

(3) the President, acting through the United States Agency for International Development, should—

(A) begin providing development assistance in areas of Sudan not controlled by the regime in Khartoum with the goal of building self-sufficiency and avoiding the same conditions which have created the current crisis, and with the goal of longer-term economic, civil, and democratic development, including the development of rule of law, within the overall framework of United States strategy throughout sub-Saharan Africa; and

(B) undertake such efforts without regard to the constraints that now compromise the ability of Operation Lifeline Sudan to distribute famine relief or that could constrain future multilateral relief arrangements;

(4) the Administrator of the United States Agency for International Development should submit a report to the appropriate congressional committees on the Agency's progress toward meeting these goals; and

(5) the policy expressed in this resolution should be implemented without a return to the status quo ante policy after the immediate famine conditions are addressed and international attention has decreased.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President and the Administrator of the United States Agency for International Development.

EXECUTIVE SESSION

CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Mr. GORTON. I ask unanimous consent that the Senate proceed to executive session to consider the following treaty on today's Executive Calendar, No. 21.

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

Mr. GORTON. I further ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages, up to and including the presentation of the resolution of ratification; that all committee provisos, reservations, understandings, declarations be considered agreed to; that any statements be inserted in the CONGRESSIONAL RECORD as if read; I further ask consent when the resolution of ratification is voted upon, the motion to reconsider be laid upon the table; the President be notified of the Senate's action, and following the disposition of the treaty, the Senate return to legislative session.

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

Mr. GORTON. I ask for a division vote on the resolution of ratification.

The PRESIDING OFFICER. A division vote is requested. Senators in favor of the resolution of ratification please stand and be counted.

All those opposed, please stand and be counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification is as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted at Paris on November 21, 1997, by a conference held under the auspices of the Organization for Economic Co-operation and Development (OECD), signed in Paris on December 17, 1997, by the United States and 32 other nations (Treaty Doc. 105-43), subject to the understanding of subsection (a), the declaration of subsection (b), and the provisos of subsection (c).

(a) UNDERSTANDING.—The advice and consent of the Senate is subject to the following understanding, which shall be included in the instrument of ratification and shall be binding on the President:

EXTRADITION.—The United States shall not consider this Convention as the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. In such cases where the United States does have a bilateral extradition treaty in force, that treaty shall serve as the legal basis for extradition for offenses covered under this Convention.

(b) DECLARATION.—The advice and consent of the Senate is subject to the following declaration:

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 of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the State Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISO.—The advice and consent of the Senate is subject to the following provisos:

(1) ENFORCEMENT AND MONITORING.—On July 1, 1999, and annually thereafter for five years, unless extended by an Act of Congress, the President shall submit to the Committee on Foreign Relations of the Senate, and the Speaker of the House of Representatives, a report that sets out:

(A) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification and entry into force for each country, and a detailed account of U.S. efforts to encourage other nations that are signatories to the Convention to ratify and implement it.

(B) DOMESTIC LEGISLATION IMPLEMENTING THE CONVENTION.—A description of the domestic laws enacted by each Party to the Convention that implement commitments under the Convention, and an assessment of the compatibility of the laws of each country with the requirements of the Convention.

(C) ENFORCEMENT.—An assessment of the measures taken by each Party to fulfill its obligations under this Convention, and to advance its object and purpose, during the previous year. This shall include:

(i) an assessment of the enforcement by each Party of its domestic laws implementing the obligations of the Convention, including its efforts to:

(i) investigate and prosecute cases of bribery of foreign public officials, including cases involving its own citizens;

(ii) provide sufficient resources to enforce its obligations under the Convention;

(iii) share information among the Parties to the Convention relating to natural and legal persons prosecuted or subjected to civil or administrative proceedings pursuant to enforcement of the Convention; and

(iv) respond to requests for mutual legal assistance or extradition relating to bribery of foreign public officials.

(2) an assessment of the efforts of each Party to—

(i) extradite its own nationals for bribery of foreign public officials;

(ii) make public the names of natural and legal persons that have been found to violate its domestic laws implementing this Convention; and

(iii) make public pronouncements, particularly to affected businesses, in support of obligations under this Convention.

(3) an assessment of the effectiveness, transparency, and viability of the OECD monitoring process, including its inclusion of input from the private sector and non-governmental organizations.

(D) LAWS PROHIBITING TAX DEDUCTION OF BRIBES.—An explanation of the domestic laws enacted by each signatory to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes. This shall include:

(i) the jurisdictional reach of the country's judicial system;

(ii) the definition of "bribery" in the tax code;

(iii) the definition of "foreign public officials" in the tax code; and

(iv) the legal standard used to disallow such a deduction.

(E) FUTURE NEGOTIATIONS.—A description of the future work of the Parties to the Convention to expand the definition of "foreign public official" and to assess other areas where the Convention could be amended to decrease bribery and other corrupt activities. This shall include:

(1) a description of efforts by the United States to amend the Convention to require countries to expand the definition of "foreign public official," so as to make illegal the bribery of:

(i) foreign political parties or party officials,

(ii) candidates for foreign political office, and

(iii) immediate family members of foreign public officials.

(2) an assessment of the likelihood of successfully negotiating the amendments set out in paragraph (1), including progress made by the Parties during the most recent annual meeting of the OECD Ministers; and

(3) an assessment of the potential for expanding the Convention in the following areas:

(i) bribery of foreign public officials as a predicate offense for money laundering legislation;

(ii) the role of foreign subsidiaries and offshore centers in bribery transactions; and

(iii) private sector corruption and corruption of officials for purposes other than to obtain or retain business.

(F) EXPANDED MEMBERSHIP.—a description of U.S. efforts to encourage other non-OECD member to sign, ratify, implement, and enforce the Convention.

(G) CLASSIFIED ANNEX.—a classified annex to the report, listing those foreign corporations or entities the President has credible national security information indicating they are engaging in activities prohibited by the Convention.

(2) MUTUAL LEGAL ASSISTANCE.—When the United States receives a request for assistance under Article 9 from a country with which it has in force a bilateral treaty for mutual legal assistance in criminal matters, the bilateral treaty will provide the legal basis for responding to that request. In any case of assistance sought from the United States under Article 9, the United States shall, consistent with U.S. laws, relevant treaties and arrangements, deny assistance where granting the assistance sought would prejudice its essential public policy interest,

including cases where the Responsible Authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Convention is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Mr. FEINGOLD. Mr. President, I rise today in strong support of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and am pleased that the Senate is poised to ratify it today.

This convention seeks to establish worldwide standards for the criminalization of the bribery of foreign officials to influence or retain business. That this treaty has overwhelming bipartisan support is not surprising. But that we have this treaty to consider at all is a rather exceptional event.

For it was just over 20 years ago that the Congress passed the Foreign Corrupt Practices Act, or FCPA. This landmark legislation, which I am proud to say was sponsored by one of Wisconsin's most respected elected officials, Senator William Proxmire, was enacted after it was discovered that some American companies were keeping slush funds for making questionable and/or illegal payments to foreign officials to help land business deals.

For these 20 years, the FCPA has succeeded at curbing U.S. corporate bribery of foreign officials by establishing extensive bookkeeping requirements to ensure transparency and by criminalizing the bribery of foreign officials.

These very important principles do not simply reflect an American sense of morality and fair play in business. They also strengthen America's trade policy, foster faith in American democracy, and protect our interests in requiring an open environment for U.S. investment.

Certainly, these are principles and guidelines in everyone's best interest, and as such, well worth promoting worldwide.

Yet there has been a price for taking the ethical high road. U.S. companies that are trying to pursue opportunities in the global marketplace are forced to compete with firms from countries whose national laws take a more—shall we say—"laissez-faire" approach to this issue, and turn a blind eye to the corruption and graft evident in many business transactions. Some countries—Germany is the most-often cited example—even allow companies to take a tax deduction for bribes paid to foreign officials as a business expense.

I call such practices corporate welfare of the worst kind!

These laws and practices by our closest trading partners clearly put our businesses at a disadvantage. I have heard from more than one Wisconsin

company about international contracts lost as a result of some non-American company paying a bribe to a foreign official. These lost contracts represent lost employment and revenue opportunities for my state, and I am sure for many other states. A 1997 report by the Trade Promotion Coordinating Committee estimates that in a single year, U.S. firms lost at least 50 international commercial contracts—valued at more than \$15 billion—as a result of bribes by competitors.

But with the signing of the OECD Convention last December, the rest of the industrialized world, along with several key lesser developed countries, is finally beginning to follow America's lead. What this convention does is initiate several significant steps to raise the standards of our major trading partners to the level established by the FCPA.

Specifically, the convention obligates the parties to criminalize bribery of foreign public officials in all branches of government. Individuals who bribe public officials will be subject to "effective, proportionate and dissuasive criminal penalties," and the parties agree to cooperate in investigations and proceedings related to such crimes.

I have been keenly interested in anti-corruption efforts for many years. In 1994, I authored a provision to close a loophole in defense contracting by outlawing kickback payments in the conduct of offsets—an issue brought to my attention by a major Wisconsin corporation. I have raised the potential problem of corruption in taxpayer-supported export promotion programs to a Wisconsin State trade promotion commission, the Lucey Commission.

In 1995, I introduced legislation that would have specifically barred the extension of U.S. export financing and trade promotion to U.S. subsidiaries of foreign corporations which have not adopted and enforced a company-wide anti-bribery code. I also introduced a resolution expressing the sense of the Senate that bribery is indeed a morally reprehensible business practice and has destabilizing consequences for the international trade environment. Finally, I offered an amendment to the 1996 State Department authorization bill requiring an inter-agency study on bribery and corruption and the impact it has on American businesses.

I believe the Administration's actions with respect to negotiation of this convention have been consistent with my intent in all of these efforts, as well as the intent of the authors of the 1988 amendments to the FCPA. I commend all the individuals involved for their efforts.

In addition, I commend the Chairman of the Senate Committee on Foreign Relations for moving the Committee quickly to recommend ratification of this convention.

I will highlight for my colleagues several provisions in the resolution of ratification. Section (c)(1) requires the

President to submit to Congress an annual report that sets out various details regarding ratification, relevant domestic legislation of the parties, and enforcement. It also requires a description of the future work of the parties to expand the definition of "foreign public official." In particular, the President will need to report on the steps taken by the Parties to specifically make illegal the bribery of foreign political parties or party officials and candidates for public office. This provision reflects the strong views of the Committee on Foreign Relations that the pernicious practice of bribery also pervades the political world, and it too must be stopped.

Finally, Section (c)(1)(F) requires the President to provide a description of U.S. efforts to encourage other non-OECD members to sign, ratify, implement, and enforce the treaty. This provision, which I encouraged the Committee to include, is important because it recognizes that while most major international companies are based in OECD members states—the major industrialized nations of the world—it is vitally important to include less developed countries in an undertaking of this nature. As Secretary of State Madeleine Albright noted at the December 1997 signing ceremony for the Convention, "supplier nations have a special responsibility to stop this destructive practice. * * * At the same time, * * * it is vital that nations in the developing world meet their responsibility to act." As noted in the Committee report, we expect the Executive to work through bilateral and multilateral fora to encourage other non-OECD members to join this effort by ratifying the treaty and implementing its provisions.

I think those of us that are members of the Foreign Relations Committee can help in this effort. For example, at the most recent hearing of the Subcommittee on Africa to consider ambassadorial nominations, I asked a panel of seven nominees to provide their views on the effectiveness of the efforts of their respective, prospective host countries' governments to combat corruption, and asked them to comment on how they might work individually with these governments to become more active in dealing with this issue at a multilateral level. These nominees provided quite thoughtful responses, and I certainly encourage all of our ambassadors to pursue similar goals in their respective countries.

Mr. President, in sum, I believe this is a vitally important treaty, and I am thrilled that the Senate has moved so quickly to ratify it. As a direct descendent of Senator Proxmire's Foreign Corrupt Practices Act, it represents the best of a long Wisconsin tradition of good government and ethics, and I am proud to have been a part of the Senate's ratification of this effort.