around the document by tabling 705 separate amendments to the text. It took the involvement of the President of the United States and the Secretary of State to cobble the agreement back together at the last minute at a price of losing some of the provisions that the United States had sought be included with respect to management reforms.

The Bush administration has made the ongoing crisis in Darfur a key concern. Yet when in June of this year members of the Security Council visited the Sudan to send a signal to the Government of Khartoum that it was on the wrong track, Mr. Bolton thought it more important to travel to London to deliver a U.N. bashing speech to a private think tank rather than join his colleagues on a visit to Sudan and carrying on a message of how important we think the genocidal behavior is.

On another occasion, prior to a vote last July on a U.N. Security Council resolution intended to sanction North Korea for its provocative Fourth of July missile launches, Mr. Bolton publicly assured anyone who would listen that he could get support for a resolution with teeth, with the so-called chapter 7 obligations. It turns out he couldn't. The resolution adopted by the U.N. Security Council fell far short of that.

Last September, Mr. Bolton told the House International Relations Committee that the negotiation of an effective Human Rights Council was a key objective of the United States and that it was a ''very high priority, and a personal priority of mine.''

There were 30 negotiating sessions held to hammer out the framework of this new Human Rights Council, and Ambassador Bolton managed to attend just one or two of those sessions.

In the end, the United States was one of four countries to vote against the approval of the U.N. Human Rights Council.

When the tally is taken on how effective Mr. Bolton has been at the U.N., in my view he gets a failing grade overall.

These are key positions that help to strengthen the United States, and yet in case after case, from reform, to Darfur, to North Korea, to the U.N. Human Rights Council—critical issues to strengthen the United States—our ambassador has failed in getting the kind of results that are critically important.

But there is more.

On the basis of those issues, I urge my colleagues to vote against Mr. Bolton, but I am going to go a step further because I believe other actions taken by Mr. Bolton are so outrageous that Mr. Bolton does not even deserve a vote, in my view.

There is Mr. Bolton's well-documented attempts to manipulate intelligence to suit his world view and seek the removal of at least two intelligence analysts who wouldn't play ball. When these analysts refused to support intelligence conclusions not supported by available intelligence, Mr. Bolton mounted a concerted effort to have them fired. The fact they were not removed does not excuse his actions.

I don't mind a heated debate. I don't mind people having serious disagreements with conclusions. But when you attempt to fire lower level employees who are responsible for gathering intelligence for the United States because you don't like their results, that is dangerous business indeed.

I do not care in which administration you may serve. Any individual, in my view, who attempts to doctor evidence to fire people whose conclusions they disagree with when it comes to intelligence gathering does not deserve to be promoted to the high position of ambassador to the United Nations.

His behavior, in my view, endangers our national security because it goes to the very heart of what we depend upon to protect that security—unbiased professional intelligence collection and analysis. Mr. Bolton stepped away and he stepped over the line and committed an offense so grievous, in my view, it warrants that this Senate deny him an up-or-down vote on his nomination.

In concluding, Mr. President, I return to the point I made earlier; namely, that Mr. Bolton has largely burned his bridges with his colleagues in New York and is not likely to be an effective diplomat when his diplomacy is increasingly becoming the coin of the realm in protecting and advancing U.S. interests at this very unstable moment in this country.

Fifty nine former U.S. Ambassadors and diplomats who have served in five administrations, Democratic and Republican, agree. Yesterday, they sent a letter to the Senate Foreign Relations Committee strongly opposing this nomination—59 former U.S. Ambassadors.

I mentioned earlier the number of people in the Bush administration who are outspokenly critical of this nomination. What more do we need to hear, what more do we need to hear that this is a bad nomination and one that is going to jeopardize the interests of the United States? Those Ambassadors recognize, as do I, that at this critical moment in our Nation's future, the President should put the Nation's interests first and nominate an individual with strong diplomatic skills who believes in diplomacy rather than placating his conservative base by continuing to push for the nomination of an unsuitable nominee.

I believe it is time for the Senate to send that message loudly and clearly to the President by rejecting efforts to ramrod this nomination through in the closing days of this session.

I urge my colleagues to join me in strongly opposing this nomination.

Mr. President, I yield floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2007

The PRESIDING OFFICER. Under previous order, the Senate will resume consideration of H.R. 5631, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5631) to make appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes.

Pending:

Kennedy-Reid amendment No. 4855, to include information on civil war in Iraq in the quarterly reports on progress toward military and political stability in Iraq.

Allen modified amendment No. 4883, to make available from Defense Health Program up to $19,000,000 for the Defense and Veterans Brain Injury Center.

Feinstein-Leahy amendment No. 4882, to protect civilian lives from unexploded cluster munitions.

Mr. STEVENS. Mr. President, what is the pending business on this bill?

The PRESIDING OFFICER. The pending amendment is the Feinstein amendment.

Mr. STEVENS. Is the Kennedy amendment still set aside following that amendment?

The PRESIDING OFFICER. Yes, it is.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

AMENDMENT NO. 4882

Mrs. FEINSTEIN. Mr. President, I understand it is appropriate for me now to speak on an amendment I offered yesterday having to do with cluster bombs.

The PRESIDING OFFICER. That is correct.

Mrs. FEINSTEIN. Mr. President, I rise to discuss again the amendment offered by myself and Senator LEAHY to this bill on the use of a munition called a cluster bomb. Our amendment is very simple. It prevents any funds from being spent to purchase, use, or transfer cluster munitions until rules of engagement have been adopted by the Department of Defense to ensure that such munitions will not be used in or near any concentration of civilians.

That is not a difficult requirement. It seems to me, because of the widespread damage caused by these munitions, that there ought to be specific rules of engagement which ban their use in areas where civilian death or maiming might result.

Cluster munitions are large bombs, rockets, or artillery shells that contain up to hundreds of small submunitions or individual bomblets. They are intended for attacking enemy troop formations, and they release these small

bomblets over the radius of a half mile. In practice, they pose a real threat to the safety of civilians when used in populated areas because they leave hundreds of unexploded bomblets over a large area, and they are often inaccurate. In some cases, up to 40 percent of cluster bombs fail to explode, posing a particular danger to civilians long after the conflict has ended.

Bomblets are no bigger than a D battery and in some cases resemble a tennis ball, so they are attractive to small children who pick them up to play with them. Then the bomblet explodes and the individual is either killed or maimed.

I would like to show three photographs.

On March 25, 2003, a youngster by the name of Abdallah Yaqoob was sleeping in his bed in his home in Basra, Iraq when he was hit with shrapnel from a cluster munitions strike that hit his neighborhood. He lost his arm, and his abdomen was severely damaged. He was hit by a British L20A1/M85 munition—a cluster bomb.

Second, Falah Hassan, 13, was injured by an unexploded ground-launched submunition in Iraq on March 26, 2003. The explosion severed his right hand and spread shrapnel throughout his body. He lost his left index finger and soft tissue in his lower limbs.

This is a photo of an unexploded M42 cluster submunition found on a barbed-wire fence in southern Iraq in August 2006. As you will see, this is the bomblet and this is a small pinecone. You will see how small this bomblet is, hanging on the barbed wire.

These unexploded cluster bombs become, in essence, de facto landmines.

The issue was first brought to my attention by a 2005 PBS documentary entitled ''Bombies'' which chronicled the impact of unexploded cluster bombs in Laos. This is startling. In Laos alone, there are between 9 and 27 million unexploded cluster bombs. They are leftovers from U.S. bombing campaigns in the 1960s and 1970s. Approximately 11,000 people, 30 percent of them children, have been killed or injured since that war ended—11,000 killed or injured by cluster bombs. So 40 to 50 years after these munitions were used, their deadly force remains active.

As the documentary showed, these unexploded cluster bombs have ended up in bamboo trees, in playgrounds, in houses, on rice paddies, and in schools. They have been found in the ground where farmers prepare their fields to plant. They have threatened their lives and their livelihood. As one farmer from northern Laos put it, ''Working in these fields is a problem. There are lots of bombies. But we work very carefully. If we work fast, we are afraid we'll hit a bombie.''

These farmers have to tend the fields and put their lives at risk because they have to grow food to feed their families. Decades after the last bomb was dropped, they are still threatened by death and serious injury. A cluster bomb is lethal for up to 150 yards. It will kill or maim the person who picks it up and those nearby.

I remind my colleagues, these munitions have been used in many battles in many wars.

In the first gulf war, 60,000 cluster bombs were used, containing 20 million bomblets. Since 1991, unexploded bomblets have killed 1,600 innocent men, women, and children and injured more than 2,500.

In Afghanistan in 2001, 1,228 cluster bombs with nearly a quarter of a million—248,056—bomblets were used.

Between October of 2001 and November of 2002—that is just 1 year—127 civilians were killed, 70 percent of them under the age of 18.

In Iraq in 2003, 13,000 cluster bombs with nearly 2 million bomblets were used. Combining the first and second gulf wars, the total number of unexploded bomblets in the region is approximately 1.2 million. An estimated 1,220 Kuwaitis and 400 Iraqi civilians have been killed since 1991 by these discarded munitions.

Here we have it: In Iraq, 13,000 cluster bombs, two million bomblets; in Afghanistan, 1,200 cluster bombs, a quarter of a million bomblets, numbers killed in a year, 127 civilians; in the first gulf war, 61,000 used, 20 million bomblets lying around, 1,600 innocent, men, women, and children killed, more than 2,500 wounded since 1991.

This gives rise to recent developments in Lebanon. Throughout southern Lebanon, more than 405 cluster bomb sites containing approximately 100,000 unexploded bomblets have been discovered. Each site covers a radius of 220 yards. As Lebanese children and families return to their homes and begin to rebuild, they will be exposed to the danger of these unexploded bomblets lying in the rubble. Thirteen people already, including three young children, have been killed, and 48 injured. One United Nations official estimates that the rate of unexploded bomblets is 40 percent in southern Lebanon. So far, more than 2,900 exploded bomblets have been destroyed. It will take 12 to 15 months to complete that effort.

The State Department is looking into charges that the cluster bombs found in southern Lebanon were American-made and that they were used in violation of agreements between the United States and Israel that govern their use. I do not know whether that is true. We have tried to find out. At this time, and despite repeated inquiries, I am unaware what those agreements actually say and what conditions they place on Israel. It seems to me we ought to know. It seems to me this information ought to be transparent and that the Congress of the United States, in the process of lawmaking, is entitled to that information.

By passing this information and codifying this language in statute we will help ensure that civilian populations will be protected by adequate rules of engagement that accompany the sale or transfer of these weapons to another country and the rules of engagement that condition their use by our military in foreign countries.

Each death that results from an unexploded bomblet weakens American diplomacy and American values. How do people in Laos feel when they live and farm with the daily threat of running into one of these bomblets? How do they feel in Afghanistan, Iraq, in southern Lebanon, in any other place where civilians can be wounded and killed by these bomblets?

Simply put, unexploded cluster bombs fuel anger and resentment. They make security, stabilization, and reconstruction efforts that much harder.

Senator LEAHY and I are not the only ones that feel this way. Former Secretary of Defense Bill Cohen recognized the threat that cluster bombs pose to civilians and U.S. troops alike because they litter a battlefield. He issued a memorandum which became known as the Cohen policy. It stated that beginning in 2005 all new cluster bombs would have a failure rate of less than 1 percent.

This was an important step forward. But we still have 5½ million cluster bombs containing 728 million bomblets. They are aging in the American arsenal. This indicates we are still prepared to use, transfer, or sell an enormous number of cluster bombs that have significant failure rates.

I ask this question: Is this the source of legacy we want to leave behind in Iraq and Afghanistan?

Let me be clear, this amendment does not place a ban on cluster bombs. It is a simple step that will give the Pentagon time to develop specific guidelines to ensure that cluster bombs are not used in or near populated areas. Does anyone in this Senate believe that a cluster munition should be used in a civilian populated area? That person can stand up and talk to that point of view. It is unconscionable. It is immoral. It is beyond the laws of warfare. If somebody wants to argue that point of view, so be it. If that is the kind of country a Member wants to represent, so be it. It is not the country I want to represent.

This is a simple amendment which says no funds will be used until there are rules of engagement that say that these munitions will not be used in civilian areas where death and maiming is apt to result.

This amendment will go a long way toward ensuring only prudent battlefield use. I hope this amendment has an opportunity to pass.

I yield the floor and I reserve the remainder of my time.

How much time remains?

The PRESIDING OFFICER. Four and a half minutes.

Mrs. FEINSTEIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I cannot support this amendment. It is not

enforceable. It establishes policies that may in some situations dangerously restrict the options available to our commanders on the battlefield.

I do share the Senator's concern about potential use on the indiscriminate manner of these antipersonal weapons. Protecting innocent civilians from the violence and destruction of war is our goal. It is a laudable goal.

Of course, the consequences of using cluster munitions must be carefully considered before such weapons are engaged. This is a complex policy area. It deserves comprehensive review by the relevant policy committees, not only the Committee on Armed Services but also the Foreign Relations Committee. As the Senator has said, it has already been reviewed on a secretarial level several times in the Department of Defense.

This amendment is just not acceptable. It legislates the rules of engagement for an entire class of weapon. The task of settling the rules of engagement properly belongs to the military and to the commander and ultimately to the Commander in Chief.

In an extreme situation the commander must be able to use all options to shape the battlefield to protect our forces and those allied with us. Restricting the deployment of cluster munitions could severely hinder aviation and artillery capabilities and reduce the commander's capability to wage war successfully. It could severely degrade our allies' capability to defend themselves in threatening situations.

The Department of Defense already has guidance and target methodologies that emphasize minimizing dangers to civilians in or near the zone of conflict. This amendment requires that prior to the sale or transfer, the Department ensures that munitions will not be used in or near populations, including villages, camps, and groups of refugees, evacuees, or nomads. This could be obtained at the point of sale.

Once the weapons are transferred, it would be impossible to enforce. They place a burden on the military that is impossible to achieve.

The Arms Export Control Act already has broad guidelines on the use of weapons sold by the United States, and press reports indicate the State Department has opened an investigation into use of cluster bombs by Israel against Hezbollah to determine if those guidelines were violated. If it has, the United States may impose sanctions. This was done in 1982. The Department of State already has tools to enforce the humanitarian considerations and sanction wanton use of cluster munitions.

The Senate should recall the use of cluster munitions is consistent with the convention on certain conventional weapons and international humanitarian law, including the Geneva and Hague Conventions. I recommend the Senate refuse to accept this amendment.

I do support the Defense appropriations bill as drafted.

I yield the floor.

Mr. BIDEN. Mr. President, I share the concerns that prompted the introduction of this amendment, but I am not prepared to approve such a far-reaching measure without a clear legislative record regarding the need for it and its likely impact on U.S. and allied forces.

Cluster bombs have always posed problems for responsible military forces like those of the United States. The weapons are very useful militarily, but they also carry a real risk of causing civilian casualties if they are used where civilians are present or if too many submunitions fail to explode when they hit the ground. This is a legitimate issue to consider and, perhaps, to legislate. But it should be done in a careful manner, after holding hearings and with proper preparation.

I urge the Senate Armed Services Committee to hold hearings on the issue of cluster munitions so that we can all gain a better understanding of how to maintain their usefulness while minimizing their risks. The committee should also make sure the Defense Department lives up to its claim that it ''is working towards minimizing 'dud' cluster munitions by phasing cluster munitions systems with more reliable or self-destructing fuzes.'' Success in that effort would go far to reduce the risks of postwar casualties.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. Mr. President, the ranking member of the Judiciary Committee is here, Senator LEAHY of Vermont, someone whose leadership on the landmine issue has been unparalleled in the Senate. He is a cosponsor of this amendment.

I yield the Senator the remainder of my time.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from California. I have had a chance to work with the Senator on this amendment. It is an extremely important amendment. I have spent decades on the question of landmines. We use the Leahy War Victims Fund in parts of the world to aid landmine victims. I have visited these field hospitals. I have seen the damage, usually to children, overwhelmingly to civilians. My wife is a registered nurse. She has gone into the surgeries and watched the amputations.

The problem of cluster bombs which maim and kill the innocent has been known for many years. Probably one of the most egregious examples was in Laos, where millions of the explosives were dropped by U.S. planes during the Vietnam war. Unfortunately, what happens with landmines, the war ends, the landmines stay. The peace treaties are signed and civilians continue to die; 30 years after those were dropped there are horrific casualties of civilians.

I have urged the Pentagon both in Democratic and Republican administrations to address this problem for nearly a decade. While they have acknowledged the problem, and they do acknowledge it, they have not taken effective steps to solve it.

We have used massive numbers of cluster munitions in the invasion of Iraq, including in densely inhabited areas. Civilians paid the price and continue to pay the price.

Israel used these weapons in Lebanon. Again, it has been innocent civilians who have suffered disproportionately.

Now, cluster munitions, like any weapon, of course, have military utility. They can be effective against armor or military infrastructure, but they are in effect indiscriminate because they scatter thousands of lethal bomblets over wide areas. There are many weapons that can be effective. Used right, I suppose, poison gas is effective, but we have banned it since World War I. We have urged other countries to ban it.

On these cluster munitions, between 1 and 40 percent, depending on the type or the condition of the terrain, fail to explode on contact. Remember, there are thousands of these coming down. So if anywhere from even 1 percent fail, and as high as 40 percent fail, they remain as hazardous duds indefinitely, no different than scattering landmines, something we do not do.

And those who come in contact with them activate them. That could very well be a child out walking to school. It can be someone playing. It can be someone going to tend their animals, their crops, and they end up with lifelong disfigurement or disability, often death.

No one argues it is possible to completely avoid civilian casualties in a war.

Such casualties are inevitable. They have been tragic consequences in all wars. But this amendment should not be necessary. Weapons that are so disproportionately hazardous to civilians should be subject to strict rules of engagement.

The Feinstein-Leahy amendment is fully consistent with the laws of war and international humanitarian law. It uses the same standard as for incendiary weapons, which are also notoriously hazardous to civilians. Rather than prohibit cluster munitions, the amendment says only that they should not be used where there are concentrations of civilians.

This is a moral issue and it is an issue of our own self interest. Using or selling weapons that are so indiscriminate, without strict rules of engagement, is immoral. It is immoral. Anyone who has seen the horrific consequences of children with an arm or a leg blown off, or a part of their face, or their lifeless body cut to pieces by the shrapnel, knows that.

But it is also contrary to our own interest to be using or selling weapons which, without strict controls on their use, cause such appalling casualties of

innocent people who are not the enemy. It fuels anger and resentment we can ill afford among the very people whose support we need.

So again I commend the Senator from California and strongly support the amendment.

Mr. President, I ask unanimous consent that an article from USA Today, dated December 11, 2003, about cluster bombs be printed in the RECORD.

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

[From USA Today, Dec. 11, 2003]

CLUSTER BOMBS KILL IN IRAQ, EVEN AFTER SHOOTING ENDS

(By Paul Wiseman)

BAGHDAD.—The little canisters dropped onto the city, white ribbons trailing behind. They clattered into streets, landed in lemon trees, rattled around on roofs, settled on lawns.

When Jassim al-Qaisi saw the canisters the size of D batteries falling on his neighborhood just before 7 a.m. April 7, he laughed and asked himself: ''Now what are the Americans throwing on our heads?''

The strange objects were fired by U.S. artillery outside Baghdad as U.S. forces approached the Iraqi capital. In the span of a few minutes, they would kill four civilians in the ai-Dora neighborhood of southern Baghdad and send al-Qaisi's teenage son to the hospital with metal fragments in his foot.

The deadly objects were cluster bomblets, small explosives packed by the dozens or hundreds into bombs, rockets or artillery shells known as cluster weapons. When these weapons were fired on Baghdad on April 7, many of the bomblets failed to explode on impact. They were picked up or stumbled on by their victims.

The four who died in the al-Dora neighborhood that day lived a few blocks from al-Qaisi's house. Rashid Majid, 58, who was nearsighted, stepped on an unexploded bomblet around the corner from his home. The explosion ripped his legs off. As he lay bleeding in the street, another bomblet exploded a few yards away, instantly killing three young men, including two of Majid's sons—Arkan, 33, and Ghasan, 28. ''My sons! My sons!'' Majid called out. He died a few hours later.

The deaths occurred because the world's most modern military, one determined to minimize civilian casualties, went to war with stockpiles of weapons known to endanger civilians and its own soldiers. The weapons claimed victims in the initial explosions and continued to kill afterward, as Iraqis and U.S. forces accidentally detonated bomblets lying around like small land mines.

A four-month examination by USA Today of how cluster bombs were used in the Iraq war found dozens of deaths that were unintended but predictable. Although U.S. forces sought to limit what they call ''collateral damage'' in the Iraq campaign, they defied international criticism and used nearly 10,800 cluster weapons; their British allies used almost 2,200.

The bomblets packed inside these weapons wiped out Iraq troop formations and silenced Iraqi artillery. They also killed civilians. These unintentional deaths added to the hostility that has complicated the U.S. occupation. One anti-war group calculates that cluster weapons killed as many as 372 Iraqi civilians. The numbers are impossible to verify: Iraqi records are incomplete, and many Iraqi families buried their dead without reporting their deaths.

In the most comprehensive report on the use of cluster weapons in Iraq, USA Today visited Iraqi neighborhoods and interviewed dozens of Iraqi families, U.S. troops, teams clearing unexploded ordnance in Iraq, military analysts and humanitarian groups. The findings:

The Pentagon presented a misleading picture during the war of the extent to which cluster weapons were being used and of the civilian casualties they were causing. Gen. Richard Myers, chairman of the Joint Chiefs of Staff, told reporters on April 25, six days before President Bush declared major combat operations over, that the United States had used 1,500 cluster weapons and caused one civilian casualty. It turns out he was referring only to cluster weapons dropped from the air, not those fired by U.S. ground forces.

In fact, the United States used 10,782 cluster weapons, according to the declassified executive summary of a report compiled by U.S. Central Command, which oversaw military operations in Iraq. Centcom sent the figures to the Joint Chiefs in response to queries from USA Today and others, but details of the report remain secret.

U.S. forces fired hundreds of cluster weapons into urban areas. These strikes, from late March to early April, killed dozens and possibly hundreds of Iraqi civilians. Forty civilians were killed in one neighborhood in Hillah, 60 miles south of Baghdad, say residents and Saad Khazal al-Faluji, a surgeon at Hillah General Hospital who tracked casualties.

The attacks also left behind thousands of unexploded bomblets, known as duds, that continued to kill and injure Iraqi civilians weeks after the fighting stopped. U.S. officials say they sought to limit civilian casualties by trying to avoid using cluster munitions. But often alternative weapons were not available or would not have been as effective during the invasion.

Unexploded U.S. cluster bomblets remain a threat to U.S. forces in Iraq. They have killed or injured at least eight U.S. troops.

The U.S. Air Force, criticized for using cluster bombs that killed civilians during the wars in Vietnam, Kosovo and Afghanistan, has improved its cluster bombs. But U.S. ground forces relied on cluster munitions known to cause a high number of civilian casualties.

The Air Force, responding to the criticism, began working on safer cluster bombs in the mid-1990s and started using them in Afghanistan. But the Army started a program to install self-destruct fuses in existing cluster bomblets only after former Defense Secretary William Cohen called in January 2001 for dud rates of no more than 1% after 2005. The safer bomblets won't be available for at least two years. During the war in Iraq, U.S. ground forces dipped into stockpiles of more than 740 million cluster bomblets, all with a history of high dud rates.

Senior Army officials in Washington would not answer questions about the Army's use of cluster weapons in Iraq. Maj. Gary Tallman, an Army spokesman at the Pentagon, said such weapons are effective ''against enemy troop formations and light-skinned vehicles'' and are used only after ''a deliberate decision-making process.''

WHY CLUSTER BOMBS ARE DEADLY

Cluster bombs have been controversial since they killed thousands of Vietnamese, Cambodian and Laotian civilians during and after the Vietnam War. They have since been used by armies around the world, including Russian forces in Chechnya and Sudanese government troops fighting rebels in a long-running civil war. But their use in urban areas of Iraq has given new momentum to a movement to restrict the use of cluster bombs.

Last month, dozens of activist groups hoping to duplicate the success of the campaign to ban land mines formed a coalition aimed at getting a worldwide moratorium on cluster weapons. After seeing the toll the weapons took on Iraqi civilians and their own forces, even some U.S. soldiers have misgivings about using cluster weapons, at least in urban areas.

As the war in Iraq approached, humanitarian groups warned the Pentagon against using cluster weapons, especially in urban areas. New York-based Human Rights Watch predicted on March 18, a day before the war began with an airstrike in Baghdad: ''The use of cluster munitions in Iraq will result in grave dangers to civilians and friendly combatants.'' Cluster weapons are especially dangerous to civilians because they spray wide areas with hundreds of bomblets. Most are unguided ''dumb'' weapons, so they can miss their target, and many of the bomblets don't explode immediately.

The U.S. military was aware of the threat cluster munitions posed and was determined to minimize them. Col. Lyle Cayce, an Army judge advocate general (JAG), led a team of 14 lawyers providing advice on the battlefield to the 3rd Infantry Division on the use of cluster munitions, as well as other weapons, during its 21-day, 450-mile drive north from Kuwait to Baghdad. The goal was to ensure that U.S. forces complied with international humanitarian law, enshrined in the Geneva Conventions. ''No other army in the world does that,'' Cayce says. ''We value the rule of law.''

The Geneva Conventions hold that when choosing which targets to hit and which weapons to use, armies must make sure they do not ''cause superfluous injury or unnecessary suffering'' and ensure that the harm to civilians does not outweigh the military advantages.

U.S. forces relied on sophisticated radar to pinpoint the sources of Iraqi fire, then cross-checked them against a computerized list of about 10,000 sensitive sites, such as mosques and schools. Cayce and the other lawyers looked at potential targets and advised U.S. commanders whether the military benefits of using specific weapons against those targets justified the risks to civilians.

Cayce gave advice 512 times during the war, usually in cases involving cluster munitions. Most involved sites outside populated areas. Cayce estimates he dealt with only 25 to 30 ''controversial missions.'' For example: He approved a strike against an Iraqi artillery battery in a soccer field next to a mosque because it was firing on the 3rd Infantry Division's artillery headquarters.

The choices could be agonizing. He says he asked himself, ''How many Americans do I have to let get killed before I take out that (Iraqi) weapons system?'' Ten to 15 times, Cayce advised commanders against firing on a target; they never overruled him. Five times, in fact, they decided against using cluster munitions even after he gave them the go-ahead because they believed the risk to civilians was too great. ''We didn't just shoot there willy-nilly,'' he says.

''It was the enemy who was putting his civilians at risk. . . . They put their artillery right in town. Now who's at fault there?''

Rather than call upon their artillery to hit a target with cluster munitions, U.S. ground forces preferred either to use other weapons, such as M–16 rifles or tank rounds, or to summon the Air Force to hit Iraqi targets from the sky with precision bombs. ''Cluster munitions were the last choice, not the first,'' Cayce says.

But aircraft frequently were unavailable. Sometimes the weather was bad or sandstorms were swirling. Sometimes Air Force pilots insisted on seeing targets instead of relying on radar readouts. The cluster munitions, especially M26 rockets fired by a multiple-launch rocket system (MLRS), had

greater range than other weapons and were more reliable in bad weather.

Commanders also thought an MLRS was better at returning fire and killing the enemy. ''MLRS is ideal for counterfire,'' says Col. Ted Janosko, artillery commander for the Army's V Corps. In fighting on March 31 around Karbala, 50 miles south of Baghdad, U.S. forces came under heavy artillery fire from the Iraqis. ''We used (MLRS) rockets to fire back,'' Janosko says. ''As soon as we started using rockets, guess what? We never heard from that unit again. I'm not going to say we killed them all . . . but believe me, they did not fire again from that position.''

The 3rd Infantry Division also used MLRS frequently. The rockets can go more than 20 miles, and they spray a wider area than other weapons. The 3rd Infantry fired 794 MLRS rockets during the Iraq war, according to an assessment by two high-ranking division artillery officers in the U.S. Army journal Field Artillery, published at Fort Sill, Okla.

As they raced north from Kuwait toward Baghdad in late March and early April, U.S. forces fired rockets and artillery shells loaded with bomblets into Iraqi troop and artillery positions in Hillah, in Baghdad and in other cities. U.S. aircraft sometimes dropped cluster bombs as well.

Just before U.S. forces' ''thunder run'' into Baghdad on April 7, the 3rd Infantry Division fired 24 MLRS cluster rockets into Iraqi positions at an important intersection in the capital. The damage assessment, recounted in the Field Artillery article: ''There's nothing left but burning trucks and body parts.''

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

The Senator from Alaska.

Mr. STEVENS. Mr. President, I reiterate my opposition to this amendment. The rules of engagement properly belong with the Department of Defense and the Commander in Chief. This amends and sets forth restrictions on the ability of our military to use these munitions to protect our people in the future. It also would put on our military and our executive branch the duty of trying to determine how weapons might be used in the future, should they sell these weapons to other countries.

We have been informed that this amendment is opposed by the Department of Defense. It is their determination that once the weapons have been transferred to a country under a sale that is permitted, it would not be possible to enforce this restriction. They point out the Arms Export Control Act already has broad guidelines on the use of weapons sold by the United States. And if that act is violated, the United States may impose sanctions and deny sale or transfer of weapons in the future, and has, as it did in 1982, sanctioned a country for misusing such weapons, not these in particular but the weapons that had been sold.

The Senator from California said if anyone wants to stand up and talk about using these munitions, they ought to defend them. Some of the instances which the Senator from California mentioned were years ago when the areas were not occupied by civilians at all. And later the civilians moved into the areas, areas that had not been cleared properly by the country involved. I think that is a dangerous situation. Obviously, it is a difficult situation.

But I would urge her to go back to the countries she mentioned and reconsider the reason for the use of these weapons in the past—in Korea, in Vietnam. I do not think we used them in Spain. But they were used in Spain after having been sold to Spain. The concepts here are impossible for our commanders to protect our forces with the prohibitions that are involved. It is impossible for us to enforce.

We have a population of approximately 300 million people. We are involved in situations throughout the world and have been. Just remember the ''Marines' Hymn: From the halls of Montezuma to the shores of Tripoli.'' We have been doing this for years, protecting our system abroad and protecting freedom abroad. It is not the province of the Senate to enact rules of engagement. We authorize people to do it, and we review them—if you want to have a hearing on it and review the rules of engagement, I will be pleased to participate in such a hearing—but we do not write them. And we should not attempt to restrict them. I think this would place a dangerous restriction on the options available to our commanders, as I have said.

If the issue is a relatively high rate of existing inventory, as the Senator indicates, then the solution is to replace these munitions with improved items, many of which are not possible to manufacture now because of existing restrictions on such manufacturing.

I do not believe it can be shown we have used these weapons indiscriminately in civilian areas. I believe civilians have moved into areas where they have been used in defense of our country and defense of our people.

So under the circumstances, I oppose this amendment.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. STEVENS. Madam President, it is my understanding this is the time set for the vote on Senator FEINSTEIN's amendment. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 30, nays 70, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—30

Akaka	Durbin	Levin
Baucus	Feingold	Menendez
Bingaman	Feinstein	Mikulski
Boxer	Harkin	Murray
Byrd	Jeffords	Obama
Cantwell	Johnson	Reed
Carper	Kennedy	Reid
Conrad	Kerry	Sarbanes
Dayton	Kohl	Stabenow
Dorgan	Leahy	Wyden

NAYS—70

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Pryor
Bennett	Frist	Roberts
Biden	Graham	Rockefeller
Bond	Grassley	Salazar
Brownback	Gregg	Santorum
Bunning	Hagel	Schumer
Burns	Hatch	Sessions
Burr	Hutchison	Shelby
Chafee	Inhofe	Smith
Chambliss	Inouye	Snowe
Clinton	Isakson	Specter
Coburn	Kyl	Stevens
Cochran	Landrieu	Sununu
Coleman	Lautenberg	Talent
Collins	Lieberman	Thomas
Cornyn	Lincoln	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	Warner
DeWine	McCain	
Dodd	McConnell	

The amendment (No. 4882) was rejected.

Mr. DURBIN. Madam President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4895

Ms. MIKULSKI. Madam President, I am here to join with my colleague, Senator PAUL SARBANES, to offer an amendment, which we have at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for herself, and Mr. SARBANES, proposes an amendment numbered 4895.

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

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

The amendment is as follows:

(Purpose: To provide that none of the funds appropriated or otherwise made available by this Act may be used to enter into or carry out a contract for the performance by a contractor of any base operation support service at Walter Reed Army Medical Hospital pursuant to a private-public competition conducted under Office of Management and Budget Circular A–76 that was initiated on June 13, 2000, and has the solicitation number DADA 10–03–R–0001)

On page 218, between lines 6 and 7, insert the following:

SEC. 8109. None of the funds appropriated or otherwise made available by this Act may be used to enter into or carry out a contract for the performance by a contractor of any base operation support service at Walter Reed Army Medical Hospital pursuant to a

private-public competition conducted under Office of Management and Budget Circular A–76 that was initiated on June 13, 2000, and has the solicitation number DADA 10–03–R–0001.

Ms. MIKULSKI. Madam President, I ask unanimous consent that Senator SARBANES be added as a cosponsor to the amendment.

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

Mr. STEVENS. Madam President, I thought we had an agreement to stand in recess at 12:30.

Ms. MIKULSKI. If the distinguished Senator will yield, I thought there was an agreement for us to offer this amendment and not ask for a vote on this amendment. Had the Senate followed the regular order, we would have been done with the other business, the pending business on cluster bombs.

Mr. STEVENS. Was there an order for the recess at 12:30?

The PRESIDING OFFICER. There is an order to recess. The Senator from Maryland will need unanimous consent in order to proceed beyond the hour of 12:30.

Ms. MIKULSKI. I apologize. Madam President, I ask unanimous consent that the session be extended for 10 additional minutes so that Senator SARBANES and I may offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Will the Senator yield? I thought the amendment had been offered.

Ms. MIKULSKI. No, it has not.

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

Mr. SARBANES. Madam President, parliamentary inquiry: Is the amendment now pending?

The PRESIDING OFFICER. The amendment is now pending.

Mr. SARBANES. And we have this unanimous consent request to take 10 minutes in order to proceed; we are trying to help the chairman move this process along.

Mr. STEVENS. Madam President, I have no objection to offering the amendment and making comments about its introduction. The Senator wants 10 minutes?

Ms. MIKULSKI. Yes.

Mr. STEVENS. I have no objection.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. We will move briskly. This is to fix a terribly botched competition for Federal jobs at the Walter Reed Army Medical Center. This competition has wasted taxpayer money. It is unfair to Federal employees, and we urge that it stop. We are opposed to this because it has gone on too long, it is unfair, it has broken the rules, and cost taxpayers an incredible amount of money.

I do wish at this time, though, to pay tribute to the distinguished Senators, the chair and the ranking member of the Defense Appropriations Subcommittee, Senator STEVENS and Senator INOUYE. We have had no finer, more hard-working champions for Walter Reed and military medicine than those two men. So in raising this amendment, we understand where they are and why they also don't want to get into individual privatization issues, but this was such an egregious, unfair process, we felt we had to do this.

This amendment would privatize 350 jobs at Walter Reed, mostly landscapers and maintenance workers.

Why is this A–76 so flawed? Well, the competition has broken the rules. It has gone on and on and on. It is deeply flawed. It is disastrous. It started in June of 2000. It has lasted more than 6 years, beyond a full Senate term and longer than a President's term. OMB says that it should not have gone on more than 12 months, but this competition has gone on for more than 6 years. Federal employees in 2004 September were declared the winner of this competition, only to have the decision reversed 2 years later—not 2 days, not 2 weeks, but 2 years. Then DOD kept putting out new plans. They announced a new plan where they amended it 16 times. Every time the Federal employees won, the Army came up with a new rule. The last amendment included 1,500 changes. This was the 49th month of this solicitation, and once again they said: Let's start over. They keep changing the rules every time the Federal employees win, and then finally they lost it in 2006 after this chaos.

Now, does contracting out save money? You bet, sometimes, but not this time. It has already cost the military $7 million to conduct this privatization. It is going to cost another $5 million to implement. When the demands on Walter Reed are so high, when we have a war that has no line item, should we be spending tax dollars to implement a program that will not save it? This will not save the taxpayers' money.

Also, I bring to my colleagues' attention that Walter Reed will be closing in just a couple of years. Why privatize now? It is a solution that is wrong. The competition was flawed. It does not save taxpayers' money. Sure, we understand contracting out when it is legal, when it is fair, when it saves taxpayers' money and maintains integrity. This amendment will eliminate the funding to carry this out, and we urge its adoption at the appropriate time.

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

The PRESIDING OFFICER. There is 5 minutes remaining.

Mr. SARBANES. Madam President, I wish to very strongly underscore the arguments made by my very able colleague, Senator MIKULSKI, with respect to this amendment. I am very pleased to join with her in offering it.

This amendment would put an end to a very costly and flawed A–76 competitive sourcing study at Walter Reed Army Medical Center, which is, of course, one of our foremost military hospitals. There have been numerous and serious flaws in the conduct of this A–76 study. The study has been going on now for 6 years—contrary to law governing the A–76 process. As a result, it has been extraordinarily expensive and promises to be even more expensive if completed.

The Federal employees actually were declared the winner of this competition in September of 2004, only to have that decision reversed earlier this year. The decision was reversed after a whole new set of amendments were made with respect to the bidding process. In fact, the solicitation has been amended a number of times with hundreds of changes, making the process terribly unfair to everyone involved. This particular A–76 is so egregious that it ought to be brought to an end, and that is what this amendment proposes to do.

I believe the situation as it currently stands is also having a detrimental impact on the work being done at Walter Reed. The A–76 study covers base operation support services—workers who deal in landscaping and maintenance. The requirements now are that these A–76 processes cannot go on for more than 30 months—in part to avoid such a disruption in the workforce. However, this study has been going on for more than 6 years. Obviously it is having an impact on the morale of the employees and resulting in a loss in productivity. So I urge my colleagues to be supportive of this amendment, which will bring this costly and flawed A–76 study to an end and help Walter Reed maintain the high level of services which characterizes that fine institution.

I would also add that the BRAC Commission has recommended the consolidation of Walter Reed with the Bethesda Naval Medical Center. That is supposed to take place over the next few years. That seems to me to be an additional argument for adopting this amendment.

In other words, in a very short period of time, Walter Reed will move to a new campus where we will be developing a new, more modern, military hospital. At that point, the base operations workforce will have to be reshaped to fit the needs of this new facility.

So I urge my colleagues to respect the reasonable rules of the bidding process, rules which have been so departed from in this instance. We should adopt this amendment to ensure that this and other competitive sourcing studies are conducted pursuant to the laws and regulations governing the A–76 process.

I very strongly support my colleague. I commend her for her important leadership on this issue. Let's be fair to the employees. Let's honor a reasonable bidding process with its own rules and requirements.

If Federal jobs are to be subject to the competitive sourcing process, Federal agencies should follow the rules and requirements governing that process. That has not been done in this instance, which is the reason I support

the amendment that is pending before us.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will now stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. SUNUNU).

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2007—Continued

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the distinguished Democratic leader seeks recognition now. I ask unanimous consent that the majority leader be recognized immediately following Senator REID.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I will at an appropriate time send an amendment to the desk. The amendment will read as follows:

At the appropriate place insert the following:

It is the sense of the Senate on the Need for a New Direction in Iraq Policy and in the Civilian Leadership of the Department of Defense.

Here are the findings.

1. U.S. forces have served honorably and courageously in Iraq, with over 2,600 brave Americans having made the ultimate sacrifice and over 20,000 wounded.

2. The current ''stay the course'' policy in Iraq has made America less secure, reduced the readiness of our troops, and burdened America's taxpayers with over $300 billion in additional debt.

3. With weekly attacks against American and Iraqi troops at their highest levels since the start of the war, and sectarian violence intensifying, it is clear that staying the course in Iraq is not a strategy for success.

Therefore, it is the sense of the Senate that:

1. Our troops deserve and the American people expect the Bush Administration to provide competent civilian leadership and a true strategy for success in Iraq.

2. President Bush needs to change course in Iraq to provide a strategy for success. One indication of a change of course would be to replace the current Secretary of Defense.

In war, strategy is the searchlight that illuminates the way ahead. In its absence, the U.S. military would fight hard and well but blindly and the noble sacrifices of soldiers would be undercut by the lack of thoughtful leadership at the top that soberly assessed the realities of the situation and constructed a response.

That is a direct quote from a book called ''Fiasco,'' which was written by Washington Post senior Pentagon correspondent, Thomas Ricks. The quote concerns a war and a Secretary of Defense I would like to talk about today. The war is Iraq, the Secretary of Defense is Donald Rumsfeld.

For me, it was not a quick or easy decision to come to the floor to demand that President Bush replace Secretary Rumsfeld. I have always held the opinion that the President of the United States deserves ample leeway in determining who serves in his Cabinet. Regrettably, after 5 years of mismanagement and mistakes in Iraq that have made America less safe, the time for that leeway has passed. So, today, as I have indicated, I will offer an amendment expressing the sense of the Senate that President Bush replace Secretary Rumsfeld immediately.

This amendment is bigger than Donald Rumsfeld. This is about changing course in Iraq and the President demonstrating to the American people he understands America cannot stay the course when the present course is taking our country in the wrong direction. The United States currently has about 140,000 soldiers serving in far away Iraq. Thousands have served coming from Nevada. Hundreds are there right now. They are bravely performing their jobs, but it is time for the President to do his and chart a new direction in that far away land called Iraq.

In the last month, scores of U.S. soldiers and marines have been killed. Hundreds of U.S. troops have been wounded. More than a thousand Iraqis have been killed. American taxpayers have lost another $12 billion to this mismanaged war. The totals for this conflict now approach 2,700 Americans killed and over 20,000 Americans wounded. A third of these wounded soldiers and marines are missing arms, legs, eyes. They are paralyzed or coping with brain injuries, and over $300 billion of debt already has been expended for which the American taxpayer must foot the bill.

Today, because of Iraq, the readiness of our troops has declined to levels not seen since Vietnam. There is not a single Army nondeployed combat brigade that is currently prepared to meet its wartime mission. I repeat, not a single nondeployed combat brigade is currently prepared to meet its wartime mission. And the Chief of the National Guard has said the Guard is ''even further behind or in an even more dire situation than the Army.''

In peacetime such a state of our military would be disturbing. At a time of war, this is unacceptable. The facts on the ground do not lie. All the speeches by President Bush, all the speeches by the Vice President, all the speeches by Secretary Rumsfeld do not change what is taking place on the ground in that desert called Iraq. The current course in Iraq is not working, not for our military, not for the Iraqi people, and not for our security.

Five years after the attacks of September 11, 2001, America is not as safe as it needs to be. Secretary Rumsfeld and the Bush White House have mastered the politics of national security, but as we have seen day after day, week after week, month after month, in Iraq they have failed to do what it takes to make America safe.

This is not a personal attack. I am not looking to pick a fight with Secretary Rumsfeld or the President of the United States, but it is about making America as safe as we can and should be. Secretary Rumsfeld's failed track record is well documented, and the consequences of his mismanagement on American national security are well known. Secretary Rumsfeld was a leading participant in the administration's cherry-picking and manipulation of intelligence in the run-up to the war, exaggerating Iraq's connections to al-Qaida and the threat posed by its weapons of mass destruction—which didn't exist.

As a result of his and others' actions, our Nation was rushed to war based on faulty facts, and the Pentagon is now spending $20 million on a public relations campaign to rebrand the war to the American people. New money, $20 million—public relations.

Secretary Rumsfeld was one of those who ignored the advice of the uniformed military and went into battle in Iraq with too few troops and no plan—no plan to win the peace. As a result, the insurgency was able to gain a foothold in Iraq, and now even the Pentagon is forced to conclude that civil and sectarian strife threatens our troops and the future of the country of Iraq. Secretary Rumsfeld was the one who directed disbanding the Iraqi Army and purging of all Baath Party officials from the Iraqi Government. His lack of preparation delayed the training of Iraqi security forces for untold time.

As a result, here we are, more than 3 years later, with not a single Iraqi Army battalion that can operate independently—not one. We should remember the Secretary's mistakes are not all buried in the past. Just last week he demonstrated again he is not the man for the job. As he spoke to the American Legion this became very clear. His remarks were wrong, they were unnecessary, and they were a slap in the face to every American.

Rumsfeld's speech was filled with reckless, irresponsible assertions, but the most insulting and misguided words compared the critics of the Bush administration's Iraq policy to those who appeased the Nazis, leading to World War II—a statement made by our Secretary of Defense. These assertions were offensive and indicative of a Secretary of Defense who has lost his way, who is not capable of overseeing America's defense or certainly a new direction in Iraq; who is more concerned, it seems, with the Bush administration's political fortunes than the safety and security of the American people; and who must be replaced.

Keith Olbermann of NBC observed, after Rumsfeld's comments, as follows:

[His speech] did not merely serve to impugn the morality or intelligence—indeed the loyalty—of the majority of Americans who oppose the transient occupants of the highest offices in the land. Worse, still, it credits those same transient occupants—our