[Rollcall Vote No. 291 Ex.]

YEAS—58

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bingaman	Inouye	Reed
Boxer	Johnson	Reid
Brown (MA)	Kerry	Rockefeller
Brown (OH)	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Manchin	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	
Feinstein	Mikulski	

NAYS—37

Alexander	Enzi	McConnell
Barrasso	Graham	Murkowski
Bennett	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Isakson	Snowe
Cochran	Johanns	Thune
Corker	Kirk	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker
DeMint	Lugar	
Ensign	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—Resumed

The PRESIDING OFFICER. The clerk will report the treaty.

The assistant legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms.

Pending:

Corker modified amendment No. 4904, to provide a condition and an additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defenses.

The PRESIDING OFFICER. There will now be 4 minutes of debate equally divided and controlled between the two leaders or their designees.

Who yields time?

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I believe the Senator from Arizona is prepared to yield back time, and I will also yield back time.

CLOTURE MOTION

The PRESIDING OFFICER. Having all time yielded back, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Treaties Calendar No. 7, Treaty Document No. 111–5, the START treaty.

Harry Reid, Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Sheldon Whitehouse, Mark L. Pryor, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Kent Conrad, Bill Nelson, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard G. Lugar.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Treaty Document No. 111–5, the New START treaty, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from New Hampshire (Mr. GREGG).

The PRESIDING OFFICER (Mrs. GILLIBRAND). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 67, nays 28, as follows:

[Rollcall Vote No. 292 Ex.]

YEAS—67

Akaka	Feinstein	Murkowski
Alexander	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Begich	Hagan	Nelson (FL)
Bennet	Harkin	Pryor
Bennett	Inouye	Reed
Bingaman	Isakson	Reid
Boxer	Johnson	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Tester
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Coons	Lugar	Voinovich
Corker	Manchin	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Durbin	Merkley	
Feingold	Mikulski	

NAYS—28

Barrasso	Graham	McConnell
Bunning	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Hutchison	Sessions
Coburn	Inhofe	Shelby
Cornyn	Johanns	Thune
Crapo	Kirk	Vitter
DeMint	Kyl	Wicker
Ensign	LeMieux	
Enzi	McCain	

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 28. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Who yields time?

The Senator from Idaho.

PREDATOR WOLVES

Mr. CRAPO. Madam President, I wish to rise to speak about an issue that has been at the center of debate in the northern Rockies for quite some time; that is, the issue of the wolf. The wolf was introduced into the northern Rockies in the 1990s and has flourished. Wolves are now abundant in the region, but, unfortunately, we have not been able to return the management of the wolves to the State, mostly due to litigation and to the inflexibility of the Endangered Species Act. In the meantime, wolf populations are growing at a rate of about 20 percent a year, resulting in substantial harm to our big game herds and domestic livestock.

Whenever I am back in Idaho, I hear from hunters who are angry their favorite hunting spots are no longer rich with elk and deer or from sheep and cattle ranchers who have lost many a head of cattle or sheep due to the wolf predation.

The State of Idaho has done everything it has been asked to do in order to manage wolves, and we continue to be denied that much needed opportunity. As such, it is time for Congress to act.

I intend to make a unanimous consent request in a few moments. First, I yield a few moments to my colleague from Idaho, Senator RISCH.

Mr. RISCH. Madam President, I join my colleague from Idaho in underscoring the difficulty we have on this issue. Most people on this floor don't have a full appreciation of what those of us in the West have to deal with. Two out of every three acres in Idaho are owned by the Federal Government. The Federal Government came in, in the mid-1990s, and forced the wolf upon the State. The Governor didn't want it, the legislature didn't want it, and the congressional delegation didn't want it. Nonetheless, the Federal Government brought us 34 wolves. Now they have turned into well over 1,000, and nobody knows exactly how many breeding pairs there are. The result is that there has been tremendous havoc wreaked on our preferred species in Idaho, the elk. We have done an outstanding job of managing elk, the preferred species, but they are also the preferred species for the wolf to eat. They are not vegetarians.

As a result, we have had a tremendous problem with wolves in Idaho, and we have brought a bill to the Senate to turn the management of wolves over to the State. All the other animals are managed by the State. We have done a great job for well over 100 years of managing two other difficult predators, the bear and various cats. We have done it responsibly, on a sustained basis, and we want to do the same thing with wolves.

The Federal Government has to let go of this. We have tried. We have the Federal courts that have stepped in. I don't quite understand how the Federal

court can claim the wolf is still an endangered species, when they can turn 34 wolves into over 1,000 and the population has exploded. Nonetheless, they have. It is time for Congress to act.

I yield back to Senator CRAPO.

Mr. CRAPO. Madam President, I will make this request on behalf of myself, Senator RISCH, and the Senators from Utah, Mr. HATCH and Mr. BENNETT, and the Senators from Wyoming, Mr. ENZI and Mr. BARRASSO.

I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of S. 3919, and that the Senate proceed to its immediate consideration; that the bill be read the third time and passed; that the motions to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, as if read.

The PRESIDING OFFICER. Is there objection?

Mr. CARDIN. Madam President, reserving the right to object, and I do intend to object, first, let me point out to Senator CRAPO, he and I have worked together on the Water and Wildlife Committee and the Environment and Public Works Committee. I think we have had a fine relationship over the past couple years, and we have worked together on a series of bills that I think will improve water and wildlife in this Nation. This legislation has not had a hearing and has not been approved by the Environment and Public Works Committee. It deals with undermining one of the most important laws in our country, the Endangered Species Act. That is one of our most important environmental laws and has protected iconic species such as the bald eagle. The act has long enjoyed bipartisan support. President Nixon signed the ESA into law on December 28, 1973.

This bill attempts to solve politically what should be done by good science. Despite many disagreements in the more than three decades of the ESA, there has never been a removal of a species by Congress. Also, there have been efforts made to work out a reasonable compromise as it relates to the wolf. It is my understanding that it has been blocked on the Republican side in trying to get that compromise brought forward.

I will make one more suggestion to my friend, Senator CRAPO. As you know, the work product of our subcommittee, along with other bills in the Environment and Public Works Committee, and some lands bills have been combined into one bill, Calendar No. 30, S. 3003. I encourage the Senator to look at that package. If we can get consent to include a compromise on the gray wolf, we would be willing to try to get it done in the remaining hours of this session. I offer that to my friend.

Madam President, in its current form, I do object.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CRAPO. Madam President, I appreciate the comments of my colleague from Maryland and I appreciate working with him on the committee and I intend to continue working with him. This is an issue of utmost importance in those States in this region of the United States. The longer we wait to resolve this issue, the more difficult it will be. Cooperation is the key in order for us to get this resolution accomplished.

I thank the Chair. I yield the floor.

Mr. BAUCUS. Madam President, I say to all my friends, it is imperative we work together to find a compromise. As both Senators from Idaho know, you and other Senators have been working on a compromise. Under that compromise, Idaho could have a wolf hunt, as they should. The State of Montana could have a wolf hunt, as Montana should. Northern Utah could. All wolves in Utah would be off the endangered species list. I and others have suggested that wolves in northern Utah be totally off the endangered species list. This proposal we have been working on—you, myself, and others, including Secretary Salazar and the Assistant Secretary of the Interior, Fish and Wildlife Services, a short time ago, all agreed we should allow wolf hunts in all the States I mentioned. Yet I have to be honest, your side of the aisle has objected to that. You are not coming up with a total abolition, taking the wolf out of the Endangered Species Act. That is a solution that will not pass. We need a compromise.

I end where I began. I strongly urge Senators, next year, to keep working on a compromise. This is not going to work when the House passes a bill that totally takes the wolf off the Endangered Species list, which I know is the game plan. If that happens, we are back into the soup again. Let's find a solution and compromise that achieves the results we all want. It is within our reach. It is right there. Because of this interchange, we will not get it done this year. Our States desperately need a solution. That proposal was the solution. It was a compromise that achieved the results intended. I very much hope we can find a compromise to resolve this.

Mr. CRAPO. Madam President, the compromise the Senator from Montana refers to—and he is correct, we have been intensely working on this issue to find a compromise with the administration and the affected States. The compromise he refers to would have required a change in the management of the wolf in Idaho that was unacceptable to the Governor in Idaho and others, including myself and Senator RISCH. Although there was a proposal made, it is not correct that it was approved by everybody. I believe, though, we are making progress.

I am willing to work with the Senator from Montana and the Senator from Maryland and others to try not only to find further progress at this late date in this session or next year, if necessary, to try to find our way to that solution. I appreciate the willingness of both Senators to work with us in trying to find that compromise that will work.

The PRESIDING OFFICER. The Senator from Texas is recognized.

FCC VOTE ON INTERNET REGULATION

Mrs. HUTCHISON. Madam President, I know the subject we are on now is the New START Treaty. It is a very important subject. I appreciate so much all the debate we have had. I hope we will be able to go forward and allow people to have amendments within this time because it is a huge issue for our country.

I wish to speak on a different subject right now because it is so timely. Today, the Federal Communications Commission voted 3 to 2 to impose new regulations on the Internet. This is an unprecedented power grab by the unelected members of the Federal Communications Commission, spearheaded by its chairman.

The FCC is attempting to push excessive government regulation of the Internet through without congressional authority. These actions threaten the very future of this incredible technology. The FCC pursuit of Net neutrality regulations involves claiming authority under the Communications Act that they do not have. Congress did not provide the FCC authority to regulate how Internet service providers manage their network, not anywhere in the Communications Act nor any other statute administered by the Commission.

Adopting and imposing Net neutrality regulations is, in effect, legislating. It takes away the appropriate role of Congress in determining the proper regulatory framework for the fastest growing sector of our economy. The real-world impact of the FCC's action today is that it will be litigated. It will take 18 months to 2 years to sort through the briefings and the court decisions, and it will probably go to the Supreme Court of the United States. In the meantime, capital investment will slow in core communications networks, and I cannot think of a worse possible time for that, as we attempt to create jobs and fuel a recovery from the most significant recession in years.

Elected representatives should determine if regulation is necessary in this area. Hearings would bring opposing parties to the table, and the process would be open. Instead, an unelected and unaccountable group of regulators are creating new authority to intervene in an area that represents one-sixth of the Nation's economy.

I wish to go through a few of the specific provisions in this FCC order. The first one is an order to require broadband providers, such as Comcast and AT&T, to allow subscribers to send and receive any lawful Internet traffic, to go where they want, say what they want, to use any nonharmful online devices or applications they want to use.

These principles are widely supported. I don't object and neither

would probably anyone. However, these principles are already in use. We don't need a big regulatory intervention to accomplish these principles. It is the rest of the order that is diametrically opposed to this statement of openness and freedom. It installs a government arbiter to force their idea of freedom on the users of the Internet and on the companies that are trying to make the Internet the economic engine of America.

The first provision that deals with this is that networks must be transparent. It says networks must be transparent about how they manage their networks, i.e., decisions about engineering, traffic routing, and quality of service. Transparency requirements usually translate to reporting and consumer disclosure requirements that are heavily prescribed and expensive to comply with, and the possible disclosure of proprietary information could affect competition. The real-world impact of this is higher costs to consumers. The Commission will increase regulatory reporting and consumer disclosure requirements as a result of this provision, and the cost will be passed along to, of course, the consumers in the form of more expensive services.

The second provision is that you may not unreasonably discriminate. The FCC's order states that providers may not unreasonably discriminate against lawful Internet traffic. That sounds fine. But the devil is in the details. The term is vaguely defined in the order, and how the FCC interprets and enforces what is unreasonable will determine how limiting this restriction is. For instance, if a provider notices that a small number of users are sharing huge files that are leading to congestion on the network and determines that slowing down those connections would relieve the congestion for the majority of other users, the FCC would have the right, under this order, to determine that such an action is unreasonable.

The real-world impact is that this would diminish the company's flexibility in managing their own services. The unreasonable discrimination provision could undermine the providers' ability to manage their network and guarantee all the users a high quality of service. Companies that build and maintain the networks that make up the Internet need the flexibility to manage the exploding demand for services on their network.

Regrettably, the FCC's order curtails that by establishing that the FCC would be an approval portal that companies would have to pass through to manage their day-to-day operations. Surely, there is a better way.

The next provision requires that broadband providers must justify new specialized services. Under the FCC orders, providers would now have to come to the FCC in order to offer consumers a new service, something that would be creative and innovative. Instead of offering it to the marketplace and having the competitive advantage from something new, they have to now expose it to all of their competitors by going through a regulatory adjudication at the FCC.

Let me give an example of what could happen.

A hospital might want to work with a provider, such as Verizon, to offer a new telemedicine service for Verizon subscribers that allows patients at home to interact with their doctors via high-definition video and uninterruptible remote medical monitoring.

In order to do this, Verizon might have to prioritize that telemedicine traffic ahead of regular Internet traffic to ensure the appropriate quality of service, particularly if there is a life-threatening situation.

The FCC order allows the Commission to determine on a case-by-case basis whether such prioritization is actually unreasonable discrimination because presumably the hospital that is offering the service would be giving better treatment for that telemedicine traffic than the user's regular traffic.

Going through a whole regulatory process in order to offer that service is a burden we do not need and that will stifle the innovation that has been a hallmark of the Internet, which led to the explosion of opportunities there.

The Commission says it wants innovation to occur, but the language of the order clearly discourages innovation by forcing companies to pass through a government regulatory turnstile to determine whether a particular service, an innovative service, something new that might be a competitive advantage, something new for quality of life, should be allowed. This puts the FCC in the position of picking winners and losers among the new innovative services, and it certainly slows down the opportunity to have new things coming on the market in what is usually a fast-paced economic environment.

In some cases, this may be enough to discourage providers from even entering into the special arrangements necessary to offer such services. It is a cumbersome process and, furthermore, it is unnecessary.

In another provision, the FCC order will treat wireless broadband services more lightly than wireline broadband services, at least for now. The FCC reserves rights in this order, which are taken without congressional authority, in my opinion—and certainly the courts will litigate that and make its decisions—the FCC reserves the right to regulate wireless just as harshly in the future as they are now attempting to regulate wireline. For now, wireless providers will have more leeway to innovate and to manage their networks. But how much investment are they going to make for the long term if they do not know what the FCC might foresee in the future that needs fixing, even if it is not apparently broken.

The real world impact is that wireless is the fastest growing area of communications markets. The threat that the Commission might later apply the wireline prohibitions it has ordered today to this wireless marketplace is a major concern.

I commend the two members of the Commission who dissented in the vote today—Rob McDowell and Meredith Atwell Baker. They each did op-eds, one in the Wall Street Journal and one in the Washington Post. I would say the common theme is that this is a solution where there is no problem. We have an open Internet. We have an Internet that is working. It does not need the heavy hand of government. It does not need a government prism through which to determine if the Internet providers are doing an allowable service. We have a marketplace, and the marketplace is working.

This is a time for Congress to take a stand. These regulations will raise uncertainty about the methods and practices communications companies may use to manage their networks. Heavy-handed regulation threatens investment and innovation in broadband services, placing valuable American jobs at risk.

Why would this be happening in a recession where we are trying to increase jobs, where we are trying to stop the trajectory of unemployment in our country?

We need to lay off, and it is time for Congress to take a stand. Individuals and businesses alike are rightfully concerned about government attempts to seize control of the Internet. Senator ENSIGN, who is the ranking member of a Commerce subcommittee—I am the ranking member on the full Commerce Committee—together we are going to submit a resolution of disapproval under the Congressional Review Act in an effort to overturn this troubling regulatory overreach by the FCC. It is time for Congress to say we have not delegated this authority to the FCC. The FCC tried to do this once before using another part of the Communications Act. They were struck down by the courts. Now they have gone to a different interpretation in a different section of the act to try to gain the capability to obstruct freedom on the Internet.

It is a huge and serious issue on which I hope Congress will take the reins and say to the FCC: If we need regulation in this area, Congress will do it.

We are elected. We are accountable. People can vote what they believe is the right approach by what we do. The FCC is not accountable to the people of our country. Yes, they are accountable to the President and the votes for today's order were from Presidential appointees of this administration. It is another big government intervention where we do not need to suppress innovation.

What we need is to embrace innovation so we can create jobs in this country with the freedom that has marked the economic vitality of America for over 200 years.

We will have a resolution of disapproval at the appropriate time in the next session of Congress. I look forward to working with other Members of Congress to take the reins on this issue. It is a congressional responsibility.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, I understand Senator SESSIONS is on the floor and wishes to speak. I ask unanimous consent that the Chair recognize Senator SESSIONS, and after Senator SESSIONS, recognize myself and then Senator SHAHEEN, so we stay in order, if that is agreeable.

Mr. SESSIONS. It is agreeable to me.

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

The Senator from Alabama.

Mr. SESSIONS. Madam President, I wish to take a brief moment to express my pleasure in the fact that the continuing resolution that passed and will now be going to the House had within it a provision to allow the Navy to award the littoral combat ship competition to two of the bidders. It took a bit of a modification of the procedure to allow them to do that. It is a product of good news.

At one point in the late nineties, I chaired the Seapower Subcommittee of the Armed Services Committee. I have been a member of it. I have seen the development of the littoral combat ship concept. ADM Vern Clark determined it was the future of the Navy. We expect to have 55 of them in the fleet. They would be manned by only 40 sailors. They would be high speed, able to travel in shallow waters, and be effective for pirates or be effective for mine sweeping and other activities of that nature.

The House put in this language. We had a hearing in the committee a few days ago with Admiral Roughead and Navy officials, Secretary of the Navy Mabus, and representatives from the CRS, GAO and CBO—those ABC agencies that evaluate these kinds of proposals—and it has moved forward.

I thank Senator LEVIN for his leadership. I thank Senator INOUYE and Senator COCHRAN on our side and the House leaders also who saw fit to support the Navy's idea. It is not a plan I suggested, but it is one I believe is good.

The good news is this was enabled by the fact that as a surprise, the bids on the ships were very much below what was anticipated. The legislation required that the bids come in under $480 million per ship, and it looks as if these bids are going to be at $450 million. By having both shipyards go forward, the Navy gets a fixed price today. In other words, if aluminum goes up or electricity goes up, the shipyards are going to eat it. We will bring on both ships at the same time.

Not only that, but we would get 20 ships total in this first tranche of ships rather than 19. In addition to that, the Navy scores that it will save $1 billion, and that $1 billion they hope to apply to other ships the Navy needs in their 313-ship Navy of the future.

Ashton Carter, the DOD's acquisition executive, said:

> The U.S. Navy's recent decision to buy both classes of Littoral Combat Ship due to lower than expected bid prices is an example of what good competition can do.

It was a competitive bid. I think the Navy may have made a mistake in not allowing more benefit to the bidders based on how valuable the ship was, the total value, but they made it a rigorous cost competition and apparently got very good bids. The average bids were, as I said, $450 million.

The Chief of Naval Operations, ADM Gary Roughead, on December 14—a few days ago—testified before the Armed Services Committee. He said:

> I think the two different types [of ships] give us a certain amount of flexibility, versatility that one would not, and as I talked earlier about this ability to mix the capabilities of a force that we put in there.

This may have been when I asked a question about it at that same hearing. He said:

> I . . . believe that the designs of the ships and the flexibility of the ships . . . and also the cost of these ships open up potential of foreign military sales that would otherwise not be there.

In other words, not only could we create jobs, perhaps 3,000 to 4,000 jobs immediately, but many of our allies, with the approval of the Defense Department, might want to buy these ships for their fleets, and we would have the ability to export these products abroad.

Having been involved in seeing the vision of the Navy over a decade plus and to see that finally come to fruition is good. One Navy official was quoted in one of the major publications as saying the nature of these competitions is such there be a 100-percent chance of a protest, whichever one won the bid, and one reason is because the bid was so close. We will avoid a protest and will be able to move forward, get the ships faster, lock in the lowest possible cost, clearly lower than what would be otherwise, and maybe even be able to save enough money to build an even larger ship with it.

I thank my colleagues who worked on this issue. I believe it will be a good thing. One of the ships will be built in my hometown of Mobile, AL. I know how excited the workers at the shipyards will be to hear they will have jobs in the future producing one of the finest, most modern warships in the history of the Navy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, we are now only hours away from when we will have a chance to vote on the ratification of the New START treaty. The Senate has invoked cloture, so we are in that 30-hour postcloture period. We are now in a period where we need to consider some additional amendments, and then we will be able to vote on the ratification. I think that is good news for the United States, for national security.

I think each Member of the Senate wants to do what is right for our national security. And I wish to emphasize the point that whenever I look at a national security issue, I want to get the best advice I can from the experts—from our military experts, from our experts who are charged with making sure we have the best intelligence to protect the security of America, from our diplomatic experts, who understand the ramifications of what we do here and around the world in other areas of concern for national security. I would say it is unanimous that the experts are telling us it is in the security interests of the United States to ratify the New START treaty.

Mr. SESSIONS. Madam President, would the Senator yield for a moment?

Mr. CARDIN. I will be glad to yield.

Mr. SESSIONS. Madam President, I want to make a 1-minute comment about a Navy fellow who has been in my office. I am reluctant to interrupt, but the Senator is so eloquent, I know he can handle the interruption almost better than anybody else.

CDR Brent Breining has been assigned to my office for the year by the Navy. I hope it has been beneficial to him. I think it has been. It has certainly been beneficial to us on a host of matters. He is a man of ability, of integrity and hard work, and he symbolizes the kind of bright young men and women we have so many of in our military. I wanted to take this moment to express my appreciation for his fabulous service.

I thank the Chair, I yield the floor, and I thank my colleague for letting me interrupt him.

Mr. CARDIN. I am glad I yielded to Senator SESSIONS for that point because I do believe the fellows from the military assigned to our offices are extremely valuable in our work. I was fortunate to have CDR Andre Coleman in my office from the Navy, and I can tell you that what I learned from his presence in my office was important to me, and I think it really made me much more informed when it came to decisions I have had to make in the Senate. So this program is a very valuable program.

I was pleased to yield to the Senator so he could recognize the person in his office. He is from the Navy? He is a Navy officer?

Mr. SESSIONS. A Navy officer, yes.

Mr. CARDIN. Navy officers are always the best, and coming from Maryland, where we have the Naval Academy, we were pleased to provide some help to the Senator from Alabama.

If I can continue on the New START treaty, the real test here is the national security of our Nation. When you listen to the advice given to us by our military experts, they tell us the ratification of New START will enhance our national security. When you

talk to the people who are responsible for collecting intelligence information and analyzing that information, they tell us it is in our national security interest to ratify the New START treaty. When you talk to the political experts, those who are charged with managing our foreign policy considerations around the world, they tell us the ratification of New START will help protect our national security interest.

The reason is that when you look at this treaty and find out what is in this treaty that restricts what the United States can do and you look at the number of deployed warheads and the number of delivery vehicles we are permitted to have, our experts say those numbers are clearly achievable for us without compromising whatsoever all of our national security interests. That is what they tell us. And these numbers were not developed by the political system; they were developed by the military experts as to what is reasonable as far as limitations on deployed warheads.

When you look at the other restrictions—and we have heard a lot of debate that we are restricted on other defense issues. There is nothing in this agreement that limits missile defense issues. That is going to be a matter for our national debate. It will be a matter, in working with our allies, of analyzing where our current risks come from. But we can make independent judgments, and we are not restricted at all by the New START treaty as to how we make those judgments.

What is in this treaty is our ability to verify what the Russians are doing with their nuclear stockpile and what they are doing with their warheads and with their delivery systems. It allows us to have inspectors on the ground. Since the end of last year, we have not had inspectors on the ground. That is intelligence information that is extremely valuable for us to have. You can't substitute for that. Yes, we can get certain intelligence information from the assets we have, but having boots on the ground is critically important to our national security. So without the ratification of New START, we do not have the inspectors on the ground telling us, in fact, what Russia is doing, inspecting the warheads, and inspecting their delivery systems.

There is a third reason in addition to it being important from the point of view of what our experts are saying and in addition to the fact that it gives us verification. It also is a very important part of our national security system in working with other countries. We want to make sure we know what Russia is doing, yes. We understand Russia is a country of interest to the United States. But when you look at countries that are developing nuclear weapons, we need Russia's help and the international community working with us to make sure we prevent countries such as Iran from becoming nuclear weapon states. The ratification of this treaty will help us in those political efforts.

When you put all this together, it gives us what we need for verification. The restrictions in this treaty were worked out by our military as being what they believed was right, and it gives us the ability to continue to lead internationally not just on strategic arms reduction but on nonproliferation issues. So for all those reasons, I would urge my colleagues to vote for ratification.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Massachusetts.

Mr. KERRY. I wish to thank the Senator from Maryland for being a terrific member of the Foreign Relations Committee, and I thank both him and the Senator from New Hampshire for their help here on the floor this afternoon as we try to proceed on amendments as rapidly as possible for our colleagues and also try to negotiate a few of these amendments at the same time as the Senator from Arizona.

Having discussed with the Senator from Arizona the path forward, I assure colleagues that both of us hear the pleas of our colleagues, and we are anxious to try to move as rapidly as possible. But in fairness to my colleague from Arizona, I also want to make certain that he has an opportunity to have his amendments and that the other amendments are properly heard.

To that end, I ask unanimous consent that the following amendments be deemed as pending from those amendments filed at the desk. These would be the amendments eligible for consideration. I am not calling them up yet; I just want this to be a narrow list.

I apologize, Mr. President. I ask unanimous consent that these amendments be in order: Kyl No. 4864; Kyl No. 4892, as modified; Risch No. 4878; Risch No. 4879; Ensign re rail-mobile; Wicker No. 4895; Kyl No. 4860, as modified; Kyl No. 4893; and McCain No. 4900.

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Arizona.

Mr. KYL. Mr. President, I wish to make a comment. For the benefit of Members, what we are trying to do is to identify those matters we need to try to deal with in the 30 hours postcloture on the START treaty. If Members have amendments they need to deal with, I would appreciate it if they would either communicate with me or with Senator LUGAR's staff or Senator KERRY's staff so that we can determine whether to get them on the list and where to plug them in. I would also suggest to Members that there isn't a lot of time left, and if they have comments they would like to make, now is the time to come to the Senate floor. There shouldn't be a minute of quorum call time here. There is a lot to do and not a lot of time to do it. So if Members have something, bring it to us. If they want to speak, they should come to the floor now or as soon as they can get here.

My goal is to get as many of the amendments as possible dealt with, if not with a vote then worked out by unanimous consent. What I have tried to do is to take a universe of about 70 amendments and to consolidate them into a much smaller group. So there are some specific subject areas that are not specifically dealt with. In some cases, the consolidations may not be technically related. For example, Senator LEMIEUX would like to add to one of the amendments his language dealing with tactical weapons taken from his treaty amendment but to conform it to a resolution of ratification amendment. So we may be even combining some subjects that don't necessarily relate.

The object here is to cover as much ground as possible within a limited period of time, and in order to do that we will need everybody's cooperation. Senator KERRY and I will then—and Senator LUGAR, of course—primarily try to make sure everybody gets heard who wants to be heard.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I am very grateful to the Senator from Arizona for his willingness to try to do exactly what we have just done, and I pledge to him that I will work as hard as possible on our side to rapidly move on these amendments and to give them time.

I would ask for the cooperation of colleagues who want to speak on the treaty as a whole, that they not do so at the expense of being able to move an amendment. So if colleagues would cooperate with us, we will certainly, in between any activity on amendments, try to accommodate anyone who wants to talk on the treaty.

We are currently working staff to staff and negotiating out these amendments, and on some it may be possible to accept them. We will certainly try to avoid any rollcall votes, if possible. I know a number of colleagues have asked for some rollcalls on some amendments which may not be acceptable. So with that understanding—

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. If I can add, I understand Senator SHAHEEN is in order to speak next, and then Senator RISCH is available to begin; am I not correct?

Mr. KERRY. No, Senator SHAHEEN is here managing together with the Senator from Maryland while we are negotiating. So Senator RISCH would be in order to move on an amendment immediately.

Mr. KYL. OK. His numbers are 4878 and 4879, so we can begin with one of those, if it is agreeable.

Mr. KERRY. That is correct.

Mr. President, we would welcome that, and I yield the floor.

Mr. KYL. So, Mr. President, it would be in order to call up for consideration—I believe the first is amendment No. 4878, Risch amendment No. 4878.

Well, Mr. President, I said there shouldn't be any quorum call, but we are going to be a couple of minutes here. So I suggest the absence of a quorum until we are ready to go.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, about an hour or so ago, our colleagues voted on whether we should proceed to final debate and eventually to an up-or-down vote on whether to ratify the New START treaty. I think it is safe to say most Democrats, most Republicans—even those two Independents who hang out with us—have pretty much decided on what they want to do on that final vote. I think there is a handful of Senators, maybe a half dozen or so, who are still undecided and trying to make up their minds. I just want to say I respect that. It is a serious matter, very serious matter, and there are strong arguments to be made on either side of this issue.

For those who have already made up their minds, they are probably not all that interested in what I have to say. But for the handful of our colleagues who have not decided how they believe we should proceed, how they ultimately want to vote, I want to take a few minutes and talk to them.

I want to boil this down into four questions that I have focused on as I have looked at this issue, looked at the treaty, looked at its ramifications. I want to start out by mentioning what I think the four maybe critical questions are that we should be asking ourselves.

The first question is, does this treaty make us safer? I believe it does. I think absolutely it makes us safer.

The second question is, can we afford not to ratify this treaty? I believe the answer is no; we cannot afford not to ratify this treaty. We need to.

The third question is, Can we go on to build a robust missile defense system, should we need to, if we ratify this treaty? I believe the answer is yes; we can do that if we need to.

The fourth and final question I want us to ponder is, Is ratification of the New START treaty the last word on this issue? Quite frankly, the answer is no, not at all. In fact, ratification of this treaty would just be another step, an important step, in what has been a decades-long journey. What I would like to do, if I could, is to take these questions just one question at a time.

The first question is, Does this treaty make us safer?

One of the greatest threats, and some would say the greatest threat, to our country and to its people today is the chance that terrorists might somehow acquire a nuclear weapon and detonate it inside this country. I ask my colleagues, are we doing all that we need to do to stop this from happening?

Sure, we can try to hunt down all the terrorists before they strike. In fact, we are doing that now. But we will never know where every terrorist is hiding, and I doubt we will ever have the manpower necessary to hunt them down if we did know where they were and try to stop them.

Here is what we do know, however. We know where most of the nuclear weapons on this planet are today. The majority of them are either in Russia or they are in the United States. I would like to think we do a good job of securing our nuclear weapons facilities in the United States. But Russia, as most of us know, is another story. There is a reason terrorists target Russian nuclear facilities.

While Russian security has improved recently, there are still holes, some would say gaping holes, in the physical facilities of some Russian facilities, holes that leave openings for terrorists to gain access to these weapons. That is one of the reasons we need to ratify this treaty. It limits the number of warheads that Russia can hold. Fewer Russian warheads translate into fewer chances that those weapons, those warheads, will fall into the wrong hands.

Here is another reason to ratify this treaty: Since the original START treaty expired at the end of 2009, the United States has been denied the ability to track and to verify the status of Russian nuclear weapons. The U.S. and Russian cooperation on verifying and monitoring warheads under the original START treaty helped lay the groundwork under the Nunn-Lugar cooperative threat reduction program in the 1990s. This program worked and still works to secure and dismantle Russian nuclear weapons, to keep them from falling into the hands of terrorists or rogue regimes.

New START will restore our verification and tracking capabilities that we lost last year with the expiration of the original START treaty. This, in turn, will encourage Russia to continue and to participate in the Nunn-Lugar program. In short, Americans will be safer if the treaty before us is ratified.

That leads me to the second question, Can we afford not to ratify this treaty? I believe the answer is no; no, we cannot. Let me say why.

My colleagues opposing this treaty have pointed out what they believe to be flaws in it. Some of them say the United States should have held out for a better deal. Others say the United States should have increased the number of allowed inspections or increased the number of delivery systems allowed under the treaty. They say the job of the Senate is not to simply ratify treaties but to debate and to amend them.

Let me just say, if this were a seriously flawed treaty, I would agree or if this were a flawed treaty I would agree. But it is not. The fact that so far all the amendments offered to this treaty have failed, mostly by large majorities, bears witness to that fact. Sure, we could amend the treaty language to maximize the U.S. position. We could send our diplomats back to the negotiating table with the Russians with a whole new set of terms the Russians will find unacceptable and ultimately nonnegotiable. When the Russians then walk away from the talks and the prospects of securing a new treaty die, we will ask ourselves, was it worth it to oppose ratification? Was it worth it?

When a Russian nuclear weapon goes missing and we are left in the dark because U.S.-Russian cooperation on tracking and dismantling warheads died with the treaty, we will ask ourselves, was it worth it to oppose ratification?

I believe the answer is no. Every living former Secretary of State from Kissinger to Baker to Rice shares that opinion.

Several former Secretaries of Defense, including Secretaries Schlesinger, Carlucci, Perry, and Cohen, all believe we ought to ratify this treaty in order to make our country—our country—safer. I might add, our top intelligence people agree with them.

This unlikely bipartisan coalition has come to this conclusion because they are certain that failure to ratify New START leaves our country less safe and more at risk to terror. We ignore the collective wisdom and advice of these leaders, past and present, at our peril. They have no axe to grind. They are calling it like they see it. I hope we will search our hearts—every one of us—and our minds this week and come to the same conclusion they have.

Question No. 3 was: Can we build a robust missile defense system if we ratify this treaty? That is an important question. The answer is too. And the answer is, yes, we absolutely can. There is simply nothing in this treaty that limits the United States from building the kind of missile defense system we might want and that we might need.

You do not have to take my word for it. Last month the Chairman of the Joint Chiefs of Staff, ADM Mike Mullen, bluntly stated, ''There is nothing in the treaty that prohibits us from developing any kind of missile defense.''

Let me say his words again. ''There is nothing in the treaty that prohibits us from developing any kind of missile defense.'' Those are not my words. Those are his words. Nothing, nothing in the treaty prohibits us from doing that.

Just last week Secretary Gates said that the treaty ''in no way limits anything we want or have in mind on missile defense.'' Let me repeat that as well. He said, ''The treaty in no way limits anything we want or have in mind on missile defense.'' In no way.

Simply put, this treaty gives us both what we want and what we need. It reduces the number of nuclear warheads Russia can possess, and it does so without constraining U.S. missile defense and deployment.

Some of our colleagues on the other side of the aisle, who have made up their minds that they will oppose ratification, dispute the statements of

both Secretary Gates and Admiral Mullen. Clearly, that is their right to do so. These opponents to the treaty argue that this treaty would, in fact, create limitations on our ability to build and deploy a missile defense system. With all due respect to them, I do not believe that is true. And, more importantly, neither do our top military and intelligence leaders, upon whom our Nation depends. They do not believe it is true either. In supporting this argument, some of the treaty's critics point to a provision which states we cannot convert nuclear missile launchers into missile defense launchers. We have all heard Senators KERRY and LUGAR respond to this assertion. We do not want to make these conversions. We do not want to make these conversions. Why? Because it is not cost effective. It is cheaper to build new silos rather than convert the old launchers. This is not a limitation on missile defense. It is common sense. It is cost effective. And it is certainly not a reason to vote against this important treaty.

Question No. 4 again. Question No. 4 was: Is ratification of New START the last word on this issue? And the answer is, not at all. This is not the last word. In fact, ratification is another step, albeit an important one, in a decades-long journey. Ratification reflects a vision shared by Presidents Nixon, Carter, Reagan, Clinton, George Herbert Walker Bush, and George W. Bush, as well as the people of our country, and the people of the Russian Federation.

Realizing that vision is vitally important both to Russians and to Americans, our two nations must join to lead the global community on the issue of nuclear disarmament. If we do not, no one else will.

The next step in realizing that vision requires us to ratify this New START treaty that is before us this week. Once we have done so, we should turn to redoubling our efforts to work with Russia, with China, and our allies to pressure Iran and North Korea to give up not their nuclear energy programs but their nuclear weapons programs. And as we do that, we should continue working toward future agreements with the Russian Federation on reducing tactical nuclear weapons.

Fortunately, in the resolution of ratification that contains the New START treaty language, there are instructions added by the Senate Foreign Relations Committee that order—that order—the Obama administration to pursue agreements on the limits of tactical nuclear weapons with Russia as well. Two weeks ago, Secretaries Clinton and Gates said they would pursue such an agreement with the Russian Federation in the coming years. However, we cannot continue down that path without first ratifying New START. And we must.

Let me conclude today by asking my undecided colleagues, however many there are out there, one final question. Here it is: How often do we see in this body nearly every major national security official from just about every Presidential administration of the last four decades come together to support one initiative like this? How often? The answer is, not very often, at least not on my watch.

As a captain in the Navy, as my State's Congressman, and Senator, as Governor of Delaware, and commander in chief for a while of our State's National Guard, I learned a long time ago that the best way to make tough decisions, to make the right decision, is to gather together the best and brightest minds that we can, people with different perspectives, urge them to try to find common ground, and then provide their recommendations to me.

In the case of this treaty, many of the best and brightest national security minds our Nation has ever seen, names such as Kissinger, Powell, Schlesinger, Baker, Hadley, Scowcraft, Shultz, Rice, Nunn, Warner, LUGAR, KERRY, Clinton, Bush, and Gates, agree that we should ratify New START and ratify it now.

I urge my colleagues who are still undecided on this critical issue to join me, to join us, in moving our Nation forward by voting to ratify this treaty.

Before I yield the floor, I want to take a moment to salute Senator LUGAR. I thank you and thank your staff for the terrific leadership you have provided for years on these issues, along with Sam Nunn, all of those years ago, and with JOHN KERRY and others today.

I am going to thank Senator KERRY for the terrific leadership and the great support he has gotten from his committee, from the staff, to get us to this point today.

I am encouraged that we may have the votes to finish our business and to conclude by ratifying this treaty tomorrow. I hope that handful of our colleagues who are out there who are still trying to figure out what is the right thing to do will maybe find some words in the wisdom I share today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 4855

Mr. ENSIGN. Mr. President, I ask unanimous consent that we set aside the pending amendment and call up amendment No. 4855.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 4855.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 4855

(Purpose: To amend the Treaty to provide for a clear definition of rail-mobile missiles)

In Part One of the Protocol to the New START Treaty, in paragraph 45. (35.), strike ''and the self-propelled device on which it is mounted'' and insert ''and the self-propelled device or railcar or flatcar on which it is mounted''.

Mr. ENSIGN. Mr. President, I rise today to speak on behalf of this amendment, which would clear up any ambiguity by adding the rail mobile definition of START I to the New START treaty.

Specifically, my amendment would amend the protocol annex, part one, in terms and definitions protocol. Specifically under START I the definition of rail mobile launchers of ICBMs means an erector launching mechanism for launching ICBMs, and the rail car or flat car on which it is mounted.

Unfortunately, there is no such definition in New START. According to Konstantin Kosachev, the head of the Duma International Affairs Committee, Senator KERRY's counterpart in the Duma, the understanding on rail mobile ICBMs presumes that: ''The Americans are trying to apply the New START treaty to rail mobile ICBMs in case they are built.''

So their definition, their understanding, the Russians' understanding, is that rail mobile is not included in this treaty. That is according to Mr. Kosachev's statement in the Duma. By making this statement, we can infer that it is absolutely Russia's position that rail mobile ICBMs are not captured by this treaty or subject to the treaty's limitations. So this is an issue we must address and we must clarify.

The administration, in a State Department fact sheet, asserts that rail mobiles are covered under the 700 ceiling of deployed delivery vehicles in article II. However, Mr. Kosachev's statements imply to the contrary. Further, if rail mobiles were to fall under that cap, it would be in the definitions. There is zero mention of rail mobiles in New START.

My amendment simply clarifies this ambiguity. In the absence of New START limitations on rail mobile ICBMs and launchers, an unlimited number of these could be deployed. It may even be possible to take a road mobile SS–27 ICBM, including multiple warhead versions, and put it on a railcar. This would not in any way violate the conditions of the New START limits, because the earlier START I limits on rail mobile launchers and nondeployed mobile ICBMs do not appear in this New START.

Another way to clarify that ambiguity would be if the administration gave us full access to the negotiating records. Since they have not, however, we must amend the treaty to amend the definition back to as it was in START I.

What happens if the Russian Duma, in its ratification process, adds language in its version of their ORR, that excludes rail mobile launchers? What do we do at that time? If they do this, I would think we would have no choice but to simply take it.

Mitt Romney highlighted eloquently in an op-ed that:

The absence of any mention of rail based launchers should be remedied. U.S. advocates of the treaty say that if Russia again inaugurates a rail program, as some articles in the Russian press have suggested it might, rail mobile ICBMs would count toward the treaty limits. Opponents say that no treaty language supports such an interpretation. Russian commentators have said that rail-based systems would be discussed by the Bilateral Consultative Commission. Such ambiguity should be resolved before the treaty is approved, not after.

I will yield to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the amendment speaks to concerns about rail mobile missiles. First, I would emphasize it is important to note that neither side currently deploys rail mobile systems.

The Nunn-Lugar program destroyed the last SS–24 rail mobile system in 2008. They are all gone. Destroyed. The New START treaty is specifically drafted so that if Russia were to revive its rail mobile program, it would count under New START's central limits. This is underscored in our resolution of ratification through an understanding that if such systems are ever deployed by Russia, they will count as deployed ICBMs under New START, and that such railcars on BMs.

I submit that the amendment is unneeded. But more seriously, if in fact it were to be adopted, it would require renegotiation of the treaty. For that reason, as well as others I have stated as succinctly as possible, I oppose the amendment.

The PRESIDING OFFICER (Mr. BENNET). The Senator from Nevada.

Mr. ENSIGN. Just to address the one point on the clarification in the resolution of ratification, it has been said that our resolution of ratification clarifies and we should not need this language in the definition. Here is the problem I have.

Several years ago when we were debating the Chemical Weapons Convention and riot control agents, there it is right there in the resolution of ratification that these riot control agents can be used in operations to protect civilian life. Yet to this day, our State Department lawyers continue to argue they cannot, even though in the resolution of ratification we clearly stated that these riot control agents, tear gas basically, could be used to protect civilian life. Yet our State Department continues to argue against that. That is why putting it in the definitions within the treaty, we believe, is important to clarify the difference we seem to have with the Russians based on statements they have made to the press.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, this won't take too long. Let me say, first of all, I thank the Senator for bringing this up. Let me underscore: This is one of the sort of let's see if we can find a problem, and if we can find a problem, make it into a bigger problem, and then amend the treaty because amending the treaty itself—this amendment seeks to amend the treaty, so here we go right back down the road of the old ''let's open up the negotiations again'' argument. We have been through it so many times here. It has appropriately been rejected by colleagues.

I think the last vote was something like 66 to 30 on whether we will amend the treaty. That doesn't mean he doesn't have a right to raise it, but let me speak to the substance.

Going back in history on the START treaty, which is why this is a complete red herring—if you go back in the history of the START treaty, you will recall that the Soviet Union deployed 10 warheads, 10 MIRV warheads on an SS–24 intercontinental ballistic missile, and Russia deployed some 36 of those SS–24 rail-based launchers the Senator is referring to at the height of their deployment. But to comply with START I and with START II, which interestingly, we worked together on in terms of START II even though the Russians never ratified it—and the reason they didn't ratify it is because we took unilateral action and withdrew from the ABM treaty, and they were mad about it. That is why what we do matters in this relationship. We ratified the START II treaty; they didn't. So the things we choose to do have an effect.

The fact is, thanks to our colleague to my right, the distinguished Senator from Indiana, Mr. LUGAR, and Senator Nunn, who had the vision to put together the threat reduction program, that program set out to destroy Russia's SS–24 ICBMs and rail-based launchers.

This is important for all those people who have come to the floor and argued repeatedly that Russia has acted in bad faith in all of these efforts. Take note that Russia continued those cooperative efforts and continued to destroy those rail-based launchers even though they had not signed on to START II. Guess what. The last Russian SS–24 launcher was eliminated in 2007.

Now START I had a specific sublimit on mobile missiles and on rail mobile missiles. So the START treaty's definition, as a result of those two sublimits, the START treaty's definition needed to cover both the rail mobile and the road mobile launchers that were deployed at the time of the treaty. They were both put under the same roof, and that roof was the START treaty's definition. Just like the Moscow Treaty, the New START treaty contains just a plane limit, an overall limit on ICBMs and ICBM launchers, SLBMs and SLBM launchers. We have the two categories and heavy bombers with no sublimits.

That means the characteristics of strategic offensive arms limited by the treaty, in particular the deployed and the nondeployed launchers of ICBMs and the deployed ICBMs and their warheads, those characteristics do not hinge on the treaty's definition of mobile launchers of ICBMs. We don't want them to because we want this big umbrella that covers all of it, which we have the ability to verify.

If we look at exactly what the treaty says, it says the following—and I don't know which lawyers are arguing about this, but the lawyers involved between the Russians and the United States and the lawyers involved on the negotiating team and the lawyers at the State Department are not arguing about this. They understand exactly what the treaty says.

Here is what it says. Article II, 1(a) of the treaty sets the limit of 700 deployed ICBMs, deployed submarine-launched ballistic missiles and deployed heavy bombers. That is really simple. It is very straightforward—700 ICBMs, SLBMs, bombers. We have the flexibility to decide how many of each of those we want to have. We had a debate previously with our colleagues about how many we would have. But that is pretty straightforward. There is no ambiguity in that. Where is the ambiguity—700, all three, and we believe we can count all three. Paragraph 12 of part 1 of the protocol defines deployed ICBM as an ICBM that is contained in or on a deployed launcher of ICBMs. That is pretty obvious. A launcher is a launcher is a launcher.

Paragraph 13 of part 1 of the protocol defines deployed launcher of ICBMs as an ICBM launcher that contains an ICBM and is not an ICBM test launcher, an ICBM training launcher or an ICBM launcher located at a space launch facility. Those are the only three exceptions. That is it. There is no ambiguity.

It seems to me pretty darn straightforward that a rail mobile ICBM, if either side decided to deploy it, obviously falls under the 700. It is so obvious that we should not have to risk renegotiating the entire treaty over something as obvious as that.

I might add, a nondeployed launcher of a rail mobile would fall under the 700 limit in terms of the launchers. I just ask my colleagues to look carefully at this. It would be highly improbable.

The Senator from Tennessee earlier today gave a terrific speech, Mr. ALEXANDER. He said: What is all this fuss about? In the end, we are going to have thousands of these things that can destroy the whole planet anyway.

That came from a person who is pretty thoughtful on these issues, who understands that you have to put this in a context. We are not talking about the Cold War right now. We are not talking about the Soviet Union right now. We are talking about a country with which we have a very different relationship and where we have a whole set of combined interests, and you have to put this treaty into that context. It is highly unlikely that during the duration of this treaty with the Russian Federation, after years of working with the United States to destroy the weapons and work cooperatively under Senator LUGAR and Senator Nunn's program, it is unbelievably hard to believe

they are going to divert what we know to be their very limited resources and infrastructure from their planned deployment in order to do new mobile—we have a planned deployment of new mobile-based ICBM forces, and suddenly to have them go out and build and deploy rail mobile launchers, which we would observe unbelievably quickly under our national technical means.

The simple answer is that we know what they are going to do. We have a strong capacity to track what they are doing. We have every reason to believe the Russians agree with what I just said about the allocation of resources. The fact is, the resolution the Senate will vote on, in order to guarantee that we are certain about this, requires the President to communicate to the Russians in the formal instrument that ratifies the agreement, when we ratify it, assuming we do it, will ratify the understanding of the United States that the treaty would cover rail mobile launched ICBMs and their launchers, if Russia or the United States were crazy enough to try to build them. So for the life of me, I don't know what you can do more than that. But we certainly are not going to reopen the treaty for the basis of a nonambiguity like that.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I wish to add parenthetically a footnote to the chairman's presentation.

As has been mentioned frequently during this debate, for a variety of reasons, the Russians reduced the number of ICBMs below the totals that were required by the former treaty. Some Senators, in fact, have said the New START treaty, by imposing these limits of 1,550 warheads and 700 launchers, inhibits only the United States because, according to those who have argued this, Russia has already fallen below these limits.

Let me add, as a point of personal recollection, one of the reasons the Russians are below some of the standards that have been suggested is, as they thought more and more about the rail mobile situation, they decided this was either useless, expensive, or so vulnerable to potential attack that it was not worth maintaining.

As a result, as has been suggested, as it turned out, using the Cooperative Threat Reduction Program, the United States and Russia, quite outside of the last treaty, decided we would proceed under the Cooperative Threat Reduction Program to simply destroy all the rest of the rail, which we did.

Just for the sake of exhibit, I have a piece of one of the last rails to be destroyed. It was presented to us by the Russians with a proper inscription on the back of it, recognizing their appreciation to the United States for this destruction. Therefore, logically, to argue that we are back into a predicament of the Russians wanting to build rails again and launch missiles and what have you from them negates the history of cooperation, conversations that may have occurred well beyond the treaty but that have come from the fact that there were Americans working with Russians who were not involved necessarily in specifics of the treaty but, in fact, were able to effect results that were well beyond what the treaty mandated.

I mention this, again, to indicate that I believe the amendment is unnecessary. But worse still, adoption of it would, in fact, eliminate our consideration today. We would go home. It is finished.

I certainly encourage Senators, recognizing that the Russians don't want the rails, have actually worked in the Cooperative Threat Reduction Program with Americans to get rid of all of it, plus everything associated with them, that as a commonsense situation that seems to be fairly well under control. Even then, the statements we have adopted as a part of the treaty take care at least of the counting situation if, for any reason, such an emergence should occur again on the rails.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, in response to the last argument that the Russians don't have any incentive to and we don't believe they are going to build the rail mobile system again, I ask, then: What is the big deal about ensuring in the treaty that if they do, they would be counted under the 700? What is the problem? The problem appears to be that the Russians don't have the same view of this as do my colleagues or the United States Government.

My colleague from Nevada quoted earlier from the Interfax report of October 29, 2010, where the chairman of the Russian Duma—parliament—committee responsible for treaties, Konstantin Kosachyov, stated—in response to the argument we have just made, that the Senator from Nevada just made, that the treaty should include rail-mobile as part of the 700 limit—he stated, in response to that claim, and in response to the resolution of ratification of the Foreign Relations Committee, that U.S. claim compelled the Duma to stop action on the treaty. He said—and I am quoting:

> The Americans are trying to apply the New START Treaty to rail-mobile ICBMs in case they are built.

That, obviously, means if he is saying: We would have to stop the Duma action on this if that is what the U.S. Government is going to claim, they are pushing back on this pretty hard. The question is, why? I do not know whether they intend to build the rail-mobile system. I do not much care whether they build it. All we care about is, if they do, it has to be included within the 700 limit.

Now, the report language of the Senate Foreign Relations Committee confirms the fact that they are not included. Here is what the report language says—and this is in direct contradiction to what was said just a moment ago—this is from page 17 of the report—

> Nevertheless, while a new rail-mobile system would clearly be captured under the Article II limits despite the exclusion of rail-mobile launchers from the definition of mobile launchers of ICBMs, those provisions that actually use the defined term ''mobile launcher of ICBMs'' would not cover rail-mobile systems if Russia were to reintroduce them.

''Would not cover.''

It goes on to say:

> ''Appropriate detailed arrangements for incorporating rail-mobile ICBM launchers and their ICBMs into the treaty's verification and monitoring regime would be worked out in the Bilateral Consultative Commission.'' Under Article XV . . . the Parties may make changes to the Protocol or Annexes. . . .

We have discussed this in the past. If there is a dispute about what the treaty means, then you go to this dispute resolution group of Russians and Americans, and they try to talk it out and work it out. But there is nothing to say they will, and if the Russian chairman of the committee is already saying we are trying to insert something into the agreement that isn't there, I wonder how successful we would be in working it out.

The report concludes:

> If Russia were again to produce rail-mobile ICBM launchers, the Parties would work within the BCC to find a way to ensure that the treaty's notification, inspection, and monitoring regime would adequately cover them.

So it is clear that it does not. It is clear from the report that the language would not cover rail-mobile systems if Russia were to reintroduce them. It is clear we would have to rely upon the Russians' good offices, good intentions, to reach some kind of an agreement with us in the Bilateral Consultative Commission. There are no assurances that will be done.

Why are we willing to proceed with an agreement that has such built in ambiguity? Why say: Well, we will let that be worked out by the BCC when we could work it out right now? It is the same answer we get with respect to every one of these proposals: Well, the Russians would then demand to renegotiate the treaty.

I ask again: Is the Senate just to be a rubber stamp? We cannot do anything to change the treaty or the protocol, or just the resolution of ratification, which is what we are trying to do because the Russians would say no, and, therefore, we cannot do it?

I thought we were the Senate. We are one-half of the U.S. Government that deals with it. The other is the Executive. The Executive negotiated the treaty. Now, why didn't they include this language? We do not know because we do not have the record of the negotiations. What I am told is that it is because the Russians said they would not include it because the rail-mobile system would be unique to Russia, and we do not have such a thing. Therefore, there would be a lack of parity. You could not have such a unilateral provision. So if that is the case, either the

Russians do intend to develop these systems, and they do not want them counted, or there should be no problem with the Ensign amendment, which would ensure that they would be counted.

So you cannot read the report language and agree with what has been said—that the treaty covers these weapons—you cannot read it and believe they would clearly be covered by the inspection and notification and monitoring regime. In fact, it clearly shows that is not the case. What you have to believe is that this built-in dispute in the treaty may well arise if the Russians decide to proceed to develop such a system, and we would then—or would arise if they decide to do that, and we would be required to go to the BCC to try to work it out with them. That, obviously, builds in a conflict that is not good.

As I said before, when you have a contract between two parties, the first thing the lawyers try to do is ensure there are no ambiguities that could cause one side or the other to later come forward and say: I did not mean that. Then you have a legal dispute. But it is one thing to have a legal dispute about buying a car or a house. It is quite another to have a dispute like this between two sovereign nations.

I would note when the United States had a system we might develop, such as the rail-mobile—but we have not made a decision to do it; we certainly do not have it—the Russians knew we wanted to at least study the possibility of developing a conventional Prompt Global Strike capability—that is to say, an ICBM that could carry a conventional warhead rather than a nuclear warhead—and they specifically insisted that we include that in the treaty.

Now, you might say: Well, wait a minute. The Russians apparently argued that they did not want to include anything on rail-mobile because the United States did not have anything on rail-mobile, and that would be a lack of parity—it would be a unilateral restriction—but the same thing is true with conventional Prompt Global Strike. The Russians have no intension of doing that, apparently. We might, just like for the rail-mobile, the Russians might. Yet they insisted a limitation be put on our conventional Prompt Global Strike—by what?—by counting them against the 700 launcher limit—exactly the same thing that should be done with regard to rail-mobile.

So, apparently, if we might do something in the future the Russians do not like, we have to count it. But if the Russians might do something in the future we do not like, we cannot count it. Our only relief then is to go to this BCC and hope the Russians would agree to something in the future that they have not been willing to agree to today.

So all the Ensign amendment does is to clear up an ambiguity and avoid a future dispute between the parties. It is clear from the report that it is not covered now. Again, the language, ''those provisions that actually use the defined term 'mobile launchers of ICBMs' would not cover rail-mobile systems if Russia were to re-introduce them.''

The report acknowledges that, therefore, in order to apply the inspection and notification and monitoring regimes, you would have to get the Russians to agree in the BCC. Why not solve that problem right now?

Again, we meet with the same argument we are always met with: Well, we do not dare change anything in here because the Russians would disagree.

I just ask my colleagues, again, is there any purpose for us being here? If every argument is, well, we do not dare change it because the Russians would disagree, so we would have to renegotiate it, maybe that suggests that there was not such a hot job of negotiating this treaty in the first place. If the Senate cannot find errors or mistakes or shortcomings and try to correct them without violating some superprinciple that is above the U.S. Constitution, which says that the Senate has that right, then, again, I do not know what we are doing here.

So I urge my colleagues to support the Ensign amendment, as with some other things we have raised, to try to avoid a conflict. Resolve the situation now while we still have time to do it rather than after the treaty is ratified when it is too late.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Maryland.

Mr. CARDIN. Madam President, I appreciate the concerns my colleague from Arizona is raising in regards to mobile launchers, particularly as it relates to rail-mobile launchers. But I am reading the same language the Senator has put on the floor, and it says very clearly that it is subject to the 700 limit. I think what my colleague is referring to is the fact that Russia today does not have rail-mobile launchers. So, therefore, there are other protocols in the treaty in regard to inspection, et cetera, that are not provided for in this treaty because it is not relevant since Russia today does not have rail-mobile launchers. But if they were to develop rail-mobile launchers, they would be subject to the 700 limitation of launchers, if it was being deployed. The consultation process will work out the procedures for adequate inspection.

So I think it is already covered under the treaty. In the language of the treaty Senator KERRY mentioned it is clear to me it is covered. But in the report language I think it is stating the obvious.

One last point, and that is, again, you do not dispute the fact that if we were to adopt this amendment, it would be the effect of denying the ratification of the treaty until it was modified in Russia, which is the same as saying we are not going to get a ratified treaty on this issue.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, might I pose a question to my colleague because I understand exactly the point he makes. He makes it accurately. I quoted the language that says that it would clearly be captured under article II limits. That is the committee's understanding, which is the point my colleague is making. But I go on to note that the exclusion of rail-mobile launchers from the definition means that it would not cover rail-mobile systems if Russia were to reintroduce them and, therefore, there would have to be work by the BCC to figure out how to deal with those under the inspection, monitoring, and notification regimes.

I understand that our committee says they believe they are captured. I see that in the report. What I am saying is, there is a dispute because the Russians do not appear to agree with that. I would just ask my colleague, how do you square, then, the Russian response? The chairman of their committee—you have dueling committees—in the Duma said:

> The Americans are trying to apply the New START Treaty to rail-mobile ICBMs in case they are built.

It appears to me what he is saying is, but they should not be doing that. In fact, his recommendation, I believe, was the Duma not take action on the treaty if that was our intent.

Mr. CARDIN. Madam President, will the Senator yield?

Mr. KYL. Yes, of course.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. To me, it is the language of the treaty itself. The language of the treaty itself is pretty clear as to what the definition of a launcher is, with three exclusions. Just look at the language of the treaty that any type of launcher would be covered.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, if I could just close, and I actually had, I think, yielded the floor. So I appreciate the chance to make this final point.

All the Ensign amendment tries to do is clear up the ambiguity. My colleague says it is absolutely clear to him that they are included. I know the committee says they think it is clear. I do not think the Russians think it is clear, and I think there is a basis for an argument that it is not clear. Why not clear it up?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, the answer to the question—why not clear it up—is because if you clear it up the way the Senator is trying to, you kill the treaty. Pretty simple.

The Senator keeps asking the question, Why can't we do this? We can't do it because it kills the treaty. It is pretty simple. And the Senator knows it kills the treaty.

Now, going beyond that, come back again just for an instant to the substance. First of all, the Russian general

staff—I have been known, as chairman of the Foreign Relations Committee, to make some comments which occasionally the Joint Chiefs of Staff do not agree with. My comments are not going to drive them to do what they do not agree with. Likewise, the chairman of their foreign relations committee whom he quotes was tweaking us in his comment. But the fact is, the general staff of Russia has made it abundantly clear they do not want to build these rail-based mobile. They have no intention of doing this. They have just been destroying them. They have been taking them down and destroying them in a completely verifiable manner, and the Senator from Arizona cannot contest that. He knows that is absolutely true.

So this is a completely artificial moment designed, as others have been, to try to derail—no pun intended—the treaty.

That said, let me also point out that if you want to try to rein in this issue of rail-based, this amendment is not the way to do it because there are a whole series of protocols set up in the treaty for how you deal with road-based launchers, and you would need to begin to put in place a whole different set of protocols in order to deal with rail-based. So if, indeed, the Russians are, as I said, crazy enough, as they think it would be crazy—that is the way they define it now and we do too—to go back to something we have spent the last 15 years destroying, if that happens, we will know it. Moreover, if it happens, it is counted, as the Senator has agreed, under the article II limits for launchers. So this is a nonissue, with all due respect.

I know the Senator from Nevada wants to take 2 minutes to make a comment, and then I wish to make a unanimous consent request, if I could, after that.

Mr. ENSIGN. Madam President, I think the Senator from Arizona wishes to make a statement.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Before my colleague from Nevada closes, I know this whole argument is based on the proposition that the Russians wouldn't be crazy enough to think about doing a rail system again so we don't need to worry about it. What is all the fuss, is what my colleague said.

Well, here is a December 10—how many days ago is that now? I have forgotten. We are about to Christmas, but I have forgotten the date of today. It is from Moscow ITAR-TASS, English version. Headline: ''Russia Completes Design Work For Use Of RS–24 Missiles On Rail-based Systems.''

I want my colleague from Massachusetts to hear this. The Russians aren't crazy enough to think they could do a rail system. Here is the headline, December 10: ''Russia Completes Design Work For Use of RS–24 Missiles On Rail-based Systems.''

Just to quote a couple lines from the story:

Russia has completed design work for the use of RS–24 missiles railway-based combat systems, but implementation of the project has been considered inexpedient, Moscow Heat Engineering Institute Director Yuri Solomonov said. His institute is the main designer of these missiles. Asked whether the RS–24 missiles could be used in railway-based systems, he said, ''This is possible. The relevant design work was done . . . '' and so on.

I ask unanimous consent that this article be printed in the RECORD.

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

RUSSIA COMPLETES DESIGN WORK FOR USE OF RS–24 MISSILES ON RAIL-BASED SYSTEMS

MOSCOW, December 20 (Itar-Tass)—Russia has completed design work for the use of RS–24 missiles railway-based combat systems, but implementation of this project has been considered inexpedient, Moscow Heat Engineering Institute Director Yuri Solomonov said.

His institute is the main designer of these missiles.

Asked whether the RS–24 missiles could be used on railway-based systems, Solomonov said, ''This is possible. The relevant design work was done, but their development was deemed inexpedient. I agree with this because the survivability of this system is not better than that of the ground-based one, but it costs more.''

The RS–24 Yars missile system was put on combat duty in Russia this summer.

Earlier, the chief designer of the Moscow Heat Engineering Institute, which created the system, said that one of the RS–24 systems had already been delivered to the Strategic Rocket Forces at the end of last year.

Solomonov said, ''All journalists are writing about Bulava, but are saying little about the new mobile missile system RS–24 Yars with multiple warheads that we created at the same time.''

The Strategic Rocket Forces intended to deploy the missile system RS–24 with multiple warheads in December 2009, Commander of the Strategic Rocket Forces Lieutenant-General Andrei Shvaichenko said in October 2009.

''The intercontinental ballistic missile RS–24 put into service will reinforce combat capabilities of the attack group of the Strategic Rocket Forces. Along with the single-warhead silo-based and mobile missile RS–12M2 Topol–M already made operational the mobile missile system RS–24 will make up the backbone of the attack group of the Strategic Rocket Forces,'' the general said.

Silo-based and mobile missile systems Topol–M, as well as RS–24 mobile missile systems were designed by the Moscow Heat Engineering Institute.

The warheads of Russia's newest Topol–M and RS–24 intercontinental ballistic missiles can pierce any of the existing of future missile defences, Strategic Rocket Forces Commander, Lieutenant-General Sergei Karakayev said earlier.

''The combat capability of silo-based and mobile Topol–M ICBMs is several times higher than that of Topol missiles. They can pierce any of the existing and future missile defence systems. RS–24 missiles have even better performance,'' Karakayev said.

The Strategic Rocket Forces have six regiments armed with silo-based Topol–M missiles and two regiments armed with mobile Topol–M missiles. Each missile carries a single warhead. This year, Russia began deploying RS–24 ICBMs with MIRVs. There is currently one regiment armed with RS–24 missiles.

Speaking of other ICBMs, Karakayev said that RS–20V Voyevoda (Satan by Western classification) would remain in service until 2026. ''Their service life has been extended to 33 years,'' he said.

On July 30, 1988, the first regiment armed with RS–20B Voyevoda missiles was placed on combat duty in the Dombarovka missile formation in the Orenburg region.

''This is the most powerful intercontinental ballistic missile in the world at the moment,'' the press service of the Strategic Rocket Forces told Itar-Tass.

With a takeoff weight of over 210 tonnes, the missile's maximum range is 11,000 kilometres and can carry a payload of 8,800 kilograms. The 8.8–tonne warhead includes ten independently targetable re-entry vehicles whose total power is equal to 1,200 Hiroshima nuclear bombs. A single missile can totally eliminate 500 square kilometres of enemy defences.

By 1990, Voyevoda missiles had been placed on combat duty in divisions stationed outside of Uzhur, Krasnoyarsk Territory, and Derzhavinsk, Kazakhstan. Eighty-eight Voyevoda launch sites had been deployed by 1992.

Mr. KYL. Madam President, I am not arguing that this issue has been resolved within Russia as to whether to go forward. I am not arguing whether it is a good thing or a bad thing. I simply submit it in response to the argument that the Russians would be crazy to think about doing this. Either they are crazy or—well, in any event, I would never attribute that motivation to anybody, even somebody from another country. The fact is, they have begun design work on exactly such a project.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. It is my understanding that the Russian referred to in that article is saying how difficult it is to do the rail-based. But here is the simple reality. If they build it, it will count, end of issue. That is why this is unnecessary.

I yield to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Madam President, to wrap up this debate, let me address, first of all, the whole idea that changing this treaty in any way kills the treaty. Under the Constitution, certainly it is the President's role, the administration's role, to negotiate the treaties. We all recognize that. But under the Constitution, the Senate is tasked with advice and consent. That means we are to look at the treaties, and if we think they should be changed—and we have changed treaties over the years—then we are free to change the treaties. That is why there is a process set up, such as this amendment process, to change the treaties. So if we have fundamental objections to the treaty, I think we can have a debate on whether we should, on a particular amendment, change the treaty on the merits of the amendment, but we shouldn't just say we can't change any part of a treaty because it kills the treaty, because we have a constitutional role in advice and consent on whether we approve treaties.

Just a couple points to make.

First of all, this is from the State Department's Bureau of Verification, Compliance, and Implementation. I ask unanimous consent that it be printed in the RECORD.

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

[From the Bureau of Verification, Compliance, and Implementation, Aug. 2, 2010]

RAIL-MOBILE LAUNCHERS OF ICBMS AND THEIR MISSILES

Key Point: Neither the United States nor Russia currently deploys rail-mobile ICBM launchers. If a Party develops and deploys rail-mobile ICBMs, such missiles, their warheads, and their launchers would be subject to the Treaty.

Definitions: The New START Treaty defines an ICBM launcher as a ''device intended or used to contain, prepare for launch, and launch an ICBM.'' This is a broad definition intended to cover all ICBM launchers, including rail-mobile launchers if they were to be deployed again in the future. There is no specific mention of rail-mobile launchers of ICBMs in the New START Treaty because neither Party currently deploys ICBMs in that mode. Russia eliminated its rail-mobile SS–24 ICBM system under the START Treaty. Nevertheless, the New START Treaty's terms and definitions cover all ICBMs and ICBM launchers, including a rail-mobile system should either Party decide to develop and deploy such a system.

A rail-mobile launcher of ICBMs would meet the Treaty's definition for an ICBM launcher. Such a rail-mobile launcher would therefore be accountable under the Treaty's limits.

Because neither Party has rail-mobile ICBM launchers, the previous definition of a rail-mobile launcher of ICBMs in the START Treaty (''an erector-launcher mechanism for launching ICBMs and the railcar or flatcar on which it is mounted'') was not carried forward into the New START Treaty.

If Russia chose to develop and deploy rail-mobile ICBMs, such missiles and their launchers would be subject to the Treaty and its limitations. Specific details about the application of verification provisions would be worked out in the Bilateral Consultative Commission. Necessary adjustments to the definition of ''mobile launchers of ICBMs''—to address the use of the term ''self-propelled chassis on which it is mounted'' in that definition—would also be worked out in the BCC.

Accountability: A rail-mobile launcher containing an ICBM would meet the definition of a ''deployed launcher of ICBMs,'' which is ''an ICBM launcher that contains an ICBM.''

Deployed and non-deployed (i.e., both those containing and not containing an ICBM) rail-mobile launchers of ICBMs would fall within the limit of 800 for deployed and non-deployed launchers of ICBMs and SLBMs and deployed and non-deployed heavy bombers.

The ICBMs contained in rail-mobile launchers would count as deployed and therefore would fall within the 700 ceiling for deployed ICBMs, SLBMs, and heavy bombers.

Warheads on deployed ICBMs contained in rail-mobile launchers therefore would fall within the limit of 1,550 accountable deployed warheads.

Applicable Provisions: Separate from the status of the rail-mobile ICBM launcher, all ICBMs associated with the rail-mobile system would be Treaty-accountable, whether they were existing or new types of ICBMs, and therefore would, as appropriate, be subject to initial technical characteristics exhibitions, data exchanges, notifications, Type One and Type Two inspections, and the application of unique identifiers on such ICBMs and, if applicable, on their launch canisters.

Mr. ENSIGN. Madam President, let me just read one paragraph from this:

If Russia chose to develop and deploy rail-mobile ICBMs, such missiles and their launchers would be subject to the Treaty and its limitations.

That is according to our State Department.

Specific details about the application of verification provisions would be worked out in the Bilateral Consultative Commission.

So, in other words, if Russia decides to build these things, then the verification has to be worked out by the Bilateral Consultative Commission. It isn't that it is set in there exactly what would happen, but the verification certainly would have to be worked out.

The bottom line is, we believe there is ambiguity because of the statements made by the Russians themselves. That is the problem. If the Russians, in their statements in the Duma, if they have been saying: Yes, we agree with exactly the interpretation the Americans have been making, it would be a different story and we probably wouldn't need this amendment. But because their statements—Senator KERRY's counterpart in the Russian Duma has said the Americans are trying to bring into this New START treaty mobile launchers, and the Russians don't think they should be in there. So we think we should clarify that language in a very unambiguous way, based on my amendment, to make sure there is no question on each side.

I appreciate what the Senator from Massachusetts is saying, that they have destroyed their—it would be crazy for them to build them again. But as the Senator from Arizona just talked about, they are at least designing. Maybe they have a better system to use for rail-mobile launchers. We don't know that. But what we do know is, they don't think this language applies, the language in the treaty applies to the mobile launchers. So they could get around this treaty and the number of warheads they could have, based on the language that is currently in the treaty.

I just ask our colleagues to seriously consider removing the ambiguity and voting for the Ensign amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I don't think we need to repeat. I appreciate the Senator from Nevada and I understand what he is saying. I completely agree with him about the advice and consent role of the Senate, but part of that role is to make a judgment about whether the consequences of some particular concern merit taking down the whole treaty and putting it back in the renegotiation process. It is not that we can't or shouldn't under the right circumstances; it is a question of balancing what are the right circumstances. We are arguing, I think appropriately, because the report of our committee says clearly that rail-mobile will be covered under article II and this is unnecessary. So weighing it that way, it doesn't make sense to do it.

Let me say to my colleagues that I think we want to move to the Risch amendment, and I think it is the hope of the majority leader to try to have two votes around the hour of 6 o'clock, if that is possible, and then to proceed to the Wicker amendment.

I yield the floor to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 4878

Mr. RISCH. Madam President, I wish to call up amendment No. 4878.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. RISCH] proposes an amendment numbered 4878.

Mr. RISCH. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide a condition regarding the return of stolen United States military equipment)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) RETURN OF STOLEN UNITED STATES MILITARY EQUIPMENT.—Prior to the entry into force of the New START Treaty, the President shall certify to the Committees on Armed Services and Foreign Relations of the Senate that the Russian Federation has returned to the United States all military equipment owned by the United States that was confiscated during the Russian invasion of the Republic of Georgia in August 2008.

Mr. RISCH. Madam President and fellow Senators, I bring you what I believe to be the first amendment to the resolution of ratification. We have had a number of amendments that have been to the actual treaty itself. We have listened to objection after objection that: Oh, my gosh, we can't possibly amend the treaty because if we do, we are going to have to sit down and talk to the Russians again.

We don't have to worry about that with this amendment. This is an amendment to the resolution of ratification. It will not require that we sit down with the Russians and negotiate. Frankly, I don't know what is wrong with that. Frankly, I think it is a good idea after all the problems that have been raised with the treaty. But, nonetheless, if that is an overriding concern, you can set that aside and listen to the merits of the amendment.

I have to tell my colleagues that part of this I bring as a matter of frustration. I have been involved with this for months, and I am so tired of hearing about accommodation after accommodation after accommodation to the Russians. It appears, before we even

started with this, the Russians said: Well, we are going to have to have in the preamble language that says missile defense is related to this, and we said no. We have to have the ability to protect our country and build missile defense. The Russians said it has to be in there. It is in there. The next thing we said: You know, for 40 years we have been doing this, and you guys have a 10-to-1 advantage over us on tactical weapons; that is, short-range weapons. We ought to talk about that because you want to talk about parity on strategic weapons. No, it can't be in there. We accommodated the Russians again. Every time we turn around and put out a problem here—just as we heard on this rail thing—every time we turn around and put out a problem that ought to be addressed, the people who are promoting this stand and apologize, they accommodate, they say it is OK, they overlook it, and we go on and on and on.

I am sitting here listening to this on the rails, and the one side says: Well, don't worry about it; they are never going to build this anyway. We pull up an article that says they are in the process of doing this. Well, yes, but don't worry about it because it is going to be counted anyway.

So I have something here that, hopefully, we are not going to apologize to the Russians for. We are not going to accommodate them. We are going to tell them that if you want a relationship with us, you have to be honest with us.

We all know, and it has been widely reported, that they cheat. They are serial cheaters. They cheated in virtually every agreement we have had with them. If we are going to have a relationship with them and press the restart button—and I think we should. We should press the reset button. We should have a decent relationship with them. But let's wipe the slate clean and let's start with the military equipment they have stolen from us. That is all this is about.

On August 8 of 2008, as we all know, the Russians invaded Georgia, and when they invaded Georgia, it was pretty much of a mismatch. They ran over the top of them, did a lot of bad things, and eventually there was a peace accord that was brokered by President Sarkozy, and the next amendment I have deals more in-depth with that.

But when they ran over the Georgians, the American military had just been there doing exercises with the Georgians because the Georgians were kind enough to engage with us and help us in Afghanistan. They were preparing to send troops to Afghanistan to help us. So we Americans went over there and we said: OK. We need to do some military exercises, engage in some joint training, so we can get you ready to go into Afghanistan. We are now preparing to leave. We have completed the exercises. We are preparing to leave. We obviously took a lot of our equipment over there, not the least of which were four American humvees. The four American humvees were shipped to a port in Georgia and were in the process of being shipped back to the United States. There is no argument that the title to these four humvees is with the people of the United States of America. They belong to me. They belong to you. They belong to the U.S. military. They belong to all of us.

The Russians, when they overran the Georgians and got to the seaport, found our humvees, and what did they do? Did they say: Well, yes, they belong to the Americans; we will put them on the boat that is supposed to go back to the United States? No. They said: We are going to take them, and they stole them. Today, they still have them.

The United States has asked for the four humvees back. But let me tell my colleagues where the four humvees are. If you want to see a picture of them, you can go to msn.com and search Georgia and humvees and you can see a picture of our humvees. Where are they? They are in the Russian Central Armed Forces Museum in Moscow, Russia. That is where our four humvees are. What are they doing there? They are on display as a war trophy, taken by the Russians as a war trophy. Well, we weren't engaged in that war.

So if we are going to have a good relationship with them, is it too much to ask to give us back the property they stole from us a little over 24 months ago?

So this is an easy one to vote for. I have had discussions with my good friend from Massachusetts. He said this isn't related. This is absolutely related. We are entering into a marriage on a very important issue.

Shouldn't we ask that they give us our stolen property back? And shouldn't they say: Yes, we want to set the reset button too. We want to hold hands and sing ''Kumbaya.'' We want to be friends.

Well, that is fine, but give us back our stolen military equipment.

That is all this asks for. It doesn't jeopardize the treaty; it just says it goes into force as soon as they give us our four humvees back.

I yield the floor.

Mr. CARDIN. Madam President, let me first tell my colleague that I support the treaty because it is in the best interest of the United States. It is in our national security interest. It is not an accommodation to Russia. This treaty helps us on national security. That is what our military experts tell us. That is what our intelligence experts tell us. That is what our diplomats tell us. On all fronts, the ratification of this treaty makes us a safer nation. So it is not an accommodation to Russia.

On the issue the Senator is concerned about, both the Obama administration and this body have repeatedly reaffirmed our commitment to Georgia's territorial sovereignty and integrity. We very much want Russia to withdraw. We are very sympathetic to the issue the Senator brings to our attention. We have taken action in this body to support Georgia's territorial integrity. The START treaty and its ratification is important in reestablishing confidence on verification as it relates to our relationship with Russia on strategic arms, but it is also important for the engagement of Russia on other issues. We can do more than one thing at a time.

President Saakashvili of the Republic of Georgia said:

> We all want—I personally want—Russia as a partner and not as an enemy. Nobody has a greater stake than us in seeing Russia turn into a country that truly operates within the concert of nations, respects international law, and—this is often connected—upholds basic human rights. This is why I wholeheartedly support the efforts of European and American leaders to strengthen their relationship with Russia.

The leader of Georgia understands that a better relationship between Russia and the United States will help Georgia and its territorial integrity. This treaty and its ratification will help not only build confidence between Russia and the United States but will help the other countries of Europe, particularly a country such as Georgia.

So the chairman of the committee is absolutely correct—and I think we can verify that with the Parliamentarian—that this is not relevant on the issue we have before us. It is not part of the treaty we have negotiated. It is not part of the ratification process. It is not the appropriate forum for this type of amendment to be considered. It should be rejected on that basis.

The important thing in moving forward with U.S. influence on Russia as it relates to its neighbors, such as Georgia, is to move forward with ratification of this treaty.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I will be very quick. I don't think we need to spend a lot of time on this. First of all, we agree with the Senator from Idaho that under normal circumstances the equipment they have would be best returned to the United States, and there are many good-faith ways in which they might do that. But the fact is that the way this is phrased, it has just two enormous problems. First, it says prior to the entry into force of the treaty. So we are linking this ancillary issue to this entire treaty, which bears on a whole set of other national security considerations.

I want the four humvees back, and whatever the small arms are, which raises another issue, but I am not willing to see this entire treaty get caught up in that particular fracas. We have an unbelievable number of diplomatic channels and other ways of prosecuting that concept, and I pledge to the Senator that I am prepared, in the Foreign Relations Committee, to make certain we attempt to do that, as well as deal

with the question of Russia's compliance with the peace agreement with respect to the cease-fire in Georgia and so forth. These are essential ingredients, and we will talk about that in a moment.

It also says they have to return all military equipment. It doesn't specify. This could become one of those things where we are saying, you have this, and they say, no, we don't. Are we talking about small arms? What about expended ammunition? Who knows what the circumstances are?

This is not the place or the time for us to get caught up in linking this treaty to this particular outcome. I really think that stands on its own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Madam President, obviously one of the purposes of these two amendments is to respond to one of the arguments that has been raised in support of this treaty. We have this wonderful new reset relationship with Russia, and were we to not ratify the treaty, that relationship would be frayed, and who knows how much Russia might react to it? It would be harder to get their cooperation on things. Those are all arguments that have been made.

I think one of the points of these two amendments is to show that the reset relationship between Russia and the United States has not produced all that much good behavior or cooperation on the part of the Russians. I earlier detailed all of the ways—at least a few—in which Russia had been very unhelpful to the United States with regard to Iran. I noted I think 2 days ago or maybe yesterday that in the U.N., they were trying to water down a resolution dealing with North Korea that we are working hard to try to obtain. They have been very difficult to deal with with regard to North Korea and Iran. At the end of the day, I think they only do what is in their best interest, in any event—not basing their decisions of what is in their best interests on some concept of a new friendliness with the United States.

I think part of the reason my colleague from Idaho offered these two amendments is to simply demonstrate that this new relationship isn't all that its cracked up to be if they won't even give us some equipment they confiscated when they invaded Georgia. That is not a major point in international diplomacy, and it certainly isn't a major point with respect to U.S. military capability. It is illustrative of something.

The point of the amendment is to say that you have quite a bit of time before this treaty enters into force. A lot has to happen. It is sent to Russia, the Duma has to deal with it, and so on.

Just return the stuff. Maybe that little gesture of good will would help to reestablish this so-called reset relationship in ways they have not been able to accomplish by getting Russian support with the U.N. resolutions and other actions with regard to sanctions on Iran and diplomacy with North Korea.

One can say it is not a big deal, this military equipment, but on the other hand, they say it will destroy the treaty if we have this particular amendment. The reality is that we are simply trying to make a point that the Russians have not acted well in a variety of situations. I cannot think of a better example than the invasion of Georgia, the continued violation of the cease-fire agreement they signed there, and the violation of the U.N. resolution.

I would reiterate, at the summit declaration—this is where the NATO members, meeting in Lisbon last month, joined together to call for a resolution to the problem, saying, ''We reiterate our continued support for the territorial integrity and sovereignty of Georgia within its internationally recognized borders.'' And then they urge all to play a constructive role and to work with the U.N. to pursue a peaceful resolution of the internationally recognized territory of Georgia. And then the final sentence:

> We continue to call on Russia to reverse its recognition of the South Ossetia and Abkhazia regions of Georgia as independent States.

That is the kind of cooperation we are getting from the Russian Federation these days. I appreciate the amendments brought forth by my colleague to highlight that fact.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I agree with Senator KYL and support the Risch amendment. I remember at a NATO conference not too many years ago President Bush was advocating for Georgia being a member of NATO, to show you how serious these matters are. So had we voted to bring Georgia into NATO—and they were on the short list—we would be in a situation in which the Russians would be invading a NATO country. The act of Russia invading Georgia was a dramatic event.

The proponents of the treaty portrayed this matter as advancing our relationship with Russia. I think Senator KERRY has been not so aggressive—that hasn't been one of his themes. But a lot of people have, and I think he was wise not to go down that road.

A lot of people have tried to say we are going to get along with Russia better by signing this treaty with them. That is not a sound basis to sign a treaty. We all need a better relationship with Russia. That I certainly acknowledge. Georgia would certainly benefit from it, and hopefully the world will have a better relationship with Russia.

But I am unable to fathom a lot of the Russian activities, frankly. It is just difficult for me. Why have they negotiated so hardheadedly on this treaty to actually reduce the number of inspections over what we had in the previous treaty? Why? I thought Russia was about wanting to move forward into the world and be a good citizen in the world community. I haven't seen it. I am worried about it.

So the question is, if we abandon or concede too much, are we helping develop a positive relationship? I think Senator RISCH is saying: Look, we have a serious problem. They are holding our military equipment. Are we not even going to discuss that?

How do we get to a more positive relationship with our Russian friends? I think the people of Russia are our friends. How do we get there? Is it through strength, constancy, consistency, principle, and position, or is it through weakness, placating, concession, and appeasing? Is that the way to gain respect and move us into a healthier relationship? I don't think so.

I think we have only one charge, and that is to defend our legitimate interests. I believe this administration has been too fixed on a treaty, and, as one observer and former treaty negotiator has said: If you want it bad, you will get it bad. In other words, if you want the treaty too badly, you won't be an effective negotiator. I remember during this process, on more than one occasion, warning and expressing concern to our negotiators that we appeared to be too anxious to obtain this treaty and, if so, the Russians would play us like a fiddle. I am afraid that is what has happened.

I think this Congress would do the President, the world, Russia, and our country a service if we said what Senator RISCH says: OK, guys, how about letting our equipment be sent back. If you are not willing to do that, then we have a serious problem.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. RISCH. Madam President, first of all, to my good friend from Maryland, I agree with much of what he said about our relationship and the relationship between Georgia and Russia. I will speak about that in the next amendment I am going to offer, which is No. 4879, right after this one. I know the Senator didn't talk about our stolen military equipment by the Russians.

To my friend from Massachusetts, who responded to what I said, I say: Here we go again. This is exactly why I brought this amendment. We are again accommodating the Russians. Why can't we just once ask them to behave themselves and say: Look, this is not a big matter, but you are acting like a thief.

Do you want to see what they did? I made reference for you to go on the Internet to see the pictures, but here they are. If you are a good American, you can go there and you can watch your property right here being towed away by the Russians, back to Moscow, to put on display as a trophy. Here is another picture of it right here. This is even better. This is one of our humvees being towed by the Russians. This humvee is headed back to Moscow, where it is now displayed as a trophy.

Is it too much to ask, where we are going to enter into this agreement and supposedly befriend and supposedly reset the button on our relationship, is it too much to say: Look, you stole from us. You are acting like a thief. Give us back the property we own.

Is that asking too much of the Russians? Can we not just once, instead of accommodating them, instead of apologizing for them, instead of saying we should not tie this to that or we will not get it, can we not just once say: Give us our stolen property back.

That is all we are asking here. It is not a big thing, but it does give us a clear indication of what they are thinking, of what their relationship is with us, of what they want their relationship to be with us.

This is not asking too much. This does not blow up the treaty. It simply says they pack up the four humvees and, and as soon as they do, the treaty goes into effect. That is not too much to ask.

I yield to my good friend from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, this has been cleared on both sides.

I ask unanimous consent that at 6 p.m., the Senate proceed to votes in relation to the following amendments to the START treaty and the resolution of ratification: Ensign amendment No. 4855 and Risch amendment No. 4878; further, that prior to the votes, there be no second-degree amendments in order to the amendment, and that the time before the votes be divided equally between the sponsors and myself or their designees.

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

The Senator from Alabama.

Mr. SESSIONS. Madam President, I will share one thought I remember so vividly before Russia invaded Georgia. We were at a NATO conference. There was a discussion outside the normal meeting. One weak-kneed, I suppose, European explained to the Georgians why it was difficult for the other nations to support Georgia in their idea to be in NATO and suggested it was difficult because Russia was a big and powerful country.

The Georgian replied—and I have never forgotten it—saying: Well, sir, we think it is a question of values. Mr. Putin said last year the greatest disaster of the 20th century was the collapse of the Soviet Union. We in Georgia believe it was the best thing that happened in the 20th century. It is a question of values. We share your values. We want to be with you.

I have to say it is deeply troubling to me that our Russian friends are being so recalcitrant and so aggressive and so hostile to sovereign states such as Georgia, the Ukraine, the Baltics, and Poland. They used to be a part of the Soviet empire. They are now sovereign nations, independent in every way.

Conceding, as part of these negotiations, the deployment of a ground-based interceptor missile defense system in Poland to comply with Russian demands during this treaty process was a terrible thing, especially when we did not even tell our friends in the sovereign nation of Poland we intended to do it before we announced it with the Russians.

The Senator is just raising a reality. I say to Senator RISCH, we have some problems here, and we might as well put it out on the table, be realistic about it, and take off the rose-colored glasses. This amendment is one way to say let's get serious and talk with our Russian friends about some serious difficulties we have.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, I call up Risch amendment No. 4879.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Madam President, at this time there is, until we have an opportunity—we were going to work this out with Senator KYL after the vote. So I object to it at this moment.

The PRESIDING OFFICER. Objection is heard.

Mr. KERRY. I believe Senator KYL had two amendments he wanted to get up at this point in time.

Mr. KYL. What was the unanimous consent request?

Mr. KERRY. The Senator from Idaho requested to go to his next amendment, which is No. 4879. That was the one the Senator from Arizona and I were talking about with respect to an issue we wanted to work out with the Parliamentarian before we go to it. I think the Senator and I had agreed he would like to go to two other amendments next in line. We will come back to this issue.

Mr. KYL. Madam President, that understanding is fine. There are two Members who I think will be ready to go forward with their amendments immediately following the two votes at 6 o'clock.

Again, for benefit of the Members, it is my hope that we can continue to work through as many amendments as possible this evening, maybe have debate a couple at a time and vote, whatever the body desires. But perhaps we could continue at least to work through a few more amendments yet this evening.

Mr. KERRY. I agree with that completely. We have a fairly limited list, and I think it is possible to move through them rapidly. I appreciate the efforts of the Senator from Arizona to do so.

Madam President, how much time do we have on our side?

The PRESIDING OFFICER. Six minutes.

Mr. KERRY. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Madam President, I thank my colleague from Massachusetts, Senator KERRY. I wish to respond to Senator RISCH's amendment because I am very sympathetic to the concerns he is raising.

All who watched Russia's invasion of Georgia had to be outraged about what happened. In fact, I have a resolution I have submitted with Senators GRAHAM and LIEBERMAN. I hope, perhaps, the Senator from Idaho might be willing to take a look at this resolution and work with us on it next year because one of the things it does is it calls upon the Government of Russia to take steps to fulfill all the terms and conditions of the 2008 cease-fire agreement, including returning military forces to prewar positions and ensuring access to international humanitarian aid to all those affected by the conflict.

It also deals with a number of other provisions in that resolution with respect to Georgia.

I also point out, as I am sure my friend from Idaho knows, that Georgia has recognized it is in their interest to have relations with Russia that can address their border concerns in a way that is positive, to have Russia working with the international community as opposed to working as a pariah. They may represent what we have heard from all our NATO allies with respect to the START treaty; that it is in the best interest of our NATO allies. We have heard from those countries that border Russia—Latvia, Poland, and a number of other countries—that they would like to see the United States ratify the New START treaty.

I am in agreement with the concerns Senator RISCH raised. I have questions about whether this is the best way to do it, given the confines of the New START treaty and our efforts to get this into effect as soon as possible so we do not continue to have a situation where we do not have inspectors on the ground in Russia who can help gather intelligence, who can see what is going on with their nuclear arms in a way that would also benefit Georgia.

I understand the concerns. I agree with those. But I cannot support this amendment because of the negative impact it might have on ratifying the treaty.

Mr. RISCH. Madam President, may I respond.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, somehow the debate about the relationship between Russia and Georgia and our relationship as far as Georgia is concerned has crept into this debate. This amendment has nothing to do with Georgia, other than the fact that is where the theft took place. The international criminal offense of theft of our military property took place in Georgia. That is the only thing Georgia has to do with this. This has nothing to do with the relationship. Amendment No. 4879 has a lot to do with it. When we get there, we will talk about that.

I regret my good friend from New Hampshire cannot support this amendment, because although I suspect I will

support the resolution, we do a lot of these resolutions. We do the resolution and send it off to the Russians. They are going to be laughing up their sleeve at us, whilst they are fondling our equipment that they have possession of.

There are no teeth in these resolutions. We actually have the opportunity to do something to get our military equipment back. If they are acting in good faith, if they are people of good will, if they want a relationship with us, then they are going to have to make a choice: Do we keep four humvees or do we give them back so this treaty can go into effect? That is the choice they are going to have to make.

That is not too tough a choice to put on them. Do you want to continue to be thieves or do you want to be honest about this and deliver the goods you have stolen? There is nothing wrong about that. This gives us the opportunity, I say to the good Senator, to do what you exactly do on the resolution, but it is going to give it some teeth.

I yield the floor.

Mr. KERRY. Madam President, how much time remains?

The PRESIDING OFFICER. Three minutes.

Mr. KERRY. On both sides? How much remains on the proponents' side?

The PRESIDING OFFICER. The minority has 19 seconds; the majority has 3 minutes.

Mr. KERRY. I suggest the absence of a quorum. I withhold that request.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Madam President, I, first, thank the Senator from Idaho for bringing up this issue. I might tell him, I have a laundry list of issues with which I would like to deal with Russia.

I have the honor of chairing the Helsinki Commission. We have a lot of human rights issues with Russia, and we raise them all the time as aggressively as we can. I am proud the Obama administration has raised these issues at the highest level with the Russian Federation. We are very sympathetic to the issue the Senator has brought up. It is the wrong vehicle to deal with this issue. It is the wrong vehicle. This treaty is important for U.S. national security. That is why I support the ratification. That is why I urge my colleagues to support the ratification.

Yes, it is appropriate in our advise-and-consent role for us to take up issues that are relevant to the subject matter of the treaty. The problem is, the issues the Senator from Idaho is bringing up are not relevant to the subject matter of the treaty. Therefore, it is the wrong vehicle to take up this issue.

I do not want the Senator from Idaho to interpret my opposition to his amendment as opposing what he is trying to do. I agree with what he is trying to do. It is the wrong vehicle on which to put it. I urge the Senator to work with Senator SHAHEEN, work with the Helsinki Commission on other issues.

The issue the Senator is bringing up about the return of property is very important to America. We believe in many cases the Russian Federation is not living up to their international commitments under international agreements. We will bring those up, and we will fight in those forums. But this treaty is in our interest. This treaty and our actions should deal with the four corners of the agreement.

In that respect, I very much oppose the Senator's amendment.

Mr. RISCH. Madam President, may I claim my 19 seconds.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Madam President, with all due respect to my good friend from Maryland, this is exactly the right vehicle to bring this up. This is a vehicle of trust, and it is a vehicle that puts some teeth in an otherwise toothless thing.

As far as human rights versus this stolen property, this is very objective, it is hard, you can see it. The human rights violations I think are entirely different. They certainly are important. They certainly rise to as high a level, but this is objective.

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

Mr. KERRY. Madam President, I believe all time has expired; is that correct?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. KERRY. I yield back my time.

The PRESIDING OFFICER. Time is yielded back. All time is expired.

VOTE ON AMENDMENT NO. 4855

The question is on agreeing to the Ensign amendment No. 4855.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), and the Senator from New Hampshire (Mr. GREGG).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 32, nays 63, as follows:

[Rollcall Vote No. 293 Ex.]

YEAS—32

Barrasso	Crapo	Inhofe
Brown (MA)	DeMint	Isakson
Bunning	Ensign	Johanns
Burr	Enzi	Kirk
Chambliss	Graham	Kyl
Coburn	Grassley	LeMieux
Cochran	Hatch	McCain
Cornyn	Hutchison	McConnell
Risch	Shelby	Vitter
Roberts	Snowe	Wicker
Sessions	Thune	

NAYS—63

Akaka	Feinstein	Mikulski
Alexander	Franken	Murkowski
Baucus	Gillibrand	Murray
Begich	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bennett	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kerry	Reid
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Specter
Collins	Levin	Stabenow
Conrad	Lieberman	Tester
Coons	Lincoln	Udall (CO)
Corker	Lugar	Udall (NM)
Dodd	Manchin	Voinovich
Dorgan	McCaskill	Warner
Durbin	Menendez	Webb
Feingold	Merkley	Whitehouse

NOT VOTING—5

Bayh	Brownback	Wyden
Bond	Gregg	

The amendment (No. 4855) was rejected.

VOTE ON AMENDMENT NO. 4878

The PRESIDING OFFICER (Mr. UDALL of Colorado). Under the previous order, the question is on agreeing to the Risch amendment No. 4878.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I move to table the Risch amendment. I ask for the yeas and nays, and I ask unanimous consent this be a 10-minute vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from New York (Mrs. GILLIBRAND), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mrs. GILLIBRAND) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Oklahoma (Mr. COBURN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 32, as follows:

[Rollcall Vote No. 294 Ex.]

YEAS—61

Akaka	Cardin	Feingold
Alexander	Carper	Feinstein
Baucus	Casey	Franken
Begich	Collins	Hagan
Bennet	Conrad	Harkin
Bennett	Coons	Inouye
Bingaman	Corker	Johnson
Boxer	Dodd	Kerry
Brown (OH)	Dorgan	Kirk
Cantwell	Durbin	Klobuchar

Kohl	Mikulski	Shaheen
Landrieu	Murkowski	Specter
Lautenberg	Murray	Stabenow
Leahy	Nelson (NE)	Tester
Levin	Nelson (FL)	Udall (CO)
Lincoln	Pryor	Udall (NM)
Lugar	Reed	Warner
Manchin	Reid	Webb
McCaskill	Rockefeller	Whitehouse
Menendez	Sanders	
Merkley	Schumer	

NAYS—32

Barrasso	Graham	McConnell
Brown (MA)	Grassley	Risch
Bunning	Hatch	Roberts
Burr	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Cochran	Isakson	Snowe
Cornyn	Johanns	Thune
Crapo	Kyl	Vitter
DeMint	LeMieux	Voinovich
Ensign	Lieberman	Wicker
Enzi	McCain	

NOT VOTING—7

Bayh	Coburn	Wyden
Bond	Gillibrand	
Brownback	Gregg	

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we are in a position now—we don't have the consent agreement completely fixed, but we know what we are going to do. We are going to have three votes, three different amendments. There would be a half hour debate on each amendment. So we likely will have a series of votes at 8:15 or thereabouts tonight. Senator KERRY will offer a consent agreement to this effect very shortly. In the meantime, we can start debating one of the amendments.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I understand there will be three amendments we will proceed with. Two will be offered by Senator KYL and one by Senator WICKER. Senator WICKER is prepared to call up his amendment.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

AMENDMENT NO. 4895

Mr. WICKER. I ask unanimous consent to call up amendment No. 4895 by Wicker and Kyl.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. WICKER], for himself and Mr. KYL, proposes an amendment numbered 4895.

Mr. WICKER. 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:

(Purpose: To provide an understanding that provisions adopted in the Bilateral Consultative Commission that affect substantive rights or obligations under the Treaty are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent)

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) BILATERAL CONSULTATIVE COMMISSION.—It is the understanding of the United States that provisions adopted in the Bilateral Consultative Commission that affect substantive rights or obligations under the Treaty are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent.

Mr. WICKER. Mr. President, I rise this evening to offer another amendment to the resolution of ratification. This amendment rises out of concerns over the Bilateral Consultative Commission known as the BCC. The BCC has been referred to numerous times in debate today. Article XII of the treaty establishes the BCC as a forum for the parties to resolve issues concerning implementation of the treaty. Part six of the protocol says the BCC has the authority to resolve questions relating to compliance, agree to additional measures to improve the viability and effectiveness of the treaty, and discuss other issues raised by either party. This clearly is very broad authority given to the BCC. In effect, the subject matter jurisdiction of the BCC seems limitless, based on the clear language of article XII.

Former National Security Adviser under President George W. Bush, Stephen Hadley, appeared before the Foreign Relations Committee and expressed concerns over this treaty. He stated, with regard to the Bilateral Consultative Commission:

The Bilateral Consultative Commission seems to have been given authority to adopt, without Senate review, measures to improve the viability and effectiveness of the treaty which could include restrictions on missile defense.

It is that element of Senate review that this amendment would inject back into the process.

Others have voiced concern that the mandate of the BCC is overly broad. This should trouble Senators. It is why I offer this amendment to place proper limits on the power of the BCC.

I hold in my hand a fax sheet written by the Department of State Bureau of Verification, Compliance, and Implementation, dated August 11, 2010. I ask unanimous consent that it be printed in the RECORD.

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

[FROM THE BUREAU OF VERIFICATION, COMPLIANCE, AND IMPLEMENTATION, AUG. 11, 2010]

BILATERAL CONSULTATIVE COMMISSION (BCC)

Key Point: The New START Treaty establishes the BCC to work questions related to Treaty implementation. The use of treaty-based commissions to agree on limited technical changes to improve or clarify implementation of treaty provisions is a well-established practice in arms control treaties.

Background: The New START Treaty authorizes the Parties to use the Bilateral Consultative Commission (BCC) to reach agreement on changes in the Protocol to the Treaty, including its Annexes, that do not affect substantive rights or obligations. The START Treaty's Joint Compliance and Inspection Commission and the Intermediate and Shorter Range Nuclear Forces Treaty's Special Verification Commission were assigned similar responsibilities by those treaties.

The Chemical Weapons Convention, the Open Skies Treaty, and the Conventional Forces in Europe Treaty provide similar authority to effect technical changes that are deemed necessary by the Parties during the implementation of the respective treaty.

Authority of the BCC: In addition to making technical changes to the Protocol, including its Annexes, that do not affect substantive rights or obligations, the BCC may: resolve questions relating to compliance with the obligations assumed by the Parties; agree upon such additional measures as may be necessary to improve the viability and effectiveness of the Treaty; discuss the unique features of missiles and their launchers, other than ICBMs and ICBM launchers, or SLBMs and SLBM launchers, referred to in paragraph 3 of Article V of the Treaty, that distinguish such missiles and their launchers from ICBMs and ICBM launchers, or SLBMs and SLBM launchers; discuss on an annual basis the exchange of telemetric information under the Treaty; resolve questions related to the applicability of provisions of the Treaty to a new kind of strategic offensive arm; and discuss other issues raised by either Party.

If amendments to the Treaty are necessary, the Parties may use the BCC as a framework within which to negotiate such amendments. However, once negotiated, such amendments may enter into force only in accordance with procedures governing entry into force of the Treaty. This means that they would be subject to the advice and consent of the United States Senate.

This provision ensures that the Senate's Constitutional role in providing advice and consent to the ratification of treaties is not undermined.

RULES GOVERNING THE WORK OF THE BCC

The BCC is required to meet at least twice each year in Geneva, Switzerland, unless the Parties agree otherwise.

The work of the BCC is confidential, except if the Parties agree in the BCC to release the details of the work.

BCC agreements reached or results of its work recorded in writing are not confidential, except as otherwise agreed by the BCC.

Mr. WICKER. The fax sheet mentions on more than one occasion that changes adopted by the BCC cannot affect substantive rights or obligations. It says under background: ''The New START treaty authorizes the parties to use the Bilateral Consultative Commission, BCC, to reach agreement on changes in the protocol to the treaty, including its annexes, that do not affect substantive rights or obligations.''

Further down under authority of the BCC, the State Department fax sheet says: ''In addition to making technical changes to the protocol, including its annexes that do not affect substantive rights or obligations, the BCC may,'' and then it lists the six bullets. First, resolve questions relating to compliance with the obligations assumed by the parties. Secondly, agree upon such

additional measures as may be necessary to improve the viability and effectiveness of the treaty. Next, discuss the unique features of missiles and their launchers other than ICBM and ICBM launchers or SLBM and SLBM launchers referred to in paragraph 3 of article V of the treaty that distinguish such missiles and their launchers from ICBM and ICBM launchers and SLBM and SLBM launchers. Next, discuss on an annual basis the exchange of telemetric information under the treaty. Fifth, resolve questions related to the applicability of provisions of the treaty to a new kind of strategic offensive arm. And finally, discuss other issues raised by either party. But the changes may not affect substantive rights or obligations of the parties.

''Rules governing the work of the BCC: The BCC is required to meet at least twice a year in Geneva unless the parties agree otherwise. The work of the BCC is confidential, except if the parties agree in the BCC to release details of the work,'' and ''BCC agreements reached or result of its work recorded in writing are not confidential . . . '' The BCC can agree to amendments in the treaty, but they must be submitted back to the Senate for advice and consent. It is a very powerful commission, no doubt. And it is reassuring to have this fax sheet saying that substantive changes cannot be made by the BCC.

It would be more reassuring if we put this in writing, and that is what the Wicker-Kyl amendment 4895 does. It is very simple and it uses the State Department language, stating that provisions adopted by the BCC that affect substantive rights—and these are the words used by the State Department in the fax sheet—are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent.

The bottom line is this: If it is determined that a substantive change has been made by a decision of the BCC, then that change should be subject to the advice and consent of the Senate.

I urge a ''yes'' vote to this very simple but straightforward amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the amendment offered by Senator WICKER is an amendment that is looking for an issue. There is no issue that is joined here with respect to the bilateral commission or what it might do with respect to the creation of rights. But if this amendment were to pass, there would be an issue, not only an issue with respect to Russian participation but actually an issue that could be harmful to the United States. This is a little bit technical and it is a tricky thing to follow in some ways, but let me lay this out.

Under the START treaty, the prior treaty under which we have lived since 1992, and now under the proposed New START treaty, the consultative commission that we create in the treaty will get together in order to work out the problems that may or may not arise and is allowed to agree upon ''such additional measures as may be necessary to improve the viability and the effectiveness of the treaty.'' If those additional measures they might approve at some point in time are changes to the protocol or to its annexes and if the changes don't affect substantive rights or obligations under the treaty, then it is entirely allowable for those changes to be adopted without referring them back to the Senate for any advice or ratification. The Senators' proposed amendment would make it U.S. policy all of a sudden that the phrase ''do not affect substantive rights or obligations'' means ''doesn't create new rights or obligations.'' So there is a distinction between affecting substantive rights and then having the operative language that kicks it into gear become the creation of rights or obligations. This proposal is unnecessary.

Why? We have operated without it for 15 years under the START treaty without a single problem. The New START treaty uses the exact same approach that has worked for 15 years. We have a lot of experience in determining what constitutes substantive rights or obligations.

More importantly, I mentioned a moment ago that this could be harmful to American interests. Here is how. It would actually require that agreements we want to move on and that act in our national security interest would be delayed and referred to the Senate, and we all know how long that could take, even if the new rights or obligations that they created were absolutely technical in nature. No matter how technical or trivial, they have to come to the Senate to become hostage to one Senator or another Senator's other agenda in terms of our ability to move, at least as structured here.

Under START, the compliance commission adopted provisions on how inspectors would use radiation detection equipment to determine that the objects on a missile that Russia declared not to be warheads were, in fact, nonnuclear and, therefore, not warheads. There was absolutely no need for the Senate to hold hearings, write reports, or have a floor debate on that provision, even though it created a new right for the inspecting side and a new obligation for the hosting side in an inspection. We don't want to take away our ability to be able to do that. This amendment would do that.

Similarly, the commission under START reached agreement from time to time on changes in the types of inspection and equipment that a country could use. Equipment changes over time, as we know. Technology advances, so the equipment changes. Giving U.S. inspectors the new right to use that equipment or the new obligation to let Russian inspectors use it hardly warrants referral to the Senate for its advice and consent.

In summary, this amendment is unneeded. We have done well without it. Not well—we have done spectacularly without it for 15 years. No problems whatsoever. On the other side, it is a dangerous amendment because it forces us to delay for months the implementation of technical agreements that our inspectors ought to be allowed to implement without delay.

I reserve the remainder of my time and ask unanimous consent that upon the use or yielding back of time specified below, the Senate proceed to votes in relation to the following amendments to the resolution of ratification: Wicker 4895, Kyl 4860, and Kyl 4893; further, that prior to the votes there be no second-degree amendment in order to any of the amendments and that there be 30 minutes of debate on each amendment equally divided between the sponsors of the amendment and myself and/or my designee or the designee of the sponsors; further, I ask unanimous consent that the time already consumed by Senator WICKER and myself be counted toward this agreement.

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

Mr. KERRY. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes remaining on the Wicker amendment.

Mr. KERRY. I yield 3 minutes to the Senator from Maryland.

Mr. CARDIN. Let me thank Senator WICKER for bringing forward this amendment. I know it is an amendment he feels very strongly about. I compliment him because I believe a good part of what he was concerned about is already in the resolution of advice and consent on ratification.

As the Senator pointed out, there is a consultation process before the Bilateral Consultative Commission to meet on any changes that would modify the treaty itself. There has to be consultation with Congress on those issues, as the Senator pointed out in his comments. So I think we have already taken care of the major concern the Senator has that it would be a substantive decision made by the Bilateral Consultative Commission.

Secondly, let me point out that whatever the Bilateral Consultative Commission does, it is limited by the treaty itself, which, hopefully, will have been ratified by both the United States and Russia. So there will be a limit on the ratification already in the process.

As Senator KERRY pointed out, we certainly do not want to hold up Senate ratification for minor administrative issues, knowing how long Senate ratification of anything related to a treaty could take.

The last point I want to bring out is, the Senator mentioned missile defense, and I know this has been brought up over and over and over. But in our advice and consent to the ratification of the treaty, we have already put in that:

. . . the New START Treaty does not impose any limitations on the deployment of

missile defenses other than the requirements of paragraph 3 of Article V of the New START Treaty, which states, ''Each Party shall not convert and shall not use ICBM launchers or SLBM launchers for placement of missile defense interceptors therein.''

So we already put in the resolution the concern that the Senator has voiced as the major reason he wanted to expand the consultative process, which is also already included in the resolution.

I think the point Senator KERRY has raised is that this would make it technically unworkable for the Bilateral Consultative Commission to do its work if we required Senate consultation or ratification every time the Commission wanted to meet.

For all those reasons, I urge my colleagues to reject the amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Mississippi.

Mr. WICKER. Mr. President, if no one else seeks time on this amendment, I would be prepared to close.

It may be that my friend from Maryland is satisfied that there are no restrictions on missile defense in this aspect of the treaty. But it did not satisfy Stephen Hadley, the National Security Adviser to former President George W. Bush, who came before our committee with concerns.

It seems to me we have a very simple way to address those concerns. Let me reiterate to my colleagues the quote of Mr. Hadley:

The Bilateral Consultative Commission seems to have been given authority to adopt without Senate review measures to improve the viability and effectiveness of the Treaty which could include restrictions on missile defense.

I would also agree with my colleague from Maryland that, indeed, the BCC has the authority to negotiate amendments to the treaty. That is acknowledged in the factsheet by the State Department.

The simple step beyond that I am trying to do with my amendment is to make it clear, using the terms supplied to us by the State Department that say: The BCC cannot make changes that affect the substantive rights or obligations of the United States. I am trying to make that part of the resolution of ratification, and that is all it does. It says if the BCC adopts provisions that affect substantive rights or obligations under the treaty that create new rights or obligations, that those changes must come back to the Senate. It is in addition to the requirement that amendments to the treaty come back to the Senate for ratification, and it is a protection of the rights of this body to continue to have a role in substantive modifications that might come out of the BCC.

I urge the adoption of this amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Maryland.

Mr. CARDIN. Mr. President, I will say, I think we just have a disagreement. I think where Senate confirmation would be at issue is where there is an amendment to the treaty, and that is exactly what is included in our resolution.

I think it is unworkable to try to get the Senate involved in all the changes in trying to say what is substantive and what is not. I think you would be interfering with the administration of the verification systems, et cetera. So I would just urge our colleagues to reject the amendment.

I say to Senator WICKER, I think on our side we are prepared to yield back. So if the Senator would like to——

Mr. WICKER. Mr. President, I yield back.

Mr. CARDIN. Mr. President, we yield back the time on this amendment.

As I understand the unanimous consent agreement, it is 30 minutes per amendment. Then I think we are prepared to go to Senator KYL for his amendment.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, a point of inquiry before I begin. Is there a reason I should speak to either amendment No. 4860 or amendment No. 4893 first?

The PRESIDING OFFICER. The Senator can speak in whatever order he wishes, but neither amendment has been offered.

Mr. KYL. Thank you, Mr. President.

AMENDMENT NO. 4860

Then, Mr. President, with that, I would like to offer amendment No. 4860, SLCM side agreement, which I believe is pending at the desk. I would ask for its consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. KYL] proposes an amendment numbered 4860.

Mr. KYL. 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:

(Purpose: To require a certification that the President has negotiated a legally binding side agreement with the Russian Federation that the Russian Federation will not deploy a significant number of nuclear-armed sea-launched cruise missiles during the duration of the New START Treaty)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) LIMITATION ON NUCLEAR-ARMED SEA-LAUNCHED CRUISE MISSILES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President has negotiated a legally binding side agreement with the Russian Federation that the Russian Federation will not deploy a significant number of nuclear-armed sea-launched cruise missiles during the duration of the New START Treaty.

Mr. KYL. Mr. President, this is actually a very straightforward amendment. It simply seeks to repeat in this New START treaty the same thing the then-Soviet Union and United States did in the previous START I treaty with respect to a particular kind of weapon—a Russian weapon called the SLCM or sea-launched cruise missile.

As part of START I, we reached a binding side agreement—a side agreement—because the Senate had said we needed to include these weapons in the treaty. So a side agreement was reached that they would limit a deployment of sea-launched cruise missiles or the SLCMs due to their impact on strategic stability, the point being that whether these sea-launched cruise missiles are deemed tactical or strategic, they actually have a strategic component, especially if they are sitting right off your coast and they are launched and they can hit your country. So that agreement was put into a side agreement between the then-Soviet Union and the United States.

But when this New START treaty was negotiated, there was no similar side agreement. So there were no restrictions on SLCM deployments. The side agreement in the START treaty limited both nations to fewer than 800 SLCMs with a range greater than 600 kilometers. In the 2010 Nuclear Posture Review, the administration committed to unilaterally eliminating our SLCM capability.

The United States will retire the nuclear-equipped sea-launched cruise missile (TLAM-N).

Under Secretary Miller said:

The timeline for its retirement will be over the next two or three years.

Now Russia is developing a new version of its SLCM, with a range of up to, approximately, 5,000 kilometers, which is a longer range than some of the ballistic missiles that are covered by the New START treaty.

So that is why we believe there should be a side agreement, just like there was in START I, that deals with these SLCMs. We are not going to have them, Russia is. Yet there is nothing in the treaty that would count their SLCMs against the total limit of warheads or delivery vehicles that are allowed under the treaty or in any other way deal with them.

The administration assures us we should not be concerned about a lack of a formal agreement. Secretary Clinton noted that the START I treaty did have a limitation on sea-launched cruise missiles and said that both parties ''voluntarily agreed to cease deploying any nuclear SLCMs on surface ships or multipurpose submarines.''

But today it is obvious, with the information about Russian plans, that there is going to be a great disparity between the United States and Russia. As I said, it is not obvious that saying one is tactical, as opposed to the strategic weapons that are otherwise limited by this treaty, is a very important distinction. I think it is really a distinction without a difference.

Steve Hadley, the former head of the NSC, said:

And if you're living in eastern or central Europe, a so-called tactical nuclear weapon,

if you're within range, looks pretty strategic to you. So what are we going to do about those?

As I said, he was the National Security Adviser.

Ambassador Bob Joseph, in testimony before the Foreign Relations Committee, said:

> Every time I hear the term ''nonstrategic nuclear weapons,'' I recall that no nuclear weapon is nonstrategic.

If you stop and think about it, that is certainly true.

So these weapons, which are very powerful, and can have a range of up to 5,000 kilometers, clearly need to be dealt with.

Now, we did not want to insist that they go back and renegotiate the treaty because we heard that argument before, so what we are suggesting by this amendment is simply to do the same thing we did in START I—just have it be a side agreement where the two parties would agree to limit the number. Our administration would limit the Russians so they would not have a significant number of these particular weapons.

Just a point, by the way: In the event there are folks who do not believe the Russians intend to rely on their weapons such as the SLCMs, Under Secretary of Defense Flournoy said: The Russians are ''actually increasing their reliance on nuclear weapons and the role of nuclear weapons in their strategy.''

Secretary Gates has made the same point. He said:

> Ironically, that is the case with Russia today, which has neither the money nor the population to sustain its Cold War conventional force levels. Instead, we have seen an increased reliance on its nuclear force with new ICBM and sea-based missiles, as well as a fully functional infrastructure that can manufacture a significant number of warheads each year.

And the Strategic Posture Commission noted:

> This imbalance in non-strategic nuclear weapons, which greatly favors Russia, is of rising concern and an illustration of the new challenges of strategic stability as reductions in strategic weapons proceed.

The point has been made by many others as well.

So I think this is fairly straightforward. It would require the United States to negotiate a side agreement with Russia, very similar to the side agreement we had under START I, to deal with a weapon that we are no longer going to have, but the Russians are apparently developing a new version of, that has a pretty substantial range—5,000 kilometers. Clearly, it is very difficult to distinguish the difference between a weapon like that and the strategic offensive weapons that are otherwise dealt with in the treaty.

I hope my colleagues will recognize this is not a treaty killer, and it is something that needs t be addressed.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. First, let me thank Senator KYL for bringing this issue to our attention. I think this is a very important issue. We have a lot of security issues as they relate to Russia, as they relate to Europe, and as they relate to the sea-launch cruise missiles. I couldn't agree with the Senator more. But this falls under the same category of the discussion we had earlier about a side agreement on tactical weapons.

These are all beneficial issues, but it is not the key issue that is before us today. If we were to adopt this amendment, I think we all would agree it would cause a considerable delay in the implementation of the START treaty.

Let me remind my colleagues that the START treaty, according to our military experts, is needed now. We have been a year without having inspection regimes in Russia so we can get the intelligence information we need by people on the ground. That expired in December of last year. So we have already been delayed through this year, and the longer we delay, the less reliable the information we have for our own national security.

Although it would be nice to have all of these side agreements with Russia on a lot of other issues, every time we ask our negotiators to do that, it takes time. It takes a lot of time to negotiate. It is not all one-sided when you negotiate. My colleagues know that. We know that here as we negotiate issues.

This is an important issue, but it shouldn't delay the ratification and implementation of the New START treaty so that we can get our inspectors on the ground, giving us the information we need for our own national security as it relates to the strategic capacity of Russia.

For all of those reasons, I urge my colleagues to reject the amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator from Maryland is absolutely correct, and I appreciate him pointing that out. I think I have said many times in the course of this debate that it is imperative for us to deal with the issue of tactical nuclear weapons. In fact, the resolution of ratification has a section in it which specifically addresses this and urges the President to move to that.

I might add that the Senator from Florida, Mr. LEMIEUX—we are just finishing up an agreement on an amendment which will, in fact, add an additional component. It is an amendment we intend to accept, and it will add an additional emphasis on this question of tactical weapons.

But not only is there no benefit to delaying this treaty from going into effect—I mean, that is what the amendment of the Senator from Arizona will do. Until this new verification and limitation mechanism is put into effect—the fact is that most of our experts, from Secretary Gates through Admiral Mullen and others, have all said to us: If we don't get this treaty, we are not going to get to the tactical nuclear discussion with the Russians.

If we were the Russians and the U.S. Senate said: We are not going to do this until this, we would be looking at a long road where we have reopened all of the different relationships and we have discarded this one component of our nuclear deterrent that we find so critical, which is the submarine-launched missiles, the intercontinental ballistic missiles, and the heavy bombers. That is the heart of our nuclear deterrence. We want to know what they are doing and they want to know what we are doing, and that is how you provide the greatest stability.

In addition to that, Secretary Gates and Secretary Clinton have both reinforced that many times, but here is the important thing to think about as we think about what the impact on this treaty would be. Nuclear-armed sea-launched cruise missiles—or SLCMs, as we call them in the crazy vernacular of this place—these are tactical weapons, and although this amendment seems to suggest that Russian SLCMs could upset the strategic balance between the United States and Russia, the truth is, they cannot. They don't do what this amendment seems to suggest.

For many years, going back at least to the Reagan administration, we have considered these kinds of weapons to be nonstrategic weapons, tactical weapons. Even if they are long range, we consider them that. Secretary Gates and Admiral Mullen explained why in their answer to a specific question from the Senate. They said:

> Russian nuclear-armed sea-launched cruise missiles . . . could not threaten deployed submarine-launched ballistic missiles (which will comprise a significant fraction of U.S. strategic force under New START), and would pose a very limited threat to the hundreds of silo-based ICBMs that the United States will retain under New START.

In other words, Russian nuclear SLCMs can't take out our nuclear deterrent in a first strike. That means if Russia were to use nuclear SLCMs against us, we could still use most of our strategic nuclear weapons and deliver an absolutely devastating blow in return. No logic in the sort of give-and-take of war planning, as horrible and as incomprehensible as it is to most people with respect to nuclear weapons, but it has all been done, appropriately, because they do exist, and it is important to our security. But no warfighting under those situations is going to reduce our ability to not just defend ourselves but to annihilate anyone who would propose or think about doing that.

Ironically, it was the Soviets who once wanted to do what Senator KYL is actually seeking to do. They wanted to categorize SLCMs as strategic weapons because we used to deploy a nuclear version of the Tomahawk on our attack submarines, and the Soviets

worked very hard to get the original START treaty to cover SLCMs. Guess what. We didn't bite. We didn't do that. The first Bush administration explicitly rejected those Soviet efforts to add legally binding limits on sea-launched cruise missiles. They considered SLCMs tactical weapons, and they also thought that limits on nuclear sea-launched cruise missiles are inherently unverifiable. That is, in part, because we didn't want to give the Soviets that much access to our submarines in return for access to theirs, and we don't want to do it now with the Russians. Now, maybe people were wrong about that, but I just don't see the wisdom in putting the treaty we have agreed on on the shelf while we go out and try to experiment with a new approach that nobody has argued is imperative for the security of our country.

Back then, we did agree in politically binding declarations to a limit of 880 deployed long-range nuclear SLCMs and to declare at the beginning of the year how many SLCMs we intended to deploy for that year. Those political declarations stayed operative for many years, and, in fact, Secretary Gates stated for the record that as recently as December of 2008, Russia has declared that it planned to deploy zero nuclear SLCMs.

Shortly after START was signed in 1991, the United States and Russia each pledged as part of the Presidential nuclear initiative to cease deploying any nuclear SLCMs on surface ships or attack submarines. So while we have four former ballistic missile submarines converted to cruise missile submarines, we are no longer deploying our nuclear Tomahawk missiles on any U.S. submarines. The Presidential nuclear initiatives are still operative for us and for the Russians, and we think we are more secure that way.

So I see nothing to be gained from negotiating a new binding agreement in the context of holding up this treaty, of putting it on the shelf, and of going back in an effort to do that.

This amendment would delay the New START for months or years, throw an entire curveball back into what I talked about yesterday, which is that theory of negotiation that nothing is agreed upon until everything is agreed upon. And in this case, if we say: Oh, no, ain't agreed upon, sorry, we are coming back to say you have to agree with us on tacticals before any of this becomes law, we have opened the entire negotiation again. How reliable and what kind of partnership is that? I don't think that makes sense. I fail to see any point in going down that road.

I urge my colleagues to defeat this amendment, and I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Arizona has just under 8 minutes.

Mr. KYL. Mr. President, I am a little bit flummoxed here because I thought in a conversation I had a couple of days ago with Senator KERRY that side agreements might be all right; that we didn't want to amend the preamble or didn't want to amend the treaty but that we could perhaps do some side agreements. So we structured this as a side agreement just exactly as was done in START I.

Mr. KERRY. Will the Senator yield?

Mr. KYL. On the Senator's time, I would be happy to.

Mr. KERRY. I would be happy to urge, if he wants to change the amendment or if he wants to submit—it is too late now, but we could perhaps do a modification by unanimous consent to urge the President to enter into an agreement but not shelve the whole treaty until that happens. That is the difference. So I am not going back on the notion. It would be great to get a side agreement, but don't hold this agreement up in the effort to do it.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, there was no delay in the implementation of the START I agreement because of a requirement that a side agreement be entered into between the then-Soviet Union and the United States on SLCMs. So I don't buy the notion that this necessarily would delay anything.

Secondly, we are not talking about tactical missile limitations generally. All we are doing is talking about the same kinds of missiles that were the subject of the side agreement under START I. I suspect that part of the reason was because it is pretty difficult to distinguish as to whether these weapons are being used for a strategic or a tactical purpose. Senator KERRY has said they cannot upset the strategic balance. I simply totally disagree with that proposition. They absolutely can upset the strategic balance, depending upon where they are located or how they intend to be used. That is one of the reasons I suspect they were limited under the START I treaty.

My colleague said they can't threaten our submarine fleet at sea and they pose only a limited threat to ICBM sites. Well, that may be the opinion of our experts. They could sure threaten our submarine bases in Washington State at King's Bay. They could take out bases or other assets we have.

In fact, let me quote from a Russian article, the RIA Novosti Report of April 14, 2010, on the Graney class nuclear submarines:

> Graney class nuclear submarines are designed to launch a variety of long-range cruise missiles up to 3,100 miles or 500 kilometers with nuclear warheads and effectively engage submarines, surface warships, and land-based targets.

Obviously, at 5,000 kilometers, as I said, that is a range longer than some of the ballistic missiles that are covered by the New START treaty. So these weapons—it is a little hard to characterize them as either tactical or strategic. I think it depends upon how they are used.

But the point is, if my colleague believes they can't threaten anything, then what is the problem with trying to set a limit on them? Well, obviously—or at least I assume obviously—the Russians don't want to do that. I assume we raised this, though we don't have the negotiation record, so I don't know whether it was raised. If it wasn't, why wasn't it? And if it was because we didn't think there was any threat to the United States, then I think it would be very important to ask some of our military folks why they think that is the case given the kinds of targets that could be held at risk here and given the fact that we apparently reached a different conclusion during the START I treaty implementation phase when the side agreement was negotiated with the then-Soviet Union.

So I don't think it would delay anything. We do posit it as a side agreement rather than an amendment. We just say that the administration should negotiate so that there wouldn't be a significant number of SLCM deployments by the Russians given the fact that we are not doing any.

I do have to say that I fundamentally disagree with the assertion of my colleague that this kind of weapon can't upset the strategic balance. If you have a weapon that can fly over 3,000 miles with a nuclear warhead, which could be just as big of a nuclear warhead as on a bomber or an intercontinental ballistic missile, with all of the targets on our eastern seaboard or western seaboard that would be held at risk for such a weapon—in fact, 3,000 miles—you won't have to be far off either of our two U.S. coasts to hit most targets within the continental United States.

This is a weapon that it seems to me we should be concerned about. Therefore, I urge my colleagues to support calling for a side agreement that would deal with the SLCMs just as we did under the START I treaty.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I say to Senator KYL, these missiles are not strategic. Do they affect our strategic balance? I say that everything in our defense toolbox can affect our strategic balance. That was taken into consideration in the negotiations. I thank him for bringing this issue to our attention, but for the reasons we have stated, we urge our colleagues to reject the amendment.

We are prepared to go to the Senator's next amendment if he is prepared to go forward.

Mr. KYL. Mr. President, I will respond with about 30 seconds. Then I will be prepared to go to my next amendment. Perhaps I can reserve whatever time I have left on there to make a closing argument.

I really do sincerely appreciate the characterization of these issues we have raised as serious and important. I do appreciate that. I do think, though,

that it would be appropriate to have a better response than just that this will upset the Russians, they won't want to do it, so we will have to renegotiate the treaty, and that it will delay things and that will create problems.

The purpose is not to delay, as I said. I don't think the START I treaty was delayed when we reached a side agreement.

I think, in any event, the question is this: Should the United States delay, if that is what is called for, in order to improve the treaty in important respects? If it is conceded that this is an important aspect, then it seems to me that it is worth taking time to do it right.

Most of the arguments that have been made in response to the amendments we have raised boil down to: The Russians won't want to do what you say, and therefore we need to reject your amendment because it would require some renegotiation. I get back to the point I have made over and over: Then what is the Senate doing here? Why would the Founders have suggested we should have a role in relation to treaties if every time we try to change something, the argument is that you cannot change a comma because the other side wouldn't like that and that would require renegotiation?

There is nothing that serious about this treaty that it has to go into effect tomorrow. The Washington Post had an editorial, and they said that no great calamity will befall the United States if this treaty is not concluded before the end of the year. I think that is almost a direct quotation. There is no immediate national security reason to do so. I know the administration would like to get on with it, but no great harm will befall us if we take time to do it right. If we are not willing to do that, the Senate might as well rubberstamp what the President sends up because the argument will be that if we try to suggest changes, the other side will reject them and we could not possibly abide that.

I will reserve the remainder of time on this amendment.

AMENDMENT NO. 4893

Mr. President, I call up amendment No. 4893, which I believe is at 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 Arizona [Mr. KYL] proposes an amendment numbered 4893.

Mr. KYL. 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:

(Purpose: To provide that the advice and consent of the Senate to ratification of the New START Treaty is subject to an understanding regarding the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting, is subject to the United States and the Russian Federation reaching an agreement regarding access and monitoring, and is subject to a certification that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the Treaty)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) COVERS.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President has reached an agreement with the Government of the Russian Federation on the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting.

(12) TELEMETRY.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the United States has reached a legally-binding agreement with the Russian Federation that each party to the Treaty is obliged to provide the other full and unimpeded access to its telemetry from all flight-test of strategic missiles limited by the Treaty.

(13) TELEMETRIC EXCHANGES ON BALLISTIC MISSILES DEPLOYED BY THE RUSSIAN FEDERATION.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the Treaty.

At the end of subsection (b), add the following:

(4) TYPE ONE INSPECTIONS.—The United States would consider as a violation of the deployed warhead limit in section 1(b) of Article II of the Treaty and as a material breach of the Treaty either of the following actions:

(A) Any Type One inspection that revealed the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile.

(B) Any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a Type One inspection.

Mr. KYL. Mr. President, I would have preferred to deal with each of the subjects in this amendment individually because each one is very important. To accommodate the other side's desire to try to get as much done as quickly as possible, we consolidated some amendments, and there is a lot in this. I regret that we don't have time to get into detail about each one of them.

This amendment amounts to an effort to try to improve the verification of the treaty to deal with a variety of issues which have been raised in the past and which we believe are inadequately dealt with by the treaty. One of them involves covers, the kinds of things the then-Soviet Union and now Russians consistently put over the warheads so that it is impossible for our inspectors to see what is under them, to see how many warheads are under them. That has been a problem in the past.

On telemetry, we say the President should certify to the Senate that he has reached a legally binding agreement with the Russian Federation so that each party is obliged to provide full and unimpeded access to its telemetry from all flight tests of strategic missiles limited by the treaty. That is important because while we are not developing a new generation of missiles, the Russians are. We will be denied the telemetry of those missile tests if the Russians decide to deny it. Our intelligence community has told us that this is of great value to us in assessing the capabilities of Russian missiles. Under the treaty, they don't have to provide anything. They could provide telemetry on old missiles they are testing, and they don't have to provide any on any of the new missiles they are testing. We believe that should be done. The same thing with respect to any ballistic missiles deployed during the duration of the treaty.

Then we turn to the subject of inspections. There are different kinds of inspections, but we are talking here about type one inspections in which we say that the United States would consider it a violation of the deployed warhead limit and a material breach of the treaty if the Russians do one of two things: No. 1, any type one inspection that revealed that the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile; No. 2, any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a type one inspection.

That gets to the issue of covers again. Why is this important? Because we are supposedly counting weapons in this treaty, warheads. There is a limit of 1,550 warheads. How can we possibly verify compliance if, when we seek to count the number of warheads on top of missiles we have designated and have a right to inspect, we can't count the warheads? You tell me how we are supposed to assume how many warheads there are on the top of that particular missile or why we should not deem it a material breach if they declared a certain number of warheads and it turns out there are more.

I think these are commonsense changes that would strengthen the verification provisions of the treaty.

It is too bad Senator BOND is not here tonight. He is the ranking Republican member of the Intelligence Committee. In the classified session we had yesterday, he talked about the deficiencies in verification under this treaty. This subject doesn't permit us to get into a lot of detail in open session.

We have heard a lot about past cheating by the Russians and the kinds of things that were done. What we are trying to do with these basic components is to make it less likely that the Russians would cheat, and if they do, it would less likely have an impact on the

key element of the treaty, which is the limitation on warheads of 1,550.

I will note a couple of things here that put this into context.

There have been allegations that there is better verification than ever before under this treaty. That is just not true. The verification provisions of this treaty are not as strong as under the START I treaty. There is an argument that they don't need to be for various reasons or the Russians weren't willing to allow them to be for various reasons. I don't think you can say the verification is better.

Former Secretary of State James Baker, who testified, said:

> The verification mechanism in the New START Treaty does not appear as rigorous or extensive as the one that verified the numerous and diverse treaty obligations and prohibitions under START I. This complex part of the treaty is even more crucial when fewer deployed nuclear warheads are allowed than were allowed in the past.

That is obvious. The more you get down to a smaller number, the more important cheating is, the more dramatic the effect can be, and the better verification you need.

Senator MCCAIN said this:

> The New START Treaty's permissive approach to verification will result in less transparency and create additional challenges for our ability to monitor Russia's current and future capabilities.

Former CIA Director James Woolsey said:

> New START's verification provisions will provide little or no help in detecting illegal activity at locations the Russians fail to declare, are off-limits to U.S. inspectors, or are underground or otherwise hidden from our satellites.

Senator BOND made a comment that I have quoted before, which is this:

> New START suffers from fundamental verification flaws that no amount of tinkering around the edges can fix. . . . The Select Committee on Intelligence has been looking at this issue closely over the past several months. . . . There is no doubt in my mind that the United States cannot reliably verify the treaty's 1,550 limit on deployed warheads.

To conclude, the amendment would require the President to certify that he has reached an agreement with Russia on the nonuse of covers that interfere with type one inspections and accurate warhead counting during those inspections. It doesn't solve the problem of determining the total number of warheads Russia deploys, but it would reduce a method of deception Russia has used in the past.

On telemetry, the amendment would require the President to certify that he has reached a legally binding agreement with Russia that each party is obliged to provide the other full and unimpeded access to its telemetry from all flight tests of strategic missiles, including on new ballistic missile systems deployed by the Russians. They are free now to encrypt those tests. That makes it much harder to get information we have found to be very valuable.

Finally, with regard to the material breach, the amendment contains an understanding that the United States would consider a violation of the deployed warhead limits to be a material breach of the treaty. This would include any type one inspection that revealed the Russians had deployed a number of warheads on any one missile in excess of the number they declared for that missile or that they continued to use covers that deny us the ability to see exactly how many warheads they have on their missiles.

Mr. President, I hope my colleagues would recognize that verification is a problem under the treaty. This is a modest way to try to deal with specific aspects of that verification. I hope my colleagues would be willing to support the amendment.

I reserve the remainder of my time.

Mr. KERRY. Mr. President, I ask unanimous consent that when the Senate votes on the three amendments, as provided under the previous order, those votes occur in the order listed in that agreement.

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

Mr. KYL. Might we also add that the second two votes would be 10-minute votes?

Mr. KERRY. That is a good suggestion. I ask unanimous consent that the second two votes be 10 minutes in length.

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

Mr. KERRY. Mr. President, let me first compliment my colleague from Arizona, who has been dogged, if nothing else, in his advocacy with respect to his points of view regarding this treaty. And while I and other Senators may disagree with a specific amendment he proposes because of its impact as well as, in some cases, because of something else, that doesn't mean the Senator isn't raising valid questions for future discussions and things on which we ought to be focused. I know he spends a lot of time with this. I think all of us have a lot of respect for the ways in which he has already impacted this treaty. I give him credit for that.

This particular amendment is a combination of about four different amendments that have come together. I understand why that happened. I am not complaining about that at all. It is just that there is a lot in it, and therefore there are different reasons one ought to oppose this amendment.

Let me say that, first of all, the New START, I think in most people's judgment, addresses the concerns that have been raised by the Senator from Arizona.

The purpose of warhead inspections is to count the number of warheads on the missile. Neither side is comfortable with the other actually seeing the warheads, looking into it and seeing it. We are not comfortable with them doing that to us, and they are not comfortable with us doing that to them. That is not so much about the counting of the warhead as it is often the issue of failsafe devices or counter-shoot-down devices and other kinds of things that might be in there that we don't necessarily have a right to see and they don't want us to see. So neither side is sort of looking at the actual warhead. The START treaty—the original START treaty, therefore, to deal with that issue, lets the inspected party cover the warheads on the front of the inspected missile, but it allows us to inspect any cover before it is used so that we know what it can and can't conceal. We know what that cover is permitting us to see.

What is more, paragraph 11 of section (2) in the treaty's annex on inspections says explicitly—this is in New START:

> The covers shall not hamper inspectors.

We did not have that previously. That is new to this treaty.

As a result of what we have learned in START, we have learned how to look and how to ask for things more appropriately, and our negotiators worked that into this treaty so as to protect our interests.

In fact, the covers are not allowed to hamper the inspectors in ascertaining that the front section contains a number of reentry vehicles equal to the number of reentry vehicles that were declared for that deployed ICBM or deployed SLBM.

The virtue of the New START treaty is that these declarations and the specific alphanumeric numbers that are going to be attached to the launchers and these warheads allow us enormous certainty in the randomness of our choices of where we go. If the Russians are cheating or somebody is over for one reason or another, we have great capacity to decide where that might be, where we think the best target of opportunity is, and to lock that place down and go in and check it. There are enormous risks of being discovered as a consequence of the way we have set that up.

The treaty already forbids Russia from using covers that interfere with warhead counting. It would create a very dangerous precedent, in my judgment, to require that we negotiate now, before we put the treaty into effect, a side agreement on the very same thing. That might suggest that other New START provisions do not need to be obeyed because there is no side deal reinforcing them. What is the impact of the side deal? Does the side agreement, incidentally, have to be ratified by the Senate before it goes into effect? There are a lot of imponderables here.

With respect to the agreement on telemetry, the requirement for a legally binding agreement with Russia that both parties have to provide telemetry on all flight tests of ICBMs and SLBMs, which is what the Senator is seeking, would also delay the START treaty into force by the same months or years about which we talked.

That argument has been hammered around here the last 7 days adequately.

This delays the treaty. It does not act to increase the security of our country, and it already is in the resolution of ratification in the treaty.

Given what we already understand, we know that the Russians do not like trading in telemetry. I find it hard to believe, therefore, that if we make this treaty condition precedent on the agreement of a side agreement, which we know the Russians hate to do, that is a way of buying into gridlock, deadlock, nothing.

I do not think anybody would suggest—we have already been through this a little bit, incidentally. I and others strongly urged the President and his negotiators to seek as significant telemetry as possible. For a lot of reasons, it did not turn out that it was achievable from their side, but it also did not turn out it was desirable on our side altogether.

Russia is testing new systems such as the Belava SLBM, and the United States may test only existing types of missiles during the next decade. That is a reason why the Russians obviously resist this very significantly.

A lot of people have suggested that our military does not want to share the telemetry on all our flight tests of ICBMs and SLBMs. They are pretty happy the way the treaty is structured now, including the provisions for telemetry which allow us five telemetry exchanges. We have to agree on them, but they are allowed under the treaty. If that were not true, there is no way the Chairman of the Joint Chiefs of Staff Admiral Mullen would have sent the letter he sent to the entire Senate where he stated he wants this treaty ratified now, he wants it implemented now, and he believes, consistent with everything people said within our national security network, that this treaty is both verifiable and enhances our capacity to be able to count and know what the Russians are doing.

The requirement for Russian agreement not to deny telemetry on the new ballistic missile systems it develops during the duration of the treaty is redundant with the previous part about which we just talked.

Again, the amendment requires a side agreement with the Russians. It is the absolute equivalent of amending the treaty itself and, therefore, I would oppose that.

The New START's telemetry exchange regime involves negotiating the beginning of next year, assuming this goes into effect, which missile tests from the past year we are willing to share.

May I ask how much time I have?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes.

Mr. KERRY. Mr. President, I want to reserve time for the Senator from New Hampshire.

The New START regime requires us to negotiate at the beginning of next year what we are going to share. If we do not offer anything interesting, Russia is not going to offer anything. That is the nature of a negotiation. You have to give to get. This amendment would change that basic principle from a negotiated exchange to a literally ''give me something for next to nothing.'' It does not work. The Russians would have to give us the good stuff while we would give them telemetry from launches that were no different from 30 other tests over the last 20 years.

I have to tell you, that sort of agreement is not going to happen. It is in a fantasy land, and the President would never get that side deal with Russia. The New START treaty would never come into force.

I yield the remainder of my time to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I will speak only for about 1 minute and then give the rest of my time to Senator FEINSTEIN who wishes to speak to the question of the covers.

I do not want to speak to the technicalities that have been raised, but I want to make two points in response to Senator KYL's concern about verification.

We should all be concerned about the fact that right now we have no inspectors on the ground. We have no way to verify what is going on in Russia. Anything that delays our ability to get that intelligence back on the ground in Russia adds to the urgency of the situation. That is a very important point.

The other issue he raised was relative to why do we need to do this now. The fact is, as Senator KERRY pointed out, we received a letter from ADM Mike Mullen, the Chairman of the Joint Chiefs, yesterday that said the sooner we ratify the treaty, the better. James Clapper, Director of National Intelligence, said about New START the earlier, the sooner, the better we get this done. There is a lot of reason to believe we need to act on this treaty and need to do it now.

I yield to the Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from New Hampshire.

Senator KYL is a very smart man. This is a major amendment. In my view, it is a deal breaker. It is a poison pill for the entire treaty. It essentially provides real changes in the treaty.

It says the President, prior to the treaty going into effect, must certify that he has achieved certain side agreements, and those side agreements strike directly at some of the heart of the treaty. Therefore, it will effectively, in my view, be unacceptable to the Russians and will destroy the treaty.

The treaty now says you cannot block an inspector's ability to ascertain warheads on a reentry vehicle. That covers the cover issue. This again says that telemetry by a prior agreement—that there be a side agreement on full access to telemetry for all missiles, and then on new missiles, is one-sided. Clearly, this is not going to be acceptable. Then it goes into the type one inspections.

If you are for the treaty, there is only one vote, and it is to vote no. I very much regret this because I respect the Senator. As I see it—and there are things I cannot go into here that I tried to go into yesterday—this is a poison pill amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from Arizona.

Mr. KYL. Might I inquire how much time remains on this side?

The PRESIDING OFFICER. There is 7 minutes remaining.

Mr. KYL. Mr. President, let me take 3, 4, 5 of those minutes. I appreciate my colleagues' compliments about important issues being brought up, and I also appreciate their concern that amendments of this significance would cause heartburn for the Russians and might well require them to want to renegotiate aspects of the treaty. I am trying to address that through the mechanism of the side agreement rather than amendment to the treaty or some kind of other more restrictive method. I thought that would be the preferable way to do it.

It is not my intention, as with the previous amendment, to delay things. I do not think it necessarily would. But I do appreciate that on a couple of these items the Russians would not likely want to renegotiate.

I am not so sure that would be the case with regard to the covers, this question of the kind of shroud or cover you put over the missile bus, the top of the missile that has the warheads since the treaty does deal with it, as my colleagues have pointed out, but I do not think it does so in a conclusive way.

The 2005 compliance report issued by the State Department to discuss compliance of the Russian Government with respect to the START I treaty had a couple of longstanding issues. The issue of shrouds was one that they characterized as of long standing. They had a very hard time getting that resolved with the Russians. In the end, there was a particular accommodation reached, but it took forever. And during that time, we did not have the kind of satisfaction we wanted.

We asked how disputes would be dealt with, and we get the same basic answer. That would go to the Bilateral Consultative Commission, the group of Russian and U.S. negotiators who are supposed to work these things out.

What I can see is a kind of repeat of what we had before. They like to cover these things up and that does not seem to me the way to enter into a treaty where we are supposed to be in agreement with our counterparts and yet we have unresolved issues we have to leave to another day to be resolved through a long and probably difficult negotiation process.

Also, my colleague from Massachusetts—these were his words; he was not quoting anyone—thought we had enormous certainty about this. I suggest I do not think the intelligence community would use a phrase such as ''enormous certainty.'' We cannot get into here the degree of percentage they attach to being able to know certain things under this treaty.

Suffice it to say that we are not absolutely sure we can do what needs to be done here, and I do not think characterizing it as ''enormous certainty'' would be an accurate way to do it.

Let me mention with regard to telemetry—first of all, let me correct one thing that is a little bit of misdirection and then agree with my colleagues on something else.

There is a suggestion that we can get telemetry on five missiles, and that is true if the Russians agree. In other words, they have to volunteer to do it. The five missiles they tell us about can be old missiles. They do not have to be new missiles. It is a fact there is nothing in this treaty that requires the Russians or the United States to exchange telemetry on new missile tests; that is to say, tests of missiles currently being developed. There are at least two the Russians are developing right now.

That leads to the second point. I think it is probably true the reason they did not want to agree to this is it would require them to give us very valuable information. Right now, they would not be getting any information from the United States because we are not testing missiles. But I ask, is that an asymmetry that is justified or that justifies a provision that says if you are not modernizing your forces and we are modernizing our forces, it is not fair to have us tell you what our missiles are like?

Under the previous treaty, both sides had to do that, and it gave both sides more confidence. The Russians are developing new missiles. Should we not have some understanding of the capability of those missiles? We are not developing any. It is almost as if the United States would have to be modernizing its forces too in order to be able to justify a provision that said we had to exchange telemetry.

Maybe the United States ought to get on with the modernization of our missile force so we can then go back to the Russians and say: You are modernizing, we are modernizing, now how about the exchange. To me that is not an argument to require the Russians not to provide us information. And in fact, when the shoe is on the other foot, that argument falls by the wayside, and we end up putting limitations in the treaty.

Here is an example. The Russians are not developing and do not seem to have any intention of developing something called conventional Prompt Global Strike, which is a fancy way of saying: Put a conventional warhead on top of an ICBM so you do not have to send a nuclear warhead halfway around the world to destroy a target.

We can see in today's conflict that we are not going to be engaging in a multiple nuclear exchange with another country but might well have a need based upon intelligence that does not have a very long shelf life that we want to send a conventional warhead to a specific target and that is something we would like to develop but the Russians are not interested in doing that. So did we say to the Russians: So because you are not doing it and we are, therefore, we are not going to have any limitation on this? No. We agreed, in fact, to a very important limitation. Any missiles we use in that regard have to be counted as if there were a nuclear warhead on top of it. So there is a 700-vehicle limit. That is all the number of missiles we can have. And yet any missiles that we put a conventional warhead on that have this ICBM range have to be counted against that limit.

Well, the Russians aren't doing it, so why did we have to agree to something they are not doing? That is asymmetrical. That is not parity.

So it is okay for the Russians to say: Hey, if we are doing something you are not doing, we are not going to be bound by anything in the treaty on it. But by the way, if you are doing something we are not doing, we are going to hold you accountable and bind you with a very important limitation in the treaty.

You see, the argument doesn't hold water. Russia and the United States are not acting exactly the same with regard to our weapons. So to argue that anything we are doing differently from the other shouldn't count in the treaty is suspicious. And, in any event, it turns out we don't make that argument.

The PRESIDING OFFICER. The Senator's time on this amendment has expired. The Senator has time remaining on the previous amendment.

Mr. KYL. Let me finish my sentence on this.

In any event, what is good for the goose is good for the gander. If we put a limitation on the United States on something they are not developing, then it is only fair to put a limitation on them with regard to something we are not developing.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, do we have any time remaining?

The PRESIDING OFFICER. There is 1 minute 40 seconds remaining.

Mr. KERRY. I yield all that time to the Senator from Michigan, the chairman of the Armed Services Committee.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my good friend from Massachusetts.

There has been reference made to a side agreement which was entered into at the time of START I. There is a major difference between what happened then and what is being proposed by Senator KYL now.

That side agreement, first of all, was in front of the Senate but there was no effort at that time to do what Senator KYL's amendment does, which is to say prior to the entry into force of that treaty the President shall certify to the Senate that there was a legally binding side agreement. That was not part of START I, and it would seem to me would absolutely derail this New START agreement.

Second, that was a political agreement, that side agreement that was entered into, which would last as long as the Presidents of both countries were in office but would not necessarily last beyond that because it was not a legally binding agreement in that sense.

So there are two major differences between what happened at the time of START I and what is being proposed here by Senator KYL. I hope we could defeat the Kyl amendment No. 4860.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, if any time remains, we yield it back.

The PRESIDING OFFICER. Time is yielded back.

Mr. KERRY. What is the parliamentary situation, Mr. President?

The PRESIDING OFFICER. There is still time remaining on the Wicker amendment, and Kyl 4860.

Mr. KYL. Mr. President, I wish to speak briefly to that now, in direct response to my colleague from Michigan.

Mr. KERRY. Mr. President, before he does that, do we have time remaining on either of those amendments?

The PRESIDING OFFICER. The Senator from Massachusetts has time remaining on both amendments.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, let me quote from the START I treaty, Text of Resolution of Advice and Consent to Ratification as Approved by the Senate:

> The Senate's advice and consent to the ratification of the START Treaty is subject to the following conditions, which shall be binding upon the President: Legal and Political Obligations of U.S.S.R.: That the legal and political obligations of the Union of Soviet Socialist Republics reflected in the four related separate agreements, seven legally binding letters, four areas of correspondence, two politically binding declarations, thirteen joint statements . . .

And so on. The two politically binding declarations are precisely the reference to the limitation of the SLCM numbers for both countries. I mean there is a dispute about whether it is legally binding in the same sense that the treaty itself is, but the heading of this is Legal and Political Obligations of the U.S.S.R., and it goes on to talk about . . .

> The United States shall regard actions inconsistent with these legal obligations as equivalent under international law to actions inconsistent with the START Treaty.

And so on and so on. We believe these were binding and should be. It is no argument, however, to say that if somebody else didn't see it that way, therefore, what we are asking for here is not

a binding agreement. Whether you call it binding legally or binding politically, in any event, I wish to see it done, because there is no limitation on the SLCMs the Russians are planning to develop, and the submarine that is under development to carry them, and they could have a strategic value as well as a tactical value. They were a subject of the previous START I agreement and I think they should be a subject of this agreement as well.

Let me summarize. The first amendment our colleagues will be voting on is, I believe, the Wicker amendment, and then the second amendment is the amendment which would provide a side agreement for a limitation on the number of Russian SLCMs—the submarine launch cruise missiles—and the third vote will be on the Kyl amendment relative to verification relating to covers on the ICBMs and telemetry on ICBM tests.

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

The Senator from Massachusetts.

Mr. KERRY. How much times remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 3 minutes on the Kyl amendment and 5 minutes on the Wicker amendment.

Mr. KERRY. Mr. President, is Senator WICKER here?

I wonder, Senator KYL, if we can yield back time. I know colleagues are waiting to vote.

Mr. President, by unanimous consent we yield back all time on both sides and go to regular order.

The PRESIDING OFFICER. If all time is yielded back, under the previous order, the question is on agreeing to amendment No. 4895 offered by the Senator from Mississippi, Mr. WICKER.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 59, as follows:

[Rollcall Vote No. 295 Ex.]

YEAS—34

Alexander	Chambliss	Crapo
Barrasso	Coburn	DeMint
Brown (MA)	Cochran	Ensign
Bunning	Collins	Enzi
Burr	Cornyn	Graham
Grassley	Kyl	Sessions
Hatch	LeMieux	Snowe
Hutchison	McCain	Thune
Inhofe	McConnell	Vitter
Isakson	Murkowski	Wicker
Johanns	Risch	
Kirk	Roberts	

NAYS—59

Akaka	Gillibrand	Murray
Baucus	Hagan	Nelson (NE)
Bennet	Harkin	Nelson (FL)
Bennett	Inouye	Pryor
Bingaman	Johnson	Reed
Boxer	Kerry	Reid
Brown (OH)	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Specter
Conrad	Levin	Stabenow
Coons	Lieberman	Tester
Corker	Lincoln	Udall (CO)
Dodd	Lugar	Udall (NM)
Dorgan	Manchin	Voinovich
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4895) was rejected.

VOTE ON AMENDMENT NO. 4860

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 4860 offered by the Senator from Arizona.

Mr. INOUYE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 31, nays 62, as follows:

[Rollcall Vote No. 296 Ex.]

YEAS—31

Barrasso	Ensign	McCain
Brown (MA)	Enzi	McConnell
Bunning	Graham	Risch
Burr	Grassley	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Johanns	Vitter
Cornyn	Kirk	Wicker
Crapo	Kyl	
DeMint	LeMieux	

NAYS—62

Akaka	Brown (OH)	Corker
Alexander	Cantwell	Dodd
Baucus	Cardin	Dorgan
Bennet	Carper	Durbin
Bennett	Casey	Feingold
Bingaman	Conrad	Feinstein
Boxer	Coons	Franken
Gillibrand	Lincoln	Rockefeller
Hagan	Lugar	Sanders
Harkin	Manchin	Schumer
Inouye	McCaskill	Shaheen
Isakson	Menendez	Specter
Johnson	Merkley	Stabenow
Kerry	Mikulski	Tester
Klobuchar	Murkowski	Udall (CO)
Kohl	Murray	Udall (NM)
Landrieu	Nelson (NE)	Voinovich
Lautenberg	Nelson (FL)	Warner
Leahy	Pryor	Webb
Levin	Reed	Whitehouse
Lieberman	Reid	

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4860) was rejected.

Mr. KERRY. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, we are going to have one more vote tonight. Senators KERRY, LUGAR, KYL, and others are working on how we are going to work tomorrow morning. They will work this evening. Hopefully, we can come in at 9 in the morning with, hopefully, an hour of debate on an amendment, and then we will find out where we are after that. The reason I asked for the attention of the Senate was to announce that.

However, I ask unanimous consent that Senator LEVIN, chairman of the Armed Services Committee, and the ranking member, Senator MCCAIN, each be recognized for 2 minutes to explain something they are working on on the Defense authorization bill.

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

The Senator from Michigan.

Mr. LEVIN. Mr. President, I think all of us have an interest in the Defense authorization bill. Senator MCCAIN and I have been working on this bill with members of the committee for about a year. This is a bill that has a lot of provisions critically important to our troops.

To give a few examples, it authorizes health care coverage for military children, impact aid to local civilian schools, so-called CERP authority, which is the commander's emergency response program, and transfer of defense articles to the Afghan Army. It is about 800 pages. We have removed from this bill what we thought were the controversial items so that we could get it passed. We don't have the time to go through them, but that was our intent. We missed one controversial item which came over from the House having to do with Guam funding. We have now reached an agreement that we would remove that provision from the bill. That is a removal. But we can't add any controversial items to this bill; it will be objected to.

The only way we can do this for the troops, as we have done for 45 years, is if we proceed with a unanimous consent agreement tonight. We haven't

yet gotten there. I plead with our colleagues to let us get to this unanimous consent agreement tonight. It is the only time we can do it. The House will be in tomorrow. They could take it up tomorrow, if we pass it tonight. That is the status.

Senator MCCAIN, I know, will speak on his support. But this is a plea from the two of us who have worked so hard with Members and our staffs on a critically important bill.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. The only thing I would add to the comments of Senator LEVIN is that there are policy provisions regarding training and equipment and readiness that cannot be just done by money. These are important policy decisions, important authorizations, including a pay raise—not for us. I urge my colleagues not to object to this Defense Authorization Act. I argue it is critical to sustaining this Nation's security.

Mr. LEVIN. Mr. President, we will offer this later tonight. We are not offering it at this time.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 4893 offered by the Senator from Arizona, Mr. KYL.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Alaska (Mr. BEGICH), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri, (Mr. BOND), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alabama (Mr. SHELBY).

The PRESIDING OFFICER (Mr. MERKLEY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 30, nays 63, as follows:

[Rollcall Vote No. 297 Ex.]

YEAS—30

Barrasso	Ensign	LeMieux
Brown (MA)	Enzi	McCain
Bunning	Graham	McConnell
Burr	Grassley	Risch
Chambliss	Hatch	Roberts
Coburn	Hutchison	Sessions
Cochran	Inhofe	Snowe
Cornyn	Johanns	Thune
Crapo	Kirk	Vitter
DeMint	Kyl	Wicker

NAYS—63

Akaka	Cantwell	Dodd
Alexander	Cardin	Dorgan
Baucus	Carper	Durbin
Bennet	Casey	Feingold
Bennett	Collins	Feinstein
Bingaman	Conrad	Franken
Boxer	Coons	Gillibrand
Brown (OH)	Corker	Hagan
Harkin	Lugar	Rockefeller
Inouye	Manchin	Sanders
Isakson	McCaskill	Schumer
Johnson	Menendez	Shaheen
Kerry	Merkley	Specter
Klobuchar	Mikulski	Stabenow
Kohl	Murkowski	Tester
Landrieu	Murray	Udall (CO)
Lautenberg	Nelson (NE)	Udall (NM)
Leahy	Nelson (FL)	Voinovich
Levin	Pryor	Warner
Lieberman	Reed	Webb
Lincoln	Reid	Whitehouse

NOT VOTING—7

Bayh	Brownback	Wyden
Begich	Gregg	
Bond	Shelby	

The amendment (No. 4893) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, let me say to colleagues how we are going to proceed. With the consent of the Senator from Arizona and Senator LUGAR, we are going to accept two amendments, I believe. One of them we are checking with the White House and making certain we are all in sync on it. But assuming we are, we will be able to have Senator LEMIEUX of Florida speak for a few minutes on his amendment. In addition, there is Senator KYL's amendment, which we will accept.

Subsequent to that, I believe Senator THUNE wants to raise an issue regarding an amendment. We will do that. Then I think we will probably be at a point where we will have an opportunity if people want to talk on the treaty, or conceivably even on something else, I imagine there may be a moment there, but I do not want to speak for the leadership on that yet until we have cleared it.

Mr. President, I ask unanimous consent—the Senator from Ohio has been trying to get the floor for most of the day, and because he wanted to give us the opportunity to move on the amendments, he has been very patient. I ask unanimous consent that he be granted 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. I ask the Senator, will you go ahead and handle the unanimous consent agreement on the two amendments. I do not have to be here for that.

Mr. KERRY. Mr. President, I will do that and guarantee the Senator that his amendment will be adopted. And I thank him. I want to thank Senator KYL. He has actually—I know we have all been struggling here, but the Senator has been extremely helpful in processing a lot of amendments this evening, and I want to thank him for his good-faith efforts in doing that.

Mr. President, I yield to the Senator from Ohio.

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

The Senator from Ohio.

Mr. BROWN of Ohio. Thank you, Mr. President.

I appreciate the generosity of the senior Senator from Massachusetts and especially his leadership on one of the most important debates in the 4 years I have been in the Senate. I thank Senator KERRY for that.

OMNIBUS TRADE ACT/TAA AND HCTC

Mr. President, I hold in my hand 500 pieces of paper, 500 testimonials from retirees who lost their pensions and health care during the GM bankruptcy. These are some of the 50,000 Americans who will be hurt if we do not pass an extension of the health coverage tax credit this week before the year is out.

This stack of paper here does not represent Delta retirees and it does not represent other retirees—thousands of others—who are in the same boat as the Delphi/GM retirees.

Their pensions have been cut. Their employee-sponsored health care has been eliminated. If we do not pass the omnibus trade bill—which includes GSP, trade adjustment, the Andean trade agreement, and the health care tax credit, and some miscellaneous tariffs—if we do not pass this, H.R. 6517, they will take in another economic blow. The blood from this one will be on our hands.

We must pass the omnibus trade bill before this Congress ends. I want to share a handful of letters. I know the Senator from Massachusetts yielded for 5 minutes, so I will do this quickly.

Mary Ann from Warren, OH, writes that she lost 40 percent of her pension, all her health care, and all her life insurance earned from GM/Delphi. Here is what she said:

> My husband is self employed and he is on my healthcare. He suffers terribly with chronic pain due to degenerative disc disease. He forces himself to work at least part time but it's a struggle. . . . I have a cerebral condition recently diagnosed. I spent a week in the hospital early this year and am still paying on that too. A 75 percent hike in our healthcare premiums—

And that is what will happen if we do not renew this, which will help these 500 and another 50,000—

> while we try to pay these medical balances on a reduced pension would force us and many others into a downward spiral of existence. Those who we entrust to represent us must realize that our story could be theirs if life situations were different. When do we start treating others how we ourselves want to be treated?

Here are others.

Dan from Columbus, IN, writes:

> Dear Senator Brown—I am a retired Delta Air Line pilot. During my retirement, Delta took my retirement money that I had spent a career of time accumulating and left me out in the cold. The health care tax credit stepped in and helped by giving our family some insurance premium help. Now this is being destroyed too.

David from Atlanta, GA:

It is very important that the health care tax credit . . . be continued. After losing the pension income and insurance benefits I was promised when I retired from Delta Airlines, I have made significant adjustments to try to compensate for the losses.

Still, after cutting back, the cost of living, skyrocketing insurance premiums, and 2 years of trying to sell my house at a substantial reduction of price while competing with foreclosures, the finances of my friends and me continued to erode.

Gary from Arrowhead, CA: Since Delta Airlines eliminated my pension and health coverage, I looked forward to a Kaiser Permanente HCTC qualified health insurance policy starting January 1. Without this HCTC passage, my premiums will be $2,600 a month.

These go on and on. The omnibus trade bill has received unanimous approval from every Democratic Member of this body. It is supported by the U.S. Chamber of Commerce, the National Retail Federation, the AFL–CIO. It is my understanding most Republicans here support it. There are just a few blocking the passage of it.

On Friday, Senator SESSIONS objected to a request Senator CASEY and I made to pass the trade act. I understand his objection. I believe it can be worked through. Senator SESSIONS said he supports the rest of the package. I hope this obstruction doesn't interfere with the need to move on this omnibus trade package. These 500 letters, if each of my colleagues would read two or three of them, I think they would see how important it is we pass the Omnibus Trade Act. It is about the trade adjustment assistance language. It is about 50,000 people who will not be able to afford their health insurance come January 1. Happy New Year to them. It also will help us with Colombia and other countries around the world in our trade policies. This makes so much sense.

Tomorrow, Senator CASEY and I and perhaps some others will ask for a UC. I hope my colleagues can see fit to move forward on this. It is supported by business groups, by labor groups, by the majority of people in this body. I am hopeful we can bring in the few people who still disagree and make this work for our country.

I yield the floor. I thank Senator KERRY for his indulgence.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Mr. President, I have had the opportunity to work out with the Senator from Massachusetts an amendment to the resolution, which I will be offering in a second.

To my colleagues, what this does—we had this discussion the other day on the treaty. This is an amendment to the resolution that would require, within a year's time of ratification, that the President of the United States certify to the Senate that the United States will seek to initiate with the Russian Federation negotiations on the disparity between nonstrategic or tactical nuclear weapons and to make sure we secure those weapons and reduce the number of tactical nuclear weapons in a verifiable manner.

Remember, the Russians have a 10-to-1 ratio of tactical nuclear weapons over us—3,000 to 300—not talked about in this treaty, an important issue. This requires that the President will certify within a year's time that the parties are going to sit down and have a negotiation about the disparity, about verification, and about securing these weapons. It has been agreed to by all parties.

With that, amendment No. 4908 has been cleared on both sides. I now ask that the amendment, as modified by the changes at the desk, be offered and agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object, we just have to jump through a few hoops over here. We will not object ultimately, but if I could ask the Senator if we could just wait a little longer, I would object at this time but not ultimately. We need to get this cleared and put all the next steps together into one effort, if we can. It doesn't mean we can't talk about some of the other issues, if you want to, while we are waiting for that to be ready. It might be better to just wait until we have the agreement.

So, in the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Florida has the floor.

Mr. LEMIEUX. 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. KERRY. 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. KERRY. Mr. President, I know the Senator from Florida wants to speak on this amendment. I ask unanimous consent that the following two amendments be considered and agreed to: Senator KYL No. 4864 and LEMIEUX No. 4908, as modified.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 4864 and 4908, as modified), were agreed to, as follows:

AMENDMENT NO. 4864

(Purpose: To require a certification that the President intends to modernize the triad of strategic nuclear delivery vehicles)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) STRATEGIC NUCLEAR DELIVERY VEHICLES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) modernize or replace the triad of strategic nuclear delivery systems: a heavy bomber and air-launched cruise missile, an ICBM, and an SSBN and SLBM; and

(B) maintain the United States rocket motor industrial base.

AMENDMENT NO. 4908, AS MODIFIED

(Purpose: To require negotiations to address the disparity between tactical nuclear weapons stockpiles)

At the end of subsection (a) of the resolution of advice and consent to the New START Treaty, add the following:

(11) TACTICAL NUCLEAR WEAPONS.—(A) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the United States will seek to initiate, following consultation with NATO allies but not later than one year after the entry into force of the New START Treaty, negotiations with the Russian Federation on an agreement to address the disparity between the non-strategic (tactical) nuclear weapons stockpiles of the Russian Federation and of the United States and to secure and reduce tactical nuclear weapons in a verifiable manner; and

(ii) it is the policy of the United States that such negotiations shall not include defensive missile systems.

(B) Not later than one year after the entry into force of the New START Treaty, and annually thereafter for the duration of the New START Treaty or until the conclusion of an agreement pursuant to subparagraph (A), the President shall submit to the Committees on Foreign Relations and Armed Services of the Senate a report—

(i) detailing the steps taken to conclude the agreement cited in subparagraph (A); and

(ii) analyzing the reasons why such an agreement has not yet been concluded.

(C) Recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to engage the Russian Federation with the objectives of—

(i) establishing cooperative measures to give each Party to the New START Treaty improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other Party; and

(ii) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

Strike paragraph (11) of subsection (c) of the resolution of advice and consent to the New START Treaty.

Mr. KERRY. Mr. President, does the Senator wish to speak?

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. LEMIEUX. Mr. President, I thank the Senator from Massachusetts for working on this with us. I think this is an important improvement that will require that the United States seek to initiate negotiations with the Russian Federation within a year's period of time. I thank my colleague from Massachusetts, as well as other colleagues who were willing to make this happen as part of the ratification.

I yield the floor.

Mr. KERRY. Mr. President, I thank the Senator. This is a constructive amendment. We all agree that we need to reduce tactical nuclear weapons. Everybody who testified to us reiterated the importance of that being the next step in terms of our relationship and increased stability. NATO allies also said it was essential to proceed to that. The Senator's amendment helps us to make it clear that is the direction in

which we need to go. I thank him for his efforts.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I ask unanimous consent that amended No. 4920 be made pending.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, I do object. I want to say to the Senator that I am delighted to have a discussion with him about this particular issue. But I think given the efforts we have made thus far to deal with a fixed set of amendments has been affected somewhat by some of those amendments that were filed late, and also not germane, requiring colleagues at the last minute to consider a lot of issues on the floor that are not pertaining directly to the treaty itself.

The subject the Senator wants to bring up and talk about, which is Russian cooperation on Iran, is absolutely essential to us as a matter of foreign policy. I want to join with the Senator in emphasizing that. I look forward to hearing his comments about it. I think we can have an important colloquy that could add to the record of our discussions with respect to this treaty without negatively impacting the direction we are moving in at this point.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, if I might, given that, speak to the amendment. I regret that the amendment can't be voted on. The process has been fairly open. A number of amendments have been considered. This amendment was filed sometime this afternoon. It deals with an important subject, which is germane to the debate that we are having with regard to the New START treaty.

One of the predicates for improving the START treaty is the so-called reset of our relationship with Russia. Of course, the President, as recently as November 18, 2010, made a statement, which is in this amendment:

''The New START Treaty is also a cornerstone of our relations with Russia'' for the reason that ''Russia has been fundamental to our efforts to put strong sanctions in place to put pressure on Iran to deal with its nuclear program.'' Accordingly, the advice and consent of the Senate to ratification of the New START Treaty is conditioned on the expectation that the Russian Federation will cooperate fully with United States and international efforts to prevent the Government of Iran from developing a nuclear weapons capability.

What this amendment does is to provide some assurance that all those intentions and statements actually come to pass. It would require the President to certify to the Senate the following:

Prior to entry into force of the New START Treaty, 1, the President shall certify to the Senate that (i) the Russian Federation is in full compliance with all United Nations Security Council Resolutions relating to Iran; (ii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will (I) transfer to Iran the S–300 air defense system or other advanced weapons systems or any parts thereof; or (II) transfer such items to a third party which will in turn transfer such items to Iran; (iii) the Government of the Russian Federation has assured the United States that neither it nor any entity subject to its jurisdiction and control will transfer to Iran goods, services, or technology that contribute to the advancement of the nuclear or missile programs of the Government of Iran; and (iv) the Government of the Russian Federation has assured the United States that it will support efforts at the United Nations Security Council and elsewhere to increase political and economic pressure on the Government of Iran to abandon its nuclear weapons program.

That would be a commitment, a certification, that would be issued prior to the entry in force of the treaty by the President each year, and on December 31 of each subsequent year a similar certification would be issued by the President. In fact, if the President fails to certify, then it would require that he consult with the Senate and submit a report on whether adherence to the New START treaty remains in the U.S. national security interest.

I say this because I think there is a direct connection and correlation between this treaty and the efforts of the Russians that we assume the Russians are going to commit to in terms of putting pressure on Iran regarding its nuclear program and not doing things that would put in jeopardy the security of the region.

I have to say, obviously, this has a big impact on our great ally, Israel, as well as the whole region. It would be very destabilizing if the Iranians have a nuclear weapon. So I think the effort made by the administration to ''reset relations with Russia,'' bears directly on this treaty. As I said, it was stated clearly by the President as recently as November 18, where he recognized that important relationship. I simply say this amendment, I don't think, is anything that anybody would not agree with. All it does is require not just a statement that this is going to be part of our ongoing relationship with Russia, but it provides an assurance, a certification that the administration would make to the Senate before the treaty would enter into force and each year subsequent to that with those basic issues.

The issues are fairly straightforward. It simply requires a condition that the Russian Federation is in full compliance with all U.N. Security Council resolutions relating to Iran and the government of the Russian Federation assures the United States that neither it nor any entity subject to its jurisdiction and control will transfer to Iran the S–300 air defense system or other advanced weapons systems or any parts thereof or transfer such items to a third party, which will in turn transfer such items to Iran.

While the S–300—for the time being, Russia has refrained from doing that. There are concerns and reports that Russia has recently provided Tehran with a new radar system allegedly through third party mediators from Venezuela and Belarus. So the concern about that coming into Iran through some third party is also something that I think is of great concern to America's national security interests as well as those of our allies.

Mr. President, the amendment, again, is very straightforward. It requires a certification before the entry into force of the treaty, and then each year thereafter about those basic conditions that the Russians be in compliance with U.N. Security Council resolutions, that they would not try to get the S–300 to the Iranians, directly or indirectly, and they would continue putting pressure on the Iranians with respect to their nuclear program.

We know too that the nuclear reactor in Bashir is now producing plutonium. Russia has fueled a nuclear reactor there that is now producing plutonium in Iran. That ought to be of great concern to everybody here as we pass judgment on this treaty, which is obviously important to our relationship with Russia, but also bears on the relationship we have with other countries around the world.

I think anybody in the foreign policy community that you talk to today, when you ask what is the most dangerous threats the United States and its allies face around the world today, Iran and nuclear weapons in the hands of Iran top that list.

So the efforts that we make to persuade the Russians to put pressure on the Iranians and make sure there isn't anything going on there that would destabilize or put in peril America's national security interest is certainly an objective we have.

This would require the President certify that those things are taking place rather than relying on the statements and good intentions of the Russians. I wish, again, that I could get this amendment pending and get it voted on. I think it is important to have the Senate on record with regard to this issue. I regret that the amendment has been objected to.

I appreciate the opportunity to at least raise the issue, and I certainly hope it is something that the administration and our leaders in the Senate and the entire military establishment of this country pays close attention to in the days ahead. This issue will not go away. I think it bears definitely on the treaty.

With that, I will conclude my remarks and say I wish we had an opportunity to get a vote on it.

I yield the floor.

Mr. KERRY. Mr. President, in, I think, 7 days, I have not made an objection to an amendment that we tried to take up. I am sensitive to that because we, obviously, want to provide as much opportunity to go into these issues as is possible. I say to my friend from South Dakota that I am happy to stay here with him and do as much as we could do to impress on anybody the importance of the issue he is raising.

But if we stayed here and went through the process of a vote, which would conceivably take us a lot longer in terms of the other amendments we have to finish tomorrow morning, as well as keep the Senate in even later, only the votes—I think we had only one motion to table. Almost every vote has been straight up or down. The votes have been 60 to 30, or 60-something to 28, or something like that. I think the reason is that there is a fundamental flaw in the approach of this particular amendment and the others we have had because they seek to prevent the treaty from going into force.

The language says ''prior to the entry into force of the New START Treaty,'' the President has to do a series of things. Some of those may read in a fairly straightforward and literal way, but they are not necessarily what can be done immediately or are even subject to our control, in which case we wind up with a treaty that we have actually partially ratified because it cannot go into force, and it may never go into force, depending on what happens with some of those things that are out of our control.

There are a lot of reports requested on one thing or another. I think there is a more effective way to go at this, personally, that doesn't wind up with a negative impact on the treaty, where we are veering from our military and national intelligence leaders who would like to see this put into effect as rapidly as possible. The effect of this is not to let that happen as rapidly as possible.

The Senator is 100 percent correct about our concern about Iran. We need Russian cooperation in order to ever have a chance of enforcing the sanctions that have been put in place, as well as finding the other tiers of cooperation that are going to be critical as we go forward, absent Iranian shifts in policy. The fact is, what has happened through Russian cooperation right now is that the most significant sanctions we have been able to put in place to date have been put in place. They were largely achieved because of the relationship President Obama has achieved with President Medvedev and the reset button and the sense that we are coming together, not going apart.

It is easy for us in the Senate to stand here and say we have to require this, we have to require that. A lot of these things I have found increasingly—particularly in this time I have been chairman of this committee—a lot of the things we sometimes do with good intention in the Senate actually very significantly complicate the life and work of our diplomats who spend as much time trying to meet some kind of certification as they do doing the diplomacy they are meant to do.

I am happy to work with the Senator as chairman of this committee. We will have hearings early next year on this topic of Iran and where we stand with respect to that nuclear program. We will look at this issue of Russian cooperation, and we will look at it hopefully within the context of a START treaty that is going to be ratified by the Duma and implemented and that can only strengthen the resolve of both our countries to focus on the challenges of Iran.

I thank my colleague. I have been in that position before when we have not been able to get an amendment in.

I might add, the amendment was filed a day and a half after cloture was filed. I said to JON KYL very clearly that we were going to try to be as flexible as we could. That flexibility needed to be mostly focused on those amendments that directly affect the treaty or are to the treaty in its most direct sense. If we raised a point of order, this would be an amendment that would be found to be not germane because it is outside those direct treaty issues. With that in mind, I have taken the position I have taken. But I look forward to working with my colleague, if we can, as we go forward from here.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I say to my friend from Massachusetts that if he would allow me to vote on the amendment, I would try to break that 35-vote threshold that we have seen, to blow through that cap.

I appreciate the fact that the Senator shares the concerns I have about Iran. All I would say is I think what this provides is an additional safeguard as we move into this process and we have this treaty and a clearly established connection between what is a great threat, a regional threat and, I would argue, a threat beyond the region, certainly to our national security as well, the Iranian threat, and the relationship we have with Russia and this treaty and the good-faith effort that we are making through this treaty with the Russians to reset, that this would provide an additional level of assurance that they are, in fact, cooperating and that they are following through on the commitments they are making to the administration and to us as we debate this treaty.

Again, I will not belabor the point. The point has been made. I do think this is a germane amendment. I take issue with the chairman's contention that it is not. But at this particular late hour and with his objection to this, I know I am probably not going to have an opportunity to have this amendment voted on, but I hope the issue continues to stay front and center, in front of this body and before the Foreign Relations Committee and the Armed Services Committee on which I serve.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I say to the Senator, let's commit to work to make sure that happens. I certainly will do that on my part. I look forward to those hearings next year. Perhaps the Senator would even want to find a way to take part in them.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. 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. KERRY. Mr. President, Senator REID asked me a few minutes ago if I would communicate where we are with respect to the START treaty, and I will do so.

As it stands now, we have two amendments that remain. One is an amendment by Senator KYL on modernization, which I believe is the intention, though not yet locked in, of the majority leader to try to take up around 9 o'clock in the morning. We expect to spend somewhere in the vicinity of an hour on it, maybe a little bit longer than that, to accommodate the speakers for Senator KYL. Then there will be one other amendment after that on missile defense, I believe an amendment that will be offered by Senator CORKER and Senator LIEBERMAN together. That amendment will be the last barrier remaining before we can get to the final vote on the treaty itself.

It would be my hope, depending on the negotiations going on and discussions with respect to the 9/11 first responders—those are discussions taking place now—depending on that, we will have a better sense of when that final vote will be able to take place. I know a lot of colleagues are trying to figure that out in the context of flights, family, and other things. Our hope is that will become clearer in the next minutes, hours, moments of the Senate.

That is the lay of the land. I know the chairman of the Armed Services Committee and the ranking member have made their request to the Senate regarding the Defense authorization bill.

Our hope is that tomorrow morning we can move rapidly through the remaining two amendments. It may even be possible for us to accept the amendment on the missile defense. We are working on that language now. If that happens, obviously it will clear the possibilities of a final vote to an earlier hour, again dependent on this discussion regarding the 9/11 first responders.

That is the state of play.

Mr. COCHRAN. Mr. President, I am pleased to support the approval by the Senate of the New START treaty.

On December 16, I joined Senators INOUYE, FEINSTEIN and ALEXANDER in a letter to President Obama to express my support for ratification of the treaty and funding for the modernization of our nuclear weapons arsenal. At the time, I was concerned that this might not be taken seriously as a long-term commitment. The President has responded to our request and assured me that nuclear modernization is a priority for his administration and that

he will request funding for these programs and capabilities as long as he is in office. I appreciate his commitment to this long-term investment.

The treaty before us is not perfect. Many of our colleagues have brought forth ideas and offered amendments that will help address concerns about the treaty. I share concerns about missile defense, tactical nuclear weapons, and limits on delivery vehicles, but I cannot deny the potential national security consequences of not ratifying the New START treaty.

After listening carefully to national security experts and the debate on the Senate floor, I have been convinced that failure to ratify this treaty would diminish cooperation between our two countries on several fronts, including nuclear proliferation, and limit our understanding of Russian capabilities. Furthermore, failure to ratify this treaty would cause further delays in getting our inspectors back to Russia after a 1-year absence.

While I am dissatisfied with the way this treaty has been considered by the Senate in a lameduck session, I take our responsibility to provide advice and consent to international treaties very seriously; and I do not think that the politics of the moment should trump our national security priorities. I am cognizant of the fact that the New START treaty has received unanimous endorsement by both our country's diplomatic and military leadership, and it would be an unusual response for the Senate not to respect and consider their views on how best to support our national security interests.

I agree with them on the merits of this treaty, and I will support ratification.

Mr. AKAKA. Mr. President, I rise today and proudly stand among the long, bipartisan list of Senators, statesmen, and military leaders in support of the New Strategic Arms Reduction Treaty. The New START treaty is critical to our Nation's security because it places limits on U.S. and Russian nuclear arsenals, supports an improving bilateral relationship with Russia, and advances international nuclear nonproliferation efforts.

Over the last three decades, both the United States and Russia have benefited greatly from the bilateral reduction of nuclear weapons. Through the efforts of Presidents Ronald Reagan and George H.W. Bush, the two superpowers embarked on gradual nuclear disarmament, agreeing to reduce the number of their strategic warheads and deployed delivery vehicles through the negotiation and signing of the first START treaty. Under President Obama's leadership, we are now considering the New START treaty, which, when ratified, will reduce these numbers even more in both countries.

The ratification of the New START treaty is vital to our national security.

First, this treaty helps to decrease the threat of nuclear destruction and strategic miscalculation by requiring the reduction of strategic offensive arms such as warheads and launchers in Russia and the U.S. Supporting this effort is a strong verification regime that includes on-site inspections. Without this treaty, our inspectors do not have the ability to monitor Russian activities. We have not had access to the Russian nuclear stockpile for over a year. Our ability to ''trust, but verify'' must be restored.

Second, this treaty reinforces our important relationship with Russia. It advances our Nation's capacity to build durable, multilateral cooperation to confront international security risks from countries like Iran and North Korea. In addition, a strong relationship with Russia helps to keep available the supply chains that deliver equipment to the brave Americans serving in Afghanistan.

Finally, this treaty strengthens our nonproliferation efforts around the world. By ratifying the New START treaty and taking the focus off of strategic weapons, the United States and Russia can increase their efforts on tactical nuclear weapons and proliferation. The risks associated with nuclear proliferation are particularly serious and include acts of nuclear terrorism against the United States and its allies and the destabilizing effects of new nuclear arms races.

For many years I have been concerned about these risks. During the 111th Congress, I have introduced bills that would decrease the spread of potentially dangerous nuclear technologies around the world and implement key nuclear nonproliferation recommendations offered by the Commission on the Prevention of the Proliferation of Weapons of Mass Destruction and Terrorism. I have also called for more oversight of the International Atomic Energy Agency's Technical Cooperation Program and its proliferation vulnerabilities. Ratifying the New START treaty will reinforce these and many other nuclear nonproliferation efforts.

I urge my colleagues to strengthen national security by ratifying the New START treaty.

Mr. UDALL of New Mexico. Mr. President, I rise today to echo the call of the Senators and Presidents who have furthered the cause of peace. I rise to continue this body's longstanding work to reduce the threat that nuclear weapons still pose to our Nation and world.

Much has changed since the groundbreaking arms treaties of the 1990s. The cold war has ended, and with its end the balance of power changed greatly. But the threat of nuclear war has not entirely gone away.

Over the last decade, we have seen the U.S. attacked on 9–11. And we learned about al-Qaida's ambition to acquire a weapon of mass destruction.

One mishap or one intentional attack is all that is needed to throw our entire global society into a tailspin.

Thanks to the work done through Nunn-Lugar, the U.S. has been involved in efforts since the end of the cold war to prevent nuclear materials from falling into the wrong hands.

But today, with our resources spread thin due to two wars overseas and the threat from failed states and unstable regimes in possession of nuclear weapons the risk of nuclear proliferation has steadily increased.

That is why the goal articulated by President Kennedy, built upon by President Reagan, and further advanced by President Obama is more important than ever. Moving toward a world with zero nuclear weapons is a move toward a safer and more peaceful future.

Through committed negotiations on the New START treaty, the U.S. and Russia have renewed their commitments to this important goal. Passing New START would be another momentous step toward that more peaceful world.

But, as we have all seen in recent days, and over the course of the year since the U.S. and Russia reached this historic agreement, some in this Chamber are playing partisan politics with an issue that has the potential to impact every person in America and across the world.

This political posturing is shortsighted at best. And it is dangerous at worst. The threat of nuclear weapons is not a partisan issue. It is an American issue. And, more importantly, a human issue.

When START One was ratified in 1991, it was ratified not with just a simple majority but with 93 Members of the Senate voting in favor of the legislation.

Similarly, START Two, ratified in 1993, had the support of 87 Members of the Senate.

The New START treaty deserves similar support from this body. Obstruction of this treaty does not strengthen our country. It reduces our security. And arguments to the contrary go against decades of bipartisan work to reduce the threat of nuclear annihilation.

Those opposed to ratification say this treaty will diminish our national security. They argue that we cannot rely on a smaller nuclear arsenal to effectively deter an opponent.

These concerns have been overhyped and hyperpoliticized. And they fall flat in light of the scientific evidence provided by our scientists and engineers at the National Labs.

Along with Senator BINGAMAN, I helped lead a visit to New Mexico's National Labs while the Senate Foreign Relations Committee was debating ratification. The scientists and engineers at the Labs briefed the delegation, which also included Senators KYL, CORKER, RISCH, and THUNE, on issues pertinent to this debate.

After participating in these briefings, I am confident of two things. One, that the United States can assure our allies

that our nuclear arsenal remains an effective deterrent. And two, that our scientists and engineers will be able to verify that Russia is abiding by its end of the bargain.

New Mexico will be at the forefront of verification measures because the Los Alamos and Sandia National Labs have the requisite professional expertise to aid the monitoring of Russian forces.

I have been continually amazed by the work of our National Labs in New Mexico. The Los Alamos and Sandia National Labs, and the hardworking men and women who serve there, are truly a treasure of the Nation.

Unfortunately, some on the other side of the aisle have derided the labs as ''decrepit and dangerous.'' This poorly imagined and strikingly inaccurate description couldn't be further from the truth.

Los Alamos National Labs Director Michael Anastasio, Sandia National Labs Director Paul Hommert, and Lawrence Livermore Director George Miller, have been unequivocal in their testimony to the Senate Armed Services Committee and the Senate Foreign Relations Committee.

They all agree that our labs are prepared to maintain our nuclear stockpile, and they are ready to lend their scientific expertise to the overall mission of verification and reduction.

To quote Director Anastasio's Senate testimony:

I do not see New START fundamentally changing the role of the Laboratory. What New START does do, however, is emphasize the importance of the Laboratories' mission and the need for a healthy and vibrant science, technology and engineering base to be able to continue to assure the stockpile into the future:

Sandia National Labs also plays a major role in stockpile stewardship, life extension, and stockpile surveillance.

Director Hommert's testimony makes clear that Sandia understands the challenges involved under New START but that it is ready to undertake those challenges. He said:

As a whole package, the documents describing the future of U.S. nuclear policy represent a well founded, achievable path forward.

I believe that it is no small coincidence that the progression toward a world without nuclear weapons will require the continued, diligent work of those who first created and then secured our arsenals.

The safety, security, and reliability of our available nuclear weapons will become increasingly important to our country as we reduce our stockpile.

For New Mexico, President Obama's strategy will mean an expanded role for our National Labs in managing our Nation's nuclear deterrent.

For our country, President Obama's strategy means that we are one step closer to closing the curtain of the cold war's legacy of nuclear arms races.

For the world, it means we will be taking a step forward toward greater cooperation and peace, and one step back from catastrophe.

Fewer weapons mean fewer opportunities for mistakes or losses of warheads. Fewer weapons also mean fewer opportunities for unstable regimes such as North Korea, Iran, or Myanmar, or individuals with malicious intentions to acquire or build a nuclear weapon.

The two nations with the largest stockpile of nuclear weapons have a duty to remain vigilant in protecting the rest of the world from the unthinkable. By ratifying this treaty, the Senate is upholding its duty to protect our Nation and to protect our shared planet.

President Kennedy said the following during his 1962 State of the Union Address:

World order will be secured only when the whole world has laid down these weapons which seem to offer us present security but threaten the future survival of the human race.

By ratifying this treaty, we move a step closer toward realizing this legacy and continuing a longstanding policy goal of our country—the goal of creating a more peaceful and secure world.

Let us continue our work together by ratifying this treaty and sending a message to the world that the United States of America will continue making significant steps towards peace.

● Mr. BOND. Mr. President, New START is a bad deal for the United States. It requires us to reduce our deployed strategic forces while the Russians can add to theirs. This amounts to unilateral reductions.

The treaty gives Russia political leverage, which they will use, to try to prevent us from expanding our missile defenses to protect us against North Korea and Iran. This is unacceptable.

The treaty fails to deal with Russia's reported ten to one advantage in tactical nuclear weapons or their nuclear, sea-launched cruise missiles. However, the Treaty will limit our nonnuclear ballistic missiles.

Compounding these deficiencies, the treaty's verification is weak and the Russians have a poor compliance record.

As vice chairman of the Senate Select Committee on Intelligence, I have reviewed all the relevant classified intelligence concerning this treaty. I come away convinced that the United States has no reliable means to verify the treaty's central 1,550 warhead limit.

It is also inexcusable that the United States has forfeited in this treaty the rights it enjoyed under START to full and open access to Russian telemetry. This amounts to giving up the ''keys to the kingdom,'' as it will harm our ability understand new Russian missile developments.

The administration has attempted to justify giving up Russian telemetry on the basis that it is not needed to verify the New START treaty. This is only true if you believe that the treaty's ten or fewer yearly inspections of Russian missiles will provide adequate verification. They do not. In fact, these inspections have three strikes against them.

Strike One: The 10 annual warhead inspections allowed under New START only permit us to sample 2 to 3 percent of the Russian force.

Strike Two: The inspections cannot provide conclusive evidence of whether Russia is complying with the 1,550 warhead limit. If we found a missile loaded with more warheads than Russia declared, it would be a faulty and suspicious declaration. However, we could not infer that Russia had thereby violated the overall 1,550 limit. The Russians could just make some excuse for the faulty declaration, as they have in the past.

Strike Three: New START relies on a type of on-site inspections that Russia illegally obstructed on certain missile types for almost the entire 15 year history of START. Russia's use of illegal, oversized covers were a clear violation of our on-site inspection rights under that treaty. As the old adage goes, ''fool me once, shame on you, fool me twice, shame on me.''

Common sense tells us that the worse a treaty partner's compliance history, the stronger verification should be. However, according to official State Department reports by this administration and the previous one, Russia has violated, or is still violating, important provisions of most key arms control treaties to which they have been a party. In addition to START, this includes the Chemical Weapons Convention, the Biological Weapons Convention, the Conventional Forces in Europe Treaty, and Open Skies.

We also know that the lower the limits on our weapons, the stronger the verification should be. But with these lower New START limits, our verification of warhead limits is much worse than under the previous START treaty, with its higher limits.

With all these arguments against the treaty, proponents can only point to one tangible benefit—that we will know more about Russian forces with the treaty than without it. This is hardly a ringing endorsement.

Learning more will hardly compensate the United States for the major concessions included in this Treaty. What are these concessions? Unilateral limits, unlimited Russian nuclear systems, limited U.S. nonnuclear systems, unreliable verification, the forfeiture of our telemetry rights, and perhaps most importantly, handing Russia a vote on our missile defense decisions.

In many cases, concerns about particular treaties can be solved during the ratification process. My colleagues have my respect for their attempts to do so. Unfortunately, New START suffers from fundamental flaws that no amount of tinkering around the edges can fix.

For these and other reasons, I cannot in good conscience vote to ratify the New START treaty.●

Mr. MERKLEY. Madam President, I ask unanimous consent to speak as in morning business for up to 10 minutes.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

INTEREST ON LEGAL TRUST ACCOUNTS

Mr. MERKLEY. Madam President, I rise this evening to talk about a program that is of great importance to our citizens across America who are struggling to access legal services. There is a program that is called the Interest on Lawyer Trust Accounts or IOLTA. This is a very interesting arrangement that I was not familiar with until I came to the Senate.

Essentially, IOLTA is interest on lawyer trust accounts, and it works like this. When lawyers need to put money into a trust account, they are putting it in that account on behalf of a client or on behalf of an estate. It is not allowed under the law for the client to earn interest. However, there is an arrangement that has been made over the years in which banks agree to pay interest on those accounts, since they are accessing those deposits—those funds—but the interest gets donated to legal services for poor Americans across the United States of America. So it is a win-win. The client isn't allowed to get the interest, but the banks pay the interest to benefit low-income Americans across our Nation.

That is the structure of the IOLTA accounts. All 50 States have these programs. Forty-two States require lawyers to deposit client funds that do not earn net interest for the client into these IOLTA accounts so they will earn interest to pay for civil legal services for the poor.

During the financial crisis, the FDIC created a program to guarantee that the business and trust checking accounts that do not pay interest are insured—they are guaranteed—and IOLTA was included in this because they do not pay interest to the client. The Dodd-Frank reform bill we had, which extended these arrangements for 2 years for accounts that do not pay interest to the clients, forgot to include the IOLTA accounts that do not pay interest to the clients but do pay interest that goes to fund civil legal services for poor Americans in all 50 States.

So we are seeking to fix this glitch. I wish to note that hundreds of thousands of Americans who don't otherwise have access to legal services are in a position to benefit when they need such services across our Nation.

In Oregon, we have the Oregon Law Foundation, the nonprofit, nonpartisan organization that administers legal aid for the poor. They benefited to the tune of over $1 million in revenue in 2009. When interest was a little better, they had more revenue in 2008—$2.2 million. That was a decrease from 2007 of $3.6 million. So as interest rates have declined, the amount of funds that have gone to fund legal services for the poor have declined, but still, a few million dollars is better than none in terms of providing assistance.

In a case such as this—the Oregon Law Foundation—IOLTA funding makes up 95 percent of their total revenue. So if the guarantee is not extended for 2 more years, we have a real problem, and it goes like this. A lawyer has a fiduciary responsibility to a client to put the funds into an account that protects the client. They would not be able to put the funds into an IOLTA account if it is not guaranteed, if they have the option of putting it into a noninterest-bearing fund that is guaranteed and, thus, the bank's willingness to pay interest. So the funding that goes for legal services across our Nation will disappear.

I rise to talk about this because the deadline for this is December 31. We have a bill to fix this before the Senate. But for those who are familiar, in the Senate, any Senator has the ability to put a hold on legislation, and we have a situation where a Senator has put a hold on this. I think, in general, this hasn't gotten much attention, the fact that this assistance that goes to low-income Americans across this country will be deeply damaged, even if 99 Senators support this, because we don't have 100 Senators. So I am rising to basically make an appeal to my colleagues to take a look at the legal programs in your States that are funded by this.

There are legal education programs that are funded. I hope my colleagues will recognize that what we have is a lose-lose situation if we don't change this law, and that lose-lose is legal education and legal services. The banks will actually make more money because they will not have to pay interest. So you have a lose-lose and a win—a loss for the poor, a loss for the students wanting legal education, and a win for banks receiving greater profits.

In this situation, the banks have been absolutely stellar citizens of our communities. In Oregon, we have a host of banks that not only pay interest on these lawyer trust funds, but they have agreed to maintain a floor of 1 percent interest. I would like to mention these banks recognized by the Oregon Law Foundation as leadership banks. I believe this list is as of the end of the year 2009. By mentioning these banks, I am basically saying thank you to these banks for being involved in this program. They include: the Albina Community Bank, the Bank of Eastern Oregon, the Bank of the Cascades, the Bank of the West, Capital Pacific Bank, Century Bank, Columbia River Bank, Key Bank, Northwest Bank, Peoples Bank of Commerce, the Pioneer Trust Bank, Premier West Bank, Siuslaw Bank, South Valley Bank and Trust, the Bank of Oswego, the Commerce Bank of Oregon, Umpqua Bank—a bank that originated in southern Oregon, in timber country, Douglas County, where I come from—U.S. Bank, Washington Trust Bank, and Wells Fargo.

So all these banks have been willing to pay interest on these lawyer trust accounts, knowing they are doing good work in the community by assisting legal programs.

I mentioned one of those programs in Oregon. Let me mention a couple more. The Juvenile Rights Project provides legal services to children and families who do not otherwise have the means to retain counsel through individual representation in juvenile court and school proceedings and through classwide advocacy in the courts, the legislature, and public agencies. It has the only help line offering legal advice for children and teenagers in Oregon. So that is the Juvenile Rights Project.

Disability Rights Oregon. The Oregon Advocacy Center provides statewide legal services to Oregonians with disabilities who are victims of abuse or neglect or have problems obtaining health care, special education, housing, employment, public benefits, and access to public and private services. Oregonians with disabilities look to OAC—that is the Oregon Advocacy Center or Disability Rights Oregon—to protect and advocate for their rights in courts, with public agencies and with the State legislature.

The Classroom Law Project promotes understanding of the law and legal process for 15,000 elementary and secondary school students in the State of Oregon by incorporating the lessons and principles of democracy into school curriculum. Their programs include the High School Mock Trial Competition. That is an extraordinary competition. It is wonderful to see how a high school student can blossom when preparing to argue before his or her peers the facts of a case and the legal principles of a case. It is an enormous education.

The Classroom Law Project also includes the Summer Institute training for teachers. This program enables those teachers to better address the issues of law and legal process in their classrooms.

Also included is the We the People program on the Constitution and Bill of Rights. A lot of us often carry the Constitution. We understand it is the foundation for our government of, by, and for the people, and we want our children to get an education in the Constitution. This is funded in this fashion.

We also have help for citizens who are trying to get into a home mortgage modification, such as HAMP—the Housing Affordable Modification Program—and also families who are working through issues of domestic violence.

So here is the situation. Families addressing domestic violence issues, families addressing wrongful home foreclosures, children—juveniles—seeking legal assistance, the disabled seeking resolution of issues regarding access to health care, special education, housing or employment are being helped. The Classroom Law Project is helping educate our children about the Constitution, about the Bill of Rights, funding

mock trial competitions, and funding the Summer Institute training for teachers. These are the types of tremendous programs that are funded through the interest on lawyer trust accounts. That line of funding, due to a technical overrsight, ends on December 31.

So I am rising to ask my colleagues, if you are the Senator who is holding this up, I encourage you to get the facts from your State because all 50 States participate, and then let this funding, provided through a wonderful arrangement between the banks and our lawyers and these trust accounts, go forward. Who knows how many thousands, the multiple of thousands who will be assisted in challenging situations if we fix this before we adjourn.

I yield the floor.

REGISTRATION OF MUNICIPAL ADVISERS

Mr. DODD. Madam President, on the occasion of the Municipal Securities Rulemaking Board's, MSRB, implementation of congressionally mandated registration of municipal advisers, I would like to briefly speak on this important development. Congress in the Dodd-Frank Act of 2010 sought to enhance the regulation of the $3 trillion municipal securities market. The law expanded the authority of the MSRB in recognition of the MSRB's deep and specialized expertise, and the law expanded the mission of the MSRB to protect issuers and other municipal entities. It directed the MSRB to write rules regulating municipal advisers—persons and firms that advise municipalities and public pension funds or solicit their business on behalf of others, which includes ''financial advisers, placement agents, swap advisers'' and others. The law also reaffirmed the MSRB's authority to regulate the conduct of municipal securities dealers. At the same time, Congress required municipal advisers to exercise a higher, fiduciary standard of care to those municipal entities that seek their advice about municipal securities and other related financial matters.

During the Senate-House Conference for the Dodd-Frank Act, the conferees carefully considered and debated alternative approaches for overseeing municipal advisers and strengthening municipal securities market regulation. We recognized that the MSRB has written a comprehensive set of rules on key issues and said that the MSRB is well-equipped and experienced to write rules regulating participants in the municipal markets. Over the past decades, the MSRB has accumulated knowledge and hired specialized expertise to write rules regulating the complex and varied municipal securities market. In addition, the Banking Committee in its report, S. Report No. 111–176 accompanying S. 3217, said that the MSRB is in the best position to assure that rules are consistent with other rules governing the municipal markets.

Under the new law, the MSRB is expected to develop a robust system of regulation for intermediaries, including swap advisers, as it has for dealers. Swap advisers were specifically identified in the statute and made subject to MSRB rulemaking. The financial press has reported about State and local governments that received bad advice from advisers and entered into swaps and other derivatives that they did not fully understand, that are not performing as promised, and that are now costing them tremendous amounts to unwind. Those swaps are often tied to municipal securities issued by those same State and local governments and Congress recognized the experience of the MSRB in the regulation of the municipal markets.

The act, which authorizes MSRB regulation over municipal advisers, has limited exceptions, including an exception for commodity trading advisers registered under the Commodity Exchange Act or their associated persons who provide advice related to swaps. This exception covers swap dealers and major swap participants regulated by the CFTC. It does not extend to independent swap advisers or other types of municipal advisers not explicitly exempted, which are meant to be subject to the MSRB rules. I expect that the regulators of municipal swaps advisers would adopt rules governing advisory practices that are consistent with each other as well as relevant and appropriate for the municipal markets. Thus, municipal swaps advisers would be subject to practice rules embodying common principles, since they have the same types of clients.

NOMINATION OF ROBERT N. CHATIGNY

Mr. DODD. Madam President, I rise today to express my strong support for the nomination of Judge Robert Chatigny to serve on the U.S. Court of Appeals for the Second Circuit. I would like to thank my dear friend and colleague, Chairman LEAHY, for his efforts on this nomination. Chairman LEAHY, and his staff, does an outstanding job in seeking to ensure that the Federal courts function as our Constitution prescribes. I applaud him for his work and his commitment to the rule of law.

Judge Chatigny was first nominated to the Second Circuit last year, but after a sustained and, in my view, totally unwarranted attack on him by some, my colleagues on the other side refused to grant consent to allow his nomination to remain pending in the Senate. As a result, under rule 31, his nomination, along with 12 others, including 4 other judicial nominees, was returned to the President on August 5, prior to the August recess.

While I was extremely disappointed by this development, I am pleased that President Obama decided to renominate Judge Chatigny to this position. Judge Chatigny is an individual of outstanding character, keen intellect, and extensive judicial experience. I can think of few jurists more qualified to serve on the Second Circuit than he, and I congratulate President Obama on making such an excellent selection to fill this vacancy.

For 16 years, Robert Chatigny has been a Federal judge in Connecticut, serving as chief judge of the District of Connecticut from 2003 to 2009. In addition to ruling on a wide variety of cases, Judge Chatigny has earned a reputation for integrity, intelligence, and strict adherence to the rule of law.

I am pleased that Judge Chatigny has received the support of numerous former Federal prosecutors in Connecticut who understand the importance of upholding the rule of law and vouch for his character and his qualifications. Let me quote from a letter to the Judiciary Committee from three former U.S. Attorneys, each appointed by a Republican President:

> We believe that he is a fair minded and impartial judge, who has the appropriate fitness and temperament for the appellate court.

In addition, the Judiciary Committee has also received a letter signed by 17 former assistant U.S. attorneys currently practicing law in Connecticut, in which they express their confidence that he will be ''unbiased, compassionate, and temperate.''

This support demonstrates the high regard in which Judge Chatigny is held by the members of the legal community in Connecticut that know him best. In addition to the praise from the Connecticut Bar, Judge Chatigny has been unanimously rated ''well qualified'' by the American Bar Association.

Judge Chatigny's legal experience prior to his appointment reveals a rich understanding of—and deep commitment to—the American legal system. After graduating from Brown University and the Georgetown University Law Center, he served as a clerk to three Federal judges, including judges Jon Newman and Jose Cabranes. Prior to his service on the court, he built an excellent reputation in private practice, first as an associate here in Washington, before returning to private practice in Hartford for nearly a decade.

In addition, Judge Chatigny has devoted substantial time and effort to improving the legal profession. When the Governor of Connecticut sought experienced and knowledgeable public servants to help make better public policy, Judge Chatigny was an easy choice, serving on both the State Judicial Selection Commission and the State Commission on Prison and Jail Overcrowding. In addition, he has served in various roles with the Connecticut Bar Association, as well as being an advisor to the congressionally created Federal Courts Study Committee.

Unfortunately, Judge Chatigny has become the target of totally unjust attacks that threaten not only to defeat his nomination but also send a chilling