

Senators come down here to start the next—I see the Senator from North Carolina is here. I will move on. We will have to break off the debate for a short period of time. I hope we will have more time to debate later this evening, and then, pursuant to this unanimous consent that I will read, we will move tomorrow at 11 o'clock to reconsideration of this bill, bringing this bill back up for consideration, and debate the Boxer amendment.

Mr. President, I ask unanimous consent that the time between 11 a.m. and 2 p.m. on Thursday be equally divided for debate regarding the Feinstein amendment to H.R. 1122, that no amendment be in order to the Feinstein amendment, and, further, at the hour of 2 p.m., the Senate proceed to a vote on or in relation to the Feinstein amendment.

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

EXECUTIVE SESSION

FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

Mr. SANTORUM. Mr. President, in executive session I ask unanimous-consent the Senate now proceed to the consideration of Executive Calendar No. 2, the Treaty Doc. No. 105-5, the CFE Treaty.

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

The clerk will report.

The legislative clerk read as follows:

Treaty Document 105-5, Flank Document Agreement to the Conventional Armed Forces in Europe Treaty.

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

Mr. HELMS. I thank the Chair very much. Mr. President, may I ask that the unanimous-consent be stated as to time on this resolution of ratification?

The PRESIDING OFFICER. There are 1½ hours equally divided between the chairman of the Foreign Relations Committee and the ranking member.

Mr. HELMS. Senator BYRD has some time, too?

The PRESIDING OFFICER. And an additional 30 minutes for Senator BYRD.

Mr. HELMS. Very well. I do thank the Chair.

Mr. President, I yield myself such time as I may require.

The Senate Foreign Relations Committee this past Thursday reported a treaty to amend the Conventional Armed Forces in Europe Treaty. The vote was unanimous.

I have never hesitated to oppose, or seek to modify, treaties that ignore the best interests of the American people. As long as I am a Member of the U.S. Senate, I will be mindful of the advice and consent responsibilities conferred upon the Senate and the Senators by the U.S. Constitution. Therefore, I have never hesitated to oppose bad

treaties and bad resolutions of ratification without hesitation. But when a treaty serves the Nation's interests, if it is verifiable, and if the resolution of ratification ensures the integrity of these two points for the life of the treaty, I unflinchingly offer my support to it. That is why I support the treaty before us today.

In that connection, let the record show that the pending treaty was signed on May 31, 1996, and was not submitted by the President to the Senate for our advice and consent April 7, 1997. With the bewildering delay in the delivery of this treaty, the administration demanded action by May 15, 1997, which is tomorrow.

So, after wasting an entire year, the administration demanded that the Senate act on this treaty within 1 month's time. I believe it is obvious that the Foreign Relations Committee has been more than helpful in fulfilling its constitutional responsibilities to advise and consent.

The treaty before us today is a modification of the treaty approved by the Senate in 1991. Specifically, it will revise the obligations of Ukraine and Russia in what is known as the flank zone of the former Soviet Union. In recognition of the changes having occurred since the collapse of the Soviet Union, the 30 parties to the CFE Treaty have agreed to modify the obligations of Ukraine and Russia.

The 1991 CFE Treaty could not and did not anticipate the dissolution of the Soviet Union and the Warsaw Pact, let alone the expansion of NATO to include Central and Eastern Europe countries. Consequently, recent years have been occupied with efforts to adapt the treaty to the new security environment of its members.

Mr. President, in its essentials, the Flank Agreement removes several administrative districts from the old flank zone, thus permitting current flank equipment ceilings to apply to a smaller area. In addition, Russia now has until May 1999 to reduce its forces sufficient to meet the new limit.

To provide some counterbalance to these adjustments, reporting requirements were enhanced and inspection rights in the zone increased.

Mr. President, with the protections, interpretations, and monitoring requirements contained in the resolution of ratification, I recommend approval of this treaty because it sets reasonable limits and provides adequate guarantees to ensure implementation.

However, the simple act of approving this treaty does not diminish the need for further steps by the U.S. Government to strengthen the security of those countries located on Russia's borders. If this agreement is not implemented properly, Russia will retain its existing military means to intimidate its neighbors—a pattern of behavior with stark precedents.

As the Clinton administration is so fond of saying, this treaty is but a tool to implement the foreign policy of the

United States. During the past 4 years, the Clinton administration has remained silent while Russia has encroached upon the territory and sovereignty of its neighbors. It was the lack of a foreign policy—not a lack of tools—that allowed this to happen.

I have confidence that the new Secretary of State will correct the course of our policies toward Russia, and I gladly support this treaty to aid the Honorable Madeleine Albright in that endeavor. The collapse of the Soviet Union was one of the finest moments of the 20th century. To allow even a partial restoration of the Soviet Union before the turn of the century would be a failure of an even greater magnitude.

Mr. President, a final and related issue in the resolution of ratification is one upholding the prerogatives of the Senate in matters related to the ABM Treaty. During the past few years, the executive branch has sought to erode the Senate's constitutional role of advice and consent regarding treaties. In fact, the executive branch originally refused to submit for advice and consent the treaty that is before the Senate today. Through protracted negotiations, the Senate successfully asserted its proper role to advise and consent to new, international treaty obligations. Likewise, on revisions to the ABM Treaty, it is only through a legally binding mandate that we can ensure the proper, constitutional role of the U.S. Senate. I hope, Mr. President, that we can proceed to do that without delay. Mr. President, I ask for the yeas and nays on the resolution of ratification.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I believe the Senator from Delaware wishes to speak.

Mr. BIDEN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware.

Mr. BIDEN. Mr. President, let me begin by acknowledging what the Senator and chairman of the committee said, and that is that this treaty has been around a long time, and all of a sudden it came popping up here. Some of us, like the Senator from North Carolina and the majority leader and others, myself included, have felt it is a Senate prerogative to determine whether or not this flank agreement should be agreed to. It is an amendment to the treaty. The administration for a long time concluded it was not a prerogative of the Senate, and it was not necessary to submit this treaty.

Some have asked, why are we acting so expeditiously on this treaty? Why is there this deadline? Two reasons: One, we waited a long time to agree we had the responsibility to accede to this or it could not occur, and, two, there is a real May 15 deadline by which all 30 nations must ratify this agreement. If, in fact, they do not, the agreement will have to be reviewed by all of them.

We are right now dealing with the enlargement of NATO, we are now dealing with the NATO-Russia Charter, and if it looks as though the United States is reneging on this flank agreement, it can just create a lot of confusion.

Having said that, had I been chairman of the committee rather than the ranking member and had it been a Republican President, I probably would have spent more time chastising the administration than the distinguished Senator from North Carolina. He just rolled up his sleeves and said, "OK, this is a necessary and important treaty," and didn't spend a lot of time in recriminations about why it took so long to get here. I thank him for that, and I thank him for the way in which he moved this. I doubt there is any treaty or change in a treaty as significant as this that has moved as rapidly through the Foreign Relations Committee with as studied an approach as under the leadership of my colleague from North Carolina.

Mr. President, nearly 6 years ago, as chairman of the Subcommittee on European Affairs, I managed the ratification of the original CFE agreement for the then Democratic chairman of the committee. The treaty was, I believe then and I believe now, a monumental achievement, capping some two decades of negotiations between NATO and Warsaw Pact countries to establish a secure conventional military balance in Europe. I would argue, it was sort of the prelude to the undoing of our adversary at the time, the Soviet Union and the Warsaw Pact.

Mr. President, the treaty has succeeded as few other arms reduction measures have. Since 1992, it has fundamentally altered the military landscape from the Atlantic to the Urals, dramatically reducing the number of pieces of equipment that could be used to wage war.

In the last 5 years, the CFE Treaty has resulted in the removal or destruction of more than 53,000 pieces of heavy equipment, including tanks, artillery, armored combat vehicles, attack helicopters, and combat aircraft.

Since 1991, of course, the political face of Europe has changed dramatically. These developments had an impact on the relevance and potential durability of the CFE Treaty. Particularly effective were the so-called flank limits. To the average citizen out there, a flank limit is not much different than a flank steak or flank cut. The fact of the matter is, it has real significance; it is very important.

The flank limits were included to prevent military equipment that was removed from Central Europe from being concentrated elsewhere. We set limits on how much equipment could be set on that inter-German border, which we necessarily focused on for so many years. As that equipment was removed or destroyed, what we did not want to have happen is to have the Soviets take that equipment and move it into the flanks, moving it on the Turk-

ish border or moving it up by Norway and having a predominance of force accumulated there.

After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the so-called flank limits, did not adequately reflect its security needs in the flank zone. We had placed limits on what type of equipment and how much could be placed in these flanks. Had I a map, I would reference it, but the fact of the matter is, we put limits on this. After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the flank limits, did not adequately reflect its security needs in the flank zone.

Put another way, all those folks in the Caucasus and Transcaucasus are now independent countries. When this was negotiated, they weren't part of the deal. They weren't part of the deal, and it was some Soviet general in Moscow deciding what could and could not be done in those countries.

Now the Russians come back and say, "Hey, wait, this isn't the deal we signed on to." Russell Long—a great Senator who the Senator from North Carolina remembers well, but not nearly as well as the Senator from West Virginia sitting behind me—one of Russell Long's many expressions used to be, "I ain't for no deal I ain't in on." All of a sudden, the Russians realized that they had signed on to a deal that, in a strong way, they were no longer in on, as it related to what was left of the Soviet Union.

Consequently, the NATO alliance agreed to negotiations on revising these flank limits, and the result was the agreement before us now known as the Flank Document that was signed by 30 states parties—a fancy term for saying 30 countries—to the treaty in Vienna on May 31, 1996. Reiterating the point made by my friend from North Carolina, this was signed a year ago, 1996. I believe that our negotiators, while meeting some Russian concerns, did an excellent job of protecting the interests of this country and the democracies on the northern and southern flanks of the former Soviet Union.

The CFE Flank Document removes some areas from what we call the old flank zone, but maintains constraints on equipment both in the new flank zone and in the old one. There are also limits on armored combat vehicles in each area that were removed from the old flank zone so as to prevent any tremendous concentration of equipment in any one place.

We all are concerned about Russian troop deployments outside its borders, Mr. President. We cannot allow Moscow to coerce its independent neighbors into accepting the presence of foreign forces on their soil or into giving up their own rights to military equipment, which would now be folded into this total limit.

But I believe the Flank Document and the resolution of ratification now before the Senate addresses these con-

cerns and recognizes that sovereign countries must have the right to refuse Russian demands. Indeed, the chairman and I have found common ground on most of the issues in this resolution.

There are a total of, if I am not mistaken, 14 conditions, Mr. President. Two of these conditions of ratification, however, I think are extraneous and give me some concern. Of the 14, there are only two that I would flag for my colleagues, and I am not going to move to strike either one of them. I am not going to move to do anything about it. I just want to make the point of why I think they are unnecessary or counter-productive.

The first is condition 5, which includes a provision calling for a special report on possible noncompliance of the CFE Treaty by Armenia. I regret that this provision was included in the resolution at the insistence of the majority, but I am pleased that we have reached an agreement through the efforts of Senator JOHN KERRY and Senator SARBANES—and I am sure if they reached an agreement they must have run it by the distinguished Senator from West Virginia or it would not have been agreed to—to mitigate the one-sided nature of this original agreement.

More troubling, though, is condition 9. I will not speak more about condition 5 in the interest of time. Condition 9 also is insisted upon by the majority, and I note from a brief discussion, while working out yesterday out of the Senate environs with my distinguished friend from Virginia, that he feels very strongly about, and I happen to disagree with him on it.

Condition 9 requires the President to submit an agreement which will multilateralize the 1972 Anti-Ballistic Missile Treaty to the Senate for advice and consent. Put another way, there is a condition placed on here, very skillfully, I might add, by my friends who have concerns about the ABM Treaty that has nothing to do with this flank agreement. I was of the view it should not be included as part of a condition to this treaty. I did not have the votes. I must say to my friend from North Carolina, it is not merely because I hope I am a gentleman that I am not attempting to remove the condition, I do not have the votes to remove the condition, so I am not going to attempt to do something that I know will not prevail. But, I would like to point out, the condition is titled "Senate Prerogatives." The title is interesting but, I think, inaccurate.

I take a back seat to no one when it comes to Senate prerogatives. As a matter of fact, it was the Byrd-Biden amendment attached to the INF Treaty. We have been jealous of the protection of our constitutional obligations and responsibilities. With all due respect, and it sounds self-serving, but I take a back seat to no one in the Senate in terms of protecting the constitutional obligations and responsibilities of the Senate. But in this case, I do not

think we have a prerogative to exercise, notwithstanding condition 9 is called "Senate Prerogatives."

The issue involves two powers: recognition of successor states and the power to interpret and implement treaties, both of which are executive functions.

Mr. President, it is undisputed that the President has the exclusive power, under the powers of article 2 of the Constitution, to recognize new states. I am not going to take a long time on this, so don't everybody worry I am in for a long constitutional discussion; I am only going to spend another 3 or 4 minutes, but I want to make the point for the RECORD. Under article 2, section 2 of the Constitution, the President and the Senate have a shared duty to "make treaties." But once the treaty is made, it is the law of the land, and the President, under article 2, section 3, has the duty to take care that it is faithfully executed.

In exercising this duty, it is for the President to determine whether a treaty remains in force, a determination that, of necessity, must be made whenever a state dissolves.

So what are we talking about here? We had an ABM Treaty and CFE Treaty with the former Soviet Union. The Soviet Union dissolved. And the question remains, all those constituent countries that are now independent countries, is the President able to recognize Ukraine, for example, and, as a consequence, recognize the Ukrainians' assertion that they want to be part of the ABM Treaty? They were part of it when they were part of the whole Soviet Union, but as the constituent parts broke apart, the question was: As each individual country within that whole signs on to the continued commitment to ABM, does that require ratification by the United States Senate with each of them again? I would argue, and I will argue at a later date—I am sure we will hear more of this—that it does not require that. It is not a Senate prerogative.

In the case before us, the ABM Treaty, the President has the power to declare whether Russia and the other New Independent States inherit the treaty obligations of the former Soviet Union, provided those states indicate a desire to do so and provided that the succession agreement effects no substantive change in the terms of the treaty.

Both the Bush and Clinton administrations exercised this power following the breakup of the Soviet Union, Yugoslavia, Czechoslovakia, and Ethiopia as it relates to other issues, not as it relates to ABM. Moreover, it bears emphasis that the two arms control treaties, the CFE Treaty and the INF Treaty, were multilateralized by the executive action without the advice and consent of the Senate. By definition, we are all here, we are not asking for multilateralization of the flank agreement. It is somewhat curious that we say ABM requires the Senate to have a

treaty vote on every successor nation, but on CFE, which we all like and we have no substantive disagreement on, we are not asking for that.

So the point I am making is that this condition has nothing to do with CFE and it is more about whether you like ABM or do not like ABM, not about who has what constitutional responsibility, I respectfully suggest.

I agree with my colleagues on the other side of the aisle and the other side of the issue in one respect, that this is the subject of legitimate debate. But the debate, which I am confident we can win on the merits, can readily be conducted at another time on a more germane subject than a treaty that it has nothing to do with. Nonetheless, the majority insisted upon this extraneous condition, and I think I can count votes.

I will never forget going to former Chairman Eastland as a young member of the Judiciary Committee asking for his support. He sat behind his desk, I say to the chairman of the committee, and said, "Did you count?" I didn't understand what he said.

I said, "I beg your pardon, Mr. Chairman?"

He took that cigar out—I was asking to be chairman of the Subcommittee on Criminal Laws, because Senator McClellan had just passed away and, for years, it had been his job. It was a contest between me and another Senator.

I was looking at him, and he said, "Did you count?" I seriously did not understand what he was saying. "I beg your pardon?" I said. I tried to be humorous. I said, "Mr. Chairman, I don't speak Southern very well." He smiled and looked at me, and he took the cigar out of his mouth, and said, "Son, when you have counted, come back and talk to me."

Well, I learned to count. The reason I am not contesting this now, as I said, I counted. I do not have the votes at this moment to remove condition 9 and still get this treaty up and out of here in time. So I will reserve that fight for another day.

Despite the inclusion of condition 9, I will strongly support the flank agreement because of its integral role in protecting American interests in maintaining security and stability in Europe. Indeed, the Flank Document we will be voting on is an important bridge to the broader revision of the CFE Treaty now under discussion as we talk about the enlargement of NATO. Those talks will allow us to achieve further reductions in military equipment in Europe and ensure that the confidence-building measures embodied in the CFE Treaty remain in place.

Mr. President, the CFE Treaty is just one component of the architecture of arrangements, including NATO, the Partnership for Peace, the Organization for Security and Cooperation in Europe, all of which are designed to ensure that in the post-cold war era, the European nations remain free and inde-

pendent and are partners in a zone of security and prosperity.

But by maintaining the integrity of the CFE Treaty, we maintain the forum in which an enlarged NATO will make clear to Russia that our objective is stability in Europe, not military intimidation. Ratification of the flank agreement is a modest but important step toward the new European security system.

I urge my Senate colleagues to do two things—thank the chairman of the full committee for expediting this, and when we get very shortly to a vote on it, to vote their advice and consent to ratification.

I thank again the chairman of the full committee.

I reserve the remainder of my time.

Mr. HELMS. I thank the Senator from Delaware.

How much time do I have?

The PRESIDING OFFICER. The Senator has 41 minutes 42 seconds.

Mr. HELMS. I yield 8 minutes to the distinguished Senator from Virginia [Mr. WARNER].

Mr. WARNER. Mr. President, I thank my friend and colleague, the senior Senator from North Carolina. May I join others in urging that the Senate give its advice and consent to this very important treaty, a treaty brought forward by the leadership of the chairman and the distinguished ranking member at a critical time in the ever-increasing debates regarding Europe, whether it be NATO expansion or other issues.

I was prepared today to go toe to toe with my good friend, the ranking member of this committee, the Senator from Delaware, on the question of condition 9. I have spent a good portion of my career in the Senate on the question of the ABM Treaty. I think it was a very wise addition to this particular resolution of ratification, a provision, condition 9, that addresses the issue of the multilateralization of the ABM Treaty.

I go back to the Fiscal Year 1995 Defense Authorization Act, section 232. It was my privilege to introduce that provision as an amendment to that bill. That provision provided:

The United States shall not be bound by any international agreement entered into by the President that would "substantively" modify the ABM Treaty unless this agreement is entered [into] pursuant to the treaty making power of the President under the Constitution.

That is section 232 of the Fiscal Year 1995 Defense Authorization Act. That is precisely, really a recitation, of what condition 9 requires—follow the law of the land. President Clinton signed section 232 into law, and yet, time and again, this President claims exemptions from the requirement to submit to the Senate agreements which clearly change the rights and obligations of the United States under the ABM Treaty.

For years, I have joined a number in this Chamber, primarily the Republicans, in insisting that the "demarcation" agreement, which the administration is currently completing in negotiations with the Russians, represents again another "substantive" change to the ABM Treaty that must be submitted to the Senate. I am pleased that the administration has at long last acknowledged that very fact and has agreed to bring that demarcation agreement before this body for the advice-and-consent responsibility entrusted to the Senate by the Constitution.

I, like the Senator from Delaware, was concerned about the use of the word "prerogative" in condition 9. I view the advice and consent role as an obligation of the U.S. Senate under the Constitution of the United States. It is an obligation that we must exercise in cases such as the demarcation and the multilateralization of the ABM Treaty.

I ask my colleagues to indulge me just for a minute. I go back to May 1972, a quarter of a century ago. As a much younger man, I was privileged to be a part of the delegation, headed by the President of the United States, that went to Moscow for the summit which culminated in the signing of SALT I, the ABM Treaty and other agreements. The particular matter for which I had primary responsibility was the Incidents at Sea Executive Agreement, which was also signed at that time.

I had been in the Pentagon as Secretary of the Navy during the course of the negotiation of the ABM Treaty. As such, I have spent a good deal of my career, beginning with the inception of that treaty to date, in trying to analyze it and defend it. I think it is a valuable part of our overall arms control relationship with the then-Soviet Union and today Russia. But there is a limit to which that treaty should be applied to other activities that this Nation must now undertake—activities that were not contemplated at the time the treaty was negotiated.

One of those activities—and I do not know of a more important one—is to protect the men and women of the Armed Forces when they are deployed abroad, and any number of civilians in their positions abroad, from the ever-growing threat of short-range ballistic missiles.

Hopefully, this year we will forge ahead and finally clarify—clarify—the misunderstandings about what the ABM Treaty was intended to do and what it was not intended to do on this issue. I have talked to so many of my colleagues who were in that delegation a quarter of a century ago who had a primary responsibility for the ABM Treaty. One after one they will tell you that they never envisioned at that time, from a technological standpoint, this new class of weapons, namely, the short-range ballistic missiles, and that that treaty was never intended to apply to those missiles.

As the Senator from Delaware said, there will be another day on which we can have that debate on the issue of that treaty's application to the current research and development now underway to develop and deploy those systems desperately needed in the Armed Forces of the United States to protect us from the short-range threat, an ever-growing threat, which is proliferating across the world.

The Foreign Relations Committee did precisely what it should have done: included in as condition 9 the protection of future debate on the ABM Treaty such that the U.S. Senate can make the decisions as to whether or not there are successions to the ABM Treaty by other nations.

The ABM Treaty was contemplated, negotiated, and signed as a bilateral treaty. It was approved by the Senate as a bilateral treaty. It strains credibility for the administration to now argue that the conversion of that treaty from a bilateral to a multilateral treaty is not a "significant" change to warrant Senate advice and consent.

At the time this treaty was negotiated, no one involved in the negotiations could ever have envisioned the dissolution of the Soviet Union in their lifetimes—much less within 20 years. Likewise, technical advances in the areas of both strategic offensive and defensive systems could not be adequately anticipated. That is why the treaty has provisions for amendment to adapt it to changing times circumstances, and technologies. I am personally of the view that this treaty should have been—and still needs to be—amended to allow the United States to protect its citizens, stationed abroad from short-range ballistic missile attacks which were not contemplated 25 years ago. But I also strongly believe that any amendment which alters U.S. rights and obligations—any substantive changes—must be submitted to the Senate for advice and consent.

We could argue for days about the international legal principles and requirements in this area. But one thing is clear—domestic law on this issue is unambiguous. Section 232 of the fiscal year 1995 Defense authorization bill, which I referred to earlier, clearly requires the President to submit for Senate advice and consent any international agreement which substantively modifies the ABM Treaty.

It is clear that multilateralization would constitute a substantive change to the ABM Treaty. For 25 years, this has been a bilateral treaty. If new parties are added, the geographic boundaries, which govern many aspects of the treaty, would be changed. Existing U.S. rights under the treaty to amend it by bilateral agreement would be lost. The draft memorandum of understanding on succession, the three new states parties will be given full voting rights in the Standing Consultative Commission [SCC], the body which supervises treaty implementation and negotiates

amendments to the treaty. According to the guidelines of the SCC, changes to the ABM Treaty can only be made through a consensus of the parties. That means that any one of these three new states parties could block United States efforts to amend this treaty to allow for effective missile defenses to deal with current threats—even if the Russians agree to the changes.

The succession issue with the states of the former Soviet Union has been handled on a case-by-case basis. In the case of the CFE Treaty and the START I Treaty, the Senate specifically addressed the succession issue during consideration of the resolutions of ratification for those treaties. INF succession was handled without Senate involvement. It is clear that the matter of succession—far from being a legal absolute—is, at best, a murky legal issue.

The unique status of the ABM Treaty was highlighted in the 1994 legislation requiring Senate advice and consent of any international agreement that "substantively" modifies the ABM Treaty. This is not the case for the hundreds of other treaties we had in effect with the former Soviet Union.

Since the ABM Treaty reinterpretation debate of the late 1980's, the Democrats have insisted that any change to a treaty that differs from what was presented to the Senate at the time of ratification must be resubmitted to the Senate or the Congress for approval. Multilateralization of the ABM Treaty is not simply a reinterpretation of the treaty, it is a substantive change to the treaty text. By the Democrats own standards, such a change should clearly require Senate advice and consent.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I appreciate very much the comments by the distinguished ranking member of the Foreign Relations Committee. I must say for the record that I also enjoy the privilege of working with him. I think the committee has been more active in the last year or two than it has been for some time. But in any case, I am grateful to Senator BIDEN.

Mr. President, the history of the succession agreements to the various treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of ABM multilateralization. In only one case was advice and consent not required for multilateralization on an arms control treaty. Because the INF Treaty carried the so-called negative obligation of not possessing any intermediate-range nuclear missiles, that treaty could be multilateralized without altering any treaty terms or imposing any new treaty rights or obligations on the United States or new parties.

Multilateralization of the START I Treaty under the Lisbon Protocol, on the other hand, required Senate advice

and consent because this change had clear implications for the treaty's text and object and purpose. The Lisbon Protocol determined the extent to which countries other than Russia would be allowed to possess strategic nuclear weapons. Similarly, ratification of the Lisbon Protocol also effectively determined successorship questions to the Treaty on Non-Proliferation of Nuclear Weapons, NPT. Under that protocol, Belarus and other countries agreed to a legally binding commitment to join the NPT as nonnuclear weapons states. Thus when the Senate offered its advice and consent to the Lisbon Protocol, it approved successorship to both the INF and the START treaties.

Finally, the Senate specifically considered the question of multilateralization of the Treaty on Conventional Armed Forces in Europe under condition 5 of the resolution of ratification for the CFE Treaty.

Under article II, section 2, clause 2 of the Constitution, the Senate holds a co-equal treaty-making power. John Jay made one of the most cogent arguments in this respect, noting:

Of course, treaties could be amended, but let us not forget that treaties are made not only by one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be in order to alter . . . them.

Now, my colleagues of the Senate may disagree on the wisdom of continuing the national strategy embodied in the ABM Treaty. Where I hope all of our colleagues could agree, however, is on the imperative of upholding the constitutional responsibilities of the Senate, as reposed in this body by the Founding Fathers.

Mr. Justice Frankfurter stated:

The accretion of dangerous power does not come in a day. It does come, however, slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

I know the administration has demonstrated nothing if not disregard for the Senate's constitutional authority. The Senate's duty with regard to the issue of ABM multilateralization is, I believe, Mr. President, clear.

I yield the floor.

How much time does the distinguished Senator from Texas want?

Mrs. HUTCHISON. I do not know what the time limitations are. At least 10 minutes, in your range, or I could cut it back.

Mr. HELMS. If the Senator could do with 8 minutes, I think I could cover everybody, and the distinguished President pro tempore.

Mr. THURMOND. I need about 10 minutes. I can ask for extra time.

Mr. HELMS. Why don't you proceed.

Mrs. HUTCHISON. I will be happy to yield to the distinguished Senator.

Mr. HELMS. I say to Senator THURMOND, you have been yielded to by the distinguished Senator from Texas.

Mrs. HUTCHISON. Would you like to go next, Mr. Chairman?

Mr. THURMOND. Whatever suits you.

Mrs. HUTCHISON. After him, if I could have 8 to 10 minutes.

Mr. HELMS. Yes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the CFE Flank Document resolution of ratification. My support of the CFE Flank Document is based largely upon the 14 conditions that the Foreign Relations Committee attached to the resolution of ratification. I am particularly pleased that the Foreign Relations Committee included condition 9, which deals with the Senate's prerogatives on multilateralization of the ABM Treaty. This has been an issue with which the Armed Services Committee has been deeply involved for many years.

I would strongly oppose any effort to dilute or eliminate condition 9 from the resolution of ratification. Condition 9 does not take a position, as such, on the ABM Treaty or treaty succession. It simply seeks to protect the Senate's prerogatives in case the treaty is substantively changed. I find it difficult to believe that any Member of this body would be opposed to this objective. In my view, it is a solemn and fundamental obligation of a Senator to consistently guard the rights and prerogatives of the Senate, regardless of which political party may occupy the White House at any given time.

Mr. President, although international law is ambiguous on the question of treaty succession, the U.S. Constitution and statutory law is clear. As section 232 of the National Defense Authorization Act for fiscal year 1995 states, "the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution." This provision originated as an amendment sponsored by Senator WARNER of Virginia and Senator Wallop of Wyoming, two of the Senate's foremost experts on the ABM Treaty.

Notwithstanding the administration's assertion that treaty succession is an executive branch responsibility, or any argument that one might derive from international law, the real issue is simple and clear. Only one overarching question needs to be answered: Does multilateralization of the ABM Treaty constitute a substantive change to the treaty? If so, the President has no choice, under the law and the Constitution, other than to submit such an agreement to the Senate for advice and consent.

Ironically, those who have asserted that the President does not need to submit the multilateralization agreement to the Senate for advice and consent have not even attempted to answer the one relevant question: Is it a substantive change or not? Instead they have chosen to base their views

strictly on ambiguity-laden international law and a simple assertion of executive prerogative.

If one carefully analyzes the issues associated with ABM Treaty multilateralization, it is difficult to avoid the conclusion that the ABM Treaty will indeed be modified in several substantive ways. The conferees to the fiscal year 1997 Defense Authorization Act recognized this in stating that "the accord on ABM Treaty succession, tentatively agreed to by the administration, would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution." This conference language, which was supported overwhelmingly on a bipartisan basis, was the culmination of 2 years of effort by several key Senators on the Armed Services Committee: I have been joined in this fight by Senator LOTT of Mississippi, Senator WARNER of Virginia, Senator—now Secretary of Defense—Cohen of Maine, and Senator SMITH of New Hampshire, as well as other stalwart supporters of the Senate's prerogatives.

Why would multilateralization of the ABM Treaty constitute a substantive change? First, because the basic strategic rationale for the treaty would be altered. The ABM Treaty was intended to be part of an overarching arms control regime for regulating United States-Soviet competition in strategic offensive forces. But under a multilateral ABM Treaty, some members will have neither strategic offensive nor strategic defensive forces, and hence no direct stake in the treaty's subject matter. Overall, the United States faces strategic and political circumstances that are vastly different than those that existed in 1972 when the ABM Treaty was signed. The Senate must carefully consider how these bear on the issue of treaty succession.

Second, the ABM Treaty will change from a treaty between two equal parties to one in which different parties have different rights and obligations. Some states will be entitled to a deployed ABM system, others will not. The United States will also face four states rather than one at any future negotiation concerning the future of the treaty. This clearly diminishes the weight of the American vote in the Standing Consultative Commission and increases the complexity of seeking changes or clarifications to the treaty.

Third, the actual mechanics of the ABM Treaty will be altered by multilateralization since the treaty is largely defined in terms of "national territory." Some items that are regulated by the treaty, including large phased array radars, are currently located outside the national territory of any of the states that plan to accede to the ABM Treaty. Also, those former Soviet States that opt not to stay in the treaty would be legally permitted to deploy an unlimited ABM system even though their national territory

was formerly covered by the treaty's definition of Soviet "national territory."

Mr. President, these are only a few of the ways in which a multilateral ABM Treaty would constitute a substantive change from the original treaty. The evidence is overwhelming. For the Senate to do anything other than to insist on its right to provide advice and consent to such an agreement would be an abandonment of its rights and obligations. I urge my colleagues to stand together on this important constitutional prerogative of the Senate. The executive branch must not be permitted to circumvent the Senate on a matter of such fundamental importance.

The PRESIDING OFFICER (Mr. AL-LARD). The Senator from Texas is now recognized for 8 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the committee and, of course, the distinguished senior Senator from South Carolina.

Mr. President, there is no Senate responsibility I take more seriously than the obligation we have to advise and consent on treaties. We are discussing two treaties today that mark the past and the future of arms control. It is interesting to me that they have become linked in the manner before us today. I commend the distinguished chairman of the Foreign Relations Committee for his vision in this effort.

The Conventional Forces in Europe Treaty is a pillar of post-cold-war security in Europe. That treaty, over a decade in negotiation and finished by President Bush in 1990, solidified NATO's victory in the cold war by dramatically reducing the size of the conventional forces arrayed against each other.

That treaty also restricted the areas on the flanks of Europe where the Soviet Union or its successors could place troops and equipment. This particular provision was one of the most difficult to negotiate because it was one of the most meaningful. By restricting the size of forces on Europe's northern and southern flanks, we greatly reduced the likelihood that the Soviet Union or its successors could conduct an effective assault on western forces.

Because of the importance of this provision, it is with great reluctance that I support the changes to the agreement before us today, which will relax these flank restrictions.

It is true that over 50,000 pieces of equipment limited by the CFE Treaty have been destroyed or removed since the treaty went into effect. Nevertheless, with the changes in the agreement regarding the flanks of Europe, we will all have to be watchful that we not slide back too far from the high standard we set for ourselves and for Russia in the original treaty.

Mr. President, I will also say that we will have to reevaluate our actions when we learn the full details of the NATO-Russia agreement just an-

nounced today. For example, I am hopeful that we did not place unilateral restrictions on our own ability to deploy troops in the potentially expanded area of NATO responsibility in exchange for Russia support for NATO expansion. I light of the changes we are making to the CFE Treaty—permitting Russia to deploy forces in areas that have been off-limits until now—such a unilateral restriction on our own ability to move troops around Europe would be shortsighted indeed.

Even with these reservations, though, I am willing to support the treaty document before us today because of condition 9, which will require the President to submit to the Senate for ratification any substantive changes to the Anti-Ballistic Missile Treaty. My support for an effective, global ballistic missile defense system greatly outweighs the concerns I may have with changes to the CFE Treaty.

Mr. President, if the CFE Treaty is a forward looking treaty that reflects the new realities of post-cold-war Europe, the ABM Treaty is an outdated document that harkens back to an era that is thankfully behind us. The ABM Treaty was with the USSR. Now that the cold war is over it is restricting the inexorable march of technology, a technology that I am convinced will make ballistic missiles obsolete.

The Clinton administration wants to bring new countries into this outmoded agreement. If the United States was limited in its ability to deploy an effective missile defense when the treaty was with Russia alone, how much more restricted will we find ourselves when there are half-a-dozen or more new members in this treaty?

The document before us today does not prejudice the Senate's action regarding the ABM Treaty. It only says that if the President wishes to permit other countries to join this treaty, then the Senate must fulfill its constitutional role to advise and consent on such a change to the treaty. Colleagues will have the opportunity at that time to debate the merits of bringing new countries into the treaty or simply letting this treaty fade into the history it represents.

While I support the latter, we aren't deciding that matter today. Today, we're simply asserting our prerogative to advise and consent on treaties. No Member of this body should be comfortable that any administration would want to make major modifications to a treaty without Senate approval.

I urge my colleagues to support the resolution of ratification before us today and assert their rights as a Member of the U.S. Senate. I commend Senator HELMS once again with the wisdom and leadership, a staunch defender always, of senatorial prerogatives and U.S. national security.

I commend all of those who are going to stand for the rights of the Senate and therefore the people, to change any potential treaty that this country has committed itself to, because we will

keep our treaty obligations and we must make sure that the people of our country are informed and support any changes in those treaties.

I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 12 minutes.

Mr. KERRY. Mr. President, before the Senate this afternoon is the task of taking the appropriate action, in fulfillment of the Senate's vital constitutional advice and consent responsibility and power, to adapt the Conventional Forces in Europe [CFE] Treaty to the constant change that affects our world—change which has been more sweeping and profound in Europe in the past 7 or 8 years than at any time in the preceding 40.

In 1990, after years of grueling negotiations to control the historically unprecedented conventional weaponry arrayed on opposite sides of the Iron Curtain in Central Europe, the CFE was signed. It entered into force in November of 1992. The long, difficult journey that led to the CFE treaty included one failed effort—the Mutual and Balanced Force Reduction Treaty episode—where negotiators eventually had to throw up their hands and acknowledge defeat in their efforts. But fortunately that failure was not permitted to become permanent. With U.S. leadership, efforts recommenced, and the CFE is the result.

The CFE treaty is the first in the post-World War II period to succeed in limiting and reducing conventional weaponry. While understandably strategic weapons treaty negotiations captured greater attention, since those negotiations addressed weapons of mass destruction each of which can annihilate great numbers of people and large cities, the CFE arguably addressed the greater threat to peace in Europe, because I believe it always was more likely that any conflict there would start as a conventional conflict. The CFE negotiating effort was successful in large part because it approached the issue of obtaining multilateral agreement to limitations of key offensive-capable weapons systems on an alliance-to-alliance basis—addressing on the one side the armaments possessed by not only the Soviet Union but all the Warsaw Pact nations taken together, and on the other side the armaments possessed by all the NATO nations taken together.

The CFE placed numerical limits on the numbers of five types of weapons systems critical to effective offensive operations which each alliance could possess in the Atlantic-to-the-Urals region of Europe where the Warsaw Pact confronted NATO: tanks; artillery pieces; armored combat vehicles; attack aircraft; and attack helicopters. It also contained sublimits based on

geographical regions—in realization of the fact that while a certain number of the covered items might not be a threat to peace or indicate diabolical intentions if spread evenly across the entire geography of each alliance, that same number if massed in a subregion could be threatening indeed and could indicate intentions to launch an attack or engage in other destabilizing behavior.

The treaty has been a notable success. It has resulted in reductions of over 50,000 items of heavy military equipment, verified by an intrusive verification regime that has included nearly 3,000 on-site inspections conducted to date under treaty auspices. It has worked and worked well. It is not a prospective treaty about which we all must guess or predict. It is a here-and-now, real-world treaty that has resulted in tangible reduction in armaments and consequently in real reduction in the threat of conflict. It is a treaty that we would do well to preserve and protect.

Its underlying premise remains valid. If buildups of a critical mass of the categories of treaty-limited equipment can be prevented, it will be very difficult for any nation to launch an attack against another with a significant prospect of success. And even if a nation seeks to flaunt the treaty's terms, and engage in a buildup of these weapons systems for the purpose either of conducting offensive military operations or engaging in a form of extortion, the treaty's verification procedures will reveal those efforts so that appropriate diplomatic and military responses can be made, and its terms give the other parties to the treaty the means to condemn violative activities and to enlist the community of nations in efforts to prevent escalation into conflict.

The implementation and ongoing administration of every treaty result in cases of different interpretations and various disagreements, and the CFE Treaty is no exception. But the mechanisms included in the treaty for resolving such conflicts or disagreements have worked reasonably well. And one can presume that the treaty would have continued to make a significant contribution to the security of Europe and, in turn, of the globe in a relatively smooth manner had the world remained as it was when the treaty was negotiated and entered into force. But, of course, the world has not stood still. The Soviet Union imploded. The Warsaw Pact disintegrated. Some of the very nations and armies that stared across the Iron Curtain at NATO's forces and their key United States components have become great friends of the United States and other NATO nations. Several of these appear to be on the verge of becoming a part of NATO itself. That, of course, is a matter of considerable controversy which should be and I trust will be debated separately and thoroughly. But our focus today is or should be on the CFE treaty.

In addition to the disappearance of the Soviet Union and the Warsaw Pact, and the realignment of some of the former pact nations with the North Atlantic Alliance, other components of the Eurasian security picture have changed dramatically. No longer is Russia's biggest concern the need to be ready for full-scale battle with NATO troops on the German and Benelux plains. Today ethnic conflict in some provinces and efforts of other provinces to obtain independence require much greater Russian attention. The ferment in the Middle East, and activities in Iran and Turkey south of the Russian Caucasus region also are of greater concern to Russia.

Not surprisingly the alterations in Russia's view of its own security picture resulted in alterations in what it believed to be the vital disposition of its security forces. Other nations of the former Soviet Union, including Ukraine, and of the now-defunct Warsaw Pact were faced with unanticipated anomalies resulting from the new maps of Eurasia. The changes occurred in and affected primarily one of four zones to which the CFE Treaty applies, the so-called flank region which consists of Norway, Iceland, Turkey, Greece, Romania, Bulgaria, Moldova, Georgia, Azerbaijan, Armenia, and parts of Ukraine and Russia.

To address the desires by Russia, Ukraine, and others to reallocate their forces, but to ensure that those reallocations protect the accomplishments and security provided by the CFE, the parties to the CFE Treaty negotiated the so-called flank agreement consisting of amendments to the original CFE treaty. The parties agreed to the flank agreement on May 31, 1996. It will enter into force if approved by all CFE Treaty party states by May 15, 1997.

The agreement does not change numerical limits for either of the two major sides of the post-World War II European alignment. Instead, it adjusts the boundaries of the flank, providing Russia and Ukraine more flexibility than they had before with respect to deployment of equipment limited by the treaty.

The flank agreement is in NATO's security interest, and, specifically, it is in the security interests of the United States. Without the adjustments it provides, it is likely Russia and possibly Ukraine would feel so impeded in their ability to meet their own national security requirements that they either would leave the treaty altogether or fail to comply with some of its provisions. The implications of neither of these outcomes would be acceptable, and would weaken or destroy the protections and added security offered by the CFE Treaty.

The judgment that the flank agreement is in our national interest is not just a judgment of our diplomatic community. It is fully endorsed by our Armed Forces leadership. On April 29 of this year, Brig. Gen. Gary Rubus testified:

In the judgment of the Joint Chiefs of Staff, the Flank Agreement is militarily sound. It preserves the CFE treaty and its contribution to U.S. and Allied military security. The additional flexibility permitted Russia in the flank zone does not allow a destabilizing new concentration of forces on the flanks of Norway, Turkey and other States in that area. Moreover, the agreement includes significant new safeguards, including greater transparency and new constraints on flank deployment:

The benefits of this agreement are apparent. The Foreign Relations Committee last week approved the resolution of ratification by a unanimous vote of 17-0. I am confident that a great majority of Senators approve of the flank agreement. But I am very troubled by how some in the majority seem determined to transform the constitutional treaty advice and consent process into an obstacle course.

The Foreign Relations Committee last week approved the resolution of ratification by unanimous vote. Mr. President, as the Foreign Relations Committee last week approved this by unanimous vote of 17 to 0, it doesn't mean that there were not some reservations. I just want to speak to them.

I am confident that the great majority of our colleagues will support the Flank Agreement. But I am troubled by the way in which some have transformed the constitutional treaty advice and consent process into something of an obstacle course that involves things that aren't directly in the treaty.

The conditions for ratification which the majority required before it would permit the Foreign Relations Committee and then the full Senate to perform the advice and consent role, fall into four rough categories. I find several of them—primarily those which the Senate appropriately and routinely attaches to treaties—beneficial and desirable. I find several others reflect a degree of fear and anxiety on the part of some Members, the basis for which I cannot ascertain—but which, all things told, appear unlikely to do fundamental damage to what should be our objective here: To keep the CFE Treaty in operation in order to continue to derive its benefits to security in Europe and a reduction in the risk of conflict there.

The third category, Mr. President, consists of a condition whose objective may have been desirable but which inadvertently or inadvisedly singles out one nation for implicit criticism when the kinds of actions it is implicitly criticized for taking may place it in the company of other nations in its region, and when it would be more appropriate to address these situations as a group so that all nations are held accountable to the same treaty standards. I speak of paragraph F of condition 5 which, in the form approved by the committee, singles out Armenia and requires a report directed solely at its activities and whether they comply with the terms of the treaty. I will address that matter separately, and will

offer an amendment to establish what I believe is an important balance and equity with respect to the entire Caucasus region.

Then, Mr. President, there is condition 9 which forms a special category all its own. I understand why a Senator who has not been deeply involved in the Senate's processing of the CFE Flank Agreement may be puzzled by the fact that condition 9 pertains to the ABM Treaty. In fact, I have been involved in the effort to move the Flank Agreement to Senate approval, and I cannot discern a reasonable or defensible rationale to link the issue of multilateralization of the ABM Treaty to action on the CFE Flank Agreement except for the reason of taking something that ought to happen that is important to our security and linking it to something that is not necessarily yet thoroughly considered by the Senate.

But even so, I do believe I understand what is going on here. Proposed condition 9 is hostage-taking, pure and simple. I think there are some who have a fundamental aversion to arms control agreements and want the United States to simply go it alone in the interdependent world of the last decade of the 20th century. Unfortunately they insist that unless the President concedes to their position on the unrelated issue of ABM multilateralization, they will refuse to let the United States ratify the CFE flank agreement.

I readily agree that the issues surrounding the ABM Treaty are both vital and very controversial. The Committee on Foreign Relations, with the contribution of the Committee on Armed Services, should devote considerable time and energy to thoroughly exploring those issues, and then the Senate as a whole should carefully determine how to proceed with respect to them.

But I want to register the strongest possible dissent from this tactic of hostage-taking. In my judgment these issues are separate and ought to be treated separately. Treaties are fundamentally different than bills on which this Congress acts on a daily basis. We ought to approach our advice and consent responsibility—a solemn constitutional duty—with more abstract side bar process. We should not load up resolutions of treaty ratification with essentially nongermane amendments.

Further, purporting to resolve the complex and very important ABM issues by attaching a condition to a wholly unrelated treaty—and without thoroughly airing and deliberating on those issues at the committee level via hearings and other means—is risky and ill-advised. Because I understand the power of the majority, perhaps the most significant feature of which is its considerable control over determining whether and when the Senate will address important issues, and because I believe it is of great importance that this flank agreement be considered and

acted on by the full Senate, and that the Senate do so prior to the May 15 deadline which is imminent, I did not seek because of my aversion to condition 9 to derail the Foreign Relations Committee's action on the resolution of ratification last week, but I expressed my concerns which were published as additional views in the committee's report on the resolution.

Mr. President, as Senators, every one of us is sworn to uphold the Constitution. In my judgment that requires maintaining the separation of powers which plays so critical a part in maintaining the equilibrium of our unique form of government which has permitted it to survive and function successfully for over 200 years. Maintaining the separation requires a careful allegiance to preserving and protecting not only the constitutional obligations, responsibilities, and prerogatives of the legislative branch, and the Senate in particular, but also of the judicial and the executive branches.

We in this Chamber are most accustomed, understandably, to rising to the defense of the responsibilities, role, and prerogatives of our own branch and our own Chamber. I have joined many times in such efforts. Indeed, the very fact that the CFE Flank Agreement is being considered by the Senate is attributable to an effort to assert that the Senate properly should act on that agreement under the treaty clause of the Constitution because it substantively alters the original CFE Treaty.

It is my view, and, I believe, the view of most Senators on both sides of the aisle who have carefully examined the issue, that the ABM Demarcation Agreement also makes a substantive change in a treaty to the ratification of which the Senate previously gave its advice and consent—thereby necessitating that U.S. ratification of the Demarcation Agreement can occur only if the Senate gives its advice and consent by means of the complete constitutional process.

But the ABM Succession Agreement is a different matter entirely. It effects no substantive change in the ABM Treaty or any other treaty. It does one and only one thing: It codifies the status with respect to the treaty of the states which succeeded to the rights and obligations of the former Soviet Union. It is a function of the executive branch, not the legislative branch, to determine if new nations which descend from a dissolved nation inherit the predecessor nation's obligations such as those under a treaty. This is not a matter of defending a Senate right or obligation or prerogative; the Senate has no right, obligation, or prerogative to defend with respect to determination of succession.

This principle has been illustrated on many occasions by its application. Recently, and of direct relevance, it has been applied in a number of circumstances with regard to the dissolution of the Soviet Union.

I believe I understand the objective here, Mr. President, and I do not believe it is the defense of a nonexistent constitutional principle or a nonexistent constitutional right or prerogative of the Senate. This is a wolf in sheep's clothing—a maneuver by opponents of the ABM Treaty to gain strategic advantage in their quest to demolish the ABM Treaty. The objective is to give them one additional shot at killing the Treaty.

I am prepared for the debate on the ABM Treaty. I look forward to thoroughly assessing whether this treaty continues to serve our Nation's security interests as I strongly believe it has well served those interests since its ratification. I look forward to examining in detail the probable reactions in Russia and elsewhere if we abandon the treaty.

But let me return to an earlier point that ABM opponents have shown they are willing to ignore. The Senate is not currently debating the ABM Treaty. The matter that is before us today is the Conventional Forces in Europe Treaty Flank Agreement. Condition 9 is an unwise, unnecessary, destructive digression from what we should be doing here today. It is yet another example of distressing political expediency too often illustrated in this Chamber in recent years. Fortunately, that expediency rarely has sunk to the level of sacrificing a vital constitutional principle—such as the separation of powers—for the sake of tactical gain. But, Mr. President, let there be no mistake: It is sinking to that level today in condition 9.

When we do such things, Mr. President, there is a price to be paid. Either we who serve here today will pay that price at a later time, or those who follow in our footsteps will pay that price. We deserve the Constitution we are sworn to uphold when we permit that to occur.

I must remark, Mr. President, on the peculiar and troubling silence of the administration on this issue. The administration, by position and motivation, is best situated to defend the constitutional prerogatives and responsibilities of the executive branch. And yet, for some unknown reason, perhaps a tactical calculus, or exhaustion, or distraction—for some reason—the administration never even joined this issue. I say to the administration: Despite the appearances given by your silence and inaction on this issue, this truly does matter in the long run. And this administration, and others to follow it, will regret this day. Much more is being ceded here than the authority to decide what nations properly hold the obligations of the ABM Treaty that previously were held by the Soviet Union.

Mr. President, I strongly support the ratification of the Flank Agreement. Before we vote on the resolution of ratification, I will offer the amendment I referenced earlier to address the Caucasus region, which I hope will be

approved. Then, despite the reservations about condition 9 I have enunciated, because of how important I believe the CFE Treaty is and will continue to be to European security and stability and therefore to world security and stability, I will vote to approve the resolution of ratification and urge all other Senators to do so.

QUESTIONS OF TREATY ADHERENCE IN THE
CAUCASUS

Mr. President, the Conventional Forces in Europe Treaty was negotiated to limit the numbers and geographical distribution in Europe of five key types of offensive-capable weapons systems. The treaty contains sublimits for portions of the Atlantic-to-the-Urals region covered by the treaty that apply to the five types of treaty-limited equipment.

The treaty, when it was negotiated, was focused on the protracted cold war and the confrontation at the Iron Curtain that ran through Central Europe. Its design was to make it less likely that the cold war would turn hot, by making it more difficult to amass sufficient quantities of the weapons systems that would be needed for a successful attack of one side on the other, or, at the very least, to amass such weaponry without the other side being aware of the preparations for such an attack. The weapons limitations and the transparency are the treaty's keys.

But as the astonishing events of the late 1980's and early 1990's unfolded, the entire structure of Europe changed in such a fashion as to be virtually unrecognizable. For the most part, this was a very welcome change. For the first time in 40 years, there was no tense face-off of the world's greatest armies at the Warsaw Pact/NATO border.

But the disintegration of the Soviet Union, which was one of the most prominent of the changes in the region, removed the authority and control that had kept a lid on ethnic conflicts and territorial disputes in several regions of what had been the Soviet Union. Ancient tensions and hatreds soon began to bubble to the surface, and nowhere more so than in the Caucasus region.

The Russian province of Chechnya sought to secede from Russia. Ethnic Armenians in the Nagorno-Karabakh region of Azerbaijan sought to gain independence so they could align with Armenia. Abkhaz separatists in Georgia have fought a long-running civil war with the central government.

Wars and revolutions are fought with weapons, of course. All parties to these conflicts have done all in their power to increase their firepower. Not surprisingly, these actions, when they involve treaty-limited equipment, have implications for the CFE Treaty even though contending with such situations was not the primary purpose for which the treaty was negotiated.

Responding to an allegation made publicly by a Russian Army general who now serves in the Duma, the majority included in the text of the reso-

lution of ratification of the CFE flank agreement, as a part of condition 5 titled "Monitoring and Verification of Compliance," paragraph F, which is a requirement that the President submit a report to the Congress regarding "whether Armenia was in compliance with the treaty in allowing the transfer of conventional armaments and equipment limited by the treaty through Armenian territory to the secessionist movement in Azerbaijan."

Mr. President, wherever there are credible allegations or concerns that the provisions of any arms control treaty have been violated, those allegations or concerns should be explored thoroughly and the truth determined. That, certainly, applies in this case. However, I believe this portion of condition 5 is too limited in its scope, and because of that limitation, leaves the impression that the Senate is not as concerned about the effects on the treaty of arms transfer and acquisition actions in other areas of the Caucasus region.

If we are to carefully examine alleged violations of treaty provisions in one specific location in this conflicted region, we should direct the same level of inquiry at all portions of the region. We know that arms buildups in other Caucasus locations have violated provisions of the CFE Treaty. Some of those violations, in fact, have been openly acknowledged.

It is my belief that the Senate should address this matter directly, and do so by expanding the scope of the report that will be required by paragraph F of condition 5. Together with Senator SARBANES, and with the support of several other Senators, I have prepared an amendment to do this. The amendment inserts a new subparagraph ii requiring that the President's report address "whether other States Parties located in the Caucasus region are in compliance with the Treaty." The President also must indicate what actions have been taken to implement sanctions on any of these states found to be in violation.

I believe this change will make this provision of the resolution of ratification more useful. Because the report the Congress will receive will give a more complete picture of the level of compliance with or violation of the CFE Treaty in the Caucasus region, the United States can formulate a response that will be more complete and suitable.

AMENDMENT NO. 279

(Purpose: To require a compliance report on Armenia and other States Parties in the Caucasus region)

Mr. KERRY. Mr. President, the amendment that I send to the desk is an amendment that seeks very simply to create the equity and balance that I sought with respect to the question of Armenia.

I believe that we have an agreement on this language. It will simply reflect that we ought to hold all nations in the area to the same standard.

In my judgment, it is self explanatory. I believe it has been approved by both sides as a consequence of that.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, Mr. BIDEN, Mr. SARBANES, Mr. ABRAHAM, and Mrs. FEINSTEIN, proposes an amendment numbered 279.

Mr. KERRY. 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:

Strike subparagraph (F) of section 2(5) and insert the following:

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER STATES PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i) or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

Mr. KERRY. Mr. President, I believe we have an agreement on this particular amendment.

I thank the distinguished chairman of the Foreign Relations Committee for working, as he always does, in order to find a common ground in these matters.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 279) was agreed to.

Mr. KERRY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I yield 6 minutes to the distinguished Senator from New Hampshire, [Mr. SMITH].

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee.

Mr. President, I rise in strong support of the resolution of ratification reported by the Senate Foreign Relations

Committee. I want to specifically commend the distinguished chairman, Senator HELMS, for his outstanding leadership in moving this resolution promptly and responsibly.

I also want to commend the Foreign Relations Committee for including condition No. 9, which would require the administration to submit any agreement that would multilateralize the ABM Treaty to the Senate for advice and consent. This is an extremely important issue, Mr. President, and this provision ensures that the Senate retains its constitutional prerogatives to advise and consent on international treaties.

By way of background, there is an existing statutory requirement, with precedent, that any substantive change to an international treaty must be submitted to the Senate for advice and consent, as prescribed under the Constitution.

The Clinton administration has spent the better part of the past 4 years negotiating changes to the 1972 Anti-Ballistic Missile [ABM] Treaty. Foremost among these changes are a demarcation agreement that would restrict the performance of certain theater defense programs, and a multilateralization agreement that would expand the ABM Treaty to include the Republics of the former Soviet Union. It is this multilateralization agreement that condition No. 9 would address.

Mr. President, condition No. 9 has become necessary because the administration refuses to submit the multilateralization agreement to the Senate for advice and consent. They have rightly conceded that both a demarcation agreement and the CFE flank limits agreement are substantive changes requiring approval of the Senate, but they adamantly refuse to submit multilateralization for approval.

The administration asserts that the executive branch alone has the authority to recognize nations and determine the successor states on treaties whose participants no longer exist. They also argue that multilateralization is merely a clarification, not a substantive change to the ABM Treaty.

It is a very significant change that will fundamentally alter both the nature of the treaty and the obligations of its parties. It is most certainly a substantive change, and as such, it must be submitted to the Senate for advice and consent.

Mr. President, let me elaborate on exactly why a multilateralization agreement would represent a substantive change. The ABM Treaty was signed by the United States and the Soviet Union. It was premised on the policy of mutual assured destruction and it codified the bipolar strategic reality of the cold war. All negotiations on compliance and all discussions concerning amendments to the treaty were to be bilateral in nature, with any decisions being approved by each side. The negotiating ratio was 1 to 1, the United States versus the Soviet Union.

However, one of these two parties has now ceased to exist. There is no longer a Soviet Union. If the treaty is multilateralized, and thereby expanded to include multiple parties on the former Soviet side, it will dramatically change this negotiating ratio, both theoretically and practically.

Instead of the 1-to-1 ratio that the treaty was premised on, it will become at a minimum a 1-to-4 ratio, of the United States versus Russia, Khazakstan, Ukraine, and Belarus, and perhaps even a 1-to-15 ratio of the United States versus all 15 of the former Soviet Republics. We just don't know and the administration isn't saying.

Under a multilateralization agreement, each of these former Soviet Republics would have an equal say in negotiations, even though they clearly would have unequal rights and unequal equipment holdings. For instance, only the United States and Russia would be permitted to field an ABM system, but other nations would be free to deploy ABM radars and other related components of a system. Further, while the ABM Treaty prohibits defense of the territory of a nation, the term territory is being redefined to mean the combined territories of all former Soviet Republics who choose to join the treaty.

What does this mean? It means that instead of the treaty applying to the territory of an individual nation, it applies to a number of nations, unevenly and in a manner that is very detrimental to the United States. For example, Russia could legally establish new early warning radars on the territory of other States, well beyond the periphery of Russia, while the United States is restricted to its own borders. Compounding this inequity, the territory and borders of the so-called former Soviet Union could change over time because the multilateralization agreement allows the admission of additional republics even after entry into force.

The bottom line, Mr. President, is multilateralization would by definition and practice create a fundamental asymmetry in the ABM Treaty. Rather than having two parties with equal offensive strategic forces and defensive capabilities, this agreement would create a tremendous imbalance. For us to negotiate any changes to the treaty, such as an agreement to permit multiple sites or to change the location, we would now need to convince all the participating Republics of the former Soviet Union rather than just one.

In essence, each of those countries would be able to veto our position at any time. And they would individually leverage the vote in the Standing Consultative Commission for more foreign aid, or trade recognition, or concessions on a variety of issues. Whenever we finally met any single Republic's demands, another could instantly leverage similar concessions. When would it end? Never. This scenario is very troubling. It is troubling there are

people in the Senate who would be willing to accede to that kind of situation. At the very least, it will cause huge complications in our process for negotiating changes to the treaty.

There can be no question, an agreement to multilateralize the ABM Treaty is a substantive change to the ABM Treaty, plain and simple. It must be submitted for advice and consent. Condition 9 merely says that before the CFE Flank Limits Agreement can take effect, the President must certify that he will submit the ABM Treaty multilateralization agreement to the Senate for advice and consent.

Nothing in this condition will require any renegotiation of any provision of the CFE Flank Limits Agreement or, for that matter, require any renegotiation of any provision of the ABM Treaty multilateralization agreement. This condition will not affect any other country or any other treaty or the cause of strategic stability in any respect. That is a fact.

Contrary to the parochial appeals of the administration, it is not going to kill NATO expansion. It will not kill START II. And it will not kill the CFE Treaty. In fact, all the President has to do is send us a letter this afternoon certifying he will submit the agreement to the Senate for advice and consent and we will be done with it. Case closed.

I am pleased the Senate has seen fit, thanks to the tremendous leadership of Chairman HELMS, to adopt this very important condition. Senator HELMS, as he does so many times and often on the floor of the Senate and in private meetings on issues, stands sometimes alone. I am proud to be standing with him on this very important issue, and I think future generations will thank him for his leadership when we get to the point where this treaty does take effect. People will be thanking him for his leadership on the multilateralization issue.

I thank the Chair.

Mr. HELMS. I thank the Senator from New Hampshire. I assure him it is an honor to serve in the Senate with him.

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

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I am pleased to support this CFE Flank Treaty today. It is good for the security of the United States and the security of our NATO allies.

This treaty modifies the Conventional Forces in Europe Treaty. This treaty was reached in 1990 before the breakup of the Soviet Union and the Warsaw Pact. The modifications in CFE flank restrictions contained in this treaty are reasonable, and we all should support them.

Under Chairman HELMS' guidance, the Foreign Relations Committee added a number of important conditions to this treaty. These conditions

clarify parts of the treaty that could be construed as granting special rights to Russia to intimidate its neighbors, but most importantly are the clarifications that nothing in the CFE Flank Treaty grants to Russia any right to continue its current violations of the sovereignty of several neighboring states.

I am pleased that these clarifications were fully bipartisan conditions that received the support of our distinguished Foreign Relations ranking member, Senator BIDEN.

There is, however, one remaining condition that caused some controversy. This is condition 9, which requires the President to submit to the Senate for ratification another treaty modification, the ABM multilateralization treaty. This is not a question of support or opposition to the ABM Treaty. This is purely a matter of the prerogative of the Senate, of whether or not to adhere to the clear intent of the Constitution of this country.

During negotiations over the Chemical Weapons Convention, Senator HELMS and Majority Leader LOTT succeeded in convincing the President to submit to the Senate two out of three pending treaty modifications that the President had intended to implement as executive agreements. One of those treaty modifications, the CFE Flank Treaty now before us today, and another, the ABM Demarcation Treaty, is before the Foreign Relations Committee where it will receive serious consideration.

Only one treaty modification has yet to be submitted to the Senate, the ABM multilateralization treaty agreed to in Helsinki by Presidents Clinton and Yeltsin. It is right to require that treaty to be submitted as well.

Again, this issue is merely the constitutional obligation of each of us in this body to give our advice and consent on the ratification of treaties, not whether this treaty modification is good or bad.

I again congratulate Chairman HELMS, Senator BIDEN, and the distinguished majority leader. I am proud of the leadership they have shown on this treaty and on the constitutional prerogatives of the Senate.

Mr. President, I yield my time.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I have a little house-keeping function. I ask what I am about to do will not be charged to either side.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 1122

Mr. HELMS. As in legislative session, Mr. President, I ask unanimous consent that immediately following disposition of the Feinstein amendment to H.R. 1122 during Thursday's session of the Senate, Senator DASCHLE be recognized to offer an amendment and it be considered under the following time agreement: 2½ hours under the control

of Senator DASCHLE or his designee, and 2½ hours under the control of Senator SANTORUM or his designee.

I further ask unanimous consent that following the conclusion or yielding back of time on the Daschle amendment, the Senate proceed to vote on or in relation to the Daschle amendment without further action or debate, with no amendments in order during the pendency of the Daschle amendment.

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

Mr. HELMS. I thank the Chair.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Delaware.

First, let me congratulate the Senators from North Carolina and Delaware, the chairman and ranking member of the Foreign Relations Committee, for working together so speedily and quickly to bring this treaty to the floor. It is a real feat. It is difficult to do this in this length of time. The kind of bipartisan cooperation that this takes really, I think, reflects great honor on this body.

There is one condition that I have some difficulty with that I want to address some remarks to this afternoon, and that is condition 9, which is now part of the resolution before the Senate.

Condition 9 requires the President to submit to the Senate for its advice and consent the memorandum of understanding concerning successor states to the ABM Treaty. In my view, this condition is probably unconstitutional but certainly unwise. As a general rule, a condition on a resolution of ratification is a stipulation which the President must accept before proceeding to ratification of a treaty. And if the President finds the condition unacceptable, he generally has but one choice, which is to refuse to ratify the treaty. There is, however, a generally recognized exception: If the condition is inconsistent with or invades the President's constitutional powers, in which case the condition would be ineffective and of no consequence. The restatement of foreign relations law puts the matter this way:

The Senate has not made a practice of attaching conditions unrelated to the treaty before it. If the Senate were to do so and were to attach a condition invading the President's constitutional powers, for example, his power of appointment, the condition would be ineffective. The President would then have to decide whether he could assume that the Senate would have given its consent without the condition.

In this matter before us, condition 9 has no relation to the CFE flank agreement. The condition, therefore, on that ground is improper. It seeks to invade the President's constitutional powers to recognize states and to implement treaties, and thus is probably unconstitutional.

When the Senate deals with the important issue of advice and consent to a treaty, I think it should limit itself to the treaty before it. When we go beyond that, it seems to me we do not bring honor on this institution, when we try to force the hand of the President in areas beyond the immediate treaty that is being considered.

In a very ironic twist, condition 9 could imperil the continued viability of the treaty that we are ratifying because if the ABM Treaty, when it is multilateralized, needs to come back for ratification, the same principle would apply to other treaties, of which we have dozens. The same principle, if it applies to ABM, would apply to CFE, the treaty before us.

Is this treaty binding on those other states, those other successor states of the Soviet Union without coming back to the Senate? INF, START I, probably dozens of treaties with the former Soviet Union which have been multilateralized, which have been accepted by the successor states, which we now, I hope, consider binding on those States and on us, even though they have not been brought back to the Senate for ratification, if the logic of condition 9 is correct, it would undermine the viability, the efficacy of those other treaties that we had with the former Soviet Union. It would call into question treaties that I do not believe this body wants to call into question.

The reason that it does that is that condition 9 requires the President to submit to the Senate for its advice and consent his recognition of the Soviet Union successor states to the ABM Treaty. It does provide an opportunity for opponents of the ABM Treaty to try to defeat that memorandum of understanding as it relates to the successor states. But in doing so, it jeopardizes the continuing viability of the acceptance by those successor states of their obligations under the ABM Treaty and, in terms of the point I am making, their obligations under a number of other treaties which have been signed by the former Soviet Union.

This outcome could undermine the reductions of former Soviet nuclear weapons that our military has testified are so clearly in our national security interests. Opponents of having successor states other than Russia appear to worry about the potential difficulty of negotiating changes or amendments to the ABM Treaty in order to permit deployment of a national missile defense system in the future. Their notion appears to be that while it may be straightforward for us to negotiate required changes with Russia, it will somehow be more difficult to get the other three successor states to agree to any changes. And according to that view, rather than to give each of the other three states a potential veto over changes to the ABM Treaty, it would be better to prevent those successor states from ever joining the ABM Treaty as a party.

That is what this condition is all about, but it is misguided from a number of perspectives. First, the notion that Ukraine, Belarus, and Kazakhstan would obstruct any changes to the ABM Treaty but that somehow Russia would be an easier negotiating partner flies in the face of experience. In the negotiations at the Standing Consultative Commission, it is Russia that has been the most challenging negotiating partner, while Ukraine, Kazakhstan, and Belarus have been more amenable to American proposals.

Furthermore, as the administration has pointed out on many occasions, if the United States determines that there is the threat that requires us to deploy a national missile defense system that would conflict with the ABM Treaty, they would seek to negotiate changes with our treaty partners to permit such a deployment. We would seek to adapt the treaty to our security requirements. But if the Russians would not agree to our proposed changes, then the administration would consider whether to withdraw from the ABM Treaty, as is our right under the treaty's provisions relating to our supreme national interests. That is the prudent approach and the one that best serves our security.

Let me just give one other example of the implication of this condition. In 1995, the United States recognized Ukraine as a successor to the former Soviet Union for 35 nonarmed control treaties that we previously had with the U.S.S.R. We did this without a Senate vote. So now we presumably want the Ukraine to be bound by 35 treaties previously negotiated. But there is no Senate vote ratifying that treaty with Ukraine.

In a diplomatic note from the United States Embassy to the Government of Ukraine dated May 10, 1995, the United States listed the 35 agreements that have continued in force with Ukraine and they include such treaties as the incidents at sea agreement of 1972 with its protocol, which our good friend from Virginia, Senator WARNER, negotiated when he was Secretary of the Navy. They included the prevention of dangerous military activities agreement of 1989, which is designed to prevent an accident or mistake from erupting into hostilities. These are extremely important agreements and we should not put those agreements in limbo, or in doubt, by setting this precedent relative to the ABM Treaty.

I ask unanimous consent that the list of those 35 treaties that Ukraine is hopefully bound by, through that note—but which we have not ratified, vis-a-vis Ukraine—that that list and note be printed in the RECORD at this time.

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

EMBASSY OF THE UNITED STATES OF AMERICA—KIEV, MAY 10, 1996

The Embassy of the United States of America presents its compliments to the

Ministry of Foreign Affairs of Ukraine and has the honor to refer to discussions between technical experts of our two Governments concerning the succession of Ukraine to bilateral treaties between the United States of America and the former Union of Soviet Socialist Republics in light of the independence of Ukraine and the dissolution of the Union of Soviet Socialist Republics. In conducting their discussions, the experts took as a point of departure the continuity principle set forth in Article 34 of the Vienna Convention on Succession of States in respect of Treaties. In examining the texts they found that certain treaties to which the principle applied had since expired by their terms. Others had become obsolete and should not be continued in force between the two countries. Finally, after a treaty-by-treaty review, which included an examination of the practicability of the continuance of certain specific treaties, they recommended that our two Governments agree no longer to apply those treaties.

In light of the foregoing, the Embassy proposes that, subject to condition that follows, the United States of America and Ukraine confirm the continuance in force as between them of the treaties listed in the Annex to this Note.

Inasmuch as special mechanisms have been established to work out matters concerning succession to bilateral arms limitation and related agreements concluded between the United States and the former Union of Soviet Socialist Republics, those agreements were not examined by the technical experts. Accordingly, this Note does not deal with the status of those agreements and no conclusion as to their status can be drawn from their absence from the list appearing in the Annex.

With respect to those treaties listed in the Annex that require designations of new implementing agencies or officials by Ukraine, the United States understands that Ukraine will inform it of such designations within two months of the date of this Note.

If the foregoing is acceptable to the Government of Ukraine, this Note and the Ministry's Note of reply concurring therein shall constitute an agreement between our two Governments which shall enter into force on the date of receipt by the Embassy of the Ministry's Note in reply.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Ukraine the assurance of its highest consideration.

Enclosure: Annex.

ANNEX

Convention relating to the rights of neutrals at sea. Signed at Washington July 22, 1854; entered into force October 31, 1854.

Agreement regulating the position of corporations and other commercial associations. Signed at St. Petersburg June 25, 1904; entered into force June 25, 1904.

Arrangements relating to the establishment of diplomatic relations, nonintervention, freedom of conscience and religious liberty, legal protection, and claims. Exchange of notes at Washington November 16, 1933; entered into force November 16, 1933.

Agreement relating to the procedure to be followed in the execution of letters rogatory. Exchange of notes at Moscow November 22, 1935; entered into force November 22, 1935.

Preliminary agreement relating to principles applying to mutual aid in the prosecution of the war against aggression, and exchange of notes. Signed at Washington June 11, 1942; entered into force June 11, 1942.

Agreement relating to prisoners of war and civilians liberated by forces operating under Soviet command and forces operating under

United States of America command. Signed at Yalta February 11, 1945; entered into force February 11, 1945.

Consular convention. Signed at Moscow June 1, 1964; entered into force July 13, 1968.

Agreement on the reciprocal allocation for use free of charge of plots of land in Moscow and Washington with annexes and exchanges of notes. Signed at Moscow May 16, 1969; entered into force May 16, 1969.

Agreement on the prevention of incidents on and over the high seas. Signed at Moscow May 25, 1972; entered into force May 25, 1972.

Agreement regarding settlement of lend-lease, reciprocal aid and claims. Signed at Washington October 18, 1972; entered into force October 18, 1972.

Protocol to the agreement of May 25, 1972 on the prevention of incidents on and over the high seas. Signed at Washington May 22, 1973; entered into force May 22, 1973.

Convention on matters of taxation, with related letters. Signed at Washington June 20, 1973; entered into force January 29, 1976; effective January 1, 1976.

Agreement on cooperation in artificial heart research and development. Signed at Moscow June 28, 1974; entered into force June 28, 1974.

Agreement relating to the reciprocal issuance of multiple entry and exit visas to American and Soviet correspondents. Exchange of notes at Moscow September 29, 1975; entered into force September 29, 1975.

Agreement concerning dates for use of land for, and construction of, embassy complexes in Moscow and Washington. Exchange of notes at Moscow March 20, 1977; entered into force March 30, 1977.

Agreement relating to privileges and immunities of all members of the Soviet and American embassies and their families, with agreed minute. Exchange of notes at Washington December 14, 1978; entered into force December 14, 1978; effective December 29, 1978.

Memorandum of understanding regarding marine cargo insurance. Signed at London April 5, 1979; entered into force April 5, 1979.

The Agreement supplementary to the 1966 Civil Air Transport Agreement, as amended by the Agreement of February 13, 1986. Signed at Washington November 4, 1966; entered into force November 4, 1966.

Agreement relating to immunity of family members of consular officers and employees from criminal jurisdiction. Exchange of notes at Washington October 31, 1986; entered into force October 31, 1986.

Agreement concerning the confidentiality of data on deep seabed areas, with related exchange of letters. Exchange of notes at Moscow December 5, 1986; entered into force December 5, 1986.

Agreement relating to the agreement of August 14, 1987 on the resolution of practical problems with respect to deep seabed mining areas. Exchange of notes at Moscow August 14, 1987; entered into force August 14, 1987.

Declaration on international guarantees (Afghanistan Settlement Agreement). Signed at Geneva April 14, 1988; entered into force May 15, 1988.

Agreement on cooperation in transportation science and technology, with annexes. Signed at Moscow May 31, 1988; entered into force May 31, 1988.

Memorandum of understanding on cooperation to combat illegal narcotics trafficking. Signed at Paris January 8, 1989; entered into force January 8, 1989.

Agreement on the prevention of dangerous military activities, with annexes and agreed statements. Signed at Moscow June 12, 1989; entered into force January 1, 1990.

Agreement on a mutual understanding on cooperation in the struggle against the illicit traffic in narcotics. Signed at Washington January 31, 1990; entered into force January 31, 1990.

Civil Air Transport Agreement, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement regarding settlement of lend-lease accounts. Exchange of letters at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on cooperation on ocean studies, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on expansion of undergraduate exchanges. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on scientific and technical cooperation in the field of peaceful uses of atomic energy, with annex. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Memorandum of cooperation in the fields of environmental restoration and waste management. Signed at Vienna September 18, 1990; entered into force September 18, 1990.

Memorandum of understanding on cooperation in the physical, chemical and engineering sciences. Signed at Moscow May 13, 1991; entered into force May 13, 1991.

Memorandum of understanding on cooperation in the mapping sciences, with annexes. Signed at Moscow May 14, 1991; entered into force May 14, 1991.

Memorandum of cooperation in the field of magnetic confinement fusion. Signed at Moscow July 5, 1991; entered into force July 5, 1991.

Memorandum of understanding on cooperation in natural and man-made emergency prevention and response. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Memorandum of understanding on cooperation in housing and economic development. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Agreement on emergency medical supplies and related assistance. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Mr. LEVIN. If the logic of condition 9 were extended to Ukraine, all those 35 treaties would be in limbo until we ratified the succession of the treaties. And this list of treaties is just one case of the 12 successor states to the former Soviet Union. Condition 9 could cast into doubt the effect of all of those treaties for all of those states.

I think the aim here, while it is aimed at ABM, does not hit ABM because our ABM Treaty is not touched by this condition. Our treaty relative to ABM, with Russia, is not affected by condition 9. Condition 9 does not refer to Russia. It is the other states that it refers to. So our ABM Treaty with Russia is not affected. It is all the other treaties which are undermined, with all the other successor states. It is the arms control treaties and the nonarms control treaties which are put in jeopardy, left in limbo by the logic of this condition. So, while the aim is at the ABM Treaty, it misses that and, instead, hits treaties that I believe this body wants to be binding on the successor states to the Soviet Union.

What about the treaty before us, the CFE Treaty? Does this have to be ratified with each of the successor states to the Soviet Union? If so, we are putting this very treaty in limbo. This very CFE Treaty which we are ratifying, by the logic of condition 9, is left in limbo as to the other successor states, because there is no ratification of this treaty relative to the other states.

Mr. President, I fail to understand the logic of the supporters of condition 9 that appears to say that Russia is a successor state to the former Soviet Union but the other states of the former Soviet Union can only become successor states if the Senate ratifies that action. If the Senate must ratify the succession of one state, then logically it should ratify the succession of all. Thus this condition would cast into doubt the continuing validity of Russia's obligations under the numerous treaties that the United States had entered into with the Soviet Union but which were not submitted to the Senate for ratification subsequent to the breakup of the Soviet Union.

And it could cast into similar doubt other treaties with other countries that have dissolved, such as former Czechoslovakia, or former Yugoslavia, where the Senate has not ratified the succession of states to those treaties.

We should also consider the impact of condition 9 on other arms control agreements which successor states to the former Soviet Union have joined. Since we are considering the resolution of ratification for the CFE Flank Agreement, let us start with the underlying CFE Treaty. It was ratified by the Senate in November 1991, prior to the accession of successor states based on the Oslo document in June of 1992. In other words, it was after the Senate voted for ratification of the CFE Treaty that the former successor states agreed on the arrangement for joining the CFE Treaty.

The precedent that condition 9 would set would, if followed in other cases, call into question whether those states are considered members of and bound by the CFE Treaty until the Senate votes on their succession to the treaty.

There is also the case of the intermediate-range nuclear forces, or INF, Treaty signed between the United States and USSR. When the Soviet Union dissolved into 12 successor states, 6 of those states had INF facilities on their soil while the other 6 did not. All twelve are successors to the INF Treaty, with six having obligations related to their INF facilities and the other six having the obligation not to have such facilities or INF missiles.

The logic of condition 9 would suggest that the successor states are not parties to, or bound by, the INF Treaty unless and until the Senate provides its advice and consent to their accession. I cannot imagine any Member of the Senate wanting to cast doubt on the obligation of these states to comply with the INF Treaty, but that is what condition 9 does when its logic extended to other treaties.

In a June 11, 1996, letter, then-Secretary of Defense William Perry explained the Defense Department's concerns with a proposed provision of law that was essentially the same as condition 9:

... this section runs counter to the successful U.S. policy of involving within the framework of strategic stability all states

which emerged from the former Soviet Union with nuclear weapons on their territory. Moreover, Russia, Belarus, Kazakhstan, and Ukraine perceive a clear link between their participation in the START and INF Treaties and the ABM Treaty. Casting doubt on their ability to be equal partners in the ABM Treaty could poison our overall relationship with these states and needlessly jeopardize their compliance with their denuclearization obligations under START I.

The logic of condition 9, when extended to other treaties, could well lead the successor states to the former Soviet Union to reconsider whether they are bound by these treaties as well as the ABM Treaty. Such a move would be decidedly against our security interests.

I should point out, Mr. President, that the Congress itself urged the President to discuss ABM Treaty issues "with Russia and other successor states of the former Soviet Union" in the National Defense Authorization Act for Fiscal Year 1994. At that time there was no question that there were other successor states to the former Soviet Union with whom we would want to discuss possible changes to the ABM Treaty. Section 232(c) of that Act states:

Congress urges the President to pursue immediate discussions with Russia and other successor states of the former Soviet Union, as appropriate, on the feasibility of, and mutual interest in, amendments to the ABM Treaty to permit—

clarification of the distinctions for the purposes of the purposes of the ABM Treaty between theater missile defenses and anti-ballistic missile defenses . . .

I find it strange that the Senate, after urging the President to discuss the ABM Treaty with Russia and other successor states to the former Soviet Union on demarcation, now would call into question whether there are other successor states to the ABM Treaty without a Senate ratification.

If a treaty must be submitted to the Senate for ratification of successors to the former Soviet Union, or other countries, before it is binding, then hundreds of our treaty commitments are in doubt. All of this is because opponents of the ABM Treaty are trying to maim or kill this one treaty.

Additionally, we should consider the impact of accepting condition 9 on other parliaments in other nations that may take this signal as an invitation for them to reconsider their nation's treaty commitments. I find it ironic that on an act of treaty ratification the Senate is on the verge of creating a potential international treaty uncertainty.

There is no need for the Senate to drag in the ABM Treaty issue on the CFE Flank Agreement resolution of ratification. The Senate will have ample opportunity to debate the ABM Treaty when the administration submits the ABM demarcation agreement to the Senate, as they have committed to do. But this is neither the time nor the vehicle to try to decide this issue.

Furthermore, this issue of the memorandum of understanding on successor

states to the ABM Treaty is already connected to Senate consideration on the demarcation agreement. The text of the demarcation agreement states that the MOU on successor states will not go into effect until the Agreed Statement on Demarcation goes into effect. So in effect, the MOU cannot take effect until the Senate votes on the demarcation agreement. Consequently there is no need for this condition and it should not be included in this resolution of ratification.

Mr. President, thankfully, condition 9 is limited to the memorandum of understanding concerning successor states to the ABM Treaty. It is my fervent hope and expectation that the President will make clear in his signing statement for the CFE Flank Agreement that this extraordinary action is not a precedent. In that way he can limit the damage that could otherwise flow from this unwise condition.

Mr. President, I am pleased that condition 5(f) dealing with potential violations of the CFE Treaty in the Caucasus region has been modified. I would have much preferred that it not make any reference to any particular country.

More importantly, I am very concerned with the word "secessionist" in condition 5(f). The situation in this troubled area has a long and unfortunate history, and I am disturbed that this condition would seek to so characterize a conflict there.

Mr. COCHRAN. Mr. President, I am pleased the administration has decided not to contest condition 9 in the resolution of ratification now before the Senate. That condition makes the advice and consent of the Senate a condition precedent to the addition of parties to the Anti-Ballistic Missile Treaty.

Any agreement between the administration and the Government of Russia or other states that were part of the Soviet Union which purports to enlarge the ABM Treaty by adding new parties must be submitted to the United States Senate and a resolution of ratification approved by the Senate before it will have the force and effect of law.

There are important reasons why it is necessary for the Senate to insist on its constitutional role in treaty making in this resolution. The administration has announced its intent not to submit a memorandum of understanding on succession to the Senate for advice and consent to ratification, and it purports to transform the ABM Treaty from a bilateral agreement into a multilateral accord.

The addition of new parties to the ABM Treaty clearly would have serious national security implications for the United States. It would make it much more difficult and time consuming to negotiate other changes in the treaty that may be considered necessary in the future to protect our security interests.

Unless the Senate insists on fulfilling its advice and consent responsibilities

with respect to the ABM Treaty, there may be a mistaken view taken by the administration that a demarcation amendment being negotiated now with Russia could likewise be the subject of an executive agreement without the benefit of Senate ratification.

I am concerned that by our inaction the Senate could be forfeiting its constitutional role in the making of treaties. It should be clear that no treaty or material change in a treaty can be entered into by our government without the consent of the Senate. That is what the Constitution says, and that is what condition 9 says, and that is what the Senate says today as it provides advice and consent to ratification of the amendments to the Conventional Armed Forces in Europe Treaty.

Mr. ABRAHAM. Mr. President, I rise today to express my support for both the resolution of ratification to the Conventional Forces in Europe Treaty flank agreement, and, more importantly, the manager's amendment to condition 5 regarding compliance with the treaty by member states in the Caucasus region. True, the manager's amendment does not change the original language to the extent that I would desire, but I do wish to thank Senator HELMS and the staff of the Foreign Relations Committee for being so open to my ideas and engaging in very full negotiations. I also wish to thank Senators MCCONNELL, KERRY, and SARBANES for providing such critical leadership on this issue.

Mr. President, it is indeed important that the United States respond forthrightly to violations of the CFE Treaty. And considering this deals with numerical limits on military equipment, the degree of alleged violations is also important. But in executing such diligence, I hope we do not assume too quickly that all alleged violations are, in fact, true. That is why I applaud the inclusion of the request for a report on alleged violations, to ensure that the United States does not blindly enter a treaty which others may disregard.

But in requesting such reports, we must also be mindful of the impact our actions may have upon the delicate fabric of ongoing negotiations to which the United States is party. Specifically, Mr. President, I refer to the OSCE negotiations, to which the United States is co-chairman, regarding the future status of the Nagorno-Karabakh region. To single out one nation for alleged violations, in this case Armenia, without taking into account the full geo-political environment under which that nation's government must operate, may subvert the very process we think has been violated. Better, in my opinion, to err by requesting too much information than not enough, and take into account the region as a whole, and all the players in the current dispute. To ensure we do not upend this ongoing process of peaceful resolution, we should minimize giving credence to unverified allegations and cast as wide a net as possible in requesting additional analysis.

Mr. President, Armenia has had a tough go of it in its short period of independence. It is landlocked, its ethnic population is geographically divided, and it has suffered egregiously in the past from the crimes of others who condemned them simply because of their heritage. Add on top of that a 70-year legacy of abuse and political game playing by the Soviet Union, and it is understandable that Armenia may find itself hard-pressed to execute the policies that we Americans would like to see in a perfect world. But it is not a perfect world, and sometimes we must understand the realities of a situation, and make the best of it.

Therefore, Mr. President, I appreciate the willingness of the Foreign Relations Committee chairman to work with me on making condition 5 more inclusive of all potential threats to U.S. interests and the treaty's viability. By taking a more evenhanded approach, hopefully no party to the current negotiations will feel slighted. And, Mr. President, they should not feel slighted at this point in the process. This condition is meant to address violations to the CFE Treaty, not express an opinion on the legitimacy of any party's negotiating position. Any other interpretation is, in my opinion, a misunderstanding of the condition's intent. Further, I do not believe that this will, or should, be interpreted in any manner that would impugn the ability of the United States to continue as co-chair to the OSCE negotiations. The United States has energetically taken on this mantle of leadership, and I reaffirm my support for this process.

Mr. President, both the viability of the CFE Treaty, and the continued good-faith negotiations regarding the future status of Nagorno-Karabakh are important United States interests. We can, and must, work toward the success of both. I thank the chairman of the Foreign Relations Committee for his leadership in these areas, and the assistance of Senators KERRY and SARBANES in bringing about this amendment which I have cosponsored.

Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise today to address Senate consideration of the CFE Flank Agreement.

The Conventional Forces in Europe Treaty [CFE] entered into in 1990 is an outstanding arms control achievement, requiring the destruction of over 50,000 items of heavy weaponry, including tanks, armored personnel carriers, artillery pieces, and attack helicopters. The CFE has helped to make the Europe of 1997 a far safer place than the Europe of even just a few years ago, and in doing so has served American national security interests well.

The implementation of CFE helps guarantee that a destabilizing concentration of military equipment—or a massed military attack in central Europe of the kind that has dominated strategic thinking in Europe through two World Wars and a cold war—will

now be next to impossible for any nation or group of nations to achieve.

But, as the flank agreement underscores, the treaty negotiated between NATO and the Warsaw Pact in 1990 is not adequate to the realities of the new European security environment.

To begin with, the Soviet Union and the Warsaw Pact no longer exist. There are now Soviet successor states in the Baltics and the Transcaucasus—the flank zones—with very different security and political concerns. Since the breakup of the Soviet Union, the Transcaucasus have been a region of almost singular instability. Russia and the Ukraine, likewise, have different security orientations than did the Soviet Union, as do the states of both central and western Europe. NATO is undergoing a searching debate about the possibility of enlargement. The Europe that the CFE must be relevant to in 1997 is radically different than the Europe of 1990.

Thus, in ways unanticipated by its original negotiators, the issues raised by the flank agreement touch on some of the most central and the most sensitive security issues of the new European security environment.

The history of the Transcaucasus since the breakup of the Soviet Union have served as a grim reminder of the deadly subtleties of rapidly changing regional geography. Civil war and ethnic strife has been the rule, not the exception, in Nagorno-Karabagh, Osettia, Abkhazia, Georgia, and, of course, Chechnya.

Stabilizing the military balance in the Transcaucasus and inculcating confidence and security building measures, as the CFE Treaty does, is critical for peace in the region.

Although not racked with the violence that has characterized the Transcaucasus, the security concerns of the Baltic States in the northern flank zone will prove to be central to future stability in Europe, and the limits placed on threatening conventional weapons by the CFE Treaty is a critical part of the security architecture of the Baltics.

Likewise, the flank agreement also touches upon the sensitive topic of Russian-Ukrainian ties, and the political and security relationship between the two, and it addresses the role of Turkey between Europe, the Middle East, and central Asia.

Last, the flank agreement has profound implications for Russian nationalist sentiment, and may well have an impact on the future of Russian domestic political development, and the dynamics of those domestic factors which may influence either a cooperative or confrontational Russian foreign policy.

In this sense, the flank agreement is also critical issue for the debate over NATO enlargement that is just now beginning to come to a simmer. In structuring the balance of forces between NATO and Russia, the CFE and the flank agreement—what it says as well as how it is implemented—will be at

the heart of Russian perceptions and assessments regarding the potential of an enlarged NATO.

In short, the CFE will play a central role in determining the future course of peace and stability in Europe.

Notwithstanding the positive contributions of the CFE to U.S. national security interests—and it is a treaty which I will be voting for—I feel that I would be remiss in my duty as a Senator if I did not also point out some general concerns that I have with the flank agreement, as well as some specific concerns I have with the resolution of ratification for this treaty as it was voted out of the Foreign Relations Committee last week.

As I made clear in the Foreign Relations Committee hearing, I found the way in which the flank agreement was negotiated—opening up an already negotiated treaty for revision because of the reticence of one party to live up to its commitments—deeply troubling.

Although I would agree with those who argue that it is necessary to revisit international agreements when there has been a material change in circumstances—and few would argue that the breakup of the Soviet Union does not count on this score—treaties, by their very nature, are only worthwhile if they are binding the minute they are signed.

The post-cold-war world may very well be more turbulent and fluid than the world which we are used to, but I hope that the way in which the flank agreement was opened for renegotiation—with one party not in compliance with a treaty which they had signed—does not set a precedent which will call into question other treaties which, after the fact, a state may wish to change.

I think that it is important for the Senate to go on the record in support of the binding nature of the treaty obligations which we and other states enter into—obligations which should be opened for renegotiation in only the most extreme of cases—even as we give our support to this agreement.

Second, in changing the CFE flank equipment ceilings to meet Russian security concerns, we must be careful to make sure that we have not increased the insecurity felt by other states in or bordering the flank zone.

In its original conception, the CFE Treaty was intended to make Europe safe from the dangers of a big war between East and West. I think that there is general agreement that CFE has been and will continue to be effective in this respect.

But the CFE Treaty, as revised, must not become part of a European security architecture in which Europe is made safe for little wars, between the large and the small, or as a tool for intimidation used by the strong against the weak.

If such a situation were to result from the flank agreement revisions, Europe would be less stable and secure, not more.

Third, as several of my colleagues have already pointed out, the inclusion of condition 9 regarding Senate advice and consent for the multilateralization of the Anti-Ballistic Missile Treaty is, I think, unwarranted and unwise.

It is unwarranted because the Anti-Ballistic Missile Treaty is not connected in any way with the CFE. It is unwise because it calls into question whether the United States may attempt to reopen or substantively change a treaty because some now perceive that it is in our interests to do so.

There was an attempt to get this same language regarding the ABM inserted into last year's defense authorization bill. That effort failed. On its own, the Senate has already rejected this language. Now there is an attempt to resurrect this language and attach it to this treaty. The consideration of treaties is one of the highest responsibilities of the Senate, and I am disappointed that some of my colleagues have chosen to place petty politics above the interests of U.S. national security.

The ABM Treaty is the diplomatic foundation of our intercontinental ballistic missile reduction strategy. It was possible to negotiate and ratify the Strategic Arms Reduction Treaty, or START, and negotiate START II because of the strategic groundwork laid in the ABM Treaty. Abandoning or violating the ABM Treaty would threaten the strategic ballistic missile reductions under these two treaties, which, when implemented, would verifiably eliminate the intercontinental ballistic missiles carrying two-thirds of Russia's nuclear warheads.

I would have preferred to have had the opportunity to eliminate this condition from the final resolution of ratification, but, unfortunately, it does not appear that we will have this opportunity.

In addition to these general concerns, I also have one specific concern with the resolution of ratification for this treaty as it was voted out of committee last week, which I hope that we will have an opportunity to change.

I am concerned that condition 5 (F) of section 2 unfairly singles out Armenia for a report on compliance with the CFE Treaty. In so doing, this condition makes the treaty weaker, and less effective in guaranteeing U.S. security interests in Europe, not more.

Although some of my Armenian friends might not want me to say this, I do believe that there should be a report on Armenia's compliance with the treaty. There have been some troubling questions raised in the press and in our committee discussions regarding Armenian transshipments of arms from Russia, and whether Armenia is in violation of certain provisions of the CFE.

As I noted previously, this is a very sensitive part of the globe, and one in which even a relatively small amount of heavy weaponry can have tremendous impact on the balance of power. If

Armenia is in violation of the treaty, then appropriate measures should be taken.

However, it is precisely the volatile nature of this region that dictates that U.S. national security interests demand that we seek compliance reports on the other states in the region as well. There are questions regarding Azerbaijan's compliance with the CFE's Treaty Limited Equipment (TLE) limits, for example, and recent experience with civil war and ethnic strife in Georgia, Osetia, Chechnya, Abkhazia, and elsewhere in the region all suggest that a condition calling for region-wide compliance reports would be in order.

Indeed stigmatizing and isolating Armenia in this fashion may well prove to be counterproductive. If the CFE Treaty is perceived as a tool of one side or another in an already tense and volatile region, it will have the effect of destroying confidence, not building it, and will contribute to an atmosphere where the states of the region may seek to build their armed forces, not lessen them.

This would be a grave mistake, and that is why I believe that condition 5 (F) must be changed to call for compliance reports for the other countries in the Transcaucasus as well. I urge my colleagues to support the amendment offered to make just these changes when we vote on this issue.

Even with these reservations, however, I find that the treaty merits support. The CFE, with the revised flank agreement, provides an invaluable tool for stabilizing European security and lessening regional tension. I would urge all of my colleagues to join me in voting in favor of this treaty.

Mr. LUGAR. Mr. President, I voted in committee to support the CFE Flank Document and the accompanying resolution of ratification that was reported favorably by the Committee on Foreign Relations last week.

Let me review a few of the issues that commanded committee concern.

THE FLANK DOCUMENT AND RELATIONS
BETWEEN RUSSIA AND FORMER SOVIET STATES

During committee consideration of the CFE Flank Document, members on both sides of the aisle voiced concern over United States willingness to serve as an intermediary in negotiations between Russia and other former Soviet states to secure permission for temporary Russian troop deployments on their soil or for revision of the Russian treaty-limited equipment quotas set in the 1992 Tashkent Agreement. Paragraphs 2 and 3 of section IV of the Flank Document restate Russia's right to seek such permission "by means of free negotiations and with full respect for the sovereignty of the States Parties involved". A United States note passed to the Russians, according to Undersecretary of State Lynn Davis, said that the United States was "prepared to facilitate or act as an intermediary for a successful outcome in" such negotiations. United States

officials state that Washington's offer to serve as an intermediary between Russia and other Tashkent Agreement signatories was for the purpose of leveling the playing field between Russia and smaller countries.

Many of the conditions in the resolution of ratification seek to bind the executive branch to its asserted purpose.

THE FLANK DOCUMENT AND AN ADAPTED CFE
TREATY

In short, I agree with a number of the cautions presented by various witnesses with regard to the impact of the flank agreement on both Russia and a number of the States of the former Soviet Union, as well as its implications for bordering Western States. Thus, I am supportive of most of the conditions in the Committee resolution.

But I also believe that, on balance, this flank agreement is a useful contribution to the larger effort to adapt the original CFE agreement to the changed circumstances we now confront in Europe. I believe that the Flank Agreement must be viewed in that context as well.

The original CFE agreement has been a useful instrument for winding down the military confrontation in Europe that was a principal feature of the cold war. The United States is now presented with an opportunity to adapt that treaty to the new security situation in Europe in a way that could, in my judgment, facilitate both NATO enlargement and improved NATO-Russian cooperation. Because the former Soviet Army, and indeed some elements of the current Russian Armed Forces, always disliked CFE and considered it inequitable, some have argued that amending or adapting it now would be a concession to Russia or a price the United States should not have to pay. In my view, it is in the interest of the United States, NATO, and, for that matter, Russia to update the CFE Treaty as the only way to ensure its continued viability and its stabilizing influence in the Europe of the next century.

In light of the dramatic developments that have occurred in Europe since the treaty was negotiated, the CFE Treaty should not be exempted from the kind of change that is occurring in so many other European political, economic and security institutions. Thus, it is wholly appropriate to eliminate the bloc-to-bloc character of the original treaty in favor of national equipment ceilings and to reduce the amount of military equipment that will be permitted throughout the treaty area.

In short, I tend to analyze the benefits and costs associated with the CFE Flank Agreement not only on their own merits, but also in terms of their contributions to overhauling the entire treaty; that is one of the contexts in which I believe we must review the CFE Flank Agreement.

I am supportive of the general direction of NATO's recent proposals for adapting the CFE Treaty. As a general

matter, it would emphasize the need for reciprocity in the adjustments that are made and encourage transparency.

However, I would raise some concerns relating to three aspects of the NATO proposals for an adapted CFE regime and suggest that we need to bear them in mind as we consent to ratification of the CFE Flank Agreement.

First, NATO has proposed limits on the ground equipment that could be deployed in the center zone of Europe, defined as Belarus, the Czech Republic, Hungary, Poland, Slovakia, Ukraine—other than the Odessa region—and the Kaliningrad region of Russia. This could be viewed as singling out potential new members of NATO for special restrictions, thus saddling them de facto with second-class citizenship within NATO. It is one thing for NATO to make a unilateral statement, as it has recently done, that it has, at present, no intention or need to station permanently substantial combat forces on the territory of new member states. It is quite another for it to accept legal limitations on its ability to station equipment on the territory of these states as part of an adapted CFE Treaty. While NATO would not be precluded from stationing forces on the territory of these states, such deployment would be constrained by the individual national ceilings which apply to the equipment of both stationed and indigenous forces.

It is certainly useful to have such a limitation with respect to the Kaliningrad region of Russia. With that exception, however, all of Russian territory lies outside the central zone. While Russian forces, permitted by a pliant Belarus to be stationed on its territory, would presumably be subject to the national ceiling applicable to Belarus, such a deployment could be viewed by Poland, for example, as an attempt to intimidate it. This consideration needs to be taken into account by NATO negotiators as they elaborate the terms of the NATO proposal for adapting the CFE Treaty. It is possible that provisions covering cooperative military exercises and temporary deployments in emergency situations, as well as ensuring adequate headroom in the national ceilings of the Central European States, may resolve this concern.

Secondly, this special central zone could be viewed as isolating Ukraine. If Russia chose to build up forces in the old Moscow Military District abutting Ukraine, then Ukraine could find itself unable to respond because it is subject to the special provisions of the central zone. It may be that in the negotiation of the revisions in the CFE Treaty, some arrangement can be found to allay Ukrainian concerns by some special limitation on Russia with respect to all or a portion of the Moscow Military District.

Finally, in negotiating changes to the CFE Treaty, NATO negotiators must keep in mind the possibility of further enlargement of NATO at some

future date to include states beyond three or four central European nations. It must ensure that whatever revised CFE limitations it negotiates will permit NATO, should it so decide, to extend security guarantees to these countries that will be credible and on which NATO can make good, even under the provisions of a revised CFE Treaty.

In sum, the CFE Flank Agreement, if ratified, provides the first building block to a revised CFE Treaty. NATO's proposals for an adapted CFE Treaty are based on the assumption that the flank agreement will be ratified. That being the case, it is appropriate that the Senate, in consenting to the CFE Flank Document, not only judge it on its own terms but also in terms of the contribution it can make to a revised CFE Treaty.

Mr. KYL. Mr. President, Article II of the Constitution gave the President and the Senate equal treaty making powers, stating that the President "shall have the power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." Substantive changes to treaties also require the advice and consent of the Senate. John Jay made one of the most persuasive arguments about this point, noting that, "of course, treaties could be amended, but let us not forget that treaties are made not by only one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter . . . them."

Condition 9 of the resolution of ratification for the CFE Flank Agreement protects the Senate's constitutional role by requiring that any agreement to multilateralize the 1972 ABM Treaty be submitted to the Senate for advice and consent, since any such agreement would substantively alter the rights and obligations of the United States and others under the treaty. This condition is not the first expression of the Senate's view on this issue, and would merely be the latest addition to a clear legislative history.

Section 232 of the Defense Authorization Act for fiscal year 1995 clearly states that any agreement that substantively modifies the ABM treaty must be submitted to the Senate for advice and consent.

The conference report accompanying the fiscal year 1997 Defense Authorization Act built on the language in the 1995 Authorization Act stating that, "the accord on ABM Treaty succession, tentatively agreed to by the administration would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution."

The conversion of the ABM Treaty from a bilateral to a multilateral agreement represents a substantive modification of the treaty. First of all, multilateralization changes the agreement by altering the definition of territory, which is at the heart of the treaty. Article I of the 1972 ABM Tre-

ty states, "Each Party undertakes not to deploy ABM systems for a defense of the territory of its country."

Under the terms of the memorandum of understanding on Succession to the ABM Treaty, territory would now be defined as the "combined national territories of the U.S.S.R. Successor States that have become Parties to the Treaty." The term periphery would also be changed to mean the combined periphery of all the former Soviet states party to the treaty. Thus, instead of the treaty applying to the territory of a single nation, in the case of the former Soviet Union, it would apply to a number of nations.

Multilateralization would also be a substantive change since it would create a system of unequal rights under the treaty, wherein the New Independent States of the former Soviet Union would be treated as second class citizens. The ABM Treaty that the Senate agreed to 25 years ago created identical rights and obligations for each party. Under the memorandum of Understanding on succession, however, only two of the potential parties to the treaty—the United States and Russia—would be permitted to field an ABM system. Other nations, while responsible for regulating ABM activities on their territory, would not be allowed to deploy such a system. For example, Ukraine could locate new early warning radars on the periphery of its territory, oriented outward, but would not be permitted to protect its capital with an ABM system.

The multilateralization of the ABM Treaty also undermines U.S. efforts to promote the independence of the former Soviet republics. The memorandum of understanding on succession states that the term capital of the U.S.S.R. will continue to mean the city of Moscow. This designation, in addition to granting the New Independent States inferior rights under the treaty, and defining territory and periphery as the combined total of the former Soviet states sends the wrong message. It tells the New Independent States that they remain linked to Russia, without equal rights.

Finally, multilateralization represents a substantive change to the agreement since it would diminish U.S. rights and influence under the treaty. New parties will surely be given a seat at the Standing Consultative Commission [SCC], which interprets, amends, and administers the ABM treaty. Under the 1972 ABM Treaty, the United States could take actions through bilateral agreements with the Soviet Union. By expanding the number of nations in the treaty, it will now be necessary to reach multilateral consensus to interpret or amend the treaty. One country, such as Belarus, could effectively block United States actions or demand concessions, even if Russia and the other parties to the treaty agreed with the United States. Negotiating changes or common interpretations of treaty obligations with Russia is a difficult task. Adding up to 11 new parties to the treaty will make this process much more difficult.

In addition to the reasons I have cited as to why multilateralization would substantively modify the ABM Treaty, and the legislative history compelling the administration to submit the agreement to the Senate for advice and consent, the way the Senate has considered succession agreements for the various arms control treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of any ABM successorship document.

Since the breakup of the Soviet Union, the only arms control treaty which was not re-submitted to the Senate for advice and consent due to changes in countries covered, was the INF Treaty. This treaty carried a negative obligation, namely not to possess intermediate-range nuclear missiles. Since no treaty terms were altered and U.S. rights and obligations remained unchanged, advice and consent was not necessary.

The resolution of ratification for the START I Treaty was accompanied by a separate protocol multilateralizing the treaty, which was submitted to the Senate for advice and consent.

This same protocol determined successorship questions for the Nuclear Nonproliferation Treaty [NPT].

Finally, the Senate specifically considered the question of multilateralization of the Conventional Armed Forces in Europe [CFE] treaty under condition #5 of its resolution of ratification.

As I have discussed today, the addition of parties to the ABM Treaty clearly represents a substantive modification of the treaty. The Defense Authorization Acts passed by the Senate in 1995 and 1997, and the history of how this body has considered succession agreements to previous arms control accords with the Soviet Union strongly support the submission of any ABM multilateralization agreement to the Senate. Voting to require the administration to submit the ABM multilateralization agreement for advice and consent, simply protects the Senate's constitutional role in treaty making. Reasonable people may differ over the merits of the ABM Treaty or the addition of one or more countries to the agreement, but I believe all my colleagues can agree that before this new treaty is implemented, the Senate needs to fulfill its constitutional duty by considering whether to give its advice and consent to this new agreement.

Mr. SHELBY. Mr. President, I rise in support of condition 9 of the resolution of ratification of the CFE Flank Agreement.

Condition 9 simply confirms the Senate's role in treaty making, as established in the U.S. Constitution and reaffirmed in existing law.

Specifically, condition 9 restates the requirement, enacted as section 232 of

the National Defense Authorization Act for fiscal year 1995, Public Law 103-337, that:

The United States shall not be bound by any international agreement entered into by the President that would substantially modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.

Thus, this body is already on record supporting the preservation of the Senate's constitutional prerogatives in this area.

In other words, the President may not unilaterally negotiate substantive changes to the ABM Treaty without the advice and consent of the Senate.

Frankly, I am surprised some of my colleagues, who in the past have been strong supporters of this body's constitutional prerogatives with respect to treaties in general, and the ABM Treaty in particular, are arguing to strike condition 9.

Not only do the Constitution and U.S. law require Senate advice and consent, but submission to the Senate is also consistent with recent practice on the multilateralization of arms agreements with the Soviet Union to include successor states.

Both the multilateralization of START I and the multilateralization of the CFE Treaty were considered by the Senate when it acted on the Lisbon protocol and the CFE Treaty itself.

Mr. President, some of my colleagues argue that the multilateralization of the ABM Treaty is not a substantive change.

Consider the following:

The proposed changes would alter the basic rights and obligations of the parties—the central issue in any contract or treaty.

Second, the proposed changes would modify the geographic scope and coverage of the Treaty, and would do so by taking the extraordinary step of defining Russia's national territory to include the combined territory of other independent states of the former Soviet Union.

Third, the role and function of the Standing Consultative Commission [SCC], in particular the ability of the United States to negotiate amendments to the treaty to protect our national interests, would be dramatically changed by the accession of new parties to the treaty with effective veto power over treaty amendments.

Lastly, some of my colleagues have cited a Congressional Research Service legal analysis that seems to suggest that the Senate has no role in the process.

In response, I would like to point out that:

The CRS analysis concludes that an apportionment of the rights and obligations of the U.S.S.R. under the ABM Treaty to its successor states would not, in itself, seem to require Senate participation.

The CRS analysis goes on to say, however, "arguably, a

multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent."

The administration's proposal clearly falls into the latter category.

It does much more than merely apportion the rights and obligations of the U.S.S.R.

It apportions some rights to some successor parties—but denies them to others, in effect creating two classes of parties. This asymmetry and lack of reciprocity represents a clear departure from both the legal and strategic assumptions embodied in the initial treaty.

It specifically permits Russia to establish ABM facilities on the territory of other independent states. This is not an apportionment; this creates a new right under the treaty.

The administration proposal admits to the treaty states which neither have nor intend to have offensive or defensive strategic weapons, while giving them virtual veto rights over the strategic posture of other parties.

This brings me to the most important point: The administration's proposal affects the rights of the United States to provide for our own defense as we see fit.

It was to protect those rights that the Senate was given its advice and consent role in the first place. The Senate must not abdicate its role, now.

I urge my colleagues to support this provision.

Mr. DODD. Mr. President, today I rise to recognize the past success of the CFE Treaty and to stress that, in order to continue that success, this body must now offer its advice and consent for the CFE Treaty's Flank Document.

Since the CFE Treaty entered into force in 1992 it has made Europe a safer place; not just because it has resulted in the removal or destruction of over 53,000 items of major military equipment; not just because it has enabled international inspectors to undertake nearly 3,000 on-site international inspections; but, above all, because it has fostered a sense of trust between NATO and Russia.

Now, as we move to build on that sense of trust and deal with Russia as a new democratic state rather than an old arch-enemy, it is only fair and proper that we address Russia's concerns with respect to some of the arcane provisions of this treaty. The CFE Treaty, as written, establishes zones on an old cold war map, a map drawn before the breakup of the former Soviet Union. The pending revised Flank Document updates alters some of the provisions of this treaty to reflect the fact that we're now dealing with a new map.

Clearly the Flank Document does not address all the issues that we must face in adapting the CFE Treaty to the new situation in Europe, but it is a fine first step.

The conditions in the resolution of ratification are, for the most part,

thoughtful and necessary. I also support the amendment, offered by Senators KERRY and SARBANES, clarifying condition 5 as it relates to Armenia.

Without this amendment, section F of condition No. 5 would have required the President to submit a special report to Congress regarding whether or not Armenia has been in compliance with the CFE Treaty, and, if not, what actions the President has taken to implement sanctions.

Why should we single out Armenia? Without the amendment, the language assumed that Armenia and only Armenia violated the CFE Treaty and should suffer sanctions.

This amendment was added in the interest of fairness and simply asks the President to examine compliance of all States Parties located in the Caucasus region rather than singling out Armenia for special treatment.

While the amendment ameliorates one problem with the resolution of ratification, I have another misgiving about another condition that was adopted by the Committee on Foreign Relations during consideration of the treaty last week. Condition No. 9 would require the President to certify that he will submit to the Senate, for its advice and consent, the agreement to multilateralize the 1971 Anti-Ballistic Missile Treaty.

I am of the same mind as my distinguished colleague, Senator BIDEN, on this issue. While the Senate does not prohibit itself from attaching unrelated conditions to resolutions of ratification, the Senate should exercise some self-restraint in such important matters. The Founding Fathers clearly distinguished the question of treaty ratification by requiring a supermajority in such cases. This is not every day legislation we're dealing with here. We're debating whether or not to ratify a treaty, and this attached, unrelated condition really has no place in today's debate.

In short, condition No. 9 links ratification of the Flank Document with the unrelated, but controversial 1972 Anti-Ballistic Missile Treaty debate. There are merits to both sides of that issue and that debate will surely have its time. This is the wrong way to move that debate forward.

Let us be certain of one thing: The Senate, with condition 9, interferes with what has long been a function of the executive branch. In the breakups of the U.S.S.R., Yugoslavia, Czechoslovakia, and Ethiopia, when the new States took on the treaty rights and obligations of their predecessors, no request for Senate advice and consent was sought. I ask my colleagues: Why are we treating the ABM Treaty differently?

In spite of my objection to condition 9, this treaty and its resolution of ratification are too important to be bogged down today over a debate on the ABM Treaty. I believe that the appropriate course of action is to ratify the pending Flank Document this is a reasonable initial adjustment to the CFE

Treaty. In doing so, we will also show Russia that we are willing to work with Russian officials in facing legitimate concerns, and, most importantly, we will maintain the viability of this valuable 30-nation agreement.

Mr. HELMS. Mr. President, I yield the remainder of my time to the distinguished Senator from Oregon [Mr. SMITH].

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, I rise in appreciation for the leadership of the chairman, the Senator from North Carolina, on this issue and as member of his committee I rise in support of the ratification of the CFE Flank Agreement.

The CFE Treaty has been remarkably successful in reducing the cold war arsenals of conventional weapons in Europe. To date well over 50,000 tanks, artillery pieces and aircraft have been destroyed or removed from Europe. This treaty serves as an important mechanism to continue balanced force reductions in Europe, to build confidence among European States, and to provide assurances that NATO expansion will in no way threaten Russia.

In addition to the Europe-wide national ceilings on specific categories of military equipment, the CFE Treaty established a system of four zones inside the map of Europe with separate subceilings. The three central zones are nested and overlapping, the fourth zone is the flank zone. The flank zones include Russia's northern and southern military districts that, during the cold war, were areas of heightened tension with NATO. NATO has corresponding limits on its Northern and Southern Flanks.

The CFE flank zones limit the amount of equipment a country is permitted to deploy in certain areas of its own territory. The outbreak of armed ethnic conflicts in and around the Caucasus in 1993 and 1994, most notably the large scale offensive launched by the Russian Government in Chechnya, led to Russian claims for the need to deploy equipment in excess of treaty limits in that zone.

Under the CFE Treaty, mechanisms exist that would allow parties the flexibility to make temporary adjustments in the size or location of their military equipment holdings with proper notification. However, in 1994 the Government of Russia signaled its intention to violate the treaty if such restrictions were not permanently relaxed.

In early 1995, Clinton administration officials adamantly insisted that Russia must meet its obligations under the CFE Treaty on schedule. By May of that same year, those rigid statements demanding compliance soon collapsed into a frenzied effort to renegotiate the treaty on terms that would be acceptable to Russia.

Aside from the embarrassing spectacle of Western concessions in the face of Russian arms control violations, the NATO alliance was further

undermined by a United States-Russian side deal that failed to gain the support of our allies. A key element of the final compromise on this treaty is a confidential side statement which U.S. negotiators provided to the Russian delegation in order to win their approval of the Flank Document. An interim United States-Russian proposal—known as the Perry-Grachev understanding—led to yet another embarrassing retreat, this time from our own NATO allies. Finally, after 11th hour negotiations, the agreement before us today was accepted by all 30 parties to the CFE Treaty.

In order to understand the process through which this treaty was approved, I strongly recommend that any interested Senator review that short document, which is available in the Office of Senate Security on the fourth floor of the Capitol. After reading that document, the purpose of the numerous restrictions contained in the resolution of ratification—particularly paragraphs 3 and 6—should be abundantly clear.

The committee resolution reverses the affects of this side agreement by prohibiting United States participation in any negotiations which would allow Russia to violate the sovereignty of its neighbors. As further assurance, the resolution requires the President to certify, prior to deposit of the instrument of ratification, that he will vigorously reject any other side agreements sought by the Russians or any other country.

I believe that the proper approach for the United States would have been to insist on Russian compliance 18 months ago. However, the 30 parties to the treaty were willing to reach a compromise consisting of the document before the Senate today. In all likelihood, if this treaty is rejected, it will be renegotiated on less favorable terms. With that in mind, and because of the 14 conditions included in the committee's resolution of ratification, I am willing to recommend support for this treaty.

The treaty is an acceptable first step in resolving the difficult challenge of adapting a cold war era treaty to post-cold-war realities. It is one part in a series of efforts underway to redesign the security architecture of Europe, and as such it is an important step toward the larger goal of NATO enlargement.

The CFE Treaty and the Vienna-based organization that oversees its implementation are important pieces of the geopolitical landscape of Europe and the former Soviet Union. With the end of the cold war, decisions made in the context of the CFE Treaty affect U.S. security on the margins. But for countries such as the Baltic States, Ukraine, Georgia, and Azerbaijan, such decisions can affect the very sovereignty of these newly independent countries.

Russia—still the largest military power in Europe—has used its armed forces in recent years in both Georgia

and Azerbaijan. Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those states. Russian Government officials have made open threats of military invasion against the Baltics. Finally, less than a year ago, a bloody war in Chechnya was brought to an end. That war was characterized by wide scale Russian atrocities, the intentional targeting of civilians, and casualties possibly in excess of 100,000 people—mostly innocent men, women, and children. It is against this backdrop that the countries on Russia's periphery watch any revisions to the security guarantees contained in the CFE Treaty.

Mr. President, I understand my time is up.

On this basis, this treaty has been negotiated. Again, with the leadership of the chairman, I urge support from the Senate and thank you for this time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I want to pay my respects to the distinguished Senator from Oregon [Mr. SMITH]. He is the chairman of the Europe subcommittee, and he has devoted an enormous amount of time and effort to bringing this treaty forward. So he thanks me, but I thank him. I am glad he is in the Senate. I am glad he is a member of the Foreign Relations Committee.

I have been asked to advise Senators that the coming vote, after the able Senator from West Virginia, Senator BYRD, completes his presentation, the ensuing vote will be the last vote of the day.

I yield the floor and yield back such time as I may have.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, how much time remains before the vote?

The PRESIDING OFFICER. There is 3½ minutes for Senator BIDEN. You have 30 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I want to commend the managers of the agreement to the expeditious manner in which they have moved this agreement through the committee and to the floor in time for the deadline of May 15 in order that it not be subject to further action by the review conference in Vienna. As I understand it, the agreement was not submitted to the Senate by the Secretary of State until April 3, 1997. So I commend the committee. But I also wish to express my concern over the rushed manner in which the Senate has been forced to deal with this important treaty. All of us in this Chamber know that treaties are not considered by the House of Representatives, but they still have the effect and status of being the law of the land of our Nation. They have as much or even more importance, in some respects, and certainly as far as the Senate is concerned, than any bill that is passed by both Houses and has been subjected to the scrutiny of a conference committee.

In the case of treaties, the Senate considers them and, assuming that the President exchanges the instruments of ratification, they become the law of the land according to article 6 of the United States Constitution. Therefore, the Senate has a special responsibility, in the case of treaties, to exercise due caution and great care in dealing with treaties, since there is no review or check by the other body. Additionally, the Senate provides the only forum for the debate of the provisions of treaties, and for informing the American people about their content. Because of those realities, I am very concerned about the increasing tendency in this body, as has been evidenced by the Chemical Weapons Treaty that we recently passed, and now by this treaty, to enter into time agreements that inadequately protect the rights of all Senators to debate and amend treaties, but which also fail to defend the rights of the American people to know what is in the treaties. I think it is a bad trend. I think it should be curtailed, because it does not allow Members to thoroughly study and debate these complicate and important matters.

This committee report bears the date of May 9, 1997, when it was ordered to be printed. That was last Friday. As I understand it, it was made available to my staff on Monday of this week, and, so, I have had between Monday and now to consider the contents of the committee report. The committee report is where we naturally turn to understand the content of the treaty or content of the bill or resolution, as it were. Also, the courts turn to the phraseology of a committee report to better understand the intent of the legislature when it passes on a bill or resolution, or approves the resolution of ratification of a treaty. So it is important that Members have an adequate opportunity to study a committee report.

It is important that they have adequate opportunity to study the hearings. It is likewise important that they have an adequate opportunity to fully debate a treaty. Let me say, again, that according to article 6 of the United States Constitution—the Constitution, this Constitution—and the laws that are made in pursuance of this Constitution and the treaties that are made under the authority of the United States shall be the supreme law of the land—the supreme law of the land.

Now, that is a very heavy burden to place upon the U.S. Senate, as it is given the sole responsibility with respect to the Congress. As far as the Congress is concerned, the Senate has the sole responsibility, a very heavy responsibility, to study treaties, to conduct hearings thereon, to mark up the treaties, to approve of conditions or reservations, amendments, whatever, to those treaties. There is no other body that scrutinizes the treaty. The Senate of the United States—and that is one of the reasons why the Senate is the unique body that it is—unique body, the premier upper body in the

world today, more so than the House of Lords in our mother country. And so it places upon us as Senators a responsibility that is very, very heavy, and we have a duty to know what is in a treaty before we vote on it. We get these requests, and here we are backed up against a date of the 15th.

We had the same problem, in a way, I think, with respect to the chemical weapons treaty. We are handed a unanimous consent request, and it is a bit intimidating for one Senator to be faced with the prospect that he will be holding up the business of the Senate if he holds up the unanimous consent request. But that is our responsibility; that is our duty.

So, I am increasingly concerned by the trend, as I have said, that we are finding ourselves being subjected to. It did not just begin yesterday or the day before, and I am not attempting to place any blame for that. I am simply calling attention to the fact that we have the responsibility as Senators under the Constitution, to which we swear an oath to uphold to support and defend, we have a duty to know what is in this treaty.

I am not on the committee, but I am a Senator, and I have as heavy a duty as does the Senator from North Carolina or the Senator from Delaware. That is the way I see it. I have as heavy a duty to know what I am voting on, because this is the law of the land. It is not an ordinary bill or resolution which can be vetoed by the President and which, if signed into law by the President, can be repealed next week or the following week or the next month. It is not that easy to negate the effects of a treaty if we find we made a mistake.

Well, so much for that. Here we are debating the treaty. We have one, two, three, four Senators on the floor debating an important treaty, and we are confined within a 2½-hour time limit, I believe. Four Senators. The law of the land. We should be debating the treaty without a time limit, at least in the beginning.

I have been majority leader of the Senate twice during the years when President Carter was President. I did not serve under Mr. Carter, I served with him. Senators don't serve under Presidents, we serve with Presidents. But I was majority leader during those 4 years. I was majority leader in the 100th Congress. I was minority leader in all of the Congresses in between 1981 and 1986.

We had some important treaties: INF Treaty, we had the Panama Canal Treaties, and we did not bring treaties like this to the floor and ask they be debated, no amendments thereon, and in a time limitation of 2 hours. And there was a request to cut that to 1 hour. We did not do that.

When I came here, we debated treaties, and we took our time. At some point, it is all right to try to get a time limitation after things have been aired; it is all right to try to bring it to clo-

sure. But I am somewhat disturbed and concerned by this trend that we find ourselves being subjected to.

As to the substance of the treaty, I want to note that condition No. 8 dealing with treaty interpretation provides sound guidance on the meaning of "condition," which was authored by the distinguished Senator from Delaware, Mr. BIDEN, now the ranking Democrat on the Foreign Relations Committee, myself and former Senator Sam Nunn, the former chairman of the Senate Armed Services Committee, and agreed to on the Treaty on Intermediate Nuclear Forces in Europe of 1988. That is the INF Treaty.

In that instance, I was under great pressure from my friends on the Republican side of the aisle and great pressure from my friends on the Democratic side of the aisle to bring up the treaty. As majority leader, I thought it was my duty to wait until we had resolved some critical problems that were estimated to be critical problems by the Armed Services Committee and the Intelligence Committee before I brought it up. We spent considerable time on the treaty.

Condition (8) states that "nothing in [the so-called Biden-Byrd] condition shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through a majority approval of both Houses."

Why was it necessary—I would like to ask this question of either the manager or the ranking manager of the resolution—why was it necessary for us to include condition (8), which certainly is a condition that I strongly support? Why was it necessary for us to include condition (8)?

(Ms. COLLINS assumed the chair.)

Mr. BIDEN. Madam President, would the Senator like me to respond?

Mr. BYRD. Yes, I yield, Madam President.

Mr. BIDEN. The Senator makes a valid observation. The truth is, it was not necessary, but I would like to give the explanation why it was included, and the majority can speak even more clearly to it.

The concern on the part of the majority was that the Clinton administration would use the Biden-Byrd language to justify sending a modification of a treaty for a two-House approval by majority vote rather than to the Senate for a supermajority vote when, in fact, it was a modification that constituted an amendment to the treaty.

You never intended it for that purpose; I never intended it for that purpose. The concern was, I think it is fair to say on the part of the majority, that the Clinton administration might have attempted to read it to allow them to avoid submission to the Senate for a supermajority vote under the Constitution and just go to each House for a majority vote.

Mr. BYRD. Does the manager wish to add anything?

Mr. HELMS. No, except to say Senator BIDEN has said it correctly.

Mr. BYRD. I am pleased that we have not done that. In other words, as I understand the distinguished ranking manager, the administration originally wanted the approval of disagreements through normal legislative action by both bodies of the Congress which would, of course, require only majority approval in both bodies. Was that the concern?

Mr. BIDEN. Yes, it is. If I may say, Madam President, to the distinguished leader, that in a November 25, 1996, memorandum for Alan J. Kreczko, Special Assistant to the President and Legal Adviser to the National Security Council, from Christopher Schroeder, Acting Assistant Attorney General, there is this phrase on page 14 of that memorandum. It says:

Because the Senate took the view that such "common understandings" of a treaty had the same binding effect as express provisions of the treaty for the purposes of U.S. law, the Biden condition logically supports the proposition that the President may be authorized to accept changes in treaty obligations either by further Senate advice and consent or by statutory enactment.

The next paragraph:

In light of these judicial and historical precedents, we conclude the Congress may authorize the President, through an executive agreement, substantially to modify the United States' international obligations under an arms control (or other political-military) treaty.

So the purpose, again, was to make it clear what you and I, as we understood at the time that condition was added—I might add, I get credit for it being called the Biden-Byrd condition, of which I am very proud, but the truth of the matter is, after having suggested such a condition early in the ratification process, I spent the next 7 months in the hospital during the remainder of the whole ratification process, and it was the distinguished leader, the Senator from West Virginia—it really should be the Byrd-Biden condition. Nonetheless, that is the reason. You and I never thought a majority vote in both Houses as a simple piece of legislation would be sufficient to approve an amendment to a treaty, and that was the concern expressed by the majority that it be memorialized, if you will, in condition (8).

Mr. BYRD. I thank the very able ranking manager, and I compliment him again and compliment the manager. I am glad that condition has been made clear.

Secondly, I would like to ask the managers of the agreement their reasoning behind their view of the collective impact of conditions (1), (2) and (3). Let me preface what I have just said by reading excerpts from these conditions.

CONDITION 1: POLICY OF THE UNITED STATES

I read from the committee report, page 20:

Condition (1) simply restates United States policy that no Russian troops should be deployed on another country's territory without the freely-given consent of that country. Unfortunately, Russia continues to station

troops in several sovereign countries of the former Soviet Union—in several cases against the express wishes of the host country.

CONDITION 2: VIOLATIONS OF STATE SOVEREIGNTY

Condition (2) states the view of the Senate that Russian troops are deployed abroad against the will of some countries (namely, Moldova). It further states the Secretary of State should undertake priority discussions to secure the removal of Russian troops from any country that wishes them withdrawn. Further, it requires the Administration to issue a joint statement with the other fifteen members of the NATO alliance reaffirming the principles that this treaty modification does not give any country: (1) The right to station forces abroad against the will of the recipient country; or (2) the right to demand reallocation of military equipment quotas under the CFE Treaty and the Tashkent Agreement. This joint statement was issued, in fact, on May 8, 1997 in Vienna.

CONDITION 3: FACILITATION OF NEGOTIATIONS

Now, I am particularly interested in this condition.

Condition (3) ensures that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors.

Let me interpolate right there for the moment with a rhetorical question.

Why should we have to have a condition to ensure that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors? It would seem to me that would be a given.

Let me continue, and then I will yield to the distinguished ranking member.

Indeed, this condition, along with much of the rest of the resolution, is specifically designed to require the United States to safeguard the sovereign rights of other countries (such as Ukraine, Moldova, Azerbaijan, and Georgia) in their dealings with the Russian Federation.

Listen to this:

The committee became alarmed, over the course of its consideration of the CFE Flank Document, with several aspects of the United States negotiating record. This condition [condition No. 3] will ensure that the United States will adhere to the highest principles in the conduct of negotiations undertaken pursuant to the treaty, the CFE Flank Document, and any side statements that have already been issued or which may be issued in the future.

Now, there are several questions that jump out at anyone who reads that paragraph.

It makes reference to "side statements." It uses the word "alarmed." There is a condition there that ensures that the United States will not be a party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from a smaller neighbor.

Why do we have to have a condition to that effect? Is there some confusion about what the right position is that the United States should take? Is it not a given that the United States would not be a party to any efforts by Russia to intimidate concessions from its smaller neighbors?

I yield to the distinguished Senator.

Mr. BIDEN. Let me say, this all came about—and they are, obviously, as usual, very good, incisive and insightful questions.

I think it is unnecessary because I think it is a given. But let me explain, in fairness, why we got to this point and why I thought it was—speaking only for myself—a clarification, although in some sense I thought it was a demeaning clarification. Let me explain.

During the negotiations on the flank agreement, there was concern about what became referred to as a "side agreement." That was, there was an issue that came up during the negotiations where a diplomatic note was passed, which is classified—I am not able to give you, but I can tell you from the committee testimony what it said—a note that was passed to the Russian representative dealing with the issue of the stationing of Russian troops on the soil of the countries you named.

The Under Secretary of State, Lynn Davis, who appeared before the committee on April 29, was asked to explain. He went on to explain why a statement was made to the Russians. The statement made was that we would—this is the quote, in part—"the United States is prepared to facilitate or act as an intermediary for a successful outcome in discussions that could take place under the flank agreement and the CFE Treaty between Russia and other Newly Independent States."

The worry expressed by my friends in the Republican Party was that this reflected a possible inclination to try to mollify Russia and put American pressure on Moldova or Georgia or other states to accept Russian deployment of Russian forces on their soil.

The concern was that the assertion made by the U.S. negotiators was a way of saying, do not worry, we are going to help you to get Russian troops placed in those regions.

Lynn Davis, the Under Secretary said, no, that was never the intention of that "side agreement," as it became referred to.

I will quote what he said at the hearing to my friend from West Virginia. He said:

We see this particular statement of our intentions as part of the reassurance that we can make so that those countries will feel that this is an agreement that continues to be in their security interests. This statement of our intentions makes clear that the commitment is predicated on an understanding that any agreements between Russia and the Newly Independent States must be done on a voluntary basis with due respect for the sovereignty of the countries involved, and our role here is indeed to reinforce that and ensure that it is carried out.

This was the concern that was expressed by my friends on the Republican side, that the United States intention to level the playing field between Russia and other Newly Independent States had not been seen that way by all concerned.

So what was done—and the administration signed on to the condition—was to make it crystal clear that this offer of an intermediary role was not for the purpose of using our influence or power to coerce them into accepting a demand or a suggestion from their Russian brethren.

That is the context, I say to my friend, in which it came up. You used the phrase “the committee became alarmed.” Some in the committee were alarmed because of the wording of the “side agreement.” This was done to clarify what the administration says was their intent from the beginning but now locks in the stated interpretation by the administration of what that whole thing was all about.

I hope I have answered the question, and I hope I have done it correctly.

Mr. HELMS. You have done it correctly, I say to the Senator.

Conditions 1, 2, and 3 of the resolution on ratification require the President to observe reasonable limits in the conduct of certain negotiations facilitated by the United States in support of the CFE Treaty. Specifically, this entails an obligation for the President to conduct his diplomacy in a manner that respects the sovereignty and free will of countries on the periphery of Russia that are under pressure by Russia to allow the establishment of military bases.

In fact, I do not believe that the United States should be party to any negotiation which could result in allowing Russia to deploy its troops into the territory occupied by the Soviet Union for nearly 70 years. Yet this is exactly the result contemplated by the Clinton administration if this resolution of ratification is not clear on this point. Conditions 1, 2, and 3 are clear on this matter.

It is clear from this document that the Clinton administration has demonstrated a willingness to participate in negotiations that could actually result in the establishment of Russian military bases on the territory of other States with the endorsement—and even with the active assistance—of the United States. Is there anyone in the administration who is prepared to state that it would be in the United States' interest for Russia to establish military bases outside of its territory?

The Clinton administration offers hollow assertions that Russian troops will not be deployed in other States without the freely given consent of the relevant government. Russia—still the largest military power in Europe—has used its armed forces in recent years in both Georgia and Azerbaijan with virtually no complaint from the Clinton administration.

Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those States while the Clinton administration remains silent. Russian Government officials have made open threats of military invasion against the Baltic States. Finally, less than 1 year ago, a

bloody war in Chechnya was brought to an end. That war was characterized by wide scale Russian atrocities, the intentional targeting of civilians, and casualties possibly in excess of 100,000 people—mostly innocent men, women, and children. Do the administration's lawyers find that these incidents were with the freely given consent of the affected governments?

Conditions 1, 2, and 3 set reasonable limits specifically tied to activities cited in paragraph IV (2) and (3) of the CFE Flank Document.

Mr. BIDEN. Mr. President—Madam President, I made the mistake of referring to the Presiding Officer as “Mr. President” before I turned around. And I also made the mistake of referring to Under Secretary Davis as “he.” It is “she.” I knew that, and I apologize on both scores.

Mr. BYRD. Well, Madam President, I came up, I suppose, at a time when political correctness did not make any difference. As far as I am concerned, it does not make any difference yet. And the pronoun “he” is inclusive. It was inclusive when I was a boy; it was inclusive when I became a man. It still is inclusive of the female. So I would not worry too much about that.

Mr. BIDEN. Madam President, as the distinguished former majority leader knows, another former majority leader, Senator Baker, used an expression all the time. He would come to the floor, and he would say, “I ain't got no dog in that fight.”

Mr. BYRD. I commend the committee for including that condition.

I can understand how the committee would become alarmed. I think that it would have been well if all Senators could have been notified that there was—and maybe they were, I do not know, but I do not remember being notified except through my own staff that there was such a paper up in room 407 so that they could have gone up and examined it. I heard about it this afternoon, and I went up and looked at it.

So I think the committee had a right to be alarmed. I congratulate the committee on including the condition which, as Mr. BIDEN has just said, locks it in, locks the administration in, so there will be no doubt that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors.

I would dare say, if the people in Azerbaijan or Armenia or Georgia should see that language, they would be alarmed also—they would be alarmed also. They would wonder, where does the United States stand? But the condition is there. And I again commend the committee on including it.

Do the managers feel that U.S. policy is now clearly to protect the interests and rights of the newly sovereign nations of the Caucasus against intimidation and pressure tactics by the Russians regarding equipment that is covered by the flank agreement that we are considering here today?

Mr. HELMS. Yes, sir.

Mr. BIDEN. I would say yes, as well, Madam President.

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

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. BYRD. Madam President, I thank all Senators. Especially I thank the manager and ranking manager on the committee.

I shall vote for the treaty.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Will the Senator yield me 1 minute?

Mr. BYRD. I yield 1 minute to the Senator.

Mr. HELMS. I thank the Senator.

During the past 4 years, the Clinton administration has remained silent while Russia has encroached upon the territory and sovereignty of its neighbors. It was the lack of a foreign policy—not a lack of tools—that allowed this to happen.

I have confidence that the new Secretary of State will correct the course of our policies toward Russia, and I gladly support this treaty to aid the Honorable Madeleine Albright in that endeavor. The collapse of the Soviet Union was one of the finest moments of the 20th century. To allow even a partial restoration of the Soviet Union before the turn of the century would be a failure of an even greater magnitude.

Senator LOTT, I believe, is standing by.

I thank the Senator.

Mr. BYRD. I thank the distinguished Senator.

I reserve the remainder of my time.

Mr. BIDEN. Madam President, before the distinguished leader takes the floor, if I could just take 60 seconds of the 3 minutes I have remaining to comment on something the Senator from West Virginia said.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Madam President, the Senate has always been served well by the talent of the Senator from West Virginia and, most importantly, in making sure that we do our job responsibly.

I would make only one 20-second explanation of why I think this treaty got less of a cover than any others.

One was the way in which it was delayed and being presented and the timeframe. But a second reason is that people who followed this, which is a mistake to assume everyone should, people who follow this have been aware of what the terms of the agreement were since May of last year.

I think many of us fell into the routine on Foreign Relations and Armed Services of thinking that its terms were well known. And it was widely accepted, the broad outlines of the treaty. But I think the Senator makes a very valid point and I, too, as ranking member of this committee, do not want

to be party to these expedited efforts to deal with very significant security issues relating to the United States.

Mr. HELMS. Let us make a pact.

Mr. BIDEN. We make a pact.

Mr. BYRD. Mr. President, I thank both Senators.

Mr. BIDEN. I reserve the remainder of my time, if I have any.

Mr. LOTT. Madam President, could I inquire how much time is remaining for debate?

The PRESIDING OFFICER. The Senator from West Virginia has 5 minutes remaining. The Senator from Delaware has 2 minutes remaining.

Mr. LOTT. Then I will yield myself time off my leader's time.

Mr. BYRD. Do you need more time?

Mr. LOTT. No. I thank the Senator from West Virginia.

I am glad I was able to come to the floor, Madam President, and listen to this exchange. I always enjoy learning from the exchanges involving the senior Senators, like the Senators from West Virginia and North Carolina and Delaware. I wish all Members had been here for the last hour and heard this debate.

I do want to take just a few minutes, as we get to the close of debate, to speak on the Chemical Forces in Europe flank agreement or resolution of ratification because I think it is very important. I wish we did have more time to talk about all of its ramifications, but I know the chairman and the ranking member have gone over the importance of this treaty earlier today.

Madam President, we have an important treaty before us today modifying the 1990 Conventional Armed Forces in Europe Agreement [CFE]. The Flank Document adjusts the CFE boundaries to reflect the collapse of the Soviet Empire, adds reporting requirements, and increases inspection provisions.

Negotiations to modify the CFE Treaty began in 1995, because Russia threatened to violate the flank limits in the original treaty. The precedent of modifying a treaty to accommodate violations by a major signatory concerned many of us. We have also been concerned about how Russia intends to use the Flank Agreement to pressure countries on its borders—former Republics of the Soviet Union. Our concerns were dramatically heightened by the classified side agreement the administration reached to further accommodate Russian demands. This side agreement is available for all Senators to review in room S-407 of the Capitol.

The concerns about the CFE Flank Agreement are shared by a number of states which have been subjected to Russian intimidation, pressure and subversion. States with Russian troops on their soil without their consent—Moldova, Ukraine, and Georgia—have rightly expressed concern that the Flank Agreement must not undermine their sovereign right to demand withdrawal of those Russian forces. A fourth country, Azerbaijan, has been subject to Russian-sponsored coups and

assassination attempts. They have been reluctant to approve the Flank Agreement without adequate assurances.

The resolution of ratification before the Senate today addresses these concerns. The resolution includes a number of binding conditions which make clear to all CFE parties that no additional rights for Russian military deployments outside Russian borders are granted. The resolution ensures that United States diplomacy will not be engaged on the side of Russia but on the side of the victims of Russian policies. In addition, the 16 members of NATO issued a statement last week affirming that no additional rights are granted to Russia by the Flank Agreement. This statement was a direct result of the concerns expressed by other CFE parties and by the Senate.

The resolution directly addresses the administration's side agreement in condition 3 which limits United States diplomatic activities to ensuring the rights of the smaller countries on Russia's borders. This resolution ensures the United States will not tacitly support Russian policies that have undermined the independence of Ukraine, Georgia, Moldova, and Azerbaijan. Finally, the resolution requires detailed compliance reports and lays out a road map for dealing with noncompliance in the future.

The resolution of ratification also addresses important issues of Senate prerogatives. It clarifies that the Byrd-Biden condition, added to the INF Treaty in 1988, does not allow the administration to avoid Senate advice and consent on treaty modifications or amendments. The resolution addresses the issue of multilateralizing the 1972 ABM Treaty in condition 9. The administration has raised objections to this provision as they have to many previous efforts to assert Senate prerogatives on this point. This should be an institutional position—not a partisan issue.

For more than 3 years, Congress has been on the record expressing serious misgivings about the administration plan to alter the ABM Treaty by adding new signatories. Section 232 of the 1994 defense authorization bill states the issue clearly: "The United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution."

Efforts to address the multilateralization issue since then have resulted in filibusters and veto threats. It should not surprise anyone that the Senate selected this resolution of ratification to address the issue—just as Senators BYRD and BIDEN selected the resolution of ratification for the INF Treaty to address an ABM Treaty issue 9 years ago.

Many of my colleagues are familiar with the issue of ABM multi-

lateralization. Despite the often arcane legal arguments, the issue is not complicated. The Senate gave its advice and consent to the 1972 ABM Treaty as a bilateral agreement between the United States and the Soviet Union. The administration has proposed adding as many as four new signatories to the treaty and has negotiated limited treaty rights for those new signatories. The administration's proposal would define Russia's national territory to include these countries for purposes of the ABM Treaty. The administration's proposal would essentially define military equipment of these countries as belonging to Russia for purposes of the ABM Treaty. The administration's proposal would add new countries to the ABM Treaty but not grant them rights allowed the original signatories. This would mean that countries would have the power to block future U.S. amendments to the ABM Treaty—even though the new signatories would not have the same rights and obligations as the United States. The administration's proposed multilateralization would only address some of the military equipment covered under the original ABM Treaty—leaving a radar in Latvia, for example, outside the scope of the new treaty. Under the administration's proposal, the vast majority of states independent which succeeded the Soviet Union would be free to develop and deploy unlimited missile defenses—a dramatic change from the situation in 1972 when the deployment of missile defenses on these territories was strictly limited by the ABM Treaty.

In part and in total, these are clearly substantive modifications which require—under U.S. law—Senate advice and consent. Multilateralization would alter the object and purpose of the ABM Treaty as approved by the Senate in 1972. Multilateralization, therefore, must be subject to the advice and consent of the Senate.

The administration argues that it has the sole power to determine questions of succession. But that is not true. The Congressional Research Service opinion, quoted widely in this debate, recognizes that "International law regarding successor States and their treaty obligations * * * remains unsettled." It also notes that "international law does not provide certain guidance on the question of whether the republics formed on the territory of the former U.S.S.R. have succeeded to the rights and obligations of the ABM Treaty" and that "a multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent." It is my understanding that this opinion was prepared a year ago by a lawyer who has not even seen the text of the proposed agreement.

The administration's position does not recognize the arms control precedents followed in the last decade. Arms control treaties are different from

treaties on fisheries, taxes, or cultural affairs. START I was concluded with the Soviet Union but entered into force only after the Senate gave its advice and consent to the Lisbon Protocol apportioning the nuclear forces of the former Soviet Union among successor States. The Bush administration did not argue that Ukrainian SS-19 missiles were the property of Russia. Yet, the Clinton administration is essentially arguing that Ukrainian phased-array radars are Russian under the proposed ABM multilateralization agreement. The question of successor state obligations under the CFE Treaty was explicitly recognized by the Senate when we gave our advice and consent to that treaty. During our consideration, a condition was included in the resolution of ratification which specified procedures for the accession of new States Parties to the CFE Treaty. On the issue of ABM multilateralization, Congress has specifically legislated on our right to review the agreement. To my knowledge, that has not happened on any other succession issue. Clearly, ABM multilateralization is very different from routine succession questions which have been decided by the executive branch alone.

Madam President, I agree with the administration on one important point. This is a constitutional issue. The White House has taken one position until today, and now the Senate has definitively taken another. Last January, I asked President Clinton to agree to submit three treaties for our consideration. The President has agreed to submit the ABM Demarcation agreement and the CFE Flank Agreement, which is before the Senate today. After he refused to submit ABM multilateralization, I said publicly that I would continue to press for the Senate prerogatives—because the Constitution, the precedents and the law are on our side. We do not prejudice the outcome of our consideration of ABM multilateralization. All we require is that the administration submit the agreement to the Senate. Yes, that requires building a consensus that may not exist today but such a consensus is necessary for a truly bipartisan national security policy. That is the issue before the Senate today.

Late last week, the administration recognized the Senate's desire to review ABM multilateralization. They proposed replacing the certification in condition 9 with nonbinding "sense of the Senate" language. In exchange, Secretary Albright offered to send a letter assuring us that we could address multilateralization in an indirect way—as part of a reference in the ABM demarcation agreement. But this offer was logically inconsistent. It asked the Senate to simply express our view about a right to provide advice and consent to multilateralization—and then accept a letter that explicitly denied that right. Adding new parties to the ABM Treaty is a fundamentally different issue from the proposed de-

marcation limits on theater defense systems. The administration's offer would allow multilateralization regardless of Senate action on the demarcation agreement. Our position is simple: We want to review multilateralization through the "front door" on its own merits—not through the "back door" as a reference in a substantively different agreement.

When the administration agreed to submit the CFE Flank Agreement for our advice and consent, we were asked to act by the entry into force deadline of May 15. We will act today even though the treaty was not submitted to the Senate until April 7—3 months after my request. We will act today even though we have a very full agenda—including comp time/flex time, IDEA, partial birth abortion and the budget resolution. We will fulfill our constitutional duty, we will address our concerns about policy toward Russia, and we will address the important issue of Senate prerogatives.

I urge my colleagues to support the entire resolution of ratification reported by the Foreign Relations Committee—including condition 9 on ABM multilateralization.

Madam President, I want to thank many Senators who have worked very hard and for quite some time on this treaty and on the ABM condition.

I particularly would like to thank Chairman HELMS, Senator BIDEN, Senator GORDON SMITH, and their staffs for all the work they did to get this resolution before the Senate today. Also, I would like to thank Senators who helped in insisting on Senate prerogatives—Senator WARNER and Senator MCCAIN, Senator SMITH, Senator KYL, Senator SHELBY, Senator LUGAR, and Senator HAGEL. A number of Senators on the committee and some not on the committee have been very much involved in this process. I commend them all.

Senators have had concerns about how and why this agreement was negotiated, and we had concerns about a side deal the administration made with the Russians concerning the allocation of equipment under the treaty.

The Senate has addressed these concerns decisively in this resolution of ratification. The resolution places strict limits on the administration's flank policy. It ensures that we will be on the side of the victims of Russian intimidation and that the United States will stand up for the independence of States on Russia's borders.

Most important, this resolution addresses a critical issue of Senate prerogative, our right to review the proposed modifications to the 1972 ABM Treaty. It was a decade ago that another ABM Treaty issue was brought in this body. That debate over interpretations of the ABM Treaty was finally resolved in the resolution of ratification for the INF Treaty in 1988.

Today, we are resolving the debate over multilateralization of the ABM Treaty in this resolution of ratifica-

tion. For more than 3 years now Congress and the executive branch have discussed back and forth the appropriate Senate rule in reviewing the administration's plan to add new countries to the ABM Treaty.

Condition 9 requires the President to submit any multilateralization agreement to the Senate for our advice and consent. It does not force action here. It just says we should have that opportunity. We should be able to exercise that prerogative to review these changes. It ensures we will have a full opportunity to look at the merits of multilateralization in the future. I believe the Constitution and legal precedence are in our favor.

Today, the Senate will act on the Conventional Forces in the Europe [CFE] Flank Agreement in time to meet the May 15 deadline. In spite of the limited time we had to consider the agreement and the very full schedule that we have had on the floor, we are meeting that deadline.

I did have the opportunity to discuss this issue with our very distinguished Secretary of State yesterday, and we discussed the importance of this CFE Flank Agreement. Also, we talked about how we could properly and appropriately address our concerns about multilateralization. I suspect that she probably had something to do with the decision to go forward with it in this form, and I thank her for that, and the members of the committee for allowing it to go forward in this form.

Mr. BIDEN. Will the Senator yield?

Mr. LOTT. I am happy to yield to the Senator.

Mr. BIDEN. I would like to publicly comment and compliment the Senator from Mississippi. The truth of the matter is that this treaty would not be before the Senate today as a treaty without the efforts of the majority leader. The executive believed that they can do this by executive agreement. They did not think they needed to submit this to the Senate, although I had been for several months explaining that I thought it should be treated as a treaty. It was not until the distinguished leader from Mississippi said, if it is not treated as a treaty, we have a problem.

The truth of the matter is the reason it is here is because of the distinguished Senator from Mississippi. I thank him for that.

Mr. LOTT. I thank the Senator for those comments. I did write to the President expressing my concerns in this area in January of this year, and other issues.

When I had the opportunity to visit with Secretary Madeleine Albright before she was confirmed by the Senate, I had the temerity to read to her from the Constitution about our rights in the Senate in advice and consent, and she said, "You know, I agree with you. I taught that at Georgetown University," and I believe she meant that.

I think we are seeing some results of that, and I appreciate the fact that our prerogatives are being protected. We

have had this opportunity to review it, debate it, and we will be able to take up other issues later on this year that are very important for Senate consideration. I think the process has worked. I urge my colleagues to support this resolution of ratification.

I yield the floor.

Mr. BYRD. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. BYRD. I will take 30 seconds. I want to thank the majority leader, and I associate myself with the remarks of Senator BIDEN. I thank the majority leader in insisting that this come to the Hill as a treaty, which requires a supermajority in the Senate. I very much appreciate that.

Madam President, I yield back the remainder of my time to Mr. BIDEN and Mr. HELMS. They can yield it back or they can use it.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I have nothing more to say, which will surprise my colleagues, except that the distinguished Democratic leader, I am told, may wish to speak on leader's time for a few moments on this issue. Give me a minute to check on whether or not the distinguished leader, Mr. DASCHLE, wishes to speak.

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

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

Mr. DASCHLE. Madam President, the Senate today is being presented with an opportunity that is as rare as it is important. For the second time in less than 3 weeks, the Senate is being asked to give its advice and consent on a major arms control treaty: the flank agreement to the Conventional Forces in Europe treaty.

Late last month, the Senate had placed before it the Chemical Weapons Convention [CWC]. After much debate, the Senate resoundingly rebuffed several attempts by the treaty's opponents to scuttle it, and eventually passed CWC with the support of 74 Senators.

Now many have questioned the length to which CWC opponents went in their efforts to kill or delay Senate consideration of this treaty. I share some of those concerns. However, in the end, when the Senate was finally allowed to take up the CWC treaty, I would argue that the ensuing floor debate on the CWC treaty represented the Senate at its best. Senators discussed honest disagreements on issues directly related to the CWC treaty, carefully weighed those discussions, and finally voted up or down on those issues and, ultimately, the treaty itself. In short, during the actual floor debate of

the CWC treaty, we saw the Senate acting in a responsible and exemplary fashion.

I am confident that if we had this same kind of debate on the CFE treaty, we would see the same result. In fact, the margin would probably be significantly greater for CFE than for CWC. I have listened carefully to the comments of my fellow Senators on for their views on this important agreement and have yet to hear a single Senator voice his or her opposition to the CFE treaty. This was true before the Foreign Relations Committee attached 13 CWC-related conditions and it is especially true after. As a result, Senate support for the CFE agreement itself probably exceeds the 74 who voted for the CWC.

Unfortunately, the Senate is being prevented from considering the CFE treaty in the same fashion we considered the CWC. We are not being allowed to look at just the CFE treaty and issues directly related to it. Instead, the time for Senate consideration of the CFE treaty is likely to be spent largely on a wholly unrelated issue—the ABM treaty and opponents efforts to undermine it.

Now, I understand this is an important issue to many members on the other side of the aisle. And, I know that Senators are well within their rights to attach unrelated matters to most types of legislation we consider.

However, I disagree with the proponents of the ABM condition on the merits and I especially disagree with them on their methods. On the merits, the administration's lawyers argue persuasively that the Constitution assigns the exclusive responsibility to the President to determine the successor states to any treaty when an original party dissolves, to make whatever adjustments might be required to accomplish such succession, and to enter into agreements for this purpose. Increasing the number of states participating in a treaty due to the dissolution of an original party does not itself constitute a substantive modification of obligations assumed. This is the view of the administration's lawyers. This is also the view of the nonpartisan Congressional Research Service in a legal review they conducted last year.

As for their methods, I think it is both unfortunate and short-sighted to use a treaty that is in our national security interests as a vehicle for advancing a totally unrelated political agenda. The principal sponsors of this condition have previously made no secret of the fact that they would like to see the United States walk away from the entire ABM treaty and immediately begin spending tens of billions of dollars to build a star wars type missile defense. With this act, they have now revealed the lengths they are willing to go to force their views on this Senate and this administration.

Nevertheless, that is what has been done. Senators are now faced with a difficult choice: vote for this treaty in

spite of the unacceptable ABM condition or against it because of the ABM language. This is an extremely close call for many of us.

In the end, Madam President, we must support this treaty. We must do so for two reasons. First, the treaty is still fundamentally in our strategic interest. Failure to pass this treaty now could unravel both the CFE agreement as well as any future efforts to enhance security arrangements in Europe. Second, the administration, which must ultimately decide how to deal with the objectionable ABM condition, has indicated that we should vote for this treaty now and let them work out what to do about this provision later. It is for these reasons that I cast my vote in support of this treaty and urge my colleagues to do the same.

Mr. BIDEN. Madam President, depending on the disposition of the chairman of the committee, I am prepared to yield back whatever time we have left and am ready to vote. The distinguished minority leader does not wish to speak on this at this moment.

I yield back the remainder of my time.

Mr. BYRD. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. LOTT. Madam President, if I could say for the Senators that will be coming over, this will be the last vote for the night so we can attend a very important dinner we have scheduled momentarily.

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. On this question, the yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The yeas and nays resulted—yeas 100, nays 0, as follows:

[Rollcall Vote No. 67 Ex.]

YEAS—100

Abraham	Enzi	Leahy
Akaka	Faircloth	Levin
Allard	Feingold	Lieberman
Ashcroft	Feinstein	Lott
Baucus	Ford	Lugar
Bennett	Frist	Mack
Biden	Glenn	McCain
Bingaman	Gorton	McConnell
Bond	Graham	Mikulski
Boxer	Gramm	Moseley-Braun
Breaux	Grams	Moynihan
Brownback	Grassley	Murkowski
Bryan	Gregg	Murray
Bumpers	Hagel	Nickles
Burns	Harkin	Reed
Byrd	Hatch	Reid
Campbell	Helms	Robb
Chafee	Hollings	Roberts
Cleland	Hutchinson	Rockefeller
Coats	Hutchison	Roth
Cochran	Inhofe	Santorum
Collins	Inouye	Sarbanes
Conrad	Jeffords	Sessions
Coverdell	Johnson	Shelby
Craig	Kempthorne	Smith (NH)
D'Amato	Kennedy	Smith (OR)
Daschle	Kerrey	Snowe
DeWine	Kerry	Specter
Dodd	Kohl	Stevens
Domenici	Kyl	Thomas
Dorgan	Landrieu	
Durbin	Lautenberg	

Thompson Torricelli Wellstone
Thurmond Warner Wyden

The PRESIDING OFFICER. Two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

The resolution of ratification, as amended, is as follows:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1, SENATE ADVICE AND CONSENT SUBJECT TO CONDITIONS.

The Senate advises and consents to the ratification of the CFE Flank Document (as defined in section 3 of this resolution), subject to the conditions in section 2.

SEC. 2. CONDITIONS.

The Senate's advice and consent to the ratification of the CFE Flank Document is subject to the following conditions, which shall be binding upon the President:

(1) **POLICY OF THE UNITED STATES.**—Nothing in the CFE Flank Document shall be construed as altering the policy of the United States to achieve the immediate and complete withdrawal of any armed forces and military equipment under the control of the Russian Federation that are deployed on the territories of the independent states of the former Soviet Union (as defined in section 3 of the FREEDOM Support Act) without the full and complete agreement of those states.

(2) **VIOLATIONS OF STATE SOVEREIGNTY.**—

(A) **FINDING.**—The Senate finds that armed forces and military equipment under the control of the Russian Federation are currently deployed on the territories of States Parties without the full and complete agreement of those States Parties.

(B) **INITIATION OF DISCUSSIONS.**—The Secretary of State should, as a priority matter, initiate discussions with the relevant States Parties with the objective of securing the immediate withdrawal of all armed forces and military equipment under the control of the Russian Federation deployed on the territory of any State Party without the full and complete agreement of that State Party.

(C) **STATEMENT OF POLICY.**—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that the United States and the governments of Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom have issued a joint statement affirming that—

(i) the CFE Flank Document does not give any State Party the right to station (under Article IV, paragraph 5 of the Treaty) or temporarily deploy (under Article V, paragraphs 1 (B) and C) of the Treaty) conventional armaments and equipment limited by the Treaty or the territory of other States Parties to the Treaty without the freely expressed consent of the receiving State Party;

(ii) the CFE Flank Document does not alter or abridge the right of any State Party under the Treaty to utilize fully its declared maximum levels for conventional armaments and equipment limited by the Treaty notified pursuant to Article VII of the Treaty; and

(iii) the CFE Flank Document does not alter in any way the requirement for the freely expressed consent of all States Parties concerned in the exercise of any reallocations envisioned under Article IV, paragraph 3 of the CFE Flank Document.

(3) **FACILITATION OF NEGOTIATIONS.**—

(A) **UNITED STATES ACTION.**—

(i) **IN GENERAL.**—The United States, in entering into any negotiation described in clause (ii) involving the government of Moldova, Ukraine, Azerbaijan, or Georgia,

including the support of United States intermediaries in the negotiation, will limit its diplomatic activities to—

(I) achieving the equal and unreserved application by all States Parties of the principles of the Helsinki Final Act, including, in particular, the principle that "States will respect each other's sovereign equality and individuality as well as all the rights inherent in and concompassed by its sovereignty, including a particular, the right of every State to juridical equality, to territorial integrity, and to freedom and political independence.";

(II) ensuring that Moldova, Ukraine, Azerbaijan, and Georgia retain the right under the Treaty to reject, or accept conditionally, any request by another State Party to temporarily deploy conventional armaments and equipment limited by the Treaty on its territory; and

(III) ensuring the right of Moldova, Ukraine, Azerbaijan, and Georgia to reject, or to accept conditionally, any request by another State Party to reallocate the current quotas of Moldova, Ukraine, Azerbaijan, and Georgia, as the case may be, applicable to conventional armaments and equipment limited by the Treaty and as established under the Tashkent Agreement.

(ii) **NEGOTIATIONS COVERED.**—A negotiation described in this clause is any negotiation conducted pursuant to paragraph (2) or (3) of Section IV of the CFE Flank Document or pursuant to any side statement or agreement related to the CFE Flank Document concluded between the United States and the Russian Federation.

(B) **OTHER AGREEMENTS.**—Nothing in the CFR Flank Document shall be construed as providing additional rights to any State Party to temporarily deploy forces or to reallocate quotas for conventional armaments and equipment limited by the Treaty beyond the rights accorded to all States Parties under the original Treaty and as established under the Tashkent Agreement.

(4) **NONCOMPLIANCE.**—

(A) **IN GENERAL.**—If the President determines that persuasive information exists that a State Party is in violation of the Treaty or the CFE Flank Document in a manner which threatens the national security interests of the United States, then the President shall—

(i) consult with the Senate and promptly submit to the Senate a report detailing the effect of such actions;

(ii) seek on an urgent basis an inspection of the relevant State Party in accordance with the provisions of the Treaty or the CFE Flank Document with the objective of demonstrating to the international community the act of noncompliance;

(iii) seek, or encourage, on an urgent basis, a meeting at the highest diplomatic level with the relevant State Party with the objective of bringing the noncompliant State Party into compliance;

(iv) implement prohibitions and sanctions against the relevant State Party as required by law;

(v) if noncompliance has been determined, seek on an urgent basis the multilateral imposition of sanctions against the noncompliant State Party for the purposes of bringing the noncompliant State Party into compliance; and

(vi) in the event that noncompliance persists for a period longer than one year after the date of the determination made pursuant to this subparagraph, promptly consult with the Senate for the purposes of obtaining a resolution of support for continued adherence to the Treaty, notwithstanding the changed circumstances affecting the object and purpose of the Treaty.

(B) **AUTHORITY OF DIRECTOR OF CENTRAL INTELLIGENCE.**—Nothing in this section may be

construed to impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure pursuant to section 103(c)(5) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(5)).

(C) **PRESIDENTIAL DETERMINATIONS.**—If the President determines that an action otherwise required under subparagraph (A) would impair or otherwise affect the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure, the President shall report that determination, together with a detailed written explanation of the basis for that determination, to the chairmen of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than 15 days after making such determination.

(5) **MONITORING AND VERIFICATION OF COMPLIANCE.**—

(A) **DECLARATION.**—The Senate declares that—

(i) the Treaty is in the interests of the United States only if all parties to the Treaty are in strict compliance with the terms of the Treaty as submitted to the Senate for its advice and consent to ratification, such compliance being measured by performance and not by efforts, intentions, or commitments to comply; and

(ii) the Senate expects all parties to the Treaty, including the Russian Federation, to be in strict compliance with their obligations under the terms of the Treaty, as submitted to the Senate for its advice and consent to ratification.

(B) **BRIEFINGS ON COMPLIANCE.**—Given its concern about ongoing violations of the Treaty by the Russian Federation and other States Parties, the Senate expects the executive branch of Government to offer briefings not less than four times a year to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives on compliance issues related to the Treaty. Each such briefing shall include a description of all United States efforts in bilateral and multilateral diplomatic channels and forums to resolve compliance issues relating to the Treaty, including a complete description of—

(i) any compliance issues the United States plans to raise at meetings of the Joint Consultative Group under the Treaty;

(ii) any compliance issues raised at meetings of the Joint Consultative Group under the Treaty; and

(iii) any determination by the President that a State Party is in noncompliance with or is otherwise acting in a manner inconsistent with the object or purpose of the Treaty, within 30 days of such a determination.

(C) **ANNUAL REPORTS ON COMPLIANCE.**—Beginning January 1, 1998, and annually thereafter, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) certification of those States Parties that are determined to be in compliance with the Treaty, on a country-by-country basis;

(ii) for those countries not certified pursuant to clause (i), an identification and assessment of all compliance issues arising with regard to the adherence of the country to its obligations under the Treaty;

(iii) for those countries not certified pursuant to clause (i), the steps the United States has taken, either unilaterally or in conjunction with another State Party—

(I) to initiate inspections of the noncompliant State Party with the objective of demonstrating to the international community the act of noncompliance;

(II) to call attention publicly to the activity in question; and

(III) to seek on an urgent basis a meeting at the highest diplomatic level with the non-compliant State Party with the objective of bringing the noncompliant State Party into compliance;

(iv) a determination of the military significance of and border security risks arising from any compliance issue identified pursuant to clause (ii); and

(v) a detailed assessment of the responses of the noncompliant State Party in question to actions undertaken by the United States described in clause (iii).

(D) ANNUAL REPORT ON WITHDRAWAL OF RUSSIAN ARMED FORCES AND MILITARY EQUIPMENT.—Beginning January 1, 1998, and annually thereafter, the Secretary of State shall submit a report to the Committee on Foreign Relations of the Senate and to the Speaker of the House of Representatives on the results of discussions undertaken pursuant to subparagraph (B) of paragraph (2), plans for future such discussions, and measures agreed to secure the immediate withdrawal of all armed forces and military equipment in question.

(E) ANNUAL REPORT ON UNCONTROLLED TREATY-LIMITED EQUIPMENT.—Beginning January 1, 1998, and annually thereafter, the Director of Central Intelligence shall submit to the Committees on Foreign Relations, Armed Services, and the Select Committee on Intelligence of the Senate and to the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) the status of uncontrolled conventional armament and equipment limited by the Treaty, on a region-by-region basis within the Treaty's area of application;

(ii) the status of uncontrolled conventional armaments and equipment subject to the Treaty, on a region-by-region basis within the Treaty's area of application; and

(iii) any information made available to the United States Government concerning the transfer of conventional armaments and equipment subject to the Treaty within the Treaty's area of application made by any country to any subnational group, including any secessionist movement or any terrorist or paramilitary organization.

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenia territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i), or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

(G) REPORT ON DESTRUCTION OF EQUIPMENT EAST OF THE URALS.—Not later than January 1, 1998, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether the Russian Federation is fully implementing on schedule all agreements re-

quiring the destruction of conventional armaments and equipment subject to the Treaty but for the withdrawal of such armaments and equipment by the Soviet Union from the Treaty's area of application prior to the Soviet Union's deposit of its instrument of ratification of the Treaty; and

(ii) whether any of the armaments and equipment described under clause (i) have been redeployed, reintroduced, or transferred into the Treaty's area of application and, if so, the location of such armaments and equipment.

(H) DEFINITIONS.—

(i) UNCONTROLLED CONVENTIONAL ARMAMENTS AND EQUIPMENT LIMITED BY THE TREATY.—The term "uncontrolled conventional armaments and equipment limited by the Treaty" means all conventional armaments and equipment limited by the Treaty not under the control of a State Party that would be subject to the numerical limitations set forth in the Treaty if such armaments and equipment were directly under the control of a State Party.

(ii) UNCONTROLLED CONVENTIONAL ARMAMENTS AND EQUIPMENT SUBJECT TO THE TREATY.—The term "uncontrolled conventional armaments and equipment subject to the Treaty" means all conventional armaments and equipment described in Article II(1)(Q) of the Treaty not under the control of a State Party that would be subject to information exchange in accordance with the Protocol on Information Exchange if such armaments and equipment were directly under the control of a State Party.

(6) APPLICATION AND EFFECTIVENESS OF SENATE ADVICE AND CONSENT.—

(A) IN GENERAL.—The advice and consent of the Senate in this resolution shall apply only to the CFE Flank Document and the documents described in subparagraph (D).

(B) PRESIDENTIAL CERTIFICATION.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that, in the course of diplomatic negotiations to secure accession to, or ratification of, the CFE Flank Document by any other State Party, the United States will vigorously reject any effort by a State Party to—

(i) modify, amend, or alter a United States right or obligation under the Treaty or the CFE Flank Document, unless such modification, amendment, or alternation is solely an extension of the period of provisional application of the CFE Flank Document or a change of a minor administrative or technical nature;

(ii) secure the adoption of a new United States obligation under, or in relation to, the Treaty or the CFE Flank Document, unless such obligation is solely of a minor administrative or technical nature; or

(iii) secure the provision of assurances, or endorsement of a course of action or a diplomatic position, inconsistent with the principles and policies established under conditions (1), (2), and (3) of this resolution.

(C) SUBSTANTIVE MODIFICATIONS.—Any subsequent agreement to modify, amend, or alter the CFE Flank Document shall require the complete resubmission of the CFE Flank Document, together with any modification, amendment, or alteration made thereto, to the Senate for advice and consent to ratification, if such modification, amendment, or alteration is not solely of a minor administrative or technical nature.

(D) STATUS OF OTHER DOCUMENTS.—

(i) IN GENERAL.—The following documents are of the same force and effect as the provisions of the CFE Flank Document:

(I) Understanding on Details of the CFE Flank Document of 31 May 1996 in Order to Facilitate its Implementation.

(II) Exchange of letters between the United States Chief Delegate to the CFE Joint Con-

sultative Group and the Head of Delegation of the Russian Federation to the Joint Consultative Group, dated July 25, 1996.

(ii) STATUS OF INCONSISTENT ACTIONS.—The United States shall regard all actions inconsistent with obligations under those documents as equivalent under international law to actions inconsistent with the CFE Flank Document or the Treaty, or both, as the case may be.

(7) MODIFICATIONS OF THE CFE FLANK ZONE.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that any subsequent agreement to modify, revise, amend, or alter the boundaries of the CFE flank zone, as delineated by the map entitled "Revised CFE Flank Zone" submitted by the President to the Senate on April 7, 1997, shall require the submission of such agreement to the Senate for its advice and consent to ratification, if such changes are not solely of a minor administrative or technical nature.

(8) TREATY INTERPRETATION.—

(A) PRINCIPLES OF TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in condition (1) in the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988.

(B) CONSTRUCTION OF SENATE RESOLUTION OF RATIFICATION.—Nothing in condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through majority approval of both Houses.

(C) DEFINITION.—As used in this paragraph, the term "INF Treaty" refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, done at Washington on December 8, 1987.

(9) SENATE PREROGATIVES ON MULTILATERALIZATION OF THE ABM TREATY.—

(A) FINDINGS.—The Senate makes the following findings:

(i) Section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) states that "the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution".

(ii) The conference report accompanying the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) states ". . . the accord on ABM Treaty succession, tentatively agreed to by the administration, would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution".

(B) CERTIFICATION REQUIRED.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that he will submit for Senate advice and consent to ratification any international agreement—

(i) that would add one or more countries as States Parties to the ABM Treaty, or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty; or

(ii) that would change the geographic scope or coverage of the ABM Treaty, or otherwise modify the meaning of the term "national territory" as used in Article VI and Article IX of the ABM Treaty.

(C) ABM TREATY DEFINED.—For the purposes of this resolution, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet

Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed in Moscow on May 26, 1972, with related protocol, signed in Moscow on July 3, 1974.

(10) ACCESSION TO THE CFE TREATY.—The Senate urges the President to support a request to become a State Party to the Treaty by—

(A) any state within the territory of the Treaty's area of application as of the date of signature of the Treaty, including Lithuania, Estonia, and Latvia; and

(B) the Republic of Slovenia.

(11) TEMPORARY DEPLOYMENTS.—Prior to the deposit of the United States instrument of ratification, the President shall certify to the Senate that the United States has informed all other States Parties to the Treaty that the United States—

(A) will continue to interpret the term "temporary deployment", as used in the Treaty, to mean a deployment of severely limited duration measured in days or weeks or, at most, but not years;

(B) will pursue measures designed to ensure that any State Party seeking to utilize the temporary deployments provision of the Treaty will be required to furnish the Joint Consultative Group established by the Treaty with a statement of the purpose and intended duration of the deployment, together with a description of the object of verification and the location of origin and destination of the relevant conventional armaments and equipment limited by the Treaty; and

(C) will vigorously reject any effort by a State Party to use the right of temporary deployment under the Treaty—

(i) to justify military deployments on a permanent basis; or

(ii) to justify military deployments without the full and complete agreement of the State Party upon whose territory the armed forces or military equipment of another State Party are to be deployed.

(12) MILITARY ACTS OF INTIMIDATION.—It is the policy of the United States to treat with the utmost seriousness all acts of intimidation carried out against any State Party by any other State Party using any conventional armament or equipment limited by the Treaty.

(13) SUPPLEMENTARY INSPECTIONS.—The Senate understands that additional supplementary declared site inspections may be conducted in the Russian Federation in accordance with Section V of the CFE Flank Document at any object of verification under paragraph 3(A) or paragraph 3(B) of Section V of the CFE Flank Document, without regard to whether a declared site passive quota inspection pursuant to paragraph 10(D) of Section II of the Protocol on Inspection has been specifically conducted at such object of verification in the course of the same year.

(14) DESIGNATED PERMANENT STORAGE SITES.—

(A) FINDING.—The Senate finds that removal of the constraints of the Treaty on designated permanent storage sites pursuant to paragraph 1 of Section IV of the CFE Flank Document could introduce into active military units within the Treaty's area of application as many as 7,000 additional battle tanks, 3,400 armored combat vehicles, and 6,000 pieces of artillery, which would constitute a significant change in the conventional capabilities of States Parties within the Treaty's area of application.

(B) SPECIFIC REPORT.—Prior to the agreement or acceptance by the United States of any proposal to alter the constraints of the Treaty on designated permanent storage sites, but not later than January 1, 1998, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report setting forth—

(i) a detailed explanation of how additional Treaty-limited equipment will be allocated among States Parties;

(ii) a detailed assessment of the location and uses to which the Russian Federation will put additional Treaty-limited equipment; and

(iii) a detailed and comprehensive justification of the means by which introduction of additional battle tanks, armored combat vehicles, and pieces of artillery into the Treaty's area of application furthers United States national security interests.

SEC. 3. DEFINITIONS.

As used in this resolution:

(1) AREA OF APPLICATION.—The term "area of application" has the same meaning as set forth in subparagraph (B) of paragraph 1 of Article II of the Treaty.

(2) CFE FLANK DOCUMENT.—The term "CFE Flank Document" means the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990, adopted at Vienna on May 31, 1996 (Treaty Doc. 105-5).

(3) CONVENTIONAL ARMAMENTS AND EQUIPMENT LIMITED BY THE TREATY; TREATY-LIMITED EQUIPMENT.—The terms "conventional armament and equipment limited by the Treaty" and "Treaty-limited equipment" have the meaning set forth in subparagraph (J) of paragraph 1 of Article II of the Treaty.

(4) FLANK REGION.—The term "flank region" means that portion of the Treaty's area of application defined as the flank zone by the map depicting the territory of the former Soviet Union within the Treaty's area of application that was provided by the former Soviet Union upon the date of signature of the Treaty.

(5) FULL AND COMPLETE AGREEMENT.—The term "full and complete agreement" means agreement achieved through free negotiations between the respective States Parties with full respect for the sovereignty of the State Party upon whose territory the armed forces or military equipment under the control of another State Party is deployed.

(6) FREE NEGOTIATIONS.—The term "free negotiations" means negotiations with a party that are free from coercion or intimidation.

(7) HELSINKI FINAL ACT.—The term "Helsinki Final Act" refers to the Final Act of the Helsinki Conference on Security and Cooperation in Europe of August 1, 1975.

(8) PROTOCOL ON INFORMATION EXCHANGE.—The term "Protocol on Information Exchange" means the Protocol on Notification and Exchange of Information of the CFE Treaty, together with the Annex on the Format for the Exchange of Information of the CFE Treaty.

(9) STATE PARTY.—Except as otherwise expressly provided, the term "State Party" means any nation that is a party to the Treaty.

(10) TASHKENT AGREEMENT.—The term "Tashkent Agreement" means the agreement between Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, Russia, and Ukraine establishing themselves as successor states to the Soviet Union under the CFE Treaty, concluded at Tashkent on May 15, 1992.

(11) TREATY.—The term "Treaty" means the Treaty on Conventional Armed Forces in Europe, done at Paris on November 19, 1990.

(12) UNITED STATES INSTRUMENT OF RATIFICATION.—The term "United States instrument of ratification" means the instrument of ratification of the United States of the CFE Flank Document.

Mr. LOTT. Madam President, I move to reconsider the vote by which the resolution of ratification was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

ORDER OF PROCEDURE

Mr. LOTT. Madam President, I remind Senators still in the Chamber, that was the last vote for the day, and that we do have a dinner that we all need to adjourn to.

We will resume consideration in the morning. I believe there will be a cloture vote at 10 o'clock in the morning.

MORNING BUSINESS

Mr. LOTT. Madam President, I ask unanimous consent that the period for morning business be extended and Senators permitted to speak for up to 10 minutes each.

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

REMOVE CONTROVERSIAL RIDERS FROM THE SUPPLEMENTAL APPROPRIATIONS BILL

Mr. DASCHLE. Mr. President, on May 14 the Senate approved vitally important legislation to provide sorely needed aid to victims of the recent weather-related disasters throughout the country, including South Dakota. It is critical that this legislation be enacted as soon as possible so that residents of disaster-stricken States can get on with the process of recovering from the loss of property and livestock.

I am concerned that controversial riders on this bill, including the automatic continuing resolution and the provision related to the implementation of R.S. 2477 by the Interior Department, could, if included in the final conference report, make enactment of the bill impossible and thus delay needed aid to disaster victims.

The controversial Interior provision, over which Secretary Babbitt has said he will recommend a veto, blocks recent efforts by the administration to close a loophole in the mining laws that allow roads to be constructed in national parks and other sensitive Federal lands. Many Senators have gone on record that the administration should have the ability to protect our public lands from unnecessary and environmentally destructive road construction, and an amendment offered by Senator BUMPERS to strip the R.S. 2477 provision from the supplemental lost by a vote of only 49-51, drawing considerable bipartisan support. I urge the conferees to drop this and other controversial provisions from the bill during the House-Senate conference.