. BAUCUS. Mr. President, I rise today to express my firm support of the Chemical Weapons Convention Treaty. I have thought long and hard on this issue. And I believe that my colleagues—both for and against this treaty—have shown patience, diligence and understanding during this important debate.

I also believe the time has come for us to lead the civilized world in signing this treaty. And to remember why, we need to look back to our history.

On October 30, 1918, 12 days before the end of the First World War, the 362nd Infantry Division received orders to attack German positions outside the city of Audenarde in France. Many Montanans served in this division.

During this battle, German troops lobbed several gas shells toward the Montana troops. The wind that morning just happened to be blowing to the east, and the gas carried over the American area.

The men of the 362nd fought valiantly that day. And in the end, they overtook the German positions with a minimal loss of life. But they, and hundreds of thousands of other World War

I veterans, carried scars in their lungs for the rest of their lives. It made breathing difficult and left many of them invalids.

Chemical weaponry has come a long way in the 79 years since that battle took place. Modern technology has made this type of warfare more devastating and more deadly. It can now kill instantly as well as scar and maim the lungs.

Chemical warfare is an indiscriminate killer. It cannot tell the difference between a soldier and a civilian, a bunker from a subway, or a barracks from a school.

And worst of all, some chemical weapons are relatively easy to create. As we have seen in recent news reports, if the substances used to create chemical weapons are freely available, terrorist groups and cults can make them and use them against civilians.

This, of course, often makes them hard to detect. So the critics of this Convention have a point when they say it will be hard to verify.

But this agreement will make it much easier than it is now for us to find out when rogue states try to create or stockpile chemical weapons. We will have the right to inspect the factories and defense installations of those we suspect are creating these weapons. And we will be able to block those who do not sign from buying the substances they need to create chemical weapons.

That is why this treaty has wide support. If we choose not to ratify it, we cast ourselves with such countries as Iraq and Libya—one which used chemical weapons against Iran and its own Kurdish citizens, another suspected of clandestine efforts to create a chemical weapons program.

And we make it more likely that some day, another generation of American servicemen and servicewomen will suffer the same kind of outrageous attack that the Montanans in the 362nd went through in 1918. That must not happen. And the Senate must pass this Convention.

If we ratify this treaty now, we allow the United States to participate in its administration from the outset. To fail to ratify the treaty is to lose our seat at the table. I want to make sure that we put American inspectors on the ground to ensure the eventual end of these horrible weapons.

Again, I urge my colleagues to join me in supporting this treaty. And I look forward to the day we remove chemical weapons from the face of the earth.

Mr. MCCONNELL. Mr. President, I rise today to join my colleagues in addressing the issue of ratification of the Chemical Weapons Convention (CWC).

While some who are less familiar with the advice and consent process may regret the pace the Senate has undertaken, I strongly believe it is a point of pride. The Senate, led by Majority Leader LOTT, Senator KYL, Senator HELMS, Senator LUGAR and many others, has painstakingly reviewed the CWC for many months. The 33 conditions which have been the subject of protracted negotiations have created a document which better protects our nation's security interests. I congratulate Senator LOTT and the rest of the participants for their efforts.

Despite the best efforts of all involved I continue to harbor a number of strong reservations about the convention. I am concerned about its verifiability, the impact on U.S. business, the effect on U.S. efforts to eliminate existing chemical weapons stockpiles, and the number of rogue nations which are not party to the CWC.

Former CIA director James Woolsey testified that detection of violations of the CWC is so difficult that we cannot ''have high confidence in our ability to detect noncompliance, especially on a small scale.'' Nowhere is this more evident than Iraq. In a recent column, Charles Krauthammer pointed out that Iraq has been subjected to the most intrusive, comprehensive inspections for weapons of mass destruction ever devised or implemented by an international organization. Yet, we continue to uncover secret sites and weapons and have no confidence we know the extent of Saddam Hussein's lethal stockpile. If we are uncertain under the best of conditions, we should not underestimate the significant risks under adverse circumstances.

Mr. President, my second concern is the unforseen impact inspection requirements might have on U.S. businesses. One estimate puts the number of Kentucky businesses which are likely to be impacted by the CWC at 44. Not all of these companies are large enough to be able to afford the increased costs of additional burdensome regulations. The chemical industry is already one of the most over-regulated industries in America. Currently, the combined costs of EPA, OSHA and other federal regulations on the industry is near $4.9 billion annually. Adding to this incredible financial burden is overkill.

In addition to the costly regulatory burdens CWC asks these companies to withstand, the treaty will require companies to open their books and facilities to foreign inspection teams—creating a Pandora's box of commercial hazards. Former Defense Secretary Donald Rumsfeld points out, despite best efforts its possible, even likely, that inspection teams could come away with classified and proprietary information.

Specifically, the inspection requirements may compel companies to provide proprietary technical data which could be used to considerable financial advantage by competitors. Worse yet, the results might enable adversaries to enhance their chemical weapons capabilities, putting American soldiers and citizens at potential risk. These risks underscore the need to include the imperative protections in Condition 31 enabling the President to ban inspection teams with terrorist track records.

The third issue of concern relates to Condition 27's direct affect on my state and on our ability to dismantle our existing stockpiles. Kentucky is home to the Lexington Bluegrass Army Depot where thousands of chemical munitions are currently stored. The community surrounding this facility is justifiably concerned over the method by which the weapons will be destroyed. The Treaty mandates signatories register specific technical plans for destruction shortly after the instruments of ratification are filed. This may undermine alternatives currently being explored.

Let me explain. Last year, I offered an amendment to the Defense Appropriations Bill which directed the Secretary of Defense to pursue the acquisition of at least two alternative technologies to the current plan of incineration. Condition 27, provides some assurance that the development and use of alternatives to incineration would not be affected by the CWC regime. However, if this agreement between Congress and the Administration is overruled, reversed or challenged by the Organization for the Prohibition of Chemical Weapons, my constituents will be placed at increased risk. I accept the President's written guarantee at this point, but will keep a close watch to assure his commitment is not reversed or revised. I ask unanimous consent that a letter from President Clinton to me on this issue be included in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. MCCONNELL. Condition 27 also presents another problem. Current law requires the President to destroy the U.S. stockpile by 2004. Condition 27 extends the deadline to 2007. Mr. President I am emphatically opposed to this provision. I do not believe it wise to give the Army, or any party the opportunity to slow down efforts to identify alternative technologies or to delay the destruction process.

The weapons stored in the U.S. need to be dismantled now. They are aging and therefore becoming more unstable every day. As this occurs, safe destruction becomes increasingly difficult and the chance of an accident increases dramatically. I hope the Administration will not seek a delay in the destruction deadline unless it is absolutely necessary in order to undergo the safe and effective elimination of our weapons.

Finally, Mr. President, the fact that many of the nations with either the intent or the means to attack U.S. soldiers and citizens with chemical weapons are not covered by the CWC is deeply troubling. Libya, Syria, Iraq and North Korea are all suspected of possessing chemical weapons and not one is a participant in the CWC. This fact is strong justification for maintaining Condition 30 which compels their participation.

If the U.S. ratifies the CWC the horrors of chemical attack will not magically disappear. Those of us in the

United States Senate must remain vigilant in ensuring that America continues to prepare adequate defensive capabilities against potential chemical or biological attack. Incidents such as the sarin gas attack in the Tokyo subway cannot be prevented by this or any other treaty.

The world remains a dangerous place and this treaty will not substantially change that fact. The Secretary of State insists that this Treaty is not about our chemical weapons—it is a means to limit other nations'. The plain fact is it will not constrain one nation from acquiring or using these weapons. Even if we are able to determine that a participating nation is violating the CWC, the means of redress or sanction available under the treaty are toothless and largely ineffective. The United Nations Security Council must craft penalties which could avoid potential Chinese or Russian vetoes. I am certain this would be a near impossible task.

With these objections stated, it is clear that I do not believe the CWC is a perfect document. In fact, it remains unclear whether the treaty will have any of the positive effects its proponents allege.

Why then do I feel compelled to support U.S. ratification? Quite simply it comes down to one issue—the necessity to sustain the strength and credibility of U.S. leadership. As the principal architect of the CWC, the United States risks our authority and stature should we refuse to ratify the convention. If this treaty is to enjoy any success it will be due to U.S. participation and leadership. As President Bush has stated repeatedly, ''it is vitally important for the United States to be out front.'' I also agree with former Secretary of State James Baker's assertion that failure to ratify the convention ''would send a message of American retreat from engagement in the world.''

The United States must be in a position to lead, and it must use this leadership to push other nations to follow our example and eliminate their chemical stockpiles. Just this week we heard from a former high ranking North Korean official of that country's significant chemical and nuclear capabilities and willingness to use both. The U.S. must actively work to ensure that the North Korea's of the world recognize the futility in relying on these weapons. The CWC is a modest step on that road, a road which I hope yields success.

EXHIBIT 1

THE WHITE HOUSE,
Washington, March 19, 1997.

DEAR SENATOR MCCONNELL: Thank you for your letter concerning your support for the Chemical Weapons Convention and for the alternative technologies program.

I want to assure you that nothing in the Convention would preclude the consideration of alternative technologies funded by your amendment to the FY 1997 Defense Appropriations bill. Indeed, the Administration has agreed to a condition to the CWC resolution of ratification which makes clear my commitment to exploring alternatives to incineration for the destruction of the U.S. chemical weapons stockpile and clarifies the relationship between the CWC and our chemical weapons demilitarization program. A copy of the condition is attached.

I am gratified that you agree on the importance to U.S. national security of banning the production, possession and use of chemical weapons worldwide. I look forward to your support for Senate ratification of the CWC in the weeks ahead.

Sincerely,

BILL CLINTON.

Ms. MOSELEY-BRAUN. Mr. President, in recent weeks we have heard a great deal about the Chemical Weapons Convention.

We have talked about the risks of information sharing, the reliability of the verification systems, and whether Russia should go first. We have debated the dangers of exchanging inspectors, we have questioned whether outcasts like Iran, Iraq and North Korea should sign this international agreement, and whether anything would change if they did. Fundmentally, we have been considering whether the proposed treaty is a step forward, or whether it is worse than no treaty at all.

Opponents have argued that the treaty is fatally flawed, and that the United States is better off without it. It's true that the Chemical Weapons Convention is not perfect. Chemical weapons are cheap and easy to make, and despite our best efforts, we will never be able to monitor every laboratory, or stop every nation in this world that is driven to make tools of biological warfare.

But this debate is not about whether the treaty is perfect, or whether its provisions must be changed. This debate is about what happens if the United States fails to act.

Every weapon of war is horrible. While the bloodshed, violence and destruction caused by things that kill people cannot be ranked, death by poison gases or viruses is particularly grisly. I am reminded of the words of Erich Maria Remarque in his novel about men lost to poison gas attacks during the Great War in the early part of this century:

> We found one dug-out full of them, with blue heads and black lips. Some . . . took their masks off too soon . . . they swallowed enough to scorch their lungs. Their condition is hopeless; they choke to death with hemorrhages and suffocation—''All Quiet on The Western Front'' Erich Maria Remarque.

It was experiences like this that helped to generate worldwide hatred and fear of chemical weapons, and is what led to the Geneva Protocol of 1925.

In the 70 years since that time, negotiations have been conducted, conferences have been held, and agreements have been signed to permanently ban chemical weapons from the earth. It is universally recognized that outlawing chemical and biological weapons and their manufacture—while it might not completely prevent any use in future conflicts—is the right thing to do.

That's why it is incredible to me, less than a week before the ratification deadline, that this treaty has become a point of political division here in the U.S. Senate.

This treaty is the first global arms control agreement to ban an entire class of weapons. Participating states must destroy their chemical weapons within 10 years of the treaty's enactment and pledge to never make them again. The agreement also creates an international organization to monitor compliance, and signatories must exchange data and permit routine inspections of their facilities.

Nations refusing to participate will be barred from purchasing the ingredients necessary to make chemical weapons and many commercial chemical products, and will face heightened scrutiny over their chemical weapons activities. Their chemical and biotechnology industries will face great international trade obstacles.

Opponents of the Chemical Weapons Convention argue that this treaty should not be ratified because countries such as Iraq, Iran and Syria are not signatories. They argue that the treaty is unverifiable, that it is intrusive and damaging to confidential trade information held by the U.S. chemical industry, and that, due to the Clinton administration's refusal to modify article 10 and 11, the United States will be forced to share critical technology with other nations.

I do not subscribe to this interpretation. The sanctions provided by this treaty for nonmembers were designed with the distinct understanding that pariah states were unlikely to join the agreement, and therefore would be isolated and targeted for sanctions. Furthermore, article 10 does not obligate the United States to share chemical defense technologies and equipment with member or nonmember states. Article 10, in fact, provides the United States with the flexibility to determine how and what types of assistance should be provided to signatories. Article 11 will not force private businesses to release proprietary information. The convention legally binds signatories, via article 1, never to engage in any activities prohibited under the convention, greatly decreasing the likelihood that nations would seek to profit by giving secrets to non-signatories.

For the American people, the benefits of the Chemical Weapons Convention are clear. Its provisions will diminish the threat of chemical warfare against our young troops overseas. It will help protect Americans at home from terrorist attacks like the kind that occurred in the Tokyo subway. And it gives us new tools to help us track down and punish nations that violate this treaty.

The amount of good that this treaty can accomplish has been recognized by the rest of the civilized world. One hundred and sixty-four nations have signed, and seventy-four nations have ratified this agreement. The treaty,

which was negotiated by the Republican administrations of Reagan and Bush, has been endorsed by military leaders like General Powell and General Schwartzkopf. It's supported by the chemical manufacturers, and most significantly, it is supported by the American people.

The Senate has less than 1 week, however, to ratify this treaty. If we miss the April 29 deadline, the world will move ahead without us, and the United States will lose a critical opportunity to take a stand against the worldwide proliferation of chemical weapons. America will lose its seat at the table in the international enforcement process, and American inspectors will be barred from examining foreign facilities. Our chemical industry will lose hundreds of millions of dollars per year as a result of the treaty's trade restrictions. And we will sit on the sidelines with outlaw nations like Libya, North Korea, Iraq, and Iran.

The United States is not an outlaw nation, and should not be considered one because of our failure to act. We cannot stop these deadly weapons alone, and the world cannot stop these weapons without us. As President Clinton said in his State of the Union Address, ''We must be shapers of events, not observers.'' If we want to continue our leadership role into the next century, then it is time for the United States to be leagued with the rest of the world and put an end to these weapons of death.

We have a clear choice. We can take the path of political partisanship, and stand in isolation. Or we can set aside discord, take responsibility for our children's future, and ratify this agreement.

This is the decision that the Senate must make. In the 100 years since the Hague Conventions, a historic opportunity is within reach to ban chemical weapons forever. It is time for the Senate to complete the job and ratify the Chemical Weapons Convention.

Ms. MIKULSKI. Mr. President, I support the ratification of the Chemical Weapons Convention. This international treaty is our best hope to end the use of lethal chemical weapons. It will protect Americans by making it harder for terrorists to produce chemical weapons and it will protect our soldiers on the battlefield. This treaty will make America and the world more secure.

The Chemical Weapons Convention bans the development, production, stockpiling, and use of chemicals as weapons. Each and every nation that signs this treaty becomes an ally in the fight against chemical weapons used by terrorists or by outlaw states. If we don't ratify this treaty, America will join countries like Libya and Iraq who refuse to join the worldwide effort to end the use of chemical weapons. I can't speak for my colleagues, but I know that this Senator does not want the United States to be aligned with those terrorist states.

The Chemical Weapons Convention is not a liberal or a conservative document. It is not a Democratic or a Republican document. It was negotiated by the Reagan and Bush administrations and it is supported by the Clinton administration. It is in the tradition of a nonpartisan foreign policy.

The Chemical Weapons Convention was made in America. It is inconceivable that we—the world's only superpower—would refuse to ratify a Convention that we were instrumental in drafting.

Of course no treaty can ever eliminate every threat. That is why the United States must continue to maintain our strong chemical weapons defense program. At the Aberdeen Proving Ground in Maryland, scientists and technicians are developing better ways to protect our troops from the effects of chemical weapons. This important work must continue.

In addition, our intelligence agencies, like the National Security Agency, must continue to provide the kind of information that prevents the use of chemical weapons. The National Security Agency is listening in on the international criminals and terrorists as they seek to buy chemicals and produce weapons. The Chemical Weapons Convention will aid these efforts by making it harder for terrorists to get chemicals that could be turned against Americans.

America has always led the effort to end the use of chemical weapons—and the convention will ensure that other countries follow our lead. We have already decided not to use chemical weapons and we have started to dismantle our chemical stockpile.

Maryland is one of seven States that stores chemical weapons left over from the First and Second World Wars. For many years, we have lived with the threat of an accident. We are only now preparing to neutralize the chemical stockpile that is stored in Maryland. We in Maryland know first-hand the dangers these chemical weapons pose to military personnel and civilians. America's priority must be to safely dispose of these lethal chemicals—not to produce them.

Mr. President, The Chemical Weapons Convention will make it harder for thugs and rogue nations to make and use chemical weapons. I urge my colleagues to join me in voting for its ratification.

Ms. SNOWE. Mr. President, in my view there is no greater threat to our nation's security than the proliferation of weapons of mass destruction. Among these is the scourge of chemical weapons which have been unleashed in this century with such horrifying effect in the trenches of the First World War, in the villages of Iraq a decade ago, and more recently in the Tokyo subway.

In 1985 the United States took a bold unilateral decision to destroy our chemical weapons stockpiles because they serve no military purpose. And in 1990 the United States negotiated a bilateral chemical weapons destruction agreement with the Soviet Union in an effort to begin the process of reducing that country's stockpiles, the largest in the world. The leadership of the United States through the years has been crucial in forging the broad international consensus which produced the Chemical Weapons Convention. The whole world is watching us closely today to see whether or not the United States is going to continue its leadership role on this critical issue.

The United States must not retreat from more than a decade of leadership on controlling chemical weapons. We must ratify the Chemical Weapons Convention before it comes into force on April 29—not just to maintain our leadership on this issue, but because it is in our best interests to do so.

The issue is not whether the Convention will completely eliminate the threat of chemical weapons. There is no magic wand to do that. However, what the Chemical Weapons Convention will do is nevertheless substantial. It will establish—for the first time—an international standard against the production and use of chemical weapons. It will provide us with significant additional monitoring and inspection tools to detect chemical weapons activities. And it will impose trade restrictions that will make it more difficult for ''rogue'' states and terrorist organizations to start or continue chemical weapons programs.

Opponents of the Convention argue that it is not adequately verifiable, although many of those same critics argue at the same time that the treaty is too intrusive. The fact is that the Convention includes the most extensive monitoring and inspection regime of any arms control treaty to date. The U.S. chemical industry—which will be the target of most of the monitoring and inspection under the Convention—helped write these provisions and is comfortable with them.

The U.S. intelligence community believes that the Convention will significantly enhance its current ability to detect suspicious patterns of chemical activity in other countries. I am particularly pleased with the Condition #5, which has been agreed to, that protects U.S. intelligence information that may be shared with the Organization for the Prohibition of Chemical Weapons. It reflects the legislation I have introduced to protect U.S. intelligence which is shared with international organizations.

The trade restrictions imposed by the Convention represent another key element in controlling the proliferation of chemical weapons. Building on the existing trade restrictions in chemicals under the informal Australia Group, the Convention limits trade in the most likely chemicals to be used in weapons production—Schedule I chemicals—to trade among countries that have already ratified it. The same restrictions will apply after three years to Schedule II ''dual-use'' chemicals

which have both commercial and military applications.

Therefore, if we do not ratify, we hurt our own chemical industry which will be excluded from commerce in Schedule I chemicals with some of our principal trading partners, including the United Kingdom, France, Germany, Japan, and Canada. The economic loss to the United States is estimated to be $600 million annually.

Opponents of the Convention also argue that it is contrary to our national security interests because countries like Iraq and North Korea will continue their chemical weapons programs while we destroy our own stockpiles. But the Convention will make it harder for these countries to obtain critical chemical ingredients for their weapons programs. And, by outlawing the production of chemical weapons for the first time, the Convention will allow the international community to take collective action to isolate ''rogue'' states intent on developing these weapons.

The Pentagon's top military leaders have all testified that chemical weapons are not needed to deter other countries from using these weapons against the U.S. or our armed forces. In fact, chemical weapons serve no useful military purpose as a method of warfare. America's ability to inflict overwhelming destruction, without resorting to chemical warfare, serves as a sufficient deterrent to the use of chemical weapons against our armed forces. I agree strongly with Condition #11, which has already been agreed to, that requires the United States to maintain a robust program of chemical and biological defenses to ensure that our forces are provided with maximum protection in the event such weapons are ever used against U.S. forces. Such a policy is only matter of prudence and common sense.

The resolution of ratification before the Senate today sets out further conditions that address widely-shared concerns about the Chemical Weapons Convention. For instance, conditions will ensure the primacy of the U.S. Constitution, limit U.S. financial obligations under the Convention, ensure appropriate cost-sharing arrangements, and require consultation with this body in cases of noncompliance with the treaty. By clarifying and reinforcing the Senate's views on these and other important issues, the conditions constitute a useful complement to the Chemical Weapons Convention.

Mr. President, it is important to note that this Convention has a history of bipartisan support. Negotiations began under the Reagan Administration and were concluded by the Bush Administration. Former President George Bush has said, and I quote, ''This Convention clearly serves the best interests of the United States in a world in which the proliferation and use of chemical weapons is a real and growing threat . . . United States leadership is required once again to bring this historic agreement into force.''

A total of 162 countries have now signed the Chemical Weapons Convention and 74 countries have ratified it. Russia, China and Iran—all with known chemical weapons programs—have signed the Convention, but it is unlikely that these countries will ratify it if the U.S. does not do so first.

Mr. President, American leadership is needed once again. The U.S. must be among the original ratifying states in order to play a central role in setting up the new Organization for the Prohibition of Chemical Weapons and to participate fully in the Convention's monitoring, inspection, and trade control activities. I urge my colleagues to support the resolution of ratification for the Chemical Weapons Convention.

Mrs. MURRAY. Mr President, I am pleased that the United States Senate has finally turned its attention to the Chemical Weapons Convention. Before this body today sits the work of President Reagan, President Bush and now President Clinton. The CWC will place a global ban on the manufacture, stockpiling and use of chemical weapons by its signatories. Along with protocols for inspections and sanctions against countries that do not abide by the CWC, it contains a specific timetable for the destruction of existing chemical weapons and production facilities.

The United States provided valuable leadership for many years in the effort to outlaw chemical weapons and their use. Our government was the driving force behind the negotiations that produced the Chemical Weapons Convention. The CWC will go into effect next week with or without U.S. participation. Failure to ratify the CWC would be a monumental error for the United States; a symbolic retreat from our traditional role in the world that will likely impede our efforts to further eliminate and combat proliferation of weapons of mass destruction.

I do strongly support the immediate ratification of the Chemical Weapons Convention. I want to add my personal thanks to my many colleagues who have worked so hard to bring the articles of ratification to the Senate floor. Senator BIDEN and Senator LUGAR have both been champions in this effort. I have great admiration and respect for both of these Senators and I know many thousands of my constituents also appreciate their leadership on the CWC.

As a Member of the Senate Committee on Veterans Affairs, I have been particularly impressed by the support given to the CWC by numerous veterans service organizations. My own state has more than 700,000 veterans and thousands of additional active duty personnel stationed in every corner of my state. The following veterans organization have all called upon the Senate to ratify the CWC; the Veterans of Foreign Wars, the Vietnam Veterans of America, the Reserve Officers Association of the United States, the American Ex-Prisoners of War and the Jewish War Veterans of the USA. The National Gulf War Resource Center, a coalition of two dozen Gulf War veterans organizations has also publicly endorsed the CWC.

Such distinguished senior US military commanders as General Norman Schwarzkopf, former Chairmen of the Joint Chiefs of Staff Generals John M. Shalikashvili and Colin Powell, former Chief of Naval Operations Admiral Elmo Zumwalt, and former National Security Adviser General Brent Scowcroft have all publicly called for the ratification of the CWC. Colin Powell appeared before the Veterans Affairs Committee last week; he gave the committee his unequivocal support for the CWC. General Powell stated that the treaty will lessen the likelihood that U.S. troops will be safer from chemical attack in the future. Given the problems many of our Gulf War veterans are suffering that many attribute to exposure to chemical weapons, I believe the Senate should give General Powell's comments in support of the CWC special consideration.

Also of great importance to me in considering the merits of the CWC is the strong support of the chemical industry, including both small and large businesses. It is noteworthy that our business community provided advice to the Reagan and Bush administrations on the treaty provisions affecting this industry.

If the United States does not ratify the Chemical Weapons Convention it will not have access to the Treaty's tools to help detect rogue states and terrorists who seek to acquire chemical weapons. The United States will not be allowed to participate in the Organization for the Prohibition of Chemical Weapons (OPCW), the governing body deciding the terms for the implementation of the Treaty. Therefore, Americans will not be able to serve on inspection teams or influence amendments, and Americans now serving as head of administration, head of industrial inspections, and head of security will be replaced by nationals from countries that have ratified the CWC. Chemical proliferation and terrorism are undoubtedly problems the United States can fight more effectively within the framework of global cooperation.

The Chemical Manufacturing Association has stated that the CWC ''does not trump US export control laws.'' Instead, the Treaty will expand and improve the effectiveness of non-proliferation by instituting a strong system of multilateral export controls. No information will be disclosed regarding imports, exports or domestic shipments. The CWC will affect approximately 2,000 companies, not 8,000 as the Treaty's opponents hold. About 1,800 of those 2,000 companies will do nothing more than check a box regarding the range of Discrete Organic Chemicals they produce, without specifying the nature of these chemicals. Of the some 140 companies most likely to be subjected to routine inspections, a large

proportion are CMA members, who assisted in writing the provisions of the Treaty. Regardless, it is anticipated that any challenge inspections will more than likely involve military, rather than commercial facilities. Thus, we should not concern ourselves with a potential negative impact of the CWC on the industry, because clearly this is not the case. On the contrary, if the US Senate chooses not to ratify the Chemical Weapons Convention, American chemical companies risk losing as much as $600 million a year in sales and many well-paying jobs when the mandatory trade sanctions against non-parties are enforced.

Critics insist that the CWC will be ineffective because rogue states suspected of possessing or attempting to acquire chemical weapons, such as Syria, Iraq, North Korea and Libya, have not joined the convention. Accordingly, they argue that the United States should hold up ratification until these states join. The reality is that only about 20 states are believed to have or to be seeking a chemical weapons program, more than two-thirds of which have already signed the CWC. For the past 40 years, the United States has led nonproliferation regimes that have established accepted norms of international behavior. Failing to ratify the convention will not persuade the rogue states to join the CWC. Rather, it will legitimize their action and hurt US credibility in the international community. The Treaty ensures that non-party states are isolated and makes it extremely difficult for them to pursue their nefarious objectives.

I urge my Senate colleagues to reflect on the measure of American leadership and the indispensability of our nation on nonproliferation issues and to vote for the Chemical Weapons Convention. This Treaty makes sense on political, legal and moral grounds. As officials of both Republican and Democratic administrations assert, the Chemical Weapons Convention will ensure that Americans live in a safer America and a safer world.

Mr. BOND. Mr. President I will vote against ratification of the Chemical Warfare Convention. I came to this decision, not because I am against doing away with chemical weapons, we all are. I will vote against ratification because amendments which I believe were critical to ensuring our safety and security were stricken rendering the convention more dangerous to our well being than one which would include those conditions, even if it means having to renegotiate the convention. Of the outstanding amendments which were debated through out the day today, I believe those covering Russian ratification and their compliance with previous treaties, the rejection of inspectors or inspections by states with a history of violating non-proliferation treaties or which have been designated by our State Department as sporting terrorism, striking article 10 of the treaty and amending article 11, and having our intelligence agencies certify that the treaty would be credibly verifiable were critical to making the treaty worthwhile.

The fact that the President suggested we could withdraw from the convention if there were a compelling reason to do so, was a placebo which carried little viable meaning. I believe that it would not only be more difficult to withdraw from the convention once we ratify it, it would be much more dangerous to world stability if we were to withdraw after obligating ourselves to a flawed treaty. And so, I must, in good conscience, vote not to ratify.

Mr. HATCH. Mr. President, the first thing I wish to express is my gratitude to the Chairman of the Foreign Relations Committee and the Majority Leader for the work they have done in the final weeks to improve this resolution of ratification.

The Chemical Weapons Convention before us is significantly better than what we faced last year. In addition, I wish to compliment both the Chairman and the Ranking Member of the Foreign Relations Committee for holding numerous hearings during the past month and for the way they have led the debate over the past two days. The duty of this body to advise and consent has never been more honorably met.

This treaty, with the resolution of ratification, while now an acceptable treaty, is not the panacea for chemical weapons that some of the more adamant proponents have implied or suggested. It will not, in and of itself, spare our grandchildren from the horrors of chemical warfare. It will not, in and of itself, protect our citizens from terrorists intent on using chemical weapons.

This Convention will not significantly reduce the threat of terrorism, Mr. President. Now that this debate is almost concluded, it would be of great benefit to the future of this agreement that everyone be realistic about this. The Administration and other proponents of this agreement recognized this when they stated in the resolution of ratification, condition 19 that: ''The Senate finds that without regard to whether the Convention enters into force, terrorists will likely view chemical weapons as a means to gain greater publicity and instill widespread fear; and the March 1995 Tokyo subway attack by the Aum Shinrikyo would not have been prevented by the Convention.''

Mr. President, I am greatly concerned about future terrorist threats to the citizens of this country, and I urge those who have suggested that this Convention will curb that threat to decease from such counterproductive rhetoric that could disastrously mislead us about future threats.

In addition, I must note to the ardent proponents of the CWC that a number of nations will remain outside of this regime, and some of them have policies inimical to this nation's welfare and security. I have read the Convention, and I wish to state that I read Article XI, section (d) to mean that the U.S. is free to pursue any action—unilaterally or multilaterally—against nations having chemical weapons. Furthermore, I will insist on clarification indicating that current trade sanctions promoting U.S. national security, and supported by this body as well the executive, will not be infringed by this Treaty.

The benefits of this Treaty will not nearly approach the rhetoric of some of its proponents. In my opinion, overblown rhetoric enhanced the possibility that this Treaty could have failed, as some of us studied the document and realized the great gap between the rhetoric and reality.

The current resolution of ratification helps to close that gap. The conditions included in the resolution preserve the Senate's constitutional role in treaty-making, including approval of amendments to the CWC. Agreed conditions established standards for U.S. intelligence sharing, including requiring reports on such sharing. They limit the sharing of defensive capabilities under Article X. They clarify our position on the use of riot control agents in wartime circumstances, preserving for us that option along the lines originally intended by our negotiators under President Reagan. They require the President to report regularly on the threat of chemical weapons.

Finally—and this is extremely important, Mr. President—the resolution of ratification requires criminal search warrants for challenge inspections against non-complying parties.

I stress again, Mr. President, my gratitude to those, on both sides of the aisle as well as in the Clinton Administration, who negotiated this resolution.

The letter the Majority Leader has obtained from President Clinton also helps close the gap between rhetoric and reality. The President recognizes, with this letter, that the Treaty may not guarantee the cessation of proliferation of these monstrous weapons and their precursors. He recognizes that, despite the goals of this document, our defenses against their possible use on our troops should not wane. He recognizes that we have a regime—the Australia Group—in place that has addressed the problem of illicit trade in chemicals and that that regime should not go by the wayside.

With this letter, the President recognizes that if this Treaty is seen to be failing, we can and will exercise Article XVI, which defines how a State Party may withdraw from the CWC.

Despite these improvements and assurances, Mr. President, I know that a number of thoughtful colleagues continue to have reservations about the effectiveness of this Treaty. And I wish to say that I respect their decisions, and I object to certain exceptional notions heard during the debate that opponents of this Treaty object because they are against all arms control treaties. I don't believe this to be the case

at all. This Treaty has many practical limitations, and I believe that we should not impugn the motives of individuals who, at the end of the day, have great reservations over its benefits.

I have supported many arms control agreements myself, Mr. President, but always after careful consideration of the strategic value as well as practical consequences of making so grave a commitment. And I must say that it has never been more difficult for me to determine the net worth of an arms control agreement as it has been for me regarding the Chemical Weapons Convention before us today.

I have concluded that this treaty can advance our security, but only if Administration matches the rhetoric of arms control with the muscle of political will. Because, Mr. President, international norms without political will do not become norms.

The benefits of treaties are measured on achievements, not intentions. If intentions were all that mattered, all treaties would be beneficial prima facie. By this standard, the Kellogg-Briand Treaty, which outlawed war, or the 1925 Geneva Convention Against the Use of Chemical Weapons, would have been rousing successes. History has proven that they were not. But, the success of treaties is measured in reality, not rhetoric. And the benefits of this Treaty are measured on a narrow margin.

It is after a careful parsing of this margin, and much reflection, that I have determined that I will vote for the Chemical Weapons Convention. But I do so with the expectation that this Chief Executive, and subsequent ones, must be wholly dedicated to implementing this agreement in a way that advances U.S. security interests and protects U.S. domestic interests.

Mr. President, this Treaty will give us some tools—inspections and other data collections—that will enhance our knowledge of the threat of chemical weapons. The information will not be comprehensive; it will not apply universally. But, if in collecting this information we reduce the possibility that our troops will face a chemical threat, then this is a tangible, defensible goal, for which anyone could support this Treaty.

The United States has been a principal negotiator of this agreement, through Republican and Democratic administrations. To abandon it now would be to abdicate U.S. leadership. We are now burdened to support it and implement it. The goals are admirable. The bridge to achieving those goals, to bridging the gap between the idealistic rhetoric and the vexing reality, will be difficult. On that bridge, Mr. President, will ride the credibility of the United States, and, I believe, the credibility of future arms control. Past administrations have led in the establishment of this international norm. Future administrations will need to verify its legitimacy. President Clinton must carry through on his pledge for strict international compliance and for vigilence regarding threats by terrorists or renegade groups.

Over 70 nations have ratified this Convention. Of course, we decided to unilaterally destroy our stockpile more than a decade ago, and we are proceeding as expeditiously as possible, restrained only by prudence regarding safety and the environment. We've known all along that our unilateral destruction plan was not contingent on the outcome of this debate. We determined these weapons were not militarily useful to us; our defense establishment can preserve and promote our national security without them. But as of the moment that our instrument of ratification is deposited, we will be the first of the countries with a large stockpile to ratify. The United States is leading. Will other nations follow?

Mr. President, I wish to say a few words about Russia. With the consent of the Senate today, the Administration will be able to deposit the instrument of ratification before the April 29 deadline, allowing U.S. participation in the formation of the Organization for the Prohibition of Chemical Weapons. The U.S. and Russia are the only powers that voluntarily declare they have chemical weapons. On two occasions the Russians have joined us—in the 1990 Bilateral Destruction Agreement and under the 1989 Wyoming Memorandum—in bilateral commitments to expose and destroy our stockpiles. As those who have studied this question know, the record of Russian compliance is not good. As those who read the papers and get the briefings know, the Russian chemical arms capability is not stagnant.

President Yeltsin has indicated that he wishes the Russian Duma to approve ratification before the April 29 deadline. I hope they do. The Russians need to join and participate in the initial construction of this regime. And we need to begin to inspect and expose all of our stockpiles. If the Russians are not part of this Treaty, Mr. President, this regime may be stillborn, because the largest stockpile of chemical weapons in the world exists in the Russian Federation. I hope we can work with the Russians as partners beginning next week.

If the Senate gives its consent today, Mr. President, next week the hard work will begin. The success or failure of this regime will not be a function of depositing the instrument of ratification. It will be a function of implementing the agreement. I am supporting this Convention today because I think it can only succeed with U.S. participation—and leadership. It can fail for many reasons, including noncompliance or nonparticipation by nations around the world. But it won't succeed without U.S. leadership.

Leadership will require more than idealistic promises. We must abandon the rhetoric of unattainable promises and commit to the reality of national interest. I fear the Administration will have a lot of work building the bridge between the rhetoric and reality. On that bridge lies the future of this Convention and the future of arms control.

Mr. HELMS. Mr. President, let me state the order of distinguished speakers on this side of the aisle. I am going to start with the most distinguished of all. The President pro tempore of the Senate, Senator THURMOND, will have 5 minutes; followed by Senator HUTCHISON of Texas, for 5 minutes; Senator HUTCHINSON of Arkansas to follow with 2 minutes; Senator BROWNBACK, for 1 minute; Senator KYL, for 1 minute; Senator ASHCROFT, for 2 minutes. They will be recognized in that order.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I want to recognize the work done on this treaty by the floor managers—both in opposition and in support of this very important international treaty. Both sides have made laudable arguments in supporting their different positions. This subject is one of great importance. I want to especially commend our able majority leader for the long hours he spent working with both floor managers and the administration.

Mr. President, during the Senate Armed Services Committee's review of the national security implications of the Chemical Weapons Convention, I raised concerns about the ability of the U.S. to comply with the treaty obligation to destroy our chemical stockpile within the timeframe stipulated, the universality of the treaty, the verifiability of the treaty, and the administration's interpretation of the provision on the defensive use of riot control agents by U.S. forces.

During the committee's hearings on the treaty in August 1994, I took no position on this treaty. I made it clear that the administration would have to convince me that it was in the national security interests of the United States.

I have concerns about statements made over the past few weeks, by the President and several administration representatives, that if the United States does not ratify the Chemical Weapons Convention, that we would be aligning ourselves on the side of rogue nations, like Iraq and Libya, and against our allies.

Mr. President, in 1985 the Congress legislated the requirement for the United States to destroy its chemical stockpile, and has reaffirmed that decision every year since that time. The Senate agreed to take actions against Iraq for attacking its neighbor, and against Libya for terrorist actions which resulted in the death of American citizens. How can the President, the Secretary of State and other administration representatives liken a decision by the Senate, in its performance of its constitutional duties to provide advice and consent to international treaties, to be aligning the United States with rogue nations? Regardless of the outcome of the CWC,

the United States will continue to destroy its chemical stockpiles.

Last Sunday, the Secretary of Defense talked about his recent visit to South Korea and the discussions he had about the threat posed to U.S. Forces by the chemical weapons in North Korea. He also mentioned General Tilelli's support for ratification of the CWC because it would reduce the chemical weapons threat faced by his troops in South Korea.

Mr. President, North Korea has not signed the CWC. As I read the treaty, none of the provisions will apply to nations that have not signed and ratified it. Only trade sanctions will apply to countries that have not signed it. United States ratification of the CWC will not minimize the North Korean chemical weapons threat which face our United States forces.

Mr. President, I cannot support the Chemical Weapons Convention. I appreciate the efforts made by the White House to work out conditions to the resolution of ratification that respond to concerns raised about the treaty made by Members of the Senate. However, I do not believe they go far enough. I remain concerned about the ability of the intelligence community to verify compliance with the treaty. Rogue nations which pose a military and terrorist threat to the United States have not signed the treaty, and most likely will not sign it. I am also concerned about the potential compromise of U.S. defensive capability through potential transfers of chemical defensive protective equipment, material or information under article X and article XI.

It is for these reasons that I cannot vote for this treaty.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas for 5 minutes.

Mrs. HUTCHISON. Mr. President, I respect everyone who is going to vote today for the position that they are taking because I know that it is sincere. I respect the people who have come out for this convention treaty—the former Presidents—and I respect the people who have come out against the treaty, the former Secretaries of Defense.

It comes down, for me, to a basic question, and that is: Do we believe that international conventions and conferences keep us safe at night? Or do we believe a strong national defense is what keeps us safe at night and what has served us so well for this century? Mr. President, I think it is a commitment to a strong national defense, and I have decided, reluctantly, to vote against this convention treaty because I believe this does more to harm our strength and our national defense than it does to help it.

Mr. President, we have seen our allies transfer nuclear technology that can be made into weapons to rogue nations. So now we have a treaty that will allow people to come into our chemical plants—not chemical plants that make weapons, because we are not going to make weapons, but into our chemical plants that might be doing research on how to defend against chemical weapons. That technology can then be transferred to the nations who would use the chemical weapons.

It seems to me that we are unilaterally disarming ourselves, Mr. President, with a treaty that would say we must allow international groups to come into plants that use chemicals, whether it is to make fertilizer or disinfectant, or defenses to chemical weapons, any of those things. An international group will be able to come in and, I think, violate our constitutional right against search and seizure. I am concerned that we are hurting our ability to defend our country.

So, Mr. President, I think we have a choice here between America being the leader and undercutting our defenses, or standing on principle and protecting our security. Mr. President, I just don't think there is a choice. We must stand on principle. So that if our young men and women in the field are attacked by chemical weapons by those who will not sign this treaty, we will surely have the defenses to protect them; and so that we will keep the ability in our country to have the strength to fight the chemical weapons that will be produced, that we know are being produced right now, by nations who will not abide by this treaty.

So I do not buy the argument that we are better off with this treaty than without it. In fact, I think we are hurting our ability to combat the rogue nations, the terrorist nations with whom we are dealing all over the world, and I could not vote in good conscience to do that. Thank you.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. HUTCHINSON. Mr. President, I want to especially applaud this evening the Senator from North Carolina and the Senator from Arizona for their courageous opposition to this treaty. I also want to recognize the good and patriotic Americans and Senators who have differed on this treaty and have come down to different places on how they are going to vote.

But this treaty is not about who is committed to and who believes in the elimination of chemical warfare in this world. I believe all of us are equally committed to that goal.

I rise in opposition to the CWC because I simply believe that it is a flawed treaty in which we claim to verify the unverifiable, we are ratifying the unenforceable, and we are trusting the untrustworthy. We are binding ourselves and our friends, while those that we should be most concerned about go unrestrained and undeterred. When addressing the ratification of a treaty, we in this body are executing one of our most solemn duties. When addressing our Nation's security and when addressing our Nation's sovereignty, our watch words should be ''prudence'' and ''caution.''

I believe that prudence and caution call out for a ''no'' vote. By ratifying this treaty, we spurn the sage advice of former Secretaries of Defense. And I close with the words of one of those Secretaries, Secretary Cheney, who wrote that ''This accord is worse than no treaty at all.''

So, while I recognize and applaud the sincerity and the passion with which the advocates of this treaty have spoken and how they articulated their position, I believe firmly that it is not in the interest of the sovereignty and the security of the United States. And I urge a ''no'' vote on the treaty ratification.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kansas for 1 minute.

Mr. BROWNBACK. Thank you very much, Mr. President. I appreciate that.

Mr. President, I join with other Senators noting how extremely difficult and important this decision is to vote for treaty ratification. I have taken it very seriously, as well as everybody else. I have read the entire treaty. I sat down and thought it through. I have talked with people. I have talked with President Bush, Bob Dole, Colin Powell, Casper Weinberger, James Schlesinger, Richard Perle, and my 9-year-old son, too, who I think has a stake in this as well.

I find it a terribly tough call to make on this treaty; a tough one to be able to decide what is in the best interest and ultimately what will get the fewest chemical weapons used in this world. That to me is the real litmus test issue. What is going to make the world safer is when we are going to have fewer chemical weapons used in the world.

I would like to bare to the body that I chair the Middle East Subcommittee of the Foreign Relations Committee. We held a hearing just last week on U.S. policy toward Iran. Our policy has failed to stop them from receiving weapons of mass destruction, particularly chemical weapons. The Iranians are receiving precursor chemical weapons from the Chinese.

May I have an additional minute and a half?

Mr. HELMS. Please. Yes.

Mr. BROWNBACK. I thank the chairman very much.

As I mentioned in our hearing last week, it was noted and pointed out that the Iranians have received chemical weapons, precursor chemical weapons, from the Chinese and from other sources.

I have reluctantly but clearly concluded that Iran would be more likely to obtain and use chemical weapons if we enter into this Chemical Weapons Convention with article X in place, which is currently how it sits; that they will be more likely to get and use chemical weapons, weapons of mass destruction. Iran is our erstwhile terrorist enemy.

I spoke to Colin Powell. He noted that chemical weapons today are the

weapons of choice, primarily, for terrorists. These are primarily weapons used by terrorists. That certainly fits the Iranians.

So that is why I have, unfortunately, reluctantly yet clearly, decided that with article X in it and with the likelihood of that being used by the Iranians, that this treaty would actually cause more chemical weapons to be used by people that we don't want; by terrorist regimes such as the Iranians. Therefore, I will have to vote against this treaty.

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank you for this opportunity to make some comments in regard to this serious matter.

None of us has any affection for chemical weapons. Each of us hates chemical weapons. We would all like to see chemical weapons abolished. None of us would like to see chemical weapons used. We would all like to believe the statements of prominent experts that have been made about this treaty. We would all like to embrace the assurances of the President that, if something goes wrong, the treaty could be something easily walked away from.

But, in spite of all our aspirations, in spite of all of our desires, and in spite of all our hopes, there is one reality which will persist; and that reality is the language of the treaty itself. Long after the assurances have stopped echoing through this Chamber, long after the President has left office, who is trying to assuage the fears of those who have misgivings about this treaty, the black and white letters of the treaty itself will be the controlling components of what happens. And the thing that gives me great pause is that the treaty will remain.

There are the requirements, particularly in articles X and XI of the treaty, which require us to share technology, to share information, and to share, in particular, the defensive technology of chemical weaponry. There is an anomaly in chemical weaponry which is challenging. It is that when you provide the defensive technology for chemical weapons, you are providing one of the essential components of delivering chemical weapons. No one can deliver chemical weapons, unless it is launched by a missile, without having to have all the technologies of how to defend against the chemistry of the weapons.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ASHCROFT. I ask for 30 additional seconds.

If a rogue state wants to deliver chemical weapons, one of the things they need to do is to acquire the defensive technology to defend against them and to protect their own soldiers in delivery. That seems to me one of the substantial problems contained in articles X and XI. The risks far exceed the benefits.

As a result, I think it is ill-advised for us to accept assurances which would mislead us. We need to read the treaty, and the treaty is not one which merits our approval.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona for 1 minute.

Mr. KYL. Mr. President, let me begin by thanking Senator HELMS and Senator BIDEN, the floor managers of this treaty, for the work they did in bringing it before us.

Mr. President, I share the hope of the supporters of this treaty that it will help end the proliferation of chemical weapons. I believe, however, that history will record this treaty as one of the most well-intentioned yet least effective in our history. My hope is that we will not relax our efforts in other ways to reduce this threat, that we will not be lulled into a sense of security when it is ratified.

With the protections in the original resolution of ratification, I voted for the treaty. But the protections having been stricken, I must vote ''no.''

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. Mr. President, Senators will be glad to hear this.

I ask for the yeas and nays on the final vote in the Senate.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 8½ minutes.

Mr. LEAHY. Mr. President, I will not use all of that time, only to say this. We will advise and consent so the President can ratify this treaty. I truly believe we will. It will show the moral leadership that the Senate should show and that the United States should show. We will act as the conscience of this Nation, and we will advise and consent to this treaty. We will show the moral leadership because we began this by saying we would act unilaterally, if need be, renouncing our own use of chemical weapons with or without a treaty. That was true leadership.

Not all countries are going to join with us. But most did join with us on this, and we should be proud of that leadership that brought them together. We will never have all of the countries with us, but we know that it is in the best interests of the United States to do this.

I suggest, after we do this, Mr. President, that we should again look at the question of antipersonnel landmines and show the same moral leadership to get countries to join with us—not all countries will—to ban antipersonnel landmines which kill and injure far more people than chemical weapons.

Mr. President, I will vote for advice and consent of this treaty so the President can ratify it.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I, on behalf of the leader's time and any other time that may be assigned to me, yield the remainder of time.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 74, nays 26, as follows:

[Rollcall Vote No. 51 Ex.]

YEAS—74

Abraham	Feinstein	McCain
Akaka	Ford	McConnell
Baucus	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Boxer	Graham	Murkowski
Breaux	Gregg	Murray
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Byrd	Hatch	Robb
Chafee	Hollings	Roberts
Cleland	Inouye	Rockefeller
Coats	Jeffords	Roth
Cochran	Johnson	Santorum
Collins	Kennedy	Sarbanes
Conrad	Kerrey	Smith (OR)
D'Amato	Kerry	Snowe
Daschle	Kohl	Specter
DeWine	Landrieu	Stevens
Dodd	Lautenberg	Thomas
Domenici	Leahy	Torricelli
Dorgan	Levin	Warner
Durbin	Lieberman	Wellstone
Enzi	Lott	Wyden
Feingold	Lugar	

NAYS—26

Allard	Faircloth	Kyl
Ashcroft	Gramm	Mack
Bennett	Grams	Nickles
Bond	Grassley	Sessions
Brownback	Helms	Shelby
Burns	Hutchinson	Smith (NH)
Campbell	Hutchison	Thompson
Coverdell	Inhofe	Thurmond
Craig	Kempthorne	

The VICE PRESIDENT. On this vote, the yeas are 74, the nays are 26. Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification, as amended, was agreed to, as follows:

Resolved, (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the Chemical Weapons Convention (as defined in section 3 of this resolution), subject to the conditions in section 2.

SECTION 2. CONDITIONS.

The Senate's advice and consent to the ratification of the Chemical Weapons Convention is subject to the following conditions, which shall be binding upon the President:

(1) EFFECT OF ARTICLE XXII.—Upon the deposit of the United States instrument of ratification, the President shall certify to the Congress that the United States has informed all other States Parties to the Convention that the Senate reserves the right, pursuant to the Constitution of the United States, to give its advice and consent to ratification of the Convention subject to reservations, notwithstanding Article XXII of the Convention.

(2) FINANCIAL CONTRIBUTIONS.—Notwithstanding any provision of the Convention, no funds may be drawn from the Treasury of the United States for any payment or assistance (including the transfer of in-kind items) under paragraph 16 of Article IV, paragraph 19 of Article V, paragraph 7 of Article VIII, paragraph 23 of Article IX, Article X, or any other provision of the Convention, without statutory authorization and appropriation.

(3) ESTABLISHMENT OF AN INTERNAL OVERSIGHT OFFICE.—

(A) CERTIFICATION.—Not later than 240 days after the deposit of the United States instrument of ratification, the President shall certify to the Congress that the current internal audit office of the Preparatory Commission has been expanded into an independent internal oversight office whose functions will be transferred to the Organization for the Prohibition of Chemical Weapons upon the establishment of the Organization. The independent internal oversight office shall be obligated to protect confidential information pursuant to the obligations of the Confidentiality Annex. The independent internal oversight office shall—

(i) make investigations and reports relating to all programs of the Organization;

(ii) undertake both management and financial audits, including—

(I) an annual assessment verifying that classified and confidential information is stored and handled securely pursuant to the general obligations set forth in Article VIII and in accordance with all provisions of the Annex on the Protection of Confidential Information; and

(II) an annual assessment of laboratories established pursuant to paragraph 55 of Part II of the Verification Annex to ensure that the Director General of the Technical Secretariat is carrying out his functions pursuant to paragraph 56 of Part II of the Verification Annex;

(iii) undertake performance evaluations annually to ensure the Organization has complied to the extent practicable with the recommendations of the independent internal oversight office;

(iv) have access to all records relating to the programs and operations of the Organization;

(v) have direct and prompt access to any official of the Organization; and

(vi) be required to protect the identity of, and prevent reprisals against, all complainants.

(B) COMPLIANCE WITH RECOMMENDATIONS.—The Organization shall ensure, to the extent practicable, compliance with recommendations of the independent internal oversight office, and shall ensure that annual and other relevant reports by the independent internal oversight office are made available to all member states pursuant to the requirements established in the Confidentiality Annex.

(C) WITHHOLDING A PORTION OF CONTRIBUTIONS.—Until a certification is made under subparagraph (A), 50 percent of the amount of United States contributions to the regular budget of the Organization assessed pursuant to paragraph 7 of Article VIII shall be withheld from disbursement, in addition to any other amounts required to be withheld from disbursement by any other provision of law.

(D) ASSESSMENT OF FIRST YEAR CONTRIBUTIONS.—Notwithstanding the requirements of this paragraph, for the first year of the Organization's operation, ending on April 29, 1998, the United States shall make its full contribution to the regular budget of the Organization assessed pursuant to paragraph 7 of Article VIII.

(E) DEFINITION.—For purposes of this paragraph, the term ''internal oversight office'' means an independent office (or other independent entity) established by the Organization to conduct and supervise objective audits, inspections, and investigations relating to the programs and operations of the Organization.

(4) COST SHARING ARRANGEMENTS.—

(A) ANNUAL REPORTS.—Prior to the deposit of the United States instrument of ratification, and annually thereafter, the President shall submit a report to Congress identifying all cost-sharing arrangements with the Organization.

(B) COST-SHARING ARRANGEMENT REQUIRED.—The United States shall not undertake any new research or development expenditures for the primary purpose of refining or improving the Organization's regime for verification of compliance under the Convention, including the training of inspectors and the provision of detection equipment and on-site analysis sampling and analysis techniques, or share the articles, items, or services resulting from any research and development undertaken previously, without first having concluded and submitted to the Congress a cost-sharing arrangement with the Organization.

(C) CONSTRUCTION.—Nothing in this paragraph may be construed as limiting or constricting in any way the ability of the United States to pursue unilaterally any project undertaken solely to increase the capability of the United States means for monitoring compliance with the Convention.

(5) INTELLIGENCE SHARING AND SAFEGUARDS.—

(A) PROVISION OF INTELLIGENCE INFORMATION TO THE ORGANIZATION.—

(i) IN GENERAL.—No United States intelligence information may be provided to the Organization or any organization affiliated with the Organization, or to any official or employee thereof, unless the President certifies to the appropriate committees of Congress that the Director of Central Intelligence, in consultation with the Secretary of State and the Secretary of Defense, has established and implemented procedures, and has worked with the Organization or other such organization, as the case may be to ensure implementation of procedures, for protecting from unauthorized disclosure United States intelligence sources and methods connected to such information. These procedures shall include the requirement of—

(I) the offer and provision if accepted of advice and assistance to the Organization or the affiliated organization in establishing and maintaining the necessary measures to ensure that inspectors and other staff members of the Technical Secretariat meet the highest standards of efficiency, competence, and integrity, pursuant to paragraph 1(b) of the Confidentiality Annex, and in establishing and maintaining a stringent regime governing the handling of confidential information by the Technical Secretariat, pursuant to paragraph 2 of the Confidentiality Annex;

(II) a determination that any unauthorized disclosure of United States intelligence information to be provided to the Organization or any organization affiliated with the Organization, or any official or employee thereof, would result in no more than minimal damage to United States national security, in light of the risks of the unauthorized disclosure of such information;

(III) sanitization of intelligence information that is to be provided to the Organization or the affiliated organization to remove all information that could betray intelligence sources and methods; and

(IV) interagency United States intelligence community approval for any release of intelligence information to the Organization or the affiliated organization, no matter how thoroughly it has been sanitized.

(ii) WAIVER AUTHORITY.—

(I) IN GENERAL.—The Director of Central Intelligence may waive the application of clause (i) if the Director of Central Intelligence certifies in writing to the appropriate committees of Congress that providing such information to the Organization or an organization affiliated with the Organization, or to any official or employee thereof, is in the vital national security interests of the United States and that all possible measures to protect such information have been taken, except that such waiver must be made for each instance such information is provided, or for each such document provided. In the event that multiple waivers are issued within a single week, a single certification to the appropriate committees of Congress may be submitted, specifying each waiver issued during that week.

(II) DELEGATION OF DUTIES.—The Director of Central Intelligence may not delegate any duty of the Director under this paragraph.

(B) PERIODIC AND SPECIAL REPORTS.—

(i) IN GENERAL.—The President shall report periodically, but not less frequently than semiannually, to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives on the types and volume of intelligence information provided to the Organization or affiliated organizations and the purposes for which it was provided during the period covered by the report.

(ii) EXEMPTION.—For purposes of this subparagraph, intelligence information provided to the Organization or affiliated organizations does not cover information that is provided only to, and only for the use of, appropriately cleared United States Government personnel serving with the Organization or an affiliated organization.

(C) SPECIAL REPORTS.—

(i) REPORT ON PROCEDURES.—Accompanying the certification provided pursuant to subparagraph (A)(i), the President shall provide a detailed report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives identifying the procedures established for protecting intelligence sources and methods when intelligence information is provided pursuant to this section.

(ii) REPORTS ON UNAUTHORIZED DISCLOSURES.—The President shall submit a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives within 15 days after it has become known to the United States Government regarding any unauthorized disclosure of intelligence provided by the United States to the Organization.

(D) DELEGATION OF DUTIES.—The President may not delegate or assign the duties of the President under this section.

(E) RELATIONSHIP TO EXISTING LAW.—Nothing in this paragraph may be construed to—

(i) impair of otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5)); or

(ii) supersede or otherwise affect the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(F) DEFINITIONS.—In this section:

(i) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

(ii) ORGANIZATION.—The term ''Organization'' means the Organization for the Prohibition of Chemical Weapons established

under the Convention and includes any organ of that Organization and any board or working group, such as the Scientific Advisory Board, that may be established by it and any official or employee thereof.

(iii) ORGANIZATION AFFILIATED WITH THE ORGANIZATION.—The terms ''organization affiliated with the Organization'' and ''affiliated organizations'' include the Provisional Technical Secretariat under the Convention and any laboratory certified by the Director-General of the Technical Secretariat as designated to perform analytical or other functions and any official or employee thereof.

(6) AMENDMENTS TO THE CONVENTION.—

(A) VOTING REPRESENTATION OF THE UNITED STATES.—A United States representative will be present at all Amendment Conferences and will cast a vote, either affirmative or negative, on all proposed amendments made at such conferences.

(B) SUBMISSION OF AMENDMENTS AS TREATIES.—The President shall submit to the Senate for its advice and consent to ratification under Article II, Section 2, Clause 2 of the Constitution of the United States any amendment to the Convention adopted by an Amendment Conference.

(7) CONTINUING VITALITY OF THE AUSTRALIA GROUP AND NATIONAL EXPORT CONTROLS.—

(A) DECLARATION.—The Senate declares that the collapse of the informal forum of states known as the ''Australia Group,'' either through changes in membership or lack of compliance with common export controls, or the substantial weakening of common Australia Group export controls and nonproliferation measures in force on the date of United States ratification of the Convention, would constitute a fundamental change in circumstances affecting the object and purpose of the Convention.

(B) CERTIFICATION REQUIREMENT.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that—

(i) nothing in the Convention obligates the United States to accept any modification, change in scope, or weakening of its national export controls;

(ii) the United States understands that the maintenance of national restrictions on trade in chemicals and chemical production technology is fully compatible with the provisions of the Convention, including Article XI(2), and solely within the sovereign jurisdiction of the United States;

(iii) the Convention preserves the right of State Parties, unilaterally or collectively, to maintain or impose export controls on chemicals and related chemical production technology for foreign policy or national security reasons, notwithstanding Article XI(2); and

(iv) each Australia Group member, at the highest diplomatic levels, has officially communicated to the United States Government its understanding and agreement that export control and nonproliferation measures which the Australia Group has undertaken are fully compatible with the provisions of the Convention, including Article XI(2), and its commitment to maintain in the future such export controls and nonproliferation measures against non-Australia Group members.

(C) ANNUAL CERTIFICATION.—

(i) EFFECTIVENESS OF AUSTRALIA GROUP.—The President shall certify to Congress on an annual basis that—

(I) Australia Group members continue to maintain an equally effective or more comprehensive control over the export of toxic chemicals and their precursors, dual-use processing equipment, human, animal and plant pathogens and toxins with potential biological weapons application, and dual-use biological equipment, as that afforded by the Australia Group as of the date of ratification of the Convention by the United States; and

(II) the Australia Group remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials and technology, and that the effectiveness of the Australia Group has not been undermined by changes in membership, lack of compliance with common export controls and nonproliferation measures, or the weakening of common controls and nonproliferation measures, in force as of the date of ratification of the Convention by the United States.

(ii) CONSULTATION WITH SENATE REQUIRED.—In the event that the President is, at any time, unable to make the certifications described in clause (i), the President shall consult with the Senate for the purposes of obtaining a resolution of support for continued adherence to the Convention, notwithstanding the fundamental change in circumstance.

(D) PERIODIC CONSULTATION WITH CONGRESSIONAL COMMITTEES.—The President shall consult periodically, but not less frequently than twice a year, with the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives, on Australia Group export control and nonproliferation measures. If any Australia Group member adopts a position at variance with the certifications and understandings provided under subparagraph (B), or should seek to gain Australia Group acquiescence or approval for an interpretation that various provisions of the Convention require it to remove chemical-weapons related export controls against any State Party to the Convention, the President shall block any effort by the Australia Group member to secure Australia Group approval of such a position or interpretation.

(E) DEFINITIONS.—In this paragraph.

(i) AUSTRALIA GROUP.—The term ''Australia Group'' means the informal forum of states, chaired by Australia, whose goal is to discourage and impede chemical and biological weapons proliferation by harmonizing national export controls, chemical weapons precursor chemicals, biological weapons pathogens, and dual-use production equipment, and through other measures.

(ii) HIGHEST DIPLOMATIC LEVELS.—The term ''highest diplomatic levels'' means at the levels of senior officials with the power to authoritatively represent their governments, and does not include diplomatic representatives of these governments to the United States.

(8) NEGATIVE SECURITY ASSURANCES.—

(A) REEVALATION.—In forswearing under the Convention the possession of a chemical weapons retaliatory capability, the Senate understands that deterrence of attack by chemical weapons requires a reevaluation of the negative security assurances extended to non-nuclear-weapon states.

(B) CLASSIFIED REPORT.—Accordingly, 180 days after the deposit of the United States instrument of ratification, the President shall submit to the Congress a classified report setting forth the findings of a detailed review of United States policy on negative security assurances, including a determination of the appropriate responses to the use of chemical or biological weapons against the Armed Forces of the United States, United States citizens and allies, and third parties.

(9) PROTECTION OF ADVANCED BIOTECHNOLOGY.—Prior to the deposit of the United States instrument of ratification, and on January 1 of every year thereafter, the President shall certify to the Committee on Foreign Relations and the Speaker of the House of Representatives that the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1 of the Annex on Chemicals.

(10) MONITORING AND VERIFICATION OF COMPLIANCE.—

(A) DECLARATION.—The Senate declares that—

(i) the Convention is in the interests of the United States only if all State Parties are in strict compliance with the terms of the Convention as submitted to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply; and

(ii) the Senate expects all State Parties to be in strict compliance with their obligations under the terms of the Convention, as submitted to the Senate for its advice and consent to ratification;

(B) BRIEFINGS ON COMPLIANCE.—Given its concern about the intelligence community's low level of confidence in its ability to monitor compliance with the Convention, the Senate expects the executive branch of the Government to offer regular briefings, not less than four times a year, to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives on compliance issues related to the Convention. Such briefings shall include a description of all United States efforts in bilateral and multilateral diplomatic channels and forums to resolve compliance issues and shall include a complete description of—

(i) any compliance issues the United States plans to raise at meetings of the Organization, in advance of such meetings;

(ii) any compliance issues raised at meetings of the Organization, within 30 days of such meeting;

(iii) any determination by the President that a State Party is in noncompliance with or is otherwise acting in a manner inconsistent with the object or purpose of the Convention, within 30 days of such a determination.

(C) ANNUAL REPORTS ON COMPLIANCE.—The President shall submit on January 1 of each year to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) a certification of those countries included in the Intelligence Community's Monitoring Strategy, as set forth by the Director of Central Intelligence's Arms Control Staff and the National Intelligence Council (or any successor document setting forth intelligence priorities in the field of the proliferation of weapons of mass destruction) that are determined to be in compliance with the Convention, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Convention;

(iii) the steps the United States has taken, either unilaterally or in conjunction with another State Party—

(I) to initiate challenge inspections of the noncompliant party with the objective of demonstrating to the international community the act of noncompliance;

(II) to call attention publicly to the activity in question; and

(III) to seek on an urgent basis a meeting at the highest diplomatic level with the noncompliant party with the objective of bringing the noncompliant party into compliance;

(iv) a determination of the military significance and broader security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant party in question to action undertaken by the United States described in clause (iii).

(D) COUNTRIES PREVIOUSLY INCLUDED IN COMPLIANCE REPORTS.—For any country that was previously included in a report submitted under subparagraph (C), but which subsequently is not included in the Intelligence Community's Monitoring Strategy (or successor document), such country shall continue to be included in the report submitted under subparagraph (C) unless the country has been certified under subparagraph (C)(i) for each of the previous two years.

(E) FORM OF CERTIFICATIONS.—For those countries that have been publicly and officially identified by a representative of the intelligence community as possessing or seeking to develop chemical weapons, the certification described in subparagraph (C)(i) shall be in unclassified form.

(F) ANNUAL REPORTS ON INTELLIGENCE.—On January 1, 1998, and annually thereafter, the Director of Central Intelligence shall submit to the Committees on Foreign Relations, Armed Services, and the Select Committee on Intelligence of the Senate and to the Committees on International Relations, National Security, and Permanent Select Committee on Intelligence of the House of Representatives a full and complete classified and unclassified report regarding—

(i) the status of chemical weapons development, production, stockpiling, and use, within the meanings of those terms under the Convention, on a country-by-country basis;

(ii) any information made available to the United States Government concerning the development, production, acquisition, stockpiling, retention, use, or direct or indirect transfer of novel agents, including any unitary or binary chemical weapon comprised of chemical components not identified on the schedules of the Annex on Chemicals, on a country-by-country basis;

(iii) the extent of trade in chemicals potentially relevant to chemical weapons programs, including all Australia Group chemicals and chemicals identified on the schedules of the Annex on Chemicals, on a country-by-country basis;

(iv) the monitoring responsibilities, practices, and strategies of the intelligence community (as defined in section 3(4) of the National Security Act of 1947) and a determination of the level of confidence of the intelligence community with respect to each specific monitoring task undertaken, including an assessment by the intelligence community of the national aggregate data provided by State Parties to the Organization, on a country-by-country basis;

(v) an identification of how United States national intelligence means, including national technical means and human intelligence, are being marshaled together with the Convention's verification provisions to monitor compliance with the Convention; and

(vi) the identification of chemical weapons development, production, stockpiling, or use, within the meanings of those terms under the Convention, by subnational groups, including terrorist and paramilitary organizations.

(G) REPORTS ON RESOURCES FOR MONITORING.—Each report required under subparagraph (F) shall include a full and complete classified annex submitted solely to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives regarding—

(i) a detailed and specific identification of all United States resources devoted to monitoring the Convention, including information on all expenditures associated with the monitoring of the Convention; and

(ii) an identification of the priorities of the executive branch of Government for the development of new resources relating to detection and monitoring capabilities with respect to chemical and biological weapons, including a description of the steps being taken and resources being devoted to strengthening United States monitoring capabilities.

(11) ENHANCEMENTS TO ROBUST CHEMICAL AND BIOLOGICAL DEFENSES.—

(A) SENSE OF THE SENATE.—It is the sense of the Senate that—

(i) chemical and biological threats to deployed United States Armed Forces will continue to grow in regions of concern around the world, and pose serious threats to United States power projection and forward deployment strategies;

(ii) chemical weapons or biological weapons use is a potential element of future conflicts in regions of concern;

(iii) it is essential for the United States and key regional allies to preserve and further develop robust chemical and biological defenses;

(iv) the United States Armed Forces are inadequately equipped, organized, trained and exercised for chemical and biological defense against current and expected threats, and that too much reliance is placed on non-active duty forces, which receive less training and less modern equipment, for critical chemical and biological defense capabilities;

(v) the lack of readiness stems from a deemphasis of chemical and biological defenses within the executive branch of Government and the United States Armed Forces;

(vi) the armed forces of key regional allies and likely coalition partners, as well as civilians necessary to support United States military operations, are inadequately prepared and equipped to carry out essential missions in chemically and biologically contaminated environments;

(vii) congressional direction contained in the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201) should lead to enhanced domestic preparedness to protect against chemical and biological weapons threats; and

(viii) the United States Armed Forces should place increased emphasis on potential threats to forces deployed abroad and, in particular, make countering chemical and biological weapons use an organizing principle for United States defense strategy and development of force structure, doctrine, planning, training, and exercising policies of the United States Armed Forces.

(B) ACTIONS TO STRENGTHEN DEFENSE CAPABILITIES.—The Secretary of Defense shall take those actions necessary to ensure that the United States Armed Forces are capable of carrying out required military missions in United States regional contingency plans, despite the threat or use of chemical or biological weapons. In particular, the Secretary of Defense shall ensure that the United States Armed Forces are effectively equipped, organized, trained, and exercised (including at the large unit and theater level) to conduct operations in a chemically or biologically contaminated environment that are critical to the success of the United States military plans in regional conflicts, including—

(i) deployment, logistics, and reinforcement operations at key ports and airfields;

(ii) sustained combat aircraft sortie generation at critical regional airbases; and

(iii) ground force maneuvers of large units and divisions.

(C) DISCUSSIONS WITH REGIONAL ALLIES AND LIKELY COALITION PARTNERS.—

(i) IN GENERAL.—The Secretaries of Defense and State shall, as a priority matter, initiate discussions with key regional allies and likely regional coalition partners, including those countries where the United States currently deploys forces, where United States forces would likely operate during regional conflicts, or which would provide civilians necessary to support United States military operations, to determine what steps are necessary to ensure that allied and coalition forces and other critical civilians are adequately equipped and prepared to operate in chemically and biologically contaminated environments.

(ii) REPORTING REQUIREMENT.—Not later than one year after deposit of the United States instrument of ratification, the Secretaries of Defense and State shall submit a report to the Committees on Foreign Relations and Armed Services of the Senate and to the Speaker of the House of Representatives on the result of these discussions, plans for future discussions, measures agreed to improve the preparedness of foreign forces and civilians, and proposals for increased military assistance, including through the Foreign Military Sales and Foreign Military Financing under the Arms Export Control Act, and the International Military Education and Training programs pursuant to the Foreign Assistance Act of 1961.

(D) UNITED STATES ARMY CHEMICAL SCHOOL.—The Secretary of Defense shall take those actions necessary to ensure that the United States Army Chemical School remains under the oversight of a general officer of the United States Army.

(E) SENSE OF THE SENATE.—Given its concerns about the present state of chemical and biological defense readiness and training, it is the sense of the Senate that—

(i) in the transfer, consolidation, and reorganization of the United States Army Chemical School, the Army should not disrupt or diminish the training and readiness of the United States Armed Forces to fight in a chemical-biological warfare environment;

(ii) the Army should continue to operate the Chemical Defense Training Facility at Fort McClellan until such time as the replacement training facility at Fort Leonard Wood is functional.

(F) ANNUAL REPORTS ON CHEMICAL AND BIOLOGICAL WEAPONS DEFENSE ACTIVITIES.—On January 1, 1998, and annually thereafter, the President shall submit a report to the Committees on Foreign Relations, Appropriations, and Armed Services of the Senate and the Committees on International Relations, National Security, and Appropriations of the House of Representatives, and the Speaker of the House of Representatives on previous, current, and planned chemical and biological weapons defense activities. The report shall contain for the previous fiscal year and for the next three fiscal years—

(i) proposed solutions to each of the deficiencies in chemical and biological warfare defenses identified in the March 1996 report of the General Accounting Office entitled ''Chemical and Biological Defense: Emphasis Remains Insufficient to Resolve Continuing Problems'', and steps being taken pursuant to subparagraph (B) to ensure that the United States Armed Forces are capable of conducting required military operations to ensure the success of United States regional contingency plans despite the threat or use of chemical or biological weapons;

(ii) identification of the priorities of the executive branch of Government in the development of both active and passive chemical and biological defenses;

(iii) a detailed summary of all budget activities associated with the research, development, testing, and evaluation of chemical and biological defense programs;

(iv) a detailed summary of expenditures on research, development, testing, and evaluation, and procurement of chemical and biological defenses by fiscal years defense programs, department, and agency;

(v) a detailed assessment of current and projected vaccine production capabilities and vaccine stocks, including progress in researching and developing a multivalent vaccine;

(vi) a detailed assessment of procedures and capabilities necessary to protect and decontaminate infrastructure to reinforce United States power-projection forces, including progress in developing a nonaqueous chemical decontamination capability;

(vii) a description of progress made in procuring light-weight personal protective gear and steps being taken to ensure that programmed procurement quantities are sufficient to replace expiring battle-dress overgarments and chemical protective overgarments to maintain required wartime inventory levels;

(viii) a description of progress made in developing long-range standoff detection and identification capabilities and other battlefield surveillance capabilities for biological and chemical weapons, including progress on developing a multichemical agent detector, unmanned aerial vehicles, and unmanned ground sensors;

(ix) a description of progress made in developing and deploying layered theater missile defenses for deployed United States Armed Forces which will provide greater geographic coverage against current and expected ballistic missile threats and will assist in mitigating chemical and biological contamination through higher altitude intercepts and boost-phase intercepts;

(x) an assessment of—

(I) the training and readiness of the United States Armed Forces to operate in a chemically or biologically contaminated environment; and

(II) actions taken to sustain training and readiness, including training and readiness carried out at national combat training centers;

(xi) a description of progress made in incorporating chemical and biological considerations into service and joint exercises as well as simulations, models, and war games, and the conclusions drawn from these efforts about the United States capability to carry out required missions, including missions with coalition partners, in military contingencies;

(xii) a description of progress made in developing and implementing service and joint doctrine for combat and non-combat operations involving adversaries armed with chemical or biological weapons, including efforts to update the range of service and joint doctrine to better address the wide range of military activities, including deployment, reinforcement, and logistics operations in support of combat operations, and for the conduct of such operations in concert with coalition forces; and

(xiii) a description of progress made in resolving issues relating to the protection of United States population centers from chemical and biological attack, including plans for inoculation of populations, consequence management, and a description of progress made in developing and deploying effective cruise missile defenses and a national ballistic missile defense.

(12) PRIMACY OF THE UNITED STATES CONSTITUTION.—Nothing in the Convention requires or authorizes legislation, or other action, by the United States prohibited by the Constitution of the United States, as interpreted by the United States.

(13) NONCOMPLIANCE.—

(A) IN GENERAL.—If the President determines that persuasive information exists that a State Party to the Convention is maintaining a chemical weapons production or production mobilization capability, is developing new chemical agents, or is in violation of the Convention in any other manner so as to threaten the national security interests of the United States, then the President shall—

(i) consult with the Senate, and promptly submit to it, a report detailing the effect of such actions;

(ii) seek on an urgent basis a challenge inspection of the facilities of the relevant party in accordance with the provisions of the Convention with the objective of demonstrating to the international community the act of noncompliance;

(iii) seek, or encourage, on an urgent basis a meeting at the highest diplomatic level with the relevant party with the objective of bringing the noncompliant party into compliance;

(iv) implement prohibitions and sanctions against the relevant party as required by law;

(v) if noncompliance has been determined, seek on an urgent basis within the Security Council of the United Nations a multilateral imposition of sanctions against the noncompliant party for the purposes of bringing the noncompliant party into compliance; and

(vi) in the event that the noncompliance continues for a period of longer than one year after the date of the determination made pursuant to subparagraph (A), promptly consult with the Senate for the purposes of obtaining a resolution of support for continued adherence to the Convention, notwithstanding the changed circumstances affecting the object and purpose of the Convention.

(B) CONSTRUCTION.—Nothing in this section may be construed to impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(5)).

(C) PRESIDENTIAL DETERMINATIONS.—If the President determines that an action otherwise required under subparagraph (A) would impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure, the President shall report that determination, together with a detailed written explanation of the basis for that determination, to the chairmen of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence not later than 15 days after making such determination.

(14) FINANCING RUSSIAN IMPLEMENTATION.—The United States understands that, in order to be assured of the Russian commitment to a reduction in chemical weapons stockpiles, Russia must maintain a substantial stake in financing the implementation of both the 1990 Bilateral Destruction Agreement and the Convention. The United States shall not accept any effort by Russia to make deposit of Russia's instrument of ratification of the Convention contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia under the 1990 Bilateral Destruction Agreement or the Convention.

(15) ASSISTANCE UNDER ARTICLE X.—

(A) IN GENERAL.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Congress that the United States shall not provide assistance under paragraph 7(a) of Article X.

(B) COUNTRIES INELIGIBLE FOR CERTAIN ASSISTANCE UNDER THE FOREIGN ASSISTANCE ACT.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Congress that for any State Party the government of which is not eligible for assistance under chapter 2 of part II (relating to military assistance) or chapter 4 of part II (relating to economic support assistance) of the Foreign Assistance Act of 1961—

(i) no assistance under paragraph 7(b) of Article X will be provided to the State Party; and

(ii) no assistance under paragraph 7(c) of Article X other than medical antidotes and treatment will be provided to the State Party.

(16) PROTECTION OF CONFIDENTIAL INFORMATION.—

(A) UNAUTHORIZED DISCLOSURE OF UNITED STATES BUSINESS INFORMATION.—Whenever the President determines that persuasive information is available indicating that—

(i) an officer or employee of the Organization has willfully published, divulged, disclosed, or made known in any manner or to any extent not authorized by the Convention any United States confidential business information coming to him in the course of his employment or official duties or by reason of any examination or investigation of any return, report, or record made to or filed with the Organization, or any officer or employee thereof, and

(ii) such practice or disclosure has resulted in financial losses or damages to a United States person,

the President shall, within 30 days after the receipt of such information by the executive branch of Government, notify the Congress in writing of such determination.

(B) WAIVER OF IMMUNITY FROM JURISDICTION.—

(i) CERTIFICATION.—Not later than 270 days after notification of Congress under subparagraph (A), the President shall certify to Congress that the immunity from jurisdiction of such foreign person has been waived by the Director-General of the Technical Secretariat.

(ii) WITHHOLDING OF PORTION OF CONTRIBUTIONS.—If the President is unable to make the certification described under clause (i), then 50 percent of the amount of each annual United States contribution to the regular budget of the Organization that is assessed pursuant to paragraph 7 of Article VIII shall be withheld from disbursement, in addition to any other amounts required to be withheld from disbursement by any other provision of law, until—

(I) the President makes such certification, or

(II) the President certifies to Congress that the situation has been resolved in a manner satisfactory to the United States person who has suffered the damages due to the disclosure of United States confidential business information.

(C) BREACHES OF CONFIDENTIALITY.—

(i) CERTIFICATION.—In the case of any breach of confidentiality involving both a State Party and the Organization, including any officer or employee thereof, the President shall, within 270 days after providing written notification to Congress pursuant to subparagraph (A), certify to Congress that the Commission described under paragraph 23 of the Confidentiality Annex has been established to consider the breach.

(ii) WITHHOLDING OF PORTION OF CONTRIBUTIONS.—If the President is unable to make the certification described under clause (i), then 50 percent of the amount of each annual United States contribution to the regular budget of the Organization that is assessed pursuant to paragraph 7 of Article VIII shall be withheld from disbursement, in addition to any other amounts required to be withheld from disbursement by any other provision of law, until—

(I) the President makes such certification, or

(II) the President certifies to Congress that the situation has been resolved in a manner

satisfactory to the United States person who has suffered the damages due to the disclosure of United States confidential business information.

(D) DEFINITIONS.—In this paragraph:

(i) UNITED STATES CONFIDENTIAL BUSINESS INFORMATION.—The term ''United States confidential business information means any trade secrets or commercial or financial information that is privileged and confidential, as described in section 662(b)(4) of title 5, United States Code, and that is obtained—

(I) from a United States person; and

(II) through the United States National Authority or the conduct of an inspection on United States territory under the Convention.

(ii) UNITED STATES PERSON.—The term ''United States person'' means any natural person or any corporation, partnership, or other juridical entity organized under the laws of the United States.

(iii) UNITED STATES.—The term ''United States'' means the several States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(17) CONSTITUTIONAL PREROGATIVES.—

(A) FINDINGS.—The Senate makes the following findings:

(i) Article II, Section 2, Clause 2 of the United States Constitution states that the President ''shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur''.

(ii) At the turn of the century, Senator Henry Cabot Lodge took the position that the giving of advice and consent to the ratification of treaties constitutes a stage in negotiation on the treaties and that Senate amendments or reservations to a treaty are propositions ''offered at a later stage of the negotiation by the other part of the American treaty making power in the only manner in which they could then be offered''.

(iii) The executive branch of Government has begun a practice of negotiating and submitting to the Senate treaties which include provisions that have the purported effect of—

(I) inhibiting the Senate from attaching reservations that the Senate considers necessary in the national interest; or

(II) preventing the Senate from exercising its constitutional duty to give its advice and consent to treaty commitments before ratification of the treaties.

(iv) During the 85th Congress, and again during the 102d Congress, the Committee on Foreign Relations of the Senate made its position on this issue clear when stating that ''the President's agreement to such a prohibition cannot constrain the Senate's constitutional right and obligation to give its advice and consent to a treaty subject to any reservation it might determine is required by the national interest''.

(B) SENSE OF THE SENATE.—It is the sense of the Senate that—

(i) the advice and consent given by the Senate in the past to ratification of treaties containing provisions which prohibit amendments or reservations should not be construed as a precedent for such provisions in future treaties;

(ii) United States negotiators to a treaty should not agree to any provision that has the effect of inhibiting the Senate from attaching reservations or offering amendments to the treaty; and

(iii) the Senate should not consent in the future to any article or other provision of any treaty that would prohibit the Senate from giving its advice and consent to ratification of the treaty subject to amendment or reservation.

(18) LABORATORY SAMPLE ANALYSIS.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that no sample collected in the United States pursuant to the Convention will be transferred for analysis to any laboratory outside the territory of the United States.

(19) EFFECT ON TERRORISM.—The Senate finds that—

(A) without regard to whether the Convention enters into force, terrorists will likely view chemical weapons as a means to gain greater publicity and instill widespread fear; and

(B) the March 1995 Tokyo subway attack by the Aum Shinrikyo would not have been prevented by the Convention.

(20) CONSTITUTIONAL SEPARATION OF POWERS.—

(A) FINDINGS.—The Senate makes the following findings:

(i) Article VIII(8) of the Convention allows a State Party to vote in the Organization if the State Party is in arrears in the payment of financial contributions and the Organization is satisfied that such nonpayment is due to conditions beyond the control of the State Party.

(ii) Article I, Section 8 of the United States Constitution vests in Congress the exclusive authority to ''pay the Debts'' of the United States.

(iii) Financial contributions to the Organization may be appropriated only by Congress.

(B) SENSE OF SENATE.—It is therefore the sense of the Senate that—

(i) such contributions thus should be considered, for purposes of Article VIII(8) of the Convention, beyond the control of the executive branch of the United States Government; and

(ii) the United States vote in the Organization should not be denied in the event that Congress does not appropriate the full amount of funds assessed for the United States financial contribution to the Organization.

(21) ON-SITE INSPECTION AGENCY.—It is the sense of the Senate that the On-Site Inspection Agency of the Department of Defense should have the authority to provide assistance in advance of any inspection to any facility in the United States that is subject to a routine inspection under the Convention, or to any facility in the United States that is the object of a challenge inspection conducted pursuant to Article IX, if the consent of the owner or operator of the facility has first been obtained.

(22) LIMITATION ON THE SCALE OF ASSESSMENT.—

(A) LIMITATION ON ANNUAL ASSESSMENT.—Notwithstanding any provision of the Convention, and subject to the requirements of subparagraphs (B), (C), and (D), the United States shall pay as a total annual assessment of the costs of the Organization pursuant to paragraph 7 of Article VIII not more than $25,000,000.

(B) RECALCULATION OF LIMITATIONS.—On January 1, 2000, and at each 3-year interval thereafter, the amount specified in subparagraph (A) is to be recalculated by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

(C) ADDITIONAL CONTRIBUTIONS REQUIRING CONGRESSIONAL APPROVAL.—

(i) AUTHORITY.—Notwithstanding subparagraph (A), the President may furnish additional contributions which would otherwise be prohibited under subparagraph (A) if—

(I) the President determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the failure to provide such contributions would result in the inability of the Organization to conduct challenge inspections pursuant to Article IX or would otherwise jeopardize the national security interests of the United States; and

(II) Congress enacts a joint resolution approving the certification of the President.

(ii) STATEMENT OF REASONS.—The President shall transmit with such certification a detailed statement setting forth the specific reasons therefor and the specific uses to which the additional contributions provided to the Organization would be applied.

(D) ADDITIONAL CONTRIBUTIONS FOR VERIFICATION.—Notwithstanding subparagraph (A), for a period of not more than ten years, the President may furnish additional contributions to the Organization for the purposes of meeting the costs of verification under Articles IV and V.

(23) ADDITIONS TO THE ANNEX ON CHEMICALS.—

(A) PRESIDENTIAL NOTIFICATION.—Not later than 10 days after the Director-General of the Technical Secretariat communicates information to all States Parties pursuant to Article XI(5)(a) of a proposal for the addition of a chemical or biological substance to a schedule of the Annex on Chemicals, the President shall notify the Committee on Foreign Relations of the Senate of the proposed addition.

(B) PRESIDENTIAL REPORT.—Not later than 60 days after the Director-General of the Technical Secretariat communicates information of such a proposal pursuant to Article XV(5)(a) or not later than 30 days after a positive recommendation by the Executive Council pursuant to Article XV(5)(c), whichever is sooner, the President shall submit to the Committee on Foreign Relations of the Senate a report, in classified and unclassified form, detailing the likely impact of the proposed addition to a schedule of the Annex on Chemicals. Such report shall include—

(i) an assessment of the likely impact on United States industry of the proposed addition of the chemical or biological substance to a schedule of the Annex on Chemicals;

(ii) a description of the likely costs and benefits, if any, to United States national security of the proposed addition of such chemical or biological substance to a schedule of the Annex on Chemicals; and

(iii) a detailed assessment of the effect of the proposed addition on United States obligations under the Verification Annex.

(C) PRESIDENTIAL CONSULTATION.—The President shall, after the submission of the notification required under subparagraph (A) and prior to any action on the proposal by the Executive Council under Article XV(5)(c), consult promptly with the Senate as to whether the United States should object to the proposed addition of a chemical or biological substance pursuant to Article XV(5)(c).

(24) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the Constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification with respect to the INF Treaty. For purposes of this declaration, the term ''INF Treaty'' refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, approved by the Senate on May 27, 1988.

(25) FURTHER ARMS REDUCTIONS OBLIGATIONS.—The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power as set forth in Article II, section 2, clause 2 of the Constitution.

(26) RIOT CONTROL AGENTS.—

(A) PERMITTED USES.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that the United States is not restricted by the Convention in its use of riot control agents, including the use against combatants who are parties to a conflict, in any of the following cases:

(i) UNITED STATES NOT A PARTY.—The conduct of peacetime military operations within an area of ongoing armed conflict when the United States is not a party to the conflict (such as recent use of the United States Armed Forces in Somalia, Bosnia, and Rwanda).

(ii) CONSENSUAL PEACEKEEPING.—Consensual peacekeeping operations when the use of force is authorized by the receiving state, including operations pursuant to Chapter VI of the United Nations Charter.

(iii) CHAPTER VII PEACEKEEPING.—Peacekeeping operations when force is authorized by the Security Council under Chapter VII of the United Nations Charter.

(B) IMPLEMENTATION.—The President shall take no measure, and prescribe no rule or regulation, which would alter or eliminate Executive Order 11850 of April 8, 1975.

(C) DEFINITION.—In this paragraph, the term ''riot control agent'' has the meaning given the term in Article II(7) of the Convention.

(27) CHEMICAL WEAPONS DESTRUCTION.—Prior to the deposit of the United States instrument of ratification of the Convention, the President shall certify to the Congress that all of the following conditions are satisfied:

(A) EXPLORATION OF ALTERNATIVE TECHNOLOGIES.—The President has agreed to explore alternative technologies for the destruction of the United States stockpile of chemical weapons in order to ensure that the United States has the safest, most effective and environmentally sound plans and programs for meeting its obligations under the Convention for the destruction of chemical weapons.

(B) CONVENTION EXTENDS DESTRUCTION DEADLINE.—The requirement in section 1412 of Public Law 99–145 (50 U.S.C. 1521) for completion of the destruction of the United States stockpile of chemical weapons by December 31, 2004, will be superseded upon the date the Convention enters into force with respect to the United States by the deadline required by the Convention of April 29, 2007.

(C) AUTHORITY TO EMPLOY A DIFFERENT DESTRUCTION TECHNOLOGY.—The requirement in Article III(1)(a)(v) of the Convention for a declaration by each State Party not later than 30 days after the date the Convention enters into force with respect to that Party on general plans of the State Party for destruction of its chemical weapons does not preclude in any way the United States from deciding in the future to employ a technology for the destruction of chemical weapons different than that declared under that Article.

(D) PROCEDURES FOR EXTENSION OF DEADLINE.—The President will consult with Congress on whether to submit a request to the Executive Council of the Organization for an extension of the deadline for the destruction of chemical weapons under the Convention, as provided under part IV(A) of the Annex on Implementation and Verification to the Convention, if, as a result of the program of alternative technologies for the destruction of chemical munitions carried out under section 8065 of the Department of Defense Appropriations Act, 1997 (as contained in Public Law 104–208), the President determines that alternatives to the incineration of chemical weapons are available that are safer and more environmentally sound but whose use would preclude the United States from meeting the deadlines of the Convention.

(28) CONSTITUTIONAL PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE.—

(A) IN GENERAL.—In order to protect United States citizens against unreasonable searches and seizures, prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that—

(i) for any challenge inspection conducted on the territory of the United States pursuant to Article IX, where consent has been withheld, the United States National Authority will first obtain a criminal search warrant based upon probable cause, supported by oath or affirmation, and describing with particularity the place to be searched and the persons or things to be seized; and

(ii) for any routine inspection of a declared facility under the Convention that is conducted on the territory of the United States, where consent has been withheld the United States National Authority first will obtain an administrative search warrant from a United States magistrate judge.

(B) DEFINITION.—For purposes of this resolution, the term ''National Authority'' means the agency or office of the United States Government designated by the United States pursuant to Article VII(4) of the Convention.

SECTION 3. DEFINITIONS.

As used in this resolution:

(1) CHEMICAL WEAPONS CONVENTION OR CONVENTION.—The terms ''Chemical Weapons Convention'' and ''Convention'' mean the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Opened for Signature and Signed by the United States at Paris on January 13, 1993, including the following protocols and memorandum of understanding, all such documents being integral parts of and collectively referred to as the ''Chemical Weapons Convention'' or the ''Convention'' (contained in Treaty Document 103–21):

(A) The Annex on Chemicals.

(B) The Annex on Implementation and Verification.

(C) The Annex on the Protection of Confidential Information.

(D) The Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons.

(E) The Text on the Establishment of a Preparatory Commission.

(2) ORGANIZATION.—The term ''Organization'' means the Organization for the Prohibition of Chemical Weapons established under the Convention.

(3) STATE PARTY.—The term ''State Party'' means any nation that is a party to the Convention.

(4) UNITED STATES INSTRUMENT OR RATIFICATION.—The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the Convention.

Mr. HELMS. Mr. President, of course I am disappointed by today's vote on the CWC. But I find some solace in the fact that, thanks to our efforts, this treaty is much less harmful than it would have been. I am enormously proud of Senators KYL, INHOFE, and other Senators who stood with us despite enormous pressure against this treaty. I believe history will vindicate their efforts.

Make no mistake, this is a dangerous treaty. But it is a little less dangerous thanks to the efforts we made to amend it, and to deliver the truth to the American people. Last September, treaty proponents were pressing the Senate to vote on a treaty that had none of the key protections that some of us succeeded in inserting in this treaty. Had we not been a phalanx of common sense standing in their way, the exact same treaty would have been before the Senate for ratification today, and that would have been a disaster.

The treaty approved by the Senate tonight was toned down with 28 conditions, most of which the administration was until recently calling ''killer amendments.'' Those include, among many others, conditions that limit the cost of the treaty to the American taxpayer, place safeguards on intelligence sharing, enhance our chemical defenses, and protect confidential business information.

Further, concessions on what I consider some of the most important issues—such as protecting the right of American commanders in the field to use tear gas, and requiring criminal search warrants for foreign inspectors—came only the final days before I agreed to allow the treaty to go to the Senate floor for a vote. If we had not held out so long—in spite of all the criticism and derision lobbed in our direction—none of those protections would be in the treaty today.

I hope I may be forgiven for taking some satisfaction in the knowledge that, thanks to what our critics called our stubbornness, our soldiers in the field will be a little safer, and the constitutional rights of American citizens will be a little better protected. Final judgment of our efforts will be left to future generations.

I do know this: those great Senators with whom I was honored to stand fought the good fight, we won some battles, and lost others. But we fought with honor, and integrity, and for the cause of right.

Mr. BIDEN addressed the Chair.

The VICE PRESIDENT. The Senator from Delaware.

Mr. BIDEN. I would like to thank the Vice President for being at the ready the whole day, and I would like to thank my colleagues for not making it necessary. I am glad they deprived the Vice President of the United States the opportunity to vote on the five conditions and on final passage. But I want to point out to my colleagues who are being very nice and solicitous about my efforts in this regard, the Vice President of the United States, who is in the Chair, played a critical role in pushing this, making sure that we kept it before the Nation, generating the interesting debate so this could not be left untouched, and I want to publicly thank him.

There is that old expression in politics that politics makes strange bedfellows. I have had the distinction and the honor of having been the ranking member and/or chairman with the distinguished Senator from South Carolina, Senator THURMOND, and when I

got that assignment I think most of my colleagues looked at me and said, this is going to be an interesting time, BIDEN and THURMOND. We turned out to be very good friends. This is the first occasion after 25 years that I have had to work as closely as I have with my new chairman of the Foreign Relations Committee, on which I rank, and that is Senator HELMS. I want to publicly thank him. He kept his word at every stage of this long, arduous, and for me ultimately rewarding negotiation. I want to acknowledge how much I appreciate it.

I conclude by saying, because I do not want to turn this into some litany of people to thank, what a pleasure it has been to work with and receive the guidance and encouragement from the Senator from Indiana [Mr. LUGAR]. He has served this Nation well on this occasion, as well as Senator MCCAIN. I hope I am not hurting their credentials in the Republican party by acknowledging how closely I worked with both of them. However, I think it should be noted that without the two of them weighing in on this treaty I not only doubt, I know we would not have passed this.

I conclude by saying I truly think this is a very important moment in the Senate, and I do think the vote we just cast will be within the next hour heard around the world. Had we voted the other way, it would have been a louder, more resounding sound than the one now. It will be heard around the world, and it will reaffirm American leadership.

I thank the Vice President for being here again and I am also thankful we did not have to have his vote, but I knew where it was if we had needed it.

I yield the floor.

The VICE PRESIDENT. Under the previous order, the President will be immediately notified.

LEGISLATIVE SESSION

The VICE PRESIDENT. The Senate now returns to legislative session.

MORNING BUSINESS

Mr. ROBERTS. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak up to 5 minutes each.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

COMMENDING KENTUCKY AIR NATIONAL GUARD

Mr. FORD. Mr. President, I just want to take a moment to extend my personal thanks to the Kentucky Air National Guard for a job well done. When the U.S. Air Force chose the Kentucky Derby Festival's annual Thunder Over Louisville celebration as one of the high points in a year-long celebration of the Air Force's 50th anniversary, the Kentucky Air National Guard proved to be the perfect hosts. They not only brought in all the aircraft, but coordinated all the different services.

Thunder Over Louisville has already gained a reputation as a one-of-a-kind air show and fireworks display. But I think everyone agreed that this year will be hard to top. The performances were truly spectacular, but much of the success is also due to the tremendous job the city, the Air Force, the Derby Festival and the Kentucky Air National Guard did to assure the event ran smoothly and safely.

Called ''Wild Blue Thunder'' in tribute to the Air Force's 50th Anniversary, it was the world's largest show of its kind in America, both for the fireworks display and for the air performances.

The fireworks were reported to be larger than the opening and closing of the Atlanta Olympics combined and of the Inaugural fireworks. The impressive show culminated in an 11,000 waterfall of fireworks off the Clark Memorial Bridge.

The television and radio commercials for Thunder Over Louisville use the tag line ''you haven't seen anything until you've seen everything.'' The Air Force and other armed services certainly pulled out all the stops with air performances showcasing the ''Thunderbirds USAF Aerobatic Team,'' the F–117 A Stealth Fighter, the B–2 Stealth Bomber, the SR–71A Strategic Reconnaissance Plane, the B–1B Long Range Strategic Bomber, F–14 ''Tomcat'' jet fighter, the A–10 Warthog Tank Killer jet fighter, the F–15 ''Eagle'' jet fighter, the T–33 ''Thunderbird,'' and Apache and Blackhawk helicopters.

The performances were not only a great source of entertainment, but also were a tremendous learning experience for spectators of all ages, especially about Kentucky's homegrown talent.

Kentucky's 123rd already has an impressive list of accomplishments under their belt. And I've come to the Senate floor time and again to commend them on their exceptional work in places like Bosnia, Somalia, and Rwanda.

But as part of the Derby Festival's spectacular display, the 123rd got to show off for the hometown crowd. 650,000 Kentuckians saw first-hand the 123rd's skill and expertise with the C–130Hs, getting a better idea of how important this unit is to the overall operations of this nation's active duty Air Force. And that will make my job much easier this year if Pentagon officials start making moves to pull any of the 123rd's C–130Hs.

Mr. President, let me close by thanking the 123rd for their hard work and their hospitality. I know the true test of their abilities happens when they are far from home. But it's nice to remind everyone at home just how lucky we are to have such a talented, committed group of service people right here in Kentucky.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, April 23, 1997, the federal debt stood at $5,345,088,835,181.58. (Five trillion, three hundred forty-five billion, eighty-eight million, eight hundred thirty-five thousand, one hundred eighty-one dollars and fifty-eight cents)

One year ago, April 23, 1996, the federal debt stood at $5,106,372,000,000. (Five trillion, one hundred six billion, three hundred seventy-two million)

Five years ago, April 23, 1992, the federal debt stood at $3,877,376,000,000. (Three trillion, eight hundred seventy-seven billion, three hundred seventy-six million)

Ten years ago, April 23, 1987, the federal debt stood at $2,264,001,000,000. (Two trillion, two hundred sixty-four billion, one million)

Fifteen years ago, April 23, 1982, the federal debt stood at $1,058,822,000,000 (One trillion, fifty-eight billion, eight hundred twenty-two million) which reflects a debt increase of more than $4 trillion—$4,286,266,835,181.58 (Four trillion, two hundred eighty-six billion, two hundred sixty-six million, eight hundred thirty-five thousand, one hundred eighty-one dollars and fifty-eight cents) during the past 15 years.

PATRICK H. WINDHAM

Mr. LIEBERMAN. Mr. President, I would like to take a few moments to pay tribute to Patrick H. Windham, the long-serving Senior Democratic Professional Staff Member for the Subcommittee on Science, Technology and Space. Pat is leaving Washington for California with his wife Arati Prabhakar and newborn baby Katie after nearly 20 years of service to the Senate, primarily on science and technology policy issues. For the many people here who knew or worked with Pat, including my staff and me, he will be sorely missed as a great source of institutional knowledge but most of all as a friend, a genuine and nice guy in a town not always known for its friendliness.

Originally from California, Pat completed his undergraduate work at Stanford, received a Masters in public policy from the University of California at Berkeley and first came to the Hill in 1976 as a Congressional Fellow to the Committee on Commerce, Science and Transportation. In 1982 Pat began his long association with Senator HOLLINGS, joining his personal staff as a legislative assistant. He has held his present position of Senior Democratic Professional staff member for the Subcommittee on Commerce, Science and Transportation since 1984.

I met Pat through his many hours of work on the important issue of technology partnerships, especially those run through the Commerce Department such as the Advanced Technology Program. Pat, along with my able colleague Senator HOLLINGS, has been a

tireless advocate of promoting the movement of new ideas generated by scientists and engineers in our universities and national laboratories out into the commercial marketplace. Widely respected for his substantive thinking on such topics, Pat has tirelessly worked on legislative solutions that would bridge the cultural gap existing between the differing worlds of academia, government and industry. I believe this effort to be critical towards ensuring the future ability of America to compete in a global market.

During World War II and the subsequent Cold War, federal investment in science and technology was seen as essential to maintaining America's national security. A by-product of federal investment was an infrastructure of world-leading high tech defense companies, laboratories and universities and subsequent creation of an entire new generation of products and industries. With the end of the Cold War, the defense rationale for continued investment is not as politically compelling and the growth of information technologies continues to change the landscape for American business.

We are now in a period of transition, looking for ways to move from the old system of innovation where the government funded the science, paid for development and then purchased the final product—to a new system that preserves both our country's security and its competitive economic advantage. It is not an exaggeration to say that Pat has been a major contributor in the development of science and technology policy during this turbulent transition period. My office and I particularly respect his work for Senator HOLLINGS as an architect of both the Advanced Technology Program and the Manufacturing Extension Program, both of which help move technology and information out to the manufacturing floors of America's workplaces. Pat has always been open minded, has carefully listened and will be remembered as a joy to work with. My staff and I hope that Pat will find some time to write and reflect on the technology policy issues he's been grappling with for so long, and welcome fresh insights from him. The Senate owes him a large debt of thanks for his fine work here. Good luck in California, Pat, and best wishes to your wonderful wife and daughter.

82ND ANNIVERSARY OF THE ARMENIAN GENOCIDE

Mr. KENNEDY. Mr. President, today marks the 82nd anniversary of the beginning of one of the most tragic episodes in human history. Beginning in 1915, the Government of the Ottoman Turks waged a vicious campaign of genocide against the people of Armenia. One and a half million Armenians were killed in the following eight years. Over 500,000 more Armenians were forced into exile from their homeland and compelled to seek havens in other lands.

The extraordinary resiliency of the Armenian people can be seen by what they have accomplished in their new lands. Nations around the world have benefited from the spirit and perseverance of the Armenians. No nation has benefited more from the contributions of the Armenian Diaspora than the United States. My own state of Massachusetts is blessed with a large and vigorous community of Armenians who have played an important role in all aspects of public and private life in our state.

I commend the tireless efforts of the Armenian Assembly of America and the Armenian National Committee for their outstanding work in informing Americans about the history and culture of Armenia and its people. In honoring Armenians throughout the world today, we also pledge to do all we can to banish genocide against any peoples anywhere from the face of the earth.

MESSAGES FROM THE HOUSE

At 2 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 8 Concurrent resolution recognizing the significance of maintaining the health and stability of coral reef ecosystems.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 39. An act to reauthorize the African Elephant Conservation Act.

H.R. 400. An act to amend title 35, United States Code, with respect to patents, and for other purposes.

H.R. 449. An act to provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada.

H.R. 688. An act to amend the Solid Waste Disposal Act to require at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund to be distributed to States for cooperative agreements for undertaking corrective action and for enforcement of subtitle I of such Act.

H.R. 1272. An act to authorize appropriations for fiscal years 1998 and 1999 for the United States Fire Administration, and for other purposes.

At 6:26 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1273. An act to authorize appropriations for fiscal years 1998 and 1999 for the National Science Foundation, and for other purposes.

H.R. 1274. An act to authorize appropriations for the National Institute of Standards and Technology for fiscal years 1998 and 1999, and for other purposes.

H.R. 1275. An act to authorize appropriations for the National Aeronautics and Space Administration for fiscal years 1998 and 1999, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 39. An act to reauthorize the African Elephant Conservation Act; to the Committee on Environment and Public Works.

H.R. 400. An act to amend title 35, United States Code, with respect to patents, and for other purposes; to the Committee on the Judiciary.

H.R. 449. An act to provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada; to the Committee on Energy and Natural Resources.

H.R. 688. An act to amend the Solid Waste Disposal Act to require at least 85 percent of funds appropriated to the Environmental Protection Agency from the Leaking Underground Storage Tank Trust Fund to be distributed to States for cooperative agreements for undertaking corrective action and for enforcement of subtitle I of such Act; to the Committee on Environment and Public Works.

H.R. 1272. An act to authorize appropriations for fiscal years 1998 and 1999 for the United States Fire Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1273. An act to authorize appropriations for fiscal years 1998 and 1999 for the National Science Foundation, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 1274. An act to authorize appropriations for the National Institute of Standards and Technology for fiscal years 1998 and 1999, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 1275. An act to authorize appropriations for the National Aeronautics and Space Administration for fiscal years 1998 and 1999, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1689. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of the certification regarding the incidental capture of sea turtles; to the Committee on Commerce, Science, and Transportation.

EC–1690. A communication from the Chairman of the Interagency Coordinating Committee on Oil Pollution Research, U.S. Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of the oil pollution research and technology plan; to the Committee on Commerce, Science, and Transportation.

EC–1691. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

EC–1692. A communication from the Director of Congressional Relations, U.S. Consumer Product Safety Commission, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

EC–1693. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a summary relative

to the NASA Crows Landing Facility; to the Committee on Commerce, Science, and Transportation.

EC–1694. A communication from the Under Secretary for Acquisition and Technology, Department of Defense, transmitting, pursuant to law, the report on the plan for coordinating and eliminating unnecessary duplication of operations; to the Committee on Armed Services.

EC–1695. A communication from the Administrator from the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule relative to increase in fees and charges, received on April 18, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1696. A communication from the Congressional Review Coordinator of the Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule relative to export certification of animal products, received on April 18, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1697. A communication from the Congressional Review Coordinator of the Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule relative to viruses, serums, toxins, and analogues, received on April 18, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1698. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation entitled ''Eligibility for the Defense Experimental Program to Stimulate Competitive Research''; to the Committee on Armed Services.

EC–1699. A communication from the Chief, Programs and Legislative Division, Office of Legislative Liaison, Department of the Air Force, Department of Defense, transmitting, pursuant to law, a multi-function cost comparison study relative to Tinker Air Force Base (AFB), Oklahoma; to the Committee on Armed Services.

EC–1700. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to the second special impoundment message for fiscal year 1997; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, Committee on the Budget, Committee on Agriculture, Nutrition, and Forestry, Committee on Armed Services, Banking, Housing, and Urban Affairs, Committee on Energy and Natural Resources, Committee on Finance, Committee on Governmental Affairs, and the Committee on the Judiciary.

EC–1701. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the interim report on the Lead-Based Hazard Control Grant Program; to the Committee on Banking, Housing, and Urban Affairs.

EC–1702. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the Comprehensive Needs Assessment; to the Committee on Banking, Housing, and Urban Affairs.

EC–1703. A communication from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation entitled ''Public Housing Management Reform Act of 1997''; to the Committee on Banking, Housing, and Urban Affairs.

EC–1704. A communication from the Acting President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report with respect to transactions involving exports to Poland; to the Committee on Banking, Housing, and Urban Affairs.

EC–1705. A communication from the Acting Director of the Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, transmitting, pursuant to law, three rules including one entitled ''Texas Regulatory Program,'' (TX–017–FOR) received on March 20, 1997; to the Committee on Energy and Natural Resources.

EC–1706. A communication from the Commissioner of the Bureau of Reclamation, Department of the Interior, transmitting, pursuant to law, a report relative to the Lost Creek Dam Weber Basin Project, Utah; to the Committee on Energy and Natural Resources.

EC–1707. A communication from the Assistant Secretary of the Interior for Land and Minerals Management, transmitting, pursuant to law, a rule relative to royalties, rentals and bonuses, (RIN 1010–AC01) received on April 17, 1997; to the Committee on Energy and Natural Resources.

EC–1708. A communication from the Acting Director of the Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, transmitting, pursuant to law, a rule relative to permit application process, (RIN1029-AB91) received on April 17, 1997; to the Committee on Energy and Natural Resources.

EC–1709. A communication from the Director of Regulations Policy, Management Staff, Office of Policy, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, four rules including a rule entitled ''Food and Drugs,'' (RIN0919-AA19) received on April 3, 1997; to the Committee on Labor and Human Resources.

EC–1710. A communication from the Chairman of the Consumer Products Safety Commission, transmitting, pursuant to law, the annual report on the administration of the government in the Sunshine Act for calendar year 1996; to the Committee on Governmental Affairs.

EC–1711. A communication from the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority, transmitting, pursuant to law, the report entitled ''Toward a More Equitable Relationship: Structuring the District of Columbia's State Functions''; to the Committee on Governmental Affairs.

EC–1712. A communication from the Chairman Pro Tempore of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12-61 adopted by the Council on March 4, 1997; to the Committee on Governmental Affairs.

EC–1713. A communication from the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority, transmitting, pursuant to law, a request for additional appropriations for fiscal year 1997; to the Committee on Governmental Affairs.

EC–1714. A communication from the President of the Federal Financing Bank, transmitting, pursuant to law, the fiscal year 1996 management report; to the Committee on Governmental Affairs.

EC–1715. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the management report of the Government National Mortgage Association for fiscal year 1996; to the Committee on Governmental Affairs.

EC–1716. A communication from the Secretary of the Department of Housing and Urban Development, transmitting, pursuant to law, the Federal Housing Administration Management Report for fiscal year 1995; to the Committee on Governmental Affairs.

EC–1717. A communication from the General Counsel of the Federal Retirement Thrift Investment Board, transmitting, pursuant to law, a rule entitled ''Thrift Savings Plan'' received on April 16, 1997; to the Committee on Governmental Affairs.

EC–1718. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, a rule relative to excepted service, (RIN3206-AH67) received on April 16, 1997; to the Committee on Governmental Affairs.

EC–1719. A communication from the Chairman of the Christopher Columbus Fellowship Foundation, transmitting, pursuant to law, the report on the system of internal accounting and financial controls in effect during fiscal year 1996; to the Committee on Governmental Affairs.

EC–1720. A communication from the Congressional Review Coordinator of the Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule relative to disease status, received on April 17, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1721. A communication from the Under Secretary of Commerce for Oceans and Atmosphere, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

EC–1722. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, two rules including a rule entitled ''Guides for the Jewelry, Precious Metals and Pewter Industries''; to the Committee on Commerce, Science, and Transportation.

EC–1723. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''The Maritime Administration Authorization Act for Fiscal Years 1998 and 1999''; to the Committee on Commerce, Science, and Transportation.

EC–1724. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation to authorize appropriations for fiscal years 1998 and 1999 for the U.S. Coast Guard; to the Committee on Commerce, Science, and Transportation.

EC–1725. A communication from the Chairman of the Surface Transportation Board, transmitting, pursuant to law, two rules including a rule entitled ''Railroad Consolidation Procedures''; to the Committee on Commerce, Science, and Transportation.

EC–1726. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on northeast multispecies harvest capacity; to the Committee on Commerce, Science, and Transportation.

EC–1727. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on bluefin tuna for calendar years 1995 and 1996; to the Committee on Commerce, Science, and Transportation.

EC–1728. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to the Chesapeake Bay; to the Committee on Commerce, Science, and Transportation.

EC–1729. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report on grant-in-aid for fisheries for calendar years 1995 and 1996; to the Committee on Commerce, Science, and Transportation.

EC–1730. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of the summary of scientific studies of the hatchery system in the Pacific Northwest; to the Committee on Commerce, Science, and Transportation.

EC–1731. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report regarding highly migratory species; to the Committee on Commerce, Science, and Transportation.

EC–1732. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to

law, eight rules; to the Committee on Commerce, Science, and Transportation.

EC–1733. A communication from the Acting Associate Managing Director for Performance Evaluations and Records Management, Federal Communications Commission, transmitting, pursuant to law, seven rules; to the Committee on Commerce, Science, and Transportation.

EC–1734. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''The Surface Transportation Safety Act of 1997''; to the Committee on Commerce, Science, and Transportation.

EC–1735. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, one hundred and ten rules; to the Committee on Commerce, Science, and Transportation.

EC–1736. A communication from the Acting Deputy Assistant Administrator of the National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Hawaiian Islands Humpback Whale Marine Sanctuary'' (RIN0648–AH99) received on March 28, 1997; to Committee on Commerce, Science, and Transportation.

EC–1737. A communication from the Director of the Office of Global Programs, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''NOAA Climate and Global Change Program'' (RIN0648–ZA29) received on April 22, 1997; to Committee on Commerce, Science, and Transportation.

EC–1738. A communication from the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska'' received on March 25, 1997; to Committee on Commerce, Science, and Transportation.

EC–1739. A communication from the National Marine Fisheries Services, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, four rules including a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska'' received on March 25, 1997; to Committee on Commerce, Science, and Transportation.

EC–1740. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a certification relative to a proposed Manufacturing License Agreement; to the Committee on Foreign Relations.

EC–1741. A communication from the Chairman Pro Tempore of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–63 adopted by the Council on March 4, 1997; to the Committee on Governmental Affairs.

EC–1742. A communication from the Director of the U.S. Trade and Development Agency, transmitting, pursuant to law, the report of the annual audit for fiscal year 1996; to the Committee on Governmental Affairs.

EC–1743. A communication from the Acting Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Fisheries of the Northeastern United States'' (RIN0648-AI21) received on March 25, 1997; to Committee on Commerce, Science, and Transportation.

EC–1744. A communication from the Acting Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule entitled ''Fisheries of the Caribbean'' (RIN0648-AI47) received on March 28, 1997; to Committee on Commerce, Science, and Transportation.

EC–1745. A communication from the Deputy Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, three rules including a rule concerning the Gulf of Mexico Sustainable Fisheries Program (RIN0648–AI68, AI88); to Committee on Commerce, Science, and Transportation.

EC–1746. A communication from the Director of the Office of Sustainable Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, five rules including a rule concerning fisheries; to Committee on Commerce, Science, and Transportation.

EC–1747. A communication from the Director of the Office of Sustainable Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, twelve rules including a rule concerning fisheries; to Committee on Commerce, Science, and Transportation.

EC–1748. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, five rules including a rule concerning fisheries (RIN 0648–AJ32, AJ78, AJ11, AJ43, AI15); to Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

The following-named officer for appointment in the U.S. Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Lt. Gen. George T. Babbitt, Jr., 3032.

The following-named officers for appointment in the Reserve of the Air Force to the grade indicated under title 10, United States Code, section 12203:

To be major general

Brig. Gen. John J. Batbie, Jr., 7759.
Brig. Gen. Winfred N. Carroll, 8742.
Brig. Gen. Dennis M. Gray, 5184.
Brig. Gen. Grant R. Mulder, 6734.
Brig. Gen. Virgil J. Toney, Jr., 3240.

To be brigadier general

Col. William E. Albertson, 6512.
Col. Paul R. Cooper, 1006.
Col. Gerald P. Fitzgerald, 6393.
Col. Patrick J. Gallagher, 3723.
Col. Edward J. Mechenbier, 3853.
Col. Jeffrey M. Musfeldt, 8617.
Col. Allan R. Poulin, 0569.
Col. Giuseppe P. Santaniello, 7772.
Col. Robert B. Siegfried, 5248.
Col. Robert C. Stumpf, 5111.
Col. William E. Thomlinson, 6969.

The following-named officer for appointment in the U.S. Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Tad J. Oelstrom, 3287.

The following-named officer for appointment in the U.S. Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Lt. Gen. Richard B. Myers, 7092.

The following-named officer for appointment in the U.S. Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Lt. Gen. Ralph E. Eberhart, 7375.

The following-named officer for appointment in the U.S. Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. John B. Hall, Jr., 5835.

The following-named officer for appointment in the U.S. Army to the grade indicated while assigned to a position of importance and responsibility under title 10 United States Code, section 601:

To be lieutenant general

Maj. Gen. Claudia J. Kennedy, 0477.

The following-named officer for appointment in the U.S. Army to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Tommy R. Franks, 0864.

The following-named officer for appointment in the Reserve of the U.S. Marine Corps to the grade indicated under title 10, United States Code, section 12203:

To be major general

Maj. Gen. Kevin B. Kuklok, 6010.

The following-named officers for appointment in the U.S. Marine Corps to the grade indicated under title 10, United States Code, section 624:

To be brigadier general

Col. James R. Battaglini, 5336.
Col. James E. Cartwright, 5961.
Col. Stephen A. Cheney, 1702.
Col. Christopher Cortez, 9054.
Col. Robert M. Flanagan, 2865.
Col. John F. Goodman, 3509.
Col. Gary H. Hughey, 9286.
Col. Thomas S. Jones, 2831.
Col. Richard L. Kelly, 9290.
Col. Ralph E. Parker, Jr., 6337.
Col. John F. Sattler, 0580.
Col. William A. Whitlow, 5394.
Col. Frances C. Wilson, 7788.

The following-named officer for appointment in the Reserve of the Navy to the grade indicated under title 10, United States Code, section 12203:

To be rear admiral (lower half)

Capt. Karen A. Harmeyer, 8014.

The following-named officer for appointment in the U.S. Marine Corps to the grade indicated under title 10, United States Code, section 624:

To be major general

Brig. Gen. Terrence P. Murray, 7177.

The following-named officer for appointment as Judge Advocate General of the U.S. Navy and for appointment to the grade indicated under title 10, United States Code, section 5148:

To be rear admiral

Capt. John D. Hutson, 9946.

The following-named officer for appointment in the U.S. Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. Lee F. Gunn, 4664.

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND. Mr. President, for the Committee on Armed Services, I report favorably 25 nomination lists in the Air Force, Army, Marine Corps and Navy which were printed in the CONGRESSIONAL RECORDS of January 7, 28, 30, February 5, 25, 27, March 5, 11, 21, and April 7, 1997, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of January 7, 28, 30, February 5, 25, 27, March 5, 11, 21, and April 7, 1997, at the end of the Senate proceedings.)

In the Army there are 30 promotions to the grade of major (list begins with William M. Austin) (Reference No. 55).

In the Army there are 69 promotions to the grade of colonel (list begins with Richard H. Agosta) (Reference No. 65).

In the Army there are 9 appointments to the grade of colonel (list begins with Richard Cooper) (Reference No. 171).

In the Army there are 66 appointments to the grade of major (list begins with Ida F. Agamy) (Reference No. 178).

In the Navy there are 59 appointments to the grade of lieutenant commander (list begins with Cal D. Astrin) (Reference No. 195).

In the Air Force Reserve there are 83 appointments to the grade of colonel (list begins with Robert N. Agee) (Reference No. 218).

In the Army Reserve there is 1 appointment to the grade of colonel (George B. Garrett) (Reference No. 219).

In the Army Reserve there are 32 appointments to the grade of colonel (list begins with Vincent J. Albanese) (Reference No. 220).

In the Army Reserve there are 7 appointments to the grade of colonel (list begins with James M. Caldwell) (Reference No. 221).

In the Navy there are 29 appointments to the grade of lieutenant and below (list begins with Jason T. Baltimore) (Reference No. 222).

In the Army there are 170 appointments to the rank of lieutenant colonel (list begins with Bryant H. Aldstadt) (Reference No. 224).

In the Air Force there are 22 appointment to the grade of colonel and below (list begins with John L. Bush) (Reference No. 227).

In the Army Reserve there is 1 appointment to the grade of colonel (Larry W. Rascster) (Reference No. 228).

In the Air Force there are 517 appointments to the grade of colonel and below (list begins with Barry S. Abbott) (Reference No. 229).

In the Marine Corps there are 92 appointments to the grade of colonel (list begins with Dirk R. Ahle) (Reference No. 234).

In the Army there is 1 appointment to the grade of lieutenant colonel (Douglas R. Yates) (Reference No. 239).

In the Navy there are 3 appointments to the grade of captain and below (list begins with Edward H. Lundquist) (Reference No. 240).

In the Air Force there are 16 appointments to the grade of colonel and below (list begins with Christopher R. Kleinsmith) (Reference No. 261).

In the Army Reserve there are 18 appointments to the grade of colonel (list begins with Harry L. Bryan, Jr.) (Reference No. 262).

In the Army there is 1 appointment to the grade of major (Phuong T. Pierson) (Reference No. 263).

In the Air Force there are 364 appointments to the grade of colonel and below (list begins with Marilyn S. Abughusson) (Reference No. 264).

In the Air Force there are 11 appointments to the grade of lieutenant colonel and below (list begins with John M. Barker, Jr.) (Reference No. 269).

In the Marine Corps there is 1 appointment to the grade of colonel (Todd H. Griffis) (Reference No. 270).

In the Marine Corps there are 479 appointments to the grade of major (list begins with Roy P. Ackley, Jr.,) (Reference No. 272).

In the Marine Corps there are 326 appointments to the grade of lieutenant colonel (list begins with Robert J. Abblitt) (Reference No. 273).

In the Navy there is 1 appointment to the grade of lieutenant commander (Jamel B. Weatherspoon) (Reference No. 274).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MCCAIN:

S. 641. A bill to require the Federal Communications Commission to eliminate from its regulations the restrictions on the cross-ownership of broadcasting stations and newspapers; to the Committee on Commerce, Science, and Transportation.

By Mr. TORRICELLI:

S. 642. A bill to amend section 842 of title 18, United States Code, relating to explosive materials; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. GREGG, and Mr. LAUTENBERG):

S. 643. A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured crop disaster assistance for tobacco; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO:

S. 644. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to establish standards for relationships between group health plans and health insurance issuers with enrollees, health professionals, and providers; to the Committee on Labor and Human Resources.

By Mr. LAUTENBERG (for himself and Mr. TORRICELLI):

S. 645. A bill to amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs; to the Committee on Environment and Public Works.

By Mr. FORD (for himself, Mr. HOLLINGS, Mr. HELMS, Mr. FAIRCLOTH, Mr. THURMOND, Mr. COCHRAN, Mr. ROBB, Mr. SESSIONS, Mr. WARNER, Mr. BYRD, Mr. BREAUX, Ms. COLLINS, Ms. LANDRIEU, Mr. MCCONNELL, and Mr. SHELBY):

S. 646. A bill to ensure the competitiveness of the United States textile and apparel industry; to the Committee on Finance.

By Mr. FEINGOLD:

S. 647. A bill to amend the Congressional Budget and Impeachment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

By Mr. GORTON (for himself, Mr. ASHCROFT, Mr. MCCAIN, and Mr. LOTT):

S. 648. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. GLENN, Mr. D'AMATO, Mr. INOUYE, Mr. ROCKEFELLER, and Mr. MACK):

S. 649. A bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare program; to the Committee on Finance.

By Mr. NICKLES:

S. 650. A bill to amend the Internal Revenue Code of 1986 to reduce estate taxes by providing a 20 percent rate of tax on estates exceeding $1,000,000, and a 30 percent rate of tax on estates exceeding $10,000,000, and for other purposes; to the Committee on Finance.

By Mr. ALLARD:

S.J. Res. 28. A joint resolution proposing an amendment to the Constitution of the United States granting the President the authority to exercise an item veto of individual appropriations in an appropriations bill; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURNS (for himself, Mr. BAUCUS, Ms. COLLINS, Mr. KEMPTHORNE, Mr. FAIRCLOTH, Mr. BINGAMAN, Mr. DEWINE, Mr. HATCH, Mr. GRASSLEY, Mr. WARNER, Mr. CLELAND, Mr. GORTON, Mr. ABRAHAM, Ms. LANDRIEU, Mr. REID, Mr. LIEBERMAN, Mr. DODD, Mr. MURKOWSKI, Mr. D'AMATO, Mr. KENNEDY, Mr. KERREY, Mr. LEVIN, Mr. GRAMM, Mr. KERRY, Mr. LUGAR, and Mr. MOYNIHAN):

S. Res. 78. A resolution to designate April 30, 1997, as ''National Erase the Hate and Eliminate Racism Day''; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. Con. Res. 23. A concurrent resolution honoring the lifetime achievements of Jackie Robinson; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN:

S. 641. A bill to require the Federal Communications Commission to eliminate from its regulations the restrictions on the cross-ownership of broadcasting stations and newspapers; to the Committee on Commerce, Science, and Transportation.

THE NEWSPAPER OWNERSHIP ACT

Mr. MCCAIN. Mr. President, I am pleased to introduce the Newspaper Ownership Act. This legislation would eliminate one of the most archaic provisions remaining in telecommunications law: that which prohibits a

newspaper from being co-owned with a local radio or television station.

Mr. President, at a time when the number of outlets for news, information, and entertainment has expanded exponentially, and at a time when other restrictions on ownership of mass media companies have been rethought and liberalized one fossil from the age of Walter Winchell and the Dumont Network remains—the law that keeps one entity from owning both a newspaper and a radio or TV station in the same market. It's time to finally get rid of this relic.

The newspaper/broadcast cross-ownership prohibition dates from a day when there was a realistic fear that common control of both media in the same locale could result in the public's receiving only one point of view on important issues.

Radio and television outlets abound. Many are supplemented by multichannel news and entertainment outlets like cable TV and satellite broadcasting. Even in the smallest markets, diversity of viewpoints is as close as clicking on the Internet.

It is not surprising that, in this era of media diversity, newspapers have found it tough going, their numbers steadily declining over the years. In this environment, the infusion of resources that would result from allowing them to be owned by local radio and TV station owners would be most beneficial. Moreover, is there any reason to think that an attempt to make a newspaper walk in the lock-step with a co-owned broadcast station would not be readily detected by the public, and rejected in favor of more diverse sources of information? It is difficult to believe that, given the almost bewildering variety in the numbers and types of information sources available in even the smallest markets, any seeker of information could be either so passive or so defenseless.

Mr. President, I introduce this bill in an effort to engage informed debate on this outdated restriction. I ask unanimous consent that the text of the bill be printed on the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 641

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CROSS-OWNERSHIP OF BROADCASTING AND NEWSPAPERS.

(a) RULE CHANGES REQUIRED.—The Federal Communications Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the granting or renewal of an AM, FM, or TV broadcast station license to any party (including parties under common control) on the basis of the ownership, operation, or control by such party of a daily newspaper.

(b) DEADLINE FOR ACTION.—The Federal Communications Commission shall complete all action necessary to complete the modifications required by subsection (a) within 90 days after the date of enactment of this Act.

By Mr. TORRICELLI:

S. 642. A bill to amend section 842 of title 18, United States Code, relating to explosive materials; to the Committee on the Judiciary.

THE EXPLOSIVES PROTECTION ACT OF 1997

● Mr. TORRICELLI. Mr. President, I introduce the Explosives Protection Act of 1997. I do so just over two years after the tragic bombing of the federal building in Oklahoma City, because I hope that this bill will, in some small way, prevent future bombings—whether by terrorists of symbolic targets, malcontents of random ones, or even spouses involved in marital disputes.

This bill, while not directly related to the circumstances in Oklahoma City, is a first step towards protecting the American people from those who would use explosives to do them harm.

Not many people realize, Mr. President, just how few restrictions on the use and sale of explosives really exist. While we have increasingly restricted the number of people who can obtain and use a firearm, we have been lax in extending these prohibitions to explosives.

For instance, while we prohibit illegal aliens from obtaining a gun, we allow them to obtain explosives without restriction. And this same divergence applies to those who have been dishonorably discharged from the armed forces, those who have renounced U.S. citizenship, people who have acted in such a way as to have restraining orders issued against them, and those with domestic violence convictions. Each of these categories of persons are prohibited from obtaining firearms, but face no such prohibition on obtaining explosive material.

Additionally, while this Congress has been moving to prevent nonimmigrant legal aliens from obtaining a gun, in response to the recent shooting at the Empire State Building, we have neglected to work towards this same goal with regards to explosives.

Mr. President, many of these differences in the law are simply oversights—Congress has often acted to limit the use and sale of firearms, and has neglected to bring explosives law into line. And in so doing, we have made it all too easy for many of the most dangerous or least accountable members of society to obtain materials which can result in an equal or even greater loss of life.

Congress has already made the determination that certain members of society should not have access to firearms, and the same logic clearly applies to dangerous and destructive explosive materials. It is time to bring the explosives law into line with gun laws, and this is all my bill does.

Specifically, my bill would take the list of categories of people who cannot obtain firearms and would add any of those categories not currently covered under the explosives law. Additionally, my bill would insert the Durbin-Kennedy nonimmigrant provisions into the law to protect us from persons entering the country and quickly moving to purchase and use deadly explosive material.

Mr. President, this is a simple bill meant only to correct longstanding gaps and loopholes in current law. I urge my colleagues to support the bill, and I hope we can quickly move to get this passed and protect Americans from future acts of explosive destruction.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 642

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Explosives Protection Act of 1997''.

SEC 2. PROHIBITIONS RELATING TO EXPLOSIVE MATERIALS.

(a) PROHIBITION OF SALE, DELIVERY, OR TRANSFER OF EXPLOSIVE MATERIALS TO CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by striking subsection (d) and inserting the following:

''(d) PROHIBITION OF SALE, DELIVERY, OR TRANSFER OF EXPLOSIVE MATERIALS TO CERTAIN INDIVIDUALS.—It shall be unlawful for any licensee to knowingly sell, deliver, or transfer any explosive materials to any individual who—

''(1) is less than 21 years of age;

''(2) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

''(3) is a fugitive from justice;

''(4) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(5) has been adjudicated as a mental defective or has been committed to any mental institution;

''(6) being an alien—

''(A) is illegally or unlawfully in the United States; or

''(B) except as provided in subsection (*l*), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

''(7) has been discharged from the Armed Forces under dishonorable conditions;

''(8) having been a citizen of the United States, has renounced his citizenship;

''(9) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

''(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; and

''(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

''(10) has been convicted in any court of a misdemeanor crime of domestic violence.''.

(b) PROHIBITION ON SHIPPING, TRANSPORTING, POSSESSION, OR RECEIPT OF EXPLOSIVES BY CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by striking subsection (p) and inserting the following:

''(p) PROHIBITION ON SHIPPING, TRANSPORTING, POSSESSION, OR RECEIPT OF EXPLOSIVES BY CERTAIN INDIVIDUALS.—It shall be unlawful for any person to ship or transport in interstate or foreign commerce, or possess, in or affecting commerce, any explosive, or to receive any explosive that has been shipped or transported in interstate or foreign commerce, if that person—

''(1) is less than 21 years of age;

''(2) has been convicted in any court, of a crime punishable by imprisonment for a term exceeding 1 year;

''(3) is a fugitive from justice;

''(4) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(5) has been adjudicated as a mental defective or who has been committed to a mental institution;

''(6) being an alien—

''(A) is illegally or unlawfully in the United States; or

''(B) except as provided in subsection (*l*), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

''(7) has been discharged from the Armed Forces under dishonorable conditions;

''(8) having been a citizen of the United States, has renounced his citizenship; or

''(9) is subject to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

''(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

''(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; and

''(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

''(10) has been convicted in any court of a misdemeanor crime of domestic violence.''.

(c) EXCEPTIONS AND WAIVER FOR CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by adding at the end the following:

''(*l*) EXCEPTIONS AND WAIVER FOR CERTAIN INDIVIDUALS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'alien' has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

''(B) the term 'nonimmigrant visa' has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

''(2) EXCEPTIONS.—Subsections (d)(5)(B) and (p)(5)(B) do not apply to any alien who has been lawfully admitted to the United States pursuant to a nonimmigrant visa, if that alien is—

''(A) admitted to the United States for lawful hunting or sporting purposes;

''(B) a foreign military personnel on official assignment to the United States;

''(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

''(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

''(3) WAIVER.—

''(A) IN GENERAL.—Any individual who has been admitted to the United States under a nonimmigrant visa and who is not described in paragraph (2), may receive a waiver from the applicability of subsection (d)(5)(B) or (p)(5)(B), if—

''(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (B); and

''(ii) the Attorney General approves the petition.

''(B) PETITIONS.—Each petition under subparagraph (A)(i) shall—

''(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

''(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to engage in any activity prohibited under subsection (d) or (p), as applicable, and certifying that the petitioner would not otherwise be prohibited from engaging in that activity under subsection (d) or (p), as applicable.''.●

By Mr. DURBIN (for himself, Mr. GREGG, and Mr. LAUTENBERG):

S. 643. A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured crop disaster assistance for tobacco; to the Committee on Agriculture, Nutrition, and Forestry.

THE TOBACCO SUBSIDY REDUCTION ACT OF 1997

Mr. DURBIN. Mr. President, people often ask their elected officials, ''If smoking is so dangerous, why does Congress subsidize tobacco?'' Today, my colleagues Senator GREGG of New Hampshire and Senator LAUTENBERG of New Jersey are joining me in introducing legislation that will give my colleagues an answer to this question.

The Tobacco Subsidy Reduction Act of 1997 ends the largest direct federal subsidy of tobacco. Specifically, this legislation prohibits the federal government from offering crop insurance or providing crop insurance subsidies for tobacco. For consistency, it also prohibits payments for tobacco under the Non-Insured Disaster Assistance Program, an alternative risk management program created in the 1996 Farm Bill for crops not eligible for the crop insurance program. I ask that the full text of the legislation appear in the RECORD following my statement.

Tobacco growing and processing is one of the most lucrative industries in America. To protect their profits despite the health dangers of their product, tobacco growers created the ''no net cost'' price support program. But a variety of taxpayer subsidies to tobacco remain, including crop insurance, extension services, and other programs assisting tobacco production and sales.

Last year, the federal government spent $98 million on tobacco-related subsidies and programs. These costs include $68 million for crop insurance losses beyond the premiums tobacco farmers paid, and $11 million for overhead costs of administering the crop insurance program for tobacco crops. This year, federal tobacco-related subsidies are estimated to amount to $67 million, including $48 million related to crop insurance.

In an era of tight budgets, there are better uses for this money. It makes no budgetary sense to subsidize a crop that causes an enormous amount of disease, disability, and death.

This amendment will not affect the tobacco price support program, so it will not drive any tobacco farmers out of business. It will merely get the federal government out of the business of paying for these specific subsidies for this deadly crop.

Cigarettes and smokeless tobacco products kill more than 400,000 Americans every year of cancer, heart disease, and other illnesses. These products also disable hundreds of thousands of other Americans through emphysema and other respiratory illnesses. It's time to take another step toward getting the federal government out of this business.

I invite my colleagues to cosponsor the Tobacco Subsidy Reduction Act and tell their constituents that they are working to cut government tobacco subsidies.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 643

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tobacco Subsidy Reduction Act of 1997''.

SEC. 2. PROHIBITION OF FEDERAL INSURANCE, REINSURANCE, OR NONINSURED CROP DISASTER ASSISTANCE FOR TOBACCO.

(a) CROP INSURANCE.—

(1) DEFINITION OF AGRICULTURAL COMMODITY.—Section 518 of the Federal Crop Insurance Act (7 U.S.C. 1518) is amended—

(A) by striking the section heading and all that follows through ''as used in this title, means'' and inserting the following:

''SEC. 518. DEFINITION OF AGRICULTURAL COMMODITY.

''(a) DEFINITION.—In this title, the term 'agricultural commodity' means'';

(B) by striking ''tobacco,''; and

(C) by adding at the end the following:

''(b) EXCEPTION.—In this title, the term 'agricultural commodity' does not include tobacco. The Corporation may not insure, provide reinsurance for insurers of, or pay any part of the premium related to the coverage of a crop of tobacco.''.

(2) CONFORMING AMENDMENTS.—Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended—

(A) in the first sentence of subsection (a)(2), by striking ''cases of tobacco and'' and inserting ''case of''; and

(B) in subsection (h)(9)(A), by inserting '', excluding tobacco,'' after ''commodity''.

(b) NONINSURED CROP DISASTER ASSISTANCE.—Section 196(a)(2) of Agricultural Market Transition Act (7 U.S.C. 7333(a)(2)) is amended by adding at the end the following:

''(C) CROPS SPECIFICALLY EXCLUDED.—The term 'eligible crop' does not include tobacco.

The Secretary may not make assistance available under this section to cover losses to a crop of tobacco.''.

(c) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall apply with respect to the 1997 and subsequent crops of tobacco.

EXISTING CONTRACTS.—The amendments made by this section shall not apply to a contract of insurance of the Federal Crop Insurance Corporation, or a contract of insurance reinsured by the Corporation, in existence on the date of enactment of this Act.

By Mr. D'AMATO:

S. 644. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to establish standards for relationships between group health plans and health insurance issuers with enrollees, health professionals, and providers; to the Committee on Labor and Human Resources.

THE PATIENT ACCESS TO RESPONSIBLE CARE ACT

Mr. D'AMATO. Mr. President, I am introducing this bill in an effort to protect the vast majority of patients in this country. Currently, in order to control the cost of health care, managed care organizations often place limits on the delivery of necessary medical services. I believe American families must be guaranteed basic health rights when dealing with HMOs and managed care providers. The bottom line in medicine must be the health of the patient, not the profits of any given company. This legislation, the Patient Access to Responsible Care Act, will meet this obligation.

With this Act, I seek to establish basic protections for patients and health care providers in order to ensure the best medical care for patients. I envision these basic provisions giving Americans a set of health rights, in the form of a Patients' Bill of Rights, when dealing with HMOs and other health insurance plans. These rights include:

The Right to Choose Your Own Doctor. This bill will allow patients to select their own doctors within their plan and change their selection of doctor as the patient feels necessary. It also gives patients, who are in managed care-only health plans, the option to see doctors outside their HMOs for an additional fee.

The Right to Quality Health Care. This legislation will ensure that doctors are not prohibited or limited in any way from discussing a patient's health status, treatment options or any other medical communications. It also stops HMOs from using financial incentives for doctors to deny or limit care to patients. We must make sure that health care decisions are based on sound medical criteria and not the financial bottom line.

The Right to Justice. This Act closes loopholes in current law that allow the vast majority of health insurance plans to escape legal responsibility for decisions causing needless injury or death to a patient. Currently, self-insured managed care plans cannot be held liable for a patient's wrongful death or personal injuries resulting from plan policies even when those policies directly contributed to the patient's death or injury. This is wrong and this bill would guarantee that if HMO policies hurt patients, the HMO will be held accountable for their actions.

In addition, within a patient's health plan, this bill guarantees patients can quickly and easily appeal adverse decisions by their manage care plans. We've heard too many horror stories of patients who have been denied treatment by a health plans' policy. In addition, the appeals process is too bureaucratic and lengthy, sometimes resulting in tragic consequences. We must always put the quality of patient care first.

The Right to Full Disclosure. This bill also provides that health insurance plans make available to each patient a list of what health care is covered, what are the plans costs and profits, and how much is the plan spending on marketing and other non-medical costs. This is a sort of ''truth-in-lending'' statement for health plans.

When I first considered introducing this Patients' Bill of Rights, I was concerned about how prevalent a need there was for this type of legislation. I quickly found numerous instances where patients were suffering adverse outcomes from poor medical decisions made by managed care companies. The most publicized recent case is Corcoran versus United Health Care. In this case, Ms. Corcoran, a Louisiana woman with a high risk pregnancy, was admitted to a hospital under her physician's orders. She was discharged from the hospital after her health plan refused to pay for her care. The health plan would only authorize a visiting nurse to check on the woman at home. At one point, when the nurse was absent, the unborn child went into distress and died. The U.S. Court of Appeals for the 5th Circuit ruled that the woman had no right to sue the HMO for damages because the insurance plan was governed under ERISA laws. These laws preempt state insurance laws allowing patients to seek due process. Americans cannot expect health care with this type of managed health care.

As I said before, there are numerous instances where managed care is revealed to be ruled by a company's profits. In New York, a diabetic developed an infection in his foot that had become gangrenous and had spread all the way to his groin. Almost his entire leg was infected and the blood vessels clogged. His doctor, a cardio-vascular specialist, feared that the gentleman could lose his foot if treatment was not initiated immediately. So, as a responsible physician, he admitted his patient to the hospital where he was immediately treated with intravenous antibiotics to combat the infection. Once in the hospital, the gentleman's HMO contacted the doctor to find out how long he anticipated the hospital stay would be. Since the man had clogged blood vessels and had to undergo a vascular bypass in order to be treated, the doctor estimated a stay between 10 and 15 days.

Upon learning this, an HMO official went to the gentleman's hospital room, and without even notifying the doctor, told the man that ''he could watch Oprah and be treated as well from home with a visiting nurse.'' The gentleman's doctor repeatedly argued with the HMO that it was not medically safe to release his patient from the hospital. But, with fluid still draining from his wounds and the doctor still protesting against the early discharge, the gentleman was sent home just a week after being admitted. The next day, the HMO sent a nurse—not a cardiovascular specialist or even a doctor, but a nurse—to his home to evaluate his condition and to show his wife how to change the dressing covering his wounds. With this state of affairs, the man eventually required surgery. With the early discharge and the lack of responsible care on the part of the HMO, the surgery had to be postponed because the patient's blood had become too thin to safely perform surgery.

In Georgia, a 2-year old boy was suffering from a high fever which did not respond to medication. His parents followed the insurance company's instructions for pre-authorization of emergency room care and attempted to drive 42 miles to the preferred hospital. The couple passed five emergency rooms along the way. Before they could reach the preferred hospital, their son went into cardiac arrest and stopped breathing. The child slipped into a coma, developed gangrene in his extremities, and subsequently lost his arms and legs to amputation.

In California, a young girl was diagnosed with Wilm's tumor, a rare childhood kidney cancer. The families new HMO required that the girl's surgery be performed by a surgeon within the managed care plan. None of the plan's surgeons had any experience with Wilm's tumor. The family chose to use an expert surgeon outside of the plan who had a proven track record with this type of tumor. The surgery was a success and the child has fully recovered. However, the HMO denied coverage for going outside of their system causing the family to enter a 2 year legal battle with the plan. In the first ever enforcement action against an HMO for a patient complaint, the state imposed a $500,000 fine against the plan for denying appropriate medical care.

In Colorado, a 75-year old woman was diagnosed with Kidney Cancer, but her plan refused to authorize surgery to remove the kidney and tumor of such an elderly woman. The plan only relented and allowed the surgery to be performed when a Congressman finally intervened on her behalf. The lady's cancer is now in full remission.

In Texas, a 17-year old Texas girl was critically injured in a head-on car crash that left her with severe head trauma, a broken back, a crushed pelvis, and numerous other injuries. She

eventually pulled through, but her health plan refused to pay $40,000 of her hospital bill because her family had not received ''prior authorization'' for her emergency admission to the hospital—even though the hospital was a preferred provider for the plan.

These stories are not isolated incidents. They do not happen just in New York and Georgia, but across the nation. They speak for the thousands of patients across the country who have been denied access to the responsible care they need and deserve.

Mr. President, I believe it would be beneficial for my colleagues if I summarized what rights this bill will provide for patients across the country and how this bill meets those rights.

First of all, we are trying to increase patient access to plans and doctors. Patients, including those in under served inner-city and rural areas, are ensured their choice of doctor within the plan. The bill will ensure that health plans have enough doctors to guarantee this choice. Patients will also have access to any specialist required by their medical condition within the plan. In addition, patients are to have emergency health care without the burden of seeking prior approval from their health plan.

Also in this Act, patients will have an expanded choice of health care providers inside and outside of the network. People can either go through the network, or choose a plan that allows them to go out of the network, although at a higher cost. They will be allowed to select their own personal doctors within their plan and change their selection as the patient feels necessary. Patients will also be given the option to choose a health insurance plan that covers health care options not offered in the network. The managed care plan would reimburse the costs of these services based on rates consistent with those negotiated under the plan. Patients would be responsible for any remaining costs.

This bill will include a prohibition on gag rules. Patients are ensured that the health plan will not in any way limit doctors from discussing the patient's health status, treatment options or any other medical communication. Health plans can not offer any incentives, financial or otherwise, for doctors to deny or limit any health care.

In addition, this Bill of Rights forces HMOs to be responsible for their decisions. Currently, HMOs can not be held liable for wrongful death or personal injury suffered by the medical decision making policies of the plan, action may only be brought against the doctor and the hospital. Even if the HMO or the plan had in place a policy which directly contributed to death or injury of a patient, they are protected. This bill changes that by ensuring that managed care plans are held responsible for any medical decisions that they make. This bill says that if you make a medical decision, no matter who you are, you will be responsible for your actions. ERISA was never intended to be used as a shield for health plans providing negligent medical care. Also, there will be a provision providing due process on patient appeals claims made to their heath plans. Within the plan, patients will be guaranteed the ability to quickly and easily appeal adverse decisions.

The act will establish an information disclosure provision allowing patients to make informed decisions about which health plan would be best for them. This is a sort of ''Truth in Lending'' statement for HMO's. Every health plan will be required to disclose information about plan benefits, appeals procedures, plan performance measures, history of patient satisfaction, as well as the number and type of health care providers participating in the network. Based on this information, patients will be guaranteed the ability to make informed decisions about the quality of their health care and the managed care companies they choose from.

In addition, there will be doctor and patient protections from discrimination. The provision allows any doctor who meets a clear set of standards the opportunity to be a member of any managed care plan. In addition, patients will not be discriminated against based on their personal background or preexisting conditions, such as long-term and costly diseases.

Mr. President, we have an obligation to set minimum health care standards in the private sector to protect American families and ensure they have access to quality health care. We cannot allow the profits of the company to get in the way of patient health.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 644

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Patient Access to Responsible Care Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PATIENT PROTECTION STANDARDS UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) PATIENT PROTECTION STANDARDS.—Title XXVII of the Public Health Service Act is amended—

(1) by redesignating part C as part D, and

(2) by inserting after part B the following new part:

''PART C—PATIENT PROTECTION STANDARDS

''SEC. 2770. NOTICE; ADDITIONAL DEFINITIONS; CONSTRUCTION.

''(a) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this part as if such section applied to such issuer and such issuer were a group health plan.

''(b) ADDITIONAL DEFINITIONS.—For purposes of this part:

''(1) ENROLLEE.—The term 'enrollee' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

''(2) HEALTH PROFESSIONAL.—The term 'health professional' means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with State law.

''(3) NETWORK.—The term 'network' means, with respect to a health insurance issuer offering health insurance coverage, the participating health professionals and providers through whom the plan or issuer provides health care items and services to enrollees.

''(4) NETWORK COVERAGE.—The term 'network coverage' means health insurance coverage offered by a health insurance issuer that provides or arranges for the provision of health care items and services to enrollees through participating health professionals and providers.

''(5) PARTICIPATING.—The term 'participating' means, with respect to a health professional or provider, a health professional or provider that provides health care items and services to enrollees under network coverage under an agreement with the health insurance issuer offering the coverage.

''(6) PRIOR AUTHORIZATION.—The term 'prior authorization' means the process of obtaining prior approval from a health insurance issuer as to the necessity or appropriateness of receiving medical or clinical services for treatment of a medical or clinical condition.

''(7) PROVIDER.—The term 'provider' means a health organization, health facility, or health agency that is licensed, accredited, or certified to provide health care items and services under applicable State law.

''(8) SERVICE AREA.—The term 'service area' means, with respect to a health insurance issuer with respect to health insurance coverage, the geographic area served by the issuer with respect to the coverage.

''(9) UTILIZATION REVIEW.—The term 'utilization review' means prospective, concurrent, or retrospective review of health care items and services for medical necessity, appropriateness, or quality of care that includes prior authorization requirements for coverage of such items and services.

''(c) NO REQUIREMENT FOR ANY WILLING PROVIDER.—Nothing in this part shall be construed as requiring a health insurance issuer that offers network coverage to include for participation every willing provider or health professional who meets the terms and conditions of the plan or issuer.

''SEC. 2771. ENROLLEE ACCESS TO CARE.

''(a) GENERAL ACCESS.—

''(1) IN GENERAL.—Subject to paragraphs (2), and (3), a health insurance issuer shall establish and maintain adequate arrangements, as defined by the applicable State authority, with a sufficient number, mix, and distribution of health professionals and providers to assure that covered items and services are available and accessible to each enrollee under health insurance coverage—

''(A) in the service area of the issuer;

''(B) in a variety of sites of service;

''(C) with reasonable promptness (including reasonable hours of operation and after-hours services);

''(D) with reasonable proximity to the residences and workplaces of enrollees; and

''(E) in a manner that—

''(i) takes into account the diverse needs of enrollees, and

''(ii) reasonably assures continuity of care.

For a health insurance issuer that serves a rural or medically underserved area, the issuer shall be treated as meeting the requirement of this subsection if the issuer has arrangements with a sufficient number, mix, and distribution of health professionals and providers having a history of serving such areas. The use of telemedicine and other innovative means to provide covered items and services by a health insurance issuer that serves a rural or medically underserved area shall also be considered in determining whether the requirement of this subsection is met.

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a health insurance issuer to have arrangements that conflict with its responsibilities to establish measures designed to maintain quality and control costs.

''(3) DEFINITIONS.—For purposes of paragraph (1):

''(A) MEDICALLY UNDERSERVED AREA.—The term 'medically underserved area' means an area that is designated as a health professional shortage area under section 332 of the Public Health Service Act or as a medically underserved area for purposes of section 330 or 1302(7) of such Act.

''(B) RURAL AREA.—The term 'rural area' means an area that is not within a Standard Metropolitan Statistical Area or a New England County Metropolitan Area (as defined by the Office of Management and Budget).

''(b) EMERGENCY AND URGENT CARE.—

''(1) IN GENERAL.—A health insurance issuer shall—

''(A) assure the availability and accessibility of medically or clinically necessary emergency services and urgent care services within the service area of the issuer 24 hours a day, 7 days a week;

''(B) require no prior authorization for items and services furnished in a hospital emergency department to an enrollee (without regard to whether the health professional or hospital has a contractual or other arrangement with the issuer) with symptoms that would reasonably suggest to a prudent layperson an emergency medical condition (including items and services described in subparagraph (C)(iii));

''(C) cover (and make reasonable payments for)—

''(i) emergency services,

''(ii) services that are not emergency services but are described in subparagraph (B),

''(iii) medical screening examinations and other ancillary services necessary to diagnose, treat, and stabilize an emergency medical condition, and

''(iv) urgent care services, without regard to whether the health professional or provider furnishing such services has a contractual (or other) arrangement with the issuer; and

''(D) make prior authorization determinations for—

''(i) services that are furnished in a hospital emergency department (other than services described in clauses (i) and (iii) of subparagraph (C)), and

''(ii) urgent care services, within the time periods specified in (or pursuant to) section 2776(a)(8).

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) EMERGENCY MEDICAL CONDITION.—The term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in—

''(i) placing the patient's health in serious jeopardy,

''(ii) serious impairment to bodily functions, or

''(iii) serious dysfunction of any bodily organ or part.

''(B) EMERGENCY SERVICES.—The term 'emergency services' means health care items and services that are necessary for the diagnosis, treatment, and stabilization of an emergency medical condition.

''(C) URGENT CARE SERVICES.—The term 'urgent care services' means health care items and services that are necessary for the treatment of a condition that—

''(i) is not an emergency medical condition,

''(ii) requires prompt medical or clinical treatment, and

''(iii) poses a danger to the patient if not treated in a timely manner, as defined by the applicable State authority in consultation with relevant treating health professionals or providers.

''(c) SPECIALIZED SERVICES.—

''(1) IN GENERAL.—A health insurance issuer offering network coverage shall demonstrate that enrollees have access to specialized treatment expertise when such treatment is medically or clinically indicated in the professional judgment of the treating health professional, in consultation with the enrollee.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'specialized treatment expertise' means expertise in diagnosing or treating—

''(A) unusual diseases or conditions, or

''(B) diseases and conditions that are unusually difficult to diagnose or treat.

''(d) INCENTIVE PLANS.—

''(1) IN GENERAL.—In the case of a health insurance issuer that offers network coverage, any health professional or provider incentive plan operated by the issuer with respect to such coverage shall meet the following requirements:

''(A) No specific payment is made directly or indirectly under the plan to a professional or provider or group of professionals or providers as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee.

''(B) If the plan places such a professional, provider, or group at substantial financial risk (as determined by the Secretary) for services not provided by the professional, provider, or group, the issuer—

''(i) provides stop-loss protection for the professional, provider, or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of professionals or providers placed at such substantial financial risk in the group or under the coverage and the number of individuals enrolled with the issuer who receive services from the professional, provider, or group, and

''(ii) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the issuer to determine the degree of access of such individuals to services provided by the issuer and satisfaction with the quality of such services.

''(C) The issuer provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this paragraph.

''(2) In this subsection, the term 'health professional or provider incentive plan' means any compensation arrangement between a health insurance issuer and a health professional or provider or professional or provide group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the issuer.

''SEC. 2772. ENROLLEE CHOICE OF HEALTH PROFESSIONALS AND PROVIDERS.

''(a) CHOICE OF PERSONAL HEALTH PROFESSIONAL.—A health insurance issuer shall permit each enrollee under network coverage to—

''(1) select a personal health professional from among the participating health professionals of the issuer, and

''(2) change that selection as appropriate.

''(b) POINT-OF-SERVICE OPTION.—

''(1) IN GENERAL.—If a health insurance issuer offers to enrollees health insurance coverage which provides for coverage of services only if such services are furnished through health professionals and providers who are members of a network of health professionals and providers who have entered into a contract with the issuer to provide such services, the issuer shall also offer to such enrollees (at the time of enrollment) the option of health insurance coverage which provides for coverage of such services which are not furnished through health professionals and providers who are members of such a network.

''(2) FAIR PREMIUMS.—The amount of any additional premium required for the option described in paragraph (1) may not exceed an amount that is fair and reasonable, as established by the applicable State authority, in consultation with the National Association of Insurance Commissioners, based on the nature of the additional coverage provided.

''(3) COST-SHARING.—Under the option described in paragraph (1), the health insurance coverage shall provide for reimbursement rates for covered services offered by health professionals and providers who are not participating health professionals or providers that are not less than the reimbursement rates for covered services offered by participating health professionals and providers. Nothing in this paragraph shall be construed as protecting an enrollee against balance billing by a health professional or provider that is not a participating health professional or provider.

''(c) CONTINUITY OF CARE.—A health insurance issuer offering network coverage shall—

''(1) ensure that any process established by the issuer to coordinate care and control costs does not create an undue burden, as defined by the applicable State authority, for enrollees with special health care needs or chronic conditions;

''(2) ensure direct access to relevant specialists for the continued care of such enrollees when medically or clinically indicated in the judgment of the treating health professional, in consultation with the enrollee;

''(3) in the case of an enrollee with special health care needs or a chronic condition, determine whether, based on the judgment of the treating health professional, in consultation with the enrollee, it is medically or clinically necessary to use a specialist or a care coordinator from an interdisciplinary team to ensure continuity of care; and

''(4) in circumstances under which a change of health professional or provider might disrupt the continuity of care for an enrollee, such as—

''(A) hospitalization, or

''(B) dependency on high-technology home medical equipment,

provide for continued coverage of items and services furnished by the health professional or provider that was treating the enrollee before such change for a reasonable period of time.

For purposes of paragraph (4), a change of health professional or provider may be due to changes in the membership of an issuer's health professional and provider network, changes in the health coverage made available by an employer, or other similar circumstances.

''SEC. 2773. NONDISCRIMINATION AGAINST ENROLLEES AND IN THE SELECTION OF HEALTH PROFESSIONALS; EQUITABLE ACCESS TO NETWORKS.

''(a) NONDISCRIMINATION AGAINST ENROLLEES.—No health insurance issuer may discriminate (directly or through contractual arrangements) in any activity that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socioeconomic status, age, disability, health status, or anticipated need for health services.

''(b) NONDISCRIMINATION IN SELECTION OF NETWORK HEALTH PROFESSIONALS.—A health insurance issuer offering network coverage shall not discriminate in selecting the members of its health professional network (or in establishing the terms and conditions for membership in such network) on the basis of—

''(1) the race, national origin, gender, age, or disability (other than a disability that impairs the ability of an individual to provide health care services or that may threaten the health of enrollees) of the health professional; or

''(2) the health professional's lack of affiliation with, or admitting privileges at, a hospital (unless such lack of affiliation is a result of infractions of quality standards and is not due to a health professional's type of license).

''(c) NONDISCRIMINATION IN ACCESS TO HEALTH PLANS.—While nothing in this section shall be construed as an 'any willing provider' requirement (as referred to in section 2770(c)), a health insurance issuer shall not discriminate in participation, reimbursement, or indemnification against a health professional, who is acting within the scope of the health professional's license or certification under applicable State law, solely on the basis of such license or certification.

''SEC. 2774. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

''(a) IN GENERAL.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a health insurance issuer and a health professional shall not prohibit or restrict the health professional from engaging in medical communications with his or her patient.

''(b) NULLIFICATION.—Any contract provision or agreement described in subsection (a) shall be null and void.

''(c) MEDICAL COMMUNICATION DEFINED.—For purposes of this section, the term 'medical communication' means a communication made by a health professional with a patient of the health professional (or the guardian or legal representative of the patient) with respect to—

''(1) the patient's health status, medical care, or legal treatment options;

''(2) any utilization review requirements that may affect treatment options for the patient; or

''(3) any financial incentives that may affect the treatment of the patient.

''SEC. 2775. DEVELOPMENT OF PLAN POLICIES.

''A health insurance issuer that offers network coverage shall establish mechanisms to consider the recommendations, suggestions, and views of enrollees and participating health professionals and providers regarding—

''(1) the medical policies of the issuer (including policies relating to coverage of new technologies, treatments, and procedures);

''(2) the utilization review criteria and procedures of the issuer;

''(3) the quality and credentialing criteria of the issuer; and

''(4) the medical management procedures of the issuer.

''SEC. 2776. DUE PROCESS FOR ENROLLEES.

''(a) UTILIZATION REVIEW.—The utilization review program of a health insurance issuer shall—

''(1) be developed (including any screening criteria used by such program) with the involvement of participating health professionals and providers;

''(2) to the extent consistent with the protection of proprietary business information (as defined for purposes of section 552 of title 5, United States Code) release, upon request, to affected health professionals, providers, and enrollees the screening criteria, weighting elements, and computer algorithms used in reviews and a description of the method by which they were developed;

''(3) uniformly apply review criteria that are based on sound scientific principles and the most recent medical evidence;

''(4) use licensed, accredited, or certified health professionals to make review determinations (and for services requiring specialized training for their delivery, use a health professional who is qualified through equivalent specialized training and experience);

''(5) subject to reasonable safeguards, disclose to health professionals and providers, upon request, the names and credentials of individuals conducting utilization review;

''(6) not compensate individuals conducting utilization review for denials of payment or coverage of benefits;

''(7) comply with the requirement of section 2771 that prior authorization not be required for emergency and related services furnished in a hospital emergency department;

''(8) make prior authorization determinations—

''(A) in the case of services that are urgent care services described in section 2771(b)(2)(C), within 30 minutes of a request for such determination, and

''(B) in the case of other services, within 24 hours after the time of a request for determination;

''(9) include in any notice of such determination an explanation of the basis of the determination and the right to an immediate appeal;

''(10) treat a favorable prior authorization review determination as a final determination for purposes of making payment for a claim submitted for the item or service involved unless such determination was based on false information knowingly supplied by the person requesting the determination;

''(11) provide timely access, as defined by the applicable State authority, to utilization review personnel and, if such personnel are not available, waives any prior authorization that would otherwise be required; and

''(12) provide notice of an initial determination on payment of a claim within 30 days after the date the claim is submitted for such item or service, and include in such notice an explanation of the reasons for such determination and of the right to an immediate appeal.

''(b) APPEALS PROCESS.—A health insurance issuer shall establish and maintain an accessible appeals process that—

''(1) reviews an adverse prior authorization determination—

''(A) for urgent care services, described in subsection (a)(8)(A), within 1 hour after the time of a request for such review, and

''(B) for other services, within 24 hours after the time of a request for such review;

''(2) reviews an initial determination on payment of claims described in subsection (a)(12) within 30 days after the date of a request for such review;

''(3) provides for review of determinations described in paragraphs (1) and (2) by an appropriate clinical peer professional who is in the same or similar specialty as would typically provide the item or service involved (or another licensed, accredited, or certified health professional acceptable to the plan and the person requesting such review); and

''(4) provides for review of—

''(A) the determinations described in paragraphs (1), (2), and (3), and

''(B) enrollee complaints about inadequate access to any category or type of health professional or provider in the network of the issuer or other matters specified by this part,

by an appropriate clinical peer professional who is in the same or similar specialty as would typically provide the item or service involved (or another licensed, accredited, or certified health professional acceptable to the issuer and the person requesting such review) that is not involved in the operation of the plan or in making the determination or policy being appealed.

The procedures specified in this subsection shall not be construed as preempting or superseding any other reviews or appeals an issuer is required by law to make available.

''SEC. 2777. DUE PROCESS FOR HEALTH PROFESSIONALS AND PROVIDERS.

''(a) IN GENERAL.—A health insurance issuer with respect to its offering of network coverage shall—

''(1) allow all health professionals and providers in its service area to apply to become a participating health professional or provider during at least one period in each calendar year;

''(2) provide reasonable notice to such health professionals and providers of the opportunity to apply and of the period during which applications are accepted;

''(3) provide for review of each application by a credentialing committee with appropriate representation of the category or type of health professional or provider;

''(4) select participating health professionals and providers based on objective standards of quality developed with the suggestions and advice of professional associations, health professionals, and providers;

''(5) make such selection standards available to—

''(A) those applying to become a participating provider or health professional;

''(B) health plan purchasers, and

''(C) enrollees;

''(6) when economic considerations are taken into account in selecting participating

health professionals and providers, use objective criteria that are available to those applying to become a participating provider or health professional and enrollees;

''(7) adjust any economic profiling to take into account patient characteristics (such as severity of illness) that may result in atypical utilization of services;

''(8) make the results of such profiling available to insurance purchasers, enrollees, and the health professional or provider involved;

''(9) notify any health professional or provider being reviewed under the process referred to in paragraph (3) of any information indicating that the health professional or provider fails to meet the standards of the issuer;

''(10) offer a health professional or provider receiving notice pursuant to the requirement of paragraph (9) with an opportunity to—

''(A) review the information referred to in such paragraph, and

''(B) submit supplemental or corrected information;

''(11) not include in its contracts with participating health professionals and providers a provision permitting the issuer to terminate the contract 'without cause';

''(12) provide a due process appeal that conforms to the process specified in section 412 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11112) for all determinations that are adverse to a health professional or provider; and

''(13) unless a health professional or provider poses an imminent harm to enrollees or an adverse action by a governmental agency effectively impairs the ability to provide health care items and services, provide—

''(A) reasonable notice of any decision to terminate a health professional or provider 'for cause' (including an explanation of the reasons for the determination),

''(B) an opportunity to review and discuss all of the information on which the determination is based, and

''(C) an opportunity to enter into a corrective action plan, before the determination becomes subject to appeal under the process referred to in paragraph (12).

''(b) RULE OF CONSTRUCTION.—The requirements of subsection (a) shall not be construed as preempting or superseding any other reviews and appeals a health insurance issuer is required by law to make available.

''SEC. 2778. INFORMATION REPORTING AND DISCLOSURE.

''(a) IN GENERAL.—A health insurance issuer offering health insurance coverage shall provide enrollees and prospective enrollees with information about—

''(1) coverage provisions, benefits, and any exclusions—

''(A) by category of service,

''(B) by category or type of health professional or provider, and

''(C) if applicable, by specific service, including experimental treatments;

''(2) the percentage of the premium charged by the issuer that is set aside for administration and marketing of the issuer;

''(3) the percentage of the premium charged by the issuer that is expended directly for patient care;

''(4) the number, mix, and distribution of participating health professionals and providers;

''(5) the ratio of enrollees to participating health professionals and providers by category and type of health professional and provider;

''(6) the expenditures and utilization per enrollee by category and type of health professional and provider;

''(7) the financial obligations of the enrollee and the issuer, including premiums, copayments, deductibles, and established aggregate maximums on out-of-pocket costs, for all items and services, including—

''(A) those furnished by health professionals and providers that are not participating health professionals and providers, and

''(B) those furnished to an enrollee who is outside the service area of the coverage;

''(8) utilization review requirements of the issuer (including prior authorization review, concurrent review, post-service review, post-payment review, and any other procedures that may lead to denial of coverage or payment for a service);

''(9) financial arrangements and incentives that may—

''(A) limit the items and services furnished to an enrollee,

''(B) restrict referral or treatment options, or

''(C) negatively affect the fiduciary responsibility of a health professional or provider to an enrollee;

''(10) other incentives for health professionals and providers to deny or limit needed items or services;

''(11) quality indicators for the issuer and participating health professionals and providers, including performance measures such as appropriate referrals and prevention of secondary complications following treatment;

''(12) grievance procedures and appeals rights under the coverage, and summary information about the number and disposition of grievances and appeals in the most recent period for which complete and accurate information is available; and

''(13) the percentage of utilization review determinations made by the issuer that disagree with the judgment of the treating health professional or provider and the percentage of such determinations that are reversed on appeal.

''(b) REGULATIONS.—The Secretary, in collaboration with the Secretary of Labor, shall issue regulations to establish—

''(1) the styles and sizes of type to be used with respect to the appearance of the publication of the information required under subsection (a);

''(2) standards for the publication of information to ensure that such publication is—

''(A) readily accessible, and

''(B) in common language easily understood,

by individuals with little or no connection to or understanding of the language employed by health professionals and providers, health insurance issuers, or other entities involved in the payment or delivery of health care services, and

''(3) the placement and positioning of information in health plan marketing materials.

''SEC. 2779. CONFIDENTIALITY; ADEQUATE RESERVES.

''(a) CONFIDENTIALITY.—

''(1) IN GENERAL.—A health insurance issuer shall establish mechanisms and procedures to ensure compliance with applicable Federal and State laws to protect the confidentiality of individually identifiable information held by the issuer with respect to an enrollee, health professional, or provider.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'individually identifiable information' means, with respect to an enrollee, a health professional, or a provider, any information, whether oral or recorded in any medium or form, that identifies or can readily be associated with the identity of the enrollee, the health professional, or the provider.

''(b) FINANCIAL RESERVES; SOLVENCY.—A health insurance issuer shall—

''(1) meet such financial reserve or other solvency-related requirements as the applicable State authority may establish to assure the continued availability of (and appropriate payment for) covered items and services for enrollees; and

''(2) establish mechanisms specified by the applicable State authority to protect enrollees, health professionals, and providers in the event of failure of the issuer.

Such requirements shall not unduly impede the establishment of health insurance issuers owned and operated by health care professionals or providers or by non-profit community-based organizations.

''SEC. 2780. QUALITY IMPROVEMENT PROGRAM.

''(a) IN GENERAL.—A health insurance issuer shall establish a quality improvement program (consistent with subsection (b)) that systematically and continuously assesses and improves—

''(1) enrollee health status, patient outcomes, processes of care, and enrollee satisfaction associated with health care provided by the issuer; and

''(2) the administrative and funding capacity of the issuer to support and emphasize preventive care, utilization, access and availability, cost effectiveness, acceptable treatment modalities, specialists referrals, the peer review process, and the efficiency of the administrative process.

''(b) FUNCTIONS.—A quality improvement program established pursuant to subsection (a) shall—

''(1) assess the performance of the issuer and its participating health professionals and providers and report the results of such assessment to purchasers, participating health professionals and providers, and administrative personnel;

''(2) demonstrate measurable improvements in clinical outcomes and plan performance measured by identified criteria, including those specified in subsection (a)(1); and

''(3) analyze quality assessment data to determine specific interactions in the delivery system (both the design and funding of the health insurance coverage and the clinical provision of care) that have an adverse impact on the quality of care.''.

(b) APPLICATION TO GROUP HEALTH INSURANCE COVERAGE.—

(1) Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2706. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Each health insurance issuer shall comply with patient protection requirements under part C with respect to group health insurance coverage it offers.

''(b) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under part C (and this section) and section 713 of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.

(2) Section 2792 of such Act (42 U.S.C. 300gg–92) is amended by inserting ''and section 2706(b)'' after ''of 1996''.

(c) APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2751 the following new section:

''SEC. 2752. PATIENT PROTECTION STANDARDS.

''Each health insurance issuer shall comply with patient protection requirements under part C with respect to individual health insurance coverage it offers.''.

(d) MODIFICATION OF PREEMPTION STANDARDS.—

(1) GROUP HEALTH INSURANCE COVERAGE.—Section 2723 of such Act (42 U.S.C. 300gg–23) is amended—

(A) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(B) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(C) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 2706 and part C, and part D insofar as it applies to section 2706 or part C, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(2) INDIVIDUAL HEALTH INSURANCE COVERAGE.—Section 2762 of such Act (42 U.S.C. 300gg–62), as added by section 605(b)(3)(B) of Public Law 104–204, is amended—

(A) in subsection (a), by striking ''subsection (b), nothing in this part'' and inserting ''subsections (b) and (c)'', and

(B) by adding at the end the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (b), the provisions of section 2752 and part C, and part D insofar as it applies to section 2752 or part C, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 2723(a)(1) of such Act (42 U.S.C. 300gg–23(a)(1)) is amended by striking ''part C'' and inserting ''parts C and D''.

(2) Section 2762(b)(1) of such Act (42 U.S.C. 300gg–62(b)(1)) is amended by striking ''part C'' and inserting ''part D''.

(f) EFFECTIVE DATES.—(1)(A) Subject to subparagraph (B), the amendments made by subsections (a), (b), (d)(1), and (e) shall apply with respect to group health insurance coverage for group health plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(B) In the case of group health insurance coverage provided pursuant to a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsections (a), (b), (d)(1), and (e) shall not apply to plan years beginning before the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(ii) the general effective date.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) or (b) shall not be treated as a termination of such collective bargaining agreement.

(2) The amendments made by subsections (a), (c), (d)(2), and (e) shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

SEC. 3. PATIENT PROTECTION STANDARDS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 713. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of part C of title XXVII of the Public Health Service Act.

''(b) REFERENCES IN APPLICATION.—In applying subsection (a) under this part, any reference in such part C—

''(1) to a health insurance issuer and health insurance coverage offered by such an issuer is deemed to include a reference to a group health plan and coverage under such plan, respectively;

''(2) to the Secretary is deemed a reference to the Secretary of Labor;

''(3) to an applicable State authority is deemed a reference to the Secretary of Labor; and

''(4) to an enrollee with respect to health insurance coverage is deemed to include a reference to a participant or beneficiary with respect to a group health plan.

''(c) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under such part C (and section 2706 of the Public Health Service Act) and this section are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''.

(b) MODIFICATION OF PREEMPTION STANDARDS.—Section 731 of such Act (42 U.S.C. 1191) is amended—

(1) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following new subsection:

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 713 and part C of title XXVII of the Public Health Service Act, and subpart C insofar as it applies to section 713 or such part, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(c) CONFORMING AMENDMENTS.—(1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Patient protection standards.''.

(3) Section 734 of such Act (29 U.S.C. 1187) is amended by inserting ''and section 713(d)'' after ''of 1996''.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendments made by this section shall apply with respect to group health plans for plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(2) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

SEC. 4. NON-PREEMPTION OF STATE LAW RESPECTING LIABILITY OF GROUP HEALTH PLANS.

(a) IN GENERAL.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by redesignating paragraph (9) as paragraph (10) and inserting the following new paragraph:

''(9) Subsection (a) of this section shall not be construed to preclude any State cause of action to recover damages for personal injury or wrongful death against any person that provides insurance or administrative services to or for an employee welfare benefit plan maintained to provide health care benefits.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to causes of action arising on or after the date of the enactment of this Act.

By Mr. LAUTENBERG (for himself and Mr. TORRICELLI):

S. 645. A bill to amend the Federal Water Pollution Control Act to improve and enforce compliance programs; to the Committee on Environment and Public Works.

THE CLEAN WATER ENFORCEMENT AND COMPLIANCE IMPROVEMENT ACT OF 1997

Mr. LAUTENBERG. Mr. President, I introduce the Clean Water Enforcement and Compliance Improvement Act of 1997. This important bill will put real teeth in the enforcement provisions of the Clean Water Act, and will help restore and preserve our Nation's already stressed lakes, rivers and coastal areas. I would like to commend my colleague from New Jersey, Congressman Pallone, for introducing similar legislation in the House of Representatives. Senator TORRICELLI has joined as a co-sponsor of our bill.

Mr. President, when Congress first enacted the Clean Water Act in 1972, we established lofty goals-to make our Nation's waters fishable and swimmable. And we mandated strict enforcement and provided for penalties to assure compliance with the act's provisions.

We were responding to strong public concern about pollution of our waterways. That concern is every bit as strong today because people understand that clean water is essential to human life. The American people want us to rid our waters of bacteria, toxins, and garbage.

Yet, as we approach the 25th anniversary of the Clean Water Act, and after several substantial revisions since its enactment, the act has failed to meet all of our goals. While the Act has resulted in significant progress and water quality is improving, our waters are not clean. In 1988, over one-third of our rivers, lakes and estuaries surveyed throughout the country were either failing to achieve designated water quality levels or were threatened with failing to achieve those levels. In my State of New Jersey, a survey of roughly 10 percent of the State's rivers showed that only 15 percent were safe for swimming.

One reason we haven't made more progress is that the Clean Water Act is not being adequately enforced.

Mr. President, effective enforcement is essential to achieving the goals of the act. Not only does effective enforcement deter violations, but it also helps ensure that appropriate corrective actions are taken in a timely manner when violations do occur. The Clean Water Enforcement and Compliance Improvement Act will strengthen enforcement efforts.

Mr. President, my bill will toughen penalties for polluters, improve enforcement by EPA and state water pollution agencies, and expand citizens' right-to-know about violations of the Clean Water Act.

It establishes mandatory minimum penalties for serious violations of the Clean Water Act.

It requires that civil penalties be no less than the economic benefit resulting from the violation.

It requires more frequent reporting of water discharges to identify violations more quickly.

And it requires EPA to publish annually a list of those facilities that are in significant noncompliance with the Clean Water Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 645

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Water Enforcement and Compliance Improvement Act of 1997''.

SEC. 2. FINDINGS.

(a) IN GENERAL.—Congress finds that—

(1) a significant number of persons who have been issued permits under section 402 of the Federal Water Pollution Control Act are in violation of such permits;

(2) current enforcement programs of the Administrator of the Environmental Protection Agency and the States fail to address violations of such permits in a timely and effective manner;

(3) full, accurate and prompt reporting of possible violations of the Federal Water Pollution Control Act is necessary for implementation and well served by assuring that good faith reporters of possible violations are protected against adverse personnel actions;

(4) often violations of such permits continue for a considerable period of time, yielding significant economic benefits for the violator and thus penalizing similar facilities which act lawfully;

(5) penalties assessed and collected by the Administrator from violators of such permits are often less than the economic benefit gained by the violator;

(6) swift and timely enforcement by the Administrator and the States of violations of such permits is necessary to increase levels of compliance with such permits; and

(7) actions of private citizens have been effective in enforcing such permits and directing funds to environmental mitigation projects with over $12.8 million in penalties and interest having been recovered and deposited with the Treasury of the United States over the fiscal years 1990 through 1994.

(b) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Section 101 of the Federal Water Pollution Control Act (33 U.S.C. 1251) is amended by adding at the end the following:

''(h) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Congress finds that a discharge which results in a violation of this Act or a regulation, standard, limitation, requirement, or order issued pursuant to this Act interferes with the restoration and maintenance of the chemical, physical, and biological integrity of any waters into which the discharge flows (either directly or through a publicly owned treatment works), including any waters into which the receiving waters flow, and, therefore, harms those who use or enjoy such waters and those who use or enjoy nearby lands or aquatic resources associated with those waters.

''(i) FINDING WITH RESPECT TO CITIZEN SUITS.—Congress finds that citizen suits are a valuable means of enforcement of this Act and urges the Administrator to take actions to encourage such suits, including providing information concerning violators to citizen groups to assist them in bringing suits, providing expert witnesses and other evidence with respect to such suits, and filing amicus curiae briefs on important issues related to such suits.''.

SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CONTROL AUTHORITIES.

Section 307(d) of Federal Water Pollution Control Act (33 U.S.C. 1317(d)) is amended to read as follows:

''(d) VIOLATIONS.—After the date on which (1) any effluent standard or prohibition or pretreatment standard or requirement takes effect under this section, or (2) any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8) of this Act takes effect, it shall be unlawful for any owner or operator of any source to operate such source in violation of the effluent standard, prohibition, pretreatment standard, or requirement.''.

SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING INFORMATION.

(a) APPLICABILITY OF REQUIREMENTS.—Section 308(a) of the Federal Water Pollution Control Act (33 U.S.C. 1318(a)) is amended by striking ''the owner or operator of any point source'' and inserting ''a person subject to a requirement of this Act''.

(b) PUBLIC ACCESS TO INFORMATION.—The first sentence of section 308(b) of such Act is amended—

(1) by inserting ''(including information contained in the Permit Compliance System of the Environmental Protection Agency)'' after ''obtained under this section'';

(2) by inserting ''made'' after ''shall be''; and

(3) by inserting ''by computer telecommunication and other means for a period of at least 10 years'' after ''public'' the first place it appears.

(c) PUBLIC INFORMATION.—Section 308 of such Act is further amended by adding at the end the following:

''(e) PUBLIC INFORMATION.—

''(1) POSTING OF NOTICE OF POLLUTED WATERS.—At each major point of public access (including, at a minimum, beaches, parks, recreation areas, marinas, and boat launching areas) to a body of navigable water that does not meet an applicable water quality standard or that is subject to a fishing and shell fishing ban, advisory, or consumption restriction (issued by a Federal, State, or local authority) due to fish or shellfish contamination, the State within which boundaries all or any part of such body of water lies shall, either directly or through local authorities, post and maintain a clearly visible sign which—

''(A) indicates the water quality standard that is being violated or the nature and extent of the restriction on fish or shellfish consumption, as the case may be;

''(B) includes (i) information on the environmental and health effects associated with the failure to meet such standard or with the consumption of fish or shellfish subject to the restriction, and (ii) a phone number for obtaining additional information relating to the violation and restriction; and

''(C) will be maintained until the body of water is in compliance with the water quality standard or until all fish and shellfish consumption restrictions are terminated with respect to the body of water, as the case may be.

''(2) NOTICE OF DISCHARGES TO NAVIGABLE WATERS.—Except for permits issued to municipalities for discharges composed entirely of stormwater under section 402 of this Act, each permit issued under section 402 by the Administrator or by a State shall ensure compliance with the following requirements:

''(A) Every permittee shall conspicuously maintain at all public entrances to the facility a clearly visible sign which indicates that the facility discharges pollutants into navigable waters and the location of such discharges; the name, business address, and phone number of the permittee; the permit number; and a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information.

''(B) Each permittee which is a publicly owned treatment works shall include in each quarterly mailing of a bill to each customer of the treatment works information which indicates that the treatment works discharges pollutants into the navigable waters and the location of each of such discharges; the name, business address and phone number of the permittee; the permit number; a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information; and a list of all violations of the requirements of the permit by the treatment works over the preceding 12-month period.

''(3) REGULATIONS.—

''(A) ISSUANCE.—The Administrator—

''(i) not later than 6 months after the date of the enactment of this subsection, shall

propose regulations to carry out this subsection; and

''(ii) not later than 18 months after such date of enactment, shall issue such regulations.

''(B) CONTENT.—The regulations issued to carry out this subsection shall establish—

''(i) uniform requirements and procedures for identifying and posting bodies of water under paragraph (1);

''(ii) minimum information to be included in signs posted and notices issued pursuant to this subsection;

''(iii) uniform requirements and procedures for fish and shellfish sampling and analysis;

''(iv) uniform requirements for determining the nature and extent of fish and shellfish bans, advisories, and consumption restrictions which—

''(I) address cancer and noncancer human health risks;

''(II) take into account the effects of all fish and shellfish contaminants, including the cumulative and synergistic effects;

''(III) assure the protection of subpopulations who consume higher than average amounts of fish and shellfish or are particularly susceptible to the effects of such contamination;

''(IV) address race, gender, ethnic composition, or social and economic factors, based on the latest available studies of national or regional consumption by and impacts on such subpopulations unless more reliable site-specific data is available;

''(V) are based on a margin of safety that takes into account the uncertainties in human health impacts from such contamination; and

''(VI) evaluate assessments of health risks of contaminated fish and shellfish that are used in pollution control programs developed by the Administrator under this Act.''.

(d) STATE REPORTS.—Section 305(b)(1) of such Act (33 U.S.C. 1315(b)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting ''; and''; and

(3) by adding at the end the following:

''(F) a list identifying bodies of water for which signs were posted under section 308(e)(1) in the preceding year and the reason or reasons for such posting.''.

SEC. 5. CIVIL PENALTIES.

(a) ENFORCEMENT OF LOCAL PRETREATMENT REQUIREMENTS.—

(1) COMPLIANCE ORDERS.—

(A) INITIAL ACTION.—Section 309(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1319(a)(1)) is amended by inserting after ''404 of this Act,'' the following: ''or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(B) ISSUANCE OF ORDERS.—Section 309(a)(3) of such Act is amended by inserting after ''404 of this Act by a State,'' the following: ''or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(2) CRIMINAL PENALTIES.—Section 309(c)(3)(A) of such Act is amended by inserting after ''Army or by a State,'' the following: ''or knowingly violates any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(3) ADMINISTRATIVE PENALTIES.—Section 309(g)(1)(A) of such Act is amended by inserting after ''404 by a State,'' the following: ''or has violated any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or an order issued by the Administrator under subsection (a) of this section,''.

(b) TREATMENT OF SINGLE OPERATIONAL UPSETS.—

(1) CRIMINAL PENALTIES.—Section 309(c) of such Act is amended by striking paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(2) CIVIL PENALTIES.—Section 309(d) of such Act is amended by striking the last sentence.

(3) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) of such Act is amended by striking the last sentence.

(c) USE OF CIVIL PENALTIES FOR MITIGATION PROJECTS.—

(1) IN GENERAL.—Section 309(d) of such Act is amended by inserting after the second sentence the following: ''The court may, in the court's discretion, order that a civil penalty be used for carrying out mitigation projects which are consistent with the purposes of this Act and which enhance the public health or environment.''.

(2) CONFORMING AMENDMENT.—Section 505(a) of such Act (33 U.S.C. 1365(a)) is amended by inserting before the period at the end of the last sentence the following: '', including ordering the use of a civil penalty for carrying out mitigation projects in accordance with such section 309(d)''.

(d) DETERMINATION OF AMOUNT OF PENALTIES.—

(1) CIVIL PENALTIES.—The second sentence of section 309(d) of such Act (33 U.S.C. 1319(d)) is amended by inserting ''the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations,'' after ''economic impact of the penalty on the violator,''.

(2) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) of such Act is amended—

(A) by striking ''or savings''; or

(B) by inserting ''the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations,'' after ''resulting from the violation,''.

(e) LIMITATION ON DEFENSES.—Section 309(g)(1) of such Act is amended by adding at the end the following: ''In a proceeding to assess or review a penalty under this subsection, the adequacy of consultation between the Administrator or the Secretary, as the case may be, and the State shall not be a defense to assessment or enforcement of such penalty.''.

(f) AMOUNTS OF ADMINISTRATIVE CIVIL PENALTIES.—

(1) GENERAL RULE.—Section 309(g)(2) of such Act is amended to read as follows:

''(2) AMOUNT OF PENALTIES; NOTICE; HEARING.—

''(A) MAXIMUM AMOUNT OF PENALTIES.—The amount of a civil penalty under paragraph (1) may not exceed $25,000 per violation per day for each day during which the violation continues.

''(B) WRITTEN NOTICE.—Before issuing an order assessing a civil penalty under this subsection, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed the penalty written notice of the Administrator's or Secretary's proposal to issue the order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order.

''(C) HEARINGS NOT ON THE RECORD.—If the proposed penalty does not exceed $25,000, the hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

''(D) HEARINGS ON THE RECORD.—If the proposed penalty exceeds $25,000, the hearing shall be on the record in accordance with section 554 of title 5, United States Code. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.''.

(2) CONFORMING AMENDMENTS.—Section 309(g) of such Act is amended—

(A) in paragraph (1) by striking ''class I civil penalty or a class II'';

(B) in the second sentence of paragraph (4)(C) by striking ''(2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty'' and inserting ''(2)''; and

(C) in the first sentence of paragraph (8) by striking ''assessment—'' and all that follows through ''by filing'' and inserting ''assessment in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred by filing''.

(g) STATE ENFORCEMENT ACTIONS AS BAR TO FEDERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of such Act is amended—

(1) by inserting ''or'' after the comma at the end of clause (i);

(2) by striking clause (ii); and

(3) by redesignating clause (iii) as clause (ii) and in such clause—

(A) by striking '', the Secretary, or the State'' and inserting ''or the Secretary''; and

(B) by striking ''or such comparable State law, as the case may be,''.

(h) RECOVERY OF ECONOMIC BENEFIT.—Section 309 of such Act is amended by adding at the end the following:

''(h) RECOVERY OF ECONOMIC BENEFIT.—

''(1) GENERAL RULE.—Notwithstanding any other provision of this section, any civil penalty assessed and collected under this section must be in an amount which is not less than the amount of the economic benefit (if any) resulting from the violation for which the penalty is assessed.

''(2) REGULATIONS.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall issue regulations establishing a methodology for calculating the economic benefits or savings resulting from violations of this Act. Pending issuance of such regulations, this subsection shall be in effect and economic benefits shall be calculated for purposes of paragraph (1) on a case-by-case basis.''.

(i) LIMITATION ON COMPROMISES.—Such section 309 is further amended by adding at the end the following:

''(i) LIMITATION ON COMPROMISES OF CIVIL PENALTIES.—Notwithstanding any other provision of this section, the amount of a civil penalty assessed under this section may not be compromised below the amount determined by adding—

''(1) the minimum amount required for recovery of economic benefit under subsection (h), to

''(2) 50 percent of the difference between the amount of the civil penalty assessed and such minimum amount.''.

(j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—Such section 309 is further amended by adding at the end the following:

''(j) MINIMUM CIVIL PENALTIES FOR SERIOUS VIOLATIONS AND SIGNIFICANT NONCOMPLIERS.—

''(1) SERIOUS VIOLATIONS.—Notwithstanding any other provision of this section (other than paragraph (2)), the minimum civil penalty which shall be assessed and collected under this section from a person—

''(A) for a discharge from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more, or

''(B) for a discharge from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

shall be $1,000 for the first such violation in a 180-day period.

''(2) SIGNIFICANT NONCOMPLIERS.—Notwithstanding any other provision of this section, the minimum civil penalty which shall be assessed and collected under this section from a person—

''(A) for the second or more discharge in a 180-day period from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more,

''(B) for the second or more discharge in a 180-day period from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

''(C) for the fourth or more discharge in a 180-day period from a point source of any pollutant which exceeds or otherwise violates the same effluent limitation, or

''(D) for not filing in a 180-day period 2 or more reports in accordance with section 402(r)(1),

shall be $5,000 for each of such violations.

''(3) MANDATORY INSPECTIONS FOR SIGNIFICANT NONCOMPLIERS.—The Administrator shall identify any person described in paragraph (2) as a significant noncomplier and shall conduct an inspection described in section 402(q) of this Act of the facility at which the violations were committed. Such inspections shall be conducted at least once in the 180-day period following the date of the most recent violation which resulted in such person being identified as a significant noncomplier.

''(4) ANNUAL REPORTING.—The Administrator shall transmit to Congress and to the Governors of the States, and shall publish in the Federal Register, on an annual basis a list of all persons identified as significant noncompliers under paragraph (3) in the preceding calendar year and the violations which resulted in such classifications.

''(5) HAZARDOUS POLLUTANT DEFINED.—For purposes of this subsection, the term 'hazardous pollutant' has the meaning the term 'hazardous substance' has under subsection (c)(6) of this section.''.

(k) STATE PROGRAM.—Section 402(b)(7) of such Act (33 U.S.C. 1342(b)(7)) is amended to read as follows:

''(7) To abate violations of the permit or the permit program which shall include, beginning on the last day of the 2-year period beginning on the date of the enactment of the Clean Water Compliance and Enforcement Improvement Amendments Act of 1995, a penalty program comparable to the Federal penalty program under section 309 of this Act and which shall include at a minimum criminal, civil, and civil administrative penalties, and may include other ways and means of enforcement, which the State demonstrates to the satisfaction of the Administrator are equally effective as the Federal penalty program;''.

(l) FEDERAL PROCUREMENT COMPLIANCE INCENTIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a)) is amended by inserting after the second comma ''or who is identified under section 309(j)(3) of this Act,''.

SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION PERMITS.

(a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—Section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)) is amended by striking ''unless he determines that adequate authority does not exist:'' and inserting the following: ''only when he determines that adequate authority exists and shall withdraw program approval whenever he determines that adequate authority no longer exists:''.

(b) JUDICIAL REVIEW OF RULINGS ON APPLICATIONS FOR STATE PERMITS.—Section 402(b)(3) of such Act is amended by inserting ''and to ensure that any interested person who participated in the public comment process and any other person who could obtain judicial review of that action under any other applicable law has the right to judicial review of such ruling'' before the semicolon at the end.

(c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MUNICIPAL DISCHARGERS.—Section 402(b) of such Act is amended—

(1) by striking ''and'' at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(3) by adding at the end the following:

''(10) To ensure that any permit for a discharge from a major industrial or municipal facility, as defined by the Administrator by regulation, includes conditions under which such facility will be subject to at least annual inspections by the State in accordance with subsection (q) of this section;''.

(d) MONTHLY REPORTS FOR SIGNIFICANT INDUSTRIAL USERS OF POTWS.—Section 402(b) of such Act is further amended by adding at the end the following:

''(11) To ensure that any permit for a discharge from a publicly owned treatment works in the State includes conditions under which the treatment works will require any significant industrial user of the treatment works, as defined by the Administrator by regulation, to prepare and submit to the Administrator, the State, and the treatment works a monthly discharge monitoring report as a condition to using the treatment works;''.

(e) PERMITS REQUIRED FOR INTRODUCTION OF POLLUTANTS INTO POTWS.—Section 402(b) of such Act is further amended by adding at the end the following:

''(12) To ensure that, after the last day of the 2-year period beginning on the date of the enactment of this paragraph, any significant industrial user, or other source designated by the Administrator, introducing a pollutant into a publicly owned treatment works has, and operates in accordance with, a permit issued by the treatment works or the State for introduction of such pollutant; and''.

(f) GRANTING OF AUTHORITY TO POTWS FOR INSPECTIONS AND PENALTIES.—Section 402(b) of such Act is further amended by adding at the end the following:

''(13) To ensure that the State will grant to publicly owned treatment works in the State, not later than 3 years after the date of the enactment of this paragraph, authority, power, and responsibility to conduct inspections under subsection (q) of this section and to assess and collect civil penalties and civil administrative penalties under paragraph (7) of this subsection.''.

(g) INSPECTION.—Section 402 of such Act is amended by adding at the end the following:

''(q) INSPECTION.—

''(1) GENERAL RULE.—Each permit for a discharge into the navigable waters or introduction of pollutants into a publicly owned treatment works issued under this section shall include conditions under which the effluent being discharged will be subject to random inspections in accordance with this subsection by the Administrator or the State, in the case of a State permit program under this section.

''(2) MINIMUM STANDARDS.—Not later than 6 months after the date of enactment of this subsection, the Administrator shall establish minimum standards for inspections under this subsection. Such standards shall require, at a minimum, the following:

''(A) An annual representative sampling by the Administrator or the State, in the case of a State permit program under this section, of the effluent being discharged; except that if the discharge is not from a major industrial or municipal facility such sampling shall be conducted at least once every 3 years.

''(B) An analysis of all samples collected under subparagraph (A) by a Federal or State owned and operated laboratory or a State approved laboratory, other than one that is being used by the permittee or that is directly or indirectly owned, operated, or managed by the permittee.

''(C) An evaluation of the maintenance record of any treatment equipment of the permittee.

''(D) An evaluation of the sampling techniques used by the permittee.

''(E) A random check of discharge monitoring reports of the permittee for each 12-month period for the purpose of determining whether or not such reports are consistent with the applicable analyses conducted under subparagraph (B).

''(F) An inspection of the sample storage facilities and techniques of the permittee.''.

(h) REPORTING.—Section 402 of such Act is further amended by adding at the end the following:

''(r) REPORTING.—

''(1) GENERAL RULE.—Each person holding a permit issued under this section which is determined by the Administrator to be a major industrial or municipal discharger of pollutants into the navigable waters shall prepare and submit to the Administrator a monthly discharge monitoring report. Any other person holding a permit issued under this section shall prepare and submit to the Administrator quarterly discharge monitoring reports or more frequent discharge monitoring reports if the Administrator requires. Such reports shall contain, at a minimum, such information as the Administrator shall require by regulation.

''(2) REPORTING OF HAZARDOUS DISCHARGES.—

''(A) GENERAL RULE.—If a discharge from a point source for which a permit is issued under this section exceeds an effluent limitation contained in such permit which is based on an acute water quality standard or any other discharge which may cause an exceedance of an acute water quality standard or otherwise is likely to cause injury to persons or damage to the environment or to pose a threat to human health and the environment, the person holding such permit shall notify the Administrator and the affected States and municipalities, in writing, of such discharge not later than 2 hours after the later of the time at which such discharge commenced or the time at which the permittee knew or had reason to know of such discharge.

''(B) SPECIAL RULE FOR HAZARDOUS POLLUTANTS.—If a discharge described in subparagraph (A) is of a hazardous pollutant (as defined in section 309(j) of this Act), the person holding such permit shall provide the Administrator with such additional information on the discharge as may be required by the Administrator. Such additional information shall be provided to the Administrator within 24 hours after the later of the time at which such discharge commenced or the time at which the permittee became aware of such discharge. Such additional information shall include, at a minimum, an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken or being taken (i) to remediate the problem caused by the discharge and any damage to the environment, and (ii) to avoid a repetition of the discharge.

''(3) SIGNATURE.—All reports filed under paragraph (1) must be signed and dated by the highest ranking official having day-to-

day managerial and operational responsibility for the facility at which the discharge occurs or, in the absence of such person, by another responsible high ranking official at such facility. Such highest ranking official shall be responsible for the accuracy of all information contained in such reports; except that such highest ranking official may file with the Administrator amendments to any such report if the report was signed in the absence of the highest ranking official by another high ranking official and if such amendments are filed within 7 days of the return of the highest ranking official.''.

(i) LIMITATION ON ISSUANCE OF PERMITS TO SIGNIFICANT NONCOMPLIERS.—Section 402 of such Act is further amended by adding at the end the following:

''(s) SIGNIFICANT NONCOMPLIERS.—No permit may be issued under this section to any person (other than a publicly owned treatment works) identified under section 309(j)(3) of this Act or to any other person owned or controlled by the identified person, owning or controlling the identified person, or under common control with the identified person, until the Administrator or the State or States in which the violation or violations occur determines that the condition or conditions giving rise to such violation or violations have been corrected. No permit application submitted after the date of the enactment of this subsection may be approved unless the application includes a list of all violations of this Act by a person identified under section 309(j) of this Act during the 3-year period preceding the date of submission of the application and evidence indicating whether the underlying cause of each such violation has been corrected.''.

(j) APPLICABILITY.—The amendments made by this section shall apply to permits issued before, on, or after the date of the enactment of this Act; except that—

(1) with respect to permits issued before such date of enactment to a major industrial or municipal discharger, such amendments shall take effect on the last day of the 1-year period beginning on such date of enactment; and

(2) with respect to all other permits issued before such date of enactment, such amendments shall take effect on the last day of the 2-year period beginning on such date of enactment.

SEC. 7. EXPIRED STATE PERMITS.

Section 402(d) of the Federal Water Pollution Control Act (33 U.S.C. 1342(d)) is amended by adding at the end the following:

''(5) EXPIRED STATE PERMITS.—In any case in which—

''(A) a permit issued by a State for a discharge has expired,

''(B) the permittee has submitted an application to the State for a new permit for the discharge, and

''(C) the State has not acted on the application before the last day of the 18-month period beginning on the date the permit expired,

the Administrator may issue a permit for the discharge under subsection (a).''.

SEC. 8. COMPLIANCE SCHEDULE.

Section 302(b)(2)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by adding at the end the following: ''The Administrator may only issue a permit pursuant to this subparagraph for a period exceeding 2 years if the Administrator makes the findings described in clauses (i) and (ii) of this subparagraph on the basis of a public hearing.''.

SEC. 9. EMERGENCY POWERS.

Section 504 of the Federal Water Pollution Control Act (33 U.S.C. 1364) is amended to read as follows:

''SEC. 504. COMMUNITY PROTECTION.

''(a) ISSUANCE OF ORDERS; COURT ACTION.—Notwithstanding any other provision of this Act, whenever the Administrator finds that, because of an actual or threatened direct or indirect discharge of a pollutant, there may be an imminent and substantial endangerment to the public health or welfare (including the livelihood of persons) or the environment, the Administrator may issue such orders or take such action as may be necessary to protect public health or welfare or the environment and commence a suit (or cause it to be commenced) in the United States district court for the district where the discharge or threat occurs. Such court may grant such relief to abate the threat and to protect against the endangerment as the public interest and the equities require, enforce, and adjudge penalties for disobedience to orders of the Administrator issued under this section, and grant other relief according to the public interest and the equities of the case.

''(b) ENFORCEMENT OF ORDERS.—Any person who, without sufficient cause, violates or fails to comply with an order of the Administrator issued under this section, shall be liable for civil penalties to the United States in an amount not to exceed $25,000 per day for each day on which such violation or failure occurs or continues.''.

SEC. 10. CITIZEN SUITS.

(a) SUITS FOR PAST VIOLATIONS.—Section 505 of the Federal Water Pollution Control Act (33 U.S.C. 1365) is amended—

(1) in subsection (a)(1) by inserting ''to have violated (if there is evidence that the alleged violations has been repeated) or'' after ''who is alleged'';

(2) in subsection (b)(1)(A)(ii) by striking ''occurs'' and inserting ''has occurred or is occurring''; and

(3) in subsection (f)(6) by inserting ''has been or'' after ''which''.

(b) TIME LIMIT.—Section 505(b)(1)(A) of such Act is amended by striking ''60 days'' and inserting ''30 days''.

(c) EFFECT OF JUDGMENTS ON CITIZEN SUITS.—Section 505(b) of such Act is further amended—

(1) in paragraph (1)(B)—

(A) by striking '', or a State''; and

(B) by striking ''right.'' and inserting ''right and may obtain costs of litigation under subsection (d), or''; and

(2) by adding at the end the following: ''The notice under paragraph (1)(A) need set forth only violations which have been specifically identified in the discharge monitoring reports of the alleged violator. An action by a State under subsection (a)(1) may be brought at any time. No judicial action by the Administrator or a State shall bar an action for the same violation under subsection (a)(1) unless the action is by the Administrator and meets the requirements of this paragraph. No administrative action by the Administrator or a State shall bar a pending action commenced after February 4, 1987, for the same violation under subsection (a)(1) unless the action by the Administrator or a State meets the requirements of section 309(g)(6) of this Act.''.

(d) CONSENT JUDGMENTS.—Section 505(c)(3) of such Act is amended by adding at the end the following: ''Consent judgments entered under this section may provide that the civil penalties included in the consent judgment be used for carrying out mitigation projects in accordance with section 309(d).''.

(e) PRETREATMENT REQUIREMENTS.—Section 505(f)(4) of such Act is amended by striking ''or pretreatment standards'' and inserting ''or pretreatment standard or requirement described in section 307(d)''.

(f) EFFLUENT STANDARD DEFINITION.—Section 505(f)(6) of such Act is amended by inserting ''narrative or mathematical'' before ''condition''.

(g) OFFERS OF JUDGMENT.—Section 505 of such Act is further amended by adding at the end the following:

''(g) APPLICABILITY OF OFFERS OF JUDGMENT.—Offers of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure shall not be applicable to actions brought under subsection (a)(1) of this section.''.

SEC. 11. EMPLOYEE PROTECTION.

Section 507 of the Federal Water Pollution Control Act (33 U.S.C. 1367) is amended—

(1) in subsection (e) by inserting ''CONTINUING EVALUATIONS'' after ''(e)'';

(2) by redesignating subsection (e) as subsection (f); and

(3) by striking subsections (a), (b), (c), and (d) and inserting the following:

''(a) IN GENERAL.—No employer or other person may harass, prosecute, hold liable, or discriminate against any employee or other person because the person—

''(1) is assisting or demonstrating an intent to assist in achieving compliance with any provision of this Act (including a rule or regulation issued to carry out this Act);

''(2) is refusing to violate or assist in the violation of any provision of this Act (including a rule or regulation issued to carry out this Act);

''(3) has commenced, caused to be commenced, or is about to commence a proceeding, has testified or is about to testify at a proceeding, or has assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

''(b) FILING COMPLAINTS AND PROCEDURES.—

''(1) FILING DEADLINE.—An employee alleging a violation of subsection (a), or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 365 days after the alleged violation occurred.

''(2) PROCEDURES.—

''(A) INVESTIGATION; PRELIMINARY ORDERS.—Not later than 60 days after receiving a complaint, the Secretary shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary decides it is reasonable to believe a violation occurred, the Secretary shall include with the decision findings and a preliminary order for the relief provided under paragraph (3).

''(B) OBJECTIONS TO PRELIMINARY ORDER.—Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

''(C) HEARING; FINAL ORDER; SETTLEMENT AGREEMENT.—A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.

''(3) ORDER.—

''(A) PENALTIES.—If the Secretary decides, on the basis of a complaint, a person violated subsection (a), the Secretary shall order the person to—

''(i) take affirmative action to abate the violation;

''(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

''(iii) pay compensatory damages, including back pay.

''(B) COSTS.—If the Secretary issues an order under subparagraph (A) and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred.

''(4) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an order issued after a hearing under this subsection may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. The review shall be heard and decided expeditiously. An order of the Secretary subject to review under this paragraph is not subject to judicial review in a criminal or other civil proceeding.

''(5) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued under this subsection, the Secretary shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

''(c) BURDENS OF PROOF.—The legal burdens of proof with respect to a violation of subsection (a) shall be governed by the applicable provisions of sections 1214 and 1221 of title 5, United States Code.

''(d) SUBPOENA AUTHORITY.—With respect to an alleged violation of subsection (a), the Secretary of Labor may issue a subpoena for the attendance and testimony of any person and the production of documentary or other evidence from any person if the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.

''(e) POSTING REQUIREMENT.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.''.

SEC. 12. ISSUANCE OF SUBPOENAS.

Section 509(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1369(a)(1)) is amended by striking ''obtaining information under section 305 of this Act, or carrying out section 507(e) of this Act,'' and inserting ''carrying out this Act,''.

SEC. 13. JUDICIAL REVIEW OF EPA ACTIONS.

Section 509(b)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1369(b)(1)) is amended—

(1) by inserting after the comma at the end of clause (D) ''including a decision to deny a petition by interested person to veto an individual permit issued by a State,'';

(2) by inserting after the comma at the end of clause (E) ''including a decision not to include any pollutant in such effluent limitation or other limitation if the Administrator has or is made aware of information indicating that such pollutant is present in any discharge subject to such limitation,''; and

(3) by striking ''and (G)'' and inserting the following: ''(G) in issuing or approving any water quality standard under section 303(c) or 303(d), (H) in issuing any water quality criterion under section 304(a), including a decision not to address any effect of the pollutant subject to such criterion if the Administrator has or is made aware of information indicating that such effect may occur, and (J)''.

SEC. 14. NATIONAL CLEAN WATER TRUST FUND.

(a) IN GENERAL.—Title V of the Federal Water Pollution Control Act (33 U.S.C. 1361–1377) is amended by redesignating section 519 as section 520 and by inserting after section 518 the following new section:

''SEC. 519. NATIONAL CLEAN WATER TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Water Trust Fund'.

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Clean Water Trust Fund amounts equivalent to the penalties collected under section 309 of this Act and the penalties collected under section 505(a) of this Act (excluding any amounts ordered to be used to carry out mitigation projects under section 309 or 505(a), as the case may be).

''(c) ADMINISTRATION OF TRUST FUND.—The Administrator shall administer the Clean Water Trust Fund. The Administrator may use moneys in the Fund to carry out inspections and enforcement activities pursuant to this Act. In addition, the Administrator may make such amounts of money in the Fund as the Administrator determines appropriate available to carry out title VI of this Act.''.

(b) CONFORMING AMENDMENT TO STATE REVOLVING FUND PROGRAM.—Section 607 of such Act (33 U.S.C. 1387) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''There is''; and

(2) by adding at the end the following:

''(b) TREATMENT OF TRANSFERS FROM CLEAN WATER TRUST FUND.—For purposes of this title, amounts made available from the Clean Water Trust Fund under section 519 of this Act to carry out this title shall be treated as funds authorized to be appropriated to carry out this title and as funds made available under this title.''.

SEC. 15. APPLICABILITY.

Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b), 505(g), and 505(i) of the Federal Water Pollution Control Act, as inserted or amended by this Act, shall be applicable to all cases pending under such Act on the date of the enactment of this Act and all cases brought on or after such date of enactment relating to violations which occurred before such date of enactment.

By Mr. FEINGOLD:

S. 647. A bill to amend the Congressional Budget and Impeachment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE EMERGENCY SPENDING CONTROL ACT OF 1997

● Mr. FEINGOLD. Mr. President, I am pleased to re-introduce a measure designed to limit consideration of nonemergency matters in emergency legislation. This bill, S. 647, the Emergency Spending Control Act of 1997, passed the Senate during the last Congress as part of the Senate's version of the line-item veto act, though it was later dropped in conference. Identical language passed the other body during the 103d Congress with overwhelming bipartisan support, first as a substitute amendment by a vote of 322 to 99, and then, as amended, by a vote of 406 to 6.

Mr. President, the support this measure has received in both Houses is a reflection of the keen awareness Members have of the abuses of the emergency appropriations process that have taken place. This measure helps address one aspect of that abuse by limiting emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters, other than rescissions of budget authority or reductions in direct spending, in any bill that contains an emergency measure, or an amendment to an emergency measure, or a conference report that contains an emergency measure.

As an additional enforcement mechanism, the legislation adds further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequester process for direct spending and receipts measures, for any emergency appropriations bill if the bill includes extraneous items other than rescissions of budget authority or reductions in direct spending.

Mr. President, though this proposal relates to shoring up our budget rules, I want to stress that the rules themselves do not solve the deficit problem. No rule can—whether it is a procedural rule of the Senate, a statute, or a constitutional amendment. The only way we will balance the budget is through specific spending cuts and exercising fiscal restraint.

However, we have made some progress over the past 4 years, and that progress, as well as the continued work we need to do, can be sustained through the budget rules we impose on ourselves by ensuring the sacrifices that have been made, and that we will ask in the future, will not be hollow or futile.

The rules that have been developed over the past twenty years have proven useful in this regard, though it bears repeating that the deficit has begun to come down only as a result of our willingness to vote for tough measures.

In general, the rules require that new spending, whether through direct spending, tax expenditures, or discretionary programs, be offset with spending cuts or revenue increases. However, the rules provide for exceptions in the event of true emergencies.

The deliberate review through the federal budget process, weighing one priority against another, may not permit a timely response to an international crisis, a natural disaster, or some other emergency. We do not ask that earthquake victims find a funding source before we send them aid. But that should not, even in dire circumstances, be read to imply we must not find ways to pay for emergencies, rather than simply add their costs to the deficit.

But, Mr. President, the emergency exception to our budget rules, designed to expedite a response to an urgent need, has become a loophole, abused by those trying to circumvent the scrutiny of the budget process, in particular, by adding non-emergency matters to emergency legislation that is receiving special, accelerated consideration.

Mr. President, the measure I introduce today targets that abuse by helping to keep emergency measures clean of extraneous matters on which there is no emergency designation.

When the appropriations bill to provide relief for the Los Angeles earthquake was introduced in the 103rd Congress, it initially did four things: provided $7.8 billion for the Los Angeles quake, $1.2 billion for the Department of Defense peacekeeping operations; $436 million for Midwest flood relief, and $315 million more for the 1989 California earthquake.

But, Mr. President, by the time the Los Angeles earthquake bill became law, it also provided $1.4 million to fight potato fungus, $2.3 million for FDA pay raises, $14.4 million for the National Park Service, $12.4 million for the Bureau of Indian Affairs, $10 million for a new Amtrak station in New York, $40 million for the space shuttle, $20 million for a fingerprint lab, $500,000 for United States Trade Representative travel office, and $5.2 million for the Bureau of Public Debt.

Though non-emergency matters attached to emergency bills are still subject to the spending caps established in the concurrent budget resolution, as long as total spending remains under those caps, these unrelated spending matters are not required to be offset with spending cuts. In the case of the LA earthquake bill, because the caps had been reached the new spending was offset by rescissions, but those rescissions might otherwise have been used for deficit reduction. Moreover, by using emergency appropriations bills as a vehicle, these extraneous proposals avoid the examination through which legislative proposals must go to justify Federal spending. If there is truly a need to shift funds to these programs, an alternative vehicle—a regular supplemental appropriations bill, not an emergency spending bill—should be used.

The measure I am introducing today will restrict that kind of misuse of the emergency appropriations process. Adding non-emergency, extraneous matters to emergency appropriations not only is an attempt to avoid the legitimate scrutiny of our normal budget process, it can also jeopardize our ability to provide relief to those who are suffering from the disaster to which we are responding.

Just as importantly, adding superfluous material to emergency appropriations bills degrades those budget rules on which we rely to impose fiscal discipline, and that only encourages further erosion of our efforts to reduce the deficit.

Mr. President, as I noted earlier, this legislation has passed both Houses in recent years—in the Senate during the 104th Congress as the amendment I offered to the Line Item Veto Act, and in the other body, during the 103rd Congress, by a vote of 406 to 6. I urge my colleagues to join in this effort to pass this measure through both Houses during this Congress, and help end this abusive practice.

Mr. President, I ask unanimous consent that the text of bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 647

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Emergency Spending Control Act of 1997''.

SEC. 2. TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.—Secton 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.''.

(b) EMERGENCY LEGISLATION.—Section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not designate any such amounts of new budget authority, outlays, or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.''.

(c) NEW POINT OF ORDER.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''POINT OF ORDER REGARDING EMERGENCIES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, but that bill or joint resolution, amendment, or conference report may contain rescissions of budget authority or reductions of direct spending, or that amendment may reduce amounts for that emergency.''.

(d) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

''Sec. 408. Point of order regarding emergencies.''.●

By Mr. GORTON (for himself, Mr. ASHCROFT, Mr. MCCAIN, and Mr. LOTT:

S. 648. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PRODUCT LIABILITY REFORM ACT OF 1997

Mr. GORTON. Mr. President, I am introducing this evening, along with Senators ASHCROFT, MCCAIN, and LOTT, a bill to reform and rationalize our product liability system.

At the beginning of this session, Senator ASHCROFT and others introduced S.5, another measure to address product liability. Although I agreed with the substance of S.5, which was identical to the conference report on Product Liability that the President vetoed in the 104th Congress, I did not cosponsor S.5 because I knew that that particular bill would not be enacted into law and because I wanted to craft another bill that would obtain bi-partisan support in the Senate, address the President's legitimate concerns with the conference report, and accomplish meaningful reform.

Mr. President, I cannot say that the measure I am introducing tonight fully accomplishes that. But it comes very close. I introduce this measure without the co-sponsorship of my good friend and long-time companion on this worthy mission, Senator ROCKEFELLER, but I introduce it with the sincere belief that we will continue to work together to enact product liability reform in 1997.

I introduce this measure to get the process started. It is a good measure that I believe goes a long way toward meeting the goals I described above. But as I said, the process is just starting. I welcome input from my Republican and Democratic colleagues.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 648

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Product Liability Reform Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 2. FINDINGS AND PURPOSES.

(A) FINDINGS.—The Congress finds that—

(1) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(2) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(3) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce.

(4) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the marketplace, and from excessive liability costs passed on to them through higher prices;

(5) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses and adversely affects government and taxpayers;

(6) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(7) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, volunteers, and nonprofit organizations to protect themselves from liability with any degree of confidence and at a reasonable cost;

(8) because of the national scope of the problems created by the defects in the civil justice system, it is not possible for the States to enact laws that fully and effectively respond to those problems;

(9) it is the constitutional role of the national government to remove barriers to interstate commerce and to protect due process rights; and

(10) there is a need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 and the Fourteenth Amendment of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce and to uphold constitutionally protected due process rights by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

TITLE I—TITLE PRODUCT LIABILITY REFORM

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) ACTUAL MALICE.—The term ''actual malice'' means specific intent to cause serious physical injury, illness, disease, death, or damage to property.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLEAR AND CONVINCING EVIDENCE.—The term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage solely to a product itself, loss relating to a dispute over its value, or consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous State commercial or contract law.

(5) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and non-economic loss.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), or (ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes or constructs and designs, or formulates, or has engaged another person to design or formulate, an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(9) NONECONOMIC LOSS.—The term ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(10) PERSON.—The term ''person'' means any individual corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(11) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSIONS.—The term does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(12) PRODUCT LIABILITY ACTION.— The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(13) PRODUCT SELLER—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(14) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(15) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) PREEMPTION.—

(1) IN GENERAL.—This Act governs any product liability action brought in any State or Federal court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by

this title, including any standard of liability applicable to a manufacturer, shall be governed by otherwise applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(d) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment, or any action brought under any theory of dramshop or third-party liability arising out of the sale or provision of alcohol products to intoxicated persons or minors, shall not be subject to the provisions of this Act but shall be subject to any applicable State law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant;

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product—

(A) if the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) if the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(13)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if the defendant proves that—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term ''drug'' mean any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that was not legally prescribed for use by the claimant or that was taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—

(1) IN GENERAL.—In a product liability action, the damages for which a defendant is otherwise liable under Federal or State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the claimant's harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, a defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this Act, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any coemployee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and subsection (b), a product liability action may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered—

(A) the harm that is the subject of the action; and

(B) the cause of the harm.

(2) EXCEPTION.—A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have the legal disability.

(3) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this Act concerning a product alleged to have caused harm (other than toxic harm) may be filed after the 18-year period beginning at the time of delivery of the product to the first purchaser or lessee.

(2) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 18 years, but it will apply at the expiration of that warranty.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action not later than 1 year after the date of enactment of this Act.

SEC. 107. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action may, not later than 60 days after the service of—

(1) the initial complaint; or

(2) the applicable deadline for a responsive pleading;

whichever is later, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute

resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offeree to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 108. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any product liability action.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded in an action described in subsection (a) may not exceed the greater of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—Notwithstanding paragraph (1), in any action described in subsection (a) against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, the punitive damages shall not exceed the lesser of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

For the purpose of determining the applicability of this paragraph to a corporation, the number of employees of a subsidiary or wholly-owned corporation shall include all employees of a parent or sister corporation.

(3) EXCEPTION FOR INSUFFICIENT AWARD IN CASES OF EGREGIOUS CONDUCT.—

(A) DETERMINATION BY COURT.—If the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages (referred to in this paragraph as the ''additional amount'') in excess of the amount determined in accordance with paragraph (1) to be awarded against the defendant in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under paragraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the conduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITIONAL AMOUNT.—If the court awards an additional amount pursuant to this subsection, the court shall state its reasons for setting the amount of the additional amount in findings of fact and conclusions of law.

(D) PREEMPTION.—This section does not create a cause of action for punitive damages and does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages. Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and application of this subsection shall not be disclosed to the jury. Nothing in this subsection shall authorize the court to enter an award of punitive damages in excess of the jury's initial award of punitive damages.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 109. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 108, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1997.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1997''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States,

the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services;

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier;

(iii) a person alleging harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel, except that—

(I) neither the exclusion provided by this clause nor any other provision of this Act may be construed as a finding that silicone gel (or any other form of silicone) may or may not cause harm; and

(II) the existence of the exclusion under this clause may not—

(aa) be disclosed to a jury in any civil action or other proceeding; and

(bb) except as necessary to establish the applicability of this Act, otherwise be presented in any civil action or other proceeding; or

(iv) any person who acts in only a financial capacity with respect to the sale of an implant.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant non-implant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 501(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28. United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(ii) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 205(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 301. EFFECT OF COURT OF APPEALS DECISIONS.

A decision by a Federal circuit court of appeals interpreting a provision of this Act (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 302. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 303. EFFECTIVE DATE.

This Act shall apply with respect to any action commenced on or after the date of the enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.●

By Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. GLENN, Mr. D'AMATO, Mr. INOUYE, Mr. ROCKEFELLER and Mr. MACK):

S. 649. A bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare program; to the Committee on Finance.

THE BONE MASS MEASUREMENT STANDARDIZATION ACT OF 1997

● Ms. SNOWE. Mr. President, today I am introducing the Bone Mass Measurement Standardization Act of 1997.

Millions of women in their post-menopausal years face a silent killer, a stalker disease we know as osteoporosis. This unforgiving bone disease afflicts 28 million Americans; causes 50,000 deaths each year; 1.5 million bone fractures annually; and the direct medical costs of osteoporosis fracture patients are $13.8 billion each year, or $38 million every single day. This cost is projected to reach $60 billion by the year 2020 and $240 billion by the year 2040 if medical research has not discovered an effective treatment.

The facts also show that one out of every two women have a lifetime risk of bone fractures due to osteoporosis, and that it affects half of all women over the age of 50 and an astounding 90% of all women over 75. Perhaps the most tragic consequences of osteoporosis occur with the 300,000 individuals annually who suffer a hip fracture. Twelve to thirteen percent of these persons will die within six months following a hip fracture, and of those who survive, 20% will never walk again, and 20% will require nursing home care—often for the rest of their lives.

We all know that osteoporosis cannot be cured, although with a continued commitment to research in this area I remain hopeful that we will find one. We also know that once bone mass is lost, it cannot be replaced. Therefore, early detection is our best weapon because it is only through early detection that we can thwart the progress of the disease and initiate preventive efforts to stop further loss of bone mass.

Bone mass measurement can be used to determine the status of a person's bone health and to predict the risk of future fractures. These tests are safe, painless, accurate and quick. Our expanding technology is adding new methods to determine bone mass and we need to keep up with this technology. The most commonly used test currently is DXA (Dual energy X-ray Absorptiometry).

In order to ensure that we detect bone loss early, we need to ensure that older women have coverage for bone mass tests. Unfortunately, Medicare coverage is inconsistent in its coverage depending on where an individual resides. Instead of national coverage of the DXA test, Medicare leaves coverage decisions to local Medicare insurance carriers. The definition of who is qualified to receive a bone mass measurement varies from carrier to carrier. Some carriers require beneficiaries to have suffered substantial bone loss before allowing coverage for a bone density test. For example, in about 20 States, the carriers require x-ray proof of low bone mass or other abnormalities. Unfortunately, standard x-rays do not reveal osteoporosis until 25 to 40 percent of bone mass has been lost.

One carrier allows pre-menopausal women to have a DXA test to determine whether hormone replacement therapy is indicated. However, it does not allow the test to determine treatment for the post-menopausal women—the majority of Medicare beneficiaries. Other carriers have no specific rules to guide reimbursement and cover the tests on a haphazard case-by-case basis.

Frequency of testing also varies from carrier to carrier. Re-testing is important to monitor treatment, yet only eight states specifically allow coverage for people who are under treatment for osteoporosis.

This patchwork coverage is confusing to beneficiaries, and means that an older woman who lives in one State will be covered, but if she moves to another state, she may not be. A woman may also lose coverage if she moves to another city within a given State.

Mr. President, a woman shouldn't have to change zip codes to obtain coverage for a preventive test, especially when early intervention is the only action we can take right now to slow the loss of bone mass. Once it is lost, it cannot be replaced.

The Medicare Bone Mass Measurement Standardization Act will clarify the Medicare coverage policy for DXA testing to make it uniform in all states. We all know that an ounce of prevention is worth a pound of cure. This bill will ensure that older women, regardless of where they live, will have access to bone mass measurement technology that will help detect bone loss and allow preventive steps to be taken.

I urge my colleagues to support this important bill.●

● Mr. GRASSLEY. Mr. President, I am pleased to join my colleague from Maine, Senator SNOWE, to introduce legislation to standardize Medicare eligibility for the diagnosis of osteoporosis. It is estimated that osteoporosis results in 1.5 million fractures and $20 billion in medical costs each year. The Centers for Disease Control and Prevention, through the use of 1992 incidence data of bone fractures related to osteoporosis, determined that such fractures represent three percent of all Medicare costs. A recent report issued by the Alliance for Aging Research examined the dramatic savings realized when the onset of age-related disability is delayed. The report indicates that delaying the onset of osteoporosis by 5 years could save the economy up to as much as $10 billion annually.

In the state of Iowa, 15 percent of men and women over the age of 50, which is approximately 340,000 Iowans, have osteoporosis. Women are particularly prone to getting osteoporosis, which can lead to bone fractures that result in loss of independence and eventually to nursing home care. Early detection is critical, and there are effective treatments available to prevent bone mass deterioration. An ounce of prevention is worth a pound of cure.

Medicare currently covers bone mass measurement, which is the diagnostic tool used to detect osteoporosis. However, Medicare carriers have discretion regarding eligibility requirements. States cover bone mass measurement on a case-by-case basis; some States cover it when an individual is in the early stages of or already has the disease; and some States allow early detection of the disease based on whether or not the patient is at high risk of developing osteoporosis.

Medicare carriers in states such as Iowa and Maine promote early detection of osteoporosis by covering bone mass measurement for individuals at-risk of the disease. However, carriers in more than half the States do not allow testing until the person already has the disease or is at very high-risk of getting it.

The legislation I am co-sponsoring with Senator SNOWE would help reduce the economic and social costs of osteoporosis through early detection of this crippling disease. The bill would establish uniform eligibility requirements for coverage of bone mass measurement, eliminating the variation in Medicare coverage that currently exists. It would not require that every individual be screened for the disease, only those that are considered at-risk. Medicare is a federal program where everyone pays 2.9 percent of their pay. Therefore, everyone deserves to have access to the same benefits.

I congratulate my colleague, Senator SNOWE, for taking the lead on this very important health issue. I urge my colleagues on both sides of the aisle to support this legislation.●

By Mr. NICKLES:

S. 650. A bill to amend the Internal Revenue Code of 1986 to reduce estate taxes by providing a 20 percent rate of tax on estates exceeding $1,000,000, and a 30 percent rate of tax on estates exceeding $10,000,000, and for other purposes; to the Committee on Finance.

THE ESTATE TAX REDUCTION ACT OF 1997

Mr. NICKLES. Mr. President, an April 15, 1997 letter to the Wall Street Journal, which I will insert for the RECORD, describes one family's recent experience with the estate tax.

The letter states, ''We finally did it. We didn't want to, but we had no choice. Exactly nine months after my father-in-law died, my wife and I signed a check for $1,285,000 payable to the Internal Revenue Service.''

The man who wrote this letter goes on to talk about what his family could have used that money for, such as buying a beach house, prepaying their kids' college education, or even retiring.

Instead, he calculates that the federal government will spend in 26.8 seconds what took his father-in-law 75 years to accumulate.

After I read this letter, I decided to do some calculations of my own. In 1997, the federal government will collect $19.2 billion in estate taxes from 37,200 Americans. The federal government will spend that $19.2 billion in 4.3 days. Assuming each of those decedents was 70 years old when they died, that represents more than 2.6 million years' worth of work and savings which will be wiped-out forever and spent by the government in less than five days.

Mr. President, some people mistakenly believe estate taxes only affect the rich. In the Washington Post this week, Deputy Treasury Secretary Larry Summers says in response to a question about the estate tax, ''You have to raise revenue somewhere, and ability to pay seems like a good way to do it.''

The truth is that there are thousands of small businesses and farms throughout the country owned and operated by middle-income Americans that are affected by the estate tax. In Oklahoma alone, statistics from the U.S. Census of Agriculture indicate that over 7,500 farms and ranches have a value that could trigger estate tax. Even those who do not end up paying the tax will spend thousands of dollars planning to avoid it or insuring against it.

What is the ultimate impact of all this uneconomic activity? According to the Small Business Administration, only 30 percent of family businesses are passed down to a second generation, and only 13 percent make it to a third generation.

It does not take a lot of success in business or investing these days to become a ''taxable estate'' in the eyes of Uncle Sam. With the explosive growth in mutual fund investments over the last several years, and the corresponding increase in stock prices, workers will retire and discover their pension plan to be much larger than they had anticipated. Aggressive business owners who reinvest all their profits back into their business will find themselves asset-rich and cash-poor.

Under current law, a taxable estate of $1 million faces a marginal tax rate of 39 percent. A taxable estate of $3 million qualifies you for a confiscatory 55 percent marginal tax rate. A tax credit limits the tax on the first $600,000 of the estate.

If a person starts a small business—be it a farm, a restaurant, or a car dealership—and they work hard, expand, and become successful, why should Uncle Sam be entitled to 39 percent or 55 percent of it? What did the government do to build that business?

This business owner has already paid annual income tax (twice if organized as a corporation), self-employment tax, FICA tax, FUTA tax, and capital gains tax. Why should the Government come in and say, after all these taxes are paid, ''We want over half of everything that's left''?

Mr. President, the current estate tax is unfair and it is counterproductive. In the long term, it needs to be repealed. In the short term, it needs to be dramatically changed.

I am introducing legislation today which represents dramatic change in the short term and provides a stepping-stone to eventual repeal. My bill goes right to the basic problem, which is estate tax rates. With seventeen marginal tax rate brackets ranging from 18 percent to 55 percent, estate tax rates are too complex and too high.

Under my legislation, taxable estates and gifts under $1 million will pay no tax, taxable estates and gifts from $1 million to $10 million will be taxed at a marginal rate of 20 percent, and taxable estates and gifts over $10 million will be taxed at a marginal rate of 30 percent.

Mr. President, this legislation benefits all taxpayers by simplifying the structure of the estate tax and reducing the number of tax brackets from seventeen to three. Further, by increasing the basic exemption from $600,000 to $1 million, it will reduce the number of estates subject to taxation by more than 40 percent and greatly reduce the need for and cost of estate tax planning.

The benefits of this legislation are also progressive. A taxable estate worth $1 million will have its tax liability completely eliminated. A taxable estate worth $5 million will receive a 64 percent reduction in tax liability, and a taxable estate worth $50 million will receive a 50 percent reduction in tax liability.

Finally, the benefits of this legislation are fair. It does not single-out certain types of estate assets for preferential treatment, and thus avoids the problems of picking winners and losers.

The enactment of estate tax reform this year will not be very easy, Mr. President, despite broad, bipartisan support in the Senate and the House.

The Clinton administration continues to block estate tax reform with partisan, class-warfare rhetoric. In the Washington Post article I mentioned earlier about estate tax reform, Deputy Secretary Summers even said, ''When it comes to the estate tax, there is no case other than selfishness.''

I find that statement offensive, and I wonder if President Clinton agrees with his lieutenant. Is passing your life's work on to your children is ''selfish''?

I encourage all my colleagues to read the letter I submitted with my statement today and ask themselves, ''Is our estate tax policy promoting freedom, family, and opportunity, or does it just promote the redistribution of wealth?''

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 650

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Estate Tax Reduction Act of 1997''.

SEC. 2. 20 PERCENT RATE OF TAX ON ESTATES EXCEEDING $1,000,000; 30 PERCENT RATE OF TAX ON ESTATES EXCEEDING $10,000,000.

(a) IN GENERAL.—Section 2001(c) of the Internal Revenue Code of 1986 (relating to imposition and rate of tax) is amended to read as follows:

''(c) RATE SCHEDULE.—

''If the amount with respect to which the tentative tax to be computed is:.	The tentative tax is:
Not over $10,000,000	20 percent.
Over $10,000,000	$2,000,000 plus 30 percent of the excess over $10,000,000.''.

(b) INCREASE IN UNIFIED CREDIT.—

(1) IN GENERAL.—Section 2010(a) of the Internal Revenue Code of 1986 (relating to unified credit against estate tax) is amended by striking ''$192,800'' and inserting ''$200,000''.

(2) GIFT TAX CREDIT.—Section 2505(a)(1) of such Code (relating to unified credit against gift tax) is amended by striking ''$192,800'' and inserting ''$200,000''.

(3) CONFORMING AMENDMENTS.—

(A) Section 2102(c)(3)(A) of such Code is amended by striking ''$192,800'' and inserting ''$200,000''.

(B) Section 6018(a)(1) of such Code is amended by striking ''$600,000'' and inserting ''$1,000,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

[From the Wall St. Journal, Apr. 15, 1997]

ELIMINATE THE MIDDLEMAN

(By Sanford F. Young)

We finally did it. We didn't want to, but we had no choice.

Exactly nine months after my father-in-law died, my wife and I signed a check for $1,285,000, payable to the Internal Revenue Service.

Now, you may ask what we are complaining about. After all, we were born into enlightened, liberal upper-middle-income families in the 1950s. Our fathers extolled our obligation to pay taxes so that the government can provide for the less fortunate. Indeed, it may have been those principles that dissuaded my father-in-law from engaging in any estate planning. So we had to sign away—in addition to state inheritance taxes, deferred income taxes, excise taxes and countless legal and accounting fees incurred just so we could compute how much tax we must pay—the great bulk of my father-in-law's estate.

Having had the privilege of holding on to this much money for these past months—as executors of the estate we are legally obligated to accumulate and preserve the assets for paying taxes—we dreamed of what we could have done with the funds: buy a beach house, prepay our kids' college education, even quit our jobs and retire. Instead, the reality of how fast that money will be spent by the government is hammered home by the giant billboard tallying government debt at the intersection of Sixth Avenue and 43rd Street in New York. I calculate that the federal government will spend in 26.8 seconds what took my father-in-law 75 years to accumulate—after the taxes he paid during his lifetime. Not a satisfying thought.

We thus propose the following: Rather than paying my father-in-law's hard-earned money to the government, which acts as no more than a greedy and inefficient middleman between the haves and have-nots, it should simply identify three of the neediest families and let us hand over a half-million dollars or so to each. This way we can know that my father-in-law's money will make a difference. And at least someone would give my father-in-law a posthumous thank-you.

NICKLES ESTATE TAX PROPOSAL

	Current law					Proposal					Impact	
	Marginal tax rate (%)	Tax before unified credit	Unified credit	Tax after unified credit	Effective tax rate	Marginal tax rate (%)	Tax before unified credit	Unified credit	Tax after unified credit	Effective tax rate	Reduction in tax liability	As a % of current law
Taxable estate:												
10,000	18	1,800	192,800	0	0	20	2,000	200,000	0	0	.....	.....
20,000	20	3,800	192,800	0	0	20	4,000	200,000	0	0	.....	.....
40,000	22	8,200	192,800	0	0	20	8,000	200,000	0	0	.....	.....
60,000	24	13,000	192,800	0	0	20	12,000	200,000	0	0	.....	.....
80,000	26	18,200	192,800	0	0	20	16,000	200,000	0	0	.....	.....
100,000	28	23,800	192,800	0	0	20	20,000	200,000	0	0	.....	.....
150,000	30	38,800	192,800	0	0	20	30,000	200,000	0	0	.....	.....
250,000	32	70,800	192,800	0	0	20	50,000	200,000	0	0	.....	.....
500,000	34	155,800	193,800	0	0	20	100,000	200,000	0	0	.....	.....
750,000	37	248,300	192,800	55,500	7	20	150,000	200,000	0	0	(55,500)	−100
1,000,000	39	345,800	192,800	153,000	15	20	200,000	200,000	0	0	(153,000)	−100
1,250,000	41	448,300	192,800	255,500	20	20	250,000	200,000	50,000	4	(205,500)	−80
1,500,000	43	555,800	192,800	363,000	24	20	300,000	200,000	100,000	7	(263,000)	−72
2,000,000	45	780,800	192,800	588,000	29	20	400,000	200,000	200,000	10	(388,000)	−66
2,500,000	49	1,025,800	192,800	833,000	33	20	500,000	200,000	300,000	12	(533,000)	−64
3,000,000	53	1,290,800	192,800	1,098,000	37	20	600,000	200,000	400,000	13	(698,000)	−64
5,000,000	55	2,390,800	192,800	2,198,000	44	20	1,000,000	200,000	800,000	16	(1,398,000)	−64
10,000,000	55	5,140,800	192,800	4,948,000	49	20	2,000,000	200,000	1,800,000	18	(3,148,000)	−64
20,000,000	55	11,000,000	0	11,000,000	55	30	5,000,000	200,000	4,800,000	24	(6,200,000)	−56
50,000,000	55	27,500,000	0	27,500,000	55	30	14,000,000	200,000	13,800,000	28	(13,700,000)	−50
100,000,000	55	55,000,000	0	55,000,000	55	30	29,000,000	200,000	28,800,000	29	(26,200,000)	−48

Replace the current unified transfer tax rate structure with two rates, 20% under $10 million and 30% over $10 million. Increase the unified credit equivalent to $1 million.
Staff estimates assume reductions are fully phased-in.

ESTATE TAX REFORM COMPARISION—$1 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	1,000,000	1,000,000	1,000,000	1,000,000
Other assets	0	0	0	0
Total estate	1,000,000	1,000,000	1,000,000	1,000,000
Family business exclusion	(1)	(1,000,000)	(1,000,000)	(1)
Taxable estate	1,000,000	0	0	1,000,000
Tax before unified credit	345,800	0	0	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0

	Current law	S. 2	S. 479	Nickles Plan
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	1,000,000	1,000,000	1,000,000	1,000,000
Total estate	1,000,000	1,000,000	1,000,000	1,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	1,000,000	1,000,000	1,000,000	1,000,000
Tax before unified credit	345,800	345,800	345,800	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0
SPLIT				
Family business assets	500,000	500,000	500,000	500,000
Other assets	500,000	500,000	500,000	500,000
Total estate	1,000,000	1,000,000	1,000,000	1,000 000
Family business exclusion	[1]	(500,000)	(500,000)	[1]
Taxable estate	1,000,000	500,000	500,000	1,000,000
Tax before unified credit	345,800	155,800	155,800	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

ESTATE TAX REFORM COMPARISON—$5 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	5,000,000	5,000,000	5,000,000	5,000,000
Other assets	0	0	0	0
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	(3,250,000)	(3,250,000)	[1]
Taxable estate	5,000,000	1,750,000	1,750,000	5,000,000
Tax before unified credit	2,398,000	668,300	668,300	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	322,500	322,500	800,000
Effective tax rate (percent)	44	6	6	16
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	5,000,000	5,000,000	5,000,000	5,000,000
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	5,000,000	5,000,000	5,000,000	5,000,000
Tax before unified credit	2,398,000	2,398,000	2,398,000	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	2,052,200	2,052,200	800,000
Effective tax rate (percent)	44	41	41	16
SPLIT				
Family business assets	2,500,000	2,500,000	2,500,000	2,500,000
Other assets	2,500,000	2,500,000	2,500,000	2,500,000
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	(2,000,000)	(2,000,000)	[1]
Taxable estate	5,000,000	3,000,000	3,000,000	5,000,000
Tax before unified credit	2,398,000	1,298,000	1,298,000	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	952,200	952,200	800,000
Effective tax rate (percent)	44	19	19	16

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

ESTATE TAX REFORM COMPARISON—$50 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	50,000,000	50,000,000	50,000,000	50,000,000
Other assets	0	0	0	0
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	[1]	(25,750,000)	(5,750,000)	[1]
Taxable estate	50,000,000	24,250,000	44,250,000	50,000,000
Tax before unified credit	27,148,000	12,985,500	23,985,500	14,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	12,639,700	23,639,700	13,800,000
Effective tax rate (percent)	54	25	47	28
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	50,000,000	50,000,000	50,000,000	50,000,000
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	50,000,000	50,000,000	50,000,000	50,000,000
Tax before unified credit	27,148,000	27,148,000	27,148,000	14,000,000

	Current law	S. 2	S. 479	Nickles Plan
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	26,802,200	26,802,200	13,800,000
Effective tax rate (percent)	54	54	54	28
SPLIT				
Family business assets	25,000,000	25,000,000	25,000,000	25,000,000
Other assets	25,000,000	25,000,000	25,000,000	25,000,000
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	(1)	(13,250,000)	(5,750,000)	(1)
Taxable estate	50,000,000	36,750,000	44,250,000	50,000,000
Tax before unified credit	27,148,000	19,860,500	23,985,500	14,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	19,514,700	23,639,700	13,800,000
Effective tax rate (percent)	54	39	47	28

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

By Mr. ALLARD:

Senate Joint Resolution 28. A joint resolution proposing an amendment to the Constitution of the United States granting the President the authority to exercise an item veto of individual appropriations in an appropriations bill; to the Committee on the Judiciary.

THE LINE-ITEM VETO CONSTITUTIONAL AMENDMENT

● Mr. ALLARD. Mr. President, today I am pleased to introduce a line-item veto constitutional amendment.

This action is particularly timely in light of the decision by a Federal district court judge which declared the recently enacted statutory line-item veto, or more accurately, enhanced rescission authority, to be unconstitutional.

This judge's decision may be overturned, or Congress may be able to modify the language in a way that satisfies the courts. Baring either of these, a line-item veto can only be provided by amending the Constitution.

Fortunately, Congress provided for expedited judicial review of the constitutionality of the 1996 Line Item Veto legislation, and the Supreme Court has agreed to hear arguments in the case next month, and to render a decision by July.

Prior to my election to the Senate I served in the House of Representatives. In that body I introduced a constitutional line-item veto on several occasions. This was motivated by my view that the greatest threat to our economy is the continued deficits which Congress piles on top of the accumulated $5.3 trillion national debt.

Obviously, the budget system that we have in place is not working. We need a balanced budget amendment and a line-item veto.

Last year, Congress gave the President what is generally referred to as expanded rescission authority. The Republican Congress committed to give this authority to whoever was elected President in 1996, Democrat or Republican. It was immaterial to us, our objective was to provide a bi-partisan tool to help eliminate wasteful spending beginning on January 1, 1997.

Last year's legislation was an expansion of the very limited rescission authority granted to the President in 1974 under the Impoundment Control Act. Under that earlier statute, the President could indicate items in the budget that he wanted to rescind, but he was required to obtain the support of both Houses of Congress in order for the rescission to actually be enacted. The budget history of the past two decades demonstrates better than I could why this is akin to the fox guarding the henhouse.

The Line-Item Veto Act reversed this burden and required the Congress to disapprove any rescissions identified by the President within 30 days. If this deadline was not met, then the item was eliminated.

This new authority permitted three types of rescissions. First, discretionary appropriations could be rescinded. Discretionary spending is about one-third of the budget and is where most of what is considered pork barrel spending occurs.

Second, the law permitted the rescission of any new item of entitlement spending. While currently existing entitlements would be exempt, any new item could be stricken—entitlements constitute the remaining two-thirds of the budget and is certainly the fastest growing portion of the budget.

Finally, certain limited tax benefits could be rescinded. These limited tax provisions were generally defined as provisions that provided a federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries.

The judge who ruled the line item veto statute unconstitutional focused on the fact that the cancellation or rescission authority under the statue exists only after the President signs a bill. He has up to 5 days after signature to identify these rescissions. The judge concluded that this was an unconstitutional delegation of Congressional power.

I find this reasoning puzzling since the statute was crafted in a manner that Congress believed to be consistent with past Supreme Court decisions concerning Congressional delegation of authority. The statute also provides nearly identical authority to the impoundment authority held by all Presidents from George Washington up through 1974 when Congress voted to deny this authority to future presidents.

Obviously, we will hear the final word on this in July. One thing however, is certain. The authority given to the President last year was different from that authority held by 43 state governors. In the states the governor has the explicit authority to line item veto provisions in a bill as part of the actual bill-signing process.

I believe it is time that we take the approach of the states. In order to do this we must enact a Constitutional Amendment. Under article I, section 7 of the Constitution, the President's veto authority has been interpreted to mean that he must sign or veto an entire piece of legislation—he cannot pick and choose.

This language reads: ''Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, . . .'' this section then proceeds to outline the procedures by which Congress may override this veto with a two-thirds vote of both houses.

The amendment that I am introducing today amends this language as it pertains to appropriations bills. It specifically provides that the President shall have the power to disapprove any appropriation of an appropriations bill at the time the President approves the bill.

This change will make explicit that the President is no longer confined to either vetoing or signing an entire bill, but that he may choose to single out certain appropriations for veto and still sign a portion of the bill.

I noted earlier that 43 state governors have some type of line item veto. This is consistent with the approach taken in most state constitutions of providing a greater level of detail concerning the budget process than is contained in the U.S. Constitution. In my view, the line item veto has been an important factor in the more responsible budgeting that occurs at the state level.

Colorado is one of the states that gives line item veto authority to the governor. That power, along with a balanced budget requirement in the state constitution, has worked well and insured that Colorado has been governed in a fiscally responsible manner regardless of who served in the legislature or in the governor's office.

Mr. President, I look forward to further discussion on this important issue. I realize that the Supreme Court may overturn the lower court decision and declare the line item veto statute

constitutional. However, in my mind, this is no substitute for moving ahead on a constitutional amendment. It is time to eliminate the uncertainly, and provide for explicit line item veto authority for the President.●

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. NICKLES, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 9, a bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization.

S. 28

At the request of Mr. THURMOND, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 89

At the request of Ms. SNOWE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 222

At the request of Mr. DOMENICI, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 222, a bill to establish an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 311

At the request of Mr. GRAHAM, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 311, a bill to amend title XVIII of the Social Security Act to improve preventive benefits under the medicare program.

S. 317

At the request of Mr. CRAIG, the name of the Senator from Kansas [Mr. ROBERTS] was added as a cosponsor of S. 317, a bill to reauthorize and amend the National Geologic Mapping Act of 1992.

S. 347

At the request of Mr. CLELAND, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 347, a bill to designate the Federal building located at 100 Alabama Street NW, in Altanta, Georgia, as the ''Sam Nunn Federal Center''.

S. 413

At the request of Mrs. HUTCHISON, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 413, a bill to amend the Food Stamp Act of 1977 to require States to verify that prisoners are not receiving food stamps.

S. 415

At the request of Mr. BAUCUS, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 415, a bill to amend the medicare program under title XVIII of the Social Security Act to improve rural health services, and for other purposes.

S. 436

At the request of Mr. ROTH, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 436, a bill to amend the Internal Revenue Code of 1986 to provide for the establishment of an intercity passenger rail trust fund, and for other purposes.

S. 476

At the request of Mr. HATCH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 476, a bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000.

S. 562

At the request of Mr. D'AMATO, the names of the Senator from Nevada [Mr. REID], the Senator from Montana [Mr. BURNS), and the Senator from Minnesota [Mr. GRAMS] were added as cosponsors of S. 562, a bill to amend section 255 of the National Housing Act to prevent the funding of unnecessary or excessive costs for obtaining a home equity conversion mortgage.

S. 563

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 563, a bill to limit the civil liability of business entities that donate equipment to nonprofit organizations.

S. 564

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 564, a bill to limit the civil liability of business entities providing use of facilities to nonprofit organizations.

S. 565

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 565, a bill to limit the civil liability of business entities that make available to a nonprofit organization the use of a motor vehicle or aircraft.

S. 566

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 566, a bill to limit the civil liability of business entities that provide facility tours.

S. 570

At the request of Mr. NICKLES, the names of the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Kentucky [Mr. MCCONNELL) were added as cosponsors of S. 570, a bill to amend the Internal Revenue Code of 1986 to exempt certain small businesses from the mandatory electronic fund transfer system.

S. 572

At the request of Mr. ALLARD, the names of the Senator from Nebraska [Mr. HAGEL], the Senator from Wyoming [Mr. ENZI], and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of S. 572, a bill to amend the Internal Revenue Code of 1986 to repeal restrictions on taxpayers having medical savings accounts.

S. 606

At the request of Mr. HUTCHINSON, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 606, a bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors.

SENATE CONCURRENT RESOLUTION 23—HONORING THE LIFETIME ACHIEVEMENTS OF JACKIE ROBINSON

Mr. MCCAIN submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation.

S. CON. RES. 23

Whereas Jackie Robinson was the first four sport letterman at the University of California at Los Angeles;

Whereas on April 15, 1947, Jackie Robinson was the first African-American to cross the color barrier and play for a major league baseball team;

Whereas Jackie Robinson, whose career began in the Negro Leagues, went on to be named Rookie of the Year and subsequently led the Brooklyn Dodgers to six National League pennants and a World Series championship;

Whereas Jackie Robinson's inspiring career earned him recognition as the first African-American to win a batting title, lead the league in stolen bases, play in an All-Star game, win a Most Valuable Player award, play in the World Series and be elected to baseball's Hall of Fame;

Whereas after retiring from baseball Jackie Robinson was active in the civil rights movement and founded the first bank owned by African-Americans in New York City;

Whereas his legacy continues to uplift the Nation through the Jackie Robinson Foundation that has provided 425 scholarships to needy students;

Whereas Jackie Robinson's courage, dignity, and example taught the Nation that what matters most is not the color of a man's skin but rather the content of his character;

Whereas Jackie Robinson, in his career, consistently demonstrated that how you play the game is more important than the final score;

Whereas Jackie Robinson's life and heritage help make the American dream more accessible to all; and

Whereas April 15, 1997, marks the 50th anniversary of Jackie Robinson's entrance into major league baseball: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

That the achievements and contributions of Jackie Robinson be honored and celebrated; that his dedication and sacrifice be

recognized; and that his contributions to African-Americans and to the Nation be remembered.

Mr. MCCAIN. Mr. President, today I submit a Senate concurrent resolution honoring the lifetime achievements of Jackie Robinson. I urge its immediate consideration.

After an already distinguished career in the Negro League, Jackie Robinson became the first African-American to play major league professional baseball and one of the best individuals ever to play the game. Just over 50 years ago, Mr. Robinson animated for the entire country the simple premise on which our Nation was founded—that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. Given that this animation occurred more than a decade and a half before Martin Luther King reminded us that man should be judged not by the color of his skin but by the content of his character, Mr. Robinson's accomplishments were truly great.

As his biographers have noted, Jackie Robinson began playing major league baseball 7 years before the historic Brown versus Board of Education Supreme Court ruling, 18 years before voter registration drives in Selma, Alabama. And 18 years before passage of the Voter Rights Act of 1965.

At a time when African Americans were still being forced to walk to the back of the bus, Jackie Robinson was walking up to the plate and receiving cheers of Americans from all walks of life. But for the cheers given the efforts of Jackie Robinson, I doubt we would have heard the cheers given to Arthur Ashe, Michael Jordon, and Tiger Woods.

While Jackie Robinson is best known for being the first African-American to play major league baseball, his entire life was full of achievements. These are all detailed in this resolution.

Jackie Robinson was the first four sport letterman at the University of California at Los Angeles.

Jackie Robinson was named Rookie of the Year and subsequently led the Brooklyn Dodgers to six National League pennants and a World Series championship.

Jackie Robinson's career earned him recognition as the first African-American to win a batting title, lead the league in stolen bases, play in an All-Star game, win a Most Valuable Player Award, play in the World Series and be elected to baseball's Hall of Fame.

Beyond his accomplishments in baseball, Jackie Robinson was active in the civil rights movement and founded the first bank owned by African-Americans in New York city.

Jackie Robinson's legacy continues to uplift the Nation through the Jackie Robinson Foundation that has provided 425 scholarships to needy students.

It is difficult to list the many heights obtained by Jackie Robinson. He was as successful off the playing field as he was on. It is fitting for the Congress of the United States to honor and celebrate the achievements and contributions of Jackie Robinson; that his dedication and sacrifice be recognized; and that his contributions to African-Americans and to the Nation be remembered.

SENATE RESOLUTION 78—NATIONAL ERASE THE HATE AND ELIMINATE RACISM DAY

Mr. BURNS (for himself, Mr. BAUCUS, Ms. COLLINS, Mr. KEMPTHORNE, Mr. FAIRCLOTH, Mr. BINGAMAN, Mr. DEWINE, Mr. HATCH, Mr. GRASSLEY, Mr. WARNER, Mr. CLELAND, Mr. GORTON, Mr. ABRAHAM, Ms. LANDRIEU, Mr. REID, Mr. LIEBERMAN, Mr. DODD, Mr. MURKOWSKI, Mr. D'AMATO, Mr. KENNEDY, Mr. KERREY, Mr. LEVIN, Mr. GRAMM, Mr. KERRY, Mr. LUGAR, and Mr. MOYNIHAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 78

Whereas the term ''hate crime'' means an offense in which one or more individuals, commits an offense (such as an assault or battery (simple or aggrevated), theft, criminal trespass, damage to property, mob action, disorderly conduct, or telephone harassment) by reason of the race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals;

Whereas there are almost 8,000 hate crimes reported to the Department of Justice each year, and the number of hate crimes reported increases each year;

Whereas hate crimes have no place in a civilized society that is dedicated to freedom and independence, as is the United States;

Whereas the people of the United States must lead and set the example for the world in protecting the rights of all people;

Whereas the people of the United States should take personal responsibility for and action against hatred and hate crimes;

Whereas the Members of Congress, as representatives of the people of the United States, must take personal responsibility for and action against hatred and hate crimes;

Whereas the laws against hate crimes, which have been passed by Congress and signed by the President, must be supported and implemented by the people of the United States and by Federal, State, and local law enforcement officials and other public servants: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 30, 1997, as ''National Erase the Hate and Eliminate Racism Day''; and

(2) requests that the President issues a proclamation calling upon the people of the United States and throughout the world to recognize the importance of using each day as an opportunity to take a stand against hate crimes and violence in their nations, states, neighborhoods, and communities.

Mr. BURNS. Mr. President, I rise today, along with Senator BAUCUS and 23 of our fellow colleagues, to submit a resolution to designate April 30 as ''National Erase the Hate and Eliminate Racism Day.'' We are submitting this measure because, as you may know, a few years ago a series of anti-semitic and racially biased crimes occurred in my home town of Billings, MT. However, instead of ignoring these events, I am proud to say that the community united and worked together to ban these acts of hatred. We are hoping that the American people will learn from Montanans that racism and hate crimes can be done away with if we work together.

According to the United States Department of Justice, there are almost 8,000 racially and biased crimes each year—and unfortunately, this number is rising. Due to this disappointing fact, my colleagues and I have determined that a day should be set aside to bring groups together that will work to begin to heal our Nation from the sins of our past and present.

This day would serve as a day for people in the United States, and throughout the world, to recognize the importance of using every day as an opportunity to take a stand against hate crimes and violence in their neighborhoods, communities, states and nations.

Through this legislation, we hope to reinforce in the American people that our diversity is something to be proud of. A new understanding of our differences would help bring forth a new respect for each other, and this resolution should serve as the vehicle to educate Americans and promote unity throughout our communities and States.

Now, I realize that passage of this measure will not immediately obliterate racism from our country. But it is our responsibility, as Members of this distinguished, elected, body to set an example for the American people by speaking up for what is right and encouraging others to do so.

I would like to offer a special thanks to the YWCA and the Anti-Defamation League for their assistance in garnering support for this measure. Their continued service to the American people in supporting diversity serves as a means to open the doors between divergent groups. They should be acknowledged and praised by all.

We welcome each of our colleagues to join with us to work to eradicate the forces that divide us. Finally, I hope that by April 30, the American people are made aware of our thoughts and that we will work for justice for all.

Mr. BAUCUS. Mr. President, I rise today to submit a resolution which will designate this April 30 as a National Day to Erase the Hate and Eliminate Racism.

In the last couple of years, we Montanans have seen our state come under the microscope of considerable media scrutiny. We've had the arrest of the alleged ''Unabomber,'' the standoff between the FBI and the so-called Freemen outside Jordan, and a series of hate crimes in some of our cities.

And it's appropriate for the press to take a look at these things, while recognizing that many of these incidents are repeated on a larger scale throughout the rest of the country.

What has frustrated me, and many other Montanans, however, is the lack of attention to the vast majority of Montanans—the people who are willing to stand up to bigots and hate groups. For example, take what happened in Billings, Montana, a few years ago.

People in Billings enjoy a high quality of life that only Montana can provide. It is the largest city in Montana, but it still has the feel of a small town. Folks say hello to strangers in the street. Families go to the symphony in Pioneer Park in the summer. And neighbors go out of their way to help someone when they need a hand.

That placid life was shattered in November 1993, when a group of ''skinheads'' threw a bottle through the glass door of the home of a Jewish family. A few days later they put a brick through the window of another Jewish family's home—with a five-year-old boy in the room. Then they smashed the windows of a Catholic high school that had a ''Happy Hanukkah'' sign on its marquee.

The people of Billings were horrified. But they did not sit at home and try to ignore the problem. They did not let the hatred take root. The community banded together.

Thousands of homes put Menorahs in their windows. They showed the skinheads that the people of Billings were united against hate. And that year, Billings held the largest Martin Luther King Day march ever in Montana.

And all over Montana, we see more of the same. Whether it is a county attorney who stands up to militia groups in Jordan. Or the unsung people who work in their communities, such as Helena, to stamp out racism and hatred through the Montana Human Rights Network. These are all stories that need to be told.

Recently, the USA Network aired a movie called ''Not In This Town,'' which told the story of these events to the country. I commend the network for bringing this story to the world because it sends two powerful messages. First of all, Montana is no home for bullies and hate-mongers. And second, wherever you live, violence and bigotry do not have to be accepted in your community.

That is why today I am submitting, with my colleague from Montana, Senator BURNS, and many others from across America, a bill which will designate April 30, 1997, as a National Day to Erase the Hate and Eliminate Racism.

I know a simple bill like this one will not end the problems we still have. A piece of paper alone cannot teach a child that hate is wrong.

But I do believe a piece of paper can make people think. It can make people talk about hate crimes. And it can light a spark in people's hearts and minds.

And if we continue to look at the good, courageous, decent things our neighbors are doing, that spark just might catch fire, in Montana and all across the country.

AMENDMENTS SUBMITTED

CHEMICAL WEAPONS CONVENTION RATIFICATION RESOLUTION

BIDEN AMENDMENTS NOS. 47–51

Mr. BIDEN proposed five amendments to the executive resolution (S. Res. 75) to advise and consent to the ratification of the Chemical Weapons Convention, subject to certain conditions; as follows:

AMENDMENT NO. 47

On page 63, strike lines 8 through 20.

AMENDMENT NO. 48

Beginning on page 61, strike line 21 and all that follows through line 7 of page 63.

AMENDMENT NO. 49

Beginning on page 65, strike line 25 and all that follows through line 3 of page 67.

AMENDMENT NO. 50

Beginning on page 63, strike line 21 and all that follows through line 4 of page 65.

AMENDMENT NO. 51

On page 65, strike lines 5 through 24.

HELMS AMENDMENT NO. 52

Mr. HELMS proposed an amendment to the executive resolution, Senate Resolution 75, supra; as follows:

On page 2, line 18, strike ''payments'' and insert ''any payment''.

On page 6, line 3, strike ''the head of''.

On page 8, line 2, insert ''or such other organization, as the case may be,'' after ''nization''.

On page 8, line 10, insert ''or the affiliated organization'' after ''tion''.

On page 9, line 11, insert ''or the affiliated organization'' after ''Organization''.

On page 9, line 17, insert ''or the affiliated organization'' after ''Organization''.

On page 13, line 21, insert '', and any official or employee thereof'' after ''it''.

On page 14, line 5, insert '', and any official or employee thereof'' after ''functions''.

On page 15, lines 6 and 7, strike ''to United States ratification'' and insert ''affecting the object and purpose''.

On page 18, line 2, insert ''support for'' after ''resolution of''.

On page 20, line 12, strike ''citizens,'' and insert ''citizens and''.

On page 23, line 18, strike ''obligation'' and insert ''obligations''.

On page 25, line 19, strike the comma.

On page 32, line 13, insert ''of Representatives'' after ''House''.

On page 32, lines 19 and 20, strike ''Foreign Military Sales, Foreign Military Financing,'' and insert ''Foreign Military Sales and Foreign Military Financing under the Arms Export Control Act''.

On page 34, line 1, strike ''Committee'' and insert ''Committees''.

On page 34, line 3, insert ''the'' after ''and''.

On page 37, line 11, insert a comma immediately after ''games''.

On page 40, line 9, strike ''of'' and insert ''for''.

On page 41, line 16, insert ''of the Convention'' after ''ratification''.

On page 47, line 19, insert ''the ratification of'' after ''to''.

On page 49, line 5, move the margin of ''(i)'' 2 ems to the right.

On page 49, line 11, move the margin of ''(ii)'' 2 ems to the right.

On page 49, line 16, move the margin of ''(iii)'' 2 ems to the right.

On page 52, line 9, insert a comma after ''(D)''.

On page 53, line 21, strike the comma.

On page 55, line 4, insert ''a schedule of'' after ''to''.

On page 57, line 1, strike ''the'' the first place it appears and insert ''to''.

On page 59, line 15, strike the comma.

On page 61, line 11, strike ''on an involuntary basis''.

On page 61, line 12, insert ''where consent has been withheld,'' after ''States,''.

On page 8, line 8, insert '', if accepted,'' after ''provision''.

On page 25, line 19, insert ''on Intelligence'' after ''tee''.

On page 27, line 7, strike ''is'' and insert ''are''.

On page 27, line 22, insert ''on Intelligence'' after ''Committee''.

On page 57, line 15, strike ''Ruanda'' and insert ''Rwanda''.

NOTICE OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. CAMPBELL. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will meet on Tuesday, April 29, 1997 at 9:30 a.m. in Room 485, Russell Senate Building to mark-up S. 459, a bill to amend the Native American Programs Act of 1974. An Oversight Hearing on P.L. 102–575, the San Carlos Water Rights Settlement Act of 1992 will immediately follow the Business Meeting.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce that the oversight hearing to receive testimony from the General Accounting Office on their evaluation of the development of the Draft Tongass Land Management Plan scheduled for Tuesday, April 29, 1997 before the Committee on Energy and Natural Resources will now begin at 10:00 a.m. instead 9:30 a.m. as previously scheduled.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to consider the nomination of Elizabeth Anne Moler to be Deputy Secretary of Energy.

The hearing will take place Tuesday, May 6, 1997 at 9:30 a.m. in Room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

For further information, please call Camille Heninger Flint at (202) 224–5070.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce for the public that an

oversight hearing has been scheduled jointly before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources and the Subcommittee on Forests and Forest Health of the House Committee on Resources.

The hearing will take place Thursday, May 15, 1997 at 2:00 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive testimony on the release of the Columbia River Basin Environmental Impact Statement.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Judy Brown or Mark Rey at (202) 224–6170.

NOTICE OF WORKSHOP

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a workshop has been scheduled before the Subcommittee on Forests and Public Land Management to exchange ideas and suggestions on the proposed ''Public Land Management Responsibility and Accountability Restoration Act.'' The workshop will take place on Thursday, May 22, beginning at 2:00 p.m. in room 366 of the Dirksen Senate Office Building. The topic for this workshop will be to hear testimony regarding community-based solutions that have been tried concerning public land conflicts.

Testimony at these workshops is by invitation only. They are open to the public and the press. For further information, please write to the Subcommittee on Forests and Public Land Management, United States Senate, Washington, D.C. 20510, or call Mark Rey or Judy Brown of the Subcommittee staff at (202) 224–6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, April 24, 1997, in executive session to mark up S. 7, the National Missile Defense Act of 1997.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HELMS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on April 24, 1997, at 10 a.m. on ISTEA Reauthorization/Truck Safety.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. HELMS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, April 24, 1997, at 12:30 p.m. for a hearing on opportunities for management reforms at the National Oceanic Atmospheric Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Overview of Vocational Education, during the session of the Senate on Thursday, April 24, 1997, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Thursday, April 24, 1997, beginning at 9:30 a.m. until business is completed, to hold a hearing to consider revisions to Title 44.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for an oversight hearing on ''SBA's Non-Credit Programs'' on Thursday, April 24, 1997, which will begin at 9:30 a.m. in room 428A of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, April 24, 1997 at 2:00 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN AIR, WETLANDS, PRIVATE PROPERTY, AND NUCLEAR SAFETY

Mr. HELMS. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety be granted permission to conduct a hearing Thursday, April 24, 1997, at 9:30 a.m., on ozone and particulate matter standards proposed by the Environmental Protection Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. HELMS. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 24, 1997, at 2:00 p.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. HELMS. Mr. President, I ask unanimous consent that the Science, Technology and Space Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on April 24, 1997, at 2 p.m. on reauthorization of the FY98 NASA budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

MEDICARE

● Mr. FRIST. Mr. President, in 1995, my first year in the U.S. Senate, the Medicare Trustees told Congress that unless it took ''prompt effective, and decisive action * * * Medicare will be dead in seven years.''

Two years later, another Trustees' report has been delivered to Congress and we are even worse off. We still face the same tough choices. We must balance the budget, restore integrity to the Medicare trust fund, update the Medicare system and provide consumers with more choice—a cornerstone structural change that addresses the long-term viability of the Medicare program.

In the 104th Congress, the U.S. Congress realized that the fundamental way to capture the dynamics of change in the health care system would be to modernize Medicare by opening it to a broader array of private health plans that would compete on the basis of quality and not just cost.

President Clinton embraced this ideal as well by initiating a Medicare Choices demonstration and including provisions to expand choice, although I feel they are limited, in his February budget submission to the U.S. Congress.

Therefore, Senator ROCKEFELLER and I introduced S. 146, the Provider-Sponsored Organization Act of 1997. S. 146 expands the current Medicare risk contracting program to include PSO's, Provider Sponsored Organizations.

A PSO, very simply, is a public or private provider, or group of affiliated providers, organized to deliver a spectrum of health care services under contract to purchasers.

Our bill specifies detailed requirements for certification, quality assurance and solvency to ensure that PSO's contracting with Medicare meet standards that are comparable to or higher than those for health maintenance organizations [HMO's].

Specifically, the bill provides Federal leadership for States to fashion a streamlined PSO approval process that is consistent with Federal standards protecting Medicare beneficiaries.

Second, by providing incentives for PSO's and HMO's to evaluate patterns of care, it promotes state of the art continuous quality improvement.

Third, the bill creates a mechanism by which the Secretary of HHS would be allowed, but not required, to enter into partial risk payment arrangements with PSO's or HMO's.

Fourth, it outlines specific solvency standards for PSO's which reflect the peculiarities of their operating environment.

Now, why are PSO's, to my mind, a good place to start in opening up and modernizing Medicare to offer our seniors and individuals with disabilities more choice of private plan options?

First, and something very close to me as a physician and as one who has spent over 50,000 hours working in hospitals, PSO's will improve quality of health care. The creation of PSO's in the Medicare environment, I am absolutely convinced, will improve quality.

It really goes back to personal experience. But the fundamental reason is that PSO's are the care-givers. PSO's are the physicians, the hospitals, the facilities.

It is those physicians, those care-givers who are on the front line of health care every day. Thus, they are in the best position to control, monitor, and demand quality for that individual patient who walks in through the door.

It is my feeling that in a competitive managed care environment, PSO's will be at the table competing with insurance companies, competing with HMO's. But it is they, because they are the care-givers, that can bring to the table that concern for the individual patient, and demand quality which will have a spill-over effect in the negotiations in the managed care environment. There is an inherent PSO emphasis on quality because the people at the table are the people who are taking care of the individual patient.

The second issue around quality, is that S. 146 requires collective accountability, where quality and cost are measured by overall practice patterns across the entire PSO rather than just case-by-case utilization review.

It used to be that we did not know how to do that. In 1997, we do know how to do that. We look at system-wide measures of quality. The advantage of system-wide measures, instead of case-by-case utilization, is better use of resources, less intrusiveness in the doctor/patient relationship, and it is state of the art today. It is built into our bill.

S. 146 requires PSO's to meet new, higher quality standards and they must, as spelled out in our bill, have experience in the coordination of care. Thus, we will not see the creation of inexperienced groups coming forward.

That is important because of the so-called 50–50 rule, a standard which is inappropriately used as a surrogate measure for quality, requiring that plans participate in the commercial marketplace.

Well, today, because of the outline of higher quality standards, and because of the requirement for experience with the coordination of care, the 50–50 rule does not apply and would be waived for PSO's.

I should also say that non-PSO Medicare risk contractors, under our bill, would be eligible for waiving this quasi-quality measurement as long as they met the enhanced quality standards spelled out in our bill. Thus, S. 146 sets a new standard for quality assurance, a standard that I feel will set the pace for the rest of the industry.

Mr. President, the Provider Sponsored Organization Act returns to a basic concept that applies a lot to what we are doing in the U.S. Congress today. This bill will empower providers to become, once again, true partners in the clinical decisionmaking process. The PSO really does allow physicians, care-givers, and facilities to once again regain some control over what goes on at that doctor/patient relationship level.

In the U.S. Congress over the last year we have seen bills, like a 48-hour maternity stay bill post-birth, and a proposal for a 48-hour stay after mastectomy. I have even had proposals come forward to me for 5-day bills after heart surgery. Well, obviously the U.S. Congress can go in and try to micromanage body part by body part, but I do not think that is the direction to go.

By bringing care-givers to the table, by reenfranchising them, by allowing them to once again regain participation in the clinical decision-making process, we get out of that business.

Why? Because at the negotiating table in the managed care environment you have physicians and care-givers there speaking for the patient, not allowing just cost to drive what goes on in the managed care environment.

In addition, the PSO option will bring coordinated care to more communities. Again, this is terribly important because we see so much of managed care in urban areas and not in rural areas and not in under-served areas.

This bill very specifically has incentives built in it to encourage participation in those under-served and rural areas. It will very clearly, to my mind, bring managed care, coordinated care, networking of care to those communities where it is not an available choice today.

As you know, managed care has had great difficulty in attracting seniors. We know that about three-quarters of the employed population are enrolled in coordinated/managed care today. But in Medicare, only about 13 percent are enrolled.

Two reasons. Right now, the rigidity of our Medicare system does not allow any other entities besides a very narrowly defined HMO to participate in Medicare. We can agree or disagree whether to open that system up to a broad array of plans. Indeed, I think this first step of a PSO is the most reasonable way to go to begin to expand that choice.

In the State of Tennessee, the majority of Medicare beneficiaries have no choice. There is no HMO, except right in middle Tennessee. There are no other plans. Senior citizens have no choice whatsoever in Tennessee, except in Nashville, where they can choose one plan today.

The second reason, is that our seniors are scared their care is going to be taken away. They are scared to join managed care because they are scared that their local physician will be dropped from the network. Many fear that an HMO or managed care plan might drop their physician once they join it, and that frightens them a great deal.

It only makes sense that Medicare beneficiaries will feel much more secure about coordinated care knowing that they have the choice of a health care plan run by care-givers, run by physicians, nurses, and hospitals who are in their own local community. The Rockefeller/Frist bill will give them that security.

PSO's, as I mentioned, do apply particularly well to rural communities. Because the doctors and hospitals are already in the rural areas, serving the local population, it is easier for them, rather than some outside insurance company maybe located 200 miles away, to organize, network and provide a coordinated care option for seniors in what have been traditionally underserved rural areas.

Finally, given the fact that Medicare's own trustees have reported that the trust fund will soon be bankrupt, Medicare's rate of growth clearly must be slowed. The introduction of PSO's will advance market-based competition within Medicare, which I believe is absolutely essential to the long-term integrity of the entire Medicare Program, both part A and part B.

The Provider Sponsored Organization Act of 1997 builds on the PSO provision included in the Balanced Budget Act of 1995 [BBA]. The BBA created a legal definition of PSO's and developed a definition of ''affiliated provider.'' S. 146 goes one step further. It defines a Medicare Qualified PSO as a PSO that has the capability to contract to provide full benefit, capitated, coordinated care to beneficiaries.

Specific criteria for the direct provision of services by affiliated providers are spelled out in the bill. This ensures that all but a small fraction of contracted services are provided either under affiliation or by participating provider agreements.

It also ensures that current Medicare provider contracting rules, especially those that protect beneficiaries or consumers from financial liability in the event of a plan failure, will also apply to PSOs.

Since Medicare qualified PSOs do not enter the commercial market as a health plan in order to contract with Medicare, S. 146 provides Federal certification for the first four years, after which transition to State licensure is carried out.

In addition, this bill requires that the Secretary contract with states during that four year period to provide local monitoring of ongoing PSO performance, as well as beneficiary access to services. At the end of the four year period, State licensure would be required as long as State standards are sufficiently similar to the Federal standards, and the solvency standards are identical.

This approach over these initial four years, marries the benefits of national standards for a national program with the benefits of close monitoring at the State level by State agencies, an approach currently used by Medicare in certifying a variety of health care providers.

The issue of solvency. Last year's Balanced Budget Act mandated that the Secretary develop new solvency standards that are more appropriate to this PSO, provider-sponsored, environment.

Similarly, S. 146 recognizes that PSOs are different. They are not insurance companies, nor should they pretend to be insurance companies. PSOs are the caregivers themselves.

Thus, it is not necessary, because they are care-givers—physicians, nurses, and facilities—for them to go out and contract out or pay claims for health care services that they have to go out and essentially buy—as insurance companies have to do. Very different. This bill establishes these new solvency standards to protect Medicare beneficiaries against the risk of PSO insolvency.

The test of fiscal soundness is based on net worth and reserve requirements drawn from current Medicare law and the current National Association of Insurance Commissioners' (NAIC) ''Model HMO Act.'' Adjustments are made to reflect the operational characteristics of PSOs. For example, in measuring net worth, it ensures that health delivery assets held by the PSOs, such as the hospital building, are recognized just as they are in NAIC's Model HMO Act. Thus, fiscal soundness is assured.

Another issue on which the Rockefeller/Frist bill differs from the 1995 Balanced Budget Act is that it gives the Secretary authority to enter partial risk contracts, either with PSO's or HMO's.

The Balanced Budget Act required that PSO's take full risk with respect to Medicare benefits. While both bills would require that PSO's provide the full Medicare-defined benefit package, S. 146 adds a partial risk payment method, that is, payment for all services based on a mix of capitation and cost. This is actually very important if we want to have coordinated care go to our rural communities.

Now, why is PSO legislation necessary? First, current Medicare statute does not allow managed care plans to serve only Medicare patients. Instead, currently it requires these types of plans to participate also in the commercial market.

The Balanced Budget Act established the premise, that PSO's should be allowed to offer Medicare-only plans. Therefore, the rule that I mentioned earlier, the so-called 50–50 rule, is inappropriate under our bill for Medicare-only type plans.

Second, plans today are required to go through the State licensure process. Yet, the overwhelming majority of State licensure processes do not recognize the fact that PSO's differ from most insurers. Rather, States today expect them to look and act like insurers. But they are not, they are caregivers.

Senator ROCKEFELLER and I, in closing, did not introduce this legislation to eclipse the current Medicare risk contractors. Rather, the Provider Sponsored Organization Act compliments existing HMO options in the Medicare program and expands the choices available to seniors and individuals with disabilities.

This bill is narrow. It is focused. It really does not take on the broader issues of structural reform that must be addressed in Medicare. I would like to see much more choice than this bill, but this is the place to start.

Mr. President, Qualified Provider-Sponsored Organizations will challenge all health care organizations participating in Medicare to meet the goal of an integrated, coordinated health care system where quality, and not just cost, is put forward, where relationships of care-givers and their patients is preserved, and where physicians, nurses and hospitals come to the table. PSO's will challenge the entire system and the result will be higher quality.●

SENATOR SAM NUNN SUPPORTS THE B–2

● Mr. INOUYE. Mr. President, there have been many supportive comments on the remarks I presented last week on the need to acquire nine additional B–2 global precision strike aircraft. There is one response, in particular, which I wish to share with my colleagues.

Former Senator Sam Nunn of Georgia served the Senate for many years. Through dedicated work and thoughtful analysis, Senator Nunn came to be regarded as a national authority on defense issues. I now ask that a letter in support of additional B–2 procurement, which Senator Nunn sent to Congressman DUNCAN HUNTER, chairman of the House Committee on National Security, Subcommittee on Military Procurement, be printed in today's RECORD. I believe that all Senators will benefit from a close and thoughtful reading of former Senator Nunn's letter.

The letter follows:

KING & SPALDING
Washington, DC, March 10, 1997.

HON. DUNCAN HUNTER,
Chairman, Subcommittee on Military Procurement,
Committee on National Security,
U.S. House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: Thank you for asking me to provide testimony for your March 12, 1997, hearing on bomber force structure. As you know, I have been a strong supporter of the B–2 bomber program since its inception as the Advanced Technology Bomber in the early 1980's. I continue to believe that 21 B–2 bombers will not constitute an adequate force level to deal with many likely future contingencies and crises, and that no other military systems in existence or on the drawing boards can adequately substitute for the capabilities the B–2 offers. Therefore, I strongly endorse the Subcommittee's reconsideration of the future bomber force structure to include the issue of resuming production of the B–2 bomber. I believe the Subcommittee needs to carefully consider the following points in its deliberations.

*For the foreseeable future, two major hot spots will remain in the Middle East and on the Korean peninsula. Yet these set-piece scenarios should not be the only scenarios against which the adequacy of our forces (and our military strategy) are tested.

*Potential enemies have learned several valuable lessons from Iraq's experience during Operation Desert Storm don't give the U.S. time to deploy forces and their support to the theater, do focus on disrupting U.S. air operations, do target strategic objectives that allies will be reluctant to counterattack (Seoul, Saudi oil field, etc.) and plan to seize them rapidly, before U.S. power can be brought to bear.

*Future conflicts are likely to confront the U.S. with a race against time and the advance of enemy forces toward important strategic objectives (think how different it might have been if Saddam's troops had not stopped after taking Kuwait.)

*U.S. contingency planning, including the BUR analyses and the JCS ''Nimble Dancer'' wargames (and the widely criticized 1995 DOD Heavy Bomber Study), assumes the U.S. will enjoy two weeks of actionable warning prior to an enemy attack—valuable time during which our military plans to deploy forces from CONUS and Europe, and more important, to start the sealift bridge from CONUS to the theater.

*This sealift link is crucial to U.S. performance in 1990, the U.S. needed six months in which to build up forces levels and to establish the sealift pipeline to support those forces during high-intensity conflict. Yet, the adequacy of logistics support has never been adequately modeled in JCS wargames.

*In 1994, Iraq suddenly mobilized troops and sent them to the border with Kuwait The U.S. response capability raises serious questions. U.S. planning assumes two carriers in the Persian Gulf, yet there were none, U.S. planning assumes deployment of many hundreds of tactical aircraft to the theater in the first week, yet only about one hundred arrived, U.S. planning assumes prepositioned equipment aboard ships berthed at Diego Garcia in the Indian Ocean are important assets, yet these ships did not arrive until after the crisis was ended, U.S. planning assumes many precision munitions, yet supplies in the theater were low.

*If an important class of future contingencies will be those in which U.S. forces are trying to prevent an enemy surprise attack from seizing high-value targets, then U.S. forces will have to place a premium either on combat-ready forces stationed within the theater or on forces that can reach the theater and conduct effective operations in a timely fashion.

*We cannot count on having stationed forces in the right place at the right time, all the time. This suggests the importance of long-range assets, to provide the flexibility to respond rapidly from CONUS to trouble spots around the globe. The B–2 can reach any point on the globe from just three bases—Guam, Diego Garcia, and the U.S.

*Once in the theater, U.S. assets must be both survivable and highly effective against an invading enemy force. The B–2 bomber has a combination of range, payload, and stealth that is unmatched by any other system. And, precision munitions are continuing to enhance the value of all tactical aircraft, including the B–2 bomber.

*The value of stealth for conducting operations in a high-threat environment has been clear ever since the air operations against Iraq began in early 1991. The F–117A Stealth Fighter conducted countless missions over Baghdad without any loses and are widely cited for the success of the air war. Yet the F–117A has many operational limitations—it is a medium altitude attack platform capable of effective operations only at night in clear weather.

*The B–2 is an all-altitude, all-weather platform that is more stealthy than the F–117A and that carries many more individually-targetable weapons. The B–2's advanced capabilities go well beyond those of the F–117A or any other non-stealthy bomber.

*A number of recent analytic studies have shown that against many plausible invading forces, 20 or 21 B–2 bombers are simply not enough force to stop enemy invaders short of their important strategic objectives.

*The cost of additional B–2's is high relative to non-stealthy, short-range tactical aircraft. But so is the cost of failing to stop a determined enemy short of his strategic objectives. The inherent flexibility and capability of the B–2 bomber will be most important in those cases where we are surprised, where an enemy doesn't do what we had expected, and/or where we did not plan to have to fight.

I commend these points to the attention of your Subcommittee, and would urge you to undertake a searching review of the assumptions and assertions that underlie present U.S. military contingency plans. I thank you for inviting me to submit these thoughts for the Subcommittee's consideration and for your Subcommittee's careful attention to these important questions for national security.

Sincerely,

SAM NUNN.●

REMEMBERING TURKEY'S GENOCIDE OF THE ARMENIANS

● Mr. D'AMATO. Mr. President, America has always been a haven for victims of oppression and it is fitting that Members of this body rise every year to mark April 24—the day that commemorates Turkey's genocide of the Armenians. In the first instance in the 20th century when a state declared war on a minority group, an estimated 1.5 million people were killed. We rise today to show our solidarity with the victims and our condemnation of the slaughterers.

Many Armenian survivors came to the United States, where they found sanctuary. They have prospered and their vibrant community as a whole has become an integral part of American life and the democratic process. But while realizing and contributing to the American dream, they always remembered their Armenian origins, and never forgot their national sorrow. As Nobel Peace Prize winner Elie Wiesel has written, the Armenian people are rooted firmly ''in their collective and immutable memory where death itself is vanquished, because the memory of death is received as a symbol, an instant of eternity.''

Their sharing of the Armenian historical experience with non-Armenians has served as a stark reminder for us all of the universality of human evil and the strength of the human spirit, even at the darkest moments. The resilience of the survivors and Armenians the world over have inspired in other peoples feelings of shared sorrow and admiration. We mourn with them, and simultaneously take pride in their ability to overcome a great historical injustice, the consciousness of which never disappears.

Unhappily for them, Armenians have been called upon to be our teachers. From their terrible suffering we have learned that states may not make war upon minority groups, and the international community will neither tolerate nor forget such transgressions. From their ability to transcend the saddest moments of their history, we take heart and recommit ourselves to remembrance, celebration, and vigilance.●

TRIBUTE TO JOE STERNE OF THE BALTIMORE SUN

● Ms. MIKULSKI. Mr. President, this month, Joseph R.L. Sterne will be retiring as editorial page editor of the Baltimore Sun—a job he has held for more than 44 years.

I have known Joe for more than 20 of those years. As editor, he has been one of the best. I cannot remember a time when his name was not at the top of the paper's masthead. I read his editorials and he has read my press releases. I think I liked his better. His editorials were him—they were fair, professional, insightful, instructive, tough and thorough.

I've learned a lot from them. So did Baltimore and so did Maryland—whether it was an observation or suggestion regarding foreign policy or firm recommendation on how to improve Baltimore's housing policy or Federal tax issues.

Joe started his career in 1953 covering the police beat. But he didn't stay there long. He quickly moved on to report on some of the most important moments in American history—from the civil rights movement to the Vietnam war to working in Africa and Germany covering international affairs. That was his true love. But he never forgot that a great hometown paper begins with a great hometown.

His kudos and criticisms spurred all of us to do our best. But then, he asked no less of us than he asked of himself. He is one of the best. I will miss Joe Sterne. Baltimore will miss Joe Sterne. I wish him our best.●

''PEACE! WHERE ART THOU?''

● Mr. INOUYE. Mr. President, I request that the statement entitled ''Peace! Where Art Thou?'' written by my constituent, Ruben Ortiz-Paez, be printed in the CONGRESSIONAL RECORD. I encourage my colleagues to read this thoughtful essay.

The statement follows:

''PEACE! WHERE ART THOU?''

(By Ruben Ortiz Paez)

At a meeting to discuss World Peace, its Chairman closed the meeting with the following remarks: ''After considerable effort, we are still groping like the Blind to come up with a significant dialogue which would contribute to the cause of Peace.'' After slight applause, he offered to field questions.

A blind man raised his hand and he was recognized. He stood up and this is what he had to say: ''Mr. Chairman and Members: I really don't have a question, but if you will bear with me, I do have a few words to say. ''The Chairman approved and he continued: ''I don't think that it s fair to suggest that we haven't come up with solutions; the best minds in the world are devoted to finding Peace, and so far, they have come up with Zilch!

''Peace has always been desired, but there are leaders among nations who seem to derive Satanic pleasure in obstructing or derailing Peace initiatives! How then in Heaven's name, could Peace be expected to flourish? Here's a splendid suggestion: A sure way, is for us to embrace and spread The charity of Love! For Peace is Love's Godchild, and it will flourish wherever Love and compassion dwell in the Hearts of Men!

''I know that it's difficult to understand; and some would dare to say that it's just a pipe-dream! But not so, if my logic is considered with an open mind; reinforced with the Undeniable Truth, that Love is more contagious than all of the deadly viruses, so far identified by medical science and research!

''Here then, Mr. Chairman, I humbly offer the following, which I hope you may be able to consider as an acceptable contribution to the cause of Peace. It will probably be dismissed as an illusion by the skeptics, due to it's spiritual connotation, but I ask you sir, what other choice do we have?

''It takes just one person who's a 'carrier' to start an epidemic! So what are we waiting for? Let's be the 'carriers' to start an epidemic of Love! It isn t all that difficult, all that it takes is for us to shed our shyness; our fear that our affection could be misunderstood! It will be well worth it, and surely the Prince of Peace, will bless us for it, since his exhortation ''Love your neighbor as yourself'' means not only the one next door, but all with whom we share the Earth!

''Dear Members: If I can visualize all these things despite my blindness, just try to imagine, the great and wonderful things that you will be able to accomplish with God's gift of sight and optimism, in a world firmly determined to live in Peace, in the fast-approaching New Millennium!

''Thank you for allowing me to express my pent-up emotions and my layman's assessment of such a pressing and complex subject. May God bless you!''

The blind man received a standing ovation and the applause was deafening!●

THE SMALL BUSINESS ADMINISTRATION

● Mr. BUMPERS. Mr. President, On February 3, of this year, Carolyn

Stradley testified before the Small Business Committee regarding the problems she had starting a paving company. It was one of the most interesting and compelling statements I have heard since I came to the Senate, and I have heard thousands.

Mr. President, without further elaboration, I ask that Mrs. Stradley's statement be printed in the RECORD for all to see and appreciate.

The statement follows:

TESTIMONY OF CAROLYN A. STRADLEY

Good morning. Thank you for your time today.

My name is Carolyn Stradley, I am the founder and owner of C&S Paving, Inc. in Marietta, Georgia.

I was born in the Appalachian Mountains at home in a two-room shack, without electricity or water. I had never seen indoor plumbing until I went to school.

My mother died when I was only 11 years old and my father, an alcoholic, walked away. For two years I survived in the mountains, then at 13 years old, I moved to Atlanta, sometimes sleeping in the back of cars and bathing at the bus station. When I entered high school, I did so without front teeth. Working at night, going to school in the day time. I married at 15 years old, was kicked out of school at 16 for being pregnant, became a mother at 17, caring for a totally disabled husband at 21 and became a widow at age 26.

I started C&S Paving, Inc. out of necessity, not by choice, from the back of a pickup truck, shoveling asphalt into potholes. But I quickly found out that in 1979 very few people would take a single, 32-year-old woman in the asphalt paving business seriously.

When I tried to purchase equipment and trucks in 1979, the sales people just laughed at me. So, I asked my brother, who was unemployed and only had an 8th grade education to work with me for 25 percent of this new company. It was necessary for us to work 14–16 hours a day, so I asked my brother's wife if she would care for the children and answer the telephone—for another 25 percent of the company.

When the company was first started, I went to the Small Business Administration and asked for an 8–A package, but was told I did not qualify, but I persisted and finally was able to obtain a package after many years of trying. After its costly completion, and several months of waiting C&S Paving was again denied entrance into the program.

However, I did not give up and tried several years later and once again was told that I was not and had not ever been disadvantaged. I saw other people—some third generation company and college graduates—qualify and permitted to negotiate jobs that I was not allowed to bid on. I felt very angry and betrayed. Sadly, it seems to me that the 8(a) Program does not include white females whose circumstances would otherwise qualify them as being disadvantaged. In my case that was totally unfair and an abrogation of Congress' intent for the program.

In 1986, I realized that I could no longer work with my brother because of a total different set of values in business and life. I told him if he would just get my name off the personal guarantees, he could have everything. He could not and demanded $500,000 for his and his wife's shares. My options, as I saw them: murder, suicide, or find a way to buy him out.

I went to several banks before I found one that believed a woman could run an asphalt paving company, however, they would only make the loan if the SBA would guarantee it.

Business was great for the first 6 years into a 10-year loan. However, several of our job sites were hit by two tornadoes and one flood and the most rain that was ever recorded in Georgia.

The small bank that I had been dealing with was purchased in 1993 by a large multistate group. The loan was then ''called'' at a time when I could not work because of weather—the fact that I had never missed a payment for six years meant absolutely nothing to the bank.

I then requested a meeting with the Small Business Administration. I met with Fred Stone, District Director for the State of Georgia, Ray Gibeau, Chief, Portfolio Management and Janis Burda, Loan Liquidation Specialist. It was at this meeting that I realized that these three people were completely different than anyone I had ever dealt with before at the SBA. They were very professional, understood small business and were willing to go the extra mile.

It was with their help and guidance that C & S Paving was able to restructure the remaining balance of the loan. As a result of SBA's recognition that C & S Paving was a company worth saving, we have grown, prospered and are currently planning to build a new building this year which will enable us to hire about 10 more people this year.

Without SBA's help, I would have lost everything that I had worked my whole life for and over 30 period would have lost their jobs. Therefore, I am living proof that the SBA works for this Nation by helping small business create jobs and economic independence for its citizens. My survival has provided encouragement to many other people, especially women who wish to start their own companies.

From its humble beginning, by the reinvestment of profits back into the Company, C & S Paving was awarded the largest single contract ever let to a female-owned company through open-competitive bids. Other notable projects we have constructed are the running tracks inside the Olympic Stadium and the Georgia Dome.

Additionally, we were honored by President Bush in 1989 at the White House as Second Runner Up for the National Small Business Person of the Year as well as the Small Business Person of the Year Award for 1996 by The Small Business Council of America.

I share all of this with you, hopefully to help you understand the passion I feel towards the Small Business Administration. It is not perfect by any means, but to millions of women of this country, who by no fault of their own, do not have a father, husband, the education or community standing to ask for help—SBA's Women Business Ownership Program is their only glimmer of light and hope.

Today, you can be the vehicle that helps those that seek to help themselves by recognizing the true value that the Small Business Administration has and the difference it has made in so many lives and the tremendous contributions that small business makes to this country's economy and to the world.

This Agency's programs are not a hand out, but truly a hand up. Please allow us to hope.

Hope sees the invisible; feels the intangible and hope achieves the impossible.●

TAKE OUR DAUGHTERS TO WORK DAY

● Ms. SNOWE. Mr. President, I rise today on Take Our Daughters to Work Day, to encourage young women and girls across America to set their sights high, and to reach for their dreams.

Since my childhood, the composition of the work force has changed dramatically, and job opportunities have significantly increased for young women and girls. Today, women comprise 46 percent of the paid labor force, and according to Bureau of Labor and Statistics, by the year 2000, roughly half of new entrants into the labor force will be women.

Despite these gains, studies show that during adolescence, girls often receive less attention in school and suffer from lower expectations than do boys. They also set their future sights lower than their male counterparts. This is reflected in a New York Times/CBS poll, which found that over one third of girls surveyed believed that there are more advantages to being a man than a women. For many girls, low self-esteem can lead them to lose confidence in their abilities, which may prevent them from achieving their fullest potential later in life.

In this day and age, we cannot accept reduced opportunities for girls and women from either an equity standpoint or an economic one. Today, women are equally responsible for the well-being of their families. So it is not just their own futures that are at stake, but the future of their children and their children's children. It is our responsibility to set high standards and provide them with the experiences and role models that will inspire them to be extraordinary leaders of the future.

We need to do far more to challenge our daughters' notions of women's work. While most school-age girls plan to work, they do not plan for careers that could sustain themselves and their families. In 1992, 53.8 million women were employed and only 3.5 million were employed in nontraditional occupations. Further, women working in nontraditional jobs earn 20 to 30 percent more than women in traditionally female jobs. Women remain significantly under-represented in careers requiring math and science skills—women comprise only 11 percent of today's technical work force, and only 17 percent of all doctors are women. Nearly 75 percent of tomorrow's jobs will require the use of computers, but girls comprise less than one-third of students enrolled in computer courses. And a study by the Glass Ceiling Commission found that women occupy only 5 percent of senior-level management of the top Fortune 1000 industrial and 500 service companies. As leaders and as parents, we must do our best to ensure that American girls are prepared to step into those high-wage jobs and management positions that command higher salaries in the work force.

I was honored to endorse again, this year, Take Our Daughters to Work Day, organized by the Maine's Women's Development Institute, in my home State. Girls in Maine and across the Nation will have another opportunity to see first-hand that they have a range of life options. In the past, Take

Our Daughters to Work Day has encouraged young girls to reach out and use their creative spirit and I am confident that this special day will prove again to be a rich and rewarding experience for all parents and daughters alike.

Today, millions of parents across the Nation will take their daughters to work. In 1996, in Maine alone, 10,000 Maine girls and 5,000 Maine businesses participated in Take Our Daughters To Work Day. These parents perform a great service by exposing their daughters to new and exciting experiences. They are not only expanding their horizons and helping them to explore opportunities, but teaching them important lessons about goal-setting as well. Take Our Daughters to Work Day has encouraged a new generation of young girls to envision a world where no goal is impossible.●

TAKE OUR DAUGHTERS TO WORK DAY

● Mrs. MURRAY. Mr. President, thanks to Take Our Daughters to Work Day, young girls from all over the country will be given the opportunity to accompany adults to the workplace. Today, young girls will be given the opportunity to shadow an adult mentor—and gain experience in a work environment. What better way to enable girls to explore their future and gain exposure to a wide range of career options?

The focus of this one day event is to bring awareness to the development and education of young girls. Research suggests that young girls often receive less attention in school and suffer from lower expectations than boys. This difference can affect their self-esteem and self-confidence, particularly during the difficult years of adolescence. Lower expectations and self esteem can later prevent them from achieving their maximum potential. This in turn can hinder their own personal and professional development. Therefore, adolescence is a crucial time period for adults to intervene in the lives of young girls. Adults need to take the time to show girls that they can set high goals and pursue their dreams. Today's events will offer inspiration and encouragement to millions of young girls—and show them that adults are committed to helping them—so they can fully expand their horizons and pursue their dreams.

In 1995, women comprised 46 percent of the paid labor force. The composition of the work force has changed significantly, and opportunities have continued to increase for women. Despite these gains, women's wages, on average, still remain below men's. We cannot accept the gap that still exists between men and women. Even though the gap is narrowing—we must continue to work on this issue. Women still experience barriers to non-traditional career roles. A study by the Glass Ceiling Commission found that women occupy only 5 percent of senior level management of the top Fortune 1000 industrial and 500 service companies. Women only comprise 11 percent of the technical workforce. This needs to change. America's future depends on it. Women need to be encouraged to seize opportunities and explore non-traditional careers. This includes developing skills that will prepare them for high wage jobs and management positions that offer higher salaries in the workforce.

Women are increasingly becoming responsible for the financial well-being of their families. We need to ensure that young girls are prepared for the workforce—and have the opportunity to live up to their full potential. We can only do this if we have a community effort. Today, more than ever—young girls need role models and mentors—so that they can achieve success.●

RECOGNITION OF SERVICE BY MAYOR SMIGLEY

● Mr. SMITH of Oregon. Mr. President, I would like to take this time to recognize 34 years of public service by Mayor Bill Smigley of Veneta, OR. I personally would like to thank Mayor Smigley for his commitment and hard work and wish him all the best in his retirement.

Mayor Smigley served as city councilman for 18 years and mayor for 16 years, but has also shown a life-long dedication to improving not only his community but the State of Oregon. His service as chairman of Lane Council of Governments and his 16-year contribution to the League of Oregon Cities is a testament of his commitment to making Oregon's future brighter for all of us.

I speak on behalf of many Oregonians across the State who look to Mayor Smigley's public service as a source of inspiration and hope that even in his retirement he will continue to work on future endeavors that will benefit our great State.●

THE 82d ANNIVERSARY OF THE ARMENIAN GENOCIDE

● Mrs. FEINSTEIN. Mr. President, today, April 24th, marks the 82nd anniversary of the beginning of the Armenian Genocide. I rise today to acknowledge and commemorate this terrible chapter in history, to help ensure that it will never be forgotten.

Eighty-two years ago today, one of the darkest chapters in human history began. On April 24, 1915, Ottoman authorities began arresting Armenian political and religious leaders throughout Anatolia. Over the ensuing months and years, some 1.5 million Armenians were killed at the hands of the Ottoman authorities, and hundreds of thousands more were exiled from their homes.

On this 82nd anniversary of the Armenian Genocide, let us renew our commitment never to forget the horror and barbarism of this event.

We must remember, we must speak out, and we must teach the next generation about the systematic persecution and murder of millions of Armenians by the Ottoman government. I know that I am joined by every one of my colleagues, by the Armenian-American community, and by people across the United States in commemorating the Genocide and paying tribute to the victims of this crime against humanity.

As Americans, we are blessed with freedom and security, but that blessing brings with it an important responsibility. We must never allow oppression and persecution to pass without notice or condemnation.

By commemorating the Armenian Genocide, we renew our commitment always to fight for human dignity and freedom, and we send out a message that the world can never allow genocide to be perpetrated again.

Even as we remember the tragedy and honor the dead, we also honor the living. Out of the ashes of their history, Armenians all across the world have clung to their identity and have prospered in new communities. My state of California is fortunate to be home to a community of Armenian-Americans a half-a-million strong. They are a strong and vibrant community whose members participate in every aspect of civic life, and California is the richer for their presence.

The strength and perseverance of the Armenian people is a triumph of the human spirit, which refuses to cede victory to evil. The best retort to the perpetrators of oppression and destruction is rebirth, renewal, and rebuilding. Armenians throughout the world have done just that, and today they do it in their homeland as well. A free and independent Armenia stands today as a living monument to the resilience of a people. I am proud that the United States, through our friendship and assistance, is contributing to the rebuilding and renewal of Armenia.

Let us never forget the victims of the Armenian Genocide; let their deaths not be in vain. We must remember their tragedy to ensure that such crimes can never be repeated. And as we remember Armenia's dark past, we can take some consolation in the knowledge that its future is bright with possibility.●

THE 82ND ANNIVERSARY OF THE ARMENIAN GENOCIDE

● Mr. SARBANES. Mr. President, I rise to join my colleagues in commemorating the 82nd anniversary of the Armenian genocide, the first such tragedy to occur in the twentieth century. Today, as we renew our commitment to the rights and freedoms of all humanity, we also celebrate the reemergence of an independent Armenia.

It is a tribute to the indomitable spirit of the Armenian people that, after centuries of oppression, they have persevered and re-established a free

and independent nation—a nation as determined as its citizens. In its short existence, the Republic of Armenia has survived the earthquake of 1988, the dissolution of the Soviet Union and a blockade by its neighbors. Truly, the spirit of the nation reflects the spirit of its people.

Despite these hardships, the young republic has made economic progress. As the first of the former Soviet republics to record economic growth, Armenia has kept inflation under control and made great advances toward privatization. Now, it is incumbent upon nations like the United States to continue our policy of engagement and assistance, as Armenia continues its efforts toward establishing a democratic society.

The United States has also benefitted from a strong Armenian presence. With their firm resolve and dedication to democracy, the more than one million Armenian Americans have made significant contributions to the cultural, political and economic life of this nation. At the same time, by preserving their Armenian faith and traditions, they have achieved a balance that enriches our diverse and vital American culture.

The tragic events of 1915–1923 contain in them some important moral lessons. We now realize that a quick and decisive response by the international community might have prevented the persecution and death of more than 1.5 million Armenians. Unfortunately, the world's indifference to their plight not only sealed the futures of the Armenian victims, but paved the way for similar tragedies in the years that followed.

It is imperative, Mr. President, that no nation or individual ever forgets the injustices suffered by the Armenians in 1915. Only by striving for human rights and civil liberties for all people can the promises of human dignity be achieved. In that regard, the highest honor we can accord the heroic Armenian people is to continue the struggle for freedom wherever we are, be it America, Armenia, or anywhere else across the globe. By pursuing that mission, hopefully we can prevent such tragedies from happening again.●

ANNIVERSARY OF THE ARMENIAN GENOCIDE

● Mrs. BOXER. Mr. President, I rise today to observe the 82d anniversary of the Armenian genocide. It is only by keeping the memory of this dark time alive will we keep it from occurring again.

On April 24, 1915, over 200 Armenian religious, political and intellectual leaders were arrested in Constantinople—now Istanbul—and killed, marking the beginning of an organized campaign to eliminate the Armenian presence from the Ottoman Empire.

Thousands of Armenians were subjected to torture, deportation, slavery and ultimately, murder. In the 8 years between 1915 and 1923, roughly 1.5 million men, women and children lost their lives to this genocide. More than 500,000 were removed from their homeland, many of whom perished in forced marches ending in the deserts of Syria.

The Armenians were able to gain their freedom for a short time in 1918, but in 1920, when the former Soviet Union joined the Turkish attack, they were again overpowered. It was only in 1991, following the breakup of the Soviet Union, that the new Republic of Armenia was born. Today, we pay tribute to the courage and strength of a people who would not know defeat.

Yet, independence has not meant an end to their struggle. There are still those who question the reality of the Armenian slaughter. There are those who have failed to recognize its very existence. But we must not allow the horror of the Armenian genocide to be either diminished or denied.

The pages of history are replete with stories of the atrocities man commits against his fellow man. And upon those pages, this massacre is one of the most vile stains. We must learn the lessons of the past well, and never tire of the fight to end prejudice and discrimination. We must show the world the Armenian people did not suffer in vain.●

COMMEMORATION OF THE ARMENIAN VICTIMS

● Mr. FEINGOLD. Mr. President, I rise today to commemorate the 82d anniversary of the Armenian genocide. Today we remember the Armenians who died during the years 1915 to 1923 at the hands of the Ottoman Empire.

From 1915 to 1923, the Ottoman Turkish government systematically murdered 1.5 million Armenians and drove half a million into exile. On the eve of the first World War, 2.5 million Armenians lived in the Ottoman Empire. Following the brutal Ottoman Turkish campaign, less than 100,000 remained. These Armenians were victims of a policy explicitly intended to isolate, exile, and even extinguish the Armenian population.

As we look at world events today—in Bosnia, in Rwanda, and elsewhere—we see a repetition of what happened in Armenia. In commemorating this day, we remember those who died, and condemn violations of human rights at anytime in the past or the future. We all know that, in the context of world politics, human rights violations are far too common and the response to those violations is often tame at best.

As we meet here today, it is likely that somewhere, a political prisoner is being beaten by the police or armed forces, or by some paramilitary group whose members might include police officers or soldiers. It is likely that a union organizer is being detained or harassed by authorities, that a woman is being raped by government thugs, that a newspaper is being shut down, or that a prisoner has ''disappeared.'' It is equally likely that the people responsible for such outrages will never be held accountable.

As Americans we must keep a vigilant watch on our world so that the horrors that occurred in Armenia 82 years ago might not be repeated again, and again, and again. History means nothing if we do not learn from it. On a day like today, we must remember what we stand for, and ensure that the U.S. continues to be a beacon of strength and hope for the heroes that stand up and survive such atrocities. These deaths should not be in vain.

I am proud to commemorate this important occasion today.●

COMMEMORATION OF THE ARMENIAN GENOCIDE

● Mr. REED. Mr. President, I rise to commemorate the 82d anniversary of the Armenian Genocide.

In the 1930's, someone questioned Adolph Hitler about the possible consequences of his plan for the systematic elimination of the Jews. Hitler seemed to believe that there would be none. He allegedly responded, ''Who, after all, today remembers the Armenians?''

One of my constituents, Noyemzar Alexanian, remembers. On a spring morning in 1915, when she was 6 years old, the Kurdish calvary surrounded her village. They rounded up all the men and teen-aged boys, tied their hands with rope, took them to a distant field and stabbed them to death. Her father escaped to a neighboring village but was soon discovered. Noyemzar says she remembers her father being led away while her mother cried for help. This little 6-year-old girl then ''watched the white shirt of her father as he was led up a mountainside by the soldiers. The white shirt became a dot, and then it was gone.'' Noyemzar's father was stabbed to death. Over the next few years, as she was shuttled from the houses of strangers to orphanages, Noyemzar lost her two sisters. But still she did not lose hope. After several years, she and the remaining members of her family escaped to Cuba. She later settled in Rhode Island with her husband, Krikor, another refugee from Armenia. Noyemzar Alenanian is now 88 years old, and every day she remembers.

Mr. President, old and young around the world today remember the Armenian holocaust. We remember that on this date in 1915, the Ottoman Empire and the successor Turkish nationalist regime began a brutal policy of deportation and murder. Over the next 8 years 1.5 million Armenians would be massacred at the hands of the Turks and another 500,000 would have their property confiscated and be driven from their homeland. Engrossed in its own problems at the time, the world did little as the population was devastated.

Despite having already undergone such terrible persecution and hardship, the people of the Armenian Republic

still suffer today. The peace talks recently concluded in Moscow regrettably made no progress toward the resolution of the Karabagh conflict. Turkey continues to blockade humanitarian aid to Armenia.

However, the Armenian people look hopefully to the future. Their quest for peace and democracy continues to inspire people around the world. Armenians who have emigrated to other countries, especially those in my home State of Rhode Island, bring their traditions with them. They enrich the culture and contribute much to the society of their new homelands.

The continuing reports of the recent atrocities committed in Bosnia reaffirm the importance of our commitment to always remember the Armenian genocide. As long as hate and intolerance are a part of our world, we must be vigilant. We must stand as witnesses to protect people from persecution for the simple reason that they are different.

I hope to visit Armenia in the near future. I wish to see the treasures of that land firsthand and pay tribute to the indomitable spirit of the people of Armenia. Until that time, I want to ensure the Armenian community that we remember. Menk panav chenk mornar.●

UNANIMOUS CONSENT AGREEMENT—S. 562

Mr. ROBERTS. Mr. President, I ask unanimous consent that at 11:30 a.m., on Friday, April 25, the Banking Committee be discharged from further consideration of S. 562 and the Senate then immediately begin consideration under the following limitation: 1 hour for debate on the bill equally divided in the usual form, there will be no amendments in order to the bill, and following the conclusion or yielding back of time the bill will be read for a third time with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELATING TO JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1225, which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1225) to make a technical correction to title 28, United States Code, relating to jurisdiction for lawsuits against terrorist states.

Mr. ROBERTS. Mr. President, I ask unanimous consent the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1225) was deemed read three times and passed.

ORDERS FOR FRIDAY, APRIL 25, 1997

Mr. ROBERTS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Friday, April 25.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERTS. I further ask unanimous consent that on Friday, immediately following the prayer, the routine requests through the morning hour be granted and there be then a period of morning business until the hour of 11:30 a.m., with Senators permitted to speak for up to 5 minutes each with the following exceptions: Senator SMITH of Oregon for 30 minutes, Senator DORGAN 30 minutes, Senator DASCHLE or his designee for 30 minutes, Senator THOMAS or his designee for 60 minutes; from 10:30 to 11:30, Senator GRAMS for 10 minutes, Senator KENNEDY for 20 minutes, Senator CONRAD for 10 minutes, Senator WELLSTONE for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERTS. Mr. President, for the information of all Senators, tomorrow from 9:30 in the morning until 11:30, the Senate will be in a period of morning business to accommodate a number of Senators wishing to speak.

At 11:30, the Senate will begin consideration of S. 562, the reverse mortgage bill. Under the agreement, there will be 1 hour for debate on that bill. However it is our understanding that no Senator will request a rollcall on passage, therefore, with that in mind, Senators should not expect rollcall votes to occur during Friday's session of the Senate.

On Monday, April 28, the Senate will debate the motion to proceed to S. 543, regarding protections to volunteers. A cloture motion will be filed tomorrow on this issue, which will call for a cloture vote on the motion to proceed to S. 543 on Tuesday of next week. Therefore, the next rollcall vote will occur on Tuesday, April 29, at 2:15 p.m. If cloture is invoked on Tuesday, it is expected that the Senate will proceed to the bill on Tuesday. Therefore, additional votes can be expected to occur on Tuesday on amendments to the volunteer protection bill.

The Senate could also be asked to turn to any other Legislative or Executive Calendar items that may be cleared for action.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. ROBERTS. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:48 p.m., adjourned until Friday, April 25, 1997, at 9:30 a.m.