vation Act. The bill provides that it will not be unlawful under the antitrust laws for a failing newspaper to enter into certain joint operating arrangements with another newspaper in the same city.

The survival of failing newspapers has become a serious problem. Over the last 50 years, many independent newspapers, primarily in metropolitan areas, have either suspended publication or merged.

What is the explanation for this trend? Economic conditions lie at the heart of the failure of many newspapers. Although the cost of production has spiraled upward, advertising revenue has become more scarce, largely due to competition for this revenue by other media. The result: in many cases, only one newspaper in an urban area can survive.

The only feasible remedy available for the newspaper that is in dire financial straits is a joint operating arrangement. At present there are 22 joint operating arrangements for newspapers in the United States. Although business and mechanical functions are combined—that is, the production, distribution, and advertising solicitation divisions—independent editorial departments are preserved. Separately owned newspapers can, therefore, continue to serve the public.

This bill allows the continuation of an arrangement which, I believe, is in the public interest. For this arrangement obviates the merger of two newspapers if one is threatened to close because of reduced revenues. When a merger occurs, only one stream of news and editorial information reaches the people in a community. On the other hand, if a joint newspaper operating arrangement is treated under the antitrust laws as a single entity and failing newspapers are not required to merge to survive, it is the public that benefits—for the public would thereby receive the widest exposure to varied data and diverse opinions.

In 1965 the Antitrust Division of the Department of Justice instituted an action against a joint arrangement operating in Tucson, Ariz.; the district court held that the Tucson joint operating arrangement was a per se violation of the antitrust laws. An appeal was taken to the U.S. Supreme Court; on March 10, 1969, the Supreme Court ruled that such joint arrangements were in violation of the antitrust laws.

The Department of Justice has declared its intent to move against all of the other joint operating arrangements similar to that of Tucson. This would mean in a number of communities a complete domination of the news and editorial information by one newspaper; competing editorial voices will be squelched. This, in my opinion, is a situation that is less desirable from an antitrust standpoint than the situation I am attempting to preserve in my bill. In light of the Supreme Court decision, prompt enactment of this bill is imperative.

The role of the newspaper as an organ of debate and vehicle for the exposure and discussion of ideas is a critical one in our society. When a newspaper dies, the public loses an additional means of access to pertinent facts and judgments on daily events. We must not permit this to happen.

ALIEN COMMUTER SYSTEM

HON. OGDEN R. REID

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 12, 1969

Mr. REID of New York. Mr. Speaker, today I am cosponsoring with the gentleman from Ohio (Mr. FEIGHAN) a bill which is designed to refine the current operation of the so-called alien commuter system on our borders with Canada and Mexico. The bill would amend the Immigration and Nationality Act to provide that each commuter alien must be regularly certified ever 6 months by the Department of Labor in order to assure that his presence in the United States to seek or continue employment does not adversely affect wages and working conditions of American workers similarly employed.

Under the commuter system, Canadian and Mexican workers who have been lawfully admitted to the United States for permanent residence and who hold green cards are permitted to reside in Canada or Mexico and regularly commute across the border to jobs in the United States. Experts consider the commuter system largely responsible for the stabilization of poverty in the Southwest, particularly.

A staff report called "The Commuter on the United States-Mexico Border," prepared by the U.S. Commission on Civil Rights, states:

> The impact of these commuters on the labor market has been enormous. It has been estimated that over 17% of the labor market in El Paso, Texas, are commuters. Further estimates have shown that 5% of the San Diego, California, labor market and 23% of the Brownsville, Texas, labor market are commuters. Their presence can be directly related to high unemployment rates in these areas.

In many border communities where unemployment among American citizens is high, alien commuters having the same occupational skills as the unemployed Americans do have jobs.

Enactment of this bill would in no way injure the relationship between the United States and Canada or Mexico, but would merely impose reasonable safeguards to protect our citizens and residents. In addition to regulating commuter traffic, the bill would remove a provision in the Immigration and Nationality Act that exempts from criminal sanctions individuals who willfully and knowingly employ aliens who have entered the United States illegally. This is necessary since the number of immigrants illegally entering the United States from Mexico is rapidly rising. Many employers lure prospective agricultural and factory workers into the United States to obtain inexpensive labor; criminal sanctions against such employers would help stop the high number of illegal entrants.

In my judgment, this bill would help bring an end to the system which forces domestic workers to compete for wages with workers living in a much lower cost economy and which sometimes provides agricultural producers faced by strikes with workers, thus stifling the organizing and collective-bargaining efforts of the American farmworker. I hope that the Congress will give early consideration to the legislation.

SENATE—*Thursday, March 13, 1969*

(Legislative day of Friday, March 7, 1969)

The Senate met in executive session at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Vice President.

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal God, in whose perfect kingdom no sword is drawn but the sword of righteousness, and no strength known but the strength of love: So guide and inspire, we pray Thee, the work of all who seek Thy kingdom at home and abroad, that all peoples may seek and find their security, not in force of arms, but in the perfect love that casteth out fear, and in the fellowship revealed to us by Thy Son, Jesus Christ our Lord. Impart Thy higher wisdom to the Members of this body, to whom the people have committed the stewardship of peace, that in this moment of history they may clearly know Thy will and have courage to do it.

In Thy holy name, we pray. Amen.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Geisler, one of his secretaries, and he announced that on March 12, 1969, the President had approved and signed the act (S. 17) to amend the Communications Satellite Act of 1962 with respect to the election of the board of directors of the Communications Satellite Corp.

REPORT ON WORLD WEATHER PROGRAM—MESSAGE FROM THE PRESIDENT

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Commerce:

To the Congress of the United States:

I am pleased to transmit to you, in accordance with Senate Concurrent Resolution 67 of the 90th Congress, the first annual plan for United States participation in the World Weather Program. This document describes the long-range goals of the World Weather Program and the activities in support of that program which have been planned by eight Federal agencies for Fiscal Year 1970. The budget figures shown in this report are consistent with those which appeared in the budget submitted to the Congress on January 15, 1969.

I commend this report to you and hope you will give it your careful attention, for it describes activities which can contribute in important ways to the quality of American life. The World Weather Program promises, for example, to produce earlier and more accurate weather forecasts than we now receive. It is also exploring the feasibility of large-scale weather modifications. Because so much of our social and economic life is significantly influenced by weather conditions, it is important that we encourage those advances in weather prediction and control which our scientists now foresee.

This project, and our role in it, also have great political significance. For the World Weather Program, growing out of United Nations initiatives in the early 1960's, has developed into a most impressive example of international cooperation. On a scale never attempted until this decade, scientists and governments in many countries are joining hands across national boundaries to serve the entire human community. Their example should be instructive for all of us as we pursue lasting peace and order for our world.

This report "talks about the weather," but it demonstrates that we can do far more about our weather than merely talk about it. I believe that the plans for American participation which are outlined here reflect the sense of both the Congress and the Executive Branch of our government that the United States should give its full support to the World Weather Program.

RICHARD NIXON.

THE WHITE HOUSE, *March 13, 1969.*

EXECUTIVE MESSAGES REFERRED

The VICE PRESIDENT laid before the Senate sundry messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

TREATY ON THE NONPROLIFERATION OF NUCLEAR WEAPONS

The Senate resumed the consideration of Executive H, 90th Congress, second session, the Treaty on the Nonproliferation of Nuclear Weapons.

The VICE PRESIDENT. The Chair lays before the Senate the pending business, which the clerk will state.

The LEGISLATIVE CLERK. Executive H, 90th Congress, second session, the Treaty on the Nonproliferation of Nuclear Weapons.

The VICE PRESIDENT. The pending question is on the understanding offered by the Senator from Connecticut (Mr. DODD). Under the unanimous consent agreement of yesterday, the time will be controlled by the Senator from Arkansas (Mr. FULBRIGHT) and the Senator offering the reservation or understanding, to the extent of a 1-hour limitation.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that I may make the following requests, apart from the time limitation on the pending understanding.

The VICE PRESIDENT. Without objection, it is so ordered.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Wednesday, March 12, 1969, be approved.

The VICE PRESIDENT. Without objection, it is so ordered.

SUBCOMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The VICE PRESIDENT. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW—ORDER VACATED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

The VICE PRESIDENT. Without objection, it is so ordered.

(Later in the day, the Senate, in vacating the above order, ordered that the Senate stand in adjournment until Monday, March 17, 1969, at 12 o'clock meridian.)

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, again apart from the time limitation.

The VICE PRESIDENT. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I yield 3 minutes, on my time, to the distinguished Senator from West Virginia (Mr. BYRD).

MAN TO WATCH

Mr. BYRD of West Virginia. Mr. President, one of the newcomers to Capitol Hill during the 91st Congress, the Honorable SPIRO T. AGNEW, Vice President of the United States, was the subject of an interesting article in the March 17 issue of the U.S. News & World Report.

That article was entitled "A New Kind of Vice President?" It might well have been entitled "Man To Watch."

Those of us in the U.S. Senate have had our special opportunities to observe the Vice President as he has fitted into the job of Presiding Officer of the Senate. And I believe it is a fair assessment to say that the manner in which he has discharged his duties has commended him to all of us.

The U.S. News & World Report article says it very well when it reports that the new Vice President is "gaining acceptance in Congress." We in the Senate appreciate the dignity and bearing with which he presides over the Chamber, and we have noted his conscientious efforts to carry forward his share of the daily work routine of the upper body of Congress.

Of greater substance, we have been interested to learn more of his views on issues of national concern, many of which must come before this body during the coming months of this congressional session. For this reason, I noted with particular interest the statement in the article that Vice President AGNEW "is reported to believe that relief, or welfare, is one of the most difficult problems in the country." I noted that the article stated that it has been said about Mr. AGNEW that "he has experienced poverty and prejudice and risen above them on his own merits." I noted that the article stated that he has repeatedly said that he is "for civil rights" and "against civil disobedience." I noted that the Vice President is reported to hold the view that "no President should tolerate violence," and that law and order means "the protection of the individual regardless of race or creed."

In gist, I noted some good, solid reports on the Vice President, and I recommend the article to the Members of the Senate for review.

Mr. President, I also call attention to the fact that the Vice President has presided 22 days since the inauguration. The Senate has been in session 22 days since the date of the inauguration. So far as my own observations are concerned, since I became a Member of this body over 10 years ago, the fact that the Vice President has been on the job as Presiding Officer of the Senate every day it has been in session since the inauguration of the President and the Vice President on January 20, a total of 22 days is somewhat of a record.

Moreover, I have been very favorably impressed by the manner in which the Vice President presides over this body and the manner in which he preserves decorum and order in this body. I merely wanted to take this moment to express my appreciation for the manner and dignity with which he presides, and to congratulate our Vice President, Mr. AGNEW.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD the article to which I have alluded.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

SPIRO T. AGNEW: A NEW KIND OF VICE PRESIDENT?

The Vice President is settling into his job in a different way from most of his predecessors.

One reason is that the job itself is not the same. A vice-presidential office in the White House is evidence of the expanded role assigned to the Government's No. 2 executive.

For Mr. Agnew, service in Washington goes far beyond presiding over the U.S. Senate.

In choosing Spiro T. Agnew as his running mate last year, Richard Nixon said:

"My primary concern was to select a man who had the courage, the character and the intellect—not only to be Vice President—but also to be an effective President if the need arose."

The Nixon Administration has been in office now for almost two months. Yet few people seem to know very much about Mr. Agnew, or what he is doing as the No. 2 man in the U.S. Government.

The Vice President is a 50-year-old lawyer who formerly served two years as Governor of Maryland and five years as chief executive of Baltimore County. Friends call him "Ted," after his middle name—Theodore. Associates describe him as "poised and controlled"—a man of dignity, fairness and common sense.

Mr. Agnew is the first Vice President to have an office in the White House itself. His quarters have been set up in the West Wing, down a corridor from the President's Oval Room office.

In addition, Mr. Agnew has a newly refurbished suite in the Executive Office Building—the rooms occupied by Lyndon Johnson when he was Vice President; the traditional vice-presidential offices off the Senate floor at the Capitol, and staff quarters in the new Senate Office Building.

SENATE DUTY

The Vice President's only constitutional duty is to preside over the U.S. Senate. Mr. Agnew takes this duty seriously, has made a point of being in the presiding officer's chair at the opening of Senate sessions.

Often he steps down to the floor to talk to Senators. Having spent most of his prior government service as an executive, he says the legislative process "is a whole new world to me." Normally, he spends three or four hours a day on Senate business.

The Vice President cheerfully recognizes that his role is that of an "associate member," able to vote only in case of a tie. His main concern has been to win the trust and confidence of the lawmakers of both parties.

"A PLEASANT SURPRISE"

Veterans at the Capitol believe the new Vice President is gaining acceptance in Congress. He is the first man in 24 years to preside over the Senate without first having served as an elected member of that body—sometimes described as "the most exclusive club in the world."

A Republican Senator has observed:

"Agnew is a pleasant surprise. He is doing a whale of a job to cultivate the Senate. He has spent more time in the chair than his predecessor. He eats in the dining room at the Capitol—and I can't remember any Vice President doing that."

A Democratic Senator has commented:

"Agnew is a smooth politician. He knows how to talk to the Main Street American, and is proud of calling himself a middle-brow. He will beat the drums for Nixon all over the country. Democrats make a great mistake if they underestimate Agnew."

Recently, former President Johnson was quoted as saying he believes that Mr. Agnew is "underrated," and that "Nixon made a good choice."

By law or executive order, the Vice President is a member of the President's Cabinet and of the National Security Council, and vice chairman of the newly created Urban Affairs Council.

Moreover, Mr. Agnew is head of the National Space Council, Council on Economic Opportunity, Council on Marine Resources and Engineering Development, Peace Corps Advisory Council, Indian Affairs Council, Cabinet Task Force on Youth Opportunity, and Council on Physical Fitness. He also attends White House congressional-leadership meetings and is a member of the board of the Smithsonian Institution.

Recently, President Nixon assigned Mr. Agnew to work with the nation's Governors and mayors through a new Office of Intergovernmental Relations, with a 12-man staff directed by Nils A. Boe, former Governor of South Dakota.

Said a highly placed source:

"The Governors now feel they have an 'ambassador' in Washington. This new office should be helpful in bringing cooperation on domestic programs at all levels of government."

A GOOD RAPPORT

The Vice President feels that he has established a good rapport with President Nixon, whom he sees on an average of a couple of hours a day in various meetings. An official high up in the Administration describes their relationship in this manner:

"No President has ever been more considerate to his Vice President. They have the kind of mutual understanding that does not require constant consultation.

"Mr. Nixon is easy to communicate with, and precise in making his posture known. He is firm on principle, flexible on procedure. The President is always willing to listen to another approach, but he has his objectives clearly in mind, and he does not vacillate from day to day."

Mr. Agnew is becoming familiar with problems of defense and foreign affairs through frequent NSC meetings and private briefings by Government specialists. The same problems come up in meetings with congressional leaders.

The Vice President gets the same information on economic and monetary affairs that goes to the President from the Council of Economic Advisers.

Mr. Agnew works closely with such key White House aides as Arthur F. Burns, Henry Kissinger and Daniel P. Moynihan. Probably his closest friend in the Cabinet is Attorney General John Mitchell.

AN INSIDER'S VIEW

A White House insider gave this insight into the Vice President's activities:

Mr. Agnew is aware that he is the Vice President, and not the President. He presides at meetings when Mr. Nixon is away, but is careful never to push his own point of view on these occasions.

When the President is on hand, Mr. Agnew never hesitates to speak out on policy matters. Hardly a meeting passes when he does not voice an opinion. He has been a prime supporter of a new national urban policy. But Mr. Agnew has impressed on his aides that only the President can make decisions.

When the Vice President chairs a meeting, he does it "superbly." He is an intelligent questioner, good at drawing people out, helping them to formulate ideas. Mr. Agnew "talks to a point," and is "very precise."

The Vice President is very correct and does not want to appear overbearing. When Mr. Nixon was on an out-of-town trip, some members of the Urban Affairs Council invited Mr. Agnew to take the President's chair. "No," the Vice President replied, "I'll preside from my own chair."

As a former State and county official, Mr. Agnew tends to look at government programs "from the bottom up," rather than "from the top down." He is interested in how federal programs affect people at the local level. Also, Mr. Nixon wants more attention paid to the impact of federal policies on State and local governments.

In the future, Mr. Agnew's role as an Administration spokesman is to increase. The Vice President will be making some trips abroad as a "good-will ambassador"—but none, probably, before autumn. Also, Mr. Agnew will be greeting foreign visitors, and doing ceremonial things for the President. "For the time being," the White House insider concluded, "he is learning the ropes, just like the rest of us."

The Vice President's schedule on an average day is described as follows:

Between 7:30 and 8:30 a.m., he arrives at the White House from his home in a nine-room apartment at the Sheraton Park Hotel.

By 11:30 a.m., Mr. Agnew goes to the Capitol, where he is briefed by aides on the legislative calendar, appointments and other activities.

At noon, the Vice President opens the Senate session, staying on through the business of the opening hours, and sometimes coming back after a late lunch.

Between 2 and 3:15 p.m., he receives callers in the Vice President's office off the Senate chamber.

By 3:30 p.m., he returns to the White House for executive duties. Usually he leaves for home around 7 p.m.

At the outset of the Administration, an aide said, the Vice President "was out almost every night, attending official social functions." Now, he added, that has tapered off to "one or two evenings a week."

The Agnews have given a few small parties for friends. They hope to do more entertaining at home in the future for Congressmen, Cabinet members and the like.

INTEREST IN URBAN AFFAIRS

The Vice President has taken a special interest in work of the Urban Affairs Council. He is reported to believe that relief, or welfare, is one of the most difficult problems in the country. Also, he sees no immediate solutions.

The Council is coming up with new data on the cause and effect of poverty in city slums. This is said to point to a need for new leadership and a complete change of social environment.

The problem is being viewed in its impact on the total economy, with a backing-up effect on the suburbs and rural areas. Solutions are to be aimed at drawing people out of the cities to populate underdeveloped areas.

The Vice President has been traveling around the country, speaking to such organizations as the U.S. Chamber of Commerce, National Conference of Christians and Jews, American Management Association and Investment Bankers Association.

Mr. Nixon expects him to perform a variety of chores. At the recent Governors Conference, Mr. Agnew was asked to sound out State leaders on what could be done to curb student violence at colleges and universities. Later, the Vice President visited Cape Kennedy for the Apollo 9 space shot.

Mr. Agnew helped arrange the transfer of the Brooklyn Navy Yard to the City of New York, where—he said—private investment would be able to "develop an industrial park providing 3,500 jobs immediately and 20,000 jobs within three years in an area plagued by chronic unemployment."

POLITICAL CHORES

The Vice President is expected to carry the main burden of political campaigning and party building for the President—something that Mr. Nixon did during the Eisenhower Administration.

Mr. Agnew has made speeches to Republican Lincoln Day dinners at St. Louis and Cincinnati, where he predicted that the Nixon Administration will usher in "a new era of Republican renaissance."

The Vice President also declared: "If the South is ever to rise again, it will not be a

segregationist South, but an industrial South."

In introducing his running mate in 1968, Richard Nixon said of Spiro Agnew: "He has experienced poverty and prejudice, and risen above them on his own merits."

FAMILY BACKGROUND

Mr. Agnew was born in Baltimore, Md., of Greek-American parents, on Nov. 9, 1918. His father had come to this country from Greece in 1897. His mother was a native of Bristol, Va.

Mr. Agnew's early life was a struggle. He failed when he first opened his own law office. He worked for an insurance company and a food market, but returned to the law.

Mr. Agnew was married May 27, 1942, to the former Elinor Isabel Judefind, the daughter of a Baltimore chemist. He calls his wife "Judy." They have four children and one grandchild.

Pamela, 25, is a social worker in Baltimore County. Randy, 22, who served 10 months with the Navy Seebees in Vietnam, attends the University of Maryland. Randy has an 18-month-old daughter. Susan 21, is a secretary for the joint Republican leadership in Congress. Kimberly, 13, is going to the National Cathedral School in Washington, D.C.

AGNEW AND THE "LIBERALS"

Mr. Agnew was elected as the Republican Governor of Maryland in 1966 with the backing of many Negroes and "liberals" in both parties, over a Democratic opponent who waged a compaign against an "open housing" bill.

The Governor tended to alienate some of that support in 1968 when he publicly rebuked a group of Negro leaders for not condemning black militants in the Baltimore riots that followed the assassination of the Rev. Dr. Martin Luther King.

The Governor told the group:

"I publicly repudiate, condemn and reject all white racists. I call upon you to publicly repudiate, condemn and reject all black racists."

During the 1968 campaign, Mr. Agnew stated repeatedly that he is "for civil rights" and "against civil disobedience."

Now as Vice President, an aide said, Mr. Agnew gets along well with Negroes as individuals and in small groups. He has a Negro on his staff. But Mr. Agnew still encounters resistance when he runs into a political group of Negroes under an activist leader.

The Vice President, however, has remained steadfast in his view that "no President should tolerate violence," and that law and order means "the protection of the individual regardless of race or creed."

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I am glad to yield to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, I am so happy to hear the fine statement of the distinguished Senator from West Virginia.

The VICE PRESIDENT. The Senator's 3 minutes have expired.

Mr. MANSFIELD. Mr. President, I yield 2 additional minutes to the Senator, and that will be all, although I would like to join in the commendations.

Mr. SCOTT. Mr. President, within the time limitation, may I say I am particularly pleased that the matter has been stated so well by the distinguished Senator from West Virginia because we are all well aware of the devotion to duty which the Senator from West Virginia has shown. The fact that he, himself, is always here and always available on the floor of the Senate when any matter of concern or importance is involved, makes what he has said "praise, indeed, from Sir Hubert."

I wish to add that on both sides of the aisle we are immensely pleased with the fact that we have in the chair as President of the Senate the Vice President of the United States, who has shown his interest in the Senate and its problems, who has manifested a continuing and earnest interest in all of our proceedings, and whose guidance and presence are an inspiration to all of us. We are, therefore, very happy that we are so fortunate in having the Vice President as our Presiding Officer. I do not wish to embarrass the Presiding Officer by noting these things.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. PASTORE. Mr. President, I wish to associate myself with the compliments which are being paid to the Vice President. The Vice President has adorned this Chamber, and adorned it well. We wish him good health and happiness.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. TYDINGS. Mr. President, I would like to associate myself with the remarks of the distinguished minority whip. I am particularly proud because the Vice President is from my State, the Free State of Maryland.

Mr. CURTIS. Mr. President, I associate myself with the expressions of praise for our distinguished Presiding Officer, the Vice President. It is my firm belief that these statements reflect the high regard and great respect in which the distinguished Vice President is held throughout the land.

The VICE PRESIDENT. The Chair thanks the distinguished Senators. The time has expired.

Mr. MANSFIELD. Mr. President, I yield not more than 5 minutes, as in legislative session, to the distinguished Senator from Maryland. Before I do so, however. I wish to join my colleagues in all the words of commendation they have had to say about our distinguished Presiding Officer. I wish to compliment him for a job well and assiduously done. He has been and will be a credit to this body and to the country.

The VICE PRESIDENT. The Chair is grateful to the distinguished majority leader.

S. 1536—INTRODUCTION OF A BILL TO UPGRADE THE IMPORTANCE OF POPULATION PLANNING AS A COMPONENT OF FOREIGN POLICY AND FOREIGN ASSISTANCE PROGRAM

S. 1537—INTRODUCTION OF AN AMENDMENT TO SECTION 305(a) OF THE TARIFF ACT OF 1930

SENATE RESOLUTION 166—SUBMISSION OF A RESOLUTION REQUESTING THE PRESIDENT TO CONVENE INTERNATIONAL CONFERENCE ON PROBLEMS OF HUMAN ENVIRONMENT

Mr. TYDINGS. Mr. President, I rise today to introduce legislation aimed at strengthening and expanding U.S. efforts to assist other nations to develop effective population control and family planning programs.

Eight years ago today, on March 13, 1961, President John F. Kennedy unveiled a bold and imaginative plan to promote a peaceful social, political, and economic revolution in Latin America. The Alliance for Progress, in the late President's words, was to be "a vast cooperative effort, unparalled in magnitude and nobility of purpose, to satisfy the basic needs of the American people for homes, work and land, health and school—techo, trabajoy tierra, salud y escuela."

The President's proposal was accepted by all the nations of Latin America, save Cuba, and the Alliance charter was signed at Punta del Este in Uruguay later that year. The charter pledged efforts at economic development, setting a target of at least 2.5 percent annual growth in per capita income. But more importantly, it promised this economic progress in a context of increasing democracy and social justice.

In the 8 years since its inception, the Alliance has produced some notable achievements. Tax reform has resulted in markedly increased revenues for most of the 19 participating Latin American governments. Hygenic water systems serving over 10 million people have been constructed. Thousands of classrooms have been built. Primary school enrollment has been boosted by 23 percent, secondary school enrollment by 50 percent and university attendance by 40 percent.

However, though the concepts of hemispheric cooperation and the democratic revolution by reform remain valid nearly a decade later, the overall performance of the Alliance has been a disappointment to even its ardent supporters. The fact remains that the standard of living for most Latin Americans has improved little since Punta del Este, and in some parts of the continent the quality of life is actually declining.

Much of the failure the Alliance has experienced can be laid at the feet of the wealthy oligarchies and military cliques that dominate many Latin nations, and which have refused to relinquish their power and privileges. Some of the responsibility must be placed at our own door for our unwillingness to make available the resources these nations require to build a sound infrastructure.

However, a root cause of the inability of the Alliance to generate the progress its architects envisioned is the accelerating rate of population growth that characterizes most of Latin America. Even in countries where government efforts have been sincere and U.S. assistance competent, population growth has outdistanced increases in agricultural and industrial productivity.

It is like the paradoxical situation in "Alice in Wonderland" where Alice is informed she must run faster if she is to stay in the same place. Aggregate agricultural output has been growing by 3 percent a year in Latin America during the sixties; but so has population. And in some areas, the per capita food supply has actually been decreasing since 1960.

Latin America, a continent of 213 mil-

lion inhabitants, is expected to triple its population to nearly 700 million people by the end of the century. Unless something is done immediately to dampen this population explosion, our neighbors to the south confront a future repleat with famine, and economic stagnation, and, I might add, violence and revolution. For unless a way is found to close the growing gap between food and people, millions will surely starve in the coming decade. Unless a way is found to prevent population growth from absorbing increased agricultural and industrial productivity, capital accumulation in sufficient quantities will remain impossible and poverty will continue as a way of life for the vast majority.

And, the population problem is not confined to Latin America. It is endemic to most of the developing nations—in Africa and Asia as well as Latin America.

At its present rate of growth, world population will double from 3.5 billion to 7 billion people in the next 30 years. At this time, there is no indication that the countries of the third world will be able to grow enough food to sustain these billions yet unborn. And soon U.S. food surpluses will be exhausted.

Conservative estimates place the number of people who starved to death throughout the world last year at 3.5 million. If Malthus' prediction of a geometrically expanding population outdistancing an arithmetically increasing food supply is permitted to come true, the next 10 to 20 years will see this number swell into the hundreds of millions.

There is no way to temporize the solution of this dilemma. The processes at work are inexorable. The problem will be solved in our lifetimes. Either the birth rate will fall as a result of large scale population planning, or the death rate will rise in response to war, pestilence, and famine—the ubiquitous horsemen of the Apocalypse.

Mr. President, I have said it before and I repeat it now because I fervently believe it: along with the possible use of nuclear arms, the population explosion constitutes the greatest current threat to man's survival.

It is out of the utter sense of urgency one derives from study of the population problem that I offer two bills and a resolution in the Senate today.

The first measure is designed to upgrade the importance and visability of population planning as a component of our foreign policy and foreign assistance program. The bill calls for the creation of an Assistant Secretary of State for Food and Population and an Assistant Administrator for Population in the Agency for International Development. As a means of improving present assistance to other nations and expanding the scope of such help, the authorization for programs relating to population control is increased from its present level of $50 million to $100 million in 1970.

As another means of making additional resources available this bill also calls for the removal of current limitations on the percentage of excess foreign currencies that can be used for family planning programs.

Finally, this measure would establish a National Council on Food and Population, an interagency committee charged with coordinating all U.S. overseas food and population programs. The Council would be responsible to make recommendations to the President and Congress each year with respect to these programs.

The VICE PRESIDENT. As in legislative session, the bill will be received and appropriately referred.

The bill (S. 1536) to provide for an Assistant Secretary of State for Food and Population, an Assistant Administrator for Population in the Agency for International Development, and a National Council on Food and Population, and to amend the provisions of the Foreign Assistance Act of 1961 and the Agricultural Trade Development and Assistance Act of 1954 relating to family planning and population control programs, introduced by Mr. TYDINGS, was received, read twice by its title, and referred to the Committee on Foreign Relations.

The VICE PRESIDENT. The time of the Senator has expired.

Mr. MANSFIELD. Mr. President, I yield 1 additional minute to the Senator from Maryland.

The VICE PRESIDENT. The Senator is recognized for 1 additional minute.

Mr. TYDINGS. Mr. President, the second bill I offer would amend section 305(a) of the Tariff Act of 1930 to eliminate the prohibition against the importation of drugs, medicine, and other articles for the prevention of conception. This bill would simply strike from the books an anachronistic law which the Supreme Court has ruled unenforceable.

The VICE PRESIDENT. As in legislative session, the bill will be received and appropriately referred.

The bill (S. 1537) to amend the Tariff Act of 1930 to remove the prohibition against importing articles for preventing conception, introduced by Mr. TYDINGS, was received, read twice by its title, and referred to the Committee on Finance.

Mr. TYDINGS. The third piece of legislation I am submitting is a resolution requesting the President to convene an International Conference on problems of Human Environment. The purpose of such a conference would be to mobilize the knowledge and experience in the international community to study the new relationships between man and his environment resulting from the rapid scientific and technological developments of the 20th century. In addition, an attempt would be made to develop a global plan to help man become the master of that environment instead of its captive. Hosting such a conference would serve to underline the U.S. commitment to a bold and vigorous attack on the problems of the human environment and population control.

From where we stand today in our comfortable and increasingly affluent society, the population problem in Africa, Asia, and Latin America remains a "quiet crisis." It remains easy to ignore, easy to put off. However, as the ranks of the starving are swelled by millions upon millions of new recruits—most of them children—in the decade ahead, how long will we be able to complacently ignore their cries?

William Shakespeare wrote:

Men at some time are masters of their fates:
The fault, dear Brutus, is not in our stars
But in ourselves, that we are underlings.

We must act now while it remains within our power to be masters of the situation.

The VICE PRESIDENT. As in legislative session, the resolution will be received and appropriately referred.

The resolution (S. Res. 166), which reads as follows, was referred to the Committee on Foreign Relations:

S. RES. 166

Resolution to provide for an International Conference on Problems of Human Environment

Whereas the relationship between man and his environment is undergoing profound changes due to rapid scientific and technological developments;

Whereas these developments, though they offer unprecedented opportunities to change and shape man's environment to meet his needs, also present grave dangers if not controlled;

Whereas the United States should take the initiative in organizing an international conference for the purpose of mobilizing the knowledge and experiences of human environment problems, and developing a global plan to curtail the occurrence of environmental problems: Now, therefore, be it

Resolved, That the President is requested to invite in 1970 other interested nations of the World to join with the United States in organizing, convening, and participating in, an International Conference on Problems of Human Environment for the purpose of dealing, through international cooperation, with the environmental problems of man.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I yield not to exceed 2 minutes to the Senator from Nebraska.

S. 1538—INTRODUCTION OF A BILL TO ABOLISH THE COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Mr. CURTIS. Mr. President, I am introducing today a bill to abolish the Commission on Executive, Legislative, and Judicial Salaries. It is a brief bill. It merely repeals about two lines in existing law.

Unless this Commission is abolished, it will be incumbent on the Commission to make another recommendation in regard to salaries for the Congress, the Cabinet members, the Supreme Court, and other Federal judges 4 years from now. Such permanent authority should not exist. I voted against the pay raise and for the Williams resolution to reject the recommendation of the Commission which went into effect on February 14, 1969. However, there are additional and, in a sense, more far-reaching reasons that these salaries should not be handled in this manner in the years that lie ahead.

What evidence is there before the Congress that the salaries of the Cabinet, the Supreme Court and other judges, and the Congressmen and Senators should be revised 4 years from now? Since most so-called revisions of salaries end up as increases in salaries, the assumption of need for such a Commission must be based on inflation. Inflation is very serious at the present time. It could reach

runaway proportions. To permit this authority to stand is to assume continued inflation. Such an assumption is financially and psychologically bad. Furthermore, it is notice to all the victims of inflation that the U.S. Government expects inflation to go on. We should not treat the people that way.

Another reason for repealing this authority of a commission to set salaries is that we should place first things first. The first financial need of our country is to put the budget in balance and start out in an orderly reduction of the national debt. Even though that annual reduction in debt were to be small, it would bring cheer to the hearts of the majority of the American people. It would raise the image of the United States around the world and enhance the prestige and influence of Uncle Sam. Uncle Sam is handicapped in being an influence for good in the world so long as the suspicion lurks in the background that the U.S. Government neither has the courage nor the know-how to set our financial house in order. Until our financial house is in order, there is danger that Uncle Sam will be regarded by the rest of the world as a busybody who either can not or will not pay his bills as they accrue.

In the third place, the fixing of salaries for the executive, legislative, and judiciary by an outside commission is wrong in theory and wrong in practice. At first glance it sounds very attractive. The notion that some unbiased, qualified outside group should say when Congressmen and Senators and judges and Cabinet members should have a raise in salary and to say how much has an appeal. Upon closer examination or upon observation of practical experience the theory must be cast aside. I wish to cast no reflections upon the Commission members personally. The point is that captains of business and industry are apt to be placed on such a commission. It is inconceivable that such captains of industry are going to say to high officials in Government such as Cabinet members, Congressmen, Senators, the Supreme Court and other judges, "Your salary should not be raised." It is totally inconceivable that they would ever recommend a reduction in salaries even if the country were in a more grave financial crisis. Probably any commission appointed would be heavily weighted with individuals drawing enormous salaries and there would be nothing about their day-to-day experience that would keep them in tune with the economic facts of life for the rank and file of Americans.

It cannot be said that such a commission is a necessity. Through the years salaries have been increased and always without the gimmick of a commission to take the responsibility.

The VICE PRESIDENT. As in legislative session, the bill will be received and appropriately referred.

The bill (S. 1538) to abolish the Commission on Executive, Legislative, and Judicial Salaries, introduced by Mr. CURTIS, was received, read twice by its title, and referred to the Committee on Post Office and Civil Service.

TREATY ON THE NONPROLIFERATION OF NUCLEAR WEAPONS

The Senate resumed the consideration of Executive H, 90th Congress, second session, the Treaty on the Nonproliferation of Nuclear Weapons.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to suggest the absence of a quorum with the time to be taken out of both sides.

The VICE PRESIDENT. Without objection, it is so ordered; and the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. DODD. Mr. President, let me say at the outset that I regret that more Senators are not in the Chamber to listen to the discussion of this understanding. I can understand why. Everyone is busy with committee meetings, and this is an early hour. I was supposed to chair a meeting this morning but I cancelled it. However I do not want it to be understood that what I will have to say is in any sense pro forma, because I am very serious about it. It is a serious matter.

I hope that Senators will have an opportunity to read what has been said here on the floor by me about this understanding.

Let me begin by saying, Mr. President, that I am very grateful to the majority leader for his consideration. I shall try to keep my remarks brief and do so as expeditiously as I can.

In offering this understanding I also want to emphasize that I do not, in any way, propose to change or amend the language or the meaning of the Nonproliferation Treaty.

My understanding has to do with the resolution of ratification, as distinguished from changing the meaning of the treaty. Essentially, what it says is that, in ratifying the treaty, the Senate of the United States takes it for granted that the language of the treaty means exactly what it says. That is the point, really, of this understanding.

I wish to explain it in a little more detail. The preamble of the treaty reads in part as follows. and I quote from it:

> The States concluding this Treaty . . .
>
> Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

The non-nuclear-weapons states, in forgoing the right to develop nuclear armaments of their own, I believe, are entitled to the basic assurance spelled out in that preamble. Indeed, I go so far as to say that if this preamble had not been made a part of the treaty, not half a dozen nations would have signed it, because it is the basic inducement to them not to develop their own nuclear weapons.

We say to them, "In return for your not developing your own nuclear weapons, we assure you, in this solemn treaty, that you will not be invaded and there will be no threat against your sovereignty, your political integrity, or your independence."

That, it seems to me, is the "guts" of this treaty; and without it, it is less than what it is now, and I do not think it is much now. But certainly, without that assurance, if I were the head of state of any one of these smaller nations, I would say, "You do not get me into a treaty stopping me from developing nuclear weapons, unless you guarantee that I will not be attacked."

I have talked about that here, but I have never been able to get much attention.

While the treaty is not yet legally in force, it seems to me the Senate cannot ignore the fact that the Soviet Union, since the signing of the treaty on July 1, 1968, has violated the intent expressed in the preamble, and has done it three times: First of all, by the monstrous invasion of Czechoslovakia; second, by the open threat of intervention in Western Germany, on the ground of the existence of neo-Nazism; and, third, by the express threat of intervention in the affairs of the so-called Socialist states, promulgated in what is now called the Brezhnev doctrine.

Those were three violations of the preamble. The ink was hardly dry on the treaty when the first occurred; the second followed quickly; and then the third.

The purpose, therefore, of this understanding is to try to make it clear that the preamble means something; that it is not just verbiage; that it is not just platitude or some pleasantry by way of introduction.

Legally or legalistically, however one wants to say it, I suppose Czechoslovakia can be swept under the rug by saying, "Well, the Nonproliferation Treaty was not in force when that happened." That answer is without validity, in my judgment.

It is a fact that it happened after the Soviet Union signed the treaty. It was after the preamble, which is a party of the treaty, was signed. So I do not think that this event can normally be swept under the rug.

I do not say we should always be bringing up that treacherous attack on Czechoslovakia, and refuse to go any further along the road to arms control. But I do not believe in forgetting, as we have been forgetting for many years, the constant breaking of treaties by the Soviet Union. I am hoping this one will stick; that it will be good enough so that all parties will know it is being lived up to; and that there is no danger that one signatory party may violate it by threatening intervention or by actual military intervention.

So I repeat, legally or legalistically, however one wants to put it, the argument does not impress me that the treaty was not yet in force.

However, in light of the recent record, I believe we have to make it unmistakably clear to the Soviet Union, when we ratify this treaty, as I expect we will, that we do not regard the preamble as

a scrap of paper or as a formality, but, instead, we regard it as a basic aspect of the treaty, the continuation of which must be taken at face value by the signatory nations.

I phrased the language of my understanding as diplomatically as I could, as diplomatically as possible within my ability. I do not name the Soviet Union; I do not see any sense in constantly calling the Soviet Union names, making it more difficult to bring the Soviets to their senses. I call the attention of my colleagues to the fact that the understanding does not single out the Soviet Union by name. It states:

> Any military attack directed against the independence of another country by a nuclear-weapons State party to the treaty.

I hope my colleagues will see fit to support this understanding, because I believe—earnestly believe, and I am sure I am right—it will strengthen the treaty.

Certainly it will delay the widespread fear that the United States will be willing to sweep future Czechoslovakias, as well as the past one, under the rug, and discourage statements that we shall be indifferent to future Soviet aggression.

I think my understanding will serve several purposes. First, it will strengthen the hand of the moderates—and I know there are some within the walls of the Kremlin—and it will weaken the hand of the extremists, which is in our interest. They should be weakened. Second, it will reduce the possibility of further Soviet intervention. Third, it will give at least some small measure of reassurance to our allies, as well as to the so-called Socialist states that I think are threatened by the Brezhnev doctrine.

That is my case, Mr. President, and I could talk about it a great deal longer, but I do not know that I could shed much more light on it. I think it is that simple.

The first part of the understanding states that if any one of these nuclear weapons states party to this treaty intervenes before the deposit of the instrument of ratification, this would allow others to withdraw under the 90-day provision.

The second part of it is that, after the treaty is in effect, if there is intervention by force, or threat of it, by one of the nuclear weapons states party to the treaty, then the treaty is null and void.

That is why it is in two parts.

I say, Mr. President, that is the case. The Senate will have to decide for itself.

It will be argued, as it has been when other understandings have been offered here, that it will mean a delay.

If it means a delay, then there is more to it than I have said already, and it suggests to me all the more the need for my understanding.

If none of the parties mean to intervene by threat of force, or actual military force, they are not going to say, "There is no need for it. We are not going to do that sort of thing." So if there is going to be a delay in their ratification of the treaty I think it is fair to surmise that they may be thinking of doing something like they did in Czechoslovakia. And there are rumors about Rumania now. Tito himself, within the last 48 or 72 hours, has said things that lead me to believe he is worried about the Soviets, too.

My understanding is one way—the only way we have now—of saying, "Look here, this treaty means what it says. It does not mean anything else, and we are not going to fool the American people, we are not going to fool the world, into thinking we have a treaty that will prevent what happened in Czechslovakia if you have no intention of abiding by it."

That is why I have offered the understanding.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. DODD. Yes, I yield.

Mr. BYRD of West Virginia. Mr. President, I have indicated my support for this treaty, and I have not seen in the treaty any verbiage which I would interpret to mean what I think the distinguished Senator from Connecticut has indicated that some of the verbiage means to him. I do not see such language in the preamble. The preamble would have no force of law, in any event.

Mr. DODD. Oh, yes.

Mr. BYRD of West Virginia. Does the preamble to the Constitution have any force of law?

Mr. DODD. Yes, it does. Our Supreme Court has said repeatedly that the preamble to the Constitution of the United States must be considered in any interpretation of the Constitution itself. There are several decisions along that line.

Mr. BYRD of West Virginia. Are there any decisions, though, that are rooted in the preamble of the Constitution?

Mr. DODD. I do not recall the decisions in that detail, but I think the general welfare phraseology of the preamble has been used as a legal foundation, away back during the Roosevelt administration. I do not know whether the Senator would call that an interpretation or a root.

But I would answer the distinguished Senator from West Virginia by asking, Why in the world do we put it into this treaty, then, if it does not mean anything? If I am called upon to sign a contract, I think every word of it means something, and it ought to be so understood.

It has been argued on the other side—and I am fearful that that is what is in the Senator's mind—that this is just a platitude or pleasantry, and does not really mean anything.

It ought to mean something. If, as the Senator argues, it does not mean anything, the treaty is practically worthless.

It is weak enough anyway, God knows, with respect to inspection and a hundred other things. But I plead that we should at least be sure we know what the preamble means, and we ought to assure ourselves that everyone else knows what it means.

That is my point.

Mr. BYRD of West Virginia. Will the Senator yield further?

Mr. DODD. Yes, I am happy to yield.

Mr. BYRD of West Virginia. Mr. President, I do not see any verbiage here, I repeat, which would indicate that we are binding ourselves to go to the defense of any nation that is invaded. That is what I understood that the Senator indicated——

Mr. DODD. No, no.

Mr. BYRD of West Virginia. Was the thought, or one of the thoughts or meanings, contained in this treaty. I do not find it in here.

Mr. DODD. No, I am sorry; I think the Senator misunderstood me. I was not suggesting that.

Let me say it again. The whole thrust of my understanding is: First, that before the treaty is in effect, if any nuclear-weapons power, party to the treaty, invades another country by military force to destroy its political integrity, then the other parties can withdraw under the 90-day clause; and, second, that after the treaty is in effect, if there is military intervention directed against the independence of another nation, then the whole treaty is null and void. That is all I said. I did not say anything about us having to go to the defense of anyone.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield further?

Mr. DODD. I yield.

Mr. BYRD of West Virginia. Mr. President, I think that article X provides adequate avenues for withdrawal of any nation in the event the need arises. The article says:

> Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country.

Mr. President, I think if any event should arise which, in the judgment of our own Nation, jeopardizes the supreme interests of our country, the avenue for our withdrawal is provided in article X.

Mr. DODD. I understand the Senator's position.

Mr. BYRD of West Virginia. So if what the Senator has stated should develop, and if, in the judgment of our leaders, such a development would jeopardize the interests of our country, we have the right of withdrawal, just as any other country has the right of withdrawal.

Mr. DODD. The Senator is absolutely correct about that. But it is not only the interests of our country; it is the interests of all these other little countries which are foregoing their right to develop their own nuclear weapons that I am worried about.

I think we can take care of ourselves, and I am sure we will. But we have gotten a lot of other countries to sign already, to give up their right to defend themselves with nuclear weapons if threatened. And I think this is why they did it.

I say to the Senator from West Virginia that without this preamble, I do not think we would have gotten six nations to sign it. That is the whole justification of the treaty, the whole reason for its being.

The Senator says it is in article X. I say, let us make it clear by this understanding, so there will be no doubt.

I have no doubt. I think other Senators have no doubts, including one I see in the Chamber whom I think all of us consider a great constitutional lawyer.

I think this preamble is an integral part of this treaty, as any preamble is to any contract, as a matter of law.

The Senator from West Virginia is a good lawyer, and I think he agrees with that principle of law. I think he has gone off a little bit from his usual sound judgment about these matters, and I hope to straighten him out. But I am afraid I am losing time.

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

The VICE PRESIDENT. The Senator has used 17 minutes of his time.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield to me for just 1 minute? I will take no more.

Mr. DODD. Yes. I cannot refuse the Senator that, although I am losing time.

Mr. BYRD of West Virginia. I do not wish to labor the point, and I respect the Senator for his efforts here, and for his strong convictions; but I do not think that, in the context of the intent of this treaty, the understanding which he is supporting would be beneficial.

I think the thrust of the treaty is not to prevent the invasion of any country, or to assure any country that we will go to its defense in the event that it is invaded; the whole thrust is to prevent further proliferation of nuclear weapons. I think this treaty would accomplish that, and I hope it will, and that is why I support it.

Mr. DODD. I thank the Senator for his expression of his views, although I respectfully do not agree with him. I think there is a need for the treaty to be clarified by this understanding.

Reserving such time as I have remaining, I yield to the majority leader.

Mr. MANSFIELD. Mr. President, I yield myself 5 minutes, and if the Senator from Connecticut wishes more time——

Mr. DODD. I say to the majority leader, I do not yet know whether I shall. It depends on what is said.

Mr. MANSFIELD. Fine.

Mr. President, I have listened with interest to the definition of the understanding which the distinguished Senator from Connecticut has presented to this body, and I have also been privileged to hear the statements made by the distinguished Senator from West Virginia (Mr. BYRD).

I would be forced to aline myself with the Senator from West Virginia in his interpretation of the treaty which is before us, while at the same time recognizing the fact that this treaty is not a cure-all or a be-all, but is only a small step in what I think is the right direction to afford some relief to the people of this world from the danger of a nuclear holocaust.

As far as atomic weapons are concerned, we are not holding anyone back at the moment. No country has atomic weapons except the Soviet Union, the United Kingdom, this country, and China. What kind of nuclear weapons France has I do not know; but as far as China, France, and the United Kingdom are concerned, their weapons certainly cannot be compared to those which this country and the Soviet Union have.

It appears to me that the reservation itself is directed, and I think rightly, to the attack of the Soviet Union on Czechoslovakia last August, a situation which we all deplore, and which caused the present President, the then candidate of the Republican Party, to suggest to the Senate that there be a delay in the consideration of the treaty now before us; and, primarily on that basis, we acceded to the wishes of Mr. Nixon.

Since that time, he has had a chance to go over the situation as it affects the status of the treaty, and, without qualification, he and his administration have advocated that the Senate give its advice and consent to the ratification of the measure now before us.

I would hope that no Members of the Senate would want to abrogate this treaty, if it is agreed to.

How could we be able to determine what our policy would be in situations which we cannot contemplate, such as, for example, a Soviet attack upon China. We are not even aware of the circumstances attendant thereto. I point out that under article X of the treaty, which has been referred to by the distinguished Senator from West Virginia, any signatory has a right to withdraw within 90 days—and this is a very short period—and such a withdrawal would be quite a blow.

On the question of war, if it comes, the treaty would be ineffective, because on page 424 of the hearings, we find information in the third and fourth paragraphs which reads as follows—and this statement is made by Secretary Rusk:

> I think, sir, that this was simply a recognition of what today is almost an element of nature, and that is, in a condition of general war involving the nuclear powers, treaty structures of this kind that were formerly interposed between the parties would be terminated or suspended. (July 11, 1968 hearings, p. 27.)

I continue to read from page 424 of the report:

> At the other extreme would be a limited, local conflict, not involving a nuclear weapon-state. In this case the treaty would remain in force. The first preamble to the treaty considers "the destruction that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war" and the second preamble states the belief "that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war." This central purpose of the treaty would be subverted by maintaining that the treaty was suspended in the event of such a war between non-nuclear-weapon parties. Accordingly, such parties would be bound by the treaty unless and until they exercised the right of withdrawal under Article IX.

The VICE PRESIDENT. The time of the Senator has expired.

Mr. MANSFIELD. Mr. President, I yield myself 1 additional minute.

The VICE PRESIDENT. The Senator from Montana is recognized for 1 additional minute.

Mr. MANSFIELD. Mr. President, the right to withdraw is a material right, to be determined by each individual state, large or small. The record is very clear that in case of general war, the treaty would be immediately null and void, as I have tried to indicate on the basis of my statements today.

In my opinion, the total effect of this reservation would be to muddy the treaty as well as to delay it. It would be my hope that the best way to move ahead on the road to disarmament and to bring about a hope for peace for all of the world would be to agree to this treaty, to do our part in bringing it to fruition, and to join the other nations of the world in achieving this worthwhile objective.

I repeat, this treaty is not an end-all or a be-all or a cure-all. But it is a step in the right direction. It is a small, hesitant step toward a goal which might take a long while to effect, but it is a step that is worthwhile.

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

The VICE PRESIDENT. The Senator from Connecticut has 11 minutes remaining.

Mr. DODD. Mr. President, I yield myself 2 minutes. I do not think that I will take that long.

The VICE PRESIDENT. The Senator from Connecticut is recognized for 2 minutes.

Mr. DODD. Mr. President, I respectfully address my response, as far as I can, to the remarks of the majority leader.

I thought about China and every other country. I think that the language of my understanding has been very carefully drafted to get away from border skirmishes. That is not what it is directed to. It addresses itself to a military attack directed against the independence of another country.

Unfortunately, as the majority leader, I am sure, will agree, this kind of intervention does not always take on the appearance of a full-blown war.

No war was declared on Czechoslovakia. The Russians just marched in with troops and with tanks and took the country over. That is what I fear they may try again.

I agree with the majority leader. And I hope, with him, that this measure will be effective. However, we have had bad experiences with these people. We entered into the test-ban moratorium with them in all good faith.

What did the Soviets do? This is not ancient history. They violated it at a time of their choosing, with a series of monster atmospheric explosions.

In the face of a hundred violations—and that is an understatement—we are now asked to enter into the serious and fateful agreement involved in this treaty.

I do not care to rehash all the bad experiences we have had.

I remember yesterday—I think it was—on the floor when I said that I had read the late Senator Robert F. Kennedy's book over the weekend in which he relates how Gromyko sat and looked President Kennedy in the eye, and lied in his teeth, and said the Soviets had no missiles in Cuba.

President Kennedy, however, knew they did have missiles in Cuba. And Ambassador Dobrynin, who is still the Ambassador to the United States, lied in his teeth, too.

That is not ancient history. That happened a half dozen years ago. They said they had no missiles in Cuba. But we knew they had them there.

If we were dealing with people who had a record of trustworthiness, we could

afford to take chances. And we are taking a big chance now.

We want everyone to understand that the preamble means what it says. We should stop this business of having Russia invade Czechoslovakia and threaten Rumania and West Germany, and claim the right to step into the affairs of any so-called Socialist country.

That is what my understanding is about.

I said earlier, and I think I ought to repeat it, that I know of the majority leader's earnestness and devotion to peace. I do not say that as a polite parliamentary ritual. I know that this is so. Indeed, I am deeply aware that this is so. And I highly respect the majority leader for this.

The majority leader has labored long and hard. But he says what so many others have said, that my understanding will muddy the waters and delay things.

I cannot understand why it should delay anything.

If we mean it and Great Britain means it, and it is already signed and deposited, why can the Soviet Union not say "Yes"? There should be no trouble in their doing that.

What is really bothering people is that if we write this provision into the treaty, the Soviet Union may say, "No dice. We are not going to commit ourselves to not interfering militarily."

If they are not about to do this, we can forget about the treaty. It will be remembered in history as one of the biggest jokes ever perpetrated on the American people and the world.

I do not care to delay the Senate. The majority leader has a great deal of work to do in trying to get through with this measure.

I did ask yesterday, as the majority leader will recall, for the yeas and nays. I would like to have an expression from the Senate. I have no illusions; I think, however, that it is important to make a record. It may not mean much today, but it may mean something some day for others.

Mr. President, I yield back whatever time I have remaining.

The PRESIDING OFFICER (Mr. SPONG in the chair). Does the Senator from Connecticut yield back his remaining time?

Mr. DODD. Yes, I do.

Mr. MANSFIELD. Mr. President, I yield myself a minute or two.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MANSFIELD. Mr. President, may I say that the test-ban treaty, despite its inequities—and there were some—was likewise a small step forward. And as far as violations of the Nuclear Test-Ban Treaty are concerned, there have been unintentional violations of that treaty by both the Soviet Union and the United States. It has held up very well, however.

I recall traveling with the late President John F. Kennedy when he undertook a natural resources tour of the western part of this Nation. He discussed natural resources in Duluth and Grand Forks, and the reaction was not very overwhelming. But when he reached Billings, Mont., and addressed a crowd of 75,000 people, he brought out the fact that just several days previously the Nuclear Test-Ban Treaty had been approved by the Senate. When he made that statement, he brought down the house, to use show business parlance; and it was an indication of the fact that the people of this country are interested in peace and are willing to take chances to bring about that most desirable objective.

We cannot go on building arms forever. Missiles are not the answer to the needs of the people today. Armaments are not the answer to the needs of the cities. These are problems we must confront and face up to, and these are steps we must take if the world is to be given the opportunity, which it should have, to advance on a fairly peaceful and prosperous basis, to the end that all its peoples, regardless of color or creed or origin, will be given the chance to live in a degree of peace and a chance to offer their children a small degree of hope.

When we talk of aggression, please keep in mind that the same charge could be applied against this country. Just yesterday, we apologized to Laos for an aggression into that country. Just a few days ago, Prince Norodom Sihanouk, the Chief of State of Cambodia, returned four American flyers who came down in that country. Several weeks ago, Prince Norodom Sihanouk returned 11 other Americans who had penetrated into Cambodian territory.

So I believe we should take an overall look at this treaty, weigh the consequences as the distinguished Senator from Connecticut has laid them out, and recognize that this is not the answer to the objective we seek, that it is only a step in the right direction.

I hope, Mr. President, that this treaty will be acceded to overwhelmingly by the Senate when the vote occurs.

Mr. DODD. Mr. President, I have yielded back the remainder of my time, but I would like 1 minute.

Mr. MANSFIELD. I yield as much time to the Senator as I have remaining.

Mr. DODD. I thank the Senator.

Mr. President, the Senator pointed out the situation in Laos and Cambodia. This is not what I referred to, in any respect. This was an accident in the course of war. I do not believe anyone contends that we purposely were trying to invade or interfere with the sovereignty of Laos or Cambodia. I am not talking about this. I am talking about the kind of thing that happened in Czechoslovakia.

As the majority leader knows, I agreed with him about the test ban treaty. He will recall that I introduced my own resolution, and I believe we made progress on that. What I referred to was not a treaty; it was an executive understanding suspending all nuclear testing, which we entered into in 1958.

Mr. MANSFIELD. That is correct.

Mr. DODD. That is the one I had in mind when I said that.

Mr. MANSFIELD. Mr. President, I could mention other countries in addition to Laos and Cambodia, such as the Dominican Republic. But I believe it is time to bring this reservation to a vote, and I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the understanding of the Senator from Connecticut (Mr. DODD). On this question, the yeas and nays have been ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be allowed to suggest the absence of a quorum, for a period not to exceed 10 minutes after 11 a.m.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

Mr. MANSFIELD. The attachés should notify Senators that this vote will soon be in process.

The assistant legislative clerk proceeded to call the roll.

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

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

All time having been yielded back, the question is on agreeing to Executive Understanding No. 2 of the Senator from Connecticut (Mr. DODD). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Georgia (Mr. TALMADGE) is necessarily absent.

Mr. SCOTT. I announce that the Senator from Colorado (Mr. DOMINICK) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT) and the Senator from New York (Mr. GOODELL) are detained on official business.

If present and voting, the Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK) and the Senator from New York (Mr. GOODELL) would each vote "nay."

The result was announced—yeas 15, nays 81, as follows:

[No. 19 Ex.]

YEAS—15

Allen	Dodd	Long
Bible	Eastland	McClellan
Byrd, Va.	Ervin	Russell
Cannon	Hollings	Thurmond
Curtis	Jordan, N.C.	Tower

NAYS—81

Aiken	Gurney	Murphy
Anderson	Hansen	Muskie
Baker	Harris	Nelson
Bayh	Hart	Packwood
Bellmon	Hartke	Pastore
Bennett	Hatfield	Pearson
Boggs	Holland	Pell
Brooke	Hruska	Percy
Burdick	Hughes	Prouty
Byrd, W. Va.	Inouye	Proxmire
Case	Jackson	Randolph
Church	Javits	Ribicoff
Cook	Jordan, Idaho	Saxbe
Cooper	Kennedy	Schweiker
Cotton	Magnuson	Scott
Cranston	Mansfield	Smith
Dirksen	Mathias	Sparkman
Dole	McCarthy	Spong
Eagleton	McGee	Stennis
Ellender	McGovern	Stevens
Fannin	McIntyre	Symington
Fong	Metcalf	Tydings
Fulbright	Miller	Williams, N.J.
Goldwater	Mondale	Williams, Del.
Gore	Montoya	Yarborough
Gravel	Moss	Young, N. Dak.
Griffin	Mundt	Young, Ohio

NOT VOTING—4

Allott	Goodell	Talmadge
Dominick		

So Executive Understanding No. 2 was rejected.

EXECUTIVE UNDERSTANDING NO. 3

Mr. DODD. Mr. President, I call up my Understanding No. 3.

The PRESIDING OFFICER. The clerk will state Understanding No. 3.

The assistant legislative clerk read the understanding (Executive Understanding No. 3), as follows:

Before the period at the end of the resolution of ratification insert a comma and the following: "with the understanding that the United States shall deposit its instrument of ratification simultaneously with the Soviet Union, at a time to be agreed upon".

The PRESIDING OFFICER. The debate on the understanding will be under controlled time, half an hour to a side.

Would the Senator from Connecticut, before the time begins, yield in order that the Senate may receive a message from the House?

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 33) to provide for increased participation by the United States in the International Development Association, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to a resolution (H. Res. 314) electing JOHN BRADEMAS of Indiana to fill the vacancy existing on the Joint Committee of Congress on the Library.

HOUSE BILL REFERRED

The bill (H.R. 33) to provide for increased participation by the United States in the International Development Association, and for other purposes, was read twice by its title and referred to the Committee on Foreign Relations.

Mr. MANSFIELD. Mr. President, as in legislative session, I yield 1 minute to the Senator from New York.

CONCURRENT MEMORIALIZING RESOLUTION OF LEGISLATURE OF NEW YORK

Mr. JAVITS. Mr. President, I call the attention of the Senate to the fact that the New York State Legislature, through its joint legislative committee, headed by State Senator William E. Adams as its chairman, called on Senator GOODELL and me this morning and presented a concurrent resolution, adopted unanimously without regard to party by the State legislature, memorializing the Congress to reform the welfare system and to create minimum standards for public assistance in all States. Also present to present this resolution to us were State Senator William T. Smith, and Assemblymen James L. Emery, vice chairman, and Lawrence E. Corbett, Jr.

I think this is such an important document and so very well done that I ask unanimous consent that its text may be printed in the RECORD as a part of my remarks and also that it may be included as one of the petitions and memorials presented today, and appropriately referred.

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

The concurrent resolution, which reads as follows, was referred to the Committee on Finance:

Concurrent resolution of the Legislature of the State of New York memorializing Congress to enact legislation to create a minimum standard for public assistance in all States which provide an adequate level for the maintenance of health and decency and which cannot be altered or reduced by the introduction or application of minimum payment levels, or other percentage deductions or other devices which impose a limit below the national standard amount of assistance which eligible families may receive; to provide that assistance to the aged, disabled, and the blind be fully funded and administered by the Social Security Administration of the Department of Health, Education, and Welfare; to establish a comprehensive, nation-wide program of public assistance based upon the simple criterion of need, replacing arbitrary, inequitable and inefficient, categories of assistance presently in effect; creating a simple and uniform formula to determine federal reimbursement for public assistance, other than aid to the aged, disabled, and blind, which will provide for equitable and reasonable fiscal efforts among the states and will not penalize those states which maintain and provide more adequate and comprehensive assistance level; to provide block grants to states for the purpose of establishing research projects to increase effectiveness, efficiency and economy in the administration of public welfare, commensurate in size and scope with the national investment in the assistance program and to establish demonstration projects in each of the States for restructuring the public welfare system through meaningful and effective separation of income maintenance responsibilities from the delivery of social services

Whereas, It has been recognized that the foremost domestic crisis facing the people of this nation is poverty; and

Whereas, Public welfare is the only governmental vehicle primarily designated to assure the provision of guarantee against poverty and social deprivation, and to insure the basic essentials of living to individuals and families who are in need; and

Whereas, Rapid urbanization and advancing technology have markedly affected the dimensions of public welfare in this country to the point that individual states are no longer in a position to control or ameliorate the causes of rising welfare rolls nor are they fiscally able to support an adequate system of income maintenance for those who require assistance; and

Whereas, The present Federal system of administering public welfare, based on the restrictive categorical programs and inequitable reimbursement rates to the states, tends to ignore our national commitment to provide an adequate standard of living for all citizens irrespective of their place of residence; and

Whereas, It is the judgment of this Legislature that efforts should be made to correct the injustices imposed upon the people and the inequities imposed upon the states referred to herein; now, therefore, be it

Resolved (*if the Assembly concur*), That the Congress of the United States be and it hereby is memoralized to enact legislation creating a minimum standard for public assistance in all states which provides an adequate level for the maintenance of health and decency, and which cannot be altered or reduced by the introduction or application of maximum payment levels, percentage reductions, or other devices which impose a limit below the national standard amount of assistance which eligible families may receive; and be it further

Resolved (*if the Assembly concur*), That the Congress of the United States be, and it hereby is, memoralized to enact legislation providing that assistance to the aged, blind and disabled be fully funded and administered by the Social Security Administration of the Department of Health, Education, and Welfare; and be it further

Resolved (*if the Assembly concur*), That the Congress of the United States be, and it hereby is, memoralized to enact legislation to establish a comprehensive, nation-wide program of public assistance based upon the simple criterion of need, replacing arbitrary, inequitable and inefficient categories of assistance presently in effect; and be it further

Resolved (*if the Assembly concur*), That the Congress of the United States be memorialized to enact legislation creating a simple and universal formula to determine Federal reimbursement for public assistance, other than aid to the aged, blind and disabled, which will promote equitable and reasonable fiscal efforts among the states and will not penalize those states which maintain and provide more adequate and comprehensive assistance levels; and be it further

Resolved (*if the Assembly concur*), That the Congress of the United States be memorialized to enact legislation to provide block grants in aid to states for the purpose of establishing research projects to increase effectiveness, efficiency and economy in the administration of public welfare, commensurate in size and scope with the national investment in the assistance programs; and be it further

Resolved (*if the Assembly concur*), That the Congress of the United States be memorialized to enact legislation for the establishment of demonstration projects in each of the states for restructuring the public welfare system through meaningful and effective separation of income maintenance responsibilities from the delivery of social services.

S. 1540—INTRODUCTION OF A BILL FOR NURSE TALENT SEARCH PROGRAM

Mr. JAVITS. Mr. President, I introduce, for appropriate reference, a bill to help meet the crisis in health care caused by serious shortages of registered and practical nurses. This bill would aid recruitment into the nursing professions.

My proposal would expand the present nurse talent search program, of which I was the author, to:

Include licensed practical nurses as well as registered nurses;

Permit more widespread identification of potential nursing candidates from minority and disadvantaged groups;

Provide for the development and demonstration of new and effective ways of assisting young people to overcome the effects of cultural, economic, and educational deprivation in order to become nurses;

Broaden the base of the program to include older individuals rather than just "youths" as in the present law, thus giving recognition to the fact that many older women ably serve as nurses, entering the professions later in life;

Expand the present authorization to include grants as well as contracts, thus providing flexibility in achieving the objectives of the program; and

Authorize $300,000 for fiscal year 1970, $750,000 for fiscal year 1971, $1.25 million for fiscal year 1972 and $1.75 million for fiscal year 1973.

The dimensions of the crisis in the shortage of nurses was dramatically de-

scribed by the New York State Joint Legislative Committee on the Problems of Public Health and Medicare, the Lent committee, which observed that the "single most important health problem in New York State and the Nation is how to increase the number of professional registered nurses." At a time when the proportion of high school students choosing nursing as a career has declined and Negroes comprise only 3 percent of nursing students—although 11 percent of the population—it is apparent that we must intensify efforts to recruit individuals into the nursing professions if we are to supply adequate health care for our people.

At present rates of recruitment, the Nation will be short 151,000 nurses in 1970. This dearth of nurses has already curtailed hospital services. For example, last year the District of Columbia General Hospital was obliged to close a wing because of a nursing shortage. In addition, many parts of the Nation are very adversely affected. While the national average is 313 registered nurses per 100,000 population, the actual range is from a high of 536 in Connecticut to a low of 133 in Arkansas. Other States having less than 200 registered nurses per 100,000 population are Georgia, Alabama, Kentucky, Mississippi, Tennessee, Louisiana, Oklahoma, and Texas.

While New York fares better, the fact is that in New York City vacancies range from 20 percent of the vital nursing positions in some of our best run hospitals to an incredible 75-percent vacancy in some proprietary and in most municipal hospitals.

Today, with changing hospital techniques, most bedside services are performed by licensed practical nurses—LPN's—and nurse's aides. Yet the LPN registries are only able to fill about three-fourths of the calls made on them for personnel. My bill would for the first time establish a program for recruitment of LPN students to help relieve this situation. This bill is identical to the measure I sponsored in the last Congress which was included in the Health Manpower Act of 1968 as it passed the Senate, but which was dropped in conference.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1540) to amend the Public Health Service Act to extend and improve the provisions thereof authorizing contracts and grants to encourage full utilization of nursing education talent, introduced by Mr. JAVITS, was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

TREATY ON THE NONPROLIFERATION OF NUCLEAR WEAPONS

The Senate resumed the consideration of Executive H, 90th Congress, second session, the Treaty on the Nonproliferation of Nuclear Weapons.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I ask for the yeas and nays on my understanding.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, if the Senator will yield, I wish to allow myself 1 minute to urge Members of the Senate not to go too far away, and, if possible, to remain in the Chamber. It may not take the full hour to come to a vote on the pending understanding, and it will save much time if what I have suggested is given serious consideration.

Mr. DODD. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. DODD. I join the majority leader in saying to the Members of the Senate that I do not think it will take anywhere near the full hour. I shall not require more than 15 minutes.

Mr. MANSFIELD. So it may take perhaps 15 or 20 minutes.

Mr. DODD. Mr. President, I would like to have the attention of my colleagues. I think this is important.

Mr. President, this is a very brief understanding. It simply says that the "United States shall deposit its instrument of ratification simultaneously with the Soviet Union, at a time to be agreed upon."

It is a very simple matter, but I think a gravely important one.

I offer this understanding to the resolution because while it in no way affects the sense of the treaty, the addition of this understanding may help us to avoid certain political pitfalls which might arise if we rushed to deposit our instrument of ratification while the Soviet Union held off on depositing its own instrument of ratification.

Great Britain has already deposited its instrument of ratification. I assume we will ratify this treaty. But I do not want to see us deposit that instrument of ratification until the Soviet Union, at the same time, in a common ceremony, deposits its instrument of ratification.

Why should not that be so? The first thing I want to point out is that the text of the treaty establishes no deadline for the deposit of the instruments of ratification.

While the report says it is the opinion of the committee that the major powers should deposit their instruments of ratification at the same time, there is nothing in the resolution of ratification that requires it.

One may say, "What about it? What is the danger?" We got into the consular treaty, after some debate. Some of us had doubts about it. At any rate, the Soviet Union did not deposit its instrument of ratification for a year or more afterward.

I do not know what it was up to. But I do not want it said, after we have deposited our instrument of ratification, that there is some other understanding or interpretation, or perhaps some reason for the Soviet Union's not depositing its instrument of ratification at all.

Why not deposit our instruments of ratification simultaneosuly, if everything is on the level?

Great Britain has deposited hers. I am sure we will deposit ours. There will be only one left, the Soviet Union. I think it ought to be required to do the same thing at the same time.

According to several news articles, the Soviet Union and other Communist states have let it be known that they do not intend to ratify the treaty unless and until it has been ratified by the West German Government. More than one commentator has made the statement that we can expect no action by the Bonn government until after the September election in that country, because there is a lot of misgiving over the treaty in political circles.

What worries our German allies is not that the treaty would prevent them from developing nuclear weapons of their own because they have already given up that option at the point of joining NATO. What worries them is that the treaty appears to place a prohibition on the development of a European deterrent force.

There is no assurance that West Germany will sign the treaty even after the September election. If it does not, then it is clear the Soviet Union will seize the situation to make West Germany an international whipping boy and to drive a further wedge between the United States and some of its principal NATO allies.

But the Soviet Union could very well hold off. It has said it will not do anything until West Germany does. We might then be in the position of having deposited the instrument of ratification, as has Great Britain, and, I expect, we would consider ourselves bound by it.

The Soviet Union may wait a year or more, as it did in the Consular Treaty, or it may not ever deposit its instrument of ratification.

I do not know why we should not deposit our instruments of ratification together. There are only three of us—the United States, Great Britain, and the Soviet Union, and Great Britain has already done it. Why not do it together? That is the way contracts are signed.

Mr. JAVITS. Just to elucidate the situation, does not the Senator agree that, as a matter of international law, even though we cast a vote for ratification, that does not make the treaty take effect until the President actually deposits the instrument of ratification?

Mr. DODD. That is correct. That is what I am talking about—depositing.

Mr. JAVITS. I understand.

Mr. DODD. I say that when we deposit the ratification, in all fairness, I can see no reason for any objection to an understanding that the Soviet Union should deposit its ratification at the same time.

Mr. JAVITS. But does the Senator agree that the treaty does not take effect until the President actually does that?

Mr. DODD. That is correct.

Mr. JAVITS. And that the President may withhold it if he chooses, even though we vote to ratify?

Mr. DODD. I think that is correct, but I think that is immaterial.

Mr. JAVITS. Should we not give our President some flexibility? Perhaps in this case, for very good reasons, he would like to delay our deposit until a year later than the Russians, just as the Russians chose to do in connection with the Nuclear Test Ban Treaty. Why do we have to tie ourselves to simultaneous action with the Russians?

Mr. DODD. Mr. President, there is nothing in this treaty that directs the President to do anything. It simply says, as part of this resolution of ratification, that when the instruments of ratification are deposited, this shall be done simultaneously. It does not say when the President has to deposit it, or that he

ever has to deposit it. It simply says that when the President does deposit it, the Soviet Union shall deposit its instrument of ratification at the same time, in a common ceremony.

If the Senator says this might cause delay, I say that is the best argument for my understanding. What delay will it cause if the Soviet Union is in good faith with regard to this treaty? Then it ought to say, "Why, of course, we are ready, let us both sign up together, like parties to any agreement do."

I think there is a possibility that the Soviet Union may react to the possible refusal by the West German Government to sign the treaty by again invoking its proclaimed right to intervene in West Germany.

On the other hand, if West Germany does adhere to the treaty, we might find the Soviet Union, at the point of depositing its own instrument, attaching conditions, reservations, or interpretations. I do not think any of us want to see that happen.

As I tried to point out yesterday, and as a majority of the members of the Committee on Foreign Relations have pointed out, the language of the treaty is ambiguous on many points.

I could go on and talk at greater length about this matter, but I think it is that simple. I am not happy about some other aspects of the treaty.

I think the President has done the best he can.

I understand the attitude of members of the Committee on Foreign Relations, and others. I have no ill will about the vote on the understanding I offered earlier. I believe it was right. But as to this one, I say to my fellow Senators, I deeply and truly believe we should act affirmatively.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. DODD. I yield.

Mr. PASTORE. I believe a fundamental mistake that is being made in discussing this treaty, Mr. President, is in the supposition that the treaty is an accommodation to Russia. I would hope, because I have lived with this matter from the time of its beginning, that Senators would read the treaty very carefully.

It is a fact, Mr. President, that insofar as the United States of America is concerned, under this treaty we are not being obligated to do anything that we are not doing today; and as far as Russia is concerned, she is not being obligated to do anything she is not doing today. The only people who are sacrificing part of their sovereignty under this treaty are the nonnuclear powers.

All we are trying to do here is bring the nonnuclear powers into the fold, by inducing them to agree that they will not fabricate atomic or hydrogen weapons, and that they will permit an international agency to inspect their peaceful atomic establishments to make sure that none of the material is being diverted to military purposes. Unless we understand that, Mr. President, I think we are losing sight of the very essence of this treaty.

Russia is just as much interested as the United States is interested in seeing that these bombs do not get into the hands of other irresponsible governments which today do not have them. That is essentially what this treaty is all about. But one might think, by listening to the debate on this floor, that here is the United States of America, bowing to the great power of Russia and accommodating Russia.

We are not doing that at all. Mr. President, do you know whom this treaty accommodates? It accommodates mankind. We must understand that fact.

What we are saying here today is that unless we stop this madness of every country in the world making bombs—and there are enough bombs today to destroy the world—some crazy triggerman, one day, will let this thing go off and burn this world. We are trying to avoid that.

I realize that this treaty is not the panacea or the cure-all for all of our problems. I understand that completely. But the fact still remains that unless we make a beginning, we will have a disastrous ending.

We have been struggling with this matter for months and months. I have talked with Bill Foster, I have talked with Adrian Fisher, and I have talked with all our negotiators. I even went to Geneva. All we are trying to do in this case is to reaffirm the present law.

This country could not give a bomb away without Congress authorizing it. We are not giving a bomb away under this treaty; and as far as I know, even Russia is being careful enough not to give her bombs away. And if she ever gets around to doing that, we can break the treaty if we want to. There is enough leeway under this treaty to do that.

But I leave this thought with the Senate, and I hope it will be understood: This treaty is not an accommodation to Russia. If I thought it was, I would not vote for it. This treaty is an accommodation to mankind and the survival of our civilization.

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. DODD. Mr. President, I am running out of time. I appreciate the eloquence of the Senator from Rhode Island, but I do not wish to lose all my time to the other side.

I yield to the Senator from Florida.

Mr. HOLLAND. Mr. President, I agree with the Senator from Rhode Island, in part; this treaty means what he says. However, I agree very strongly with the Senator from Connecticut that his proposed understanding is useful. I think it would serve to indicate to the world, when we ratify the treaty, as I think we shall—I shall certainly vote for its ratification—that the United States, having ratified, the pressure is in only one place, and that is on the third remaining depository, which is the Soviet Union. I think that our withholding of deposit would be a method of indicating to the nations of the world that we are in accord with this treaty, but that we are simply waiting while one other of the depositories makes up its mind when it is going to bring the relative calm and peace to the many nations of the world which are non-nuclear. I think it is the best device available to us to bring some pressure on the Soviet Union, which may result in a much earlier ratification and deposit by the Soviets than would otherwise be the case.

Therefore, I support the understanding of the Senator from Connecticut.

Mr. DODD. I thank the Senator from Florida. He is a great Senator and his support means a great deal to me.

The Senator from Rhode Island is, indeed, a persuasive, knowledgeable, and eloquent Member of this body. He is a very difficult Member with whom to debate, because he has such great ability. But having said as much as I could about the real thrust of this understanding, I want to point out for the RECORD that I do not agree when the Senator says the treaty is not an accommodation to the Soviet Union. I think it is. If it were not, I do not think they would be in it for one second.

I do not know of anything in their entire record, any time, any place, where they ever did anything for anybody unless it advanced their cause and their interests.

They have broken over a hundred agreements with us. I asked here earlier, in relation to the first understanding I offered, how often we have to be reminded of this.

I do not think there is any doubt about their interest in the treaty being greater than ours. That is why they are pressing for it. That is why they want it. But that is all right with me, if they will live up to the treaty.

I agree with the distinguished senior Senator from Rhode Island that this can be a great day for the world.

I know the interest of the Senator from Rhode Island in peace. The Senator is vice chairman of the Joint Committee on Atomic Energy. He has vastly more knowledge than I have on the subject. However, he misunderstands my purpose.

I feel that it is greatly to their interest. They are pushing so hard, at so many points I am afraid that they might try some new move.

The Senator from Rhode Island is a good lawyer. He is well known in his own State and beyond the borders of his State as being an excellent lawyer. He knows that when parties enter into a contract, they usually sign the contract together, simultaneously. Sometimes there is a little delay. However, on this treaty we are likely to run into a delay of a year or more. I do not know how long the delay will be or what will happen in the meantime.

The Senator knows what happened with relation to the honest agreement we had—it was an executive agreement—with the Soviet Union to suspend all tests of nuclear weapons. We got into that agreement by taking their word on the matter. They, without any warning or notice to anybody, suddenly embarked on their massive series of atmospheric tests and spread radioactive debris all over that part of the world.

The Senator can trust them if he wants to. I do not. I do not know of anything in their record that would compel me or lead me to do so.

I hope they will be trustworthy. I think our best hope is that they will change. It

is a sensible thing to say to them, "Let us ratify this treaty together. This is what we agree on. Let us go ahead."

That is all I am asking for, and no more. I am not trying to defeat the treaty. I may vote for it myself. I am simply trying to make sure that we do not run into any more of the disappointments and betrayals I have referred to.

I might add an additional sentence or two since the Senator could not be present at the time we were discussing the earlier understanding.

I am really afraid of another Czechoslovakia. And I know that there are those who say that is nonsense. I do not know why it is nonsense. They did it 6 months ago. There are rumbles now about Romania. Tito is alarmed.

We do not know what these people will do if the extremists are still in control, as I am afraid they are, in the Kremlin.

Despite our desire for peace, despite President Nixon's eloquent statement in his inaugural address of his desire to seek peace, we all know that we have always gone that extra mile. We are still on that road. What a little thing it would be to ask that they deposit their instrument of ratification at the same time we do.

That is the case I am trying to make, and that is all.

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

The PRESIDING OFFICER. The Senator from Connecticut has 10 minutes remaining.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. MANSFIELD. Mr. President, I yield 5 minutes to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 5 minutes.

Mr. PASTORE. Mr. President, certainly I do not want to be placed in the position this afternoon of being the devil's advocate.

I hate what the Russians have done as much as does anyone else in the Senate. I am not certainly standing here today to defend Russia. I am not defending Russia for setting up the missiles in Cuba. No one has been more critical of that than I.

The fact still remains that under President Kennedy we did bring about the Nuclear Test Ban Treaty which, in my opinion, is a triumph for our time, without any question.

Since that time, there has not been an explosion in the atmosphere by any of the signatories to that treaty. Perhaps eventually there will be an abrogation of that treaty or a violation of that treaty then we can act accordingly.

The point that I am making here today, however, is that the awesome power we are talking about here has to be brought under control, and we have to begin to do that step by step.

Under the very terms of this treaty, it cannot take effect after it is ratified until such time as the three nuclear powers that we are talking about file the treaty and deposit it. That refers to Great Britain, the United States, and Russia, plus 40 other signatories to the treaty.

Of course, there are only two other nuclear powers in the world—France and Red China—but they are not parties to this Nonproliferation Treaty. Under Section 3 of Article IX, which appears on page 5, it states very clearly:

> This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification.

That is it.

Mr. President, all I am saying is that we cannot confuse this issue on the floor by means of reservations or understandings or amendments.

This measure has gone through the Committee on Foreign Relations. We have had hearings in which the members of the Joint Committee on Atomic Energy joined.

I realize the fear of my good friend, the Senator from Connecticut, with reference to the threat of Russia. I am not trying to minimize that at all. All I am saying here today is, first, the treaty protects us against the thing he fears; and, second, we always have the backstop of the President who can deposit this treaty anytime he deems it is in the interest of the United States of America to do so.

Mr. MANSFIELD. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Montana is recognized for 5 minutes.

Mr. MANSFIELD. Mr. President, there is not much I can add to what the distinguished senior Senator from Rhode Island has said in opposition to the pending understanding which, in my opinion, is unnecessary, unneeded, and would accomplish nothing.

I argee with the Senator from Rhode Island when he says that this treaty is an accommodation for all mankind. I disagree with my distinguished friend, the Senator from Connecticut, when he states that this is an accommodation to the Soviet Union. Nothing could be farther from the fact.

When we arrive at an agreement, when we consider a treaty after 4½ years of deliberation, when we have a proposal before us which is approved by both the preceding Democratic President and the present Republican President, then I think we have gone into the matter just about as consistently and assiduously as we can.

I think this treaty is an accommodation for mankind. No one can speak more forcefully or more factually on that point than can the distinguished senior Senator from Rhode Island, the present vice chairman of the Joint Committee on Atomic Energy, who was chairman of that joint committee in the preceding 2 years. The Senator from Rhode Island knows whereof he speaks.

I recall the words of Col. Frank Borman, the commander of the Apollo 8 flight, who, when he looked down on this little globe from up in the area of the moon, said it is so small and so beautiful, and he remarked how he longed to be back here. But this so small and so beautiful earth could be blown up if we were to live in the past and forget the many dangers confronting this world today.

We must look to the future. We should not perpetuate a credibility gap based on events which happened 10, 20, or 30 years ago. We should not keep alive old antipathies, old resentments, and old policies.

We should think of people, not governments—of people, regardless of the type of government under which they live.

This body has a grave responsibility, and it will not be diminished by avoiding the questions which confront us, no matter how difficult they may be and no matter how emotionally they may be presented.

What the distinguished Senator from Connecticut is advocating today has already been recommended in the committee report, and therefore is completely unnecessary. If I may read from page 17 of the report:

> The committee expresses the opinion that this treaty is of such significance that the administration should endeavor to arrange for the major nuclear powers to deposit their instruments of ratification contemporaneously—

Contemporaneously—

> thus emphasizing the historic nature of the event and avoiding insofar as possible misunderstandings which might otherwise arise.

Again, if we adopt this understanding, we will be opening up the treaty to all kinds of understandings and reservations and misunderstandings so far as the signatory powers are concerned. Making such an absolute requirement by this understanding assumes a lack of confidence in Secretary of State Rogers and President Nixon, who, after all, have the constitutional responsibility for depositing the instrument of ratification. That is the President's responsibility, and he can desposit the instrument at his own discretion. It could be next month, next year, or 5 years from now.

I add one further item, and this is a repetition of what the distinguished Senator from Rhode Island has already said. The third paragraph of article IX reads:

> This Treaty shall enter into force after its ratification by the States—

"The States" refers to the United Kingdom, the U.S.S.R., and the United States—

> the Governments of which are designated Depositaries of the Treaty—

That means, of course, the places for deposit are Moscow, London, and Washington—

> and forty other States signatory to this Treaty and the deposit of their instruments of ratification.

Mr. President, I intend to do what I can to uphold the hand of the President of the United States, and I intend, insofar as I possibly can, to allow President Nixon as much discretion as possible. He is not a hasty man. He is a man who will move carefully, cautiously, with a full awareness of the facts; and if the Senate approves this treaty, I am quite certain that at an appropriate time, all the facts considered, the President will do the job

which is his. I would uphold the President's discretion in this matter. I have faith in him.

The PRESIDING OFFICER (Mr. ALLEN in the chair). Who yields time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 10 minutes remaining.

Mr. DODD. I am happy to yield 4 minutes to the distinguished Senator from Florida.

Mr. HOLLAND. Mr. President, I do not like to be in opposition either to my distinguished majority leader or to the distinguished former chairman of the Joint Atomic Energy Committee.

I desire to call attention to the fact, however, that the committee which considered this matter has already expressed its opinion that the course suggested by the pending understanding of the Senator from Connecticut should prevail. I see no reason why other Members of the Senate should not have the same privilege and the same opportunity. Insofar as the Senator from Florida is concerned, he is going to exercise that privilege and accept that opportunity by voting for this understanding.

This understanding would not disturb the treaty in any way. It is not a reservation. It would be persuasive only upon the President, as he may act. I have great confidence in the President, and I would much rather that he knows how keenly I feel about this matter than to have it simply stand upon a recommendation of the Committee on Foreign Relations, which has already been read into the RECORD and which appears on page 17 of the committee's report.

I read only a part of it now:

> The committee expresses the opinion that this treaty is of such significance that the administration should endeavor to arrange for the major nuclear powers to deposit their instruments of ratification contemporaneously—

That is, at the same time.

Mr. President, I strongly agree with that expression of opinion. I believe that every Senator on the floor of the Senate should have a chance to join in that matter. I do not know how we can join in it without voting for this understanding.

My own feeling, may I say with great respect to my majority leader, is that in attaining or helping to the maximum of our ability to attain this boon to humanity about which he rightly speaks, we will have accentuated our own influence in that matter, by making it clear to the world that we ratify; that only one step is necessary to go further; that then 40-odd nations or 50-odd, or however many nonnuclear nations are relying upon this treaty, will have the relief which they get under this treaty; and that only one nation stands in the way of perfecting this arrangement, which does bring a boon to mankind.

I believe it will have a real influence in the world, because much of the world will say that we are waiting on only one thing, and that is for one of the nuclear nations to itself ratify and deposit. We will have ratified. We are ready to deposit. We will have invited Russia to deposit. It seems to me that we will have put ourselves in the strongest possible position in the mind of the world, generally, and in the strongest way to get early, complete ratification of this treaty, by following this course.

I believe we should support the understanding of the Senator from Connecticut.

Mr. DODD. I thank the Senator from Florida for his excellent contribution.

Mr. MANSFIELD. I am prepared to yield back the remainder of my time.

Mr. President, I have made my arguments. I think they are valid. I have tried to bring to the attention of the Senate the attitude of the Committee on Foreign Relations toward this understanding, and also to express—and I do so again—my faith in the discretion of the President of the United States in carrying out his constitutional responsibility as to when in his judgment would be the right time to deposit the instruments of ratification. To reiterate: I do not think that President Nixon would rush to make that deposit.

Mr. DODD. Mr. President, it seems to me that my argument has not been answered. It has been bolstered by the Senator from Florida.

Nothing in this understanding says that the President of the United States has to do anything. He does not ever have to deposit it. Not one word in this understanding directs the President to do anything.

I have just as much confidence in our President as anyone else has. I have great confidence in him. I do not have any doubt about the fact that he wants to achieve a real settlement for peace in the world. I am content to put our case in his hands. I do not worry about the President. I do worry about the careless way we are getting into this treaty, and I do worry about the Soviet Union.

The majority leader eloquently says that we should no longer live in the past. I do not think I am living in the past. I am not talking about 10, 20, or 30 years ago. I am talking about 6 months ago, when I talk about Czechoslovakia. I am talking about 4 months ago, when they threatened Western Germany. I am talking about 3 months ago, when they said they could intervene in any so-called Socialist country. There is no ancient history about this. There is nothing more current.

I am well aware of the language in the committee report. I believe it is good language. It is the opinion of the committee that this should be done simultaneously, and the Senator from Florida has put the case better than I. That is the reason for offering the understanding. If the members of the committee think that simultaneous deposit is right, why not say so? Why not do what we can do to make sure that is so?

The one thing that troubles me is that it seems I am being placed in a difficult position by offering the understanding, and I do not think I should be.

I do not think my understanding will open the way to all kinds of understandings. It would not do anything of the sort. If the Soviet Union is on the level, and I hope it is, and I hope it is becoming more so, I still say we better look out because we are not living in ancient history.

When I said that it is an accommodation to the Soviet Union, I meant that is why they are so greatly interested.

When we disregard the words of the preamble, instead of adopting the previous understanding I offered, then those small nations now forgoing their right to develop their own nuclear weapons are the ones who may not be accommodated by future developments.

Without the preamble, I say again, we would have no one signing this agreement.

I, too, shall support the President. I shall support him, as I have been trying to do, and shall do, I believe in him and I believed in him for many years. I watched him when he presided over this body. I have no doubt about the President. I think this measure would help him. I know that the Secretary of State, the chairman of the Committee on Foreign Relations, and everyone else want to end this nuclear race; and I do, too.

I have no doubt about our motivations in entering into this treaty. However, I think it would be helpful if we adopted this simple understanding.

How can the Soviets say no? For the life of me, I do not understand. I hope that some day people do not come around and say, "It is too bad we did not do these things."

Mr. HOLLAND. Mr. President, will the Senator yield?

Mr. DODD. I am glad to yield to the Senator from Florida.

Mr. HOLLAND. In the event the Senate by this vote turned down the Senator's understanding, would not that make it appear that at least the Senate doubts the wisdom of the committee opinion as expressed in its report?

Mr. DODD. That is an excellent point which had not occurred to me. The Senator is correct. It seems to me it would. It seems to me when it is said if we adopt this understanding it would cause delay—what delay?—that seems the best argument for it. If they have in mind delaying because of some understanding of this kind, then heavens above, what will they do in other instances?

I think the Senator's point is well taken and it is one of the best reasons offered for agreeing to the understanding. I am for everything we are trying to do in the treaty.

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

Mr. MANSFIELD. Mr. President, I cannot agree with the interpretation made by the Senator from Florida, although he is entitled to his thoughts on this matter. I think the record should speak for itself.

The distinguished Senator from Connecticut is a member of the Committee on Foreign Relations. He expressed no objections when the committee went over the report.

I invite the attention of the Senate again to the committee language:

> The committee expresses the opinion that this treaty is of such significance that the administration should endeavor to arrange for the major nuclear powers to deposit their instruments of ratification contemporaneously, thus emphasizing the historic nature of the event and avoiding insofar as possible misunderstandings which might otherwise arise.

I also call attention to paragraph 3 of article IX of the treaty before us today which reads:

3. This Treaty shall enter into force after its ratification by the States, the Governments of which are designated Depositaries of the Treaty, and forty other States signatory to this Treaty and the deposit of their instruments of ratification.

I believe that the treaty, the report, and the constitutional responsibility of the President to use his discretion as to when the instrument of ratification shall be deposited are sufficient to guarantee that nothing untoward would take place; and I point out that if we adopt an understanding of this nature, what would stop the Soviet Union from saying they will not sign unless West Germany does so. Other countries might do the same thing, and it could create a situation that adds confusion and does not add a degree of stability to what this administration and the previous administration both have been trying to do.

Mr. President, I yield back the remainder of my time.

Mr. DODD. Mr. President, will the Senator yield to me 1 minute? He is a generous man.

Mr. MANSFIELD. I yield 1 minute to the Senator from Connecticut.

Mr. DODD. I thank the Senator from Montana.

Mr. President, the Senator made reference to the fact that I did not voice opposition in committee. I sat in committee and I voted "present."

Mr. MANSFIELD. The Senator is correct.

Mr. DODD. I had not been able to do all the work I wanted to do on this matter. My position was that I did not want to take a position.

Mr. MANSFIELD. That is understood. But, then, the committee went over the report paragraph by paragraph. When objections were raised to language, changes were brought about; and when no objections were raised to language, the committee, ipso facto, accepted the language.

I yield back the remainder of my time.

The PRESIDING OFFICER. The time of the Senator from Connecticut has expired; and the Senator from Montana has yielded back the remainder of his time. The question is on agreeing to Executive Understanding No. 3 offered by the Senator from Connecticut. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Wyoming (Mr. McGEE) and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. SCOTT. I announce that the Senator from Colorado (Mr. DOMINICK) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT), the Senator from Arizona (Mr. GOLDWATER) and the Senator from Illinois (Mr. PERCY) are detained on official business.

If present and voting, the Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK) would each vote "nay."

The result was announced—yeas 15, nays 79, as follows:

[No. 20 Ex.]

YEAS—15

Allen	Holland	Miller
Byrd, W. Va.	Hollings	Russell
Dodd	Jordan, N.C.	Stennis
Eastland	Long	Thurmond
Ervin	McClellan	Tower

NAYS—79

Aiken	Gore	Murphy
Anderson	Gravel	Muskie
Baker	Griffin	Nelson
Bayh	Gurney	Packwood
Bellmon	Hansen	Pastore
Bennett	Harris	Pearson
Bible	Hart	Pell
Boggs	Hartke	Prouty
Brooke	Hatfield	Proxmire
Burdick	Hruska	Randolph
Byrd, Va.	Hughes	Ribicoff
Cannon	Inouye	Saxbe
Case	Jackson	Schweiker
Church	Javits	Scott
Cook	Jordan, Idaho	Smith
Cooper	Kennedy	Sparkman
Cotton	Magnuson	Spong
Cranston	Mansfield	Stevens
Curtis	Mathias	Symington
Dirksen	McCarthy	Tydings
Dole	McGovern	Williams, N.J.
Eagleton	McIntyre	Williams, Del.
Ellender	Metcalf	Yarborough
Fannin	Mondale	Young, N. Dak.
Fong	Montoya	Young, Ohio
Fulbright	Moss	
Goodell	Mundt	

NOT VOTING—6

Allott	Goldwater	Percy
Dominick	McGee	Talmadge

So Executive Understanding No. 3 was rejected.

EXECUTIVE UNDERSTANDING NO. 5

Mr. THURMOND. Mr. President, I call up my Understanding No. 5.

The PRESIDING OFFICER. The clerk will state the understanding.

The bill clerk read as follows:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the understanding, which is to be made a part of the instrument of ratification, that the Treaty will be construed in accordance with the answers given by the United States in response to certain questions by other members of the North Atlantic Treaty Organization, which questions and answers are as follows:

"'1. Q. What may and what may not be transferred under the draft treaty?

"'A. The treaty deals only with what is prohibited, not with what is permitted.

"'It prohibits transfer to any recipient whatsoever of "nuclear weapons" or control over them, meaning bombs and warheads. It also prohibits the transfer of other nuclear explosive devices because a nuclear explosive device intended for peaceful purposes can be used as a weapon or can be easily adapted for such use.

"'It does not deal with, and therefore does not prohibit, transfer of nuclear delivery vehicles or delivery systems, or control over them to any recipient, so long as such transfer does not involve bombs or warheads.

"'2. Q. Does the draft treaty prohibit consultations and planning on nuclear defense among NATO members?

"'A. It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results.

"'3. Q. Does the draft treaty prohibit arrangements for the deployment of nuclear weapons owned and controlled by the United States within the territory of non-nuclear NATO members?

"'A. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.

"'4. Q. Would the draft prohibit the unification of Europe if a nuclear-weapon state was one of the constituent states?

"'A. It does not deal with the problem of European unity, and would not bar succession by a new federated European state to the nuclear status of one of its former components. A new federated European state would have to control all of its external security functions including defense and all foreign policy matters relating to external security, but would not have to be so centralized as to assume all governmental functions. While not dealing with succession by such a federated state, the treaty would bar transfer of nuclear weapons (including ownership) or control over them to any recipient, including a multilateral entity.'"

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. THURMOND. I am pleased to yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of 30 minutes on the pending understanding, the time to be equally divided between the distinguished Senator from South Carolina (Mr. THURMOND) and the distinguished chairman of the committee, the Senator from Arkansas (Mr. FULBRIGHT), and that the last 10 minutes be allocated to the Senator from South Carolina.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

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

The yeas and nays were ordered.

Mr. THURMOND. Mr. President, as I understand, this is the last matter that will come to a vote before the final action on the treaty. Is that correct?

The PRESIDING OFFICER. The Chair does not know.

Mr. THURMOND. Mr. President, a critical question with regard to the NPT concerns our nuclear-sharing arrangements with our military allies in NATO. On the face of the treaty, any transfer of nuclear weapons or explosive devices, or control over them, is prohibited to any recipient whatsoever, directly or indirectly. The key words here are "transfer," "recipient," and "indirectly." The definition of those words is not spelled out, and they leave us open to accusations that we are breaking the treaty by our deployment of nuclear weapons on the soil of our nonnuclear allies.

Are we "transferring" warheads when we physically transfer them to another country, but retain control? Is that country "receiving" them "indirectly"? Does the treaty permit us to retain the present deployment, but prohibit us from "transferring" improved nuclear weapons to that country in the future?

The answers to these questions ought to be "No," and it is reassuring that the official witnesses testifying before the Senate committees adopted that position. In transmitting the treaty to President Johnson, Secretary of State Dean Rusk appended a list of four questions asked by our NATO allies, and the answers supplied by the United States. In effect,

these four questions constitute our interpretation of the treaty, and they are part of the so-called legislative history of the negotiations.

Unfortunately, the four questions imply an interpretation that may appear to some to be at variance with the text of the treaty. The treaty says there shall be no transfer to any recipient whatsoever, directly or indirectly. The four questions say that the deployment of nuclear weapons on allied soil is not transfer within the meaning of the treaty because such deployment does not involve the transfer of control until the moment we decide to go to war. There is nothing in the treaty to differentiate between physical transfer of hardware and the transfer of control. That important distinction rests only upon our own unilateral interpretation expressed in our consultations with our allies.

Therefore, I am going to propose that the Senate adopt its understanding that the treaty is to be interpreted according to the principles set forth in the four questions. The four questions constitute a collateral document which is not clearly inserted into the legislative history of the negotiations. I am informed that it does not appear in the records of the 18-nation Disarmament Committee. Even if it did so appear, I would think that the Senate would be eager to put itself on record as endorsing the principles of interpretation set forth both by the administration of President Johnson and the administration of President Nixon. Therefore, I am submitting, as a formal understanding, an amendment to the resolution of ratification which will incorporate the four questions verbatim as endorsed by both administrations. This will not be a reservation which would change the obligations of the treaty, or an amendment to the treaty itself, which would require renegotiation. My proposal is simply an understanding by the Senate that the Senate supports the interpretation set forth by two administrations. Not one word has been changed or qualified.

Even though, on balance, I oppose the ratification of the treaty, I believe that all of us will want the record on this point to be clear. Many reports now say that the treaty will be ratified. I would like to be able to go as far along with this treaty as possible, and to indicate my desire to achieve world peace. If the treaty is ratified without this understanding, some may doubt that our intentions are fully on record. My mail is overflowing with letters opposing this treaty from every section of the country. I would like to be able to reassure my constituents and correspondents on this point, even if the treaty is ratified, and I am sure that all of us would like to be able to do likewise.

The PRESIDING OFFICER (Mr. CRANSTON in the chair). Who yields time?

Mr. FULBRIGHT. Mr. President, I yield myself 3 minutes, or such time as I may require.

I have said, and the Senator, I think, made it quite clear, that these questions and answers were circulated to achieve a better understanding of certain aspects of the treaty. Unfortunately, to try to incorporate all such interpretations into the language in the treaty would make the treaty so complicated that it would not really serve its purpose.

I think the way it was handled is not too bad. Senators will find the questions and answers referred to by the Senator from South Carolina in the message of transmission from the President of the United States on page 6. They were submitted, in other words, together with the treaty itself, for the information of the Senate.

These questions and answers have been circulated, and their meaning is quite clear, as the Senator from South Carolina has already stated, that what is prohibited by this treaty is the transfer of control of nuclear weapons. Of course, that prohibition is consistent with our own domestic law under the McMahon Act. On the other hand, nothing in the treaty prevents the physical stationing, under our control, of nuclear weapons in the territory of our allies.

Let me make it clear that it is no objection to substance of the understanding offered by the Senator from South Carolina. As I have said before, my objections are procedural. If we begin to attach to the resolution of ratification all of our different views and interpretations, the procedure, I believe, will arouse questions in the minds of the other countries which will be expected to approve the treaty. I would think that this understanding could well inspire the Russians to feel that, if we were going to attach understandings which pertain to our NATO allies, they would feel that they ought to do likewise for their Warsaw Pact allies.

This understanding offered by the Senator from South Carolina would put the Russians in the politically difficult position of having to agree to all of these understandings which do not directly concern them. As a result, I suppose some of their allies would say—"Why do you do not do the same for us?" I think it would merely complicate the process.

In sum, Mr. President some of the understandings that have been submitted I do not disagree with on the merits, but I do not think they ought to be made a part of the actual formal instrument. Therefore I cannot accept the Senator's understanding, and I hope that the Senate will vote against it.

The PRESIDING OFFICER. Who yields time?

Mr. FULBRIGHT. I yield back the remainder of my time. If the Senator from South Carolina wishes to conclude, that is all right with me.

Mr. THURMOND. Mr. President, in answering the distinguished chairman of the Committee on Foreign Relations, I wish to quote Charles Evans Hughes as the authority for my position.

There is plenty of precedent for this procedure. Hackworth's Digest of International Law, volume 5, cites a letter of Charles Evans Hughes to Senator Hale, of July 24, 1919, with regard to the treaty of Versailles. Hackworth was the State Department's legal adviser, and is the preeminent authority in this field. Charles Evans Hughes wrote as follows:

> But where there is simply a statement of the interpretation placed by the ratifying State upon ambiguous clauses in the treaty, whether or not the amendment is called a reservation, the case is really not one of amendment, and acquiescence of the other parties to the treaty may readily be inferred unless express objection is made after notice has been received of the ratification with the interpretive statement forming a part of it.
>
> Statements to safeguard our interest which clarify ambiguous clauses in the covenant by setting forth our interpretation of them, and especially when the interpretation is one which is urged by the advocates of the covenant to induce support, can meet no reasonable objection. It is not to be supposed that such interpretation will be opposed by other parties to the treaty, and they will tend to avoid disputes in the future.

Mr. President, that is exactly what we are trying to do here, to avoid any dispute in the future.

Article I, Mr. President, reads as follows:

> Each non-nuclear weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons.

That means that nuclear weapons will not be transferred. But yet, under the questions that were answered by Mr. Rusk, he says that is not the interpretation that he places upon it, that what he means is that it does not permit transfer of control.

For instance, suppose the United States decided to place some nuclear weapons in Holland, which we would have a right to do. Under this treaty, if you construe it strictly, we could not do that, even though Mr. Rusk says it does not mean we cannot transfer the physical nuclear weapons, it merely means that we cannot transfer the control to Holland of the nuclear weapons.

If that is the reasoning, I think it is important for these questions and answers, which have been agreed to by two administrations, the Johnson administration and the Nixon administration, to be included in the resolution of ratification here, so that no question can arise on that point.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. THURMOND. I am pleased to yield to the distinguished Senator from Arkansas.

Mr. FULBRIGHT. I do not know, but perhaps this reiterates the point I have made. The Senate has considered several understandings, including the understandings of the distinguished Senator from South Carolina. I do not disagree with their substance.

I think even if we could pick and choose among these understandings, that in itself would be bad practice. The Senate has already voted on these matters. As to the understanding, I do not want to be misunderstood as disagreeing with the Senator's interpretation. I agree with the Senator's interpretation, and the executive branch agrees with it. But we would force other nations which we hope will sign this treaty to take public positions upon our particular interests, and I do not know why we would want to put them in that position.

If we do it, a lot of them would feel that, as sovereign nations, they would

have to do likewise; and if we keep doing that, it would be an interminable process. But I agree with what the Senator says on the substance.

Mr. THURMOND. Mr. President, I am pleased that the distinguished Senator from Arkansas agrees that the questions propounded by the NATO countries and answered by Secretary Rusk are true and accurate and are included in the report of the Committee on Foreign Relations.

Mr. FULBRIGHT. The Senator is correct.

Mr. THURMOND. The only question is that the Senator feels it is not necessary for those to be included here as an understanding.

I say that it is necessary or ought to be necessary in view of another construction that might be placed upon this treaty in articles I and II which I just explained a few moments ago.

Why should we allow some question to arise when we can avoid it now with an understanding that will be included within the resolution of ratification?

I favored the reservations of the distinguished Senator from North Carolina and the understandings of the distinguished Senator from Connecticut. I think they were good and should have been adopted.

My understanding is clearly an understanding which includes questions raised by the NATO countries and answered by Secretary Rusk. These questions and answers were also later adopted and approved by the Nixon administration as well as the Johnson administration. I can see no objection to letting them be included as an understanding, because that is what the Government intended. However, since the treaty does not interpret it that way, there could be some misunderstanding.

It seems to me that we could avoid that possible misunderstanding by doing this.

Mr. President, during the debate of the past few days, there seems to have been a presumption that it is somehow inappropriate for the Senate to attach reservations or understandings during the process of ratifying the treaty. I cannot accept that presumption. The attachment of reservations and understandings to treaties has a long and honorable history. It is part of the treatymaking obligations of the Senate. It implies no criticism of those who negotiated in good faith. The text that was struck off in the heat of negotiations, under the pressure of give and take may appear in a different light a few months later when the opportunity is presented for reflection and a calmer look at its implications.

I am confident that my understanding will not require renegotiation, and that it will not meet conflict with the other parties to the treaty. Indeed, the other parties will appreciate our international courtesy in putting the views of the United States on official record in the negotiating process. There is plenty of precedent for this procedure. Hackworth's Digest of International Law, volume 5, cites the letter of Charles Evans Hughes to Senator Hale, July 24, 1919, with regard to the Treaty of Versailles. Hackworth was the State Department Legal Adviser, and is the preeminent authority in this field. Charles Evans Hughes wrote as follows:

> But where there is simply a statement of the interpretation placed by the ratifying State upon ambiguous clauses in the treaty, whether or not the amendment is called a reservation, the case is really not one of amendment, and acquiescence of the other parties to the treaty may readily be inferred unless express objection is made after notice has been received of the ratification with the interpretive statement forming a part of it.
>
> Statements to safeguard our interest which clarify ambiguous clauses in the covenant by setting forth our interpretation of them, and especially when the interpretation is one which is urged by the advocates of the covenant to induce support, can meet no reasonable objection. It is not to be supposed that such interpretation will be opposed by other parties to the treaty, and they will tend to avoid disputes in the future. (Hackworth V; 103.)

This is exactly the case with my understanding. It is the interpretation urged by those who favor the treaty. It can meet with no reasonable objection. The other parties to the treaty will favor it, since it will tend to avoid disputes in the future.

Furthermore, if reservations or understandings were not to be permitted, it would be reasonable to find them prohibited in the text of the treaty. This is a common practice in treaty making. Two examples are the Declaration of London and the League Covenant. This treaty does not prohibit understandings, so we must presume that they are permitted.

In fact, some treaties have even set forth the conditions under which reservations would be accepted. The International Sanitary Convention for Aerial Navigation, 1933, is an example. This nonproliferation treaty sets forth no conditions for the acceptance of reservations, so naturally they are in order.

As the precedents show, we need expect no objections, since this understanding simply goes along with what the supporters say it means. The nations which have ratified so far are Cameroon, Canada, Denmark, Finland, Ireland, Mexico, Nigeria, Norway, and the United Kingdom. Does anyone believe that any of these nations would object to an understanding clarifying our NATO rights?

Under international law, the nations which ratify subsequently to our deposit of ratification implicitly accept our understanding. Hackworth says about reservations—and this would also apply to understandings:

> As to signatories whose ratifications are deposited subsequent to the receipt by them of notice of the deposit of a ratification with reservations, acceptance of the reservations would seem to be implied from failure to object.

The main reason why a formal communication of intent is necessary is that disputes may arise after ratification which would result in the dissolution of the treaty. If the Senate ratifies this treaty, I think we would all seek to avoid a course which might lead to dissolution over a mere misunderstanding.

I would like to point out that understandings and reservations are binding only upon the party making them—unlike amendments to the text of the treaty. There is no reason to believe that others would seek renegotiation. El'i'hu Root wrote to Senator Lodge on June 19, 1919, with regard to the Treaty of Versailles. He said:

> This reservation and these expressions of understanding are in accordance with long-established precedent in the making of treaties. When included in the instrument of ratification, they will not require a reopening of negotiation, but if none of the other signatories expressly objects to the ratification with such limitations, the treaty stands as limited as between the United States and the other powers. (Hackworth 135.)

If the understanding is not included in the instrument of ratification, it has no legal effect on our obligations. Mere publicity or distribution of our views is not enough. The legal record must be made and communicated to the other parties. The Kellogg-Briand Pact of 1928—the so-called Treaty for the Renunciation of War—was in spirit similar to the pact we are now discussing. I hope that this treaty, if ratified, will do what its sponsors say it will do to preserve peace, and that it will not meet the fate of the Kellogg-Briand Pact. However, during the negotiation of the Kellogg-Briand Pact, many interpretations and understandings were expressed in the course of the proceedings. Yet none were included in the final document. Such interpretations were held to be binding only on the side of those making them. They show the intent of some of the negotiators. They were not recognized as valid by the other signatories.

The Kellogg-Briand history also shows what happens when these understandings are not incorporated into the instrument of ratification. We have here a clear precedent for Soviet reaction to such a situation. The Soviet Commissar for Foreign Affairs, Litvinov, said in a letter to the French Ambassador in Moscow, August 31, 1928:

> . . . But the said note of the British Government is not communicated to the Soviet Government as forming a constituent part of the pact or an annex thereto, so it cannot be regarded as binding on the Soviet Government any more than the other restrictions concerning the pact that are mentioned in the diplomatic correspondence of the original signatories are binding on the Soviet Government.

The Soviet attitude in this respect is perfectly legal and proper. The Soviets reject the idea that even a formal declaration is valid when it is not contained in the text or its annexes. The Soviets could very well make the same objection to the Rusk memorandum to President Johnson on NATO.

This is not to say that the Soviets would necessarily object to the substance of the understanding. They would object only to the validity of the understanding. We already have the testimony of Gerard Smith, Director of the ACDA, that the Soviets have not objected to our views, even though they are informally aware of our views. The important point—and this is why I am offering the understanding—is that if this understanding is approved by the Senate, the Soviets will have nothing to which to object.

The Rusk memorandum, consisting of the questions and answers with regard to NATO are not yet part of the official record of the negotiations. I have been informed by the Arms Control Disarmament Agency—ACDA—that the memorandum has not been formally communicated to the other parties to the negotiations. The memorandum was not a part of the proceedings of the 18-nation Disarmament Committee—ENDC. The Soviets have every reason to say, as Litvinov said in 1928, that the memorandum has not been communicated to the Soviet Government as forming a constituent part of the pact or annex thereto.

However, I do not believe the Soviets will object to the substance unless some day a misunderstanding arises. Perhaps this matter has not been fully explored in the negotiations. At some time, we might be charged with violating the treaty. Even if the charge were not true, the text would give color to the argument, and we could lose a war of propaganda. There is no reason why our intent should not be made clear by the Senate officially communicating that intent in the actual ratification process.

As for the interpretation of these words in the text—"transfer," "recipient," "directly or indirectly"—I might point out that our interpretation is a restricted one. In interpreting the treaty, we must do so from the point of view of nonproliferation. The "rights" under the treaty are rights to be free of proliferation. We are interpreting "transfer" in the limited meaning of "transfer of control," as found in our own Atomic Energy Act. But our interpretation of domestic law has no bearing on treaties. The law of treaties is that the most liberal interpretation should be applied—in this case, the interpretation that will insure the least possible proliferation of any sort. The broadest such interpretation of "transfer" would restrict any physical movement or transfer whether control is changed or not.

This is the rule of interpretation which has been handed down by the U.S. Supreme Court. Mr. Justice Stone in Nielson against Johnson said:

> When a treaty provision fairly admits of two constructions, one restricting, the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred. The rights in question are the rights of the signatories to be free from world proliferation, not the right of the U.S. and NATO to transfer nuclear arms. So the liberal interpretation—that is, any transfer of any kind—would be controlling.

I cite Mr. Justice Stone in another case, Factor against Laubenheimer:

> In choosing between conflicting interpretations of a treaty obligation, a narrow and restricted construction is to be avoided, as not consonant with the principles deemed controlling in the interpretation of international agreements. Considerations which should govern the diplomatic relations between nations, and the good faith of treaties, as well, require that their obligation should be liberally construed so as to effect the apparent intentions of the parties to secure equality and reciprocity between them.

The same principle has been cited by the Permanent Court of International Justice in the case of the Austro-German Custom Regime:

> It is a fundamental rule of interpretation that words must be given the ordinary meaning which they bear in their context unless such an interpretation leads to unreasonable or absurd results.

I ask, what is the common meaning of transfer?

I cite again from the World Court in the case of access to or anchorage in, the Port of Danzig, of Polish war vessels:

> The Court is not prepared to adopt the view that the text of the Treaty of Versailles can be enlarged by reading into it stipulations which are said to result from the proclaimed intentions of the authors of the treaty, but for which no provision is made in the text itself.

Mr. President, I submit that it is not enough, on this vital question, of our right to transfer nuclear weapons under our control across the boundaries of NATO countries, to allow our alliance to rest on public statements which are not a part of the official negotiating history. Mere publicity for our views is not enough; it is not controlling. The widest interpretation applies, says the U.S. Supreme Court. Proclaimed intentions are not enough, says the World Court. The Senate should avail itself of its role in the treatymaking process and include our intentions in the resolution of ratification and the instrument of ratification. Then no nation, from any quarter, can ever say that our intentions in this regard were not communicated to them.

I again state that the Thurmond understanding would remove any possibility of misinterpretation of the treaty with regard to the U.S. right to maintain present arrangements with our NATO allies for the deployment of nuclear weapons.

The Thurmond understanding should be adopted because it indicates bipartisan support. As I just stated, it puts the Senate on record in the treatymaking process as favoring the interpretation of the treaty with regard to NATO, endorsed by both the Johnson and the Nixon administrations.

It does not change the meaning of the treaty as explained by the negotiators and would not require renegotiation.

It incorporates verbatim the memorandum sent by Secretary Rusk to President Johnson on July 2, 1968, as appears on pages 262 and 263 of volume I of the Senate Foreign Relations Committee hearings and on pages 11 and 12 of the Senate Armed Services Committee hearings.

This interpretation has not been objected to by the Soviet Union, according to official testimony.

Incidentally, Mr. Smith, the head of the Disarmament and Control Agency, answered the questions I proposed to him on this point.

The understanding would not set any precedents inviting retaliation by other signatories, since our views are already known unofficially to all.

The text of the treaty in articles I and II appears to be ambiguous with regard to our present and future right to the deployment of nuclear weapons under our control across the national boundaries of NATO countries.

The words "transfer," "control," and "any recipient whatsoever," and "directly or indirectly" are not defined in the treaty. If taken in an exclusive sense, the way could be opened to international misunderstandings, particularly in the distinction between physical transfer and transfer of control.

The Rusk memorandum consists of consultations with third parties, and does not constitute part of the official negotiating history. It does not appear in the proceedings of the 18-nation Disarmament Committee. It has not been officially communicated to other participants and signatories even though our interpretation is unofficially known.

I can see no objection in the world to incorporating this understanding in order to avoid misunderstanding. And I cannot imagine why the chairman of the Foreign Relations Committee would oppose this understanding except that he just does not want to agree to anything offered by any Senator, as I understand. However, I do not think that position should be taken.

I think that if we can go on record as showing that the understanding had been by both administrations, the Johnson administration and the Nixon administration, on the relations of this treaty with our country and our NATO allies, and showing that this treaty does not affect our relationship with NATO, it is important that be done in order to prevent any complication or questions arising in the future.

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

Mr. FULBRIGHT. Mr. President, I yield back my remaining time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to Executive Understanding No. 5. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from Wyoming (Mr. McGEE) and the Senator from Georgia (Mr. TALMADGE), are necessarily absent.

Mr. SCOTT. I announce that the Senator from Colorado (Mr. DOMINICK) is absent because of illness.

The Senator from Colorado (Mr. ALLOTT) and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

If present and voting, the Senator from Colorado (Mr. ALLOTT) would vote "yea."

The result was announced—yeas 17, nays 77, as follows:

[No. 21 Ex.]

YEAS—17

Allen	Ervin	Murphy
Cook	Fannin	Russell
Curtis	Griffin	Thurmond
Dodd	Hansen	Tower
Dole	Hollings	Williams, Del.
Eastland	Jordan, N.C.	

NAYS—77

Aiken	Gurney	Muskie
Anderson	Harris	Nelson
Baker	Hart	Packwood
Bayh	Hartke	Pastore
Bellmon	Hatfield	Pearson
Bennett	Holland	Pell
Bible	Hruska	Percy
Boggs	Hughes	Prouty
Brooke	Inouye	Proxmire
Burdick	Jackson	Randolph
Byrd, Va.	Javits	Ribicoff
Byrd, W. Va.	Jordan, Idaho	Saxbe
Cannon	Kennedy	Schweiker
Case	Long	Scott
Church	Magnuson	Smith
Cooper	Mansfield	Sparkman
Cotton	Mathias	Spong
Cranston	McCarthy	Stennis
Dirksen	McGovern	Stevens
Eagleton	McIntyre	Symington
Ellender	Metcalf	Tydings
Fong	Miller	Williams, N.J.
Fulbright	Mondale	Yarborough
Goodell	Montoya	Young, N. Dak.
Gore	Moss	Young, Ohio
Gravel	Mundt	

NOT VOTING—6

Allott	Goldwater	McGee
Dominick	McClellan	Talmadge

So Mr. THURMOND's Executive Understanding No. 5 was rejected.

EXECUTIVE UNDERSTANDING NO. 4

Mr. ERVIN. Mr. President, I call up Executive Understanding No. 4 and ask that it be stated.

The PRESIDING OFFICER (Mr. ALLEN in the chair). The understanding will be stated.

The assistant legislative clerk read as follows:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the understanding that the United States does not obligate itself by this treaty to use its Armed Forces to defend any nonnuclear weapon State or any member of the United Nations against any acts or threats of aggression even if such acts or threats are accompanied by the use or threatened use of nuclear weapons and that this treaty does not affect in any way any obligation assumed by the United States under any other treaty or the Charter of the United Nations".

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

The yeas and nays were ordered.

Mr. ERVIN. Mr. President, I think it is important to state what this treaty does not do. It does not deny to the United States, or to the United Kingdom, or to the Soviet Union the right to manufacture without limit nuclear weapons. It does not deny to the United States, or to the United Kingdom, or to the Soviet Union the right to use nuclear weapons at any time on any nation on earth. It does not provide, as far as the treaty is concerned, for any inspection in respect to nuclear activities in Russia or in Great Britain. As far as the United States is concerned, it does not provide for any inspection of any kind, although both President Johnson and President Nixon have promised that we will submit to any inspection that nonnuclear nations submit to under the treaty.

If the Soviet Union had been anxious to make a real treaty to safeguard the peoples of this world, it would have joined the United States and the United Kingdom in an agreement that none of the nuclear nations which are parties to this treaty would use their nuclear weapons except in defense of themselves or their allies.

So, Mr. President, this treaty has been oversold to the American people. It leaves Russia just as free as it ever was, to do what it pleases. But if it is carried out, it makes certain that the United States and Great Britain are the only two signatories to the treaty that might tempt Russia to use nuclear weapons in offensive warfare.

Furthermore, France and China—and I refer to mainland China—have both stated they will not join in this treaty. They are two nuclear nations which are exempt from any of the limitations in the treaty. Therefore, to say that this treaty is a great thing for the world is magnifying its importance and the security it affords out of all proportion to the truth.

This treaty does give the United States, the United Kingdom, and Russia the assurance, so far as it can give by words, that all other nations will be without the power to acquire nuclear defenses. So if Russia should be so minded it would only concentrate its attention on the United States, the United Kingdom, or Red China. It would not have to bother about the other nations of the world.

I submit that the objective of this treaty is good. But I am reminded of the fact that after he had attended conferences in Potsdam and observed other negotiations with Russia, James F. Byrnes, one of America's great statesmen, wrote a book called "Frankly Speaking," in which he said that for some strange reason those who negotiate treaties for the United States think they have made a success if they get an agreement with other nations regardless of what the agreement may provide or fail to provide.

Mr. President, this treaty is not a complete treaty because a treaty of this nature is virtually without value unless it has some safeguards. This treaty does not have a single safeguard of any kind. As a matter of fact, article III of the treaty makes it plain that all of the signatories to the treaty recognize that it has no safeguards. It provides the safeguards are to be accepted by the nonnuclear-weapon states, parties to the treaty, and that the agreement is "to be negotiated with the International Atomic Energy Agency in accordance with the statute of the International Atomic Energy Agency and the agency's safeguards system." There may never be any safeguards in this treaty.

Mr. President, if you are going to see that this treaty is being observed, you are going to have to have inspection. Russia announced it is never going to submit to inspection. Of course, Russia is being given, as is the United States, a preferred position in not being subject to inspection. But there are no safeguards in this treaty and there are going to be no safeguards as a result of this treaty unless the nonnuclear nations make such safeguards by agreements in the future.

Why those who negotiated this treaty did not have those safeguards negotiated first and spelled out in the treaty is beyond comprehension. We may never have safeguards. We have nothing to rely on except the naked promises of other nations. If history teaches any lesson it teaches that when one has to rely upon the naked promises of nations, reliance is upon a broken reed.

Now the treaty provides, in effect, in the same article III, that the United States will be bound by any agreements these other nations may make with respect to safeguards.

Now the Constitution of the United States says in effect that any agreement of importance between the United States and another nation must be in the form of a treaty, that it does not become binding unless ratified by two-thirds of the Senate. Yet here, article III of the treaty delegates to other nations the power to make agreements in the future for establishment of alleged safeguards which will be binding upon the United States, notwithstanding the fact that we do not know what the unwritten, unnegotiated, and unspoken agreements provide.

I invite attention to the fact that the treaty places an obligation upon the United States in that the last sentence of section 2, article IV states:

Parties to the treaty in a position to do so shall also cooperate in contributing alone or together with other states or international organizations to the further development of the application of nuclear energy for peaceful purposes, especially in the territories of non-nuclear weapon states party to the treaty, with due consideration for the needs of the developing areas of the world.

If those words mean anything, and they certainly do mean something, they mean that the United States obligates itself to furnish the benefits of nuclear energy to all the nonnuclear nations on earth which join or adhere to this treaty. In other words, it is a way for Uncle Sam and the taxpayers of the United States to assume other worldwide agreements to supply nuclear energy to all the nonnuclear states which agree to the treaty.

I invite the attention of the Senate to the statement made by Secretary of State Rusk about what the treaty prohibits:

It also prohibits transfer of other nuclear explosive devices, because nuclear explosive devices intended for peaceful purposes can be used as a weapon or can be easily adapted to such use.

This does not necessarily prevent the spread of nuclear weapons. In fact, it may result in the spread of nuclear weapons. Article V has something to say on that subject.

Mr. President, I ask unanimous consent to have article V printed in the RECORD at this point.

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

ARTICLE V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be

able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of nonnuclear-weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

Mr. ERVIN. Mr. President, under article V each party to the treaty undertakes to take appropriate measures to insure that the benefits of explosives or nuclear explosions are made available to nonnuclear-weapons states party to the treaty on a nondiscriminatory basis.

In other words, we undertake that nuclear explosions—that is, the results of nuclear explosives which can be easily converted into atomic weapons—be made available on a nondiscriminatory basis to all the nonnuclear states which ratify the treaty.

Thus, as Secretary of State Rusk stated, we obligate ourselves to make available through agreements to be ratified in the future—which is another indication of the fact that the treaty is not complete—nuclear explosions to all the nations ratifying the treaty.

Mr. President, I ask unanimous consent to have printed in the RECORD United Nations Security Council Resolution 255, which appears on pages 6 and 7 of the message from the President of the United States transmitting this treaty to the Senate.

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

UNITED NATIONS SECURITY COUNCIL RESOLUTION 255—1968

(Adopted by the Security Council at its 1433d meeting on 19 June 1968)

The Security Council,

Noting with appreciation the desire of a large number of States to subscribe to the Treaty on the Non-Proliferation of Nuclear Weapons, and thereby to undertake not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices,

Taking into consideration the concern of certain of these States that, in conjunction with their adherence to the Treaty on the Non-Proliferation of Nuclear Weapons, appropriate measures be undertaken to safeguard their security,

Bearing in mind that any aggression accompanied by the use of nuclear weapons would endanger the peace and security of all States,

1. *Recognizes* that aggression with nuclear weapons or the threat of such aggression against a non-nuclear-weapon State would create a situation in which the Security Council, and above all its nuclear-weapon State permanent members, would have to act immediately in accordance with their obligations under the United Nations Charter;

2. *Welcomes* the intention expressed by certain States that they will provide or support immediate assistance, in accordance with the Charter, to any non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons that is a victim of an act or an object of a threat of aggression in which nuclear weapons are used;

3. *Reaffirms* in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Mr. ERVIN. Mr. President, I also ask unanimous consent to have printed in the RECORD the declaration of the Government of the United States of America, answering the United Nations Security Council Resolution 255, which appears on pages 7 and 8 of the message of the President of the United States transmitting the treaty to the Senate.

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

DECLARATION OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(Made in the United Nations Security Council in explanation of its vote for Security Council Resolution 255 (1968))

The Government of the United States notes with appreciation the desire expressed by a large number of States to subscribe to the treaty on the non-proliferation of nuclear weapons.

We welcome the willingness of these States to undertake not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

The United States also notes the concern of certain of these States that, in conjunction with their adherence to the treaty on the non-proliferation of nuclear weapons, appropriate measures be undertaken to safeguard their security. Any aggression accompanied by the use of nuclear weapons would endanger the peace and security of all States.

Bearing these considerations in mind, the United States declares the following:

Aggression with nuclear weapons, or the threat of such aggression, against a non-nuclear-weapon State would create a qualitatively new situation in which the nuclear-weapon States which are permanent members of the United Nations Security Council would have to act immediately throughout the Security Council to take the measures necessary to counter such aggression or to remove the threat of aggression in accordance with the United Nations Charter, which calls for taking "* * * effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace * * *". Therefore, any State which commits aggression accompanied by the use of nuclear weapons or which threatens such aggression must be aware that its actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter to suppress the aggression or remove the threat of aggression.

The United States affirms its intention, as a permanent member of the United Nations Security Council, to seek immediate Security Council action to provide assistance, in accordance with the Charter, to any non-nuclear-weapon State party to the treaty on the non-proliferation of nuclear weapons that is a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.

The United States reaffirms in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defence if an armed attack, including a nuclear attack, occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

The United States vote for the resolution before us and this statement of the way in which the United States intends to act in accordance with the Charter of the United Nations are based upon the fact that the resolution is supported by other permanent members of the Security Council which are nuclear-weapon States and are also proposing to sign the treaty on the non-proliferation of nuclear weapons, and that these States have made similar statements as to the way in which they intend to act in accordance with the Charter.

Mr. ERVIN. Mr. President, I am not going to read these documents at length. I did that the other day. But I promised to read the resolution asking for a promise that the states would support immediate assistance in accordance with the Charter of the United Nations.

The only state party to the treaty or a member of the United Nations which is a victim of nuclear attack or the threat of nuclear attack that has cause for assistance—immediate assistance—and the United States, in effect, states in this declaration that it is the duty of the nuclear nations which are parties to the treaty to furnish such immediate assistance. And it adds—and I invite the attention to the Senate to this:

Therefore, any State—

This is in the declaration of the United States—

which commits aggression accompanied by the use of nuclear weapons or which threatens such aggression must be aware that those actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter to suppress the aggression or remove the threat of aggression.

Mr. President, if that means anything, it means that the United States in this action in the United Nations was attempting to pledge our assistance to these states. Of course, our distinguished friend from Arkansas (Mr. FULBRIGHT) now tells us all that the United States was doing was just saying, "We will take the matter before the United Nations and they can debate the question until the last lingering echo of Gabriel's horn trembles into ultimate silence, without doing anything."

Any party to this treaty which is a nuclear state can end anything by a mere veto under the Charter of the United Nations, and some of the things done through the United Nations are done by the exercise of force unless there is a veto.

I challenge any man not a Philadelphia lawyer to read this declaration of the United States and not come to the conclusion that the United States has obligated itself to go to war if necessary, as an example, if Red China were a part of this treaty and dropped a bomb on Russia, then we would have to go to the aid of Russia against Red China, or vice versa.

I do not say that a Philadelphia lawyer would so construe it, but anyone who reads this statement would come to the conclusion that it pledges immediate help. Manifestly, there cannot be any

help immediately against a nuclear attack, or the threat of a nuclear attack, except through the use of nuclear weapons. The United States, in its declaration on this, in substance, has said that it is the duty of the nuclear states parties to this treaty to act immediately through the Security Council to take measures necessary to counter such aggression or to remove the threat of aggression. The only measures which do that are measures which involve the use of nuclear weapons by those states.

The pending understanding does not affect the substance of the treaty, but it merely states an understanding similar, in part, to the reservation which I offered previously. That is, it provides as follows:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the reservation that the United States does not obligate itself by this treaty to use its armed forces to defend any nonnuclear-weapon State or any member of the United Nations against any acts of aggression even if such acts or threats are accompanied by the use or threatened use of nuclear weapons".

That was what was in my other reservation. I have added these words to satisfy the argument of the distinguished Senator from Arkansas, chairman of the Foreign Relations Committee:

And that this treaty does not affect in any way any obligation assumed by the United States under any other treaty or the Charter of the United Nations.

The understanding would make it clear that this treaty, in and of itself, does not obligate the United States to use its Armed Forces in defense of any other country, and does not add any new obligation to us in that respect, and does not affect any obligation which we may heretofore have assumed in respect to our NATO treaties or under the Charter of the United Nations.

It seems to me that every Member of the Senate would welcome an opportunity to go on record for this understanding. It is simple. It just shows that the United States is not assuming further military obligations. I think the American people are entitled to have that assurance.

I sincerely hope that the Senate will approve the understanding. It does not affect the substance of the treaty, but it does away with a lot of confusion that had been thrown around the treaty and which has obscured what the Senator from Arkansas declares is its real purpose.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The chairman of the Foreign Relations Committee has requested, in his absence—and he should be back here very shortly—that I deal with the understanding that the distinguished Senator from North Carolina has proposed to us.

Virtually the same proposal, with the exception of the last words—those words being "and that this treaty does not affect in any way any abligation assumed by the United States under any other treaty or the Charter of the United Nations"—was rejected by a vote of 61 to 30.

It seems to me that the key words which indicate the reason for the rejection are the words "by this treaty," which appear on line 4 of the proposal by the Senator from North Carolina, because it is very clear, and the United States has made it very clear, and we have made it very clear in our report, that the treaty does not in any way include or deal with the question of the obligation of our forces. The only thing that can be argued in this regard is that a resolution adopted by the United Nations Security Council, together with its understanding of what that understanding means to the United States issued by the State Department, with the authority of the President, raises a question of whether or not the United States in any way obligated itself.

If the Senate adopted the understanding, it would import something into this treaty to which it has no reference in its text. So it seems to me, very basically and frontally, the understanding which the Senator from North Carolina proposes should be rejected because it would import something into the treaty which is not there in text or in fact and which the Foreign Relations Committee has very clearly enunciated as not being there so far as ratification of the treaty by the Senate is concerned.

Secondly, as to the merits, we know that every time one tries to refine something which is very clear and unequivocal on its face, he just gets tangled up in his own feet. With respect to the resolution of the Security Council, as well as in the U.S. statement with respect to it—even laying aside the constitutional question as to whether they could bind the United States; and there is no question about that; they could not; we have made that very clear in our report—but even laying that aside, there is nothing in either the Security Council resolution or in our statement with respect to it which obligates us.

The Senator from Arkansas (Mr. FULBRIGHT) argued that, quite properly and in great detail, and I would simply summarize his argument.

The fact is that the resolution of the United Nations, with all respect to the views of the Members of the Senate, must be read as to its actual text. The resolution relates to the fact that a situation would be created in the event of an attack or threat of attack with nuclear weapons, in which the permanent members would act immediately in the Security Council. It does not commit the United States or anybody else to the use of its military forces. They would have to act immediately in accordance with their obligations under the United Nations Charter.

Mr. President, I yield myself another 5 minutes.

Under the United Nations Charter, we have two strings to our bow which insulate us against a compulsion to further action. One, we can veto. We have never done that. Perhaps we never will, but we can do it. Two, even if we do not veto, we have the option whether or not to use our Armed Forces even if the Security Council passes a resolution for military sanctions.

So the United States has undertaken no commitment, as we see it, in the Security Council resolution—which, of course, is a separate matter from this treaty. The U.S. declaration in this regard says even less than the Security Council resolution. Our own interpretation says we affirm our intention, as a permanent member of the United Nations Security Council, to seek immediate Security Council action to provide assistance, and so on.

Seeking is a very far cry from doing or committing or obligating. Indeed, our report makes very clear that all we have undertaken to do is to put this matter before the Security Council.

We can veto such action, or, even if it is taken, we can refrain from participating in it. These are our absolute rights under the United Nations Charter.

The Senate, it seems to me, has shown itself overwhelmingly in favor of ratifying this treaty. Everybody agrees we are going to ratify it.

If we are going to ratify it, what are we going to do, hang a stone around its neck so no one else will ratify it, and it will never come into effect? If so, we had better reject it. If we are to ratify it, we had better make it as reasonably attractive as possible without incurring obligations where none now exist.

I should like to say one further word as to the activities of the Senator from North Carolina (Mr. ERVIN) in this matter. I do not think that by now—and I have read this record pretty carefully—there can be any question that there is riveted into the whole legislative position of the United States the very basic proposition that we reserve the most complete freedom of action, except for the fact that we will immediately consider what our own reaction will be, and we will immediately seek Security Council action. Nothing else.

It seems to me that is the very minimum that could be asked. That is all which, even in honor, we commit ourselves to; and therefore, to adopt this understanding, having turned down one practically like it by a vote of 2 to 1, would only be another way of saying that we are going to ratify the treaty, but we are going to discourage the other 40 nations from entering into it.

I do not think we wish to do that, and, therefore, speaking for the committee with Senator FULBRIGHT's permission, I hope the Senate will reject this understanding.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield myself 1 minute, and then I shall be happy to yield back the remainder of my time.

I hope this time to get a direct vote upon this issue. This is an understanding; the other was a reservation. It was tabled, and there was no vote on the merits. I want the Senate to vote on the merits in this matter, and say whether it is willing to tell the American people that this is not obligating them in any way to go to the aid, with military assistance, of any or all the nations on earth, in case any other nation drops an atom bomb on them or undertakes to make an attack with nuclear weapons.

I yield back the remainder of my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the understanding (Executive Understanding No. 4) of the Senator from North Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Arkansas (Mr. McCLELLAN), the Senator from Wyoming (Mr. McGEE), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

Mr. SCOTT. I announce that the Senator from Colorado (Mr. DOMINICK) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is detained on official business.

The Senator from Texas (Mr. TOWER) is detained on official business, and if present and voting would vote "yea."

The result was announced—yeas 25, nays 69, as follows:

[No. 22 Ex.]

YEAS—25

Allen	Ervin	Miller
Bible	Fannin	Montoya
Byrd, Va.	Griffin	Murphy
Byrd, W. Va.	Gurney	Russell
Cannon	Hansen	Stennis
Curtis	Holland	Thurmond
Dodd	Hollings	Williams, Del.
Dole	Jordan, N.C.	
Eastland	Long	

NAYS—69

Aiken	Gravel	Nelson
Allott	Harris	Packwood
Anderson	Hart	Pastore
Baker	Hartke	Pearson
Bayh	Hatfield	Pell
Bellmon	Hruska	Percy
Bennett	Hughes	Prouty
Boggs	Inouye	Proxmire
Brooke	Jackson	Randolph
Burdick	Javits	Ribicoff
Case	Jordan, Idaho	Saxbe
Church	Kennedy	Schweiker
Cook	Magnuson	Scott
Cooper	Mansfield	Smith
Cotton	Mathias	Sparkman
Cranston	McCarthy	Spong
Dirksen	McGovern	Stevens
Eagleton	McIntyre	Symington
Ellender	Metcalf	Tydings
Fong	Mondale	Williams, N.J.
Fulbright	Moss	Yarborough
Goodell	Mundt	Young, N. Dak.
Gore	Muskie	Young, Ohio

NOT VOTING—6

Dominick	McClellan	Talmadge
Goldwater	McGee	Tower

So Mr. ERVIN's Executive Understanding No. 4 was rejected.

The PRESIDING OFFICER (Mr. BYRD of Virginia in the chair). The question now recurs on the adoption of the resolution of ratification.

Mr. MILLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. DIRKSEN. Mr. President, we are trying to contrive a time limit, and I thought that perhaps an hour on each side would be sufficient. I am trying to ascertain who desires time on the treaty. The distinguished Senator from Massachusetts has only three pages. The Senator from South Dakota will require perhaps 30 minutes.

Mr. MILLER. I require approximately 15 minutes.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. MILLER. I yield to the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I should like to inquire whether any Senators on this side of the aisle intend to speak on the treaty itself. I understand that there will be about one hour and 15 minutes on the other side.

Hearing no replies, I make the unanimous-consent request, which has been considered by the joint leadership, that 2 hours be allowed on the treaty, the time to be under the control, equally, of the majority and minority leaders.

The PRESIDING OFFICER. The request is for 2 hours on the resolution of ratification, the time to be divided equally. Is there objection?

Mr. MUNDT. Mr. President, reserving the right to object, I was unable to hear the request.

Mr. MANSFIELD. Two hours, the time to be under the control of the joint leadership; and if more time is needed, it will be forthcoming.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The time is now under the control of the majority leader and the minority leader.

Mr. MILLER. Mr. President, I ask unanimous consent that I may be permitted to yield to the Senator from Massachusetts for 5 minutes, with the understanding that I do not lose my right to the floor.

Mr. DIRKSEN. The Senator from Iowa does not have time as yet. The time is controlled.

I yield 15 minutes to the Senator from Iowa.

Mr. MILLER. Mr. President, I had reached an understanding with the Senator from Massachusetts that I would yield to him for approximately 5 minutes after we contrived the time arrangements.

I ask the indulgence of the Senator from Illinois to extend 5 minutes to the Senator from Massachusetts.

Mr. DIRKSEN. Why, indeed. I yield 20 minutes to the Senator from Iowa, and he can yield as much time as he wishes.

Mr. MILLER. I appreciate the wonderful gesture of my colleague, the Senator from Illinois, and I yield 5 minutes to the Senator from Massachusetts.

Mr. BROOKE. I thank the minority leader and the Senator from Iowa.

Mr. President, for many days this body has been engaged in extensive and often enlightening debate on a treaty to prevent the spread of nuclear weapons.

All Americans can take great pride in the fact that this historic and constructive document is at last about to enter into force. It was the Government of the United States which proposed this treaty to the Geneva Disarmament Conference in 1964. Together with many other nations, we have worked long and hard, through a multitude of drafts and revisions, to devise a treaty which will truly be in the interests of the peoples of the world.

There were many claims and interests to be met in drafting this document.

Nuclear states needed to be protected in their right to continue research and development on weapons deemed essential to their national security. Fortunately, and purposely, the treaty is silent on this question.

Nonnuclear states which are closely allied with one or another of the nuclear powers required assurances that their own defense needs would not be sacrificed. Here, too, the treaty is silent, its only requirement being that control of nuclear weapons cannot be transferred to an ally, but must remain in the hands of one of the existing nuclear states.

And, finally, nonnuclear states which are neutral in their orientation to the great powers looked for some assurance that their signature on the treaty would not place them at a permanent disadvantage in their relations with nuclear neighbors or with neighbors who might, for one reason or another, refuse to become parties to the agreement. In some respects these have been the most magnanimous states, for no absolute assurances of their security can be given beyond a reiteration of the general principles of regional agreements and collective defense.

Mr. President, in surveying these three classes of states, I submit that it is the nonnuclear states which are making the greatest sacrifice in the interests of international peace. It is the nonnuclear powers, many of which are new states with uncertain boundaries and unresolved irredentist issues, which are most likely to become involved in international conflict. In some areas of the world, most notably the Middle East and Asia, these issues have already led to international conflict.

Given this situation, it is important to bear in mind that nothing in the present treaty obligates any of the nuclear powers to come to the defense of an invaded state.

Eighty-four nonnuclear nations, many of them in presently troubled areas, have already signed this treaty. They are taking a great gamble in the hope that this treaty will be ratified, and observed, by the vast majority of the governments and peoples of the world. They are willing to trust their neighbors—who often are their enemies as well—and to believe that they share a common interest in preventing the spread of nuclear armaments.

Mr. President, we have already seen what can happen when new cycles of the arms race are begun. When the Soviet Union acquired a nuclear capability, our own program was vastly accelerated. When Soviet weapons were deployed in Central Europe, France devoted resources it could ill afford to develop an independent nuclear capability. When Communist China detonated a nuclear explosion, the Soviet Union began to deploy a limited antimissile system, and the United States initiated an extended debate—which is still far from resolved—on the question of deploying a costly and complicated antimissile system of our own.

Each stage in the arms race has led to a vastly expanded and infinitely more costly level of technological development. No nation—not even the United States or the Soviet Union, and certainly not the developing states of the world—

can afford to devote increasing billions of dollars to a costly arms race of questionable utility.

On the grounds of economy, on grounds of national security, on grounds of political wisdom, this treaty is a singular accomplishment. As General Wheeler testified before the Armed Services Committee, this treaty in no way detracts from needed American military options, nor does it add to our country's military burdens. Indeed, I think the only fair judgment is that it greatly reduces the likely dimensions of our military problems in the years ahead. Furthermore, and most important, I believe this treaty is a necessary prelude to other attempts at developing stable arms control arrangements between the nuclear powers. If it serves its purposes of inhibiting the spread of nuclear weapons, the intense concentration of energies on strictly strategic and military efforts can gradually be shifted to diplomatic exploration of alternative concerted diplomacy approaches to safeguarding the peace of the world. In short, this is another building block in the structure of peace to which every human being should be dedicated.

Ratification of this treaty can be a vital step toward applying the brakes to the arms race. It will stand as a vote of confidence—in ourselves, our allies, the neutral nations, and yes, even our enemies. As riders together on the spaceship earth, we share a common interest in keeping all hands off the lever marked self-destruct. Let us set the example to the world, and proudly uphold it. Let us commit ourselves to the limited provisions of this treaty, let us encourage others to do likewise, and let us get on with the job of building together a better world for all.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. MILLER. I yield, but may I yield on the Senator's time?

Mr. FULBRIGHT. Yes, indeed.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. FULBRIGHT. Mr. President, first I want to say to the Senator that I think he made a very fine statement. But I wish to add one thought that I think might not be as clear as it should be, and that is the obligations of the major nations.

It is true that the smaller non-nuclear-weapons countries are giving up the important right to acquire nuclear weapons. But if article VI is taken seriously, then there is also a very serious obligation for the major countries, especially this country and Russia. I hope that as the President and the administration consider the question of whether or not to deploy an ABM system, they will give attention to article VI.

If we vote for the treaty today, as I anticipate we will, it should be interpreted as a specific endorsement of article VI because of all the attention focused on article VI during the debate and during the hearings by the committee.

I think the Senator has made a good point.

There is one other thought I wish to inject. I gather that there has been some comment that I and others think there is no obligation under this treaty to come to the assistance of smaller countries. Of course, these obligations already exist under our treaty arrangement and under the United Nations Charter.

Mr. JAVITS. Mr. President, will the Senator yield at that point?

Mr. FULBRIGHT. I yield to the Senator from New York.

Mr. JAVITS. We may have quite unwittingly gone a little further than many of us expected in regard to this matter of "no obligation."

Will the committee now, after all the debate, stand by what it said in its report—and we do this only in fairness to the nonnuclear powers that are parties to the treaty—that first, we will undertake to bring a situation promptly to the attention of the Security Council?

Mr. FULBRIGHT. Yes.

Mr. JAVITS. And second, we will do our utmost to get action by the Security Council. That action may be negative but those two things we do; and we would not have those two obligations.

Mr. FULBRIGHT. Yes, plus article VI. It is possible that during the course of the debate the point may have been overstated. I think the Senator has given better balance to the issue.

Mr. BROOKE. I thank the Senator. I concur in the interpretation of article VI and I share the expressions and hopes that it will be followed.

Mr. MILLER. Mr. President, I shall vote for ratification of the Nonproliferation Treaty.

After carefully reading the record of hearings before the Senate Foreign Relations Committee and the Senate Committee on Armed Services, listening to key points of the debate, and consulting other sources of information available to me, I have concluded that there is no danger to our national security interest entailed by ratification.

The Joint Chiefs of Staff and the Secretary of Defense are unanimous on this point.

First. The treaty's ratification would in no way inhibit or prohibit continuation of vigorous research and development activities by our country on nuclear weapons required for our national security—nor the deployment of such weapons.

Second. The treaty does not prohibit the transfer of nuclear weapons to the territorial jurisdiction of our allies as long as they remain under our control. Thus there is no difference from what is presently the law under the Atomic Energy Act.

Third. If the Western European countries should join together to form a federation, the nuclear weapons of Great Britain or France would be inherited by the federation.

Fourth. We can always withdraw from the treaty if it is deemed in our supreme national interest to do so.

It will be recalled that I voted against ratification of the Consular Treaty with the Soviet Union because, as I pointed out, the timing was terrible—considering the fact that the Soviet Union was furnishing North Vietnam with weapons which were killing American and allied troops in South Vietnam. I would vote against the Consular Treaty today for the same reason. But the Consular Treaty is a bilateral treaty with the Soviet Union; whereas the Nonproliferation Treaty is multilateral and involves most of the nations of the world. Accordingly, my reason for voting against the Consular Treaty is not applicable to this one.

There are two somewhat troublesome considerations which deserve comment. First is the Security Council—of the United Nations—resolution of June 19, 1968, and the explanation by the U.S. representative of the vote cast by the United States for the resolution. The resolution recites:

> Any state which commits aggression accompanied by the use of nuclear weapons or which threatens such aggression must be aware that its actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter to suppress the aggression or remove the threat of aggression.

The explanation of the vote by our representative states:

> The United States also notes the concern of certain of these states that, in conjunction with their adherence to the Treaty on the Non-proliferation of Nuclear Weapons, appropriate measures be undertaken to safeguard their security. Any aggression accompanied by the use of nuclear weapons would endanger the peace and security of all states. . . . aggression with nuclear weapons, or the threat of such aggression against a non-nuclear-weapons state would create a qualitatively new situation in which the nuclear-weapon states which are permanent members of the United Nations Security Council would have to act immediately through the Security Council to take measures necessary to counter such aggression or to remove the threat of aggression in accordance with the United Nations Charter which calls for taking "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." Therefore, any state which commits aggression must be aware that its actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter.

The report of the Senate Foreign Relations Committee, which is a most important item of evidence of legislative intent underlying ratification of the Nonproliferation Treaty, makes it clear that our United Nations representative may well have exceeded his authority. And to underscore this fact, the report states unequivocally:

> The committee, therefore, records its firm conclusion, reached after extensive testimony, that the Security Council resolution and security guarantee declaration made by the United States in no way either ratify prior national commitments or create new commitments.

Were this not the case, I would have to vote against ratification, and I trust that hereafter our representative in the United Nations will not engage in voting or explanation which might result in misinterpretation or false impression on the part of other members of the United Nations.

The second troublesome consideration has been occasioned by what the Chairman of the Joint Chiefs of Staff de-

scribed as the "gratuitous" offer made by President Johnson, and subsequently echoed by President Nixon, that the United States will permit the International Atomic Energy Agency to apply its safeguards covering nonnuclear states to all nuclear activities in the United States, exclusive of those activities with direct security significance. The Soviet Union has made no such offer and shows no disposition to do so.

We are told that the reason for the gratuitous offer was to persuade nonnuclear states to ratify the treaty, because they would be reassured that their agreement under the treaty to permit the IAEA to apply its safeguards—through appropriate inspection procedures yet to be negotiated—to assure that nuclear energy made available to them for peaceful uses is not diverted to nuclear weapons or nuclear explosive devices—would be reassured that we would not obtain an unfair commercial advantage over them unrelated to the basic purpose of the treaty. Great Britain has also made a similar gratuitous commitment.

Whatever the reason—and it appears that the reason in this case is meritorious—the fact remains that no President can commit the United States to inspection procedures within our country under the jurisdiction of an international organization such as the IAEA—much less to procedures which have not yet been negotiated with a nonnuclear state. This can only be done by ratification of the specific procedures, which would be in the nature of a treaty by the U.S. Senate.

It is interesting to note that assurance was given, during the hearings, that if we did not like the idea of having a Russian moving into one of our peaceful-uses facilities, we could prevent a Russian from being on the team of inspectors. Moreover, the Senate Foreign Relations Committee report says on this point:

> The committee notes but does not comment or pass on the constitutional appropriateness of announcements by both former President Johnson and President Nixon that the United States will permit the International Atomic Energy Agency to apply its safeguards to all nuclear activities in the United States, exclusive of those activities with direct security significance.

From the standpoint of the United States, it appears that there are three benefits from the treaty:

First. It is in the interest of our security that there not be a proliferation of nuclear weapons to any other countries than now already possess them. Unfortunately, the unwillingness of Red China and France to sign and ratify the treaty seriously undercuts this benefit.

Second. Signatories to the treaty, including the Soviet Union, undertake to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament. It is good to have the Soviet Union on record on this point, and while agreement from such negotiations is clearly a long way off, the "good faith" requirement of such negotiations can serve to place Soviet intransigence, if it continues, in proper perspective among the family of nations.

Third. Through the inspection procedures to be developed by the IAEA, United States and Soviet Union inspectors will eventually be working side by side in nonnuclear states in a common endeavor which, hopefully, may eventually persuade the Soviet Union to agree, with us, to inspection and control safeguards within her own territory which must accompany any effective agreement for nuclear arms control. In the long run, this could be the most important benefit of the treaty—not only to the United States but to the goal of a more orderly and peaceful world.

For these reasons and in view of the considerations I have discussed, a favorable vote for ratification is indicated.

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

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. HRUSKA. Mr. President, in his inaugural address, President Nixon challenged this Nation to take as its goal "where peace is unknown, make it welcome; where peace is fragile, make it strong; where peace is temporary, make it permanent." The single question before this body is whether ratification of the Nuclear Nonproliferation Treaty will strengthen the structure of peace.

All thoughtful men seek peace, but we may differ on how it is to be achieved. Some of my colleagues feel ratification is not a proper step. I respect their decision and recognize their true concern for our Nation and the cause of world peace. It is my determination, however, to vote for ratification of the treaty as a step toward curbing the spread of nuclear weapons which does not jeopardize our national security.

Debate on this treaty has been highly significant because it has demonstrated to the world, friend and foe alike, the universal belief in peace, and the deep respect for freedom and self-determination of all peoples, held by the Members of the U.S. Senate.

The main provisions of this treaty can be summarized as follows: The treaty would, first, prohibit nuclear-weapon states from transferring to any recipient nuclear weapons or other nuclear explosive devices or control over them; second, prohibit nuclear-weapon states from helping non-nuclear-weapon nations to develop their own nuclear weapons or other nuclear explosive devices; third, prohibit non-nuclear-weapon states from receiving nuclear weapons, other nuclear explosive devices, or from manufacturing their own; fourth, provide for effective safeguards on the peaceful nuclear activities of non-nuclear-weapon states to assure that no nuclear materials are diverted to nuclear weapons; fifth, encourage cooperation between nuclear and non-nuclear-weapon nations to insure that all will benefit from the peaceful uses of nuclear energy; and, sixth, affirm the responsibility of the nuclear-weapon states to strive for effective measures to end the nuclear arms race and promote disarmament.

The treaty will enter into force only on the deposit of instruments of ratification by the United States, the United Kingdom, the Soviet Union, and 44 other signatory states. Any party to the treaty can withdraw from the treaty after giving 3 months' notice if it decides that the "supreme interests of its country" are jeopardized.

The treaty deals only with what is prohibited, not with what is permitted. It does not prohibit transfer of nuclear delivery vehicles or delivery systems, or control over them. It does not prohibit allied consultations and planning on nuclear defense. It does not prohibit arrangements for deployment of nuclear weapons among allies as long as control is not transferred. It does not bar succession by a new federated state in Europe to the nuclear status of one of its former member nations.

Careful consideration has been given to possible affects on the North Atlantic Treaty Organization. Secretary Rogers, Secretary Laird, and General Wheeler all agreed that the treaty is consistent with the best interests of NATO. The United States worked closely with its allies in the formulation of the treaty and our allies have been fully assured that the treaty would in no way jeopardize the NATO alliance, or prevent allied consultations on nuclear matters.

In addition, the Joint Chiefs of Staff set forth certain considerations essential to the national security interests of the United States and our allies:

The treaty does not operate to the disadvantage of the United States and our allies.

The treaty does not disrupt any existing defense alliances in which the United States is pledged to assist in protecting the political independence and territorial integrity of other nations.

The treaty does not prohibit deployment of U.S. owned and controlled nuclear weapons within the territory of our nonnuclear NATO allies.

The treaty does not prohibit the United States from using nuclear weapons in any situation wherein nonuse of nuclear weapons would be inconsistent with U.S. security interests.

The treaty does not involve automatic commitment of U.S. military forces.

We must also recognize that the treaty will not influence or deter Red China and France from continuing to develop their own independent nuclear capabilities; neither nation is expected to sign the treaty.

The treaty may lead to broader disarmament negotiations between the United States and the Soviet Union, but does not require them. If such negotiations are begun, it will be many years before any significant achievement on halting the arms race can be expected; the cold war may have passed, but the reasons for distrust among nations are diverse, and the conflicts in the world are many.

Yet the risks of the world conflict if the proliferation of nuclear weapons is not halted are infinite.

The report to the White House Conference on International Cooperation submitted by Dr. Jerome Wiesner's Com-

mittee on Arms Control and Disarmament pointed up the dangers:

> The spread of nuclear weapons threatens to bring about a painful, expensive, and dangerous reorganization of international relations. It threatens to add new dimensions to the very fears that encourage it: new concerns in the struggle for Arab-Israeli understandings; new barriers to a permanent easing of Indian-Pakistani tensions; and new setbacks to improved relations between Western and Eastern Europe. It threatens established political relationships between countries and within them; dissension over the hard decisions it entails in government already torn by dissension; realignments associated with shifting power in nonaligned areas; and, for those in the major-power alliances, the premature assertion of an unreal independence based on nuclear status alone. There are, in these problems, the seeds of a hundred crises.

We should not promise ourselves peace tomorrow because the road to peace is long and hard. But, as President Nixon said, "we are entering an era of negotiation," and a first step away from confrontation is necessary.

Mr. President, when President Nixon sent to the Senate his message requesting the advice and consent of the Senate to the ratification of the Nuclear Nonproliferation Treaty, he acknowledged that he opposed ratification of the treaty last fall in the immediate aftermath of the Soviet invasion of Czechoslovakia. He also carefully pointed out that his present request in no sense alters his condemnation of that vicious Soviet action.

Similarly, I opposed the ratification of the treaty in the aftermath of the invasion of Czechoslovakia. On the floor of the Senate I called for a reexamination of the national concept of detente and I called for an immediate review and strengthening of the NATO defense alliance.

Since that time several significant events have occurred which have renewed my confidence in our foreign policy and in the strength and vigor of the NATO alliance. I am convinced that the United States and its allies are approaching the Nuclear Nonproliferation Treaty with their eyes open and with paramount concern for the security and strength of our mutual defense alliance.

The most significant of these events was the election of Richard Nixon as President of the United States. President Nixon's election heralds a new era of hardheaded, realistic leadership in our foreign policy. His approach was spelled out in a major speech during the campaign:

> So we begin with the proposition that if we are to have peace we must negotiate. If we are to negotiate, we must negotiate from strength. If we are to have strength, we must restore the strength of the United States and also we must restore the strength of the Western alliance.

The President desires peace and international cooperation with all nations, including the Soviet Union, but he enters the era of negotiation with no delusions. His analysis of the Nonproliferation Treaty reflects this new approach.

The former administration, on the other hand, lacked this same sense of reality. President Johnson, in his message to the Congress on July 9, 1968, was concerned with elusive "good will." His message of transmittal stated that the treaty's "very achievement, as well as its provisions, enhances the prospect of progress toward disarmament."

This statement rests on the mistaken theory of detente. My greatest concern over the past several years has been that the national security of the United States was being sacrificed for the policy of convergence. This policy assumed that as Russia developed and prospered, its interests would converge with those of the Western democracies, and that detente would follow.

The brutal subjugation of the Czechoslovak people forced second thoughts on even the most ardent disciples of the theory of Soviet melioration.

President Nixon, proceeding soundly, places his emphasis on our own national security. In his public statements, he has shown a grasp of the complexities of foreign relations and an ability to deal with them.

The President has returned from a highly successful visit with our NATO allies. He acted with judgment and his actions inspired confidence.

It is confidence in this leadership that strengthens my decision to favor ratification of the Nuclear Nonproliferation Treaty. We know precisely what we are asking for and precisely what we are getting. There are no fond, but ill-advised, hopes spurring the Nixon administration's support of this treaty.

The second significant event that I have witnessed is the rejuvenation of the NATO alliance. Both the North Atlantic Council and the North Atlantic Assembly met in November in Brussels to review the weaknesses of NATO and to consider means of strengthening the Alliance.

As a member of the U.S. delegation to the Atlantic Assembly, I felt in its November 1968 sessions in Brussels the new spirit that had been generated into NATO. The Assembly and the Council adopted a number of resolutions demonstrating a renewed determination to maintain a strong military deterrent in Europe and a willingness to accept a more equitable sharing of the costs of a strengthened NATO force.

Gen. Lyman Lemnitzer, Supreme Allied Commander, Europe, summarized for the Atlantic Assembly the proper stance for NATO:

> There is not a military man who has personally experienced the horror and shock of war who would not welcome a true detente in Europe—that is, a climate of freedom, of stability, of security, and of confidence that would lead to the peaceful and equitable solution of the political problems of Europe. But a necessary precondition to such a true detente is the maintenance by the North Atlantic Alliance of an adequate and suitable military posture.

The renewed resolve and cooperation expressed at the North Atlantic Council and Atlantic Assembly meetings can be carried forward into actions which will strengthen our NATO defenses. Such actions can dispel any doubts the Soviets may have that the members of NATO do not fully intend to defend their alliance with credible capabilities.

Mr. President, the leadership of the President of the United States, his determination to deal only from a position of strength, and the revitalized strength of the NATO alliance allow us to choose a period of negotiation rather than a period of confrontation.

We know, as we negotiate with the Soviet Union and other Communist nations that a treaty can be broken easily and that treaties often are broken by the Russians.

In his testimony to the Foreign Relations Committee last year, Dr. Robert Strausz-Hupe, director of Foreign Policy Research Institute explained:

> International agreement does not mean to totalitarian governments what it means to a Democratic people. An arms control agreement has never meant and does not mean to a militant Communist, steeped in the dialectic of Communism what it means to a Democratic statesman, steeped in the doctrine of international cooperation. There is no mystery as to why the Soviet negotiators proved relatively pliable as regards the treaty's provisions for control: an open and Democratic society controls itself, and a free press can be relied upon to ferret out and to denounce any treaty violations by the national government. A totalitarian government need not worry about the disclosure of violations by its own well-muzzled citizens.

There are three reasons why the unreliability of the Soviet Union does not compel me to oppose ratification.

First, the treaty involves many more nations than Russia. There are 87 signatories including the United Kingdom, Canada, Denmark, the Netherlands, Belgium, Sweden, Czechoslovakia, Poland, Republic of China, Iran, Iraq, the Philippines, and the Republic of Korea. The United Kingdom is a nuclear power and others could become nuclear powers. The stability of world peace may be significantly affected by ratification of the treaty by many nations.

Second, there is a provision similar to the one contained in the Test Ban Treaty that allows the United States to withdraw from the treaty upon 3 months' notice.

Third, the treaty does not prohibit or prevent the United States from defending ourselves and our allies with nuclear weapons in any situation where our security interests are deemed by us to require such use.

If the treaty were dependent upon the good faith of the Russians, I would oppose it. But I am persuaded the safeguards are such that it does not depend on trusting the Russians.

Mr. President, there may be risks involved in ratifying this treaty. However, with the growing number of nations that have, and can soon have, nuclear power, there are risks involved in refusing to ratify. I have balanced them carefully in my mind. I have examined the endorsements of this treaty by President Nixon, the Secretary of State, the Secretary of Defense, and the Joint Chiefs of Staff.

If this treaty can limit the spread of nuclear weapons, it will accomplish a great deal of good. Just as I decided to support the Nuclear Test Ban Treaty in 1963, Mr. President, and for many of the same reasons, I have decided the correct position is to support ratification of the Nuclear Nonproliferation Treaty.

Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I ask unanimous consent to suggest the absence of a quorum, with the time to be charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I yield 20 minutes to the Senator from South Dakota (Mr. MUNDT).

Mr. MUNDT. Mr. President, I want to say a few words about the treaty before it comes up for a vote, primarily because, as is well known, I was one of the five members of the Foreign Relations Committee who wrote and supported the minority views when we had this treaty before us last summer. Those who have read the report are aware of the fact that our opposition at that time did not run particularly to the contents of the treaty. It did not involve what we thought would be any deleterious effects flowing from the treaty, but the opposition related itself primarily to the question of timing and to the unsolved and unanswered questions which we had presented to the State Department and to the Pentagon and to which no satisfactory or definitive answers had been provided to the committee. So we opposed ratification of the treaty at that time and suggested consideration of the treaty be delayed until this year. Thus it is now before us for action.

Since I expect to vote for the treaty today, I want to discuss the treaty as I see it and try to put it in the perspective and in the framework of the world situation as I see it.

First of all, the world conditions prevailing at this time are not the same as those which caused us to flash a bronze light suggesting prudence and patience and postponement at that time. At that time Russian armies were moving with their tanks through the peaceful lanes and highways of Czechoslovakia. The papers and the airwaves were filled with rumors and reports that the Russians were also going to move with similar naked force into Rumania and perhaps Yugoslavia.

We thought at that time—and I think our conclusions and deductions then were correct—that it would be very bad international policy indeed for us to close our eyes to those intolerant acts and those imperialistic moves and go ahead and sign a treaty of which Russia was a part just as though she were behaving as a civilized neighbor should act toward a neighbor or another country in this day and age.

While Czechoslovakia is still in the throes of Russian control, happily the major Russian armies have pulled out, and we hear no current reports indicating that Russia again expects to defy world opinion by moving in with might and muscle and take away the sovereignty of Rumania or Yugoslavia.

In fact, quite the reverse is true. Yugoslavia certainly has been making sounds lately which indicate perhaps an increased independence toward Russia; and if not that, certainly an increased willingness to criticize the overt imperialistic acts of Russia.

Having said that, let me say that, in my opinion, the Nonproliferation Treaty is neither as good as its friends proclaim it to be, nor as bad as its opponents or critics describe it. In my opinion, it is an inadequate and disappointing document, and I say that as one who is going to vote for its ratification. But I consider it inadequate and disappointing and one which, I am afraid, has been oversold to the public as accomplishing a great deal more than it possibly can.

I consider it to be in those categories for these reasons: In the first place, it does not reduce or curtail or modify one iota the capacity of nuclear powers to attempt to destroy each other. This is a treaty which says to nuclear powers, "You can have the nuclear armament which you have. You can expand it. You can increase it. You can develop it. But countries which do not have nuclear capacity at this time are not going to be able to obtain it in terms of military weapons."

I think we should have an understanding by the public generally, that this is what the treaty provides. It is not a treaty to end nuclear war. It is not a treaty which safeguards us from the possibility of a nuclear attack. It is not a treaty which even decreases the stockpiles, or the capacity to stockpile weapons, on the part of countries that presently have them.

The second reason I think it is an inadequate and disappointing document in terms of meeting the real challenge of our day and the real need of civilization is the fact that it does not prevent the United States, the U.S.S.R., or Great Britain from accelerating their nuclear armament programs, magnifying them, expanding them, and making them move forward at any rate of increase they might desire. It does not even call upon any of the nuclear powers to stop where they are. It simply says, to those countries that do not have them, "You cannot get them."

Third, I think it fails to meet the problems of our day because it does not commit any nuclear power to total or even partial or gradual nuclear disarmament. It accepts the status quo, and proceeds from there.

So I think what the public has in mind, and what it should have in mind, and what we all ought to be thinking about, is the goal which should be sought by every good citizen in every land on this earth, and that is total and permanent nuclear disarmaments of both offensive and defensive weapons, with neutral and international inspection of an unchallenged and unchallengeable nature.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. MUNDT. In a moment.

That, to me, is the goal we should be approaching; and this treaty, if it moves at all in that direction, moves an inch when the world requires a mile of forward motion.

I am happy to yield to my chairman.

Mr. FULBRIGHT. Mr. President, I am inclined to agree with a great deal of what the Senator is presently saying about the world's needs, and so forth.

But will he not also agree that the spirit of article VI, while it is not mandatory and does not require an agreement to adopt such a course, requires that members make a good faith effort to move toward what the Senator says we ought to be moving toward?

Mr. MUNDT. Yes.

Mr. FULBRIGHT. It is the most effective expression of its kind, at least in recent history, between these two nations.

Mr. MUNDT. That is correct; and, of course, it is not limited to the two nations but all the nuclear nations.

Mr. FULBRIGHT. Yes, the nuclear nations.

Mr. MUNDT. It suggests that they should start negotiations leading toward this goal which I have been talking about.

Mr. FULBRIGHT. That is right.

Mr. MUNDT. The difficulty is that it is not mandatory—it is an expression of hope and aspiration—and does not change the status quo materially from what both countries should be thinking about now, which is the need for negotiation.

Mr. FULBRIGHT. I agree with the Senator, but it is a statement which, under the circumstances of the world as we know it, while I grant it is a small step, is a very significant one, provided that the signatories are sincere about what they are undertaking, or unless they are completely cynical about it.

Mr. MUNDT. That is correct. The Senator is anticipating what I intend to say when I get around to saying why I shall vote for the treaty, despite my disappointment.

It seems to have been produced during a period of world history when there was beginning to be a meeting of the minds, but it may actually have delayed a good while longer the achievement of a great deal more. It seems to me most unfortunate that, in negotiating the treaty, we did not hold out for a better deal and a wider understanding among the nuclear nations of the world at this time, when they were sitting around at least agreeing on some of the factors which are involved in the treaty.

Additionally, the language of the treaty, in my opinion, is unfortunately and unnecessarily obtuse and ambiguous on a number of important points. I think students of history, and even present day commentators and analysts of the legislation, would enjoy reading the majority report which was issued last August, as well as the minority report, because, as we who authored the minority report then said, "We advocate delaying this treaty, and if you do not want to accept the arguments of the five of us writing the minority views, read the majority report, because it damns the treaty with faint praise." It raised more objections, if possible, than we raised in the minority report. It called attention to a whole series of unanswered questions.

I suggest, Mr. President, that the time has come, in the treaty-writing business of this country, when we ought to state it as it is, clearly and concisely, with

meaning, definitiveness, and decisiveness, and not in the obtuse and ambiguous language with which this treaty is unfortunately replete. That is another criticism I have of the treaty.

Despite these disappointments, and despite my feeling that this is a highly inadequate and disappointing document, I shall vote for its ratification today, for the following reasons:

First, I think to reject it now, after we have had the opportunity to study all its details, after we have had a chance to explore with the Pentagon and the State Department and the White House the answers to the unanswered questions raised by the ambiguity of the language, and with the world in a somewhat better condition than it was last August, when the Russians were invading with their troops and their tanks the innocent little country of Czechoslovakia, would be interpreted rather widely around the globe as indicating that our country lacks concern about the dangers of proliferation of nuclear weapons.

I think any sane individual has to recognize that nuclear weapon proliferation is dangerous. It ought to be stopped. Stopping it does not give much security to the world. Stopping it does very little to avert the danger of a nuclear holocaust between the great powers which now have weapons. But it ought to be stopped, because every time you add some nuclear fighting capacity to another country, you add another danger: that here is another country where some intemperate ruler, some irresponsible leader, someone in a fit of rage, might push a button somewhere and start launching the few bombs he has; and once the air is filled with missiles carrying destruction to humanity across the oceans, no one knows then how to stop it, and everybody might get involved.

So I would hate, by my vote, to indicate that I am not concerned about the problem of proliferation. In the tiny, comparatively insignificant area of making it less likely that countries which do not now have bombs are going to get them, and that it can bring about a slowdown of proliferation, I want to cast my vote on the side of the faint hope that this treaty may, in some way, decrease the likelihood of proliferation. It certainly will not increase it. Any impact it has will surely be on the side of the angels. It has to be on the side of decreasing the likelihood of proliferation, and that is an important plus.

Second, not only do I think it is important to world peace and to the survival of humanity to prevent proliferation, but I believe that this treaty does have some significance toward achieving that goal; because, while it does not in any way inhibit the nuclear powers from expanding their military aspects, it does provide a set of circumstances and rules of procedure whereby nonnuclear powers obtaining fissionable material for peaceful purposes have to subject themselves to a great many prohibitions, inhibitions, and inspections not now in force. So it has some practical application in that regard.

The third reason I support it, Mr. President, is that while regrettably it imposes no inhibitions of any kind on the great powers or the nuclear powers, and does not in any way, shape, or form subject them to inspection from beyond their own state boundaries, this treaty does for the first time recognize a very significant principle. That principle is that international inspection is an imperative device for assuring compliance with prohibitions in the terms of the use of fissionable material.

This validates in a treaty proclamation the feeling of the world that we do not have any security in terms of what is to be done with atomic weapons or fissionable materials without a mutuality of complete and continuing inspection. This writes it in the book that, while the great nuclear powers are not ready to accept such inspection for themselves, as far as the rest of the world is concerned, we believe in the open skies doctrine of Dwight Eisenhower and the concentration of international inspection which was advocated by Bernard Baruch and in the realism which says that only insane diplomats would rely upon the pledges of others when the question of national survival is involved. We have to have security and mutuality of inspection and protection against nuclear attack. That is unchallengable.

It is recognized that if a nonnuclear power accepts fissionable material under the terms of the treaty from any nuclear powers, they subject themselves to international inspection.

I think it is important to have laid out in the mosaic of history this international recognition that without inspection any attempt at restriction or curtailment or reduction of atomic striking power is a hoax and a sham and a dangerous venture in the area of national suicide.

I want to support that concept by my vote.

Fourth, finally this treaty does set the stage, as was brought out in my recent colloquy with the chairman of the committee, the distinguished Senator (Mr. FULBRIGHT). This does set the stage for meaningful negotiations and for significant steps which can and should be urged upon the U.S.S.R. by the United States for the purpose of providing complete nuclear disarmament, permanent in nature, thoroughly inspectable.

This treaty now sets the stage, and we can say to the Russians and to the British and to the other nuclear powers, "Are you willing to provide those peace-preserving prohibitions for yourselves that we insist upon imposing upon others? Are you serious about trying to free the world from the threat and the specter of an international conflict with nuclear weapons? Are you willing now to face up to the fact that these weapons are far too destructive to be stockpiled in any area of the world or to be built up offensively and defensively? Are you willing, with us, to reduce the whole business permanently and to demilitarize our respective countries in a nuclear capacity and totally disarm and then provide for the inspection of devices and routines and the giving of evidence to prove that no one can cheat? Everyone will have to faithfully fulfill this."

That is the goal of humanity. And this, I think, now sets the stage for that.

I hope the United States of America will now approach the U.S.S.R. and say, "We have signed this document. We wrote in our committee report that we think it would be a great historic event if our State Department and our President exercise the patience, which I hope they will, not to complete finally the actions of ratification until it can be done at some central point with the British and the Russians by our side, depositing the articles of ratification.

I think this is another way of testing them. This is another way to see whether we have set the stage for some fruitful drama or are going simply to set the stage so that nothing will happen.

I seriously commend to Secretary Rogers and President Nixon that they read carefully that paragraph of our committee report which was unanimously adopted, which suggests that we delay the final act of ratification until it can be done simultaneously and contemporaneously and at the same point, with a blare of trumpets and some expression of good will to act, with the British and the Russians by our side in a historic event of great significance.

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

Mr. SAXBE. Mr. President, I yield an additional 10 minutes to the Senator from South Dakota.

The PRESIDING OFFICER. The Senator from South Dakota is recognized for an additional 10 minutes.

Mr. MUNDT. Mr. President, I think we ought to learn something from experience in this country. The last time I talked about a treaty on this floor, it was the consular treaty. It happened to be my responsibility to lead the opposition to that treaty. We failed to stop it by only three votes. We were told then, "It is important that we do this now. The Russians are getting ready to beat us to the draw."

All of this time has passed, and the Russians still have not ratified it. It still has not become operative.

Once again, we knuckled under, but we are now in the position of saying to the other side, "Why don't you follow our example and join the British and the United States in a joint meeting to finalize our acts of ratification?"

I think it is wise. I think it will be productive with the Russians and will show our concern about the proliferation of nuclear weapons if this time we do not rush in gayly and without any serious thought, and say, "We have it all ratified. we have completed action here and hope that some day other people will do the same."

It will be on the President's desk. The final act of ratification is the filing of the documents of ratification. This, and I think wisely, the committee suggested should be done simultaneously among the three great nuclear powers. With that evolved, I think we will have set the stage even better for the kind of talks which we should have.

Whether that will be done or not, I do not know. I have learned to my dismay in 30 years that congressional advice is not too often heeded at the other end of the avenue, no matter from whom it comes. They usually pay far too little at-

tention to our colloquy here or to our reports from the Foreign Relations Committee.

I hope that at least they follow up on this action, supplementing this highly inadequate treaty and disappointing document by suggesting to the Russians, "We would like to sit down with you and talk about total nuclear disarmament with inspections with no attempt to deceive or fool anybody."

I hope that this is done while there is still time so that if Russia and the United States can agree to do away with their nuclear armaments, we can find a way to stop the Red Chinese from getting theirs ready for deployment come the middle 1970's, which is now the target date when they expect to have enough weapons to bomb the daylights out of either Russia or the United States or perhaps both simultaneously, if they have enough bombs.

Since the Red Chinese are not going to sit down and negotiate and since they are now carrying on a hate war against the world, I am convinced that if Russia and the United States could stop that development from occurring, as between ourselves and the British and other nuclear powers, we will be able to work out an agreement, a total agreement toward disarmament and through inspection in the area of superdestructive weapons.

Mr. President, on balance, I think there is more to gain than there is to lose by voting for this treaty in terms of our American prestige, in terms of the security of the world, in terms of trying to work toward some meaningful document of disarmament in the months ahead.

I express one other hope. I hope that President Nixon will start the sort of new policy in this country of ours whereby the State Department discontinues bringing before us treaties which are shabbily written, and that are inadequate to achieve the fundamental purpose which it is so important to obtain.

Treaty ratification is a serious business. We have difficulty writing amendments. We have difficulty accepting reservations. Some amendments and reservations were offered, and properly so to this treaty and some of them were very significant. But we run into the argument always, "You might as well vote against the treaty, because you have to renegotiate and get the countries together again. If you are going to have to put something in, vote the treaty down and start over."

I think treaty writers should at least use as much circumspection and care and meticulosity in writing the words of a treaty as a committee of the Senate or the House would utilize in drawing up a bill. I guarantee that if a bill of Congress were couched in the lax language of this treaty it would be amended over and over again before it were voted upon by the Senate or the House, because we want our legislation to be concise and purposeful and not subject to various interpretations or some ambiguous presentation whereby everybody is the judge of what is contained.

I would simply like to say to the State Department and the President—because more treaties will be coming before us—next time, let us get a treaty written which is concise enough and clear enough so that we do not need a great body of documentation to try to interpret it and then, when we get through, have almost as many interpretations as interpreters.

Let us limit treatymaking to important subjects and the solution of significant problems, and then let us adjust the treaty to the target, instead of missing it completely as this one misses the grave challenge to humanity presented by the fact that these nuclear weapons are continuing to expand in the countries which already have them and the dangers continue to exist. Nothing here is done which is going to reduce those tensions or decrease those armaments or bring about a solution to the problem unless, happily, the parties do get together for a joint act of ratification in a tremendously significant historic event after which, hopefully, both Russia and Great Britain are ready to take that final step toward development of a safe and sure system of mutual nuclear disarmament with complete and continuing inspection of each other.

Even though this fails to lead to something more significant, I would say to my colleagues that I think it is better to vote for this treaty, under all the circumstances now, than to vote against it. It at least may give us one more chance to come together and to come up with something much more meaningful.

I do hope, however, that the next time we have a treaty before us, it will be a better job of treaty writing than certainly we had in the Consular Treaty and surely in this one, with language so obtuse in certain areas that even after two sets of Senate hearings and two sets of administrative interpreters, no one can be precisely sure as to what is meant by some of the passages which have been prepared for the treaty.

I yield the floor.

The PRESIDING OFFICER (Mr. GRIFFIN in the chair). Who yields time?

Mr. BYRD of Virginia. Mr. President, will the Senator yield me 5 minutes?

Mr. KENNEDY. I yield 5 minutes to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, I find myself in substantial agreement with the distinguished Senator from South Dakota. I shall cast my vote for ratification. The treaty does not appear harmful to our own national interests, and it could prove helpful in preventing the spread of nuclear weapons.

Mr. President, the threat posed by the possibility of more nations—some under irresponsible leadership—obtaining nuclear warmaking devices is so grave that every reasonable precaution should be taken. The one concern that many Senators have had in connection with this treaty involves the declaration made by a representative of the United States at the United Nations on June 19, 1968. I believe that matter was fully covered yesterday, in debate which took place on the floor of the Senate and which appears on pages 6194, 6195, and 6196 of the RECORD of Wednesday, March 12.

However, before the final vote is taken today in regard to ratification of this treaty, I wish to read into the RECORD one paragraph from the report of the Committee on Foreign Relations. That paragraph is on page 14 and is as follows:

> The committee wishes to make it unmistakably clear that it considers the Security Council resolution and the U.S. declaration as separate and distinct from the Nonproliferation Treaty. This resolution and the accompanying declaration, are solely executive measures.

I continue quoting from the committee report:

> However, because these actions are linked politically to the treaty, the connection could convey the impression that approval of the treaty by the Senate also means approval of the Security Council resolution. For this reason, the committee wishes to make the record clear that support of the Nonproliferation Treaty is in no way to be construed as approval of the security guarantee measures embodied in the United Nations resolution or the supporting U.S. declaration.

So I believe it is perfectly clear to all Members of the Senate that the declaration made in the Security Council on June 19, 1968, is in no way binding on the U.S. Senate, is in no way binding on Congress, and has nothing to do with the ratification of the treaty now under consideration.

Mr. President, as I stated at the beginning of my remarks, I shall vote for ratification. I am hopeful, however, that the people will not be lulled into a false sense of security. We must remain militarily alert, and this treaty should be recognized for what it is—only a hopeful first step in preventing the spread of nuclear weapons.

I yield the floor.

Mr. MURPHY addressed the Chair.

Mr. KENNEDY. Mr. President, I yield 25 minutes to the Senator from California.

Mr. MURPHY. I thank the distinguished majority whip. I doubt that I will require that much time. I should like to make some remarks with regard to the treaty now under consideration.

Mr. President, I wish I could rise in this Chamber today with full enthusiasm and honest excitement to urge with full confidence the signing of the so-called Nonproliferation Treaty. I have listened to the debate, attended hearings of the Committee on Armed Services, and read all reports I could find on the matter.

I yield to no man in my desire to obtain a reasonable and trustworthy control of the spread of nuclear weapons and in the hope, finally, for the cessation of the costly and dangerous arms race; and it is my devout wish that we can reach the ultimate attainment of a lasting peace and an end to all the seemingly needless and costly wars.

However, Mr. President, in our great desire and our great hope to reach these objectives—and I share them with my colleagues—I am not sure that the treaty before us will achieve these things or that it will even constitute a first step. "First step" is an expression we have heard in this Chamber quite often lately—"hope" and "first step." I hear constantly the term "first step" and "good example" and "show of good faith."

I have listened to these phrases before. Last year in connection with the Consular Treaty we were told how important

it was and what great advantages would accrue to the United States. We were told what a great forward step this would be. The Soviet Government has not even signed the Consular Treaty to this date, to my knowledge.

Before that, it was the Test Ban Treaty. The Test Ban Treaty was to achieve a halt. It was to achieve a first important step toward peace. Then, we find that even during the discussion of that treaty, the Soviet Union, a signatory, had taken an advantage, and actually the United States, according to witnesses who came before us, has been handicapped in tests which might improve our military capability, because of the Test Ban Treaty.

Mr. President, in other words, I am saying we did not gain anything; on the contrary, we lost.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. MURPHY. I yield.

Mr. KENNEDY. Mr. President, with reference to the point the Senator made with respect to the Consular Treaty, it is my understanding that the Senate acted on March 16, 1967, and the Soviet Union acted on April 26, 1968.

Mr. MURPHY. That had not come to my attention. I thank the Senator for correcting my statement. I had no knowledge of it.

Mr. President, I ask that the statement of the Senator from Massachusetts be added so that the RECORD will be correct. It would not be my wish or intent to use any facts that were not completely accurate.

Before the Test Ban Treaty there was the Peace Treaty in connection with Korea. I trust I am correct in this statement and if I am not, I hope the Senator from Massachusetts will correct me. We still do not have a peace treaty that has been signed in connection with Korea after these many years.

Then, we go back to Potsdam, Teheran and Yalta; we go back to the beginning, to the original agreements whereby the great Government of the United States of America first recognized the Soviet Union. As I recall, the basic agreements that were entered into, both of these treaties to which I have referred, have disappeared into the dust of history without any of them having been fulfilled by the U.S.S.R.

It seems to me that we in America are always trying to prove that we wish to be a friendly and peaceful nation, and that we want to live in a happy peaceful way with our neighbors and help other nations achieve health, education, and the productivity we enjoy in this great country. There is no evidence that I know of to the contrary. History is long and our record is there for all to see.

It also occurs to me that the more we try, the more we are lied about, vilified, and accused of being the "imperialist nation," "the aggressor," the "enemy of peace." We are called the aggressor in Vietnam.

Would it not be wonderful if the Soviets suddenly decided to make a "first step" and stopped supplying arms in Vietnam; or a "second step" in calling off their expansionist policy in the Middle East; or a third step by stopping the infiltration of Communist-trained and led troublemakers all over the world, even possibly on our college campuses? Would this not be wonderful?

With this show of faith there would be no ends to which this Senator would not go to promote peace and understanding. And I could vote for this treaty with a hopeful heart.

This, however, is not the case.

I have therefore, come to the conclusion that maybe from now on we must be coldly objective, factual, practical, in our dealings with other nations, particularly the U.S.S.R., and that we should assess the actual benefits of all treaties and agreements on the basis of "how do they benefit and safeguard the future security of the United States of America?"

It is in this frame of mind that I finally must decide my vote on this treaty today.

I can find no actual benefit to the United States within the treaty. I have been told the treaty really does nothing, binds nothing, creates no new conditions with regard to nuclear weapons that do not now already exist.

I find there are no actual positive safeguards written into the treaty. The organization, which will be charged with the duty of policing the treaty seems to me to be completely inadequate.

It is certain that at least two nuclear powers which presently have the capability of making atomic weapons will not sign the treaty—China and France. They have said so.

Other nations such as Israel, West Germany, Japan, which could achieve the capability of building nuclear weapons would have to depend on either the United States or U.S.S.R. for protection from nuclear attack—a condition which might not be desired—and, therefore, it might be necessary in their own self-interest, or for their own protection, to create their own capability—and thereby destroy or weaken the alleged purpose of the treaty.

There is no certain method of inspection written into the treaty to guarantee compliance by the signatories—Dr. Teller, in whom I have great confidence, is concerned about whether or not this inspection could be certain—even if and when it is agreed upon.

The U.S.S.R states plainly that under no circumstances will she permit inspection within her borders. On the other hand the former President of the United States said he would not only permit inspection, but would invite foreign teams to view any or all of our nuclear activity and expertise, excepting only what shall be classed as military.

If any of our industries using nuclear devices demurred, it has been suggested that they could be forced by the Government to comply—or be cut off the bidding lists for Federal contracts. This is a type of coercion which I have always objected to and will object to as long as I can stand and be heard.

We seem to have promised to come to the protection of the signatories in the event they are attacked by nuclear weapons.

Let us explore this matter for a moment. If China, which has the capability and has a weapon, should attack Russia with nuclear weapons, would we be committed to enter into a nuclear war on the side of Russia? Or if the Chinese should give weapons to Cuba, what would our position be under the treaty? If Russia, who has been arming the Arab States should suddenly decide to give nuclear weapons to the Arabs, and they were used, would we not be expected to come immediately to the protection of the State of Israel?

In short, if any nuclear power used nuclear weapons to attack any signatory nation, would we not be expected to come to their immediate defense?

Mr. President, the chairman of the Foreign Relations Committee, for whom I have the greatest respect, says that this is not so. However, the record shows that the former President of the United States, the former Secretary of State, and the former Ambassador to the United Nations say that it is so.

On whom am I to rely?

How do the signatory nations understand these conditions and the apparent changes which I have heard recited during the past few days?

What does this treaty do to the NATO nations?

Does it not weaken their protective potential?

Does it not cut down the potential of all our friendly nations, while it permits the only nation, which has stated that it will bury us, to proceed unimpeded in its announced plan for world domination?

What would be the psychological effect upon our friends in Europe if they suddenly found that they may not have any hope, at least for 25 years, of having any nuclear weapons with which to protect themselves, and that the promise of protection to be supplied by the United States of America is uncertain, as has been stated on the floor of the Senate?

Mr. President, is this not the time to deal in an honest, straightforward manner from our position of full strength, rather than to wait until a later time, when our strength may have been impaired and weakened?

Is it not better to deal now than to bind ourselves and our friends—possibly forever—and lose whatever bargaining advantage we now may have, or what advantage we may not have already lost in our frenzied pursuit of peace?

And here, let me pray that I will not be misunderstood. To me, the pursuit of peace is the highest goal, the highest quest with which we could concern ourselves; but, in our anxiety, we must not lose sight of the facts. We must not lose sight of the conditions as they exist today.

I have been told that the signing of this treaty would be of great help to President Nixon in the coming talks with world leaders. I have been told that to oppose the treaty might weaken his position abroad and might tend to undermine the confidence which he has built up at home and abroad as a result of his recent trip.

Mr. President, I do not believe that to be the case. First, let me say that I would do nothing to diminish his power and progress in any way. On the contrary,

there is nothing that I would not do to help his quest for peace. Were I to be convinced that the signing of this treaty would help, I would not be taking the precious time of the Senate today to explain the reasons for reaching my conclusions.

Mr. President, I sincerely hope that I am not being too critical of the content, or rather the lack of content, in this treaty. However, I cannot eliminate from my mind the memories of our continued efforts of the past—sincere efforts, efforts on many occasions that, I thought, went clearly beyond the bounds of propriety, and I believe they were honest efforts.

I believe that this treaty, and what it may effect, has been oversold. I believe that our people may be expecting too much, that we may have created the impression that if the Senate ratifies the treaty, many future worries, if not all such worries, concerning a possible nuclear war will disappear. This, I assure you, Mr. President, is not the case. There are no such provisions in this treaty.

I believe that we have seen too often, recently, the unfortunate and dangerous results which follow raising false hopes of progress toward admittedly noble goals.

Of course, as I have said, like every other Member of this body, I am completely in favor of peace. I am in favor of disarmament, when—but only when—it is safe for this Nation and the other nations of the world who depend upon us for their protection.

Unfortunately, the facts are, as I see them, that the principal safeguard of peace in the world since World War II has been the military strength plus the integrity of the United States of America. This has been the only certain, effective bulwark against imposition of the Communist ideology upon the world.

Mr. President, this is not a pleasant situation. It is not a situation to be desired. But it is a fact.

I believe that the time has come when our Nation and its representatives must face the facts in a realistic manner. We must assess the facts as they actually exist. We must stop dealing in theory. We must stop thinking in fantasies. We must get back to the true, hard facts of reality.

I wish that the treaty before us had full safeguards, references, and compliances for full inspection for the equal treatment of all nations and proper guarantees. I wish it were a treaty in the best interests of the United States of America, a treaty which would be binding, safe, permanent, and productive.

Unfortunately, I do not believe that these are the conditions which exist in the treaty.

Therefore, Mr. President, regrettably, I must cast my vote against adoption of the treaty.

I yield back the remainder of my time.

Mr. SAXBE. Mr. President, I yield 1 minute to the Senator from Colorado (Mr. ALLOTT).

The PRESIDING OFFICER. The Senator from Colorado is recognized for 1 minute.

Mr. ALLOTT. Mr. President, I appreciate very much my colleague from Ohio's yielding to me, as well as my colleague from Colorado, because basically what I wish to take the floor for at this time is to welcome my own distinguished colleague (Mr. DOMINICK) back to the floor of the Senate after a brief illness.

I am sure that everyone joins me in welcoming him back to the Senate. We are all happy to see him and are very glad that he will be back with us now for a long time to come.

Let me say to my colleague, it is good to see you back.

Mr. SAXBE. Mr. President, I yield 5 minutes to the Senator from Colorado (Mr. DOMINICK).

Mr. DOMINICK. I should like to say to the Senator from Ohio that if there is enough time available, could he make that 8 minutes. I shall try to be brief.

Mr. KENNEDY. Mr. President, I will be glad to yield 3 additional minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Chair takes great pleasure in recognizing the junior Senator from Colorado (Mr. DOMINICK) for 8 minutes.

Mr. DOMINICK. Mr. President, I thank the Chair, the distinguished Senator from Massachusetts, the distinguished Senator from Ohio—and I particularly thank my colleague from Colorado (Mr. ALLOTT).

Mr. President, I came back today from the hospital feeling remarkably improved, although somewhat weaker than when I went in—as everyone is when they lie in bed too long.

I came back because I thought this particular treaty and its ratification was of such extraordinary significance in the country's history that I should, if possible, play a part in determining what would happen in its ratification.

As usual, so far as I know, the Senate has been asked to consider a treaty which was formulated by the executive branch and which we are now being asked to consent to.

We had not been asked, so far as I know, to advise to its terms originally.

It has been a long time in the history of this country since the Senate's role of advise and consent has given rise to the term "advice." We are simply being asked to consent.

The Nonproliferation Treaty, by its very significance and by its name, indicates to the public at large that if one votes against this kind of treaty, as my distinguished colleague from California has suggested, that person is in favor of irradiating the entire world and proliferating nuclear weapons in every country.

Nothing, of course, could be further from the truth, but this is obviously the significance that many people are going to put on it.

During my enforced stay away from the Senate, I have had the opportunity of reading the hearing record before the Committee on Foreign Relations and reading the report that was issued by the very distinguished Armed Services Committee, on which I have the opportunity of serving—and I am glad to see the chairman (Mr. STENNIS) present in the Chamber—and I have also had the opportunity of recently reading a committee print put out by the Committee on Government Operations in this year, 1969, called "The Soviet Approach to Negotiation."

I think in the consideration of this particular treaty we should take into consideration some of the comments that have been made in the process of those various documents. On page 64 of the latter, "The Soviet Approach to Negotiation," is a paragraph which I should like to quote, written by Arthur H. Dean, entitled "Soviet Diplomatic Style and Tactics." It was written in 1966. He was ambassador in the post-armistice negotiations in Korea; chairman of the U.S. delegation at the Disarmament and Nuclear Test Ban negotiations in Geneva in 1961 to 1963; and a former member of the U.S. delegation to the United Nations General Assembly.

The paragraph that I want to read now is, in my opinion, Mr. President, the key to the reason why we should not ratify this agreement. I quote:

> Then there is the pitfall of the "agreement in principle," which was already a serious danger in wartime negotiations with the Soviets. Time and again—and certainly this is clear in the Soviet insistence on an agreement on disarmament first, with details of inspection and such matters to come later—Soviet negotiators will press for a general agreement, often on a principle, such as being for "peace," to which it is very difficult to object, and will charge bad faith when this is refused. They are aware of the impatience of their Western counterparts and seek to make agreements seem very close by stressing how easy it would be to record it in general terms. By pushing in this way, they hope for an agreement of such vagueness that they will be able to interpret it in their own way and act to their own advantage while professing to observe the agreement.

Mr. President, in July of last year, the President of the United States, President Johnson, signed an agreement with the Soviets on a Nonproliferation Treaty. Since then, according to a statement made by General Ira C. Eaker, retired, they have sent nuclear material to Cuba, along with 200 nuclear scientists, to teach the Cubans how to use it.

Mr. President, it is not easy for anyone to stand here and say that we are not in favor of a treaty called a Nonproliferation Treaty, but there have been some strong men who have testified before the Foreign Relations Committee. Dr. Edward Teller has already been referred to by my very distinguished colleague from California (Mr. MURPHY).

The PRESIDING OFFICER. The Chair regrets that the Senator's time has expired.

Mr. DOMINICK. Mr. President, I ask unanimous consent for 3 additional minutes.

Mr. SAXBE. Mr. President, I yield the Senator that time.

The PRESIDING OFFICER. The Senator from Colorado is yielded 3 additional minutes.

Mr. DOMINICK. On page 129 of the hearings on the treaty is a statement of Dr. Robert Strausz-Hupé, who said:

> International measures for barring the spread of destructive nuclear devices should be a concern of every responsible government. If I urge the U.S. Senate to withhold ratification from the present nuclear Nonproliferation Treaty, I do so because I have found that: First, the present treaty does not pro-

vide effective safeguards against the spread of nuclear weapons—

Generalities again, as Mr. Dean was talking about—

second, the present treaty, if ratified by the Senate, will have been concluded at a cost to U.S. national security far greater than the worth of any of its foreseeable benefits to the United States; third, the present treaty, if ratified by the Senate, will commit U.S. foreign pelicy further and, perhaps irrevocably, to a course which will alienate the allies of the United States, encourage Communist adventurism, and lead to the perilous isolation of the United States in world politics.

Mr. President, there are three reasons, then. We have an agreement in principle, which has not been set out in detail—which has been the problem with every agreement that we have ever reached with the Soviet Union.

Second, the nonnuclear nations who are our allies and who are in perilous trouble with the Soviets are not in favor of this treaty. I am talking about West Germany, France, Israel, India, Pakistan, and a lot of other countries which are in the middle of the problems that we see around the world at the present time.

If we should reach an agreement with the Soviet Union all by ourselves, on our own, we would be not only labeling ourselves allies, but we would be making these people believe that we are, from now on, going to work in a joint way with the Soviet Union, to the detriment of the other countries with the ability to defend themselves in some cases and with a need for doing so in many cases.

Certainly it seems to me it would downgrade our ability to work in NATO.

Mr. President, I am sorry to have taken so much time, but I think this matter is of such extraordinary importance in today's age that, despite the fact that I am sure I shall be accused of trying to proliferate nuclear weapons—which is the last thing in God's world that any person in this country should ever do—in my opinion, it is a treaty that should not be ratified by the U.S. Senate in its present form.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum, the time to be charged equally——

Mr. PEARSON. Mr. President, will the Senator withhold that request?

Mr. KENNEDY. I withhold it.

Mr. PEARSON. Mr. President, will the Senator yield to me briefly?

Mr. KENNEDY. I yield to the Senator from Kansas.

Mr. PEARSON. Mr. President, the Senate will soon be voting on the question of whether or not to ratify the proposed Nuclear Nonproliferation Treaty. The product of many years of patient negotiation, this pact is one of the most important foreign policy issues we will be asked to consider this year. As such, it deserves our closest scrutiny. Our duty to protect the interests of the American people demands that we study it with as much objectivity as is humanly possible to muster on a question as sensitive and emotion-laden as this.

The treaty is designed to do two things. First, to secure a pledge from the nuclear countries not to give nuclear weapons to the nonnuclear states; and second, to secure from these nonnuclear states a promise that they will not seek to develop or acquire nuclear weapons of their own.

In return, the nuclear nations are committed to give the nonnuclear countries the help they need to develop peaceful uses of atomic energy under appropriate international safeguards. The nuclear states are also pledged to begin early disarmament negotiations to still further reduce the risk of world holocaust.

After careful thought and examination, it is my opinion that the treaty merits our support. The United States began the negotiations on this treaty many, many years ago and it would be ironic for us to be the reason for their ultimate failure. Let us never forget that we bear a commitment to the international community to work toward a realistic step-by-step approach to the universal goal of gradual disarmament. To reject the treaty would thus be to reject a vital cornerstone of our own program.

Though the treaty is worth supporting, the question of its ratification is not as clearcut as it might appear at first glance. The simple fact is that while the treaty is another important step down the long road to world peace, it is nonetheless far from perfect.

Among the first factors which we should take into consideration is that while 87 nations have thus far signed the treaty, the vast majority have not ratified it. Many are waiting to see what we will do. It is no exaggeration then to say that the treaty's fate is in our hands, not only in terms of our own involvement, but also in terms of world support.

However, the fact that so many countries were at least willing to take the initial step of signing the treaty is in itself encouraging, for it indicates a willingness by a large portion of the world community to forego the prospect of owning nuclear weapons if such a step will contribute to world peace. By signing, these countries are agreeing that even though inspection procedures will not be required for the nuclear states, they will be applied to the nonnuclear countries, who, after all, comprise 84 of the treaty's 87 supporters. It is the acceptance of the inspection procedures outlined in the treaty by so many of these nations which represents such an important step forward toward universal arms control.

Mr. President, vital though this acceptance may be, it is also necessary to point out that most of the nonnuclear countries which have signed the treaty are uninterested in acquiring and are unable to produce nuclear weapons in the foreseeable future. Thus, by supporting the treaty, they are surrendering a theoretical right, albeit an important one, rather than a real prospect.

Following the five nuclear powers, two of whom, France and Red China, have not signed the treaty, the most important states affected by the treaty are the so-called "nulcear potentials" who clearly have the capacity to build nuclear weapons should they desire to do so. Of these countries, only Canada, Czechoslovakia, Italy, and Sweden have signed the treaty. Thus, such significant nonnuclear states such as India, Israel, Japan, and West Germany have not given even tentative approval to the treaty. As a result, of course, it runs the risk of being less effective than it otherwise would be.

Mr. President, another major question which must be asked with regard to this historic proposal is whether or not it will act as a realistic brake on the desire of other countries to acquire nuclear weapons. There is little doubt that none of the nuclear powers are anxious at this time to encourage the spread of nuclear weapons. But what of the feeling on the part of the "have-nots" that the only way in which they might really be able to protect their security would be to retain the right to eventually obtain nuclear weapons of their own?

The basic problem is that the only truly effective way in which we could reassure these states would be to give them an iron-clad commitment to come to their defense should they be threatened or attacked with nuclear weapons. Such a commitment could be made either in concert with the Soviets or unilaterally. The former is highly unlikely and the latter, of course, is unacceptable to us. Our security commitments are extensive already.

Our leaders have made several policy statements indicating to the nonnuclear states that their security will be protected through appropriate measures in the Security Council of the United Nations, but naturally these remarks do not have the force of binding treaties. Thus, the problem is still with us and as long as this dilemma exists, the treaty is unlikely to receive the full-fledged support from all the "nuclear potentials" that would be ideal. The fact that world support for the treaty is not yet universal, is still no reason for us to refrain from adding our endorsement. Our support will help garner more and even if it did not, the list of the treaty's adherents is already quite impressive.

Because some of the current abstainers are allies, fears have been raised that the treaty might weaken the Western Alliance by creating dissention and mistrust between the United States and our friends. It is my opinion that these diplomatic risks, while real, are not nearly as great as some have supposed. The fact is that the overwhelming majority of our allies have given the treaty their support, albeit reluctantly. And even should this treaty not exist, they still know very well that we would be unlikely to give them nuclear weapons. We have not done it yet, and there is no reason to suppose we would in the future. It simply is not in our interest to do so. Thus, the treaty really does not affect our nuclear relations with our allies in the slightest. Should this situation change, however, the treaty allows us to withdraw our commitment upon 3 months' notice.

Mr. President, it has also been said that we should not ratify this treaty because it would risk our national security by having it rest on a pledge by the Soviets whose word is notoriously unreliable. This fear is unfounded. The treaty in no way restricts our ability to do whatever we feel is necessary to strengthen our

national defense. Though we are under an obligation to pursue disarmament talks in good faith, this too, is in our national interest. The fact of the matter is that we are not being asked to trust the Soviets beyond the point of mutually agreeing not to give nuclear weapons to countries which now do not have them. This is an agreement which we can easily make, for all it prohibits is something which neither of us are doing now and which is not in the interest of either of us to do in the future anyway.

Mr. President, hard as it may be to believe, some people are opposed to the treaty, not only because of their mistaken fear about the risk it poses to our national security, but also because they are not convinced that nuclear proliferation is necessarily against our interests. Pointing to the need to further diffuse the balance of power in the world and by so doing to stabilize a number of areas which are now in ferment, these critics urge that proliferation be considered as a potentially positive rather than a negative force. Because most of the countries which might soon "go nuclear" lie outside the Communist bloc, they also argue that if proliferation were allowed to continue unchecked the ultimate advantage would lie with the West.

Mr. President, I completely disagree with this viewpoint. I find it incredible, really, for such a line of reasoning is based on two clearly false assumptions; first, that nuclear spread would stop with just a few countries when the pressures would all be mounting to force more and more proliferation; and second, that all political leaders will remain rational. But how can they be so sure? How can they be convinced that every leader whose country might obtain nuclear weapons would indeed be rational? Would Hitler, for example, have refrained from using nuclear weapons if they were available? I doubt it.

The fact is that the uncontrollable spread of nuclear weapons represents a clear and present danger to the future safety and stability of the world. It is true that possession of nuclear weapons provides a deterrent against aggression. But who can say whether or not such a deterrent will always work even if the leaders involved are rational? It almost did not in the Cuban missile crisis. And in future confrontations, the leadership might not prove to be as skillful as that provided by President John F. Kennedy and his advisers during that tense period. But whether the leadership failed because it was irrational or unskillful, the result would still be the same—world holocaust.

Another danger of proliferation, irrespective of the leadership qualities of the men governing nuclear countries, is that simply by placing more fingers on the nuclear trigger the mathematical odds on either an accidental or a deliberate attack are greatly increased. And with regard to a deliberate attack, let me point out all nuclear weapons need not be mounted on the top of intercontinental ballistic missiles or carried in the bomb bays of jet aircraft. They can be dismantled and brought into a country in a variety of ways. And the more countries that obtain them the more likely they are to use them, no matter how primitive the delivery system they have available. This danger is compounded by the fact that, because of the variety of means which an attacker can use to reach his target, it is entirely possible that a major power could be attacked and not be certain of the identity of his attacker. Obviously, such a danger is a threat not only to us, but to all the world, for it could trigger a massive nuclear exchange by the major powers.

Thus, the dangers of proliferation, only a few of which I have discussed, are many. But more importantly, they are real and immediate. Nuclear weapons are becoming easier and cheaper to build. Every year more countries acquire the ability to "go nuclear." Unless some incentive is provided—and provided soon—to halt this spread, it will inevitably occur, with all the potentially disastrous effects mentioned earlier. It might occur anyway. Given the flaws in the treaty, that is a real possibility. But our obligations to the American people and the cause of world peace demand that we try to stop it.

Another factor which we must bear in mind is that one of our primary foreign policy goals is to help our less developed friends throughout the world create stable, progressive societies that can achieve continued economic growth. This type of economic development is both in their interest and in ours. Nuclear proliferation could interfere with this objective by siphoning off scarce resources within these countries from badly needed economic and social projects and applying them instead to programs of weapon development. As the current controversy in our own abundant land over the possible deployment of the Sentinel anti-ballistic-missile system so aptly illustrates, no country has the unlimited resources to develop both sophisticated weapons and achieve maximum social and economic progress simultaneously.

Mr. President, the treaty also offers the positive benefit of adding to the efforts of recent years to build an atmosphere of greater trust between ourselves and the Soviets. We are no longer dealing with a monolithic Communist bloc. It is badly splintered. Early last week, for example, the Soviets and the Red Chinese fought a pitched battle along their common border. It is in our interest to do anything we can to demonstrate to the Soviets the value of closer cooperation with the West as opposed to the increasingly bitter character of their relationship with the Red Chinese. The treaty might be of help in this regard.

Mr. President, the Nuclear Nonproliferation Treaty may not be the perfect instrument many of its vigorous proponents would have us believe. But then neither is it the threat to our security that some of its more outspoken opponents fear. On balance, it may not turn out to be much more than a grand gesture. But it could turn out to be much more, for while the treaty's effectiveness may be limited, there is always the chance that ratification might mean the difference between world peace and nuclear war. That chance is well worth taking. As Theodore Roosevelt once said:

> It is hard to fail, but it is worse never to have tried to succeed.

In this case a failure to try could be fatal to all mankind.

Mr. KENNEDY. Mr. President, I yield 2 minutes to the Senator from New York (Mr. JAVITS).

Mr. JAVITS. Mr. President, I wish to sum up my support of this treaty, and put it in focus, as I see it.

This is the first time that we have really made an effort to arrest the nuclear arms race. In business, as in government, before one can start on the road back, one has to stop. I deeply believe that we are going just about one-tenth of the way in the ratification of the treaty. This is a case of our ratification, and that of the Soviet Union and the United Kingdom. We still have to bring 40 nonnuclear nations into it. That is going to be a very big job. They must be inspired with a sense of confidence that it is worthwhile to go into it. In addition to the 40 countries, we have problems with nations like West Germany, Israel, and other nations that have special problems.

So what we do, when it is done, is not all done and finished. It is but the beginning of a very long road.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. JAVITS. I have only 2 minutes, but I yield.

Mr. MURPHY. Is it not a fact that the attempt to stop the proliferation, to stop the spread of nuclear arms, actually started at the Geneva meeting, when President Eisenhower was present?

Mr. JAVITS. Of course it did.

Mr. MURPHY. And this is a continuation of that effort.

Mr. JAVITS. Of course.

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

Mr. JAVITS. May I have 1 more minute?

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. JAVITS. This is but the consummation of the beginning; I completely accept the amendment of the Senator from California. This is the culmination of a phase that began with the efforts of President Eisenhower.

Second, one of the most critical things here, aside from the problems I have just mentioned of winning the world to this position, is article VI. In my judgment we will not actually get to a negotiation with the Soviet Union on offensive and defensive nuclear weapons unless this treaty is ratified. They have to have a base; they are political, too. They have got a country, and people who are their fellows in office, and who were not in office last year, or were before and may not be next year. They have a political problem, too.

This will give them a base for going forward in good faith with these negotiations. It is an auspicious moment, and I pay great tribute to the Senator from Arkansas (Mr. FULBRIGHT), who has piloted this measure through with unexampled skill.

I repeat, it is a great moment, but it will take the most creative efforts, on our part and on the part of our new President, if we are really going to make it mature into what it ought to be, a beginning of the rollback from what seemed to be an unstoppable arms race, which would end only with the mutual destruction of the world and all mankind.

Mr. FULBRIGHT. Mr. President, I yield myself 5 minutes to respond to the Senator.

I appreciate particularly, of course, his gracious personal reference, and I wish to say that the Senator from New York has done a great deal of work, and very effective work, on this treaty, both on the floor and in the committee. I might as well say also that I think the staff, and, in particular, Bill Bader, has done a fine job in helping the committee to marshal the evidence for our hearings. The entire committee has done a very good job on the treaty.

I compliment the Senator from New York for what he has said. It puts the matter in perspective. It has been said on this floor that we have oversold this treaty. The members of the committee have not oversold it at all, nor has the Senator from New York. We all recognize it is no panacea. It is, just as the Senator has said so well, a beginning; and especially is article VI a beginning, because that article represents an obligation to negotiate. It is not mandatory. Unless both parties proceed to negotiate in good faith, it can easily be nullified.

This is, to me, the most significant obligation of all: In return for the pledge of small nations to refrain from accepting or developing nuclear weapons, which is very important, we commit the large nations to negotiate in good faith to stop the piling up of arms and the escalation of the arms race, and hopefully to begin the disarmament effort.

As the Senator has stated, this is a political matter. We will vote within the next few minutes on the treaty with its obligations under article VI. I cannot imagine that the President of the United States would annonunce within hours of the approval of this treaty that he has decided to deploy an antiballistic-missile system. While technically the treaty would not prevent such a decision, certainly the spirit of article VI is inconsistent with any substantial increase in our armaments in the nuclear field. This seems to me to be as clear as it can possibly be. So I think, in approving this treaty, we will have made a real contribution to a vital political decision.

Our President is a political animal, like all of us, who must run for office. This treaty will give him a political base to make the right decision on antiballistic missiles; so I think we will have accomplished a great deal in approving the treaty at the time we did.

Mr. JAVITS. Mr. President, will the Senator yield for one comment?

Mr. FULBRIGHT. I yield.

Mr. JAVITS. I think we can really give the President a bipartisan base. Keeping in mind that this will be the first real arms negotiating situation in which only we and the Soviet Union are engaged—only we have real or potential ABM capabilities—there is still time for negotiations. Overwhelming ratification of this treaty, with article VI will provide a solid bipartisan base for utilizing that time to the greatest effect.

Mr. FULBRIGHT. The Senator is quite right. This committee, with the great help of the subcommittee headed by the Senator from Tennessee (Mr. GORE), has, I think, given the President an ample base for reconsidering the deployment of the ABM system. The effort is strictly bipartisan. The Senator from New York, the Senator from Illinois, and the Senator from New Jersey have played just as great a part as any Democrat.

Mr. JAVITS. And I remind the Senator that today four new Senators had a press conference on the subject.

Mr. FULBRIGHT. And the four new Senators. The effort has been widely distributed. There is nothing partisan about it at all. It has been one of the most spontaneous movements, I would say, that I have witnessed in the Senate in a long time; and I think the same is true for the country.

So in that sense, I think it is very significant. But that is not overselling, when we call attention to the possibilities. This all remains to be done. To point out the possibilities is not saying we have accomplished the task. We are taking a significant step, which makes possible and I think more probable future steps, which will be in the interest of our security and in the interest of peace in the world generally.

So I am very pleased with the reaction of the Senate up to now to the offered reservations. As I have stated, many of the reservations were unobjectionable substantively, except that, as a matter of form and procedure, they should not be attached to an instrument of this kind, lest they cause some confusion abroad.

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

Mr. DODD. Mr. President, we have come to the conclusion of this historic debate, and now the moment approaches when each of us, having weighed all the factors in the balance, must cast his vote for or against the Nonproliferation Treaty.

For me, the decision has not been an easy one. I share the desire of the majority of the Foreign Relations Committee to prevent or restrict the proliferation of nuclear weapons.

The treaty, as it is now drafted, has posed a dilemma for me because, while I believe in the principle and purpose to which the treaty itself is directed, I fear that the treaty suffers from serious weaknesses which will impair its ability to achieve its stated purpose.

I have sought to call these weaknesses to the attention of my colleagues and to suggest certain understandings which would help to overcome these weaknesses, at least in part.

My dilemma has been increased by the fact that the Senate has seen fit to reject all understandings, apparently on the theory that it is inadvisable to tamper in any way with the wording of the resolution of ratification.

Among other things, I pointed out that the inspection provisions of the treaty are ambiguous and grossly inadequate. And I am constrained to note that although I spelled out the weaknesses of the inspection provisions in great detail, not a single Senator took issue with my critique or sought to reassure me that the inspection provisions would turn out to be adequate.

I have the impression that even the most ardent defenders of the treaty agree with me on this score, even though they themselves may not have dealt with the matter in the course of the current debate.

I pointed out that there is ample reason for fearing that certain nations, having used the treaty to acquire a nuclear capability for themselves, may then proceed to develop clandestine facilities to produce nuclear weapons, and finally, at the appropriate moment, may contrive some excuse to invoke the 90-day withdrawal clause.

Because I wanted some expert opinions on certain implications of the Nonproliferation Treaty, I addressed a series of questions to three of the top nuclear experts in the country: Dr. Edward Teller, whose name is known to all of us; Dr. Harold Agnew, head of the Weapons Division of the Los Alamos Laboratories; and Dr. John Wheeler, recent president of the American Physical Society, coauthor with Niels Bohr of the original paper on the mechanism of nuclear fission, and last year's recipient of the Fermi award for nuclear physics.

I ask unanimous consent at the conclusion of my remarks to insert the full text of the replies I received from the three scientists I have named.

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

(See exhibits 1, 2, and 3.)

Mr. DODD. Dr. Teller, Dr. Wheeler and Dr. Agnew did not agree on all points. Indeed, it would have been nothing short of amazing if they did. But there is one point on which they seem to be generally agreed which I would like to call to the attention of my colleagues, because I do think it has a very direct bearing on the treaty.

Until I had received these replies, I had been under the impression, and I am sure that this impression was shared by 99.9 percent of informed laymen, that reactor-grade plutonium could not be used for weapons purposes without putting it through a complicated and fairly costly refining process. But from the three answers I have received, it is apparent that such a refining process is not essential.

For example, Dr. Agnew says in his reply to my first question:

> Reactor-grade plutonium is superior to enriched uranium for many weapons applications. Consequently, if one has what you call "peaceful nuclear materials" which I infer to mean reactor grade plutonium, there is no need to convert to weapons grade plutonium in order to produce a nuclear explosion.

Dr. Teller in his own answer to the same question says that the distinction between peaceful and military materials "has been mistakenly overemphasized."

As for the problem of building a clandestine facility for refining weapons-grade materials, I call attention to Dr.

Wheeler's statement that a number of countries will be able to find a simple and inexpensive way to convert peaceful nuclear materials into weapons-grade plutonium.

I hope that my colleagues will find the time to read the replies I have received from these three outstanding scientists.

The weaknesses to which I have pointed are not the fault of President Nixon. Indeed, I believe that the President himself and some of his key advisers are acutely aware of these weaknesses. But President Nixon inherited a treaty which either had to be approved as it was signed last July 1 or else had to be repudiated.

Under the circumstances, I believe that President Nixon took the only course open to him by accepting the treaty which he had inherited, with its virtues and its weaknesses, and asking for its ratification.

I believe that there is no one who understands better than President Nixon the need for reviving or seeking to keep open the so-called NATO or European option. And this is one of the reasons why I am led to support the treaty, despite its weaknesses.

I have done what I consider to be my duty in pointing to the weaknesses of the Nonproliferation Treaty and to the perils that may be generated by it.

With grave misgivings and many reservations I shall now cast my vote for it, because I do believe in the principle of nonproliferation. It is my earnest hope that my misgivings will prove unfounded, and that the Nonproliferation Treaty will prove to be an important step along the difficult road to arms control and peace.

EXHIBIT 1

QUESTIONS

From: Senator Thomas J. Dodd.
To: Dr. Edward Teller.
Re: Nonproliferation Treaty.

1. Question: How difficult would it be for nuclear have-not nations, once they are provided with nuclear facilities under the terms of the Nonproliferation Treaty, to use these facilities to give themselves a nuclear military capability?

Answer: The bottleneck in producing fission bombs is the availability of an appropriate quantity of U235 or Pu239. Powerful nuclear reactors having a thermal power of 1,000 megawatts or more, will produce ample amounts of Pu239. To erect appropriate chemical separation plants will raise considerable difficulties if they are not already available. This difficulty can most probably be overcome by a determined effort in two or four years. Furthermore, in the natural course of events chemical plants applicable to separation of plutonium will be established.

While it is generally believed that the secrecy erected around nuclear weapons technology will impede development in have-not nations, there is good evidence which shows that this is not the case. None of the present five nuclear nations had difficulty on this score and studies performed by uninformed individuals for the purpose of verifying the efficacy of secrecy have shown that essentially correct solutions on paper will be obtained by capable individuals in a rapid and reliable manner. Secrecy may provide somewhat greater protection in connection with the development of thermonuclear explosives.

1(a) Question: Is the supplementary technology necessary to convert peaceful nuclear materials into weapons-grade plutonium, simple and inexpensive enough to make this technology accessible to small countries?

Answer: This technology is neither simple nor inexpensive. On the other hand, a sharp distinction between reactor-grade plutonium and weapons-grade plutonium is not valid. This distinction has been mistakenly overemphasized, even during discussion of the Baruch plan. It is wishful thinking to believe that the composition of plutonium will be a sufficient guarantee against misuse of reactor products in making nuclear explosives.

1(b) Question: Is it accurate that the so-called centrifuge process for the production of weapons grade plutonium can be accommodated in facilities compact enough to lend themselves to easy concealment?

Answer: According to the authoritative statement of Chairman Seaborg, the centrifuge process lends itself to the establishment of clandestine plants. However, even if the centrifuge is employed, production of so-called weapons-grade plutonium remains difficult and expensive. As pointed out in the previous answer, production of such material is not essential.

1(c) Question: How effective would the IAEA inspecting procedures be in preventing the diversion of materials for military purposes by governments bent on circumventing the Treaty?

Answer: An economically effective nuclear reactor must have at least a thermal power of 1,000 megawatts. Such a reactor would produce approximately 300 kg of plutonium per year and if 10% of this amount should be diverted, this will suffice to produce several nuclear explosives. By the best possible inspection procedures, diversion of material might be decreased to a couple of percent. Even in this case, the possibility of producing nuclear explosives in a short time is not eliminated. One should further remember that cheap nuclear power would make it desirable to establish a power equivalent to 100 such plants in countries like Japan and Germany in the next decade or two, and 25 such plants in countries like India or Spain. (These figures are based on the assumption that demands for nuclear electric power equivalent to the presently installed total electric power will arise in each country before the year 1980.)

It is therefore certain that even the best possible IAEA inspection will not eliminate the possibility of circumventing the Treaty in a secret manner. It is much more likely that a diversion of several percent of the plutonium will prove possible. If the Treaty is ratified, it may be essential to announce our intention to revise our stand at the end of the 18-month period, at which time we should know whether the inspection procedures are meaningful.

2. Question: Do you believe that this Treaty will really serve to prevent the proliferation of nuclear weapons? Or do you believe that the Treaty may wind up by encouraging the proliferation of nuclear weapons to nuclear have-not nations?

Answer: In view of the answers given to the previous questions, I believe that proliferation will be prevented only in case of countries which do not desire to circumvent the Treaty. Therefore, the question of whether or not the Treaty will be effective reduces to a problem of psychology, rather than technology. It should furthermore be remembered that in case of detected violation by one or two nations, other nations may feel justified in taking open possession of the whole plutonium stock which resides in their functioning reactors. In this case, rapid proliferation will ensue.

3. Question: Is it technically possible to distinguish between offensive and defensive nuclear weapons and, if so, would it be possible to build defensive weapons which could not then be employed for offensive purposes?

Answer: It is not possible to make a technical distinction between offensive and defensive nuclear weapons, *per se*. It is, however, equally obvious that one can distinguish between weapons systems deployed in an offensive and defensive manner. The antiballistic missile system is an example for the latter. It is not proven, but in my opinion likely, that one can develop appropriate electromechanical devices which together with effective inspection procedures will provide substantive assurance against the offensive use of any weapons systems which is defensively deployed and which is safeguarded in an appropriate manner. Such developments could be most significant in allowing peaceful nations to defend themselves, and would thereby decrease the incentive toward deployment of offensive systems.

In case the Treaty is ratified, it would seem highly desirable explicitly to encourage the deployment of defensive systems, and in case that appropriate safeguards become available, to exempt such defensive systems from restrictive provisions of the Treaty.

4. Question: Do you believe that this Treaty is in the overall military and political interest of the United States and the free world?

Answer: To limit proliferation would be in our interest. It is, however, not clear whether the Treaty accomplishes such limitation. By providing aid toward the development of big reactors, and by prohibiting defensive deployment of nuclear weapons, the Treaty may even help to create the means and the incentives for rapid proliferation of offensive weapons.

5. Question: In the latter part of 1969 it was announced that Moscow had installed a nuclear reactor in Cuba. On January 9 of this year Havana radio announced the conclusion of a Moscow-Havana nuclear pact. Under this Treaty, according to a broadcast statement by Dr. Antonio Nunez-Jiminez, President of the Cuban Academy of Sciences, the Soviet Union obligated itself to provide equipment and scientific material, as well as Soviet scientific personnel and training in nuclear technology for Cuban engineers and scientists. Mr. Jiminez said that there were 231 top Russian scientists now serving in Cuba, with 222 more due to arrive . . . In your opinion, does the prospect of the rapid expansion of Cuban nuclear capability which is almost certain to result from this Treaty, pose a serious danger to the security of the United States? And if there is a danger, is it a danger that relates to the next few years or is it several decades removed?

Answer: There is nothing to prevent Cuba from developing a nuclear capability in the next few years if they are helped to do so by the Russians. Such a development would certainly prove a serious danger to our security. In considering the question whether or not such a development will occur, one may remember that in the case of China, Russia first provided help then withdrew the help. The Chinese, nevertheless, proceeded to perfect nuclear weapons, although this development was somewhat delayed. On a purely technical basis it is, of course, impossible to predict what decisions Moscow will make and whether or not effective help for the development of a nuclear capability will be given.

EXHIBIT 2

UNIVERSITY OF CALIFORNIA,
LOS ALAMOS SCIENTIFIC LABORATORY,
Los Alamos, N. Mex., March 7, 1969.

Senator THOMAS J. DODD,
U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR DODD: Reference your letter of March 4, 1969 with regard to the Nonproliferation Treaty. My answers to your questions follow:

1. This depends entirely on the extent of the facilities provided. It should be obvious that any assistance will make such endeavor on their part easier.

(a) This is not a very good question. Reactor grade plutonium is superior to enriched uranium for many weapons applications. Consequently if one has what you call

"peaceful nuclear materials" which I infer to mean reactor grade plutonium, there is no need to convert to weapons-grade plutonium in order to produce a nuclear explosion.

(b) I believe this is correct, especially if very large outputs are not required.

(c) This depends entirely on the procedures which are yet to be defined. I believe techniques being developed at the Los Alamos Scientific Laboratory would make diversion extremely difficult if we were to write the rules and were given a free hand to enforce them.

2. I don't believe it will have any effect. Those countries that want to develop weapons will. Those that wouldn't have anyway will attempt to get their "pound of flesh" from us for getting them to sign. I do not believe the treaty will encourage the proliferation of nuclear weapons to nuclear have-not nations.

3. The warhead components of defensive and offensive weapons are very similar. The difference lies in the mode of employment, i.e., range, accuracy, delivery means. Most defensive weapons weapons could be used in a tactical offensive role. Since we are contemplating a defensive warhead in the megaton region (Spartan) even yield is no criterion to separate defensive and offensive weapons. Hercules, an existing air defense weapon system, has an excellent ground-to-ground capability and at one time was a mobile system. I suspect that just having a defensive nuclear weapon system would result in military planners considering how it could be used in an offensive role. Here again the point should be made that the technology, yield, and physical size, is really indistinguishable between offensive and defensive warheads. The difference lies primarily in their application.

4. I don't know. I can argue it either way. If we and the Russians were the only "have" countries then clearly it would be. But we aren't. If any other "have" countries such as Russia, China, France, and England, wanted to get us into trouble with Russia or China they could conceivably blame an incident on us or in times of tension create something that might escalate. On the other hand, if all nations had nuclear weapons they might not be so willing to get engaged in conventional wars but clearly they could cause a lot of mischief. We have become so obsessed with the fears of a nuclear war that we seem quite willing to engage in a conventional war of any magnitude. I personally would prefer to ban conventional weapons exchange and push for conventional disarmament before we attempt nuclear disarmament. Peace can be preserved with nuclear weapons. It cannot be preserved with conventional weapons because the diplomat believes that only the military get killed in a conventional war. In a nuclear war the diplomat also is vulnerable.

If we coerce Germany to sign, it could, in the long run, have some very serious implication for NATO. If they sign voluntarily fine. The treaty in no way appears to affect the present arrangement we have with NATO and our nuclear weapons so I don't believe we can really be against it.

Since you clearly have to vote Yes or No and can't vote "That Depends" I would support a Yes vote.

I do believe that there should have been a fifth safeguard on the limited Test Ban Treaty which would have required a review every couple of years to determine if the political advantages which we expected to accrue from the treaty outweighed a technical disadvantage which we knew would exist. I am not clear as to what sort of review should be provided for in this treaty but there should be one and also if possible some sort of penalty for violators, but this seems to be impossible in todays civilized world.

5. I don't believe that a nuclear buildup in Cuba could pose a serious danger to the security of the U.S. However, it would certainly create chaos with regard to our relationships to the countries of South and Central America and Mexico and their relationships to each other. Cuba, like England, is at a tremendous disadvantage in a nuclear era simply because of its very limited land mass.

Of necessity I have made my comments very brief so that I could comply with your request for a rapid response. If I can be of further service please call upon me.

Sincerely,

H. M. AGNEW,
Weapons Division Leader.

EXHIBIT 3

PRINCETON UNIVERSITY, PALMER PHYSICAL LABORATORY, DEPARTMENT OF PHYSICS,
Princeton, N.J., March 12, 1969.

Hon. THOMAS J. DODD,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR DODD: You raise important questions in connection with the hearings on the Nonproliferation Treaty. I will answer to the best of my ability. However, I must point out that my background is limited to the physics of fission, the design of plutonium production reactors, the design of atomic and hydrogen weapons, and includes only a limited background in the field of chemical processing.

1(a). Is the supplementary technology necessary to convert peaceful nuclear materials into weapons-grade plutonium, simple and inexpensive enough to make this technology accessible to small countries?

Answer: Predetonation of plutonium is the concern here. Purification is one answer. Fast implosion, before predetonation can cause trouble, is another answer. The combination of the two techniques is a third answer. India, Israel, Sweden and Switzerland, in my opinion, all possess the necessary number of people with the necessary amount of knowledge and ability. All four countries, in my opinion, can find a simple and inexpensive way to convert peaceful nuclear materials into weapons-grade plutonium.

1(b). Is it accurate that the so-called centrifuge process for the production of weapons-grade U-235 can be accommodated in facilities compact enough to lend themselves to easy concealment?

Answer: The centrifuge process in my opinion is superior to the diffusion process and the process of production of fissile material in a pile. It is superior because it lends itself to easy concealment. Even more important, both for us and for others, in my view, is this, that the centrifuge process lends itself to operation in a blast shelter.

1(c). How effective would the IAEA inspection procedures be in preventing the diversion of materials for military purposes by governments bent on circumventing the Treaty?

Answer: In connection with my past service on the U. S. A. E. C. Reactor Safeguard Committee, I and a few other colleagues have given very special attention to the possibilities of sabotage and of conducting operations that are illicit by all the rule books. I have been impressed and dismayed at how many ways one can dream up to do extremely dangerous things without much chance of getting caught. These studies referred to operations where one had to assume that everybody around the plant is an enemy of the saboteur. When one can assume that everybody around is a friend or even that 90% of those around are friends, as I can well imagine to be the case, when concerned men in a small country want to divert materials to military purposes, I believe the opportunities are infinitely greater and the dangers—to the man!—are infinitely less.

2. Do you believe that this Treaty will really serve to prevent the proliferation of nuclear weapons? Or do you believe that the Treaty may wind up by encouraging the proliferation of nuclear weapons to nuclear have-not nations?

Answer: A meeting of bishops in Paris outlawed the crossbow, but the crossbow spread. What could be more immoral, they said, than a bolt which flies out of the sky to kill one without the opportunity even to see his assailant? They ruled that anyone captured in war with a crossbow in his hand should be deprived of all the rights of a prisoner and be put to death. The history of later ages is rich with agreements between power and power to prevent the spread of gunpowder from similar reasons of morality. Gunpowder spread. Nothing could be better calculated, in my opinion, to encourage the small nations to enter what would otherwise be a hopeless race than to freeze technology at its present level.

3. Is it technically possible to distinguish between offensive and defensive nuclear weapons? In your opinion, would open access to defensive weapons on the part of the have-not nations increase or decrease the pressure to acquire offensive nuclear weapons?

Answer: I do not know of any device more definitely in the category of defense than a nuclear bomb planted in a Turkish mountain pass to block the way from the Soviet Union. There is no one whose word I would sooner trust than that of the Turkish leaders well known to me. But if it ever became necessary for the survival of Turkey as a nation to convert that nuclear mine to a deliverable weapon, Turkey can in my opinion put together a group with the drive and energy and ability to convert that device into a deliverable bomb. I have followed over the years the changing fortunes of the struggle between the maker of locks and the picker of locks, the maker of guns and the maker of armor, the maker of codes and the breaker of codes. No more in this case than in those cases do I see the possibility of stopping a clever group of men from making a deliverable bomb out of the defensive device. I see no clear way to distinguish between offensive and defensive nuclear weapons. Aware as I am of the people and pressures in two countries that would force those countries to start making nuclear weapons, I cannot think of a means better calculated to help them realize their dream than to put into their hands "defensive" nuclear weapons.

4. Do you believe that this Treaty is in the over-all military and political interest of the United States and the free world?

Answer: I know of no better answer to this question than the eloquent statement of the great lawyer and leader, the late Secretary of State, Charles Evans Hughes, when, speaking on behalf of the United States, he recommended against ratification of the Hague Convention against poison gas warfare. His reasoning was simple. The responsible nation that signs will adhere to the convention. The warmaker will not. Moreover, he reasoned, no nation whatever its standards can be expected to refrain from using a decisive weapon at a moment when its own future existence as a nation is at stake. The United States agreed with his reasoning and rejected the convention. I cannot think of any move better calculated to give the secret police states an advantage over the democracies than to ratify this "nonproliferation treaty".

5. In the latter part of 1968 it was announced that Moscow had installed a nuclear reactor in Cuba. On January 9 of this year Havana radio announced the conclusion of a Moscow-Havana nuclear pact. Under this Treaty, according to a broadcast statement by Dr. Antonio Nunez-Jiminez, President of the Cuban Academy of Sciences, the Soviet Union obligated itself to provide equipment and scientific material, as well as Soviet scientific personnel and training in nuclear technology for Cuban engineers and

scientists. Mr. Jiminez said that there were 231 top Russian scientists now serving in Cuba, with 222 more due to arrive . . . In your opinion, does the prospect of the rapid expansion of Cuban nuclear capability which is almost certain to result from this Treaty pose a serious danger to the security of the United States? And if there is a danger, is it a danger that relates to the next few years or is it several decades removed?

Answer: I am not worried about the possibility that Taiwan might build a weapons-and-missiles system, with or without American aid. I am not worried about the possibility that Cuba might build a weapons-and-missiles system with or without Soviet aid. I am very much worried about the possibilities quickly to introduce the existing Soviet weapons-and-missiles system in Cuba. The time scale for my worry is not decades or years, but months. With a few hundred key technicians of the right kind on the right spot, with the right directives, it is a matter only of a limited number of months, in my opinion, before a dismaying destructive power could be brought to bear on the United States from close quarters.

I appreciate the honor and privilege of being asked to contribute on this topic.

Sincerely yours,

JOHN ARCHIBALD WHEELER.

Mr. HART. Mr. President, earlier this week I voiced support for the treaty. At that time I suggested that it was not quite as dramatic an advance as some seemed to suggest, though it was desirable to ratify, and that rejection would have serious adverse consequences.

Two rather short but interesting and conflicting views were published in the March 14 issue of Commonweal. One was written by Betty Pilkington, the United Nations correspondent for Pacifica radio, WBAI. The other article is written by Peter Steinfels, an associate editor of Commonweal.

I suggest these views would be appropriate as we approach the vote. I therefore ask unanimous consent to have the articles to which I have referred printed at this point in the RECORD.

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

NONPROLIFERATION: TWO VIEWS [1]

DISARMING BUT NOT DISARMING

(By Betty Pilkington)

When Washington at long last ratifies the Treaty on the Nonproliferation of Nuclear Weapons, Americans in general will probably share a common illusion: that the United States has demonstrated to the world that she not only preaches disarmament in the appropriate forums but practices it through binding international commitments.

There is, unhappily, not one ounce of actual disarmament in the package. There is no demand for the destruction or freeze or cutback of those nuclear (or other) arms now in the possession of the five nuclear powers—China, France, and the United Kingdom, but more especially the United States and the Soviet Union, cardinal framers and movers of the treaty.

Moreover, of some eight or ten measures regarded as providing a proper linkage with the treaty, none has received serious attention. Indeed, even as early as October 20, 1966, Arthur Goldberg, speaking in the UN's First Committee, had warned against "encumbering [the] negotiations . . . by any attempt to link it [the treaty] to additional disarmament[!] measures." One of those measures, a prohibition of the development or deployment of anti-ballistic missiles, now appears to have been openly defied by the Pentagon disclosure that the question is less one of "whether" than "where."

The Senate debates ratification

Senator J. William Fulbright, on the first day of the Senate Foreign Relations Committee Hearings on the treaty, confronted Secretary of State Rogers with the inherent contradiction between Article VI (the undertaking "to pursue negotiations in good faith . . . relating to . . . nuclear disarmament . . .") and deployment of the Sentinel. The Secretary not only disagreed but refused to say Yes when the Senator asked, "If this is ratified, you might be more persuaded to drop the ABM?" There is one potential plus factor here. By reiteration of that contradiction the committee hearings have fortified Senate opposition to the ABM; and if the Sentinel is in fact defeated, the treaty can claim credit.

The treaty's second sin of omission—its failure to oblige the nuclears to offer the non-nuclears guarantees against nuclear attack—was, like the first, no accident. On August 24, 1967, Ambassador William C. Foster (US), speaking before the Eighteen Nation Disarmament Committee, had termed the security of the non-nuclears a matter "which because of its complexity and the divergent interests involved, cannot be dealt with in the treaty itself."

U.N. resolution

In an attempt to answer the objections to this incredible void, the two superpowers moved through the Security Council a resolution to "accompany" the treaty. It is, however, virtually worthless since its effectiveness demands unanimity among the five permanent members of the Council, something that is most unlikely—historically so proven—when tensions are at the threat-to-the-peace-of-the-world level.

What the treaty does not do is all too clear. What it does do is not.

There are, indeed, two articles concerned with making nuclear energy for peaceful purposes more available to the non-nuclears. But the main thrust of the document is contained in the first two of its eleven articles: nuclear powers undertake not to transfer nuclear explosive devices or the control over such to "any recipient whatsoever" and not to "assist, encourage, or induce" a non-nuclear to manufacture or acquire the same; and non-nuclears, for their part, undertake not to receive, manufacture or acquire such devices.

The no-transfer obligation assumed by the nuclears had its origin in the gulf dividing the United States and the Soviet Union in the early stages of their negotiations on the treaty. The Soviet Union feared that West Germany, by either a multilateral Western nuclear defense force or a political union, would get access to nuclear weapons. In fact, this central issue is still unresolved. The language of the treaty sounds prohibitive in application of this very point, and yet the United States retains her view that a multilateral nuclear force incorporating personnel from one or more non-nuclear states would not violate the treaty, and at the same time the Soviet Union adheres to her view that it would.

But the potential hazards inherent in this central conflict of interpretation was not enough to slow the speed and fury of the US–USSR efforts, within the UN, to give the covenant a certain first round of legality by "commending" it via a General Assembly resolution (June 12, 1968; 95 to 4, with 21 abstentions).

But why that haste? And for that matter, why the treaty at all, since it addresses itself only to the threat or possibility of horizontal proliferation and not to the frightening reality of vertical proliferation?

Privately the nuclear powers seemed to see it as a means of deterring a handful of countries with the capacity and/or will to manufacture nuclear weapons—India, Canada, West Germany, Japan, Israel and others—from doing so. But it would seem highly probable that allegiance to an inequitable treaty is going to be less sacred for any of these nations in a time of crisis than the concept of national survival.

Some of the treaty's most severe critics, therefore, believe that the superpowers had other objectives, such as: (a) to restrict the public image of the nuclear club to its four UN members ("monopoly in perpetuity" was the phrase used by Kenya's late Minister of State for Foreign Affairs, Mr. Argwings-Kodhek); and by a broad ratification of the treaty, to ward off any later formation of a sizable Chinese-directed nuclear consortium; (b) by a sustained ballyhoo over something that looks like disarmament but isn't, to deflect complaints directed against the nuclears themselves for getting nowhere with real disarmament; and—as for the Why of the haste—(c) to get a formulation nailed down before the opposition had had a chance to exploit its glaring weaknesses.

Chances: Zero

The non-nuclears wanted to be able to hold their own conference well before being obliged to vote on the Assembly resolution conveying the treaty. Heady corridor pressures reduced their chances to zero. In fact, Ambasador Danieli of Tanzania stated openly (First Committee) that when his delegation and others expressed concern about the treaty "we were told that the only alternative for us was to 'take it or leave it.' We had expected . . . the spirit of accommodation—not the bitter pill of blackmail."

When the non-nuclears finally met—in Geneva, more than two months after the resolution had cleared—the issue was largely academic. But they felt that their ideas might exert some influence, if only indirectly, once the treaty had experienced a few trials-by-fire, especially in the application of those clauses designed to aid the non-nuclears in the peaceful use of nuclear energy.

Meantime, Washington's long delay between signature and ratification has done nothing to change the feeling of these countries about the inadequacy of the treaty, and most of those same states would, too, remain non-nuclear with or without a treaty.

The lineup

In all, 88 states (including East Germany) have signed it. But only 9 have to date ratified it, and among these Canada is the only "near-nuclear." Among the nuclears, only the United Kingdom has ratified it. The Soviet Union is expected to act immediately after the United States; France has of now no intention of even signing it; and China, understandably, has had no wish to become a party to a treaty that was in any way authenticated by an organization from which she is still barred.

Lyndon Johnson, as President, speaking before the General Assembly less than an hour after the crucial resolution was adopted, called the treaty the "most important international agreement in the field of disarmament since the nuclear age began." But what Lord Chalfont had said a year earlier (ENDC, Geneva) was decidely less Texan and far more relevant: "[I]f a non-proliferation treaty is not followed by serious attempts amongst the nuclear powers to dismantle some of their own vast nuclear armory, then the treaty will not last . . ."

A NUCLEAR SARAJEVO

(By Peter Steinfels)

Several years ago, nuclear non-proliferation, like integration and Adlai Stevenson's sense of humor, was an unquestioned liberal cause. But like other liberal causes, non-proliferation has become suspect. Ala-

[1] Betty Pilkington is the United Nations correspondent for Pacifica Radio, WBAI. Peter Steinfels is an associate editor of Commonweal.

stair Buchan wrote in 1966 that "the discussion about the spread of nuclear weapons and its inhibition or control is, to an even greater extent than earlier controversies about the arms control, an argument about the future structure of authority, prestige and power in the world." And since the war in Vietnam, many Americans have come to doubt the "liberal" vision of this future world structure.

No surprise then that the non-proliferation treaty, up for Senate ratification, has met a resounding lack of enthusiasm on the left as well as the usual objections from the right The treaty is very much in the interests of the U.S. and the USSR because it helps preserve their super-power status. No one has ever concealed this fact, although a few critics are discovering it now as though it were evidence of horrendous Machiavellianism. Now and then, of course, the interests of the super-powers happen to coincide with those of world peace. Still, the brutal intervention of the U.S. in Vietnam and the Soviet Union in Czechoslovakia does make their support for this peacemaking measure suspicious, if not downright hypocritical.

There are also tactical reasons for sniping at the treaty. For example, *Mayday*, in its relentless harassment of the Establishment, recently revealed that the Atomic Energy Commission's interpretation of Section 5 of the treaty would provide nuclear explosive services to American firms for oil and gas exploration without charging for taxpayer-supported research and development. Senator Fulbright and others have used the treaty's clause concerning nuclear disarmament as a club in their fight against the Sentinel antimissile defense system.

More disturbing, however, is the possibility that liberals and radicals, like Dr. Strangelove, have simply "learned to live with the bomb." The peace movement, of necessity, has shifted criticism from missiles and warheads to napalm and counter-insurgency. The generation of SANE and the Student Peace Movement is succeeded by that of Clergy Concerned and SDS. The menace of a new arms race may counteract this tendency. But meanwhile the assumption has spread that a world of many nuclear powers might be as stable as the bipolar "balance of terror" has lately appeared to be. Furthermore, sympathy for the Third World or Gaullist non-conformism renders incredible, or even ludicrous, the implicit assumption of some non-proliferation advocates that only Americans and Soviets, of all people, are mature enough to handle nuclear weapons.

Yet unless one believes that nuclear weapons are just too horrible and humans just too smart ever to use them again—shades of Mr. Nobel and his hopes for dynamite!—the possibility of proliferation should be unnerving. The international system would not be one of stable deterrence at all, but rather of a whole series of unstable arms races, overlapping and feeding back in deadly patterns. An Indian bomb to deter China (and experts have told Congress that India could have nuclear arms in six months) might require a Pakistani bomb to deter India. Since India's nuclear armament would be inferior to China's, a nuclear threat from Peking might call forth a nuclear threat from Washington to cover New Delhi, or a border incident might lead the Indians into a preemptive strike; or if Pakistan's weaponry were inferior to India's, a conflict between those two nations might draw in China, in turn drawing in the U.S., and so on. Stanley Hoffman described a series of such frightening scenarios in the American Assembly's *A World of Nuclear Powers?*

The point is that various nations would always be passing through the phases of non-hardened weapons or primitive delivery systems which would either limit their own deterrence capacities to surprise attacks on first strikes, or which, on the other hand, would tempt their opponents to "kill the snake in the egg." Enormous sums would be diverted from more rational purposes. The desire of super-powers neither to be dragged into Armageddon by their smaller partners nor to abandon these partners to nuclear blackmail or destruction might infect alliances with an intolerably dangerous degree of ambiguity. Then there are the increased chances of irrational leadership or nuclear mishap. The world would constantly stand on the verge of a new Sarajevo.

Critical objective

None of which proves that nuclear proliferation can indeed be halted at all, or that the present treaty is the best instrument to that end. It does suggest that non-proliferation remains a critical objective, and that criticism of the treaty ought to be directed toward making it more effective rather than exposing the admitted self-interest of the super-powers.

In fact, the treaty is a good, if modest, beginning. The ambiguity regarding regional nuclear armament is there, yes, and other shortcomings as well; but that only raises the old question of half a loaf, and all the metaphysical arguments attendant thereon. The whole loaf might link non-proliferation firmly with some concrete and substantial super-power disarmament; it might also give a clear "no" to the question of West German participation in a nuclear force. But the first proposal would surely postpone the treaty past the time when it could be effective in halting the drift to proliferation. The second proposal risks, as does even the present treaty, a political reaction within West Germany by giving nationalists there a handy issue. As for guarantees to non-nuclear nations, they are highly delicate and highly dangerous matters, capable of transforming local incidents into world disaster.

The treaty could be rendered worthless or even self-defeating—if it is not part of an over-all anti-proliferation policy. (As a precedent, there is the well-intentioned Eisenhower "atoms-for-peace" program, which most experts now agree helped rather than hindered proliferation.) Any anti-proliferation policy must begin with a U.S.-Soviet agreement to halt the new arms race in antimissile defense systems and additional weapons developments.

This could lead to extending the test ban to underground testing, a step blocked so far by the need to test antimissile devices. Further measures might be international inspection or ownership of all diffusion plants and chemical separation plants, and the establishment of non-nuclear zones beginning with Latin America and Africa.

On the political level, the emergence in peace-making efforts of a self-conscious non-nuclear club of nations like Canada, Germany, Japan, India, and Sweden, which would have renounced their obvious nuclear potential, might dissociate international prestige from possession of nuclear arms.

All claims to international ranking on the basis of nuclear armaments should be abandoned. Finally, and more immediately, a U.S.-Soviet understanding over the minimal security needs of India and Israel might allow those nations to forgo nuclear weapons without leading to the kind of unilateral and automatic nuclear "guarantee" that could bring on a fatal East-West confrontation.

Mr. MONDALE. Mr. President, nothing will come before Congress this year that is any more important than the Nuclear Nonproliferation Treaty before us right now.

Somehow, now, this year, before it is too late, we must begin to take the steps that will deemphasize arms and de-escalate military techniques as a means of dealing with our international problems. I hope the passage of this treaty will be followed by decisions not to deploy antiballistic missiles, by serious talks with the Soviet Union on weapons systems, and by an end to our involvement in Vietnam—in whatever order those things can be accomplished.

Before us now is the question of what kind of world this is going to be in the last third of the 20th century, and perhaps whether there will be another century for us at all. We are right up against a decision about whether or not we will have two great armed camps permanently bristling with arms and waiting for a nearly inevitable explosion.

The campaign for nuclear weapons has already shown us what happens when the United States and the Soviet Union take the line of competition rather than the line of cooperation. Once we were two nations with the power to destroy not only each other but also the rest of the world. Now, belatedly, we seek international agreement to stop the worldwide deployment of nuclear weapons. With China and France clearly in the category of nations with nuclear capability, and other nations on the way or talking about getting on the way, we are finally seeking the route of sanity with regard to nuclear weapons.

Of course, there is nothing in this treaty to assure us it will not be abrogated. There is nothing in this treaty to assure us that every nation will sign it. We must, if we sign this treaty, depend on the good faith of the international community to protect us from disaster.

But what else is there for us to depend upon—whether we talk about weapons systems, military restraint in the face of lesser or greater provocation, reaching a settlement in Vietnam, strengthening the United Nations as a force for peace—whatever the means of protecting ourselves from international disaster? International negotiations and international agreements—international good faith—are truly our only means of survival. For in a world of nuclear power and defensive alliances, any nation has the capacity to destroy the world, through provocation or intemperate response to the provocation of others.

We, the Soviet Union, and the other nations of the free and the not-so-free world, are on the verge of committing ourselves to policies about as certain to bring disaster as pushing the plunger on a charge of dynamite. Once that plunger is pushed, about the only thing that can stop the explosion is a worn-out battery.

The Nuclear Nonproliferation Treaty offers us the chance to step back, at least symbolically, from the international competition in arms, and to encourage other nations to do the same. It will be a hollow gesture if it is not followed by other steps to dampen the arms race. But anything else we might do will ring hollow as well, if we do not take the opportunity that is before us.

Mr. President, there has been a great deal of official and unofficial talk about post-Vietnam "peace dividend." Unless we stop the arms race, there will not be a dividend at all. This treaty is a vital step along the way, if not to peace, at

least to the promise of a less warlike international atmosphere.

Mr. President, this treaty should not merely be ratified. It should be ratified unanimously. I do not expect that we will accomplish that, but I urge my fellow Senators to join me in this critical step.

Mr. GOODELL. Mr. President, the history of voluntary arms control among nations has been long, but with modest achievement. Competition in arms has been the rule. Limitation, restriction and reduction of arms have come about only as hard won exceptions.

We recall that the Nuclear Nonproliferation Treaty, the most far-reaching nuclear disarmament document to date, has emerged after over 7 years of laborious talks among nations, including over three years of intensive Soviet-American negotiation.

In the Senate, the treaty has received concentrated study by the Senate Foreign Relations Committee and incisive review on the Senate floor. The time has now come to make a decision.

I strongly support ratification of the Nonproliferation Treaty. I am gratified that the resolutions and understandings offered to the treaty, the net effect of which would have added little to its substance while weakening its acceptability to other nations, have been soundly defeated.

In essence, this treaty bans the spread of nuclear weapons. It also provides the nonnuclear nations access to the benefits of nuclear energy for peaceful purposes. As such, it is a document with advantages to both nuclear and nonnuclear countries.

In effect, the treaty presents us with a way to minimize the prospects of nuclear war from a variety of sources. Equally important, it involves a conception about future relations among nations and the nature of world stability. The treaty envisions cooperation among nations rather than vicious arms competition. In these important respects, the treaty advances our national security and foreign policy interests.

The treaty represents a consensus among the signatory nations that proliferation of nuclear weapons could seriously increase the danger of nuclear war. It represents a consensus among nuclear and nonnuclear nations that there are shared national interests even amid great differences; despite other conflicting interests, there is ground for common action to reduce the risk of nuclear war.

Throughout Senate consideration of the Nonproliferation Treaty several fundamental points have emerged:

The treaty is presently weakened in effectiveness by nonsignatories. The treaty has been rejected by nuclear nations France and Communist China. It has yet to be signed by West Germany, India, Israel, and Japan. Nevertheless, the treaty does represent a major step toward halting the spread of nuclear weapons and it is a framework for cooperation among nations;

The treaty is in no way to be construed as establishing new commitments by the United States to defend nonnuclear nations threatened by nuclear aggression.

The treaty does not provide for reduction of nuclear armaments of the United States or any other nation; rather it checks the spread of nuclear weapons to nonnuclear nations.

There are many things at stake in our advice and consent on the Nonproliferation Treaty. At one level, at stake is the usefulness of the United Nations and the Eighteen Nation Disarmament Conference—ENDC—in providing a forum for international discussion and action. Clearly these forums are of increasing importance to the nations of the world.

At another level, at stake is the advance already made in expanding agreement on nuclear weapons beyond the United States and the Soviet Union. Prior to the Nonproliferation Treaty, focus was on Soviet and American agreement on nuclear weapons and minimizing nuclear risks. We recall the "hot line," the atmosphere Test Ban Treaty, and the nonmilitarization of outer space. Today, with the Nonproliferation Treaty we seek agreement from the other nations of the world.

At still another level, at stake is the future of general disarmament and the likelihood of mutual and parallel steps in this direction. Article VI of the treaty provides that each party to the treaty "undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

Clearly, there is unfinished disarmament work on nuclear testing and on qualitative limitations to the escalation of nuclear arms between the United States and the Soviet Union.

In addition, there is an area of biological and chemical warfare—BCW. While we talk of minimizing the dangers of nuclear devastation, let us be reminded of the fear, panic, casualty, and death caused by the toxic environment of gas used in World War I. There is presently growing concern over herbicidal chemicals and their use in war. Experience demonstrates the impact that science and technology can have on the battlefield and forecasts the insidious nature which weapons could have in future wars unless checked. There is an urgent need for clarification on just what constitutes biological and chemical warfare. There is the pressing need for the nations of the world not only to condemn the use of biological and chemical warfare—BCW—but also to limit its production.

The Nonproliferation Treaty, then, is one step in preventing the proliferation of nuclear confrontation. Further steps toward easing international tension and increasing mutual trust are based on the question of whether the interests we hold in common with other nations provide a sufficient basis for further cooperative action.

While we speak of preventing the spread of nuclear weapons, nations of the world will not accede unless and until their problems of national security are solved.

Ratification of the Nonproliferation Treaty, then, must be paralleled with increased efforts at confidence-building among nations. President Nixon's recent trip to Europe, his consultations with the leadership of Western Europe, his willingness to meet with the Soviet Union in missile talks, his expressed interest in listening to the leadership of the nations of the world are a hopeful sign in this confidence-building.

For the above reasons, I am pleased to join with other Senators in urging advice and consent to the ratification of the Nonproliferation Treaty.

Mr. HARTKE. Mr. President, I support and shall vote for ratification of the Treaty on Nonproliferation of Nuclear Weapons presently before us.

The arguments both pro and con ratification have been ably marshaled and presented to us in the report of the Committee on Foreign Relations. By a nearly unanimous vote the committee, under the brilliant leadership of its distinguished chairman, the Senator from Arkansas (Mr. FULBRIGHT), has strongly recommended ratification. Other Senators of great distinction have debated the question, both in support of and opposition to the committee's recommendation, in a manner that reflects the highest possible credit upon this body and reinforces its status as the greatest deliberative assembly in the world.

I may say, too, Mr. President, that the quality of this debate should serve to remind the Nation—if indeed it needed any reminders during this tragic era of our Vietnam involvement—that competence on the deepest problems of international politics is by no means confined to members of the executive branch of Government.

The question now before us is whether we should advise and consent to the ratification of the Treaty on Nonproliferation of Nuclear Weapons. I have already stated that I shall vote "yea" on the absolutely fundamental grounds that it is in the vital interest of the United States to adhere to the treaty. Not even the opponents of the resolution deny that effective steps to halt the spread of nuclear weapons are indeed vitally important to us. The only question is, does this treaty hold promise of being an effective means to that end? I believe it does, Mr. President, and wish at this time to address myself to one aspect of crucial importance to an assessment of the treaty's feasibility.

It can be put in the form of a simple query: Can we trust the Russians? Can we trust them to abide by the terms of the treaty and not take some sort of insidious advantage of our own good faith?

The answer seems to me perfectly clear. We cannot trust the Russians to abide by any agreement, formal or informal, which they believe to be harmful to their own interests. But neither can we trust the British, the French, the Indians, the Mexicans, or any other nation that now exists or ever has existed, to live up to the terms of a commitment that they come to regard as inimical to their own vital interests. Nor indeed, Mr. President, has the United States ever sacrificed a vital interest in order

to fulfill an undertaking that, because of changed circumstances, appeared threatening to us.

But we can trust the Russians—and they us—to comply faithfully with the terms of a mutually advantageous agreement. So the judgment we have to make is whether, in fact, the Soviet Union shares with us an interest in preventing the spread of nuclear weapons throughout the world. And alternatively, are there circumstances in which the leaders of the Kremlin would perceive important advantages to themselves in providing nuclear arms to states which do not now possess them?

Again, the answer to both these questions seems to me perfectly clear. The Soviet Union has demonstrated in every conceivable way that they, like us, view the prospect of a nuclear war with utter horror. On every occasion since the dawn of the atomic age when confrontation between us seemed imminent, or even possible, they have joined with us in defusing the crisis. And indeed in some instances—most notably the Berlin confrontation of late 1961—the Russians unilaterally pulled back from a position on which their leaders had staked a considerable measure of reputation. I emphasize the word "unilaterally"; they themselves defused the very dangerous Berlin situation without the slightest concession on our part. This seems to me a telling indication of their profound concern to avoid nuclear confrontation. And by joining with us and other signatory powers in limiting the spread of nuclear weapons, the Soviets enhance their own vital national interest in lessening the possibility that confrontations will be imposed upon them—or us—by circumstances outside our control.

Let us look at the matter of Soviet good faith from the vantage point of the second question I raised: Could the Russians gain some positive advantage by secretely providing nuclear arms to their friends and allies? If the weapons were ever to be used, such an act of madness could come about in only two ways: the Soviet-armed state could launch an attack with Kremlin permission or without it. If the latter, the Soviet Union itself would then be engulfed in a nuclear catastrophe against its own wishes. If the former, it would suffer the same immeasurable disaster without having had whatever strategic advantage accrues from precise controls over the timing and targeting of the attack.

For there can be no mistaking the consequences of a nuclear attack by any nation upon any nation: the nuclear superpowers would inevitably, irresistibly be drawn into the maelstrom of retaliation and counterretaliation. Can we, for example, envision the United States sitting idly by while Egypt, say, launched a nuclear assault—the weapons supplied by Russia—against Israel? Can we envision the Soviets sitting idly by while Greece, say, lauched a nuclear assault—the weapons supplied by this country—against Bulgaria?

No, Mr. President, the situation is entirely clear: There is absolutely no advantage to be gained, this side of Armageddon, for either the Russians or ourselves to provide other nations with means of waging nuclear war. Hence, to join with the Soviet Union in a Nonproliferation Treaty is not at all to rest our national security upon Soviet good faith, benevolence, or high-mindedness. It is a matter, plainly and simply, of recognizing that Russian interests, like ours, require their compliance with the terms of the treaty. For them to violate the treaty is to place their own vital interests in jeopardy. That is the most nearly perfect guarantee we can have or hope to have—that they will abide by an undertaking of this sort.

None of what I have said, Mr. President, is meant to suggest that the problem of nuclear weapons proliferation will be definitively settled by our ratification of this treaty or by the Soviet Union's strict observance of its terms. We shall still have to live with the fact of French and Chinese refusal to become signatories and with the expressed unwillingness of other nations that have the technical capacity to become nuclear powers in the near future. But it is surely no argument against this or any other treaty to say that it falls short of perfection. It is a step—a large, useful step—in the direction of a goal all civilized people wish to attain—a world in which the word "nuclear" will be associated in men's minds not with nightmare and annihilation but with progress and abundance for all the peoples of the world.

Mr. NELSON. Mr. President, the awesome power of the hydrogen bomb is known to all of us. Today, five nations, Great Britain, France, Russia, China, and the United States have nuclear weapons, and about 25 other countries have the technological and economic potential to develop them also. As the membership in the nuclear club increases, the chance that some irresponsible nation might unleash this vast power grows greater. Therefore, stopping the spread of nuclear weapons should be of vital concern to men everywhere.

Certainly, we are aware that the triggering of nuclear warfare would bring disaster to all countries involved. It is crucial that further proliferation of this enormous power be stopped.

The ratification by the U.S. Senate of the Nuclear Nonproliferation Treaty is a most important step in that direction. This treaty is another wedge in our attempt to stop the insane rush that has propelled our civilization towards self destruction.

Our country has a long history of trying to control this devastating power—in 1946 the Baruch plan proposed an international authority to control all dangerous atomic materials from the mining process to the manufacturing of finished products. Approval of this plan would have removed nuclear energy from the military field, but unfortunately it was not adopted. However, in the same year, 1946, the McMahon Act prohibiting the proliferation of nuclear weapons to any other nation, passed the Congress. This unilateral action indicated to the rest of the world that the United States had no intention of sharing this military power with other nations. However, other countries did develop the bomb, first Russia, then Great Britain, France, and most recently China. Despite the spread of the bomb to other nations, in 1954 we reiterated our pledge not to share the U.S. nuclear military expertise with other nations, when we passed the Atomic Energy Act.

Ever since the Soviets exploded their first atomic bomb, the United States has sought to reach an agreement with Russia limiting the use of atomic energy to peaceful purposes. In 1963, the first breakthrough was made with the Soviets. A Nuclear Test Ban Treaty was mutually negotiated and found acceptable to us and the other major world powers. Testing of weaponry in the atmosphere was prohibited, and neither Russia nor the United States had broken its pledge in this regard.

In 1963, all Americans hailed this treaty as a great step forward.

In 1963, our nuclear sophistication and know-how was so great that our national security was not at all endangered by ratification of that treaty. There was no need for further atmospheric testing. Today we have stockpiled vast stores of atomic weaponry. We have enough hydrogen bombs to explode every form of matter in existence. To be sure, the Russians probably have a force equivalent to ours.

But while our military strength is enormous, there have been events that could have precipitated a nuclear disaster.

Fortunately, the lines of communication between Russia and the United States have been kept open, and differences have been discussed—disputes settled.

However, as atomic warheads and nuclear weaponry proliferate, the channels toward peaceful resolution of problems become more difficult to negotiate.

In recognition of this fact, the U.S. Senate in 1966 unanimously adopted a resolution urging the President to negotiate an international agreement limiting the spread of nuclear weapons. On this issue, there was no partisan dissent. But yet today after an agreement has been negotiated, and after 87 nations have already signed the treaty, including the U.S.S.R. and Great Britain, some are heard to say, "Maybe the Senate ought not to ratify this treaty."

This Nation cannot afford to let the irresponsible voices win out over the sensible arguments pressing for ratification of the Nuclear Nonproliferation Treaty. Men of great military and political expertise such as General Wheeler, Deputy Secretary of Defense Nitze have testified before the Senate Foreign Relations Committee urging speedy approval of this treaty. I think their dialog is of particular importance, and let me read it to you now:

Senator PASTORE. Now there is absolutely nothing in this treaty that is of a disadvantage to us in a military sense. Is that true?

General WHEELER. That is my belief, sir.

Senator PASTORE. As a matter of fact, all that the military, all that the nuclear powers, are being asked to do is not pass the control of these weapons to other countries.

General WHEELER. That is correct, sir.

Senator HICKENLOOPER. Does this treaty

create any inhibitions on our own national defense?

Secretary NITZE. It does not, Senator.

General WHEELER. That is my view also, Senator.

The Secretary of State, under the Johnson administration, Dean Rusk, has wisely counseled the Senate along with other high-ranking Government officials for speedy acceptance.

I, too, believe that the Senate should give its advice and consent to this treaty. Failure to do so in this session of Congress would be irresponsible and detrimental to the cause of world stability and peace.

The incorrect conception that this treaty is against the interests of the security of the United States should not be given legitimacy and credence. The Nuclear Nonproliferation Treaty in no way affects our nuclear capacity. It simply provides assurance that the nations without nuclear weapons will not develop the military aspects of atomic energy but will direct atomic know-how for peaceful purposes only. The treaty also commits the nations with nuclear capacity not to transfer nuclear weapons or control over them to any other nonnuclear power.

While the Nuclear Nonproliferation Treaty represents a step forward, it is not the end of the road. It does mark an improvement over the present situation—possibly 100 nations will be signatories of this treaty—this seems to be a milestone in the progress of international diplomacy.

Sharing the knowledge of nuclear power for peaceful purposes can bring great benefits to the people of the world. Nuclear energy is now helping us to treat and diagnose the sick, to produce and grow better crops, and to run industries more efficiently. Most dramatically dozens of nuclear power stations will produce millions of kilowatts of electricity. We can even look forward to the day when the energy from large nuclear reactors will produce fresh water, fertilizers, in addition to more electrical powers.

During the Truman, Eisenhower, Kennedy, and Johnson administrations, every effort was made by Americans, regardless of party, to work out sensible international agreements involving atomic materials. The search for some formula to control the spread of nuclear weapons has been an important and urgent task of four administrations.

Today in 1969 speaking in favor of the Nuclear Nonproliferation Treaty to prevent the spread of nuclear weapons this is the question we face: Are we now going to turn our backs and repudiate the work of four administrations and the advice of the new Nixon regime to ratify, ignore the advice of our leading military and Government officials; or are we going to speedily ratify the Nuclear Nonproliferation Treaty?

The question has been put forward—my vote is for ratification.

Mr. PERCY. Mr. President, the Treaty on the Nonproliferation of Nuclear Weapons raises many questions, some of which have been ably answered on this floor in the past few days, and others which have as yet been unanswered. I have consulted with the able and distinguished Senator from Maryland (Mr. MATHIAS), and we concur that the following questions are pertinent, and we feel that the answers provide an adequate basis for supporting ratification of the treaty. The questions we have asked ourselves follow:

Question: When will the Soviet Union ratify?

Answer: On the one hand, one might expect the U.S.S.R. to delay deposit of ratification until the United States had deposited and West Germany had at least signed. On the other hand, the Soviets might believe they would have more leverage if they deposited in the not too distant future, possibly at the same time as the United States, and thereby would be able to exert more pressure on nonsignatories and nonratifiers.

Question: What of the intention of France and Communist China not to sign?

Answer: There is no doubt that the treaty would be relatively stronger if both Communist China and France were to sign. However, every nonnuclear nation which signs eliminates itself as a recipient of nuclear weapons, including from nuclear powers who do not sign the treaty. Already 84 nonnuclear nations have signed, and we anticipate many more.

Moreover, the NPT contains an obligation that nonnuclear powers should not make nuclear weapons on their own, and this obligation obviously is not affected by the nonadherence of France and Communist China.

There is no reason to presume that Communist China and France would place nuclear weapons in the hands of other seven if they were in a position to do so. In fact, the French Ambassador stated at the United Nations that "France will behave in the future in this field exactly as the states adhering to the treaty."

Question: What is the status of the major non-nuclear-weapon nonsignatories?

Answer: Nine countries are judged capable of producing some nuclear weapons within 5 years. Four have already signed the NPT: Canada, Italy, the Netherlands, and Sweden. Those that have not yet signed are Australia, Federal Republic of Germany, India, Israel, and Japan.

Among those other states with some nuclear weapon potential, but whose resources are more limited so that it would take longer to develop sizable and sophisticated nuclear weapons and delivery systems, seven have not signed: Argentina, Brazil, Chile, Pakistan, South Africa, Spain, and Switzerland.

Nearly all of these countries support the principle of nonproliferation. Their decisions will be influenced by U.S. action on the treaty, by the actions of their neighbors, and by progress in controlling the arms race. Some have reservations concerning technical aspects of the treaty. India has indicated that it does not plan to sign. Brazil believes the treaty should not have prohibited national acquisition of nuclear explosives for peaceful purposes.

Question: What effect does NPT have on NATO relationships?

Answer: Our NATO allies were consulted at significant steps in the negotiation of the NPT. It is indicative of their support that 11 of those 14 allies have now signed the treaty.

Our NATO allies raised a number of questions about the treaty's effect. The following statements were developed to answer these concerns and they now form part of the legislative history of the treaty:

> The treaty deals only with what is prohibited; not with what is permitted. . . . It does not deal with allied consultations and planning on nuclear defense so long as no transfer of nuclear weapons or control over them results. It does not deal with arrangements for deployment of nuclear weapons within allied territory as these do not involve any transfer of nuclear weapons or control over them unless and until a decision were made to go to war, at which time the treaty would no longer be controlling.

General Wheeler, at the July hearings, restated the U.S. principle that "any international agreement on the control of nuclear weapons must not operate to the disadvantage of the United States and our allies," and asserted that this principle has been observed.

Question: Why not permit proliferation of "purely defensive" nuclear weapons?

Answer: Section 92 of Atomic Energy Act of 1954, as amended, the successor to the McMahon Act of 1946, prohibits the transfer of atomic weapons in foreign commerce, in any form. NPT, therefore, merely confirms U.S. domestic legislation of 23 years.

Furthermore, at present there is no such thing as a "purely defensive" nuclear weapon. There is at present no foolproof way of rigging nuclear weapons to fire only defensively. Therefore, defensive proliferation is potentially offensive proliferation.

Even if it becomes possible to design tamperproof systems which would prevent ABM warheads from being used offensively, the recipient could discover the technology of manufacturing offensive weapons by uncovering the secrets of defensive ABM warhead, for example by X-rays.

Even if technically possible to develop an ABM warhead so that recipients could not acquire design information through the use of X-rays, and so forth, there would be political and economic disadvantages in providing "purely defensive" weapons. We have no idea, for one, what something not yet developed is likely to cost, but it is clear the cost would be great. Secondly, could we assure the "purely defensive" weapons would be effective? Also, since the casing of the warhead would have to be "sealed" if tampering was to be avoided, the recipient which had invested vast sums of money would have no way of assuring that the warhead was properly maintained. In addition, it is difficult to foresee that a third country which might find itself threatened by one of its neighbors acquiring a nuclear potential, would accept at face value the assertion that

the warhead was solely defensive in nature.

Question: Are International Atomic Energy Agency safeguards adequate?

Answer: During last July's hearings there was a good deal of discussion as to whether the IAEA was in a position to fulfill its safeguard responsibilities under article III. General Wheeler stated that the Joint Chiefs of Staff believed the safeguards will be adequate for purposes of verification of the NPT. Deputy Defense Secretary Nitze agreed. AEC Chairman Seaborg stated that it is quite within the capability of the IAEA to take on the safeguards responsibility.

Some have criticized NPT for not having empowered IAEA to search for clandestine nuclear facilities. If such extensive police powers had been given IAEA, NPT would have become unacceptable to most non-nuclear-weapon states. A worldwide system of safeguards under NPT will have sufficient crosschecks and controls on the supply of nuclear material to give us a handle we do not have today with regard to problems of clandestine facilities. With NPT in force, interested countries will be very alert to undeclared or clandestine facilities and undoubtedly will use their intelligence resources. If indications of a clandestine facility were found, questions of violation would arise. We would then have numerous recourses available; use of Security Council, withdrawal under article X, and so forth.

Question: Do the "security assurances" contain a new commitment?

Answer: No. They merely reflect the basic concept underlying the Charter of the United Nations itself. In article 24 of the Charter, the U.N. members "confer on the Security Council primary responsibility for the maintenance of international peace and security." We have incurred no additional obligations beyond those implicit in our permanent membership on the Council.

The United States remains free to use its veto power in case a future resolution before the Security Council seems contrary to U.S. national interests. The question would only arise in the event of a grave situation which would have to be considered in light of all aspects of the situation at that time. Nothing in these security assurances binds the United States to a preconceived position regarding a hypothetical future situation. Our actions at the time would be based on our national interest as seen by the President in consultation with the leaders of Congress.

Question: Since not a new commitment, what is the importance of the Security Assurances Resolution?

Answer: It is reinforcement of the Security Council's capacity for dealing with a very serious problem. This reinforcement is made possible by an unprecedented measure of agreement and reflects significant common purpose among nuclear power NPT signatories.

It is unrealistic to expect an alliance-type specific commitment to the whole world. Also, the nonalined nations might not want such a commitment since it could imply political commitment affecting their nonalined status.

Mr. WILLIAMS of New Jersey. Mr. President, our debate on ratification of the Nuclear Nonproliferation Treaty poses a mighty question for all mankind. The question is simply this: Does man, the maker of mechanical marvels, have the capacity to control that which he makes? Can humanity still write its own history, or will the frenzied tools of technology run away with the age?

It is not an idle question, particularly when applied to atomic energy. By 1985, plutonium byproducts from atomic powerplants will be sufficient to build 20 nuclear bombs a day. Twenty bombs a day, plus the weaponry in our 1,000 Minuteman sites, our 40 Polaris submarines and our 600 long-range bombers, is clearly enough machinery to render one error, one miscalculation, man's last error on earth.

The Kingston Trio had a verse in a song which began modern protest folk music. It went:

> But we should be thankful and tranquil and proud; for man was endowed with a mushroom-shaped cloud; and we may be certain that some lucky day, someone will set the spark off, and we will all be blown away.

It could happen. If only one-fifth of our "ready" weapons were delivered on the Soviet Union, we would eliminate one-third of the Russian population and one-half its industry. All estimates place the Russian capacity to strike at the United States somewhere near this level; thus, the balance of terror is truly worldwide. In numbers of weapons, we possess nuclear armament sufficient to undo civilization.

These are the mathematics of madness.

Surely there is some hope that man can carry on his international affairs without recourse to the terrible machines of war. Surely there is enough courage left in the world to turn away from nuclear weapons and look instead to the economic and political devices of international relations.

American youth has told us that we must build a world free from the anxieties, frustrations, and injustices of war. Youth has told us that we are not free to sit complacently by while man perpetuates his inhumanity to man. Never before has the so-called establishment been as aware of a generation which cannot and will not blindly accept war's merciless penalties. It is our responsibility—the older generation, the establishment—to prove that we share youth's hope for a better world.

If there is such hope, then the Nuclear Nonproliferation Treaty is a mandatory step down the road to an eventual decrease in weaponry. In its present form, the treaty is a straightforward pledge to curb the spread of nuclear weapons to nonnuclear nations, while at the same time offering to share the peaceful uses of nuclear fission with those same countries. The treaty is an international agreement on the need to keep the peace, by limiting the availability of nuclear weapons whose very existence hang over our world like a gathering storm.

In addition, the joint signatures of the Soviet Union and the United States to this treaty would further induce each nonnuclear nation to become a signatory of the treaty. At the same time, such action would alleviate a great deal of pressure now felt by the various nations which feel they must now develop their own nuclear weaponry. Those nations which suspect or know that their rivals have nuclear capability now feel the imperative to acquire similar capabilities. Suspicion could be replaced by the beginnings of mutual trust and assurance that neither nation would engage in the acquisition of nuclear weapons. This would be further reinforced by the mandatory submission of each nation's peaceful nuclear facilities to international inspection.

Does the Nonproliferation Treaty guarantee that there will be no nuclear war? We must all certainly wish that peace could be projected on a piece of paper, but unfortunately, such is not the case. Wars, and their elimination, are the province of proud and passionate men; and for the time, we can only hope that this treaty signals the beginning of a series of agreements which move mankind farther away from war.

We must admit to ourselves that many countries are so bound up in nationalism, factionalism, regionalism, and ideological conflict that they cannot objectively view the future, nor control the forces which sweep them along the crest of history.

It is time to face the sobering acknowledgement that there are some nations with a capability to create nuclear weapons, which are at swords point with other nations. Should they possess these weapons, and face military defeat, they might be tempted to resort to any extreme in order to survive.

We may use adjectives like "selfish" and "unthinking," but a value judgment, though it may be valid, is hardly useful after a bomb has been dropped and wiped out either a part of or all of mankind. We must be pragmatic. We have to deal with what is. Existence in our time will have to depend a great deal on seeing people as they are, not as they should be.

There have been men in high positions of authority who have sacrificed their own armies in the past, as well as the well-being of entire populations. We have every reason to fear that such men would be little interested in peace and survival of our entire world.

The time has come when these acrimonious crusades must end, and peace must be prized above all other of man's works. The world's governments can no longer afford the folly of spending almost $200 billion a year for war and its weapons. The world's nations cannot continue to build for Armageddon, because no one will be left to witness it if it ever comes.

Unfortunately, the United States has led the madness in recent years; so much so that the very Soviet arms buildup we are trying to match has come about, in large measure, in reaction to what Russia sees us doing. Who knows, for example, what new handiwork will roll off the Russian and Chinese assembly lines if we rush to build a "thin" antiballistic-missile system? And who knows 10

years from now, what new weaponry we will have to develop to counter the latest Russian and Chinese devices?

No one knows. Only one thing is certain: if all these weapons are built, and given to all the nations of the world in the name of some insane brand of "security," we will never know true security again—if we live to know anything again.

Our Department of Defense is a large, powerful organization. It is rich, largely due to inadequate investigation of its funds both by the budgetary people in the administration and the Congress. How is the Department of Defense to be made more accountable for their action and reaction? And secondly, to whom should they be responsible? Mistakes are costly, and are of particular concern when people pay their taxes. They concern us all, because our dollars might better be used to combat the crisis in the cities, improve conditions for our senior citizens, poor, disabled, and hungry. We should reflect on what it means for 90 percent of Federal research and development to be directed to military programs. $20 billion is spent on the sciences while $20 million is spent on the arts. Is science really 1,000 times more important than the arts?

The U.S. Senate has the opportunity to write the answer to the mighty question of man's control over his machines. If we ratify this treaty, perhaps other negotiations on arms control will soon follow. If arms negotiations proceed, perhaps nations will begin to turn away from war's ugly hardware and turn instead to tools that build. Perhaps, in our lifetime, some of the barriers will be lowered, and some of the tensions eased.

The Nuclear Nonproliferation Treaty is one step toward relieving the insecurity which constantly haunts us. Other steps have been taken: In 1959, the Antarctic Treaty barred nuclear weapons from the Antarctic bases. The Test-Ban Treaty of 1963 prohibited nuclear explosions in the atmosphere, in the seas, and in outer space. The 1967 treaty governed the exploration and use of outer space. Now the Nonproliferation Treaty aims at preventing the spread of nuclear weapons.

The United States has signed this treaty. So have the Soviet Union and Great Britain, and 53 other states. The idea of negotiations for nonproliferation received the overwhelming support of this Senate, when we supported Senator Pastore's 1966 resolution on nonproliferation by a vote of 84 to 0. Nonproliferation is, and has been, bipartisan, international, multilateral, and high on the agenda of most peace-loving nations.

I am sure that there are those who would not like the United States to take the risk for peace. They would have us sit snug and secure, surrounded by missiles and loaded with enough warheads to set off the eclipse. They would even have us give these weapons to as many other nations as possible, so that they will be on our side if the shooting starts.

There will be no sides if the nuclear shooting starts. There will be only the empty roar of self-destruction, and the whimper of a ruined earth. No postures, no flexibility, no alternatives, no policy decisions, no mutual interests, no safeguards, no alliances, no obligations, no consultations. There will be nothing.

Last year, the Senate consented to the ratification by the President of 15 treaties, but it did not approve the one which the President called at the United Nations, "the most important international agreement in the field of disarmament since the nuclear age began."

The U.S. Senate has the chance to start down the road to world peace. Let history show that America gave this incredible decision not to kings, not to rulers, but to a legislature of common men: farmers, storekeepers, lawyers, workingmen who have the mandate to act for the common good.

Will we act for the common good? Will we finally see that the path of nuclear weaponry is the path to oblivion? I believe that we will, Mr. President, for in the end, I believe in man's triumph over his own machinery. We will ratify the Nuclear Nonproliferation Treaty because in the name of our children's dreams, we must not miss this chance at one more link in the chain of peace.

Mr. HOLLINGS. Mr. President, the intent of the Nuclear Nonproliferation Treaty is good, but the time for its ratification is bad. America's stand is for the sovereignty of nations, and the treaty expressly recognizes the territorial integrity of nations. Yet before it can be ratified, the Soviet has already violated the integrity of Czechoslovakia. This comes at a time when the Soviet is openly supporting aggression in Vietnam and the Middle East. Our NATO allies are wavering from the bonds of the alliance because they feel that they cannot rely on the United States to act in their defense. This treaty would forbid the supplying of nuclear weaponry to NATO. The treaty at this time takes on the hue of appeasement to the Soviet, while the Soviet is on the march. While the Soviet refuses inspection, both Presidents Johnson and Nixon announce that the United States will submit to inspection. We hail President Nixon's trip to repair fences with our European allies on the one hand, while we tear them down at home. If the Soviet would cool it in Europe, the Middle East, the Far East, if they would submit to inspection, then I could support this Nonproliferation Treaty. I believe that the Soviet should show good faith as provided in the treaty in negotiations and disarmament talks rather than the continued bad faith so evident. When this is done, it will be appropriate for the Senate to formally ratify.

Mr. TALMADGE. Mr. President, I have given considerable serious deliberation to the responsibility of my vote on ratification of the Nuclear Nonproliferation Treaty. I have decided to vote for ratification.

Although I am well aware of some of the weaknesses and uncertainties regarding this treaty, I have concluded that its actual good points outweigh its potentially bad ones.

I know that the treaty does not set forth adequate inspection safeguards. They are in fact vague and uncertain and even nonexistent. Under the treaty, it is the responsibility of the International Atomic Energy Agency to work out separate inspection agreements with each signatory nation. But we have no way of knowing at this time how safe these safeguards will be, or how effective.

Furthermore, we do not know at this time what happens if satisfactory inspection agreements cannot be concluded. Nor do we know what enforcement provisions there will be if subsequent inspections reveal a secret violation.

These are only some of the aspects of this treaty that indicate that it rests in large part on the good faith of the parties concerned. I hope, and all the world hopes, that our trust will not be abused.

There are also practical questions about the effectiveness of the treaty. France and Communist China, both already nuclear powers, have indicated they do not intend to adhere to the treaty in the foreseeable future. There is also doubt that the so-called threshold countries, which can be expected to soon have technological nuclear capabilities, will sign the treaty, including West Germany, India, Israel, and Japan. However, these countries are not likely to be able to produce both effective nuclear weapons and reliable delivery systems without substantial assistance from either the Soviet Union or the United States. Thus, even without the signature of the threshold nations, the treaty would have the meritorious effect of making nuclear activity for them virtually impossible.

We have to also recognize the fact that the Soviet Union has a long record of violated treaties and broken promises. Communist actions of the past give the free world good reason to suspect that the Soviet Union will honor solemn international agreements only as long as it serves their national goals to do so. For this reason, there will have to be dependable inspection agreements with the signatory nations. These agreements must be reliable. They must be enforceable.

Mr. President, although I have raised some objections and doubts to the treaty, I am constrained to support this ratification. No responsible citizen—of the free world or of the Communist world—can fail to be horrified by the prospect of nuclear warfare. We must do everything possible to keep a nuclear holocaust from being triggered by the madness of a two-bit dictator of some small and unstable government. We need some kind of positive insurance that it will not be possible for this to happen in the immediate future or at any time in the distant future.

We all know that the danger of thermonuclear warfare increases in direct proportion to the number of nations that possess a destructive nuclear force. It is to the advantage of the Soviet Union as well as the United States to act now to restrict the spread of nuclear weapons. It is to the advantage of people everywhere to prevent a nuclear war in which all the world would lose.

If both the letter and the spirit of this treaty are strictly adhered to, then we will have taken an important step

toward preserving nuclear sanity in a very troubled world.

We cannot expect too much of this treaty. But it can be regarded as an act of good faith, on our part and I hope on the part of all the signatory nations, particularly the Soviet Union, that will bring us closer to the strengthening and preservation of world peace.

Mr. FONG. Mr. President, the U.S. Senate is once again called on to give its advice and consent to a treaty that could potentially have a profound effect on the survival of mankind.

The principal provisions of the Treaty on the Nonproliferation of Nuclear Weapons may be summarized as follows:

First. Prohibit nuclear weapon states from transferring to any recipient nuclear weapons or other nuclear explosive devices or control over them;

Second. Prohibit nuclear weapon states from helping nonnuclear weapon nations to develop their own nuclear weapons or other nuclear explosive devices;

Third. Prohibit nonnuclear weapon states from receiving nuclear weapons or other nuclear explosive devices or from manufacturing their own;

Fourth. Provide for effective safeguards on the peaceful nuclear activities of nonnuclear weapon states to assure that no nuclear materials are diverted to nuclear weapons;

Fifth. Encourage cooperation between nuclear and nonnuclear weapon nations to insure that all will benefit from the peaceful uses of nuclear energy; and

Sixth. Affirm the responsibility of the nuclear weapon states to strive for effective measures to end the nuclear arms race and promote disarmament.

Ever since the Nonproliferation Treaty was signed on July 1, 1968, I have been reading and studying the statements and testimony of our country's leading diplomats, military leaders, civilian advisers, and concerned citizens.

I have scrutinized and examined with great care the extensive testimony that was given before the Joint Committee on Atomic Energy in 1966, and the Senate Foreign Relations Committee in 1968 and 1969. I am also well aware of the views of some members of the Senate Armed Services Committee, which examined the treaty in closed session this year. I have read and studied the statements of former President Johnson and President Nixon, and have followed the speeches made by my colleagues on the Senate floor.

I withheld final judgment on this issue until I had an opportunity to study and analyze closely all the evidence and all the views of our country's most knowledgeable persons. Because the ratification or rejection of this treaty could have considerable repercussions for the future of our Nation and our civilization, I wanted to be sure that when I cast my vote I would have considered and weighed all the possible arguments for and against the treaty.

In arriving at my decision I have been impelled by one overriding consideration, and one consideration only: Is this treaty in the best interests of America?

Many factors—security, diplomatic, military, political, historic, and others—are relevant in deciding what constituted the best interests of our country. After evaluating each of these factors, after weighing their relative importance and all the pros and cons, I concluded that ratification of the Treaty on the Nonproliferation of Nuclear Weapons is indeed in the best interests of our country.

For this reason, and for reasons which I shall subsequently outline, I shall vote for ratification.

HISTORICAL DEVELOPMENTS LEADING TO NUCLEAR NONPROLIFERATION TREATY

Mr. President, the first effort to bring the atom under effective international control took place in Washington, D.C., on November 15, 1945—at a time when the United States alone possessed a nuclear weapon. On that date the United States, the United Kingdom, and Canada declared their willingness to join with other nations in sharing, on a reciprocal basis, information on nuclear energy for peaceful purposes.

During that period, important proposals concerning the international control of nuclear energy were presented to the United Nations by Bernard Baruch—in 1946. The Baruch plan, as the American proposals came to be known, contemplated the establishment of an International Atomic Development Authority, whose functions would include the following:

First. Control or ownership of all nuclear energy activities potentially dangerous to world security;

Second. Control, inspection, and licensing of all other nuclear activities;

Third. Promotion of the beneficial energy; and

Fourth. Control of nuclear raw materials and primary nuclear production plants.

Under the Baruch plan, the manufacture of nuclear weapons would have ceased, all existing weapons would have been destroyed as weapons and the useful nuclear material transferred to the international agency for peaceful purposes.

This very generous offer by the United States, if accepted and universally adhered to, would have meant the removal of the threat of nuclear weapons at the very outset. It would have allowed all nations of the world to enter the nuclear age in a joint and peaceful endeavor.

Unfortunately, international experience with the atom was limited in 1946. No agreement was reached because, in large part, the Soviet Union refused to agree.

Although no international agreement was reached, the U.S. Congress enacted the McMahon Act of 1946, prohibiting the Government from proliferating nuclear weaponry know-how to any other country. The McMahon Act subsequently was incorporated in the Atomic Energy Act of 1954.

Thus, the United States unilaterally acted to prevent the spread of nuclear armaments, and has been in the forefront of this effort ever since that period.

ATOMS FOR PEACE

Mr. President, by the early 1950's it had become apparent that the United States no longer possessed a monopoly on nuclear technology, either for military or peaceful purposes. Several countries, especially the Soviet Union, had developed substantial nuclear programs of their own. However, these technological advancements were not accompanied by programs in the field of arms control or disarmament through negotiations with the United Nations.

The ominous consequences of an impasse on nuclear arms control led the Eisenhower administration to place a new and constructive proposal before the world. It was called the atoms-for-peace program, which was enacted by Congress in the Atomic Energy Act of 1954.

Under this atoms-for-peace program, the Atomic Energy Commission launched a significant research and development program devoted to the peaceful uses of nuclear energy.

The United States has provided many nations with nuclear reactors to be used for peaceful purposes.

As a part of this program, we developed a system of safeguards to insure that the reactors would not be used for the production of nuclear weapons. These safeguards consisted of a system of controls, including inspections, designed to inhibit or detect the diversion to military purposes of materials committed to the peaceful use of nuclear energy.

The second effort to bring the atom under effective international control came in 1956.

Recognizing that the maximum effect of safeguards could be achieved only if they were carried out by an international organization with broad political membership, we led the fight to establish the International Atomic Energy Agency—IAEA—as an agency of the United Nations. As a result of steady progress through the years, the IAEA now has in operation an effective safeguard system that is suitable for application to a wide variety of peaceful nuclear activities. This is the Agency that will be charged with the responsibility for safeguards under the Nonproliferation Treaty.

The third effort to control the atom came 7 years later, in 1963, after accelerated nuclear weapons competition and testing, with its accompanying nuclear fallout, had posed continuing and direct threats to international health and security.

In that year agreement finally was reached on the first major nuclear arms control measure—the Limited Nuclear Test Ban Treaty—a treaty which I strongly supported and which was ratified by an overwhelming margin.

That treaty has effectively slowed the development of nuclear weapons. But it has not halted it.

A fourth effort is now being made to bring the destructive power of the atom under additional international control—through the Nonproliferation Treaty. While the Limited Test Ban Treaty gave mankind a greater margin of security, the spread of nuclear weapons to additional countries could vastly enlarge the danger of a general nuclear holocaust. Adoption of the Nonproliferation Treaty,

I believe, could significantly reduce the danger.

THE DEVELOPMENT OF AN IDEA

Former Secretary of State Dulles plainly explained the motivation behind American nonproliferation policy in 1957 when he said:

> Already large nuclear weapons are so plentiful that their use in general war could threaten life anywhere on the globe. As matters are going the time will come when the pettiest and most irresponsible dictator could get hold of weapons with which to threaten immense harm. . . .

The Eisenhower administration concluded that, since we did not propose to proliferate, our interests would be served by securing the following pledges: First, a promise from the Soviet Union to refrain from doing so; and, second, an agreement from nonnuclear powers not to acquire nuclear weapons from any source.

These two provisions form the backbone of the present Nonproliferation Treaty.

On June 15, 1965, the United Nations Disarmament Commission passed a resolution by an overwhelming vote—83 to 1 with 18 abstentions—urging that the Eighteen-Nation Disarmament Committee—ENDC—reconvene without delay and give priority attention to a treaty to prevent the further spread of nuclear weapons. The ENDC was an organization first convened at Geneva on March 14, 1962, and whose members were four Western allies—the United States, United Kingdom, Canada, and Italy—France, which is a member but has declined to participate; five Communist nations—U.S.S.R., Bulgaria, Czechoslovakia, Poland, and Rumania—and eight others—Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden, and the United Arab Republic.

On May 17, 1966, the Senate by unanimous vote—84 to 0—adopted Senate Resolution 179, commending the President's "serious and urgent efforts to negotiate international agreements limiting the spread of nuclear weapons" and supporting additional efforts "in the interest of peace for the solution of nuclear proliferation problems." I cosponsored that resolution.

Intensive negotiations on a draft treaty began in early 1964 and continued for nearly 4 years at the ENDC. Then on March 11, 1968, the Cochairmen of the ENDC presented the draft to the U.N. General Assembly. After considerable debate in the Assembly, a final draft was presented by the United States and the Soviet Union on May 31. On June 12 a resolution commending the treaty draft was adopted by the General Assembly by a vote of 95 to 4, with 21 abstentions.

PROVISIONS OF THE NONPROLIFERATION TREATY

Mr. President, the treaty before us contains a preamble and 11 articles. The preamble is a general statement of the principles upon which the treaty is based. It declares that the spread of nuclear weapons would seriously enhance the danger of nuclear war, and that the benefits of peaceful applications of nuclear technology should be available to all parties to the treaty.

The essence of the Nonproliferation Treaty is found in articles I and II. In article I the nuclear powers are obliged not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly and not to assist, encourage, or induce any nonnuclear state to manufacture or acquire nuclear weapons.

Article II provides that the nonnuclear countries are obliged not to receive nuclear weapons or control over them. They are also forbidden from manufacturing nuclear weapons or receiving assistance in their manufacture.

Article III contains the inspection provisions. The nonnuclear powers agree to accept safeguards on all sources of fissionable material being used in peaceful nuclear activities in their territory with a view to verifying that the material is not being diverted to weapons.

Article IV reaffirms that all parties to the treaty have the right to develop, research, production, and use of nuclear energy for peaceful purpose.

Under article V each party undertakes to insure that the potential benefits from the peaceful applications of nuclear explosions will be made available to all signatories on a nondiscriminatory basis. The cost will be as low as possible and will exclude any charge for research and development.

Article VI imposes an obligation on the nuclear powers to pursue negotiations relating to the cessation of the nuclear arms race and to nuclear disarmament.

Article VII allows any group of states to "conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories."

Articles VIII, IX, X, and XI deal with the procedural aspects of the treaty—that is, amending, ratifying, and withdrawing.

U.N. SECURITY COUNCIL'S RESOLUTION ON SECURITY ASSURANCES

In addition to these provisions, a United Nations Security Council resolution must be considered in the light of the Nonproliferation Treaty.

During the course of negotiations on the treaty, several nonnuclear nations expressed the concern that if they signed the treaty—and thus renounced any right to acquire nuclear weapons—they would be defenseless against the threats or actual aggression by nations which did have nuclear weapons.

Because the treaty does not provide for such eventualities, the U.N. Security Council adopted a resolution on June 19, 1968, by a vote of 10 to 0, with the United States, the Soviet Union, and Britain voting for it. This resolution provides as follows:

> * * * any state which commits aggression accompanied by use of nuclear weapons or which threatens such aggression must be aware that its actions are to be countered effectively by measures to be taken in accordance with the United Nations Charter to suppress the aggression or remove the threat of aggression.

The United States, the United Kingdom, and the Soviet Union made separate but identical statements affirming their intention as permanent members to seek immediately Security Council action to provide assistance to any nonnuclear party to the treaty which was a victim of an act of aggression with nuclear weapons.

In its unanimous report, the Senate Foreign Relations Committee pointed out that it did not consider the Security Council resolution as an integral part of the Nonproliferation Treaty; indeed, the committee wished to make it "unmistakably clear" that support of the treaty "is in no way to be construed as approval of the security guarantee measures embodied in the United Nations resolution or the supporting U.S. declaration."

Thus, while the committee strongly affirmed its support of the Nonproliferation Treaty itself, it did not consider the U.N. resolution and the supporting U.S. declaration as establishing any new commitments on the part of the United States. In the event that the United States contemplates any action pursuant to the U.N. resolution and the supporting U.S. declaration, "such action can only be taken with due regard to proper constitutional processes."

Mr. President, I support this position of the Foreign Relations Committee. I agree that the Constitution requires the advice and consent of the Senate before any action may be taken under the U.N. resolution.

As of March 11, 1969, 87 nations had signed the Nonproliferation Treaty, and 10 had ratified it.

Mr. President, I ask unanimous consent that a list of the 87 signatories of the treaty, including the 10 which have ratified it, be included as a part of my remarks at the conclusion of my statement.

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

(See exhibit 1.)

HOW MUCH OF A DANGER IS THE PROLIFERATION OF NUCLEAR WEAPONS?

Mr. FONG. The Foreign Relations Committee, in its months of painstaking study, examined carefully the ominous threat of nuclear proliferation.

Five countries have nuclear weapons today: The United States, which exploded its first nuclear device on July 16, 1945, and had a monopoly for 4 years; the Soviet Union, whose first test was conducted August 29, 1949; Great Britain, which conducted its first explosion on October 3, 1952; France, which exploded its first nuclear device on February 13, 1960; and Communist China, which detonated its first nuclear device on October 16, 1964.

No other country has announced plans to produce atomic weapons, but the spread of advanced nuclear technology has made plain that the list could easily be tripled over the next 10 years. As former Secretary of Defense McNamara said:

> . . . there are at least three nations today which if they decided to proceed to develop a nuclear weapon could detonate a nuclear device in from six to 18 or 24 months, and there will be many more in the future. I will say that within the next 10 years, 7 to 10 nations would fall into the category that I call threshold nations, meaning by that nations which have within their power, by applying their own technology and their

own economic resources, the capability to develop nuclear weapons.

In the absence of a nonproliferation treaty many other countries would likely follow in close pursuit. In addition, there are more than 40 countries with nuclear reactors which produce as a by-product plutonium, a principal component of nuclear weapons.

The next few years will see the number of reactors and the amount of plutonium produced, around the world, increase dramatically. A typical modern power reactor produces in the neighborhood of 100 kilograms of plutonium per year. Even nuclear reactors used only for research purposes can produce as much as 5 kilograms of plutonium a year.

Five to 10 kilograms of plutonium is the estimated amount necessary for one atomic bomb. Eleven of the 40 countries having nuclear reactors now have civil power reactors which can produce much larger quantities.

A memorandum from the Atomic Energy Commission has stated:

The resources necessary for the manufacture of a few rudimentary nuclear weapons are within the means of many nations. The essentials are a cadre of trained personnel, uranium, and an industrial base adequate to permit the construction of a nuclear reactor and auxiliary facilities large enough to provide the necessary quantities of plutonium. Thus many nations possess resources sufficient to undertake, without special outside assistance, to manufacture a few rudimentary nuclear weapons, given the national will to do so and the readiness, in some cases, to forego the benefits from the endeavors to which those resources might otherwise be applied. The time required would vary among the group of countries, and for those which have only the minimum resources, the time might be ten years or more.

At the upper end of the scale, highly industrialized nations, with substantial national income, large numbers of trained scientific, technical and managerial personnel and a reasonably available source of uranium could become capable of manufacturing a few rudimentary nuclear weapons. . . .

Among those non-nuclear-weapon countries whose industrial economies are probably adequate to support a program for the manufacture of a sizeable number of reasonably sophisticated nuclear weapons and systems for their delivery, within five to ten years from a national decision to do so, are those such as Australia, Canada, the Federal Republic of Germany, India, Italy, Japan, and Sweden. Those states whose resources are somewhat more limited, and might therefore take somewhat longer to reach that level of numbers or types of weapons systems, could include Argentina, Austria, Belgium, Brazil, Chile, Czechoslovakia, Hungary, Israel, Netherlands, Pakistan, Poland, South Africa, Spain, Switzerland, United Arab Republic, and Yugoslavia.

Underlying the Nonproliferation Treaty is the premise that the larger the number of countries that possess nuclear weapons, the greater becomes the danger of nuclear war. The possibility of nuclear war beginning by accident or miscalculation will multiply with each addition to the current number of nuclear powers, particularly since few other nations will have the resources to devote to safety precautions such as those devised by our own country.

Moreover, with proliferation the danger increases that nuclear weapons will fall under the control of irresponsible persons or governments who might deliberately initiate a nuclear war without regard to its consequences.

As former Secretary of State Christian Herter has said:

The more nations that have the power to trigger off a nuclear war, the greater the chance that some nation might use this power in haste or blind folly.

In view of all these facts I have been citing, it would seem quite unreasonable to me that critics of the treaty would continue to argue that the dangers of the proliferation of nuclear weapons have been greatly exaggerated.

It is very clear to me that the facts speak otherwise.

CAN THE TREATY PREVENT THE SPREAD OF NUCLEAR WEAPONS?

Some opponents of the treaty feel that the spread of nuclear weapons is inevitable and will not be stopped by a nonproliferation treaty. They point to the fact that some of the nonnuclear powers who are most likely to build nuclear weapons have not signed and that until it is ratified by all the important nonnuclear weapon countries, the treaty will be meaningless.

In addition, two of the nuclear powers, France and Communist China, have indicated that they will not sign the treaty.

As one critic has written:

The . . . most important reason why the treaty can be expected to fail is that, for at least a few of the more important non-nuclear countries in the next ten years, the motivations for building these weapons are not going to be eliminated, reduced, sublimated, bought off, altered by ingenious argument, or provided for by other means. (David A. Robison, Learning to live with nuclear spread, Air Force and Space Digest, August, 1966; pp. 53–63.)

These shortcomings, the opponents contend, will render the treaty ineffective.

On the other hand, those in favor of the treaty believe that ratification is a step in the right direction. The treaty represents, first of all, a formal mutual commitment by the two nuclear giants not to distribute nuclear weapons or to assist other nations in manufacturing them.

Without the assistance of the two super nuclear powers, the achievement of a significant nuclear capability by any other country would be much more difficult. Proponents point out that cooperation between the United States and the Soviet Union has resulted in a large measure of agreement on a treaty.

While putting considerable pressure on the nonnuclear powers to become parties to the treaty, ratification would also relieve some of the pressures which would otherwise push nations to becoming nuclear powers.

For example, suspicion that one side may be acquiring nuclear weapons may make similar acquisition seem imperative to the other side.

Pressures to enhance status and prestige through the possession of nuclear weapons would also be reduced by the Nonproliferation Treaty.

Though the absence of signatures of some of the nuclear powers or powers-to-be undoubtedly would affect the effectiveness of the treaty, it would be only in degree. The main purpose of the treaty—to prevent the widespread proliferation of nuclear weapons—will still be preserved.

The 1963 Limited Nuclear Test Ban Treaty, to which neither Communist China nor France is a signatory, is considerably better than no treaty at all. So also is the Nonproliferation Treaty, adhered to initially by the United States, the U.S.S.R., the United Kingdom, and by the principal nonnuclear countries—even without the signature of either Peking or Paris.

Despite the absence of Communist China and France, as a representative of Mexico at the ENDC has said:

Unless a radical change comes about in the international situation, either the nonproliferation treaty will be concluded with all its limitations and inevitable shortcomings, or all reasonable possibility of stopping the arms race and making progress towards general and complete disarmament will be removed forever. The nonproliferation treaty is only one step on the long road to disarmament. But it is a necessary step. If it is not taken, this road will not be travelled. And if it is not taken soon, within a short time this road will be closed. (Mr. J. Chastaneda, June 13, 1967, ENDC/PV 304, pp. 4–5)

THE EFFECT OF THE TREATY ON NATO

Some critics of the treaty claim that it will weaken the strength and durability of NATO. They feel that the treaty would inhibit the military growth of our allies and make them forever dependent on the nuclear capability of the United States, or, to a lesser extent, Britain and France.

These critics claim that many Europeans who favor a strong Atlantic Alliance would like to replace European military dependence on the United States with a true partnership based upon the interdependence of a powerful United Europe and a powerful United States. East-West agreement on nuclear nonproliferation would render the concept of interdependence meaningless.

Partnership, they argue, implies the creation of a European deterrent independent of the American deterrent, yet closely connected with it. The prospects for creating a European nuclear deterrent are now slim. A nonproliferation treaty might eliminate any future possibility of such a development.

Other opponents feel that the treaty will alter the strategic balance in Europe in favor of Russia and the Communist bloc nations. The prospect of a Western European nuclear deterrent will be decreased, but the military situation in Eastern Europe will not be affected at all.

In addition, they contend, the treaty can foster a false sense of security by lulling the West into forgetting the dangers of Soviet or Soviet-bloc aggression.

On the other hand, proponents view the treaty as furthering the ultimate objectives of NATO, which are to preserve peace and security. They argue that the achievement of these goals is not incompatible with those of the Nonproliferation Treaty.

Secretary of State Rogers, Secretary of

Defense Laird, and Chairman of the Joint Chiefs of Staff, General Wheeler, testifying to the Foreign Relations Committee, have all reiterated the statements made by the previous administration that the treaty is consistent with the best interests of NATO.

They all agreed with former Secretary of State Rusk, who assured members of the Foreign Relations Committee:

> The treaty does not, for example, affect the deployment of U.S.-owned and controlled nuclear weapons on the territory of our allies and the existing arrangements under which those weapons are present. It does not affect the closest consultation in the Nuclear Committee of NATO on all of the problems of strategy and the decisions which have to be made in that field. It does not, of course, apply to a situation of war.

He further stated that this treaty will enhance the security of NATO because the members of NATO, too, have an interest in the nonproliferation of nuclear weapons.

Moreover, the treaty would not prohibit progress toward military integration in Western Europe that did not involve a transfer of nuclear weapons or control over them. Progress could be made, for example, on integrating conventional forces, establishing a common alert warning system, a common logistics system, further integration of communications, and air defense.

And the treaty does not prohibit a truly unified Europe from succeeding to the other nuclear assets of a former national component—such as Britain or France.

Another important point that proponents make is that the United States would not relinquish control over its nuclear weapons to a nonnuclear country, anyway—whether or not there was a Nonproliferation Treaty. This is because section 92 of the Atomic Energy Act already prohibits the transfer of nuclear weapons to another nation; thus, they say, the treaty does not prohibit the United States from doing anything that was not already prohibited by its own legislation.

It is true that this law can be amended or repealed by the Congress and the President. By ratifying the treaty, however, we will be forgoing the exercise of this option, and thereby forgo the possibility of assisting any of our allies to develop nuclear arms.

Nonetheless, as the Foreign Relations Committee report on the treaty points out, the possible future costs of renouncing this option are overshadowed by the major step the treaty takes in the direction of controlling the spread of nuclear weapons.

SHOULD THE TREATY BE RATIFIED NOW, IN VIEW OF THE INVASION OF CZECHOSLOVAKIA?

Critics of the treaty have also raised the question of timing. They argue that, in view of the Soviet Union's invasion and occupation of Czechoslovakia last August, this is not the time to ratify the treaty.

And if the Russians are so indifferent to their international obligations and so callous in disregarding world opinion, why should they respect the Nonproliferation Treaty?

Supporters of the treaty, on the other hand, have argued that while the Soviet actions are inexcusable and regrettable, the treaty is of such importance as a potential barrier to the further spread of nuclear weapons, that any additional delay would be unwise and inadvisable. Since both the Soviet Union and the United States find the treaty to their mutual advantage, both countries can be expected diligently to support and enforce its provisions. Further delay by the Senate will not penalize the Soviets for their invasion of Czechoslovakia so much as it will harm our own self-interest and that of the rest of the world in our race against time to prevent further nuclear proliferation.

Political scientists point out that treaties between sovereign governments are negotiated on the basis of mutual self-interest, not as rewards for good conduct or as evidence of good faith. There is wide agreement that there are a number of areas in which the interests of the United States and the Soviet Union coincide.

Examples of such areas of mutual self-interest are those embodied in the Limited Nuclear Test Ban Treaty, the Treaty on Outer Space, and now, the Treaty on the Nonproliferation of Nuclear Weapons. Each of these agreements either has built-in safeguards or is self-enforcing.

As a safeguard against unscrupulous parties to the Nonproliferation Treaty, article X provides a party the right to withdraw if it decides that extraordinary events, related to the subject matter of the treaty, have jeopardized its national interests. A withdrawing state must only give 3 months' notice to the other parties and the Security Council.

The Soviet Union will take any action necessary to insure its own security and interests. They demonstrated this in their invasion and occupation of Czechoslovakia.

By their active participation in negotiating, drafting, and then signing the Nonproliferation Treaty, Soviets have demonstrated that they deem the treaty to be in their self-interest.

The very same holds true for the United States, which also was in the forefront of consummating provisions of the treaty.

Neither superpower wants nuclear war; both are determined to do their utmost to avoid it.

As between themselves, they know that neither can attack the other without being itself destroyed. They do not want others to start nuclear conflicts, because they fear these would be likely to spread and involve the entire world—including themselves.

Thus, the interests of the nuclear powers and those of all other nations is the same: to avoid the horror of a nuclear conflagration.

HOW WOULD THE TREATY AFFECT PEACEFUL NUCLEAR TECHNOLOGY?

One of the major concerns of some of the nonnuclear nations is their fear that the treaty's provisions concerning peaceful nuclear technology will place them in a permanent position of inferiority in this area, as well as nuclear weapons technology.

But proponents of the treaty assert that the nonnuclear nations will benefit by these provisions: first, in that by forgoing the tremendous costs to research, develop, and manufacture nuclear weapons, the nonnuclear states will be able to devote more of their resources to and concentrate their efforts on the development of peaceful uses of nuclear energy; and second, in that the treaty will alleviate any fear that any exchange of information, material, and technology might be used for weapons purposes.

Some persons in this country have expressed the fear that the United States will undertake an open-ended commitment to all non-nuclear-weapons nations on a nondiscriminatory basis and at a charge as low as possible. They point out that this commitment suggests the United States would provide its services to any party, regardless of its relationship to this country, and without regard to the importance of these projects to American interests abroad.

These persons also have objected to the United States undertaking nuclear engineering projects throughout the world with the American taxpayer paying the major cost.

In testimony before the Foreign Relations Committee, Dr. Glenn Seaborg, Chairman of the Atomic Energy Commission, pointed out that the treaty does not contain any commitment on the part of the United States to support or provide peaceful nuclear technology or services indiscriminately to any nation. Only if it were deemed to be in the national interest would we do so.

Moreover, Dr. Seaborg pointed out that the American taxpayer will incur no greater expenses in the field of peaceful nuclear explosion services as a result of the treaty than he would without it. In fact, he said, we plan to make these services available on a commercial basis to the nonnuclear nations who are signatories to the treaty.

DOES THE TREATY PROVIDE FOR ADEQUATE INSPECTION?

American officials who negotiated the Nonproliferation Treaty look on its inspection provisions, embodied in article III, as a means of moving closer toward an objective for which the United States has long been working—the international inspection of all peaceful nuclear activities.

In each and every instance that the United States has furnished nuclear assistance to other countries to develop peaceful uses of the atom, we have insisted cn a safeguards and inspection system as a precondition.

However, the United States no longer is the only country able to furnish such assistance; and as an increasing number of countries begin to sell reactors in the international market, the United States will no longer be able to assure that such nuclear materials will be under some kind of safeguards system.

Proponents contend that article III of the treaty will provide a method of getting all the peaceful nuclear activities of nonnuclear states under inspection, whether or not they receive American assistance; the treaty requires that all nonnuclear countries which become par-

ties must agree to inspection arrangements under the IAEA, and they have 180 days to begin and 18 months to conclude negotiations of such arrangements.

The IAEA has already gained considerable experience in applying safeguards for the peaceful uses of nuclear energy, and U.S. officials believe it will be capable of carrying out the safeguards envisioned in the treaty—although its staff will have to be expanded to meet the added workload.

Basically these safeguards would consist of periodic inspections by the IAEA to verify a nation's accounting of the quantity and location of all nuclear material being used or stored by it.

The development of the IAEA as an international body responsible for and capable of promoting and safeguarding the peaceful uses of atomic energy has long been an objective of American policy. The Agency originated as a result of the atoms-for-peace proposal made by President Eisenhower in 1953.

In recent years, the United States has begun to designate the IAEA to carry out inspection of nuclear assistance it has provided to some 30 countries under bilateral agreements. We have already relied to a great extent on the IAEA safeguards system. Thus, the IAEA is an on-going organization with substantial experience to build on.

The Agency has demonstrated that the techniques of international inspection are feasible, effective, and are not considered an invasion of national sovereignty.

Some critics have objected to the fact that while President Nixon has endorsed a commitment made by former President Johnson—to permit IAEA inspection of all nuclear activities in the country except those related to national security—the treaty does not require similar inspection in the Soviet Union. They contend that this is a concession to Russia.

Proponents reply that the treaty—which does not require inspection in any nuclear-weapon country which is a signatory, including the United States and the U.S.S.R.—is not a concession to the Soviet Union. The main objective of this treaty, they maintain, is to prevent nonnuclear weapon countries from acquiring nuclear weapons—not to limit the right or capacity of any present nuclear power to produce more nuclear weapons.

Inspection of the Soviet Union, then, is not necessary to the purpose of the treaty.

Another objection lodged by opponents of the treaty is that it does not spell out the inspection arrangements; they say that the pledge to conclude a safeguards arrangement leaves the inspection to be agreed upon vague and uncertain.

But those supporting the treaty point out that article III does indeed set standards for the safeguards to be applied—those set forth in the Statute of International Atomic Energy, and in the Agency's safeguards system.

Even with the successful application of inspection procedures by the IAEA on declared peaceful nuclear activities, critics contend that it would still be possible for a nation secretly to manufacture nuclear weapons. A nation intending secretly to produce nuclear arms could have some fissionable material hidden prior to the inauguration of the system; it could secretly build entirely separate facilities for nuclear arms production.

Such separate facilities could not be detected without general inspection of the entire country, and no feasible way has yet been found to detect hidden stockpiles of fissionable material.

The Foreign Relations Committee report takes the view that no inspection system acceptable at the present time would be completely foolproof. But coupled with the observations and sources available to the diplomatic, military, commercial, and intelligence communities, the inspection system contemplated in the Nonproliferation Treaty would be adequate.

The main effectiveness of the treaty, according to the committee report, consists of the declaration of intention. If a nation wishes to become a nuclear power, it would either not sign the treaty or withdraw from it, rather than attempt to avoid it clandestinely.

To quote the report:

> Admittedly, the implementation of the treaty raises uncertainties. The reliability and thereby the credibility of international safeguards systems is still to be determined. No completely satisfactory answer was given the committee on the effectiveness of the safeguards systems envisioned under the treaty. Moreover, the committee was not given a completely satisfactory answer as to what the signatory nations will do if the International Atomic Energy Agency fails to work out mutually satisfactory agreements with individual states or associations of States within the time prescribed by the treaty. The committee hopes that the optimism of the administration will be borne out and that successful agreements with the IAEA will be concluded without difficulty or delay. Nevertheless, the committee notes that the Euratom States have unanimously agreed that the treaty will only be ratified after a satisfactory verification agreement has been reached between Euratom and the IAEA.
>
> The committee is fully aware of the potential problems in the safeguards field. But it is equally convinced that when the possible problems in reaching satisfactory safeguards agreements are carefully weighed against the potential for a worldwide mandatory safeguards system, the comparison argues strongly in favor of the present language of the treaty.

Mr. President, I am fully cognizant of the shortcomings of the safeguards provisions of the Nonproliferation Treaty.

But in weighing the problems inherent in article III as against the possibilities for the eventual formulation of a more effective and comprehensive safeguards system, I am inclined to go along with the committee.

THE NONPROLIFERATION TREATY IS ANOTHER TENTATIVE STEP TOWARD PEACE

Mr. President, the ultimate and guiding question to be asked, after thoroughly and carefully studying all of the pros and cons, all of the relevant factors, all of the limitations inherent in the treaty, is: Does the Treaty on the Nonproliferation of Nuclear Weapons serve the best interests of the United States of America?

After many months of careful analysis and review of all of these issues, I am satisfied that it does.

I have no illusions that the treaty is a panacea to all the problems of nuclear proliferation. It will not solve all the problems resulting from the wide prevalence of nuclear armaments.

It does not affect in any way the existing arsenals or the continued development and production of nuclear arms in the five nuclear powers.

Nor will it patch up American-Soviet differences, end the threat of Communist aggression, and usher in a new era of peace.

However, the weight of military and diplomatic authority, balancing the risks against the benefits to be gained from the treaty, does favor ratification.

During the course of the extensive hearings of the Committee on Foreign Relations, the Chairman of the Joint Chiefs of Staff, General Wheeler, was asked whether the view of the Joint Chiefs was fully considered while the treaty was being negotiated and drafted; he was asked whether the treaty fully protects our national security interests.

General Wheeler responded:

> At the initiation of treaty discussions, the Joint Chiefs of Staff formulated certain principles relating to national security that should not be violated by such a treaty. First, we believe that any international agreement on the control of nuclear weapons must not operate to the disadvantage of the United States and our allies. Secondly, it must not disrupt any existing defense alliances in which the United States is pledged to assist in protecting the political independence and territorial integrity of other nations. These principles have been observed.

General Wheeler assured the committee that every proposal made by the Joint Chiefs affecting the treaty was adopted.

The Joint Chiefs of Staff, he testified, unanimously supported the treaty.

Our Nation's Commander in Chief, President Nixon, deems the treaty to be in the interest of the United States and has urged ratification.

Former President Johnson took a similar stand.

So have the Secretaries of State and Defense, both past and present.

I am quite fully aware of all of the uncertainties which have been thoroughly discussed in the many studies I have read and in the very complete hearing record compiled by the committee in the 3 years it has been investigating nuclear nonproliferation—in 1966, 1967, and 1969.

However, I am also fully cognizant of the fact that this treaty represents an extremely important development in our constant effort to resolve a dilemma—making available to all mankind the benefits of the peaceful uses of nuclear energy, while minimizing the risks of proliferating nuclear weapons.

The coming decade is likely to be a crucial one in determining whether or not nuclear weapons will spread uncontrollably beyond the borders of the present five nuclear powers.

The acquisition of nuclear armaments by additional countries would seriously hinder the efforts of the United States, through the United Nations and in concert with many other countries, to begin

to establish a stable and enduring world peace.

Without a doubt, the uncontrolled proliferation of nuclear weaponry would make local conflicts far greater threats to igniting a spark that would lead to a worldwide conflagration.

Amid the tensions, the strife, the struggle, and the sorrow of the tense and trying nuclear age, the Nonproliferation Treaty represents, to me, strong evidence that men of many nations have not lost their hopes that a faint beginning can now be made to control the power of the atom.

It is my hope that, with patience, perseverance, and the knowledge that we are acting for the very survival of mankind, we will continue to pursue the long, hard road of stemming the tide of nuclear proliferation, as the first tentative step to more remote goals—negotiating effective, worldwide arms limitation and control—and possibly, even disarmament.

Although this treaty is not a cure-all, it is in a sense an experiment in trust, another faint step toward the easing of tensions and perhaps the improvement of relations between the world's two superpowers.

I support the treaty because it lays a significant foundation for expanded cooperation between the United States and the Soviet Union in the peaceful application of nuclear energy—and possibly for additional measure to halt the nuclear arms race.

I support the treaty at this time because it would bolster the Nixon administration's policy of negotiation, rather than confrontation, with the Soviet Union.

I support the treaty because, on balance, it is good for my country, good for the world, and good for all mankind.

I urge my colleagues to ratify the treaty.

EXHIBIT 1

TREATY ON THE NONPROLIFERATION OF NUCLEAR WEAPONS OPENED FOR SIGNATURE AT WASHINGTON, LONDON, AND MOSCOW ON JULY 1, 1968

1. Afghanistan.
2. Austria.
3. Barbados.
4. Belgium.
5. Bolivia.
6. Botswana.
7. Bulgaria.
8. Cameroon (ratification deposited January 8, 1969).
9. Canada (ratification deposited January 8, 1969).
10. Ceylon.
11. Chad.
12. Republic of China.
13. Colombia.
14. Congo (Kinshasa).
15. Costa Rica.
16. Cyprus.
17. Czechoslovakia.
18. Dahomey.
19. Denmark (ratification deposited January 3, 1969).
20. Dominican Republic.
21. Ecuador (ratification deposited January 10, 1969).
22. El Salvador.
23. Ethiopia.
24. Finland (ratification deposited February 5, 1969).
25. Gambia.
26. Ghana.
27. Greece.
28. Guatemala.
29. Haiti.
30. Honduras.
31. Hungary.
32. Iceland.
33. Iran.
34. Iraq.
35. Ireland (ratification deposited July 1, 1968).
36. Italy.
37. Ivory Coast.
38. Jordan.
39. Kenya.
40. Republic of Korea.
41. Kuwait.
42. Laos.
43. Lebanon.
44. Lesotho.
45. Liberia.
46. Libya.
47. Luxembourg.
48. Malagasy Republic.
49. Malaysia.
50. Maldive Islands.
51. Mauritius.
52. Mexico (ratification deposited January 21, 1969).
53. Mongolia.
54. Morocco.
55. Nepal.
56. Netherlands.
57. New Zealand.
58. Nicaragua.
59. Nigeria (ratification deposited October 7, 1968).
60. Norway (ratification deposited February 5, 1969).
61. Panama.
62. Paraguay.
63. Peru.
64. Philippines.
65. Poland.
66. Romania.
67. San Marino.
68. Senegal.
69. Somali Republic.
70. South Yemen.
71. Sudan.
72. Sweden.
73. Syria.
74. Togo.
75. Trinidad and Tobago.
76. Turkey.
77. Tunisia.
78. U.S.S.R.
79. United Arab Republic.
80. United Kingdom (ratification deposited November 27, 1968).
81. United States of America.
82. Upper Volta.
83. Uruguay.
84. Venezuela.
85. Viet Nam.
86. Yemen Arab Republic.
87. Yugoslavia.

Mr. McGEE. Mr. President, ratification of the Nuclear Nonproliferation Treaty is overdue. We should have taken this step last autumn, though we did not for reasons entangled in the politics of 1968. We should be anxious to put the stamp of Senate ratification upon this document, for the Senate itself encouraged the negotiations which produced the treaty.

Some scoffers say that the treaty does not amount to much. Perhaps not, Mr. President, but in a world which can only contemplate with dread the further spread of nuclear armaments, every little bit helps. We need all the psychology of peace we can get, if, indeed, this treaty is but a psychological step, as some would have it. In my opinion, it has greater significance than that.

Clearly, the treaty is consistent with America's national interests. It does nothing to hamper our defense. Not one single bomb will be scrapped because of this treaty. It does not prevent deployment of additional weapons. And it does not become operative until ratified by the Soviet Union.

What it would do is prevent nuclear weapons from being put into the hands of additional nations. Unhappily, it has not been signed by either France or Communist China, nor by other important powers now lacking nuclear capability. We can regret this fact, but it should not blind us to the necessity of taking what steps we can toward imposing some limitations on the possibility of nuclear holocaust. This treaty, after all, has been signed by the United States, by the U.S.S.R., by Great Britain, and by 90 other world powers, large and small. It goes far toward establishing what we might call a world consensus in favor of limiting nuclear weaponry.

As a practical matter, we in the United States have had no intention of sharing nuclear weapons. Our laws, in fact, forbid it. I doubt that Russia, either, has ever dreamed of handing nuclear weapons over to smaller powers. So the practical effect may be small. But it is formal. Lest there be fears that nuclear weapons might be developed by a nonnuclear signatory under the guise of peaceful projects, the treaty's safeguards provide for international inspection—in itself another breakthrough we can hope will be developed and expanded in years ahead.

Finally, Mr. President, the treaty commits us as a nation to talks, in good faith, aimed at calling a halt to the nuclear arms race. Progress in this area is painstakingly slow. It is complicated by mutual distrust and by hostilities growing out of the continued international turmoil that confronts us, as in Vietnam. But the treaty does contain an operative article—article VI—by which the powers agree to pursue cessation of the nuclear arms race "at an early date."

That date—we cannot kid ourselves—is probably going to be late instead of early. But it will be, when it comes, an alleluia day for all mankind—when all can breathe easier in the knowledge that the greatest force man's intelligence has loosed can at last be directed away from death and destruction and that vast energy put to work for his benefit. Many more steps will be necessary before that great date dawns, but the Nuclear Nonproliferation Treaty is one step. It follows the Limited Test-Ban Treaty of 5 years ago, which was a first step. If we are to achieve the shackling of these arms that could lead all nations to ruin, we will have to do it one step at a time.

Though the effect of this treaty may be limited, let it not be said that we failed to take every opportunity afforded to move in the path of sanity. Let us ratify this treaty now. It is already overdue.

Mr. SPONG. Mr. President, the Nuclear Nonproliferation Treaty will neither save us nor destroy us. It is neither the panacea many of its proponents proclaim nor the dragon many of its opponents deplore.

With it we will not necessarily be

guaranteed safety from nuclear holocaust nor lulled into a false security which will permit our enemies to deceive us. And, without it, we would not necessarily be lured into nuclear destruction or saved from it.

In the final analysis there was one principal question to be answered with regard to the treaty: is this treaty better than no treaty at all. After a review of the hearings and other relevant background information, I have concluded that it is.

The specter of nuclear warfare is a horrible one to contemplate. Any appropriate action which can be taken to limit the possibility of such war should be taken. We must do what we can to prevent a disaster, and this treaty might help preclude one.

In the aftermath of the Soviet invasion of Czechoslovakia, I felt that ratification of the treaty should be delayed as an indication of U.S. disapproval of the invasion. Time has, however, passed and the good the treaty may accomplish should not be sacrificed simply to signify protest.

I am concerned about the failure of Red China and France to sign the treaty. Certainly its effectiveness is lessened by the fact that two of the five nuclear nations do not desire to participate in this endeavor.

I have also questioned the inspection and safeguards provision. It can undoubtedly be argued that these provisions are extremely vague, yet they are the best provisions we can obtain at this time and they are a step in the direction we must take if nuclear weaponry is to be controlled.

Finally, I have had some reservations about the treaty and its effect on our allies in the North Atlantic Treaty Organization, especially West Germany. Fortunately, I was able to resolve most of the doubts concerning the relationship of the treaty to NATO in a colloquy earlier this week with the able chairman of the Senate Foreign Relations Committee.

Certainly not all the questions which could be raised over the treaty have been fully answered. They probably could not be. We should, however, utilize the means available to us for preserving and advancing our Nation's security in a nuclear age and for meeting our responsibilities as a world leader. The Nuclear Nonproliferation Treaty, for all its imperfections and omissions, can help serve both these ends. Accordingly, I am voting to ratify the treaty.

Mr. CURTIS. Mr. President, I fully support the objectives of the Nuclear Nonproliferation Treaty. It would be an extremely dangerous world if 10, 20, or 50 countries had nuclear weapons. With each additional country possessing nuclear weapons, the possibility of nuclear war increases. A nuclear missile launched by accident, by an irrational man, or even by a desperate nation about to be defeated, might set off a chain reaction which could end civilization as we know it today.

I understand these dangers, and I have reviewed the Nonproliferation Treaty—NPT—and the U.S. unilateral pledge to permit "all" peaceful nuclear activities to be under international safeguards. After studying the issues, I have come to the conclusion that I cannot support the Nonproliferation Treaty, and I expect to cast my vote against it.

What has emerged from more than 4 years of negotiations is a weak, vague, and ambiguous instrument open for contention and subject to misuse. Shakespeare once wrote:

> Some rise by sin and some by virtue fall.

I believe that by being excessively virtuous in trying to obtain an NPT at any price our negotiators have left the door open for others to take advantage of us.

On October 12, 1968, at the close of the congressional session, I spoke of taking a hard look at the nuclear NPT. At that time I concluded:

> The purpose of the treaty is admirable but regrettably I believe in our great enthusiasm to conclude this treaty we have lost sight of the true purpose of our Communist adversaries. They drive a harder bargain, I am afraid, than we do. The Soviet Union will not be inspected under the Nonproliferation Treaty. By separate position outside the Nonproliferation Treaty we will. We have stressed vague security assurances and thus placed ourselves in the position of either becoming the policeman of the world or backing away from implied commitments. Either course I believe is wrong. I suggest that we take a new hard look at the Nonproliferation Treaty.

I find that very little has occurred to change my pessimistic view. In regard to security assurances, the report of the Committee on Foreign Relations, printed March 6, 1969, illustrates the ambiguity of our position concerning the providing of security assurances to nonnuclear nations. The report states in part:

> The committee is constrained to point out that, in its view, this United Nations resolution and its accompanying declaration [to suppress aggression] in no way involve a ratification or prior commitments or establish new commitments.

However, four paragraphs later the report says:

> It now appears that the United States is honor bound to follow a definite if limited course of action if a nonnuclear weapon state declares that it is a victim of nuclear aggression or the threat of such aggression.

No wonder our allies and our friends are confused, particularly when on page 5 of this report they find that the treaty is not "discriminatory."

The Foreign Relations Committee report points out that General Wheeler, Chairman of the Joint Chiefs of Staff, stated that the NPT does not operate to the disadvantage of the United States or its allies. Elsewhere, the report states:

> In order to give effect to Article VI, the committee believes that the administration should consider deferring the deployment of these [offensive and defensive] weapons until it has had time to make an earnest effort to pursue meaningful discussions with the Soviet Union.

There are Senators—perhaps a majority—who feel that delaying the development and deployment of a U.S. antiballistic-missile system—in light of the fact that the Soviet Union has already deployed one and possibly two ABM systems—would be disadvantageous to our national interest.

I now turn to article III, concerning safeguards. In this connection, the Foreign Relations Committee report appears to be less than lucid. It says:

> To stimulate nuclear autarky by a rigid application of the very means designed to encourage international cooperation in the nuclear field is obviously not the intent of the Nonproliferation Treaty. (Page 17.)
>
> Neither does the treaty require that preferences be given to signatory non-nuclear states. (Page 17.)
>
> As a practical matter, however, it is the view of the committee that the nuclear powers should be most reluctant to treat nonsignatory states on the same basis as signatory states, despite the fact that the treaty does not prohibit such action. (Pages 17 and 18.)
>
> * * * * *
>
> It is the view of the committee, therefore, that the application of Article III should be handled with a carefully considered appreciation of what will encourage states to adhere and what will encourage them to abstain. (Page 18.)

Concerning article III, the report also states:

> Administration witnesses took the position that nuclear weapon states party to the treaty would be subject to an *undertaking not to provide nuclear material to any nonnuclear weapon state for peaceful purposes unless the material was subject to safeguards resulting from an agreement with the IAEA.* The United States was confident that no such situation would develop, according to the testimony before the committee. It was left *unclear,* however, how the United States would react if such a situation did develop. (Emphasis added.)

Does it mean that unless Israel signs the Nonproliferation Treaty we will cut off peaceful nuclear shipments to Israel?

Does it mean that if Israel signs the Nonproliferation Treaty that representatives from Communist nations or Arab countries will have freedom to inspect any or all of its nuclear facilities?

These ambiguities concern me greatly. But of utmost importance is the unilateral arrangement entered into as a result of President Johnson's pledge of December 2, 1967, which was reaffirmed by President Nixon on February 5, 1969. This pledge states:

> When such safeguards are applied under the Treaty, the United States will permit the International Atomic Energy Agency to apply its safeguards to all nuclear activities in the United States, excluding only those with direct national security significance.

In this connection I would like to pay tribute to the wisdom and judgment of the distinguished Senator from Vermont (Mr. AIKEN), who displayed his usual broad understanding of foreign affairs when he wrote to the Secretary of State concerning this U.S. unilateral offer and its ramifications.

The implications of what Senator AIKEN uncovered are truly momentous. Senator AIKEN asked as his first question:

> What authority does the United States Government have to require private companies in the United States to accept foreign inspection of their plants?

The answer was as follows:

> It is our intention in making this offer to rely upon the voluntary cooperation of the

U.S. nuclear industry in implementing it. Our consultations with them, prior to making the offer, have given us confidence that this cooperation will be forthcoming. However, if it becomes necessary in any instance to rely on the regulatory powers of the U.S. Atomic Energy Commission to require the participation in the inspection system by specific companies, the Attorney General would have to determine the extent to which the Commission's current authority would permit it to require a licensee to open his facility to inspection by an organization other than the Commission or other U.S. agencies.

What this says is shocking to me. The United States will initially rely on the voluntary cooperation of private industry. If this fails, the U.S. Government may rely on the regulatory powers of the AEC and perhaps go to the Attorney General to require licensees to open their facilities to foreign inspection. Put in plain language, this means that foreign nationals, including representatives of Communist countries, are going to inspect U.S. private industry plants regardless of whether the plant owner likes it or not; and if he dislikes it, the U.S. Government will bring pressure to force him to acquiesce. I think this is one of the most undemocratic situations I have ever seen. If I had suggested to the American public 10 or 20 years ago that the U.S. Government was advocating, on a unilateral basis, without even being required to do so, that American industry open its doors to possible Communist inspection, I am sure that no Senator would have taken me seriously. So that no one is confused, Senator AIKEN points out that a Yugoslav national has already inspected the Yankee nuclear reactor at Rowe, Mass., and a Rumanian national has attended the AEC safeguards school at Argonne National Laboratory outside of Chicago.

How far—how dangerously far—we have come down the road of sacrificing our national interest to the siren cries of internationalism at its worst.

To compound this situation the United States is paying almost one-third of the cost of the foreign inspections which we are not required to have. This payment is made directly to the International Atomic Energy Agency in Vienna.

I hope that all Senators will look carefully before they approve this treaty. I hope that all Members will particularly review the implications of the unilateral commitment that the U.S. Government has undertaken—and which, of course, the Russians have not.

In my speech concerning the Nonproliferation Treaty made in the Senate on last October 12, I pointed out that neither Red China nor France has had any part of this treaty. Soviet Russia is a party to the treaty but by its terms the Soviets are exempt from inspection. The United States will be subject to a most unusual system of inspection.

I cannot forget that on October 18, 1964, President Lyndon Johnson said:

> The nations that do not seek national nuclear weapons can be sure that if they need our strong support against some threat of nuclear blackmail, then they will have it.

Will the nations of the world rely upon Mr. Johnson's promise?

Were the small nonnuclear countries relying upon Mr. Johnson's promise when they became parties to the treaty?

To what future wars might this course of action commit the United States?

THE SENATE SHOULD CONSENT TO THE NONPROLIFERATION TREATY FOR THE WELFARE OF US ALL

Mr. YARBOROUGH. Mr. President, the great powers have devoted tens of billions of dollars to the development of nuclear weapons systems, but we have devoted almost nothing to international control of them. After World War II, the United States did make it our national policy not to distribute these weapons to other countries.

The purpose of the treaty we have before us is to elevate our national policy to international status and to gain for our policy adherence of those other nations of the world which will become parties to this treaty.

The ratifying nations possessing nuclear weapons pledge not to give them to others. Of the five nuclear powers, China and probably France will not join the treaty in the forseeable future. Even so, the two leading powers—the United States and the Soviet Union—are parties to the treaty and are also the major potential sources of nuclear weapons. Even without China and France as parties, this Nation and the world are better off by having the two major powers publicly agree to keep their nuclear weapons under their own control.

The treaty does not deal with deployment of nuclear weapons in the territory of other nations. Our weapons stored abroad are in no way affected as long as these devices remain under our jurisdiction and command and continue to remain so. The same will apply to the Soviet Union.

The treaty does not affect delivery systems—chiefly missiles. All signatories may do as they wish with regard to giving or making available missile systems to other countries as long as no transfer of nuclear warheads is involved or results.

In short, this treaty in no way affects or limits our capacity to defend ourselves, even if such defense includes placing warheads under our control overseas. This treaty merely binds us not to share the control over these weapons with other nations.

It will be seen that this treaty is a frail limitation indeed on the capacity of the nations of the world to lay waste to all the earth. The nuclear powers have on hand, thousands of weapons, each with many times the destructive force of the Hiroshima bomb; they also have an ingenious variety of means for delivering them throughout the world.

A limitation on the spread of these weapons to other countries is in the national interest of the United States. It deserves to be furthered by means of ratification of this treaty.

We are the world leaders in the manufacture of nuclear weapons. We ought to be the leaders in this world in efforts to prevent their widespread diffusion and use. We have developed this monster; we owe it to mankind to be the leader in chaining it.

NATIONAL SECURITY IS THE ISSUE

Mr. FANNIN. Mr. President, I have listened to the debate surrounding this treaty which is before us and I have read the record with great interest. In addition, I have done research on my own to try to discover other aspects of the question which may not have been previously developed.

It seems to me that both the Nuclear Nonproliferation Treaty and the question of the anti-ballistic-missile system are related because the national security is at stake.

May I make it clear that I do not claim to be an expert on either foreign affairs or defense technology. Perhaps this is somewhat of an advantage because I can speak from the standpoint of a layman and perhaps voice some of the questions arising in the minds of Americans across the Nation.

One of the basic questions, it seems to me, is if we sign this treaty what do we get? How does this agreement improve our national security?

All too often in the past we have apparently been willing to give away a great deal more than we get when it comes to international negotiations.

At the very least it seems the advantages we supposedly will receive under this treaty are in some doubt; particularly, when two nuclear powers have indicated they do not intend to join this treaty. I refer, of course, to France and Red China. My question is how an agreement of the latitude which we are presently proposing will prevent nonproliferation when at least two members of nuclear community are simply not concerned with it.

Second, it seems inconsistent to me to argue on the one hand that America can no longer afford to police the world while at the same time enter into an agreement, which by every explanation I have read, commits us to additional policing responsibilities.

For instance, if we had signed this treaty last year, and if Russia had also signed the treaty along with its satellite state, Czechoslovakia—when Russia invaded Czechoslovakia—would we have been obligated to go to the defense of Czechoslovakia?

If we sign this treaty what will happen if Russia decides to invade Rumania? Will we be obligated to go to the defense of that Iron Curtain country? It seems to me quite inconsistent for some of my colleagues to argue as they have on both sides of this question. Certainly no one can question any Senator's desire for peace and tranquillity.

No one wants to see a multiplication of nuclear weapons but if we are going to enter into an agreement, we must be sure there are adequate safeguards to make it effective.

That brings me to my next point. I cannot see that there are any safeguards in this treaty. Those nations which desire to secure fissionable material for peaceful or domestic purposes, could under the proposed mechanism of this treaty, convert that material to nuclear weapons. So, I cannot see the treaty as an effective instrument. In fact, it very well may accomplish the opposite by allowing nations which do not have the capability

of producing nuclear materials to get those materials under this agreement.

The whole question of national security comes to mind as we discuss this problem. The loud and long criticism of the ABM system comes to mind. I think of all the arguments that seem irrelevant, the one concerning cost seems to me to be the most irrelevant. If this system is needed for national survival it is needed no matter what the cost.

The cost of the system has been compared with the national debt. I would like to point out that a large portion of the national debt was incurred during World War II. Does anyone say that winning World War II was not worth that money? What would this country be if we had not won the war?

This is the basic fear which I feel arises in the hearts of the American people when we discuss these issues. It is pure folly in my opinion to talk about programs to benefit the poor if we neglect the very program which would allow the country to continue to exist. Mr. President, it is my intention to support continued research, development, and if necessary, deployment of the Sentinel system if the situation is as I understand it to be. I also broaden this to include any other recommendations which the President makes in support of our national security.

Even though there has been continued and significant disagreement in the scientific community over the feasibility and cost of the Sentinel system, I am not particularly impressed when I find agreement between three witnesses called at the request of a committee chairman whose opinion and position on the question is already well known. No one doubts that the preponderance of evidence in such a hearing is bound to be weighted in favor of the chairman's opinion. He controls the witness list, the time of the hearings, and to a large degree, the direction of the questioning. All this must be taken into account in considering the "body of evidence" which is developed.

Certainly no one wants to spend any money—not one penny—on a system which is not effective. On the other hand, I think the vast majority of Americans would be willing to spend any amount of money when they are convinced it is essential to the defense and maintenance of our great country. So, the question resolves down to what is essential and what is not. This is the same question which applies to the Nuclear Nonproliferation Treaty as well as the ABM system. There are hosts of unanswered questions in both of these areas. I think there are great uncertainties in the minds of the American people over the actions we are proposing.

When we look at the Russian record of abiding by treaty agreements, we find a string of broken and mangled promises. Although much has been made of a Soviet willingness not to continue the arms race, the hard fact must be faced that Russia has given absolutely no concrete evidence of either their willingness or their intention to follow such a course if we pull out. In ratifying this treaty I think we are kidding ourselves and furthermore deceiving the populace into thinking we have accomplished something in the way of nuclear weaponry control when we actually have done nothing of the kind.

Mr. President, I think the best interests of the Nation are served and the national security best preserved if we do not ratify this treaty. I shall vote against it.

Mr. THURMOND. Mr. President, first, the Soviet Union acquires a significant military strategic advantage; namely, continued assurance that Germany will be subjected to second-class status for 25 years or more. We are giving up an opportunity for a strong and independent ally for one which will be forever dependent upon us. The Soviets also gain a significant political advantage in that for the first time, Germany would be integrated into a treaty structure with the U.S.S.R. and open to harassment and propaganda pressures.

Second. The Soviet Union loses nothing if its satellite countries are subjected to controls. None of its satellites have the potential for significant production of fissionable materials or explosive devices. After the experience of Czechoslovakia and Red China, the Soviets probably would not arm any of their satellites with nuclear weapons anyway. As it is, we do not know the control arrangements over the Warsaw Pact IRBM's aimed at Western Europe. We do know that the command structure of the Warsaw Pact forces goes directly to Moscow. NATO countries are sovereign, but Warsaw Pact countries are subject to Soviet domination, as the invasion of Czechoslovakia demonstrated. Nonnuclear NATO countries give up the sovereign right of self-defense, but the nonsovereign Warsaw Pact countries have nothing to give up.

Third. The invasion of Czechoslovakia demonstrated that a fundamental change has come over Central Europe. Before August 21, many people tended to think that Soviet domination of the satellites was a myth or at worst was weakening. However, under the so-called Brezhnev doctrine, the Soviets explicitly claim the right to intervene whenever the future of communism is threatened in the so-called Socialist commonwealth of nations. The withdrawal of some or even all Soviet troops from Czechoslovakia has no effect upon the assertion of this right. In fact, the troop withdrawal indicates that the internal security of the country has been guaranteed. The Ministry of the Interior, including the interior police, is firmly in the hands of pro-Soviet officials.

Fourth. Although the debate about the Nonproliferation Treaty usually centers on strategic missile systems, and the great cost of the delivery vehicles, the Nonproliferation Treaty also outlaws tactical nuclear field weapons. A modern army must have such weapons, and the control over their use, if it is to be a match for the Warsaw Pact forces. The development of such weapons is feasible by many present nonnuclear allies, and there is no sound military or economic reason why they should not do so. In fact, we may someday wish to alter our laws to assist them in such development. The Nonproliferation Treaty forecloses this option. It requires our allies to remain dependent upon NATO sharing arrangements for the next 25 years. If we go back 25 years to 1944 and visualize the state of the art of weaponry then—before even the first atomic bomb had been dropped—and then compare that state with the present, we would be able to realize the positions of our allies who will be shutting themselves off from modern weapons.

Fifth. In addition, as Dr. Teller has pointed out, it will soon be technically feasible to construct missiles which can only be used defensively. This would be a way of strengthening our allies and increasing their confidence and morale. We would have to change our laws to do this, but we will not be able to do so if we ratify the Nonproliferation Treaty.

Sixth. Again, no one can confidently predict the future of nuclear research in the next 25 years, just as the past 25 would have been difficult to plot. The Nonproliferation Treaty is based upon current assumptions about nuclear explosives and the need for fissionable material to produce them. I am informed that a whole new direction may open up in the field of fusion rather than fission. Fusion theory may produce the so-called neutron bomb. Fission bombs produce about 85 percent heat and blast and 15 percent radiation, while the fusion process, if ever perfected, would produce the opposite proportions, destroying property. A breakthrough in fusion research would have profound military significance but also many peaceful uses. Such peaceful research on fusion is already well advanced in Italy and in the Soviet Union. Those of our allies who are non-nuclear-weapon states under terms of the safeguards on fissionable materials would have to give up their work on fusion explosives.

Mr. President, I ask unanimous consent that the article entitled "The Nonproliferation Treaty and Fission Free Research," by William R. Van Cleave, Orbis, winter 1968, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Seventh, Mr. President, the proponents of this treaty have stated that the advantages for the United States and the Soviet Union are mutual. That statement holds true only if you consider the alleged benefits of the treaty in stopping the proliferation of nuclear weapons. If you look at the two countries not in isolation but in the structure of the opposing alliances, as I have already pointed out, the Soviets gain a significant goal in the subjugation of West Germany as a second-class nuclear power. However, there are other areas the Soviets appear to have the advantage:

In a collateral action, the United States has opened its peaceful nuclear installations to IAEA inspection. The Soviets have made no such voluntary gesture.

The former head of the IAEA, Mr. William C. Foster, made a formal statement of principles to the nonnuclear nations of the world that the nuclear states would supply explosion service to the nonnuclear countries on a cost basis. This offer carried the implication that the United States was ready to provide

such service. The Soviets have never made so direct a commitment. The Soviets have only accepted the vague wording of article V which says only that—

Each party to the treaty—

And this applies to both nuclear and nonnuclear states—

Each party to the treaty undertakes to take appropriate measures to ensure that through appropriate international procedures . . . peaceful applications of nuclear explosives will be made available to nonnuclear weapon states party to the treaty on a nondiscriminatory basis.

This is no promise of service at all. It merely says that all signers agree not to interfere with this service being made available. Once again, an important part of this treaty depends upon the collateral promise of the United States, while the Soviets have made no commitment.

The question of costs: The distinguished member of the Joint Committee on Atomic Energy, Representative CRAIG HOSMER, has conducted an extensive study and estimates that the costs of enforcement will pass $1 billion a year by 1990. Nowhere in the treaty is the question of costs ever mentioned. I was surprised to learn from questions submitted to the ACDA that the question of costs had never been raised with the Soviets. Knowing the past record of the Soviets in not paying U.N. bills for activities that displeased them, it would appear that our negotiators were derelict in their duty in not reaching at least an informal understanding on this matter. At present, the administrative budget of the IAEA is assessed to members on the same basis of U.N. dues. We pay 31.57 percent, while the Soviets pay 15.4 percent. Once again we come out on the short end.

Eighth. The purported aims of this treaty is to increase the security of the United States by restricting the number of nations that urge nuclear war. No one has ever demonstrated that restricting the number of nuclear-weapon states will reduce the chance of war. This is a basic assumption that will not stand up to analysis by commonsense. The chance that a nuclear war will be started depends not upon the number of nations with a nuclear weapon capability, but upon which nations have it. Furthermore, no one can predict accurately which nations will misuse it. To do so requires us to render an invidious a priori judgment upon a nation's responsibility. Moreover, the evidence of history seems to indicate that the possession of nuclear weapons makes a nation more responsible—or at least more prudent. The proponents of this treaty have not presented any studies which show that proliferation is dangerous or that it would result in more security than alternate options, such as the selective defensive proliferation described by Dr. Teller. It is well known that the nations most likely to develop a nuclear explosive capability are the ones most reluctant to sign. This includes Israel, West Germany, India, Japan, and Brazil. Some of these who are reluctant participated in the 18-Nation Disarmament Conference, so there is no gainsaying their good will. Why then the reluctance?

In my opinion, it is because they are reluctant to close themselves off from basic research in the theory of nuclear explosions. It is all well enough and good to say that the nuclear nations shall provide explosion service on a nondiscriminatory basis. However, having a specific job done for you is not the same as participating in basic research. No one can predict what will develop out of explosion research. No one can predict what will be the best site for creativity. The Israelis and the Germans and the Japanese, for example, are all highly inventive peoples. Shall they cut themselves off from research in the basic area by a mere policy decision? To ask them to do so is an arrogant demand on our part and on that of the Soviets.

Ninth. It is true that the non-nuclear-weapon states will be allowed to "participate in the benefits" of our research. They will be allowed to develop many subsidiary areas, and they will be able to use enriched fissionable materials obtained under safeguards. But all of this is to be dependent upon castoffs and charity. It is like being the eternal poor relative. The basic impetus for scientific and economic development comes from participating in the basic formulation and testing of explosion theory. This is where the best minds will be working, and if they cannot work in the nonnuclear-weapon states, they will go to the nuclear weapon states. No nation likes to see its best talent drained off.

Furthermore, the essence of scientific creativity is discovery. Who can safely say what remains to be discovered, particularly over a 25-year span? What may appear to be impossible for a smaller nation today may be perfectly feasible in 10 years. Although at the present time, the United States is the most economical source of enriched nuclear materials, new developments may shortcut nuclear processes and make such dependence unnecessary.

One has only to look at the growth of peaceful nuclear industry in the United States today to see that this field may well be the prime area for the expansion of technology, just as the electronics industry has in recent years. This is now a $700,000,000 industry. For we must not only include basic nuclear applications such as the potential for explosives and the generation of electric power, but also the wide-ranging impact of nuclear technology on other technologies. In addition, there is a considerable spinoff of new developments that do not depend upon nuclear technology, but were created either to meet the demands of nuclear technology or through adaptation of equipment to meet new needs.

I have asked the Library of Congress to put together a short summary of the current state of the nuclear industry to give some idea of the potential in this field. At the present time the industry comprises less than 1 percent of the gross national product, but the peaceful nuclear industry is just now completing its transition from public to private hands.

Mr. President, I ask unanimous consent that this memorandum be printed in the RECORD at this point in my remarks.

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

(See exhibit 2.)

Mr. THURMOND. Mr. President, now, of course, the non-nuclear-weapon states will be able to do research in many aspects of the peaceful nuclear field under safeguards. But that is not the same thing as having the opportunity to do your own basic research on explosion theory. In passing, I might note that, so far as the safeguards are concerned, the basic technique is to keep a check on the inventory of fissionable materials to prevent diversion to military uses. Yet it is precisely the volume of activity that a smaller nation may want to keep secret for purely commercial reasons. While it is true that the United States has put some of its peaceful facilities under inspection, the United States is dominant in the field. The American unilateral offer of inspection does not compare with the situation of a small producer competing in a tight market.

Tenth. The plight of our nonnuclear allies is especially acute with respect to West Germany. This is not because of any specific situation in West Germany, but because I believe that the Soviets have agreed to the Nonproliferation Treaty solely as the solution to their so-called "German problems." The Soviets have continued to maintain a paranoid attitude toward West Germany even though that country, under its new leadership, has never manifested any of the tendencies of the Hitler leadership. A chief Soviet aim has been to neutralize West Germany's military capability as much as possible. If Germany and the United States ratify this treaty and it goes into effect, that aim will have been achieved for the following reasons:

For the first time, the West Germans will be integrated into a treaty framework with the Soviet Union, allowing the Soviets ample opportunity for interventions and harassment.

Even without the treaty, the Soviets still claim the right of intervention in West Germany as a so-called enemy state under articles 57 and 103 of the U.N. Charter. The United States does not accept this interpretation of the charter, but the Germans have been made to feel the threat very strongly within the past year.

The West Germans will be dependent upon the United States for the use of modern weapons and the development of modern tactics and strategy.

Germany's peaceful nuclear industry will also be dependent upon the United States for basic enriched nuclear materials. It is noteworthy that the Germans are already seeking to invest in U.S. nuclear facilities and to send scientific teams in the United States for research. France, on the other hand, wants to be independent of the United States, and has chosen the more expensive route of using nonenriched nuclear materials to generate electricity, since the United States is the principal source of enriched materials.

Because of this dependency, the West Germans will be subject to political pressure and veto by the United States.

The subjugation of West Germany to dominant American interests will make it easier for the Kremlin to seek a deal between the two superpowers.

Of the five high industrial nations—the United States, Soviet Union, Germany, Great Britain, and France—only Germany will be barred from the production of fissionable materials.

Even without the East-West conflict, the Germans will be placed at a disadvantage relative to France, which refuses to sign the treaty.

Although the United States estimates the cost of safeguards at 1 percent of the sales volume of the peaceful nuclear industry, the Germans say a more realistic figure is 5 percent.

For these reasons, the Germans are very hesitant to sign a treaty which would treat them as a second-class power. Their security would be tied forever to that of the United States; they would have little room for diplomatic maneuvering. Their scientists would be cut off from basic research; their economic capability would be stunted; they would be at a disadvantage with regard to France; and they would be ripe for Soviet harassment. The Germans may sign this treaty, but I think it would be against their best interests to do so. They have already tied the main part of their defense to NATO, and circumstances put them under pressure to continue. Despite our pledge to support NATO, can we really guarantee its survival for 25 years? This is NATO's 20th anniversary, and it has already been grievously weakened by the military withdrawal of France. The day may come, against our will, when the only NATO members are the United States and West Germany. We would not want that to happen, but we must put ourselves in West Germany's position and examine all the possible outcomes.

Eleventh. The ambiguity about our right to continue our present nuclear arrangements with NATO is still very much in doubt. The failure of my understanding to be accepted leaves the future of this treaty and of our NATO commitment in doubt. If you go back over the history of the negotiations, it is clear that the Soviets had one aim, one goal which they sought to obtain. That goal was to bar West Germany from access to nuclear arms in any shape or form. Over and over again, the Soviet representatives specifically mentioned their desire to block West Germany from obtaining nuclear arms, despite the fact that West Germany has already pledged itself not to acquire such arms. The Soviet draft treaties specifically barred the use of military alliances to obtain participation in the use of nuclear arms. The Soviet representatives attacked U.S. draft treaties on the grounds that they left "loopholes" for West Germany, and permitted "indirect access."

Mr. President, I have made a list of such attacks from the Soviets and their allies, as mentioned in the official ACDA history of the public negotiations. The ACDA history is a brief handbook, and it doubtless omits relevant material. Nevertheless, even this brief work shows the Soviet obsession with the question.

Mr. President, I ask unanimous consent that the list of Soviet attacks on West Germany through the Nonproliferation Treaty negotiations be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. THURMOND. Mr. President, when the United States and the U.S.S.R. agreed on the common draft which was the basis of this treaty, these attacks disappeared. The Soviets at long last had a treaty which did not have "loopholes" from their point of view. The text was more general than their earlier versions, but it did not contradict their point of view on the transfer of nuclear weapons as regards West German territory. As I pointed out in my earlier remarks, the broad interpretation of transfer is easily construed as prohibiting all transfers, even of the physical hardware. This interpretation fits the Soviet view down to the announcement of the common Soviet-United States draft treaty.

The United States, on the other hand, gave up all the qualifications it had formerly insisted upon. Although we have given a restricted interpretation of the treaty, the text alone does not support it. How can we tell what the intent of the negotiators was when we know that the two sides had conflicting intentions?

In point of fact, the Soviet negotiators and the U.S. negotiators did not agree on anything substantive. There was no meeting of minds on the key issue. They agreed only on an ambiguous language that masked the conflicting intentions of both. This conflict is bound to emerge at some point in the future.

Mr. President, the obligation of the Senate to advise and consent in the treaty-making process is a most serious duty, and after much reflection and examination of all the issues, I have concluded that I cannot vote for the resolution of ratification.

EXHIBIT 1

[From Orbis, winter, 1968]

THE NONPROLIFERATION TREATY AND FISSION-FREE EXPLOSIVE RESEARCH

(By William R. Van Cleave)

On January 18, 1968, President Johnson announced that agreement on a draft nonproliferation treaty had been reached by the United States and the Soviet Union.[1] "Agreement" by the two superpowers does not assure either the entry into force of the treaty (ratification by all signatory nuclear-weapon states and forty other states) or its effectiveness even if ratified. Nor does it by any means resolve the major problems and questions associated with a nonproliferation treaty. Indeed, these matters must now be more soberly examined than before. Many specialists on nuclear affairs have argued that the draft treaty presented to the Eighteen Nation Disarmament Conference at Geneva does not adequately take into account certain realities of the situation and thus may be self-defeating in its aims.

The problem of securing the adherence of all nuclear-weapon states (e.g., China, France) to the treaty has been widely discussed, as has the difficulty of obtaining signatures from states actively considering the weapons option (such as India) or seeking to avoid constraints on their industrial nuclear research and development.[2] The draft treaty attempts to deal with these problems. But the whole effort raises the question whether the emotional satisfaction of obtaining a treaty signed by a majority of nations should take precedence over the weakening of the treaty (in order to gain wider acceptance) and the generation of serious minority dissent.

Even the question of the development of nuclear explosives for peaceful purposes—the U.S. Plowshare program—has been widely discussed in relation to the treaty. A recent report in the *Bulletin of the Atomic Scientists* examined the peaceful application of nuclear explosives in excavation and earthmoving, tapping natural resources and scientific experimentation, and then speculated on the impact of Plowshare on nonproliferation negotiations.[3] While the Plowshare question has been one of the more intractable in negotiations, the new draft treaty does concern itself with preserving potential Plowshare advantages to signatory nations (Article V).

I

What the treaty does not deal with, and what has not been treated candidly in negotiations and public discussions, is the effect that certain ongoing scientific research will have on the objectives of the treaty. This is particularly true in the case of research on pure-fusion explosives, i.e., nuclear explosives that are devoid of fissionable materials.

Nuclear research in general remains one of the most complicated problems of the treaty. The present draft omits "peaceful" nuclear research from treaty safeguards, while at the same time pledging nonnuclear-weapon signatories "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices." Article III of the draft is clear: "Procedures for the safeguards required by this Article shall be followed with respect to *source or special fissionable material*. . . ." (Emphasis added.) Article IV supplies additional assurance that only materials, not research, shall be affected by the safeguards: "Nothing in this Treaty shall be interpreted as affecting the inalienable right of all Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes. . . ."

This provision is acceptable to the Euratom countries, as well as most advanced or developing civil nuclear powers. "The Germans believe that the best way to avoid the abuse of controls is simply to regulate the entry and exit of nuclear fuels, while industrial and research installations remain exempt from inspection."[4] Euratom formally announced to the North Atlantic Council on October 31, 1967, that Euratom controls could not be supplanted by the control powers of the International Atomic Energy Agency (IAEA), which include Soviet bloc countries, and that any controls must pertain only to materials not to research. Thus, it seems, nuclear research that can be justified on peaceful grounds, regardless of its potential weapons implications, will have considerable freedom under the treaty.

The reasons for this are fairly clear. Nonnuclear-weapon states, as well as the nuclear-weapons powers, are loathe to have their scientific and technological research restrained or even in many cases closely observed by other powers. Moreover, an inspection and safeguards system that tried to watch over such research would be very demanding and difficult to set up at a time when controls over materials alone remain to be worked out.

Yet, this treaty provision may raise more problems than it successfully avoids. There is no clear dividing line between strictly peaceful and militarily useful nuclear re-

Footnotes at end of article.

search. The Plowshare controversy is only one example of this fact. Even research directed at civil goals can place a nation in an advanced state of "eight-months pregnancy." It is entirely possible that nonprohibited scientific research could produce distinctly advanced nuclear-weapons options or an entirely new approach to nuclear weapons. On the other hand, it is manifestly impossible (and, in the view of many, undesirable) to stop nuclear research that seems to have peaceful promise—whether or not it may also have some military significance. In fact, reliance on such research and development is a fundamental tenet of the U.S. Atoms for Peace program.

The draft nonproliferation treaty neither resolves nor clarifies this problem. It ignores it. In particular, it neglects an area of research that may some day demonstrate very clearly the peaceful-military ambivalence of nuclear research: pure-fusion explosives.

In addition to the overriding desire on the part of U.S. and USSR statesmen to secure a treaty without upsetting the applecart, there appear to be three basic reasons for ignoring this problem in treaty discussions. The difficulty and unpopularity of including scientific research within the compass of the treaty's safeguards system have already been noted. The other two explanations are the assumption that "Nth countries" must follow the fission-weapon route developed by the present nuclear-weapon states, and the disparagement of pure-fusion research in terms of its weapons significance.

Even though China demonstrated the fragility of notions about Nth country weapons development by starting with uranium rather than plutonium bombs and moving quickly to thermonuclear weapons, it has been commonly assumed that any violator of the nonproliferation treaty must follow a single, well-marked path. The plutonium fission-explosive path seems obvious because success is virtually certain. Even if successful development of gas centrifugation for the enrichment of uranium leads to the dispersal of U–235 plants, and thus the possibility of following a uranium-fission path, the essential procedure would remain the same. Presumably, the path for the would-be nuclear-weapon power would be the diversion of sufficient fissile material to stockpile bombs clandestinely, or simple abrogation of the treaty.

The draft nonproliferation treaty is based on this technical assumption. Leaving aside the question of the treaty's effectiveness even if this assumption is granted, the purpose of the present discussion is to question the assumption and call attention to the implications of current research on pure-fusion explosives.

II

The articles of the treaty, and the controversies that have surrounded these articles, are directed toward preventing or inhibiting other countries from doing what has been accomplished by all present nuclear powers: producing nuclear explosives that require fissionable material for their operation. The draft treaty has not addressed itself in any serious way to preventing or inhibiting countries from doing what has *not* been accomplished: successfully developing nuclear explosives that do not require fissionable material. This yet-to-be-developed class of explosives is that of fission-free fusion devices. In contrast to fission explosives, which have used kilogram quantities of plutonium and enriched uranium derived from reactors and isotopic separation plants that are relatively few in number and thus subject to safeguards, pure-fusion weapons could use gram amounts of heavy hydrogen, which is more easily and surreptitiously obtainable—and may permit much cheaper devices.

The concept of pure-fusion explosives received widespread publicity several years ago when controversy developed over the concept of the "Neutron Bomb," at that time described as an anti-personnel weapon without destructive anti-property characteristics.[5] Some argued that this concept promised a revolutionary advance in nuclear weaponry. Others debunked the idea on grounds of infeasibility, impracticality or undesirability. The controversy was linked to the debate over the test moratorium and projected test ban treaty: Some did not want test ban negotiations complicated and jeopardized by the neutron bomb. Others feared that a comprehensive test ban would prevent the United States from developing a potentially advantageous weapon with no guarantee that the Soviet Union was not forging ahead with it. The development and even the testing of such a weapon could proceed without detection.

Despite the potential usefulness of such an explosive device for Plowshare programs or power generation, the debate was limited to weapons applications until it receded from public notice after 1961. For several years the subject of pure-fusion explosives received scant public attention. For one thing, development of a pure-fusion device encountered great technical difficulties, as was pointed out in a widely read article published in 1964 by two key Presidential scientific advisers.[6] While there have been several public reports of progress in controlled fusion research, there is very little available in the public domain concerning a U.S. pure-fusion explosive or neutron bomb program.[7]

In June 1967, a paper was published by S. T. Cohen of The RAND Corporation, which briefly discussed the neutron bomb, related pure-fusion explosives to peaceful uses, and described pure-fusion explosive research being conducted under Euratom auspices at the Laboratori Nazionali De Frascati Del Comitato Nazionale Nucleare in Frascati, Italy.[8] The paper caused a great deal of controversy.[9] However, the controversy was short-lived and the practical implications the paper raised for the nonproliferation treaty and for U.S. Atoms for Peace policies were ignored. Despite the potential embarrassment these implications could cause political leaders, they seem far too important to be dropped so abruptly. Pure-fusion explosive research, the potential of the neutron bomb, and the Frascati work should be examined more carefully in view of the present draft nonproliferation treaty.

First, a brief description of the pure-fusion explosive concept is in order. Whatever the political-military controversies surrounding the concept, the pure-fusion neutron bomb would differ technically from fission weapons in the following ways: (1) The energy would be released primarily as an instantaneous burst of radiation, rather than as blast and heat. (2) Nuclear processes that may produce no radioactivity, in contrast to the vast amounts created by fission weapons, would be involved. (3) The cost in scarce nuclear materials would be far less than that of fission or fission-fusion bombs.[10] Whereas the energy release from a fission explosion is about 80 per cent blast and heat and 5 per cent or less neutrons, blast and heat may comprise only about 15 per cent and neutrons 80 per cent of the energy yield of a pure-fusion explosion.

These characteristics may give both peaceful and military significance to pure-fusion explosives, if such devices can be developed in practical forms. Or, depending on the forms of devices developed, it is possible that peaceful but not military utility may be derived. This presently unanswerable question poses a dilemma.

The Frascati program is directed toward peaceful application of pure-fusion explosives. But regardless of its intent, the possibility of military applications, if not of an innovative breakthrough in nuclear weapons technology, exists. This raises some disturbing questions about the draft nonproliferation treaty.

First, since the draft treaty (Article II) specifically obligates nonnuclear-weapon countries "not to manufacture or otherwise acquire nuclear weapons or *other nuclear explosive devices*" (emphasis added), could the Frascati effort be prohibited under the treaty?

Second, if such research is to be prohibited or monitored, what would this require of the treaty safeguards system, and how might the proposed attempt to control such research affect national policies toward the treaty?

Third, if such research, which seems to have military implications, is not to be prohibited or safeguarded, what does this imply for the treaty's usefulness and viability?

Fourth, due to the obvious technical problems associated with the development of pure-fusion explosives, certain classes of these devices may have no military utility. If this is so, should the treaty wording be modified to permit development of these types of nuclear explosives?

Fifth, it is curious that both the United States and the Soviet Union, which are acquainted with the Frascati project, have made no known effort to take such programs into account in the Geneva negotiations. How can this be interpreted? Does it represent considered approval, or unconcern for the implications of the research, or reluctance to disturb treaty negotiations, or such a primary concern with the fission weapon problem that pure-fusion developments seem unimportant?

These are puzzling questions for which there seem to be no answers from official sources. Pointing to the technical difficulties of pure-fusion development is not an adequate answer. These might be solved at any time. Apparently the United States, despite several years of work, has not achieved success in pure-fusion. If this example is used as the criterion, success at Frascati or elsewhere does not seem likely in the near future. But solutions to seemingly unyielding technical difficulties have appeared quite suddenly in the past; thus it is presumptuous and dangerous to cite technical problems as a reason for avoiding important questions.

III

In a sense, the present status of pure-fusion research bears some similarity to the efforts leading to the test of a fission device and later to the test of a thermonuclear device, which involved the problem of producing fusion reactions. The pure-fusion problem seems considerably more formidable, and no solution has been publicly announced either for the production of minimal yields in bulky containers for peaceful purposes or for a range of yields in more compact containers for military purposes. As evidenced by the number of known research efforts, the problem of using nonnuclear means to produce nuclear fusion explosions seems solvable in theory. But there is no definitive answer as to when a practical demonstration will take place.

It might be recalled, however, that a similar question was central to the debate over the thermonuclear superbomb. In 1949 and 1950 there was much controversy about the production of a thermonuclear (fission-fusion) explosion. Many scientists felt the state-of-the-art precluded a thermonuclear device of practical military utility. Others were more optimistic. But it was not possible to resolve the dispute until in 1951 a new technique suddenly appeared and changed the state-of-the-art. What followed should be kept in mind when questioning pure-fusion practicality. As S. T. Cohen expressed it, "Somewhat less than two years after the zenith of doubting occurred the doubters were silenced by the 'thermonuclear breakthrough' at Los Alamos. Who knows when

Footnotes at end of article.

such a breakthrough may occur in the pure-fusion area?" [11]

The dream of producing fusion energy has produced a variety of schemes over the years. The Soviet Union initiated work on a pure-fusion explosive a number of years ago, using a heavy explosive assembly directly to implode and heat a small amount of deuterium and tritium (the heavy hydrogen isotopes).[12] More recently, there has been speculation on the use of lasers to initiate fusion.[13] At Frascati, Dr. J. G. Linhart has been investigating the possibility of producing small fusion explosions through the use of highly intense magnetic fields, the "Megagauss technology." [14]

The Frascati program is apparently aimed toward contained pure-fusion explosions for the production of electrical energy. The characteristics of these explosions seem to permit a unique type of "nuclear reactor" where convertible energy is produced by pulsed, very-low-yield explosions of pure-fusion, at costs perhaps more than competitive with advanced nuclear fission reactors.[15] There appear also to be important isotope breeding advantages to fusion reactors. On the face of it, therefore, there seem to be good reasons for this approach to the production of heat and electricity. What is not yet known, in addition to the very feasibility and requirements of contained pure-fusion explosions, is the cost of producing such explosions. Until such factors are worked out, the practical advantages of the system cannot be conclusively determined. But then, who could determine in 1942 what future Fermi's atomic pile, under the grandstand at the University of Chicago, had for producing nuclear power?

Whatever the promise of these approaches, if the timing of success cannot be predicted, neither can it be precluded—nor should it be excluded—from considerations of the nonproliferation treaty. To what extent should a nonproliferation treaty take pure-fusion explosion research into account? Should the ban on all nuclear explosives be modified to permit certain explosives to be developed—or certain types of certain explosives? If such a modification is to be made, should the United States actively collaborate with other nations in the development of pure-fusion devices that hold a promise of peaceful utilization? What are the risks that this research might lead to the development of new weapons?

Although public discussion of pure-fusion explosives has thus far centered on the military application of the neutron bomb, it is possible that at least the first generation devices may be so bulky and complex as to render any military application infeasible. A workable device of the Frascati variety appears to require a ton of heavy explosives, a large containment unit, equipment for producing and injecting plasma, and a complex electrical system. These characteristics suggest a machine much too large and expensive and producing too small a nuclear yield to offer military advantages.

This might suggest that the blanket prohibition of all nuclear explosive devices in the draft nonproliferation treaty is open to serious question, particularly if it is used to inhibit scientific research of this type. On the other hand, if such research and development activities continue freely, and result in military breakthroughs, the idea of a blanket prohibition may be vindicated—but too late.

There may be no practical military uses for pure-fusion explosions in the foreseeable state-of-the-art. But if pure-fusion explosive development proves comparable to previous experiences with nuclear weapons, one might anticipate improvement, refinement, or even breakthrough toward weaponization. By no means can it be assumed that subsequent designs of pure-fusion explosives will be confined to the cumbersome technology of the first successful device. In short, if pure-fusion explosive research is pursued, such explosives may eventually be put to both peaceful and military uses. The implications of this for proliferation will be great. Whatever the technical advantages of pure-fusion weapons over fission or fission-fusion weapons, their cost may be substantially less and clandestine diversion and smuggling of the necessary materials would be far easier, since only very small amounts of relatively weak radioactive materials would be required.

IV

In conclusion, there are compelling reasons for taking such research into account in deliberations over the nonproliferation treaty. It is a simple fact that research on pure-fusion nuclear explosives—whatever the chances of success of such work and whatever utility early devices might have—is being conducted by prospective signatories of the treaty.

The Frascati work is notable if only for the fact that no attempt seems to have been made to consider it in relation to the draft nonproliferation treaty. If the program is eventually successful, it will include nuclear explosive testing. Will the conduct of these tests also be ignored? Does the current tacit acceptance of this research extend also to testing? If so, there seems to be no reason why other nations cannot pursue the development and testing of pure-fusion nuclear explosive devices. What might this mean for nuclear proliferation and the nonproliferation treaty?

One can imagine the outcry if a nonnuclear-weapon nation which had signed the treaty established an open laboratory for research and development of fission explosives. Such an effort, which would have predictable success and obvious military implications, would be interpreted as a clear violation of the treaty. It seems highly inconsistent that *fission*-explosive research is clearly outlawed, while *fusion*-explosive research is not, when the draft treaty does not make an explicit distinction between the two. Does this mean that a line has been tacitly drawn somewhere between a guaranteed success and an anticipated but unpredictable development? If so, where? And why is this not made explicit in the treaty? What time element is presumed to make the critical difference between one and the other? Or has no consideration been given to the matter at all?

It is understandable that those favoring the current draft treaty would wish to postpone reference to pure-fusion explosive research. The matter would greatly complicate negotiation of the treaty. It could be argued that, barring undisclosed developments, a workable pure-fusion device has not been achieved, and one with military significance cannot be expected for a number of years. This could be buttressed with the observation that the major nuclear-weapon powers have apparently not assigned major importance to the development of pure-fusion weapons—although, as noted above, a U.S. program for the development of these weapons has been publicly revealed. Moreover, the work at Frascati, for example, has been open and in collaboration with Euratom, and neither the United States nor the Soviet Union has voiced objections to it. The attempt to stop such research would be not only politically unwise but also technically undesirable. Important peaceful benefits may one day flow from it.

If this is the case, should not the United States openly and actively collaborate with such research? The efforts of the United States to promote the peaceful atom have had mixed blessings, but the peaceful atom remains U.S. policy and the draft nonproliferation treaty supports and internationalizes this policy. International collaboration on pure-fusion explosive research would give it a sanction and respectability that a nationally conducted program would not have, and thus perhaps ease any later misunderstandings that might arise from it.

Why not make it clear at this time how pure-fusion explosive research fits into the nonproliferation treaty? Why run the risk of treaty disruption when one party later charges that another is manufacturing (pure-fusion) "nuclear explosive devices" and is thus in violation of the treaty? All parties should expect the clearest possible statement concerning permissible activities under the treaty. If there is to be a distinction drawn between work directed toward one type of nuclear explosive device and another type, it should be made explicit. In the case of pure-fusion explosive research, the formula "what is not explicitly prohibited is implicitly permitted" is likely to produce more problems in the long run than it may seem to avoid during negotiations.

Whether the treaty makes such distinctions or not, United States policymakers should. If scientific and other peaceful purposes are being served by pure-fusion explosive research conducted abroad, it might benefit all concerned for the United States to cooperate in furtherance of it. Such cooperation might also help to heal political wounds caused by what some European allies consider an inequitable military nuclear policy.

At the same time, it is important to be aware of potential military applications. An important weapons breakthrough could be achieved. The destabilizing consequences of this may be greater in the case of a purely national (or even exclusively Euratom) program than one with which the United States had been collaborating. It is always a delicate question whether to support research because it might have peaceful benefits or to try to restrict it because it might result in a threat to international security. At least, U.S. collaboration would ensure that research progress is being monitored to determine whether prospective devices hold military promise.

Technological progress often has the unsettling effect of changing the conditions upon which arms control proposals and treaties are based. Changes in this area occur so quickly that politics and policies are outdated before national authorities recognize this fact. Reluctance to face squarely the potential ramifications of pure-fusion explosive research because this might jeopardize a currently high-priority arms control objective can only increase the probability of future embarrassment or failure.

FOOTNOTES

[1] Draft Treaty on the Non-Proliferation of Nuclear Weapons," January 18, 1968, and "Statement by the President on the Presentation to the 18-Nation Disarmament Committee of the Non-proliferation Treaty," released by the White House Press Secretary, January 18.

[2] India's initial reaction to the draft was that it did not intend to sign the treaty because of security considerations. "India Won't Sign A-Ban Treaty, Official Says," *Los Angeles Times*, February 9, 1968, p. 22. For a statement of the West Germans' concern over treaty-imposed constraints on their civil nuclear program, as well as other objections to the treaty ("there are serious doubts in Germany as to whether the conditions for the conclusion of the treaty still exist"), see Dietrich Schwarzkopf, "Nuclear Defense Through German Eyes," *Interplay*, January 1968.

[3] "A Special Report on Plowshare, Prospects and Problems: The Nonmilitary Uses of Nuclear Explosives," by David R. Inglis and Carl L. Sandler, *Bulletin of the Atomic Scientists*, December 1967, pp. 46–53.

[4] Schwarzkopf, *op. cit.*, p. 14. But, "from the German viewpoint, the guarantees of this 'inalienable right' are still inadequate."

[5] See, for example, "Neutron Bomb, Nuclear

Tests—Next Decision for U.S.," *U.S. News & World Report*, July 17, 1961.

[6] Jerome B. Wiesner and Herbert F. York, "National Security and the Test Ban," *Scientific American*, October 1964.

[7] For example, T. K. Fowler and R. F. Post, "Progress Toward Fusion Power," *Scientific American*, December 1966; and "Scientists Expect Way to Curb H-Bomb Energy in 3–5 Years," *New York Times*, February 4, 1968, p. 66, reporting on an American Physical Society conference. In September, the Atomic Energy Commission publicly reported research on pure-fusion weapons, but indicated that the status of these programs is classified. "U.S. Discloses Its Weapons in Nuclear Arsenal," *Los Angeles Times*, September 6, 1967, p. 1.

[8] S. T. Cohen, "The Peaceful Neutron Bomb: A New Twist on Controlled Nuclear Fusion" (Santa Monica: The RAND Corporation, P–3510, June 1967).

[9] Perhaps because of a somewhat misleading newspaper report: "Euratom Plans Clean Bomb," *Washington Post*, September 10, 1967. See also "European Commission Corrects Press Reports," The European Community, Press Release, September 11, 1967.

[10] Cohen, *op. cit.*, p. 1.

[11] *Ibid.*, p. 9.

[12] L. A. Artsimovich, "Research on Controlled Thermonuclear Reactions in the U.S.S.R.," *Proceedings of the Second UN International Conference on the Peaceful Uses of Atomic Energy*, United Nations, Geneva, 1958.

[13] "High Temperature Laser Plasma Program," Research Progress Report, Maryland Institute of Technology, January 1, 1967.

[14] J. G. Linhart, "Megagauss Fields," *Physics Today*, February 1966.

[15] Cohen, *op. cit.*, pp. 2–4. Also, see the Annex describing the work at Frascati, included with The European Community Press Release of September 11, 1967, *op. cit.*

EXHIBIT 2

ITEM 1

TO: HON. STROM THURMOND.

Discuss the role of nuclear research as it influences other technologies.

The principal effects of nuclear energy upon other sciences and technologies all depend on nuclear fission. When an atom of uranium or plutonium splits apart, or fissions, energy is emitted in several forms. It can appear as heat, as radiant energy—such as light and X-rays, in the energy of rapidly moving nuclear particles—electrons, neutrons, and debris from fission, and in the energy of radioactive decay of the radioactive debris left after fission.

Our modern technologies have put these various forms of energy to use in many different ways. I have listed below some of the principal fields of use.

1. Civil engineering

The use of nuclear explosives for civil engineering works has been so much identified during discussions of the non-proliferation treaty that it needs no further discussion. Other less spectacular uses of nuclear energy are largely found in non-destructive testing apparatus for highway and other construction. Small amounts of materials that have been made radioactive by putting them inside a nuclear reactor, better known as radioisotopes, can be used to measure densities of materials, to examine specimens for cracks or voids, or to measure moisture content of soils or cement.

2. Food

Radiation from radioisotopes manufactured in a reactor, or recovered from radioactive debris of fission is being used experimentally to extend the shelf lives of some foods, and to sterilize others. Irradiation of grains, for example, can also cut food losses from insects. Irradiation of potatoes and certain fruits can prolong their useful lives. In another connection, radiation has been used to control one insect pest by sterilizing large numbers of insects and releasing them to mate with others, with a resulting dramatic decrease in the insect population.

3. Health

Radioisotopes are routinely used in the practice of medicine. Radioactive iodine, for example, finds daily use in diagnosis and treatment of certain thyroid conditions. Radioactive cobalt is widely employed in treatment for cancer. Other radioisotopes provide a portable source of radiation for x-rays. The AEC reports a new cancer therapy facility for low exposure rates of whole body irradiation of patients with chronic leukemia has been developed and is in use.

Recent research points the way to artificial hearts which derive their energy from radioisotopes that might be implanted into the body. Other radioisotopes are being used to heat the suits of skin divers.

4. Housing

In addition to non-destructive testing for construction by means of radioisotopes, nuclear energy has been applied to create new products which may affect housing. One is a wood-plastic combination which takes on desirable new properties when exposed to intense radiation. Three companies are now manufacturing products from this material. One example of wood-plastic combinations was the floor of the U.S. exhibition at the Worlds Fair in New York. Another, newer product is the recently announced concrete-polymer material. Preliminary experiments indicate marked improvements in the properties of this form of concrete. Preliminary tests show compressive strength increased up to 190 percent, tensile strength increased up to 220 percent, absorption reduced as much as 95 percent, abrasion resistance increased from two to five times, and greater durability in freezing and thawing tests.

5. Manufacturing

Radiation from radioisotopes are being used in industry to process materials so as to obtain new and desirable properties. One example is in the irradiation of plastics to increase their ability to withstand high temperatures, or to otherwise change their normal properties. Another application is to control process machinery. One of the earliest applications was using such radiation in a thickness gage to control the thickness of paper in a paper mill. This same idea has been extended to controlling the thickness of metals being rolled in a rolling mill. Another application is in non-destructive testing and inspection of castings.

The employment of radioactive isotopes offer advantages in industry—which must, of course be balanced against economic advantages or disadvantages—such as:

Low temperature initiation.

Solid-phase initiation.

A product with no catalyst impurities.

Adjustment of the rate of a reaction by variation of the radiation from the external sources.

Irradiation of a material in place in its final container, or in its final shape.

Producing a reaction which is unique to the use of radiation and cannot occur by other means.

6. Power

Advocates of nuclear energy claim that it has relieved mankind of the threat of running out of fuel to supply the energy required by our energy intensive civilization and economy. Thus one major reason for the Atomic Energy Commission's interest in the breeder reactor idea is that in principle one could "burn" all the uranium and thorium present in the earth's crust for fuel.

The nuclear reaction of fusion in which atoms of light elements fuse together with release of energy also promises to be an even greater supply of energy for mankind if the fusion process can be controlled for this purpose. We know full well the power of the fusion process in a weapon.

Another energy related use is to employ nuclear explosives to release natural gas and perhaps to heat oil or tar sands so as to obtain fuels from them.

The radioisotopes recovered from fission debris or certain others made in reactors or with accelerators can also be used as power supplies for special purposes where high costs of energy are less important than a compact, long lived supply. Thus heat given off by radioactive decay in strontium, for example, can be converted into electricity for use in navigation aids on the sea floor, and other radioisotopes are used to provide energy for space satellites.

7. Research

Radiation from radioisotopes has provided an immensely powerful tool for research in the life and physical sciences and in engineering. While natural radioactive materials such as radium and a few artificial radioisotopes made with accelerators were available in the late 1930's, their cost and very small supply greatly limited their use. The nuclear reactor now provides a virtually unlimited source for many different radioisotopes that furnish the scientist with many kinds and qualities of radiation.

Minute quantities of radioisotopes or tracers, can be introduced into life and physical processes so that the inner workings of a process can be better understood. Thus agricultural scientists have used them to trace the entry and fate of fertilizers in plants, chemists have used them to see what happens in various chemical reactions, engineers have used them to measure flow of fluids, metallurgists have used them to measure the transfer of materials between rubbing surfaces. The possibilities for applications are limited only by the imagination of the user.

8. Service and maintenance

The increasing growth of service industries in our national economy and the need to increase their productivity is opening new opportunities for new uses of radioisotopes. For example, in plumbing certain radioisotopes that quickly lose their radioactivity can be introduced into pipes to locate leaks, instruments using radioisotopes can measure the wall thickness of pipes and boilers and detect spots weakened by corrosion, ventilation rates can be measured with radioactive tracers, and such tracers also can provide early warning of wear inside an engine. Radiation from larger sources is being used for routine inspection of jet engines for aircraft and to check airframes.

9. Space

Energy from fission and radioisotopes may also drive the engines for vehicles that will probe deeply into space and visit the outer planets.

10. Transportation

Radioisotopes are beginning to find uses in transportation. For example, they provide the energy for luminescent signs in aircraft to mark doors and exits, railroads have experimented with them as light sources for signals at track switches, the Coast Guard is experimenting with them to supply power for unattended buoys and lightships. Nuclear fission drives the experimental merchant ship, the N.S. *Savannah*, which is now in routine commercial use.

ITEM 2

Discuss the development of the nuclear industry in the United States.

The American nuclear industry was conceived during the Manhattan Project of World War II. By 1946 uranium mining and prospecting were going on and government owned factories to mill the ores, extract the uranium, separate out the fissionable content and convert uranium-238 into pluto-

nium were in existence. The commercial nuclear industry began to expand with revision of the Atomic Energy Act in 1954 to permit private ownership of nuclear reactors and possession and to encourage use of nuclear fuel materials. The AEC has followed a deliberate policy of encouraging private industry to provide necessary products and services, and has withdrawn from competition as private suppliers have proven adequate to supply civil needs. The first part of the industry to become wholly private was the mining and milling of uranium. At present, all manufacturing capabilities needed for civil use of nuclear energy are privately available except for separation of the fissionable component of uranium, and disposal of the intensely radioactive wastes left over from reprocessing of used nuclear fuels.

For 1967, the value of selected atomic energy products was $356 million of which $119 million was to Government agencies and $35 million was export trade. This industry includes prospecting for uranium ores, mining them, extracting the uranium, separating out its fissionable component and converting other forms into fissionable plutonium, manufacturing radioisotopes, manufacturing nuclear reactors for power and for research, fabricating fissionable materials into fuel products for reactors, and disposing of radioactive wastes.

The estimated cost of nuclear power plants announced by utilities during the first nine months of 1968 totaled about $2 billion, bringing the estimated investment in nuclear power plants operating, under construction or planned to about $12 billion.

ITEM 3

Discuss the share of the nuclear industry in the Gross National Product.

For 1968 the GNP was $860.7 billion. While the selected shipments for the atomic energy industry for 1967 do not represent the whole of the industry, for they do not include Government enriching and plutonium manufacture, the $356 million should be more than half. Assuming then that the American nuclear industry had a level of from $356 million to $700 million, and realizing the inaccuracies in comparing such a figure directly with the GNP, nevertheless, it appears that the nuclear industry is presently less than one percent of the GNP.

ITEM 4

Discuss the spin off of new industry growth from the nuclear industry.

Since the beginning of the Manhattan project which created the atom bomb, some of the technology and products originated or perfected for nuclear energy have moved into general use. One example is the large scale use of fluorocarbons which led to teflon and related products. A whole new, although small, instrumentation industry has been created. Remotely controlled manipulators perfected for use in places of intense radiation have been adapted to undersea research vehicles. Very recently the AEC announced that a high-speed centrifuge developed at Oak Ridge has been put to a new, important use, which is research in the control of insect pests. The U.S. Department of Agriculture Forest Service is now using the centrifuge to concentrate and purify viruses in large quantities for use in viral insecticides that can attack a specific insect species while not harming other species. The immediate target pest is the tussock moth, which kills Douglas fir trees.

EXHIBIT 3

SOVIET ATTACKS ON GERMANY THROUGH THE NPT

August 29, 1957—Soviet representative Valerian A. Zorin attacks Western disarmament proposals, charging that the United States had already transferred nuclear weapons to the Federal Republic of Germany.

July 19, 1962—Zorin attacks West Germany and proposes an agreement among the nuclear powers "not to deliver nuclear weapons, control of them, or information necessary for their manufacture to states which at the present time do not possess them.

July 11, 1964—Soviet opposition to the Multi-Lateral Forces (MLF) centers on the participation of West Germany. Soviet note to the United States charges that West German "military and political circles" regard the MLF as only a beginning and checks a dominant role in the project.

June, 1965—Soviet representative Semyon Tsarapkin to the Disarmament Commission attacks the United States for leaving the door open for a MLF or Atlantic Nuclear Force (ANF) and questions Secretary of Defense McNamara's recent proposal for a special NATO Committee to study nuclear planning, especially because West Germany would participate in the Committee.

August 17, 1965—Semyon Tsarapkin asks whether the U.S. draft of the treaty provides the prohibition of "direct" access to nuclear weapons through a MLF with West Germany participation. He says that the draft treaty is unsatisfactory on this point because it leaves open the door for the MLF. He insists that a non-dissemination agreement must not allow any loopholes or exceptions. He says it is necessary to ban direct access and that the MLF would give West Germany and other non-nuclear NATO countries access to nuclear weapons.

September 24, 1965—Soviets submit draft treaty to U.N. In the First Committee, Soviet Ambassador Fedorenko says the American position aims at "legalizing access to these weapons and in the first analysis to participate in the position of management and utilization of them by the non-nuclear powers of NATO—and first of all by the Federal Republic of Germany." He says that the Soviet draft treaty would make it impossible to create a MLF or an ANF which would enable non-nuclear powers, above all, the Federal Republic of Germany, to obtain nuclear weapons.

September 8, 1965—Soviet Foreign Minister Gromyko tells the Supreme Soviet that West Germany's desire to participate in an MLF was in effect a vote against the General Assembly Resolution on disarmament and was an attempt to "torpedo" a Non-Proliferation Treaty. He says that the U.S.S.R. not only opposes the MLF and ANF but also rejects a two-committee system for controlling nuclear weapons on West German territory. In the Soviet view, any attempt "to camouflage the (West German) accession to nuclear weapons through the establishment of some sort of committee" would contradict the Potsdam Agreement and other allied commitments to prohibit German militarism.

September 1, 1966—Premier Kosygin sends a message to the ENDC. He says that the Soviet Union is now willing to include a clause "on the prohibition of the use of nuclear weapons against non-nuclear states or parties to the treaty which have no nuclear weapons in their territory." At the same time, he attacks alleged plans to give West Germany "terrorists and revanchists" access to nuclear weapons.

September 17, 1966—Soviet Ambassador Tsarapkin says that whatever nuclear sharing plans the U.S. and its allies might have, the U.S.S.R. would never agree to West German "access to nuclear weapons" for this would increase tension in Europe, threaten European security, and nullify any attempts to conclude an effective NPT.

September 17, 1966—Zdenek Cernik, Czechoslovak representative, says that the West German desire to participate in a joint nuclear force and in the control of nuclear weapons and the making of decisions on their use within the framework of NATO shows that there are other direct ways and means of proliferating nuclear weapons.

February 17, 1966—Miesczyslaw Blusztajn, the Polish representative charges that West Germany is the only Western European country interested in nuclear sharing and that the majority of Western Europeans are against it.

March 29, 1966—Ambassador Alexi Roshchin charges that the Western Powers still wished "to leave a loophole for giving access to nuclear weapons to non-nuclear powers and in the first place, to the Federal Republic of Germany."

April 28, 1966—Rochchin says that the U.S. draft provides the possibility for the U.S., irrespective of whether unified nuclear forces are created in NATO or not, to transfer nuclear weapons to other countries; for example, the Federal Republic of Germany and for the latter, to obtain these weapons, keep them, transport them as it sees fit, and put them into its missiles or aircraft which could thus carry out flights with nuclear weapons aboard. Lastly, the Federal Republic of Germany would be able to use these weapons after receiving the consent of a nuclear power.

August 16, 1966—Rochchin says the U.S. regards the treaty as a piece of paper "but gives priority to giving West Germany the right to take part in a joint nuclear force."

September 26, 1966—Czechoslovak delegate reports that East Germany is prepared to accept IAEA safeguards if West Germany also accedes.

September 23, 1966—Foreign Minister Gromyko again says the U.S. draft treaty leaves loopholes for West Germany.

August 17, 1967—Soviets charge that use of Euratom safeguards in place of IAEA safeguards meant that West Germany was being inspected only by its Allies.

August 24, 1967—Common Soviet-U.S. Draft Treaty on the Non-Proliferation of Nuclear Weapons.

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

The yeas and nays were not ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

The yeas and nays were ordered.

Mr. SAXBE. Mr. President, I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is, Will the Senate advise and consent to the resolution of ratification? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. AIKEN. Mr. President, will this be the final vote on the treaty?

The PRESIDING OFFICER. The Senator from Vermont is advised that this will be a vote on whether the Senate will advise and consent to the resolution of ratification. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Arkansas (Mr. MCCLELLAN) is necessarily absent,

and if present and voting would vote "yea."

Mr. SCOTT. I announce that the Senator from Kentucky (Mr. COOPER) is detained on official business, and if present and voting, would vote "yea."

The yeas and nays resulted—yeas 83, nays 15, as follows:

[No. 23 Ex.]

YEAS—83

Aiken	Gravel	Mundt
Allott	Griffin	Muskie
Anderson	Hansen	Nelson
Baker	Harris	Packwood
Bayh	Hart	Pastore
Bellmon	Hartke	Pearson
Bennett	Hatfield	Pell
Bible	Holland	Percy
Boggs	Hruska	Prouty
Brooke	Hughes	Proxmire
Burdick	Inouye	Randolph
Byrd, Va.	Jackson	Ribicoff
Byrd, W. Va.	Javits	Saxbe
Cannon	Jordan, N.C.	Schweiker
Case	Jordan, Idaho	Scott
Church	Kennedy	Smith
Cook	Magnuson	Sparkman
Cotton	Mansfield	Spong
Cranston	Mathias	Stevens
Dirksen	McCarthy	Symington
Dodd	McGee	Talmadge
Dole	McGovern	Tydings
Eagleton	McIntyre	Williams, N.J.
Ellender	Metcalf	Williams, Del.
Fong	Miller	Yarborough
Fulbright	Mondale	Young, N. Dak.
Goodell	Montoya	Young, Ohio
Gore	Moss	

NAYS—15

Allen	Fannin	Murphy
Curtis	Goldwater	Russell
Dominick	Gurney	Stennis
Eastland	Hollings	Thurmond
Ervin	Long	Tower

NOT VOTING—2

Cooper	McClellan

The PRESIDING OFFICER (Mr. STEVENS in the chair). Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. FULBRIGHT. Mr. President, I move that the President be immediately notified of the Senate's consent to the resolution of ratification.

The PRESIDING OFFICER (Mr. STEVENS in the chair). Without objection, it is so ordered.

Mr. FULBRIGHT. Mr. President, I wish to extend appreciation to the distinguished majority leader and the distinguished minority leader for the way they cooperated in the handling of this very important treaty. I think all of the Senate should be proud of the fine debate that has taken place. I think this has been an exhaustive and informative debate.

Those Senators who offered reservations and understandings, even though the chairman could not accept them, are to be commended. Nearly all proposals were sound in substance, and it was for procedural reasons that I could not accept them. However, the debate which they inspired did a great deal to make a clear legislative history. I think the debate added a great deal to national understanding of the treaty. I believe a fine record has been made.

Mr. MANSFIELD. Mr. President, the distinguished Senator from Arkansas (Mr. FULBRIGHT), the able and effective chairman of the Foreign Relations Committee, deserves the highest commendation of the Senate for the manner in which he led this treaty to final approval today. All Senators are aware of the extensive hearings and work involved in bringing a treaty of such great importance to the floor. Its handling by Senator FULBRIGHT was distinguished most perhaps by the highly thoughtful and competent way the chairman led the discussion. Once again we are in his debt. Once again does the Nation owe to him its gratitude for such a thorough and high-level discussion of the great issues involved.

May I say also that the ranking minority members of the committee, the senior Senator from Vermont (Mr. AIKEN) deserves similar high praise for his devoted efforts in behalf of this treaty. From the outset—when hearings began last summer—he joined with the able Senator from Alabama (Mr. SPARKMAN) in assuring a full and exhaustive study. So we are indeed grateful to Senator AIKEN, to Senator SPARKMAN, and to the other committee members for their vast contribution to the success of this matter.

And joining specifically to assure a full discussion of all of the issues involved were the distinguished Senator from Connecticut (Mr. DODD), the distinguished Senator from North Carolina (Mr. ERVIN), the distinguished Senator from South Carolina (Mr. THURMOND), and the distinguished Senator from Texas (Mr. TOWER). Their strong and sincere views are always welcome; indeed, the Senate profited particularly from their expressions concerning the issues involved in a matter as complex and important as is this treaty.

A number of others are to be similarly commended for their participation: the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MUNDT), the Senators from California (Mr. CRANSTON and Mr. MURPHY) and many more should be included in this list. In fact, I believe the Senate as a whole may justly be proud of this achievement—obtained with such great bipartisan cooperation on an issue of such monumental importance to all mankind.

ORDER OF BUSINESS

Mr. DIRKSEN. Mr. President, I would like to query the majority leader concerning the program for the remainder of the week and also for next week, if possible.

VACATING OF ORDER FOR RECESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order which was agreed to earlier by the Senate to recess at the conclusion of business today until 10 o'clock tomorrow morning be vacated.

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

ORDER FOR ADJOURNMENT TO MONDAY, MARCH 17, 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until noon on Monday next.

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

AUTHORITY TO RECEIVE MESSAGES, FILE REPORTS, AND SIGN BILLS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that during the adjournment following today's session until the Senate reconvenes on Monday, March 17, 1969, the Secretary of the Senate be authorized to receive messages from the President of the United States and the House of Representatives, and that said messages may be appropriately referred.

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

PROGRAM

Mr. MANSFIELD. Mr. President, it is my understanding that several measures have been reported by the Committee on Commerce today which hopefully will be taken up on Monday next. It is anticipated that we will try to clear as much of the Executive Calendar as possible immediately upon the conclusion of this colloquy with the distinguished minority leader so that we can see to it that some of these people who have been appointed will be able to take up their jobs immediately.

There will be no further votes tonight.

Mr. AIKEN. Mr. President, will the Senator yield for a question?

Mr. MANSFIELD. I yield.

Mr. AIKEN. When does the majority leader expect to take up the nomination of Mr. Smith for the Farmers Home Administration?

Mr. MANSFIELD. I would assume on Monday.

Mr. AIKEN. I thank the Senator.

Mr. MANSFIELD. I think that can be worked out for Monday.

Mr. AIKEN. The reason I ask is that the Farmers Home Administration is not able to properly function and it is one of the most important agencies of Government.

Mr. MANSFIELD. The Senator is correct.

NOMINATIONS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of nominations on the Executive Calendar, beginning with John S. D. Eisenhower, under Department of State.

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

The nominations on the Executive Calendar will be stated, beginning with the nomination of John S. D. Eisenhower.

DEPARTMENT OF STATE

The bill clerk read the nomination of John S. D. Eisenhower, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belgium.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

INTERNATIONAL MONETARY FUND, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, AND INTER-AMERICAN DEVELOPMENT BANK

The bill clerk read the nomination of David M. Kennedy, of Illinois, to be U.S. Governor of the International Monetary Fund, U.S. Governor of the International Bank for Reconstruction and Development, and a Governor of the Inter-American Development Bank.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

ASIAN DEVELOPMENT BANK

The bill clerk read the nomination of David M. Kennedy, of Illinois, to be U.S. Governor of the Asian Development Bank.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF TRANSPORTATION

The bill clerk proceeded to read sundry nominations in the Department of Transportation.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations in the Department of Transportation be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations in the Department of Transportation are considered and confirmed en bloc.

DEPARTMENT OF COMMERCE

The bill clerk proceeded to read sundry nominations in the Department of Commerce.

Mr. MANSFIELD. Mr. President, I ask that the nominations in the Department of Commerce be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations in the Department of Commerce are considered and confirmed en bloc.

INTERSTATE COMMERCE COMMISSION

The bill clerk read the nomination of Donald L. Jackson, of California, to be a member o fthe Interstate Commerce Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

OFFICE OF EMERGENCY PREPAREDNESS

The bill clerk read the nomination of James D. O'Connell, of California, to be an Assistant Director of the Office of Emergency Preparedness.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. TRAVEL SERVICE

The bill clerk read the nomination of D. Langhorne Washburn, of the District of Columbia, to be the Director of the U.S. Travel Service.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

CORPORATION FOR PUBLIC BROADCASTING

The bill clerk read the nomination of Albert L. Cole, of Connecticut, to be a member of the board of directors of the Corporation for Public Broadcasting.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF TRANSPORTATION

The bill clerk read the nomination of James M. Beggs, of Maryland, to be Under Secretary of Transportation.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

EXECUTIVE REPORTS OF A COMMITTEE

The following favorable reports of nominations were submitted:

By Mr. SPARKMAN, from the Committee on Banking and Currency:

Carlos C. Villarreal, of California, to be Urban Mass Transportation Administrator;

Henry Kearns, of California, to be President of the Export-Import Bank of the United States; and

Preston Martin, of California, to be a member of the Federal Home Loan Bank Board.

FEDERAL HOME LOAN BANK BOARD

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nomination of Preston Martin, of California, to be a member of the Federal Home Loan Bank Board. This nomination was reported unanimously by the Committee on Banking and Currency earlier today, and the reason is that it has to do with a deadline.

The PRESIDING OFFICER. The nomination will be stated.

The bill clerk read the nomination of Preston Martin, of California, to be a member of the Federal Home Loan Bank Board.

Mr. DIRKSEN. Mr. President, the incumbent chairman of the Home Loan Bank Board has resigned effective tomorrow night. Unless this nomination is taken up there would be no chairman to function for that board, and no majority.

Normally I have always insisted that these names come to us on the printed Executive Calendar, but I think it is necessary to make a dispensation here because of the extraordinary circumstances in this case.

I have no objection to a consideration of the nomination.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of the nominations on the Executive Calendar.

The PRESIDING OFFICER. The nominations will be stated.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE DIPLOMATIC AND FOREIGN SERVICE

The bill clerk proceeded to read sundry nominations in the Diplomatic and Foreign Service, placed on the Secretary's desk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

The bill clerk proceeded to read sundry nominations in the Environmental Science Services Administration, placed on the Secretary's desk.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

DEPARTMENT OF STATE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of nominations in the Department of State, beginning with Walter H. Annenberg, of Pennsylvania.

The PRESIDING OFFICER. The nomination will be stated.

The bill clerk read the nomination of Walter H. Annenberg, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Great Britain.

Mr. YOUNG of Ohio. Mr. President, it is my desire to comment briefly on this nomination.

Mr. SCOTT. Mr. President, may we have order?

Mr. YOUNG of Ohio. Mr. President, I take a dim view of the nomination of Walter H. Annenberg to be Ambassador Extraordinary and Minister Plenipotentiary to the Court of St. James. In my opinion, this nomination made by President Nixon is not a good nomination.

I am opposed to confirmation of Mr. Annenberg to this highly regarded and most important diplomatic post. This is a political nomination, pure and simple, and my vote, Mr. President, will be cast against his confirmation.

For more than 100 years our relationship with the mother country, England, has been amiable. In two world wars American and British soldiers have fought side by side.

Our Ambassador in London should be a truly great American whose achievements in American life as a private citizen, if not as a public official, have

proven him worthy of advancement to the position of being personal representative of the President of the United States to Great Britain.

Incidentally, in view of our terrible and unjustified involvement in a civil war in Vietnam and the tremendous total of Americans killed and wounded in combat, it is noteworthy to observe that these are happy days for England. The year 1968 was the first year in a period of more than 300 years that not one British soldier, sailor, marine, or airman was killed in combat action anywhere in the world.

It would have seemed fitting that an outstanding American known for his achievements, service, and compassion in American life be our Ambassador in London.

Over the years, a fine tradition has been built up, and our ambassadors have in the past deserved and won the respect and admiration of Americans and of the heads of state of European nations. I feel impelled to advert somewhat briefly to the Ambassador-designate Walter H. Annenberg, who, I fear, will be confirmed in the Senate. In all truth and candor I feel that this is a bad appointment by President Nixon.

The career of Walter H. Annenberg, new Ambassador Extraordinary and Plenipotentiary-designate to the Court of St. James, has been extraordinary for his generosity to certain charities, high-handedness in exercising the prerogatives of his profession, narrow-mindedness in the treatment of his fellow men—and I could mention contributions to that "Grand Old Party" of which I am not a member, but I have no fault to find with that.

He has, however, been consistently, almost vehemently, faithful to the Grand Old Party, of which I am not a member, though not always to Richard Nixon. Under the usual political rule of thumb, reward goes to those who stand up to be counted early. Publisher Annenberg, according to my reading of newspapers, did not stand up early.

When he arrived in Miami Beach for the GOP convention last August, he was for Ronald Reagon of California and had promoted Reagan for some time.

On one occasion he invited Reagan to Philadelphia to attend a swank gathering at the Barclay Hotel to meet Tom McCabe, the Scott Tissue king, and Phil Sharples, former head of Sharples Cream Separations, both big bankrollers for the Republican Party.

Annenberg tried to keep the meeting off the record, but his city editor, Bob Holland, heard about it over the radio and assigned reporter Bob Collins to cover for the Inquirer. But publisher Annenberg objected, forbade his own reporter to interview Reagan at the airport. He could wait and see him briefly in the hotel lobby, it was stipulated.

After the hotel reception, however, Governor Reagan gave reporter Collins the brushoff on the excuse that he had already been interviewed at the airport—by the Inquirer's rival, the Bulletin.

Regardless of all this, while I cannot fathom the reason for our President nominating Mr. Annenberg to this extremely important and prestigious ambassadorial post, my present conclusion is that the reason must be political.

The British are accustomed to having American newspapermen serve as ambassadors to the Court of St. James. A long and distinguished list of publishers and newspapermen have been distinguished American ambassadors to Great Britain, ranging from John Hay, later Secretary of State, to his grandson, John Hay Whitney, who was publisher of the New York Herald Tribune.

Mr. PELL. Mr. President, will the Senator yield for a moment on this subject?

Mr. YOUNG of Ohio. Yes; I yield for a question.

Mr. PELL. No; on the same subject.

Mr. YOUNG of Ohio. Yes, I yield.

Mr. PELL. It might be of interest to note that the gentleman whose bust is in the gallery above me, George M. Dallas, also had some of the criteria of which the Senator from Ohio is speaking. He happened to be my great-great-granduncle.

Mr. YOUNG of Ohio. Yes; and he was a distinguished American statesman and patriot. I am glad the distinguished Senator from Rhode Island pointed that out.

There have also been Robert Worth Bingham of the Louisville Courier-Journal, Walter Hines Page of the Atlantic Monthly, Whitelaw Reid of the New York Herald Tribune, and George Harvey, editor of the New York World and Harper's. But Britishers frankly are raising their eyebrows over the appointment of Walter Annenberg, publisher of the Daily Racing Form and Morning Telegraph, the two bibles of the race tracks. It is true that Annenberg likes to be known as publisher of the Philadelphia Inquirer rather than the race sheets. It is also true that the new envoy should be an expert at picking the winners at Ascot. In fact, English cartoonists are already sharpening their pencils, waiting for a chance to lampoon Annenberg in frock coat and gray top hat, whispering race tips to Prime Minister Wilson. However, Anglo-American relations, at a time when President Nixon is trying to rebuild the American position in Europe, and had a productive visit with Prime Minister Wilson, should be considered too important by serious-minded diplomats to be the subject of racing jokes. And though London is accustomed to American publishers, there is a serious question as to how much Annenberg or his newspapers are really interested in foreign affairs. Certainly the Daily Racing Form and the Morning Telegraph are not. The Philadelphia Inquirer is the fifth or sixth largest morning newspaper in the United States, yet it has stationed no foreign correspondents abroad, and did not even send a newsman on President Nixon's recent trip to Europe, though a record number of newsmen—170—accompanied him.

It seems to me, Mr. President—and I am a reader of the Philadelphia Inquirer in the Marble Room—that under publisher Walter Annenberg, the Philadelphia Inquirer's chief interest on foreign affairs has been confined to sending its fashion editor to Paris to cover the fashion shows. I know of no policy relating to the interests of our Nation with that of Britain and other European nations. It seems to me that this newly designated Ambassador's fortune was built up originally not by himself, but by his father, through Chicago gang wars and illegal race wire services.

If we in the Senate were to be guided by the lamp of experience and to make our confirmation of an American ambassador to Great Britain on a high level in accord to our ambassadors over many years, I feel certain that we would realize there is no rhyme or reason for Walter Annenberg to be nominated and confirmed to this high and important post as Ambassador to the Court of St. James's.

I desire my vote to be recorded against the confirmation of this nomination.

Mr. MURPHY. Mr. President——

Mr. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. MURPHY. I am glad to yield.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I call for a vote on the pending nomination of Mr. Walter Annenberg.

The PRESIDING OFFICER. Does the Senator from California yield further to the Senator from Montana for this purpose?

Mr. MURPHY. I am happy to yield.

The PRESIDING OFFICER. The question is on the confirmation of the nomination of Walter H. Annenberg, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Great Britain.

The nomination was confirmed.

Mr. MURPHY subsequently said: Mr. President, I feel compelled at this time to speak about the gentleman whose nomination as Ambassador to the Court of St. James has just been confirmed.

I have had the privilege, and I declare it is a great privilege, of knowing him well personally over a period of 20 years. I know him to be one of the finest citizens in this great country of ours. I know of no man who has been more public spirited, who has done more for charity in his community and in other communities across the Nation. He has been interested in all progress, not only in the city of Philadelphia and the State of Pennsylvania, but also throughout the country, and he has been a great patron of the arts. He is a man of high culture who has gone to great lengths to prepare for the job for which I am so pleased to find that he has been nominated and his nomination confirmed today by the Senate.

I think to qualify a man's performance and possibility of performance on the question of whether or not he inherited wealth is not a sound basis for qualification. I think it is much more intelligent to approach the matter on the manner in which he has used his inheritance.

I know, for example, that Ambassador Annenberg has done one of his greatest

jobs for a school in New Jersey. I know that he has helped in matters of hospitals on the west coast, and I am more than pleased that I was present today when his nomination came up for confirmation.

I am sure that if my distinguished friend and esteemed colleague from Ohio had had the privilege of knowing Mr. Annenberg as well and as long as I have, he would probably feel as I do about this appointment. I think and I sincerely hope that not only the President, but all the Members of the Senate and the people of this great country will be well served by Ambassador Annenberg when he takes over his post in the Court of St. James.

Mr. President, I yield the floor.

The bill clerk read the nomination of Jacob D. Beam, of New Jersey, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Union of Soviet Socialist Republics.

Mr. THURMOND. Mr. President, I have been deeply concerned about the nomination of Mr. Jacob Beam as U.S. Ambassador to Moscow because of the record of serious security problems that developed during his period as U.S. Ambassador to Warsaw. It is a record that does not appear to commend itself as grounds for the post as our chief representative in the Soviet Union.

Grave doubts are still in my mind about this nomination, but I am assuming that the administration has been fully apprised of the many news stories and columns, and the hearings of the Senate Internal Security Subcommittee that have dealt with the Beam period in Warsaw and since then. I am assuming that the administration has made a thorough investigation of all of these activities and has concluded that there are some overriding reasons why it is in the best interests of the United States to name Mr. Beam as U.S. Ambassador to the Soviet Union.

While I still have serious reservations about this nomination, I shall not oppose it. I want to give the administration the benefit of the doubt. I hope that the administration has made a right decision, and that Mr. Beam's duty in the Soviet Union will prove to be of benefit to the United States.

I am disappointed that the Senate Foreign Relations Committee did not question Mr. Beam extensively on the serious security problems that developed in Warsaw during his period as U.S. Ambassador, as it is only through depth investigation and penetrating questioning of such nominees that the Congress can assume its full responsibility in such matters.

The PRESIDING OFFICER. The question is on the confirmation of the nomination. [Putting the question.]

The nomination was confirmed.

Mr. MANSFIELD. Mr. President, I move that the President be immediately notified of the confirmation of these nominations.

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

Mr. MANSFIELD. Mr. President, has Executive Calendar No. 263, Message No. 196, on the nomination of Andrew E. Gibson, of New Jersey, to be Maritime Administrator, under the Department of Commerce, been confirmed?

The PRESIDING OFFICER. It has been confirmed.

Mr. MANSFIELD. I thank the Chair.

Mr. SCOTT. Mr. President, the qualifications of the Ambassadors whose nominations we have confirmed today are, in my judgment, of such outstanding caliber that they do not require testimony to that effect.

The appointment of John Eisenhower as Ambassador to Belgium is that of an able man, whose knowledge of the country is founded not only on personal interest and the command of the language, but a great deal of research pertaining to the battles which took place in that country, and whose personal qualities and qualifications are beyond dispute.

The same may be said, in my judgment, of Mr. Jacob Beam, the confirmation of whose nomination to be Ambassador to Russia is a recognition of his long and significant service to his country.

With regard to the confirmation of my friend, Mr. Walter H. Annenberg, I take this occasion to correct any misapprehensions that may perhaps have been raised here today. For example, the testimony which I attended in the Committee on Foreign Relations brought out quite clearly that the nominee, and now the confirmed Ambassador, had not, either in the year 1960 or in the year 1968, made any contribution whatsoever to the political campaigns of Mr. Nixon, now the President of the United States, and that in fact the only contributions whatever made by any member of his family were represented by a very modest campaign contribution by his wife in 1968, and I believe in 1960.

Therefore, the recognition of Mr. Annenberg is based upon his merit and upon his qualifications as an eminent charitarian and a man whose knowledge of international affairs and whose dedication to his country and to his country's interests at home and abroad are well known to all Pennsylvanians. I deeply regret that any reference has been made to whether or not people who are chosen to represent us abroad are persons of means or not of means, as I do not believe that the Senate is the place where judgment should be made on the basis of how much material worth a person has. The test, it seems to me, should be on the basis of the worth of the man himself, of his character, of his qualifications, and of his ability and willingness to serve.

As the founder and donor of the Annenberg School of Communications at the University of Pennsylvania, he has made possible advanced education to untold numbers of Americans. As a donor and contributor, both publicly and in many cases without any publicity whatever, to any number of charitable institutions, he has eminently shown the compassion which characterizes him.

His services will be a credit to the United States, and the United States will be fortunate in having Mr. Annenberg as its Ambassador to the Court of St. James and to have his well-qualified and attractive wife, a graduate of Leland Stanford University, accompany him and assist him in the performance of the manifold duties of that office.

I have talked with a number of representatives of the British Crown. They are very pleased at Mr. Annenberg's coming there. They do not reflect the sentiments that were reflected here today. They do not indulge in any derogation of the appointment in any manner whatsoever. They are looking forward eagerly to welcoming Mr. Annenberg to the Court of St. James.

I join with many other Pennsylvanians who are delighted that he has been selected for this post.

(At this point, Mr. MURPHY assumed the chair as Presiding Officer.)

Mr. SCHWEIKER. Mr. President, I am pleased to join with the senior Senator from Pennsylvania in his remarks and his expressions of pleasure at the actions of the Senate here today in confirming the nominations of John Eisenhower and Walter Annenberg.

Pennsylvania is proud of its two sons and distinguished leaders.

I was pleased to join with the senior Senator from Pennsylvania in testifying in their behalf at the confirmation hearings held on these two gentlemen.

In John Eisenhower we have a person who has been a distinguished educator, writer, military leader, and military historian in his own right.

John Eisenhower has rendered outstanding service to his country. He will do an excellent job in representing our country in Belgium.

In Walter Annenberg we have a person who has served the Pennsylvania area and the Greater Philadelphia community for many years as a hard-working editor and publisher dedicated to the betterment of Pennsylvania and its neighboring States.

He served as a philanthropist and one who has taken a keen and active participation in many charitable programs.

He served as one who has always placed the interest of public service first in his approach to problems and in his own work and feelings as well.

I was proud to testify in behalf of both of these gentlemen. We are glad to have these two men serve their country in this capacity.

I am sure that the United States will be proud of the records they make in their new roles.

LEGISLATIVE SESSION

Mr. HARRIS. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

S. 1563—INTRODUCTION OF A BILL FOR A NATIONAL INSTITUTIONAL GRANTS PROGRAM

Mr. HARRIS. Mr. President, I introduce, for appropriate reference, a bill to establish a National Institutional Grants Program. The bill, if enacted, would augment Federal support for sci-

entific research and education in a period of serious budgetary cutbacks.

Mr. President, I am privileged to be able to announce that Senators BURDICK, CANNON, EAGLETON, FULBRIGHT, HUGHES, METCALF, MUNDT, PACKWOOD, SPARKMAN, YOUNG of North Dakota, and YOUNG of Ohio are cosponsors.

The budgetary squeeze, caused principally by our vast commitment in Vietnam and the urgency of confronting firmly and resolutely the teeming social and urban problems of our Nation, has produced profound adverse effects on the soft underbelly of Federal expenditures—basic research and science education.

We must fully realize the extent to which Federal support of research and development has tapered off in recent years. Compared to the halcyon days of science in the late fifties and early sixties, the total Federal R. & D. expenditures, actual and estimated, have remained essentially constant for the last 4 years. Expenditures for fiscal year 1967 were $16.8 billion; for fiscal year 1968, $16.9 billion; for 1969, $16.4 billion; and for the upcoming fiscal year, $16.7 billion.

The research portion, one-third of the budget, shows essentially the same pattern: Between fiscal years 1968 and 1970 a meager increase from $5.1 billion to $5.4 billion is all that is anticipated.

In the same way, support of research in colleges and universities has also plateaued: $1.5 billion was expended in 1968; $1.4 billion is estimated for 1969; and $1.5 billion has been proposed for 1970.

The growth rate of Federal research and development funds for the last 5 years stands in sharp contrast to that of the preceding decade. Between 1955 and 1965 the Federal R. & D. budget increased from $3.3 billion to $14.9 billion for an average annual rate of increase of about 20 percent. But from 1965 to 1970 the budget will have inched forward from $14.9 to $16.7 billion for an average rise of 2.5 percent per year or about one-tenth of the previous rate. Meanwhile in those 5 years the number of scientists will have jumped some 20 percent.

As a percent of the gross national product, the R. & D. budget has decreased from 2.4 percent in 1964 to 1.7 percent in 1970—another dramatic indication of the downward trend when compared with one of our standard economic indicators.

Compounding the magnitude and intensity of this problem, which I must stress does not relate just to the total research and development budget but especially to the most sensitive part of that budget—basic research in universities—are inflationary trends that have reduced the buying power of the research dollar. General inflation plus the increasing sophistication and complexity of research projects and research equipment combine to reduce even further the value of the dollar invested in research.

Therefore, even if we decide only to stand in place, a continuing boost of 5 to 7 percent is needed per year. If, however, we attempt to provide for the growing number of science and engineering students, the higher costs of education and inflationary trends, we have to have a yearly increase of about 15 percent in university research funds in order to maintain a healthy rate of growth.

Unfortunately, we are not even maintaining our previous level of activity. The dollar today buys five-sixths of what it bought 6 years ago. The R. & D. budget for fiscal year 1970 is estimated to be $3 billion more than that for 1964. But, because of inflation, the 1970 budget in 1964 dollars amounts to $600 million less. A similar case can be made for the Federal support of university research.

We are, therefore, acting dangerously by stifling scientific progress. A zero gain is, in effect, a serious negative factor, and if continued will cripple our world leadership in science by stemming the flow of new knowledge from our universities into the governmental and industrial sectors.

Why are we faced with this crisis in science?

First and foremost, the high rate of expansion, in the decade beginning in 1955, could not have continued indefinitely. A slowdown was inevitable.

Second, R. & D. expenditures, while representing only 10 percent of the total Federal budget, are a markedly higher percentage of the controllable budget of some $40 billion. In fact, between 25 and 33 percent of the budget which could actually be raised or lowered substantially in recent years has been in the research and development area. In tight budget years, which are becoming the rule rather than the exception, the R. & D. budget is acutely vulnerable because of its high visibility. Arguments are advanced in favor of science cutbacks that downgrade the long and unpredictable payoffs of basic research as compared to the supposedly more immediate results which would accrue from allocating resources to many non-research areas.

Third, the hasty marriage of science and Government in World War II made it unnecessary for the scientific community to mount a comprehensive campaign to deepen public and congressional understanding of the needs and potentials of scientific research. The public support of science has been created and sustained to a significant extent by the threat of the scientific prowess of the Soviet Union. They tested the atomic bomb in 1949 and the H-bomb in 1953 and then launched Sputnik in 1957. Our Nation viewed these events as a series of external threats. We reacted quickly, and in part, in a rash manner.

The ironic result is that the Soviets have had—in effect—a major voice in the making of our national science policies. Hopefully, we are past the days of the action-reaction syndrome between the United States and Russia in this area. Now that much of the mystique and luster in science has faded we should strive to articulate national goals and priorities so that the people of America are brought within the locus of science policy affairs and can more clearly see the justifications for our support of research.

Fourth, the consequences of the cutbacks in research grants are often misunderstood. The history of the growing dependence of academic institutions on the Federal Government is too long and detailed to discuss at this time. In short, the project grant was the initial form of Federal support of university research. Out of these grants came funds for education, training, and other services, vital to the functioning of a university, that are intertwined with conducting research. Federal funds to universities account for two-thirds of their research support. When those funds are severely curtailed the impact reverberates throughout an entire institution.

Perhaps, in the past we have relied too heavily on the project grant approach which has supported science, education, and training through the back door. By stepping up the pace of institutional support and development I believe we can minimize the limitations of the project grant system. This, in large measure, can be accomplished through the adoption of the National Institutional Grants program, which is now before the Senate.

Mr. President, a fifth reason for the cutbacks is the inadequacy of our science constituency in relation to the amount of money, manpower and facilities that are at stake. We are in a period of keen competition for Federal funds. The scientific community, perhaps lulled into complacency by the overwhelming increases in funding levels of an earlier decade, seems unprepared to marshall its forces to meet the challenge of competing in the kitchen of hotly contested views. The apparent lack of political acuity of the science community is, hopefully, disappearing. The need for a higher order of persuasion is manifest if academic research and science education are to gain the support they must have.

Finally, an underlying source of tension which many feel has led to reductions in Federal research activity is the demand in a democratic system of government for accountability and the scientific demand for freedom of action. During the honeymoon of science and Government, tensions were minor. Now though, the quest for sovereignty and freedom of action on the part of the scientist is in open conflict with those in a democratic society who have raised a voice, increasing in pitch, in favor of greater accountability for the expenditures of public funds. Tensions develop between a scientist wanting to do what he thinks is best from his point of view and nonscientists, from their point of view, recommending research relevant to the needs of society.

Simplistic as this may seem, it is the type of conflict that has often prompted the public and their elected officials to react unfavorably and even harshly toward science. In such a climate, the net effect of reductions in spending is to reduce the national priority for basic research.

Altogether these factors have combined to cause a gradual erosion of the base that has supported basic research in our country. Efforts must be taken to reverse this trend and to expand and strengthen the political foundation which can support an adequate research and development budget.

Mr. President, the effects of these cuts in basic research especially have been severe on science programs in our institutions of higher education. Primarily they represent a long-term loss for a short-term economic gain. I strongly maintain that this is a false economy move. Basic research, as it clearly implies, is basic to all advances that we have made and can ultimately make in such fields as physics, chemistry, biology, the social sciences and other fields of science which underlie the tremendous technological revolution that this country has undergone since World War II. And I would remind Senators of the inextricable interrelationship of technological advance and innovation to our economic well-being.

Those of us who are trying to accomplish a more equitable distribution of research and development funds, so that additional centers of academic excellence can be created and a first-rate education in the sciences be made available to the young people of more States, must be concerned with the implications of reduced funds for research and training. Dr. Donald F. Hornig, the former President's Special Adviser for Science and Technology, said in testimony before the Senate Subcommittee on Government Research, of which I am chairman, that there is no doubt that the quality of teaching is much higher in institutions where first-rate research is going on. Every other expert witness before the subcommittee, to whom the question was posed, agreed with that view and so do I.

In the area of science teaching and university science department development, the so-called have-not universities and colleges will suffer most from diminished Federal funds that they so desperately need if they are to develop into centers of excellence in science and engineering. It is hardly sensible for us to believe that additional universities can become first-rate and be able to compete for research and development funds on an equal basis if we are unwilling to spend the seed capital to make them excellent.

I am sure that serious damage will be done to all American universities and colleges. Students will be diverted from pursuing careers in science; professors will interrupt their research for want of supporting funds; laboratories and other facilities will go unused and constitute an unbearable financial burden on university budgets already hard pressed; young graduate assistants whose stipends depend on Government funds will turn away from teaching careers; and many promising research projects will be aborted.

Every major university has encountered situations similar to the one at Oklahoma State University which was reported to me recently. A bright, young Ph. D. in chemistry received a "starter" grant from the petroleum research fund. Afterward, in order to continue his work, he applied for a grant from the National Science Foundation. It was not approved. Unavailability of funds, and not lack of merit, was the reason for this action. Additional research experience, it was suggested, would strengthen the scientist's competitive position. But how can a scientist gain experience when funds are not available? If science is to move forward, scientists must move forward, too.

We will lose our technological edge and our position of industrial superiority if we continue to throttle back on our research effort. Our economic and social strengths are dependent upon our technical capabilities which in turn are derived from our underlying base of scientific knowledge.

Universities and colleges, faced with the sharp reductions in funding levels and the curtailments and deferments of many programs, will tend to lose confidence and trust in the Federal Government. Delicate and fragile relationships developed over decades and resulting in many healthy forms of cooperation could be seriously, if not permanently, damaged if we continue to act precipitously.

NASA's sustaining university program offers a startling example of the jolting effect that the science crisis can have on universities. Funds have plummeted from $45 million in fiscal year 1966 to $10 million in 1968 and to $9 million in 1969 and 1970. This program issues institutional grants to help universities build up their research capabilities. However, the budget squeeze has forced the Space Agency to pair down the number of recipient institutions to 30, a reduction of 16 over last year's level. It is of special concern to me that a university in Oklahoma is among those being removed for next year.

The establishment of a national institutional grants program would be a timely remedy for academic science. University and college administrators, scientists, educators, and students are all suffering from the effects of the zero growth rate. The ties of mutual trust and confidence could be strengthened and our technological edge sharpened with the passage of this proposal.

A quantum jump in the level of support for institutional development would be a valuable complement to our project grant system—a system that is viable, responsive and relevant, but one which has serious shortcomings. It does not provide for the continuity of support necessary for colleges and universities to plan confidently for impending increases in student bodies, faculties, facilities, and programs. Project grants have come to support science education and training indirectly through such means as supporting graduate students and making possible the purchase of equipment which may be used for both research and instruction. Many feel that indirect costs charged to research projects are used to support teaching functions. It may very well be advantageous to support a larger share of research, science education, and training through institutional grants thus avoiding some of the problems associated with the project system and emphasizing the vital interdependence of these functions.

An augmentation of Federal science funds is a prerequisite to a steady rise once again in the research budget. The shotgun marriage of science and Government in World War II no longer offers the rationale or momentum for steady and predictable growth. Congress and the public must become involved in the formulation of policies for science and technology in a manner and on a scale heretofore unknown. Neither the science agencies nor the science community has readily sought such involvement before but without it the future of scientific research will be plagued with uncertainty and adversity.

The National Institutional Grants program is designed to increase substantially institutional support for scientific research and education from the community college to the university level. A sum of $400 million is authorized for fiscal year 1970. Then each year thereafter a sum equal to 20 percent of the total Federal funds for academic science expended the previous year is authorized. In this way the Federal research budget will rise at a rate that will ensure a healthy growth of our academic capabilities in science.

The allocation of funds employs a multiformula approach. First, one-third of the funds shall be allocated to institutions of higher learning as a graduated percentage of the total sum of project awards received by them in academic science from the Federal Government during the preceding year; second, one-third of the funds shall be divided among the States in proportion to the ratio of the total number of full-time undergraduate students in each of the States' institutions of higher learning in the preceding year as compared to the total number of such students in the United States. The final third of the funds shall be allocated to institutions of higher learning in proportion to the ratio of the number of advanced degrees awarded by the institutions in the preceding 3 years in the sciences as compared to the total number awarded in the United States.

The program shall, if enacted, be administered by the National Science Foundation. A newly created National Institutional Science Council will advise, consult with and make recommendations to the Foundation on matters relating to the administration of this act.

The consequences of the bill are diverse and profound. It would provide greater continuity and predictability of Federal support of academic science and education. A viable growth rate for academic science would be initiated and sustained.

Because of the multiformula approach, the authorized funds will not go to colleges and universities in the same proportion as they are received at present. At the same time the existing system of support will not be dismantled. In effect, the augmentation of funds will bring about a more equitable distribution of academic research funds without disrupting the present pattern of support.

I would hope that hearings on this bill could be held in the Senate. In hearings, ways to modify or refine the three formulas and the guidelines for applying them could be sought, especially if inconsistencies with the purpose of strengthening American science were found. For example, I believe, the social sciences should be liberally defined for the purposes of administering the act. The Foundation has tended to support those social

science projects that employ rigid scientific methods. Systematic social science research which may not be scientific as defined by a physicist or chemist is still good research and should be supported.

Congress should mandate the National Science Foundation to devise procedures for encouraging colleges and universities to expand their undergraduate, graduate, and research programs in an effort to enlarge the number of centers of scientific excellence on a more equitable geographical basis.

The extensive hearings of the Senate Subcommittee on Government Research clearly indicated a consensus that the national interest would be served by the development of additional centers of research and educational excellence in all areas of the United States.

We further concluded that excellence begins with local initiative. However, I feel very strongly that this does not relieve the Federal Government of an important responsibility. Federal support of research should be handled in such a way as to encourage local planning for local excellence, give incentive for increased local initiative and support and help to insure maximum impact from such research and educational excellence.

If the National Science Foundation is to play a leading role in the support of science, Congress must give it explicit authority to formulate innovative methods to encourage excellence at the local level without dismantling the present structure of academic science support and without giving the Foundation the power to stifle local plans and initiatives. The National Institutional Grants program would give to the National Science Foundation such authority and, with adequate funding, the health of academic science could be assured.

Mr. President, Dr. Leland J. Haworth, Director, National Science Foundation, presented in table form the estimated geographic distribution of institutional grants under H.R. 35, a bill identical to the one which I introduce today. He also presented the distribution under this formula to selected institutions of higher education. I ask unanimous consent that these tables be printed at this point in the RECORD so that Senators may see what benefits would accrue to their States through the passage of this measure.

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

APPENDIX TABLE I

ESTIMATED GEOGRAPHIC DISTRIBUTION OF INSTITUTIONAL GRANTS UNDER H.R. 35

[Dollar amounts in millions]

	Dollar distribution				Percent distribution				Percent of U.S. population [4]	Percent of Federal R. & D. funds (67) [5]
	Pt. 1 [1]	Pt. 2 [2]	Pt. 3 [3]	Total	Pt. 1	Pt. 2	Pt. 3	Total		
Total, United States	$133.3	$133.3	$133.3	$400.0	100.0	100.0	100.0	100.0	100.0	100.0
New England	11.5	8.1	12.7	32.4	8.7	6.1	9.5	8.1	5.8	14.3
Connecticut	2.0	1.7	2.5	6.2	1.5	1.3	1.9	1.5	1.5	1.8
Maine	.6	.5	.2	1.3	.5	.3	.2	.3	.4	.1
Massachusetts	6.7	4.5	8.5	19.7	5.0	3.4	6.4	4.9	2.7	11.1
New Hampshire	.7	.5	.4	1.7	.6	.4	.3	.4	.4	.4
Rhode Island	.9	.6	.9	2.5	.7	.5	.7	.6	.5	.8
Vermont	.6	.4	.1	1.1	.5	.3	.1	.3	.2	.2
Middle Atlantic	23.3	21.5	26.0	70.8	17.6	16.1	19.4	17.7	18.5	19.1
New Jersey	2.6	2.7	3.9	9.1	2.0	2.0	2.9	2.3	3.5	2.0
New York	13.4	12.3	15.2	40.9	10.1	9.2	11.4	10.2	9.1	12.0
Pennsylvania	7.3	6.5	6.9	20.7	5.5	4.9	5.1	5.2	5.9	5.1
East North Central	19.5	25.1	30.1	74.7	14.7	18.8	22.5	18.7	19.8	18.0
Illinois	5.2	6.5	8.7	20.4	4.0	4.9	6.5	5.1	5.5	6.3
Indiana	2.6	3.1	5.6	11.3	1.9	2.3	4.2	2.8	2.5	2.3
Michigan	4.5	6.1	6.8	17.4	3.4	4.6	5.1	4.3	4.4	4.4
Ohio	4.4	6.3	5.3	16.0	3.3	4.8	3.9	4.0	5.3	2.8
Wisconsin	2.8	3.1	3.7	9.6	2.1	2.3	2.8	2.4	2.1	2.3
West North Central	12.4	11.5	11.9	35.7	9.4	8.6	8.9	8.9	8.0	6.3
Iowa	2.4	2.0	3.0	7.4	1.8	1.5	2.2	1.8	1.4	1.1
Kansas	1.8	1.8	2.2	5.9	1.4	1.4	1.7	1.5	1.2	.8
Minnesota	2.2	2.4	2.4	7.0	1.7	1.8	1.8	1.7	1.8	1.9
Missouri	3.3	3.0	2.8	9.1	2.5	2.3	2.1	2.3	2.3	1.9
Nebraska	1.2	1.1	.7	3.0	.9	.8	.5	.8	.7	.3
North Dakota	.6	.5	.4	1.6	.5	.4	.3	.4	.3	.1
South Dakota	.8	.5	.4	1.8	.6	.4	.3	.4	.3	.1
South Atlantic	19.5	15.9	13.0	48.4	14.7	11.9	9.7	12.1	15.1	11.3
Delaware	.3	.2	.5	1.0	.2	.2	.4	.3	.3	.1
District of Columbia	1.6	.9	2.0	4.4	1.2	.6	1.5	1.1	.4	1.1
Florida	3.1	3.7	2.1	9.0	2.4	2.8	1.6	2.2	3.1	2.0
Georgia	2.7	1.9	1.4	6.1	2.1	1.5	1.1	1.5	2.3	1.1
Maryland	2.2	2.3	1.9	6.4	1.7	1.7	1.4	1.6	1.9	2.9
North Carolina	4.3	2.7	2.7	9.6	3.2	2.0	2.0	2.4	2.6	2.7
South Carolina	1.6	1.1	.5	3.2	1.2	.8	.3	.8	1.3	.2
Virginia	2.4	2.1	1.3	5.8	1.8	1.6	1.0	1.5	2.3	.8
West Virginia	1.3	1.1	.6	2.9	1.0	.8	.4	.7	.9	.3
East South Central	9.0	7.3	4.0	20.3	6.8	5.5	3.0	5.1	6.6	3.4
Alabama	2.4	1.9	.8	5.1	1.8	1.4	.6	1.3	1.8	1.0
Kentucky	1.8	1.8	.7	4.3	1.4	1.4	.5	1.1	1.6	.6
Mississippi	1.8	1.3	.7	3.9	1.3	1.0	.5	1.0	1.2	.4
Tennessee	3.0	2.3	1.8	7.0	2.2	1.7	1.3	1.8	2.0	1.4
West South Central	12.8	12.2	9.6	34.6	9.7	9.2	7.2	8.7	9.7	5.9
Arkansas	1.3	1.0	.5	2.8	1.0	.8	.4	.7	1.0	.3
Louisiana	2.4	2.1	1.7	6.1	1.8	1.6	1.3	1.5	1.9	1.1
Oklahoma	1.7	2.0	2.4	6.1	1.3	1.5	1.8	1.5	1.3	.6
Texas	7.4	7.1	4.9	19.5	5.6	5.4	3.7	4.9	5.5	3.9
Mountain	6.8	6.6	6.8	20.3	5.1	5.0	5.1	5.1	3.9	4.3
Arizona	1.0	1.5	1.5	3.9	.7	1.1	1.1	1.0	.8	.6
Colorado	2.0	1.7	2.0	5.7	1.5	1.3	1.5	1.4	1.0	1.7
Idaho	.5	.6	.3	1.3	.4	.4	.2	.3	.4	.1
Montana	.7	.5	.4	1.7	.6	.4	.3	.4	.3	.2
Nevada	.2	.2	.1	.5	.2	.1	.1	.1	.2	.2
New Mexico	1.1	.7	.9	2.6	.8	.5	.7	.7	.5	.6
Utah	1.0	1.3	1.3	3.6	.8	1.0	1.0	.9	.5	.9
Wyoming	.3	.2	.3	.9	.2	.2	.2	.2	.2	.2

See footnotes at end of table.

APPENDIX TABLE I—Continued

ESTIMATED GEOGRAPHIC DISTRIBUTION OF INSTITUTIONAL GRANTS UNDER H.R. 35—Continued

[Dollar amounts in millions]

	Dollar distribution				Percent distribution				Percent of U.S. population [4]	Percent of Federal R. & D. funds (67) [5]
	Pt. 1 [1]	Pt. 2 [2]	Pt. 3 [3]	Total	Pt. 1	Pt. 2	Pt. 3	Total		
Pacific	16.5	24.1	19.8	60.5	12.5	18.1	14.8	15.1	12.7	17.1
Alaska	.3	.1	.1	.5	.3	.1	.1	.1	.1	.3
California	11.7	18.9	15.2	45.8	8.8	14.2	11.3	11.5	9.6	13.0
Hawaii	.5	.5	.5	1.5	.4	.4	.3	.4	.4	.6
Oregon	1.9	1.6	1.7	5.2	1.4	1.2	1.3	1.3	1.0	1.1
Washington	2.2	2.9	2.4	7.5	1.6	2.2	1.8	1.9	1.6	2.1
Territories and possessions	.9	1.1	.1	2.0	.7	.8	.1	.5		.3

[1] Formula used: 100 percent of first $50,000; 20 percent—$50,000 to $100,000; 10 percent—$100,000 to $500,000; 5 percent—$500,000 to $2,000,000; 4 percent—$2,000,000 to $4,000,000; 2 percent—$4,000,000 to $10,000,000; 1.5 percent—$10,000,000 to $20,000,000; 1 percent—$20,000,000 to $35,000,000; 0.5 percent—$35,000,000 and above. (Total amount of computed grants equals $132,300,000 rather than $133,300,000.)

[2] Formula used: State's percentage of national total of undergraduate resident students (full and part time) multiplied by $133,300,000 to determine State's allocation.

[3] Formula used: State's number of master's degrees in science and engineering (1963–64, 1964–65, 1965–66) plus 3 times the number of doctor's degrees in science and engineering (1963–66). Total number of degree units then multiplied by $700. (Total amount of computed grants equals $133,900,000 rather than $133,300,000.)

[4] Census Bureau provisional estimate of total resident population July 1, 1968.

[5] Federal obligations to universities and colleges (as reported to CASE) for fiscal year 1967.

Note: Detail may not add to totals because of rounding.

APPENDIX TABLE II.—ESTIMATED INSTITUTIONAL GRANTS UNDER H.R. 35

A. COMPUTATION OF GRANTS AND OVERALL DISTRIBUTION

1. Funds Required for Part 1 by Formula Interval

[Dollar amounts in thousands]

Percent	Formula interval	Maximum increment	Number of institutions	Cost per formula interval	Percent	Formula interval	Maximum increment	Number of institutions	Cost per formula interval
100	$1 to $50	$50	1,903	$60,500	1.5	$10,001 to $20,000	$150	67	$6,903
20	$51 to $100	10	926	7,992	1	$20,001 to $35,000	150	29	2,819
10	$101 to $500	40	696	16,530	0.5	$35,001 to $95,487	302	14	1,006
5	$501 to $2,000	75	278	14,706					
4	$2,001 to $4,000	80	161	11,079		Total			132,308
2	$4,001 to $10,000	120	123	10,673					

2. Distribution of Funds in Part 1 by Institution Group

[Dollar amounts in thousands]

Formula interval	Maximum increment	Maximum IG	Number of institutions	Base dollars	Institutional grants	Formula interval	Maximum increment	Maximum IG	Number of institutions	Base dollars	Institutional grants
$1 to $50	$50	$50	977	$14,200	$14,200	$10,001 to $20,000	$150	$525	38	$550,173	$16,803
$51 to $100	10	60	230	16,662	12,532	$20,001 to $35,000	150	675	15	381,895	8,694
$101 to $500	40	100	418	95,905	30,490	$35,001 to $95,487	302	977	14	691,227	10,456
$501 to $2,000	75	175	117	111,112	14,331						
$2,001 to $4,000	80	255	38	106,970	7,889	Total			1,903	2,323,795	132,308
$4,001 to $10,000	120	375	56	355,651	16,913						

NOTES

Pt. 1, sec. 2(b)(1).
Base used: Total Federal funds for academic science, fiscal year 1967.
Formula used: 100 percent of first $50,000; 20 percent, $50,001 to $100,000; 10 percent, $100,001 to $500,000; 5 percent, $500,001 to $2,000,000; 4 percent, $2,000,001 to $4,000,000; 2 percent, $4,000,001 to $10,000,000; 1.5 percent, $10,000,001 to $20,000,000; 1 percent, $20,000,001 to $35,000,000; 0.5 percent, $35,000,001 and above ($100M=IG of $1,000,000).

B. DISTRIBUTION TO SELECTED INSTITUTIONS

1. Top 20 in Federal Funds for Academic Science, Fiscal Year 1967

[In thousands of dollars]

	Pt. 1	Pt. 2	Pt. 3	Total IG		Pt. 1	Pt. 2	Pt. 3	Total IG
Massachusetts Institute of Technology (95,487) [1]	977	155	3,536	4,668	New York University (39,363)	697	673	2,636	4,006
University of Michigan (56,344)	782	690	3,296	4,786	University of Washington (38,731)	694	600	1,686	2,979
University of Illinois [2] (52,446)	762	896	4,096	5,754	Cornell University (37,741)	689	389	2,108	3,185
Columbia University (52,113)	761	349	1,780	2,890	Johns Hopkins University (34,968)	675	205	790	1,670
University of California, Berkeley (48,889)	744	577	4,225	5,546	University of Pennsylvania (33,770)	663	388	1,589	2,640
Harvard University (48,861)	744	293	2,177	3,214	Yale University (30,926)	634	173	1,434	2,241
University of Wisconsin, Madison (48,290)	742	407	3,375	4,524	Duke University (27,594)	601	151	736	1,488
Stanford University (45,856)	727	231	3,023	3,984	University of Maryland [2] (27,138)	596	906	717	2,219
University of California, Los Angeles (45,398)	727	581	2,351	3,660	University of Colorado (24,412)	569	523	1,135	2,227
University of Minnesota [2] (42,125)	711	922	2,266	3,898					
University of Chicago (39,583)	698	195	1,560	2,453	Total				68,014

[1] Figures in parentheses on this and following pages represent the base dollars (in thousands) for pt. 1 of the formula. It is the total Federal funds for academic science obligated to the institution in fiscal year 1967, as reported to CASE.

[2] All campuses.

2. 25 Other Universities [1] Ranked in Order of Ph. D.'s in Science and Engineering for 3-Year Period

[In thousands of dollars]

	Pt. 1	Pt. 2	Pt. 3	Total IG		Pt. 1	Pt. 2	Pt. 3	Total IG
Purdue University (22,379)	549	670	3,263	4,482	Pennsylvania State University (18,331)	500	722	1,698	2,920
Ohio State University (23,602)	561	854	2,366	3,781	Northwestern University (17,233)	484	345	1,320	2,148
Iowa State University (10,407)	381	337	1,772	2,490	Indiana University (22,361)	549	971	1,246	2,766
Michigan State University (19,143)	512	775	2,173	3,460	Rutgers University (13,080)	421	544	1,273	2,238
University of Texas, Austin (23,029)	555	597	1,657	2,809	University of Florida (15,832)	463	387	1,306	2,156
Princeton University (20,531)	530	95	1,342	1,967	California Institute of Technology (16,911)	479	30	914	1,423

See footnotes at end of table.

B. DISTRIBUTION TO SELECTED INSTITUTIONS—Continued

2. 25 Other Universities [1] Ranked in Order of Ph. D.'s in Science and Engineering for 3-year Period—Continued

[In thousands of dollars]

	Pt. 1	Pt. 2	Pt. 3	Total IG
University of Iowa (15,587)	459	368	1,048	1,875
Oklahoma State University (8,167)	338	394	1,310	2,043
Texas A. & M. University (13,239)	424	237	1,068	1,728
Oregon State University (10,025)	375	266	1,109	1,751
University of California, Davis (12,635)	415	203	860	1,477
University of Pittsburgh (21,006)	535	501	865	1,902
University of Kansas (15,444)	457	316	925	1,697
University of North Carolina, Chapel Hill (23,972)	565	307	809	1,680
North Carolina State University (11,892)	403	192	977	1,571
Carnegie Institute of Technology (11,557)	398	105	839	1,342
Brown University (8,590)	347	101	711	1,158
University of Arizona (10,286)	379	446	1,002	1,828
University of Oklahoma (8,762)	350	363	974	1,687

[1] These 25 institutions plus the top 20 in Federal Funds for Academic Science constitute the 45 top-ranking producers of science and engineering Ph. D.'s for 3-year period 1963–64 through 1965–66.

3. 20 State Colleges and Universities (Master's the Highest Degree)

[In thousands of dollars]

	Pt. 1	Pt. 2	Pt. 3	Total IG
Arkansas State University (109)	61	128	22	211
San Francisco State College (California) (1,696)	160	358	138	655
Southern Connecticut State College (348)	85	180	8	273
Valdosta State College (Georgia) (182)	68	49	0	118
University of Northern Iowa (493)	99	165	109	373
Kansas State Teachers College (600)	105	139	230	474
Towson State College (Maryland) (630)	107	138	0	244
State College at Bridgewater (Massachusetts) (101)	60	100	0	160
Western Michigan University (2,228)	184	369	169	722
Bemidji State College (Minnesota) (134)	63	83	8	154
Jackson State College (Mississippi) (269)	77	60	0	137
Southeast Missouri State College (134)	63	128	0	192
Chadron State College (Nebraska) (87)	57	37	3	97
Glassboro State College (New Jersey) (24)	24	159	4	188
SUNY, New Paltz (New York) (355)	86	90	25	201
Fayetteville State College (North Carolina) (65)	53	23	0	76
Southeastern State College (Oklahoma) (245)	75	44	36	155
Indiana University of Pennsylvania (346)	85	168	68	321
Winthrop College (South Carolina) (106)	61	63	1	125
Western Washington State College (405)	91	129	29	249

4. 20 Private Colleges (Most Baccalaureate Only)

[In thousands of dollars]

	Pt. 1	Pt. 2	Pt. 3	Total IG
Tuskegee Institute (Alabama) (1,098)	130	61	43	234
Reed College (Oregon) (450)	95	23	17	135
Pomona College (California) (543)	102	26	0	129
Franklin & Marshall College (Pennsylvania) (478)	98	47	11	156
Fisk University (Tennessee) (291)	79	24	12	115
Vassar College (New York) (115)	62	33	6	101
Knox College (Illinois) (587)	104	27	0	132
Earlham College (Indiana) (92)	58	23	1	82
University of the South (Tennessee) (102)	60	18	6	85
Millsaps College (Mississippi) (300)	80	19	0	99
Carleton College (Minnesota) (159)	66	27	0	93
Washington & Lee University (Virginia) (142)	64	29	0	93
Kalamazoo College (Michigan) (443)	94	25	0	119
Morehouse College (Georgia) (171)	67	21	0	88
Grinnell College (Iowa) (443)	94	24	0	118
Centre College (Kentucky) (41)	41	15	0	56
College of Wooster (Ohio) (54)	51	33	0	84
Spring Hill College (Alabama) (72)	54	25	0	79
Birmingham-Southern College (Alabama) (125)	63	21	0	84
Davidson College (North Carolina) (14)	14	20	0	34

FOOTNOTES

Pt. 2, sec. 2(b)(2)—Formula used: Number of resident students (full and part time) enrolled in fall 1967 multiplied by $20.

Pt. 3, sec. 2(b)(3)—Formula used: Number of master's degrees in science and engineering (for 3-year period)×1, plus number of doctor's degrees in science and engineering×3. Total number of advanced degree units then multiplied by $700.

Note: The numbers of advanced degrees in science and engineering for a 3-year period (1963–64 1964–65, 1965–66) were:

M.S. ..... 100,390×1=100,390

Ph. D. ..... 30,293×3= 90,879

Total degree units 191,269

$133.3M divided by 191,269 degree units=$700 (approximately).

Totals under pts. 1–3 (in thousands):

Pt. 1 ..... $132,308

Pt. 2 133,408

Pt. 3 133,888

Total 399,604

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill (S. 1563) to promote the advancement of science and the education of scientists through a national program of institutional grants to the colleges and universities of the United States, introduced by Mr. HARRIS (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Labor and Public Welfare.

THE ANTI-BALLISTIC-MISSILE SYSTEM

Mr. GORE. Mr. President, three eminent scholars, Dr. Allen S. Whiting, Dr. Marshall D. Shulman, and Dr. Carl Kaysen, appeared before the Subcommittee on Disarmament of the Committee on Foreign Relations this morning.

I have also received a telegram from the presidential adviser to President Johnson, Dr. Donald F. Hornig.

I ask unanimous consent that these statements and the telegram may be printed in the RECORD.

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

STATEMENT OF DR. ALLEN S. WHITING, PROFESSOR OF POLITICAL SCIENCE AND ASSOCIATE, CENTER FOR CHINESE STUDIES, THE UNIVERSITY OF MICHIGAN, MARCH 13, 1969

Mr. Chairman, distinguished members of this committee. I would like to express my appreciation for the privilege accorded by your invitation to appear here today. Unlike Professor Schulman, I can lay no claim to first-hand contact with the Chinese Communist leadership and people. But twenty years of analyzing the People's Republic of China in action does give a basis for evaluating the claim that an anti-ballistic missile system is necessary to cope with the alleged "Chinese threat." In addition to past Chinese behavior, we can develop a logical framework of likely future contingencies within which we can estimate the range of probable Chinese actions. And finally, I would like to offer some thoughts on how our construction of an ABM, officially justified in terms of a "Chinese threat," might affect our future relations with China.

There appear to be two alternative premises underlying the rationale, which links an ABM with China's anticipated ICBM capability, estimated to be available to Peking in the next four or five years. One premise holds that the Chinese leadership at that time—quite likely after the death of Mao Tse-tung—may be sufficiently irrational as to launch a thermonuclear attack against American cities despite the absolute certainty of retaliatory nuclear devastation in China. An alternative premise holds that our confrontation with China in situations of mutual but conflicting interests will be sufficiently serious as to require an ABM to safeguard against the possibility of miscalculation, escalation, and a sudden—if suicidal—Chinese ICBM attack.

Both premises share an assumption that the Chinese will be fundamentally different from the Russians in their handling of nuclear weapons and their response to the threat of nuclear devastation. We have lived for many years with several generations of Soviet weapons systems capable of striking American cities. We have actually faced down the Russians in Berlin and Cuba. We have found that Soviet doctrine and American deterrence worked. No Russian attack occurred. In the Western Pacific theater we have deployed and can deploy so vast an arsenal of nuclear weapons in land, sea, and airborne systems, as to literally destroy much of China's population and virtually all of its agricultural as

well as its industrial economy. And yet we are asked to believe that unless we have an anti-ballistic missile system, we are in serious jeopardy should China acquire an intercontinental ballistic missile system.

I see no basis in fact or theory for attributing a significantly higher likelihood of irrationality to Chinese as compared with Russian decision-makers. To be sure, the Chinese are far more strident than the Russians in verbal support of so-called "people's wars" and "national liberation struggles." But Peking has done no more than Moscow in rendering open aggressive support for foreign insurgencies, much less is risking nuclear retaliation on behalf of such insurrections. Despite our continued intervention in the Chinese civil war, protecting Chinese Nationalist forces on Quemoy within gun-range of Chinese Communist batteries on the mainland, there has been no compulsive or reckless risk-taking on the part of Peking. True, Chinese Communist forces engaged us massively in the Korean War while Russia stood aside. However an American military move in Hungary in 1956 or Czechoslovakia in 1968 would almost certainly have found Moscow taking risks similar to, if not greater than, Peking took in Korea. The Chinese gave no help to the North Korean invasion in 1950 but did intervene when that regime was about to be driven off its own territory. Any similar effort to roll back communist rule in East Europe would have run an equally grave risk of provoking an identical—or worse—Russian reaction.

Since the Korean War, the only major action involving Chinese troops has been the several weeks of limited war with India in the disputed Himalayan border area. Indeed, the preponderant weight of evidence shows that the Chinese leadership to date has used force beyond its borders with a consistently deliberate control so as to minimize the risks consonant with the perceived interests involved. This rational behavior seems to be at least as equally, if not more, likely in the post-Mao regime of the mid-nineteen seventies.

The alternative premise postulates a situation wherein the Chinese leadership acts rationally but miscalculates, and suddenly finds itself compelled to launch an ICBM attack against American cities regardless of the consequences. This could arise from one or two situations. Peking attempts nuclear blackmail, its bluff is called, and it is "locked in" to a situation from which it sees no alternative but to proceed. Alternatively Chinese interaction, political or military, with the United States or its allies, reaches a point which threatens a nuclear attack on China and Peking feels it must pre-empt or lose its small, highly vulnerable ICBM force to enemy attack.

These hypothetical projections cannot be assessed in vacuo, however. They must be applied to specific situations, past, present, or future, so as to assess their likelihood. Blackmail must have a purpose; confrontations must offer credible gains as well as credible risks. For instance, the most familiar aspect of Chinese Communist propaganda is Peking's avowed support for "people's wars." However, to make this a plausible basis for projecting a Chinese nuclear attack against the United States, we must go well beyond simple patronage, whether public or private, for insurgency. We must hypothesize serious, direct, and overt material Chinese support sufficient to identify an insurgency as of vital interest to Peking—so vital as to risk the entire Chinese mainland suffering nuclear devastation.

Between 1949 and 1969 not one such insurgency has arisen, either on China's borders or at more distant points overseas. Despite a serious border dispute with New Delhi, one which eventually triggered actual war in 1962, Peking has not given massive support nor taken significant risks on behalf of Indian communist insurrectionary movements or anti-Indian minority uprisings. The Telangana uprising in 1949 failed as did the Naxalbari revolt in 1968. Both applied Mao's maxims of armed struggle in the countryside. Both times Peking anathematized New Delhi as a fascist regime, acting as an anti-Chinese tool for foreign governments. Yet China never took any serious steps to keep these insurgencies alive, much less see them through to victory.

Similarly anti-Indian movements or actual uprisings, in the sub-Himalayan states and principalities of Nepal, Bhutan, and Sikkim, or amongst the Nagas of Assam, have failed to win significant Chinese aid. Incitement and subversion may be attempted through propaganda and, to a modest extent, through money, arms, and training as well. Beyond this, however, Peking refuses to go. This pattern has remained fairly constant, despite the heightened militancy associated with China's Cultural Revolution.

Equally relevant is the low degree of Chinese involvement in Burma's various insurgencies, both communist and those of national minorities. At no time since 1949 has the Rangoon regime been able to pacify the entire country. Much of the territory adjacent to China has been controlled by various armed groups hostile to Rangoon's rule. As in India, Peking's patronage, both overt and covert, encourages and equips communist insurrectionists and anti-Burmese separatists. Yet neither the amount nor the kind of such aid has seriously threatened the regime. The situation has ebbed and flowed and today seems no worse than in the past, at least in terms of Chinese involvement.

Thailand, of course, has won considerable attention as a public target of Peking's propaganda. Over the past few years actual armed insurrection has spread through provinces in the north, northeast, and southern sectors of Thailand. Most recently Meo revolts have further challenged Bangkok's authority. Some support for these various insurgencies comes from Hanoi; most comes from Peking. Defectors provide graphic evidence of training and direction from Chinese sources on the mainland and in Thailand. Presumably China could easily infiltrate a well-trained guerrilla force that would be wholly Thai in composition, recruited from the 200,000 ethnic Thais in the nearby Chinese province of Yunnan. However, the present insurgents remain a scattered, poorly equipped, un-coordinated force of less than 2,000. This small effort is what lies behind Peking radio's grandious claims for "people's war" in Thailand.

In short, after twenty years of these unstable situations on the unpoliced borders of a nation with six or seven hundred million people supposedly "supporting" armed struggles abroad, we must ask: what has kept China from doing more? Has it been the fear of U.S. retaliation? This could hardly apply in remote Nagaland or amongst the hill peoples of neutralist Burma. Chinese troops or an indigenous fifth column could march into adjacent territory with overwhelming force and establish a "liberated area" without fear of U.S. power being unleashed against the Chinese mainland. Moreover, where China's interests have been seen by Peking as truly vital, such risks of U.S. retaliation have been taken—overtly in Korea, and covertly in Vietnam.

Thus by focusing less on Peking's words and more on Peking's actions, we can separate out the lesser from the greater Chinese interests. Clearly the Peking leadership does not believe its vital interests include giving significant material support to foreign revolutionary movements. In fact, Mao's doctrine explicitly describes national liberation struggles as essentially dependent on local resources, a "do it yourself" philosophy. This doctrine serves Chinese ethnocentric and practical interests as well. First, it points to the Chinese as the models for guerrilla warfare and prolonged struggle without outside help. The message is clear: "we did it basically on our own; you can, too." Second, China's practical interests are served because this general doctrine excludes the necessity of choosing between safe and unsafe situations in allocating Chinese assistance. All people's wars will be treated equally; no risks will be taken because no Chinese aid will be that important. This is the constant in Chinese policy, whether with neutral Burma, hostile India, or American-allied Thailand.

I see no plausible reason for these Chinese calculations to change five years hence. Neither in the first flush of victory in 1949 nor in Mao's last political convulsions during the Cultural Revolution did Chinese armies move across borders on behalf of "people's wars." Mao's successors are unlikely to react any differently to the role China should play in advancing communism abroad. They might conceivably scale down their lip-service to "national liberation struggles," although if the Soviet precedent serves any example, we should not expect this to happen for many years to come. But certainly there is no reason to believe they will take greater risks in staking their prestige, and possibly their country, behind a local insurgency through a show of force or nuclear blackmail.

Indeed, were one to concede any plausibility to this basis for Chinese nuclear blackmail, it would have far more relevance to Chinese deployment of an intermediate range ballistic missile system, targeted against U.S. bases on China's periphery and against cities of our allies. A Chinese ICBM and a U.S.-based ABM would be largely irrelevant to a serious and systematic effort by Peking to back local insurgencies with nuclear force. But even the IRBM alternative assumes so fundamental a change in Chinese doctrine as to raise serious questions of probability.

Moreover, so long as U.S. nuclear power remains capable of devastating China, the credibility of any such blackmail—whether through ICBM's or IRBM's—is so low as to, in all likelihood, discourage its use by Peking. If we assume a burgeoning nuclear missile program in China, we also assume the concomitant infrastructure of technological modernization and all that is entailed in supporting so costly and complicated a military system. This developmental process has a double effect. First, it educates an elite in the long and painful process of pulling a backward country somewhere near the levels of advanced nations. Moreover it increases the vulnerability of their society, no longer dependent on scattered rice-fields but now locked into the urban complex, to nuclear attack. In short, China's acquisition of an operation nuclear missile capability should reduce, not increase, the willingness of Peking to risk nuclear war.

If we shift from so-called "people's wars" to conventional types of conflict, the past twenty years give far more cause for concern in projecting the future. The important uses of Chinese force, with varying degrees of anticipated risk, occurred in Korea, 1950–53; Quemoy, 1954–55 and 1958; India, 1962 and 1965; and Vietnam, 1965–68. Several characteristics link these events together. Every clash occurred in immediate proximity to, if not actually on, China's border. In every case Peking regulated the level and tempo of its military actions so as to minimize the risk of escalation spilling over into China, although accepting some such risk as basically unavoidable. After Korea, Peking never again openly courted U.S. attack against the mainland. On the contrary, it very carefully controlled its actions in the Taiwan Strait crises, and its words in the Vietnam War, so as to avoid provoking us to use either conventional or nuclear force against targets in China.

Looking at the specific issues involved in

each clash, these events obviously differ, one from another. The first Sino-Indian conflict of 1962 grew out of a festering border dispute, complicated by Chinese assumptions of foreign exploitation of internal vulnerabilities in the disastrous aftermath of Mao's "Great Leap Forward." However, China's attack in 1965 was part of the Pak-Indian conflict within which Peking had a limited interest on behalf of Pakistan as well as itself. In both Korea and Vietnam, Chinese assistance came on behalf of a besieged neighbor with a common communist ideology against a commonly perceived enemy, "U.S. imperialism." Finally, the two Quemoy crises arose in the context of China's unfinished civil war into which we interposed our force nineteen years ago and from which we have never disengaged.

One can examine this record much as one looks at the doughnut or the hole. On the one hand, it shows the careful deliberation behind China's use of force in conventional situations commonly encountered in international relations over the past two hundred years. This is the way nations behave, communist or not, Chinese or not. On the other hand, it does show Peking's willingness to take risks and to use its force in situations other than clear and immediate self-defense.

I would suggest that combining both points of emphasis permits us to project a situation when China acquires nuclear weapons which is neither wholly reassuring nor wholly frightening. I suspect this will be more or less true so long as nuclear weapons remain in *anyone's* hands, other than our own, and certainly should they proliferate beyond the present nuclear powers.

There is one aspect of the Chinese situation, however, which is unique compared with our relationship to other nuclear powers: we did intervene and continue to intervene in the Chinese civil war. Moreover, in the second Quemoy crisis of 1958, we provided the Chinese Nationalist forces with eight-inch howitzers publicly identified as capable of firing nuclear shells. Aside from whatever role our threats to use nuclear weapons in 1953 may have played in bringing about a truce in Korea, our nuclear deployment in the West Pacific has taken on a particular salience for Peking because it has provided the ultimate deterrent against Mao's pursuit to the end of his more than thirty years of struggle with Chiang Kai-shek.

Here a bit of historical perspective is in order. For more than one hundred years, China—long confident of its civilization's superiority to the outside world—suffered invasion and exploitation by foreign powers, large and small, European and Asian, largely because of China's material inferiority, especially in weapons. We call this "gunboat diplomacy." Chinese—whether Nationalist or Communist—call it the period of "Unequal treaties and foreign imperialism." Peking's determination to gain sufficient military strength to prevent foreign interference in China's internal affairs made the development of nuclear power in China absolutely essential. Whether against American dominance or Soviet dependence, China's nuclear capability would provide at least psychological and political strength, if not an actual strategic equalizer.

I do not doubt that significant elements in the Chinese leadership—certainly Mao himself—believe their explanation of former Secretary of Defense McNamara's announcement to build an ABM because of the Chinese threat, as a step "taken by U.S. imperialists to continue with their nuclear blackmail and nuclear threats against China" and "another anti-Chinese measure adopted to intensify the administration's collusion with the Soviet revisionist leading clique." If we continue with the ABM and its present justification, we will perpetuate the suspicion, if not the conviction, in Peking that we are determined to maintain maximum military superiority over China so as to act at will in pursuit of our interests, regardless of the consequences for Peking. Given our confrontation over Taiwan and the offshore islands, anything which perpetuates or intensifies the sense of bitterness and frustration in the Chinese leadership must be justified as necessary on other grounds which offset this cost. Seen in this perspective, the ABM is not a guarantee against Chinese irrationality or miscalculation but rather may actually be a further goad to Chinese assumptions of our malevolance and permanent enmity.

STATEMENT BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ORGANIZATION AND DISARMAMENT OF THE SENATE COMMITTEE ON FOREIGN RELATIONS BY MARSHALL D. SHULMAN, PROFESSOR OF GOVERNMENT, AND DIRECTOR, RUSSIAN INSTITUTE, COLUMBIA UNIVERSITY, MARCH 13, 1969

Mr. Chairman, I address myself to some international political aspects of the question whether the United States should now deploy some form of anti-ballistic missile system, and in particular, I would like to suggest how I believe this decision affects, and is affected by, our relations with the Soviet Union.

I am not competent to testify regarding the technical aspects of the question, but I think it is evident that the matter is by no means a purely technical one, and that even if the question of technical feasibility were wholly satisfied, the *political context* in which this decision is made deserves serious consideration.

In the course of the public discussion of this question, there is no disagreement, I believe, that the central issue is how best to strengthen the security of the United States. The disagreements arise over how to think about security, in the light of the new conditions now prevailing, involving a complex and rapidly changing weapons technology, and an intricate process of interaction between the Soviet Union and the United States, whose policies are deeply influenced in both cases although in different ways by the interplay of political and social forces which we do not yet understand very well.

My testimony is divided into two parts: Background and Recommendations.

I. BACKGROUND

(1) Until a few years ago, the strategic military relationship of the Soviet Union and the United States had reached a plateau of relative stability, based upon a gross balance of mutual deterrence, despite considerable disparities between the two arsenals. Experience had taught both countries a considerable measure of sobriety, and in practice there developed significant tacit restraints which introduced some measure of stability in their strategic military competition. However, the quest for superiority by each country and the appearance of a new generation of technological innovations now threaten to undermine that tenuous stability. From the Soviet point of view, the United States has by and large appeared to be the pacesetter, and the Soviet Union has been making a strenuous effort in recent years to catch up. Both countries are now in the grip of technological possibilities—improved accuracy, more target information from reconnaissance satellite photography, greater range and yield, multiple guided warheads, advanced computer technology, and potential military uses of outer space and the sea-bed—which call into question the relative invulnerability of the retaliatory deterrence on which the previous stability was based. This circumstance is an important part of the context within which the ABM question arises.

(2) There has been a spiral of interaction between the two countries, which stems partly from the fact that strategic policy is often determined by bureaucratic politics and psychological apprehensions, with rational doctrine coming along as an afterthought. The interplay of forces and interests operating on the decision-making process within each country is affected by that on the other side, with the result that a reciprocal process of simulation has sometimes been set in motion. However, there is often a lag in time involved, during which ideas are diffused and sink in and get translated into action by cumbersome bureaucratic processes, with the result that we have often not recognized a reaction for what it is, but have taken it as a new initiative, reflecting a change in intentions. For example, it appears probable to me that the increased rate of intercontinental missile deployment by the Soviet Union of which we became aware a few years ago may reflect a decision taken in response to the steep rate of increase in our missile program foreshadowed in the 1961 U.S. budget, which was in turn a response to our estimate of what the Soviet missile program of 1958 might have projected.

(3) Soviet policy in the present period, particularly as it affects domestic and Eastern European developments, appears to be dominated by the orthodox wing of the Communist Party bureaucracy, and is marked by a preoccupation with ideological conformity among intellectuals, artists and nationality groups. While some of the social tensions stem from factors that also appear in the United States and elsewhere in the world, the modernization of the economy within the Soviet Union and in Eastern Europe raises special and difficult questions for a centralized system of Party governance, and this may in part be responsible for the present tightening of ideological control. If there should be a relaxation of the level of tension with the United States, it is quite possible that this will be accompanied, as has been the case at times in the past, by a further tightening of police and Party vigilance against "contamination by bourgeois ideology." However, the Soviet effort to increase its influence in areas where U.S. influence has receded, as in the Middle East, sets limits on the degree of detente that can be expected in the present period.

(4) Among the considerations which weigh heavily upon the Soviet leadership in the present period, as it faces the problem of drafting a Five Year Plan for the allocation of resources for the period 1971–1975, is the drain on resources generally and upon advanced technology in particular as it contemplates the upward spiral of the strategic arms race. One year ago at this time, the Soviet leadership was engaged in a hard-fought debate, whether to enter into talks with the United States to damp down the strategic arms race. By the late spring of 1968, this issue was settled in favor of entering into such talks. We do not know what coalition of interests may have carried this decision or how far this coalition would be prepared to go in actual negotiations—it may be that the only agreement reached at that time was to let the talks begin—but it does appear to be the case that a serious concern about economic costs has been an important factor in impelling the Soviet leadership to want to find out how far the United States is prepared to go in checking the upward spiral of the strategic arms race.

(5) As of this moment, the Soviet attitude toward the new American Administration is tentatively hopeful, with many reservations in the background. Despite its past feelings about the new President, and its anxieties about pressures it sees toward the militarization of the American society, the Soviet press and leadership appear to believe that "objective circumstances"—meaning domestic social tensions in the United States, budgetary pressures, and the pacific inclination of the American people—together with the practicality of the President may create a

present opportunity for moderating the strategic arms race in some measure.

(6) The rise in publicized hostility between the Soviet Union and Communist China is a factor that may operate in several contradictory directions. The Soviet Union has clearly been anxious about the possibility of an alliance between China and the United States, however remote that prospect now appears to us; I do not, however, see the possibility of a Soviet alliance with the United States against China in view of the intensity of the residual hostilities in our relationship. Nevertheless, some quiescence in its realtions with the United States may seem attractive in a period of intensified conflict on the Chinese border. On the other hand, this conflict also catalytically increases Soviet interest in defense, and sets limits on the possibilities for overt collaboration with the United States.

(7) Soviet thinking about the significance of ABM may have gone through changes with time. The original deployment decision appeared to be something of a "politician's compromise" among conflicting pressures, and it corresponded to a folk-wisdom feeling about the defense of Moscow. Over time, however, the decision seems to have been weakened by a growing realization of the ineffectiveness of that particular system and its stimulating effect upon the U.S. strategic budget. In recent years, serious analytical writing on the ABM in military doctrine has dropped out of the public press. With regard to the U.S. decision to deploy Sentinel, the Soviet press has not until recently expressed deep concern, except for the worry that a thin ABM might soon put on more weight. Although evidence is lacking, I believe the ABM by itself may be of less concern than the ABM in its context, which includes the deployment of MIRVs and other technological developments previously mentioned, especially the improvement of missile accuracy. Taken together, these may seem to give some plausibility to the arguments of those who claim the U.S. is bent on achieving a first-strike capability. The Soviet response could be expected both on the psychological level and on the level of military strategy—as was our response to the Soviet ABM—and would involve the acceleration of technological innovations which would, in turn, lead to a further American response.

II. RECOMMENDATIONS

With this background in mind, Mr. Chairman, I find myself impelled to the following conclusions:

(1) In the absence of a compelling case for the immediate deployment of an ABM, and a persuasive case for the feasibility of the proposed system, I believe that any such deployment should be put on "Hold" at the present time, while continuing our research and development on various anti-ballistic-missile systems. There are risks and costs to such deferment, but I believe they are less than the risks and costs of stimulating a continuation of the upward spiral of the strategic arms race, and delaying a possible agreement with the Soviet Union until it becomes even more difficult to achieve than it would be today.

(2) Even more important, I believe, would be an effort on our part to begin the process of negotiations with the Soviet Union on the damping down of the strategic arms race as soon as possible, with a clear indication of the seriousness of our intentions to achieve stability, levelling-off and, when possible, reductions. One essential mark of our seriousness would be a clear indication of our willingness to exercise restraint in the further deployment of Poseidon, Minuteman III and other advanced offensive weapons. There are also risks to this course, but if our security is best advanced at this stage by a stable deterrent balance at a moderate level, the risks are neither disproportionate nor irretrievable.

(3) I would recommend that we carefully avoid creating undue expectations for early and dramatic results in such negotiations. It seems likely that these talks may take a long time, that they may involve procedural wrangles and set-backs, and that they may at best produce tacit and reciprocal restraint rather than treaty agreements. We should also remind ourselves that these talks are not likely to produce an across-the-board detente, nor to settle other important political differences.

(4) The Administration should be commended for its effort to move ahead on a number of political issues with the Soviet Union, but the missile talks should not depend upon the successful outcome of these efforts. It is evident that progress in the missile talks would be difficult if the Soviet Union sought to gain political advantage from the climate created by the fact of the talks themselves, or if the Soviet Union were actively fanning the sparks in the Middle East, or if the United States were engaged in bombing North Viet Nam. But the point should be clearly established that there is an overlapping interest on the part of the Soviet Union and the United States equally in levelling-off the strategic arms race, even though the political rivalry between the two countries is not now substantially abated, as it may not be for some time.

(5) It follows also, Mr. Chairman, that it would not be wise to deploy an ABM system in the belief that it would improve our bargaining position in relation to the missile talks. To do so would be more likely to strengthen the position of those on the Soviet side who are only too ready to argue that the United States is too committed by its system or its pressure groups to an arms race to be seriously interested in its abatement.

(6) I would not argue that every level of anti-ballistic missile deployment under every circumstance is necessarily destabilizing. I can conceive of circumstances arising in the course of these negotiations in which the Soviet Union might indicate it would not wish to contemplate the dismantling of its ABM installations. It could then accept with equanimity some moderate level of ABM protection for the invulnerability of our fixed-site missiles, our command and control installations and our Strategic Air Force, as a stabilizing factor in the deterrent balance. In such a case, I would think it important that both by Presidential declaration and by the physical disposition of these facilities, it should be made clear that they will not be used as building blocks toward a thick ABM system for the defense of cities, thus degrading the Soviet deterrent. In such a circumstance, progress in the missile talks and restraint in the deployment of advanced offensive weapons would be necessary concomitants to these deployments.

(7) Finally, Mr. Chairman, I would urge that we never lose sight of our longer term objective to work our way out from under the balance of terror, toward agreed reductions in strategic weapons as these become possible, and toward at least tentative first steps to forms of security that need not hold our people in precarious hostage.

Thank you, Mr. Chairman.

STATEMENT OF CARL KAYSEN FOR THE SUBCOMMITTEE ON DISARMAMENT, SENATE FOREIGN RELATIONS COMMITTEE, THURSDAY, MARCH 13, 1969

The question to which I am addressing myself is, "Should the Government of the United States now go ahead with the proposed deployment of the Sentinel Anti-ballistic Missile System?" This question in turn must be divided into two parts: first, whether the deployment that has recently been proposed should go forward—namely, that of a "thin" area defenes over the whole country, relying primarily on the *Spartan* long-range, high-altitude interceptor missile but incorporating also a number of *Sprint* shorter-range, lower-altitude interceptors used mainly to defend the radar installations of the system—and second, whether, alternatively, there should be a modified deployment which would be designed primarily to defend Minuteman missle sites and bomber bases, but which would still contain a substantial element of area defense.

My answer to the question is "No."

This response is based primarily on two propositions: (1) we do not need such a deployment now to increase our security; (2) since we don't need it, we must not do it because it is expensive and there are more pressing claims on our resources and efforts which merit higher priority than a large new military system that is not strictly necessary.

Further, it is my judgment that the deployment of a Sentinel system in either of the modes described above is more likely to decrease than to increase our security. Agreement with this third proposition is not strictly necessary to a conclusion that a deployment decision is not in order, but obviously it reinforces greatly the more narrowly based argument that rests on the first two propositions above

My first proposition—that we do not need an ABM system now for security reasons—requires elaboration. The primary function of the large, complex strategic weapons systems we have built up over the last decade and a half is to insure that no adversary with a large strategic capability will be tempted to use it against us. Our present system does that by its capability to inflict a very high level of damage on even the largest and most powerful potential adversary—i.e. the Soviet Union—after that adversary has made a surprise attack on us. In the face of that capability, such an attack would be irrationl. This deterrent posture has been efficacious in the face of a large build-up in Soviet striking strength. The present size and disposition of our offensive forces and the associated intelligence, warning, command and control systems, is such as to insure that they can continue to perform this function effectively in the near future, say the next three to four years. Whether they can do so in the further future is a different question to which I will return in a moment. The proposed ABM system will add little if anything to the capability of our forces to continue to perform this deterrent function. Their own performance is quite uncertain, and their effect in adding to our very large retaliatory capacity—what the Defense Department has come to call our capacity for assured destruction—is marginal at best if the system performs well and may be nil or even negative if it performs badly. You have already heard from scientists of great technical competence and experience on the complexities of the system and the difficulties of predicting its performance. Since I am neither scientist nor engineer, I can add nothing from my own knowledge to what you have already heard. Further, the Soviet Union can readily take responsive measures in the way of adding to their offensive force, improving the penetration capability of their reentry vehicles and the like, which can be expected to overcome a very substantial part, if not all, of whatever defensive capability the ABM system possesses.

Second—as far as its supposed function of defense, in the event of nuclear war, the proposed system may have some value if the Soviets do nothing to respond to it. With the system we might sustain fewer casualties in the event of deterrence failing and war coming, than without it. However, we must remember that our primary reliance is on deterrence, and that damage limitation is, and has been, at best a poor and weak second. In the past damage limitation has been argued for in somewhat inconsistent terms, partly as a kind of nearly free add-on to what were essentially deterrent forces, partly

as a somewhat euphemistic way of discussing something that was nearly, but not quite, a first-strike capability. Even separately, these arguments are not persuasive. Together they tend to be contradictory. They become no more effective when the mode of damage limitation is defensive rather than preemptive. Further, the more it appears that the system could achieve a significant defensive result, the more likely it is that the Soviets will respond to it in such a way as to negate most of its effect.

Soviet capabilities, both in terms of current deployments and development in production potential for improving and increasing them are such as to make it impossible for our strategic forces to do much more for us than provide mutual deterrence. The existence of these forces, confronting large and similarly stable Soviet second-strike forces, does provide some general extra restraint on both powers in respect to any action which might lead to military involvements and the awful threat of escalation. Even this restraint is imperfect, as the recent past has shown. However, it is clear to me, and I think to every other careful observer, that strategic striking power cannot now, has not in the recent past, and will not in the foreseeable future, offer the kind of military threat vis-a-vis the Soviet Union that is translatable into useful political power, precisely because the Soviet Union offers and can continue to offer the same kind of threat to us.

On the scale and in the mode originally proposed, the Sentinel system would simply make no essential difference in respect to our strategic relations with the Soviet Union as far as mutual deterrence goes, even if the Soviet Union does little to respond to its deployment. Of course, we cannot predict that they will not respond. If the system is deployed on a larger scale than is now proposed—i.e. if the "thin" system grows up to a "thick" one—we must anticipate a Soviet response. It has never been our policy, and I think it never should be, to seek a first-strike capacity vis-a-vis the Soviet Union. If we were seeking such, and an ABM were big enough, reliable enough, and not capable of being effectively countered by Soviet response, then its deployment might indeed alter significantly the strategic balance. But none of these conditions holds.

The original rationale of Sentinel deployment and "thin" area defense to protect the whole country against a Chinese missile attack in the mid or late 70's was never convincing. It seems to have been abandoned by its proponents. An attack on the United States by the strategically weak Chinese would be wildly irrational. The U.S. has a first-strike capacity against China now. Are we seeking to extend it? To use it? Do we really believe that while we do deter the Soviets, we cannot deter the Chinese?

If the rationale for the deployment of Sentinel is shifted once again and becomes that of defending our bomber bases and Minuteman sites, we can say again, "It's not now needed." The survivability of a sufficient striking force for effective deterrence is not in doubt now and does not appear likely to be in the near future. To the extent that, in the further future, it becomes in doubt, the question of whether the Sentinel system, designed for quite another task, is the efficient mode for increasing that survivability deserves careful examination. For example, it is obviously cheaper, simpler and quicker to increase the survivability of the bomber force by spending the extra money required to increase the number of planes on air-alert or provide for a large number of additional bases, rather than to erect an elaborate missile system for close-in defense of bomber bases.

My second proposition hardly needs elaboration. Deployment of the Sentinel system will cost us $5 to $10 billion over the next several years. The Senate needs no instruction on the variety of pressing needs for which these sums could be used. If, as I have argued above, Sentinel is not a necessity for our security, then there is every reason to seek higher priority uses for Federal funds. Not only is the money important, but the question of political effort and priority is also important. The question of how we value what may at best be a marginal addition to our defense in relation to what are clearly major urgent needs in domestic areas is deeply involved.

In my own view, the argument goes beyond the two points that I have made. A decision to begin now to deploy the Sentinel system will detract from our security, not add to it. The argument for this view is complex; it involves a further forecast into what is inevitably an uncertain future and includes an important element of judgment, but so, of course, do the arguments the other way. Forecasts and judgment cannot be escaped. The military technology embodied in the forces that we and the Soviet Union now have deployed is such as to make the maintenance of deterrent stability relatively secure. The nature of the forces is such that a would-be attacker can hardly entertain a belief in his ability to succeed. Further, each side has a clear notion of the forces which the other side commands. The next stages of the evolution of the technology of strategic weapons will change that situation in a drastically unfavorable way. The combination of ABM defense, MIRVs, and mobile missiles, toward which both sides appear to be moving offers much less prospect of certainty and stability of deterrence. Our most urgent task in maintaining our security is to insure the kind of arms control negotiations which have a good prospect of closing off movement in this direction. An immediate decision to deploy will do nothing to help that process and may hinder it. It will stimulate forces both within our own governmental system and within the Soviet system that will push toward further radical changes in weapons.

It has been stated by some that, if we fail to deploy the ABM, we will be throwing away a bargaining card for negotiation with the Soviet Union. I cannot understand this argument. The future capacity to deploy, and perhaps to deploy a better conceived and designed system is all the bargaining card we need. Actual deployment, by revealing what we are doing, diminishes rather than increases the effectiveness of our bargaining position.

Finally, there is an even larger and deeper issue. Do weapons dictate policy, or do we decide on the basis of our policy concepts what weapons we wish to deploy? As new and frightening technological possibilities open up before us, I think this is the most important question that the Senate, the Government, and the country must face.

PITTSFORD, N.Y.,
March 13, 1969.

Senators ALBERT GORE AND JOHN SHERMAN COOPER,
Subcommittee on Disarmament, Foreign Relations Committee, Old Senate Office Building, Washington, D.C.:

During my five years as science advisor to President Johnson I studied, with the aid of distinguished consultants, the question of ABM systems, their technical capabilities and their relations to our overall strategic position. I came to the conclusion then and believe now that the deployment of any of the proposed ABM systems would impair the security of the United States and retard progress toward a stable, peaceful world.

I can see no necessity for the deployment of a system to protect us from the Chinese. If our ICBM, Polaris and bomber forces are adequate to deter the Soviet Union, which possesses very large nuclear forces of its own, the deterrent against China is overwhelming for the foreseeable future.

As for an ABM defense against the Soviet Union, there is no present prospect of a defense which could stop a large-scale attack. Any system which I have examined was vulnerable in various respects, and in any case could be relatively easily countered by new developments in offensive weapons and tactics.

ABM systems cannot be considered in isolation. They would become part of an offense-defense game in which, at present, the offense seems to have the advantage. In any case, whatever initial system we deploy would have to be constantly elaborated and improved and eventually replaced by newer generation of ABM systems as the other side increased the quantity and quality of its offensive forces. This it would inevitably do if the ABM system had any effectiveness, so that even the cost of the so-called full system would only be a down payment on the eventual expense. More important still, it would lead to continual escalation in the armament level of both sides with no increase in security. Indeed, if one reflects that in the face of a stronger Soviet force we would rely on a fantastically complicated system which could never be tested full scale and whose overall reliability would never be known, I believe that our security would decrease.

In my view the question of whether we would be defended better with or without an ABM system can only be answered by considering our overall strategic situation. Since so much is at stake, this should be reviewed free from historical or partisan bias or vested interest. For this reason I support the proposal by Dr. Killian that a broadly based national commission be created to study the total problem.

At this time I believe deployment of ABM would be contrary to the national interest and might well impede what I consider the most urgent business, to get on with talks aimed at the possibility of limiting the further expansion of nuclear armaments.

DONALD F. HORNIG.

Mr. MOSS. Mr. President, I am opposed to the Sentinel anti-ballistic-missile system. I was opposed to it when President Johnson first proposed that it be deployed, and I voted twice in the Senate to postpone deployment. There is nothing which has occurred since I cast those votes to change my mind and I intend to vote against deployment once again.

The country and the Congress are in a state of anticipation today as the countdown continues at the White House. It is expected that the President will announce his decision on the ABM at his press conference tomorrow. I ask him to call a halt on ABM. I cannot believe that with all of the hard facts—the scientific facts—he has at hand, that he will decide to resume emplacement of this system which is so obviously ineffective at this point in time.

If a nuclear war ever starts, it will be lost in that moment. I do not hold with the argument that we might, with an antiballistic system, reduce casualties from 100 million people to maybe 70 or 80 million people. Does one call that a victory? To any but the military mind, to call this a victory is absurd.

What the administration is talking about is a thin system which it hopes would be an effective guardian against the Chinese. To me it is unbelievable that China with its primitive missile arsenal, would attack the United States, since we have the capacity to retaliate by wiping out most of their cities within minutes.

But, even if a case could be made for a thin missile system as a defense against the Chinese, once such a thin system were adopted it would be a short step to the thick system urged as a defense against the Soviet Union, and we would be thrust in a monstrous open-ended weapons race which could escalate the cost of ABM, now billed as a $5 billion venture, to $100 billion a year. And still no assurance that it would be really effective.

The scientific community is opposed to the Sentinel system, and some of their spokesmen have told us why with brilliance and clarity in the last 2 days. Many of our military leaders have little faith in it. Millions of Americans are opposed to it, not only because they feel it would be useless, but because it would add an even greater threat to our cities than they now face.

Mr. President, the ABM system would not be, as some insist, America's best mainstay against attack, enhancing our security, but instead would become America's biggest miscalculation, because it would escalate the arms race to an ever higher rate of peril, and make it all but impossible to bring the deadly competition in overkill under effective control.

If a nuclear war ever starts, which God forbid, it will be lost in that moment. We know that the Soviets have a limited defense system, but we do not know how good it is. If we insist, because the Russians have one, that we must adopt a similar system and a better system, we will be triggering an arms race whose end we cannot foresee. If we build the Sentinel system, it will merely increase the possibility that it will have to be used. We must have the courage to move toward a more peaceful world, toward nuclear weapon limitation.

SENTINEL ABM SYSTEM

Mr. KENNEDY. Mr. President, this week, the Committee on Foreign Relations has heard the testimony of six eminent Americans—all of them opposed, for various and differing reasons, to deployment of the Sentinel anti-ballistic-missile system. Taken as a whole, I find this testimony so compelling and persuasive that I believe it should be made widely available.

I noticed in the last few minutes that the Senator from Tennessee (Mr. GORE), who is chairing the hearings, placed that testimony in the RECORD and I urge all my colleagues to read it very carefully.

I do not think that the arguments these gentlemen made need restating on the Senate floor today. Instead, I should like to point out that the expertise they brought to their testimony—expertise in science, in foreign relations, in public policy service at the top of our Government—is unique in its breadth. I hope, as a result, that their testimony is closely studied.

One particular suggestion by one of the witnesses—the chairman of the board of the Massachusetts Institute of Technology, Dr. James R. Killian—deserves further comment. In his testimony, Dr. Killian made the suggestion that there be created an ad hoc commission or task force to make an "independent, comprehensive study in depth of our weapons technology and of the factors which bear upon the decisions the Nation must make regarding ongoing strategic forces and policies." I do not think the value of this proposal can be overstated.

In Dr. Killian's words, the work of such an ad hoc commission or task force would have special value to the Nation and the Congress for the overriding reason that its proposals would be independent conclusions reached by a group of competent citizens who were free of organizational loyalties. It was precisely this kind of thinking which motivated me to ask Dr. Jerome Wiesner and Prof. Abram Chayes to organize a report to me and to the Congress on the Sentinel ABM system. I was concerned that we would not have available to us, as we debated the Sentinel and the budget requests to support its deployment, any comprehensive and coherent body of information which presented the arguments of those who opposed deployment.

Were Dr. Killian's suggestion adopted, then we would have a dispassionate evaluation available to us not only on the Sentinel ABM system, but on our entire strategic and other weapons systems as well. The experience of the Gaither Commission, appointed in the early 1950's and whose recommendations both greatly altered and still influence the direction our weapons policies take, is an instructive example of the worth of this concept. Coming as it would at a crossroads in our history, such a report could prove of signal value in bringing us closer to a safe and sane world. It is my hope that such an ad hoc task force or commission is appointed soon, and that its work is available in a relatively short time.

Dr. Killian's suggestion raises a larger and deeper issue, which Dr. Carl Kaysen phrases this way in his testimony:

> Do weapons dictate policy, or do we decide on the basis of our policy what weapons we wish to deploy?

There is a growing feeling that for far too long weapons have dictated policy, and that President Eisenhower's warning about the influence of the military-industrial complex has not been closely heeded.

We must be vigilant to assure that the decisionmaking process for matters so vital as our weapons policies is an orderly and open process. If it is not, then we will continue to have our priorities distorted and our security imperiled. This is the lesson of the current debate over the Sentinel system, a lesson whose importance we cannot neglect.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. SPARKMAN, from the Committee on Banking and Currency, without amendments:

S. 408. A bill to modify eligibility requirements governing the grant of assistance in acquiring specially adapted housing to include loss or loss of use of a lower extremity and other service-connected neurological or orthopedic disability which impairs locomotion to the extent that a wheelchair is regularly required (Rept. No. 94); and

S. 1130. A bill to provide for the striking of medals in commemoration of the 100th anniversary of the founding of the American Fisheries Society (Rept. No. 96).

By Mr. SPARKMAN, from the Committee on Banking and Currency, with amendments:

S. 1081. A bill to provide for the striking of medals in honor of the dedication of the Winston Churchill Memorial and Library (Rept. No. 95).

STRIKING OF MEDALS IN HONOR OF THE DEDICATION OF THE WINSTON CHURCHILL MEMORIAL AND LIBRARY

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1081.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill to provide for the striking of medals in honor of the dedication of the Winston Churchill Memorial and Library, reported with amendments, on page 2, line 2, after the word "President.", strike out "There is hereby authorized to be appropriated the sum of $3,000 to carry out the purposes of this section." and insert *"Provided,* That the Fulton Area Chamber of Commerce, Incorporated, agrees to pay, under terms considered necessary by the Secretary to protect the interests of the United States, all costs incurred in the striking of such medal."; and, in line 11, after the word "than", strike out "ten" and insert "five"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), in honor of the dedication of the Winston Churchill Memorial and Library at Westminster College in Fulton, Missouri, in May 1969, the President is authorized to present in the name of the people of the United States and in the name of the Congress to the widow of the late Winston Churchill a gold medal with suitable emblems, devices, and inscriptions to be determined by the Fulton Area Chamber of Commerce, Incorporated, subject to the approval of the Secretary of the Treasury. The Secretary shall cause such a medal to be struck and furnished to the President. *Provided,* That the Fulton Area Chamber of Commerce, Incorporated, agrees to pay, under terms considered necessary by the Secretary to protect the interests of the United States, all costs incurred in the striking of such medal.

(b) The die from which such gold medal is struck shall be marred and donated to the Winston Churchill Memorial and Library for display purposes.

SEC. 2. (a) The Secretary of the Treasury shall strike and furnish to the Fulton Area Chamber of Commerce, Incorporated, not more than one hundred thousand duplicate copies of such medal in silver and bronze (of which not more than five thousand copies shall be in silver). The medals shall be considered to be national medals within the meaning of section 3551 of the Revised Statutes (31 U.S.C. 368).

(b) The medals provided for in this section shall be made and delivered at such times as may be required by the Fulton Area Chamber of Commerce, Incorporated, in quantities of not less than two thousand, but no medals shall be made after December 31, 1969.

(c) The Secretary of the Treasury shall cause such medals to be struck and furnished at not less than the estimated cost of manu-

facture, including labor, materials, dies, use of machinery, and overhead expenses, and security satisfactory to the Director of the Mint shall be furnished to indemnify the United States for full payment of such costs.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SPARKMAN. Mr. President, I move that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

S. 1560—INTRODUCTION OF A BILL TO AMEND INTERNAL REVENUE CODE OF 1954 TO PREVENT FARM OPERATION LOSS WRITEOFFS

Mr. MILLER. Mr. President, for myself and Senators GRIFFIN and COOK, I introduce for appropriate reference a bill to amend the Internal Revenue Code of 1954 to prevent farm operation loss writeoffs for tax purposes in the case of taxpayers whose principal business activity is not farming. I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred; and, without objection, will be printed in the RECORD at the conclusion of the Senator's remarks.

(See exhibit 1.)

Mr. MILLER. Mr. President, this bill is basically the same as the one I introduced last year—S. 3443, with amendment.

Its approach is to prevent any tax loss writeoff, with certain exceptions to cover off-farm wages and salaries and losses resulting from flood, drought, hail, and other type casualty. In this respect, my bill differs from several other bills introduced recently on this subject which permit varying amounts of tax loss writeoffs and, to this extent, fail to plug the loophole.

These other bills also tend to force farmers to change their accounting systems from the cash basis to the accrual basis, which is considerably more complicated. They do so by excepting accrual basis farm operations from the prohibition against tax loss writeoffs within the varying amounts specified in the bills. My bill would leave cash basis farmers alone. Furthermore, by excepting accrual basis farm operations, the loophole permitting tax loss writeoffs would not be closed.

The policy behind my bill and others introduced on this subject is to protect the commercial farmer from unfair competition which results when individuals and corporations not primarily engaged in farming operations can deduct losses from farming operations against income in high income tax brackets. The tax law developed on so-called hobby farmers is inadequate for this purpose, because the court decisions permit loss writeoffs if there are businesslike operations with "a reasonable expectation of profit." Most loss writeoffs involve businesslike operations, and the line between those with a reasonable expectation of profit and those without a reasonable expectation of profit is extremely difficult to draw. Meanwhile, Uncle Sam absorbs a large amount of the loss burden, ranging up to 77 percent, depending on the income bracket of the taxpayer.

Worse yet, a top income bracket taxpayer can, using proper planning, convert $1 of loss into 77 cents of tax savings; and then, by selling off his farm assets lock, stock, and barrel realize long-term capital gain of $1 with maximum tax of 25 cents.

The extent of these tax loss writeoffs is reflected in a study of 1966 income tax returns by the Internal Revenue Service which shows that 75 percent of the 4,778 individuals who had farm operations and incomes over $100,000 deducted $72 million in farm losses against their other income.

A more complete breakdown shows: Millionaires: of the 103 involved in farming operations, 15 showed a net profit and 88 or 85.4 percent showed a net loss; $500,000 to $1,000,000: of the 228 in farming, 27 showed a net profit and 201 or 88.1 percent showed a loss; $200,000 to $500,000: of the 1,104, 209 showed a net profit and 895 or 81.1 percent showed a loss; $100,000 to $200,000: of the 3,343, 986 showed a net profit and 2,357 or 70.5 percent showed a loss; $50,000 to $100,000: of the 14,202, 5,622 showed a net profit and 8,580 or 60.3 percent showed a loss.

A U.S. Department of Agriculture study, released about the same time as the Internal Revenue Service survey, discloses that nonfarm business income was reported most frequently by those with the largest farm losses. Although the USDA study was based on 1963 income tax returns, it shows the depth of the problem, which is even greater today. The study shows that individuals with farm losses reported nonfarm income nearly twice as often as those with farm profits, and their nonfarm business income averaged more than twice that of persons with farm profits. Out of a group classified by the study as "well off," comprising almost a quarter of a million individuals, approximately 111,000 reported farm losses and more than 38,000 reported farm profits of less than $12,000. Of the 66,000 individuals who were classified as "wealthy," more than two-thirds reported farm losses, with the average losses reported being $14,110.

A properly designed tax law is needed. Tax loss farming is detrimental to the regular farmer in that it tends to push up the price of farmland. This, in turn, pushes up the land values and property taxes of regular farmers. Furthermore, the fact that farmowners with nonfarm income in high-income brackets may consider a farm profit, in the economic sense, unnecessary for their purposes places the ordinary farmer at a disadvantage when competing in the marketplace. Because he does not have to depend on his farm operations for a livelihood, the high-income bracket taxpayer can demand less for his products than the regular farmer, who needs to make a profit to be able to stay in business.

If farm losses could not be offset against nonfarm business income, these multibusiness individuals and corporations would get out of farming or they would help fight for better prices and lower costs of production.

The bill I have introduced follows an uncomplicated formula. It would provide that, except in the case of a taxpayer engaged in the business of farming as the principal business activity, the deductions attributable to the business of farming—which include losses—may not exceed the gross income derived by the taxpayer from the business of farming for the taxable year plus, in the case of an individual residing on the farm, the gross income derived by such individual and his spouse from wages and salaries, timber located on the farm, and royalties derived from property on which the farming operations are conducted.

A taxpayer is deemed to be engaged in the business of farming as the principal business activity if net income from farming for the 3 preceding taxable years—or so many of such preceding years as the taxpayer has been engaged in the business of farming—equals or exceeds two-thirds of total net income for such years. This conforms to the congressional definition of a "farmer" for purposes of filing a declaration of estimated tax.

The bill defines "business of farming" to include the holding of property used in farming. Thus, the so-called "investor" in livestock operations is prevented from benefiting from loss writeoffs.

Appropriate exemptions are provided to the general rule. Thus a deduction would not be disallowed if it is attributable to drought, abnormal weather conditions or other casualty; to a research or experimental farming operation conducted under a program approved by the U.S. Department of Agriculture, a State department of agriculture, or an agricultural school of an accredited college or university; or to farming operations consisting of egg or broiler production—which is a special situation not involved in the tax loss writeoff problem.

A farm enterprise acquired from a decedent and a farm enterprise acquired by foreclosure are also excepted from the limitation of the bill for the taxable year in which the farm enterprise is acquired and for two succeeding taxable years. This would give taxpayers acquiring, for example, a farm by devise or debt settlement a reasonable opportunity to place the farm on a profitmaking basis or to sell it within a reasonable period of time.

The final exception is in the case of a farming enterprise which comprises a part of an estate. In such a case the limitation would not apply to the estate for the first 2 taxable years if the business of farming was the principal business activity of the decedent for the last full taxable year before his death.

The bill authorizes the Secretary of the Treasury to prescribe regulations to carry

out the purpose of the bill including specific regulations dealing with a taxpayer who has more than one business of farming and a business of farming which is carried on by a partnership or by a subchapter S corporation. Under these regulations, the Secretary would make it clear that if a taxpayer had more than one business of farming they would be treated together, and the income and deductions of a partnership or a subchapter S corporation would be treated as the income and deductions of the members or shareholders, respectively.

Mr. President, the bill I have introduced would not prohibit farming operations by nonfarmers. It would simply put an end to the use of farming as a tax avoidance mechanism by some individuals and corporations which results in unfair competition with the regular farmer.

The bill (S. 1560) to amend the Internal Revenue Code of 1954 to limit losses allowable with respect to farming operations which are incurred by taxpayers whose principal business activity is not farming, introduced by Mr. MILLER (for himself and other Senators), was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD.

EXHIBIT 1.

S. 1560

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part IX of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 277. Limitations on deductions attributable to certain farming opertions.

"(a) General Rule.—Except as provided in this section and except in the case of a taxpayer engaged in the business of farming as the principal business activity, the deductions attributable to the business of farming which, but for this section, would be allowable under this chapter for the taxable year shall not exceed an aggregate amount equal to the sum of—

"(1) the gross income derived from the business of farming for the taxable year, and

"(2) in the case of an individual whose principal residence is on a farm, the gross income derived by such individual and his spouse for the taxable year from (A) wages and salaries for personal services, (B) timber located on a farm, and (C) royalties derived from property on which the taxpayer's farming operations are conducted.

"(b) Business of Farming.—For purposes of this section, the term 'business of farming' includes the holding of property used in farming.

"(c) Farming as Principal Business Activity.—

"(1) In general.—For purposes of subsection (a), the business of farming is the principal business activity of a taxpayer for a taxable year only if the net income from the business of farming for the three preceding taxable years (or so many of such preceding years as the taxpayer has been engaged in the business of farming) equals or exceeds two-thirds of the total net income of the taxpayer for such years.

"(2) Net income from business of farming.—For purposes of paragraph (1), the net income from the business of farming of a taxpayer for any taxable year is the sum of—

"(A) the gross income derived from the business of farming for such year minus the deductions attributable to such business, and

"(B) the full amount (if any) by which the gains from sales or exchanges of property used in the business of farming (within the meaning of section 1231 (b)) which are treated as gains from sales or exchanges of capital assets exceed the losses from such sales or exchanges.

"(3) Total net income.—For purposes of paragraph (1), the total net income of a taxpayer for any taxable year is the taxpayer's adjusted gross income (taxable income, in the case of a corporation) determined without regard to gains from sales or exchanges of capital assets or of property used in a trade or business, other than the business of farming. For the purposes of the preceding sentence, adjusted gross income and taxable income shall be computed by recognizing the full amount (if any) by which the gains from sales or exchanges of property used in the business of farming (within the meaning of section 1231(b)) which are treated as gains from sales or exchanges of capital assets exceed the losses from such sales or exchanges.

"(d) Exceptions for Deductions Attributable to Drought, Flood, and Other Casualties and to Certain Farming Operations.—

No deduction shall be disallowed under subsection (a) if such deduction is attributable—

"(1) to drought, flood, hail, or other abnormal weather conditions, disease, fire, storm, or other casualty or theft;

"(2) to a research or experimental farming operation conducted under a program approved by the United States Department of Agriculture, a State department of agriculture, or the agricultural school of an accredited college or university; or

"(3) to farming operations consisting of egg or broiler production.

"(e) Other Exceptions.—

"(1) Farm enterprise acquired from a decedent.—The limitation in subsection (a) shall not apply with respect to any farming enterprise acquired by the taxpayer by devise or inheritance, or by distribution of a testamentary trust, for the taxable year in which such enterprise is so acquired and for the two succeeding taxable years.

"(2) Farm enterprise acquired by foreclosure, etc.—The limitation in subsection (a) shall not apply with respect to any farming enterprise acquired by the taxpayer in partial or complete satisfaction of a debt for the taxable year in which such enterprise is so acquired and for the two succeeding taxable years.

"(3) Estates.—In the case of an estate, the limitation in subsection (a) shall not apply to any farming enterprise comprising a part of the estate for the first and second taxable years of the estate if the business of farming was the principal business activity of the decedent for the last full taxable year before his death.

"(f) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations applying the provisions of this section—

"(1) to a taxpayer engaged in more than one business of farming,

"(2) to a business of farming carried on by a partnership, and

"(3) to a business of farming carried on by an electing small business corporation (as defined in section 1371(b)).

The regulations required under paragraphs (2) and (3) shall provide that the income and deductions of a partnership or an electing small business corporation which is engaged in the business of farming shall be treated as the income and deductions of the partners or of the shareholders of such corporation."

(b) The table of sections for such part IX is amended by adding at the end thereof the following new item:

"SEC. 277. Limitation on deductions attributable to certain farming operations."

SEC. 2. The amendments made by this Act shall apply to taxable years beginning after December 31, 1969.

AUTHORIZATION FOR COMMITTEES TO FILE REPORTS DURING ADJOURNMENT OF THE SENATE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that committees of the Senate be authorized to file reports during the adjournment of the Senate until noon on Monday next.

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

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business.

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

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NATIONAL ENDOWMENT FOR THE ARTS

Mr. PELL. Mr. President, it is with regret that I bring to the attention of the Senate the fact that Roger Stevens who has been the Chairman of the National Endowment for the Arts since its establishment has not been reappointed to his post upon the expiration of his term of office.

I fully understand that an administration has the right to appoint whomever it chooses to positions which come open during the Executive's term of office. However, I would like to most emphatically clear up some misinformation which is currently being cited concerning Mr. Stevens' original appointment.

Press reports lead one to believe that fundraising activities was one of the reasons, if not the reason, why Mr. Stevens was appointed Chairman for the Arts by President Johnson. As principal sponsor

of the legislation which established the National Foundation on the Arts and Humanities, and as chairman of the Special Subcommittee on the Arts and Humanities, I was aware of the selection process involved, and believe the record should be set straight.

In fact, at the time of the assassination of President Kennedy, on November 22, 1963, Mr. Richard Goodwin was to have been named to this job and have this responsibility. However, following President Kennedy's death, the decision was made that whoever filled this position should be acceptable to the new President. Moreover, President Johnson had other duties in mind for Mr. Goodwin.

Various conversations were held with those interested in the arts program, both in and out of Government. The view that emerged from these conversations was that Roger Stevens was the man who would be most able to nurture the new, rather delicate creation that was the National Endowment on the Arts, that he was more qualified than any other individual of whom we knew to handle the work in a noncontroversial, nonpartisan manner, and that he would be particularly able to deal with Congress and with people throughout the country without regard to political alinement in carrying out his responsibilities.

Moreover, he was already chairman of the Kennedy Center for the Performing Arts and hence was here in Washington, an important factor since the question of funds for operating expenses and salary was then very much in the air.

The fact that he had been a leading fundraiser for Adlai Stevenson in his two campaigns for the Presidency in 1952 and 1956 was in no way a factor in the decision to name him. In fact, in the 1960 Kennedy-Johnson campaign it should here be noted that his fundraising activities for the Democratic Party were minimal.

All told, Roger Stevens has done a superb job as Chairman on the Council. I knew that when he took the job he, or anybody else in that position, would face almost impossible criticism. He has not; rather, he has secured the trust and acceptance of a great majority of people of the arts.

Again, while it is President Nixon's privilege to name his own man to this job, I do think as a matter of fairness that the public should be aware that Roger Stevens was not appointed because he was a Democratic fundraiser.

I would also hope that because this erroneous conclusion might be drawn from the press articles, it would not now mean that the Endowment for the Arts would be headed by a man with the newly established qualification of being a political fundraiser.

THE POTENTIALLY EXPLOSIVE SITUATION BETWEEN THE UNITED STATES AND PERU

Mr. PELL. Mr. President, I desire to call the attention of the Senate to the potentially explosive situation between the United States and Peru concerning the expropriation of the International Petroleum Co. assets and the abuse of our fishermen. Lessons should be learned from this situation in terms of the proper limitations of our foreign aid program.

Before turning directly to a brief description of the facts of the current controversy, let me refer to the announcement that President Nixon will send John Irwin II as his personal emissary to Peru for high-level discussions.

John Irwin is a particularly fine man and an eminently capable diplomat. At the same time, however, I want to express the hope that he receive the full backing of the administration and that this trip does not turn out to be a stopgap diplomatic measure; in other words, I hope that the Irwin mission leads to some significant policy changes.

As to the specific changes that might be called for, I would like to suggest three: First, the United States should make more use of the Organization of American States, as both a channel for diplomatic discussions and foreign aid programs. Second, the United States should give consideration to the formulation of an international convention covering the rights and responsibilities of multinational corporations. Third, the United States should press forward with an international ocean space arrangement capable of securing multilateral agreement on the width of the territorial sea and the breadth of the continental shelf; such an arrangement also should give consideration to the creation of international machinery to regulate activities beyond the limits of coastal State jurisdiction, including the question of regional fisheries and their proper management.

Having made these recommendations, let me briefly sketch the complex background to the present controversy between the United States and Peru. In 1963, following a period of military government, Fernando Belaunde Terry was elected President of Peru for a 6-year term. His appeal was rather vaguely to the moderate left, and he embarked on a program which emphasized roadbuilding and community development. Although he left some things undone—partly from his own volition, partly because his Congress was controlled by the opposition—his general approach was in tune with the Alliance for Progress. As his administration began, it seemed to be one of the more promising governments in Latin America and one with which the United States could work in the spirit of the Charter of Punta del Este.

Bilateral issues between the United States and Peru served to prevent the development of a fruitful relationship, however. The most important of these have been over the International Petroleum Co., the breadth of the territorial sea, and Peruvian military expenditures.

The International Petroleum Co.—IPC—an Esso subsidiary, acquired oil fields in northern Peru from British interests in the 1920's. The validity of the company's rights has long been a matter of controversy between the company and a succession of Peruvian Governments, and Peruvian policy toward the company has long been a subject of political debate within Peru.

The issue over the breadth of the territorial sea arose because of Peru's assertion of sovereignty to a line 200 miles from its coast. Pursuant to this assertion, the Peruvian Navy from time to time seizes a U.S. fishing boat within this area but beyond the 3-mile territorial or 12-mile fisheries limit recognized by the United States. This happened most recently when on February 14, 1969, the Peruvians seized the U.S. tuna boat, *Mariner;* at the same time, according to press reports, the Peruvian Navy fired on another tuna boat, the *San Juan.*

In this connection, though, we should bear in mind that the reason for the August 1, 1947, unilateral declaration of Peru and similar declarations by other Pacific Latin American nations—nations which have virtually no continental shelf—to the effect that they considered their territorial seas extended 200 miles outward was in riposte to the earlier, September 28, 1945, declaration of President Truman that the United States has jurisdiction and control over the natural resources of its continental shelf.

The issue over military expenditures arose from the desire of the Peruvian Air Force to modernize its equipment, a desire which eventually led to the purchase of supersonic Mirage jet aircraft from France. And, I am afraid, a desire that all Latin American military people seem to have, mostly I believe for reasons of prestige.

In major part because of the actions of Congress, the United States at one time or another has used the foreign aid program, usually through withholding aid or threatening to withhold it, as an instrument to resolve these disputes. This tactic has been unsuccessful. Not only do the disputes remain unresolved; they have been aggravated. At the same time, we have not accomplished what might have been achieved if aid had been extended to the Belaunde government in timely and substantial amounts.

This is the consequence, I suggest, of attempting to use the aid program to accomplish purposes for which it is an inappropriate instrument. It is difficult to argue that the United States ought to aid countries which expropriate American property without compensation, or seize American fishing vessels on what most of the world regards as the high seas, or fritter away their own resources on useless military expenditures. But we delude ourselves if we think that the withholding of aid—or the threat to do so—is going to cause these countries to behave much differently. On the contrary, it is more likely to make them even stubborner about their preexisting policies.

This is precisely what happened in Peru. In August last year, the Belaunde government and the IPC settled their differences. On October 3, Belaunde was overthrown by a military coup d'etat, and on October 9 the military government expropriated not only the IPC oil fields but also its refinery and other installations.

This started a timebomb to ticking. Under the terms of the Hickenlooper amendment to the Foreign Assistance Act, all U.S. aid programs to Peru will have to be terminated unless the Peru-

vian Government takes steps to compensate IPC within 6 months of the expropriation; that is, by April 9. This in itself is not a matter of large consequence, because the aid program in Peru has already been trimmed to modest efforts at technical assistance.

There is an analog to the Hickenlooper amendment in the Sugar Act, however, requiring that the Peruvian sugar quota also be cut off. This is more serious. Peru's initial sugar quota for calendar 1969 has been fixed at 354,253 tons, and it is reasonable to expect that this might be increased by perhaps 50,000 tons during the course of the year to meet shortfalls from other suppliers. At a differential of 4½ to 5 cents a pound over the world price, this means approximately $40 million in foreign exchange to Peru. Furthermore, some of Peru's sugar industry is American-owned, and most of Peru's sugar exports to the United States are carried on American ships.

It is to be hoped, of course, that the Peruvian Government will take adequate steps to compensate IPC, or at least to submit the matter to judicial determination, but the prospects do not appear bright. The military government was highly nationalistic to begin with and seems to be becoming more so.

The more the United States waves what looks like a big stick, the more this nationalism is inflamed—and it finds a popular response among the Peruvian people.

The story of United States-Peruvian relations over the last 6 years is one of a steady accumulation of irritations, each building upon, and greater than, the last. This is the more to be deplored because the prospects of 1963 seemed so bright.

We are now in a maze out of which there appears no clear path. Even in the absence of such problems as the IPC case, the 200-mile limit, and military expenditures, it might well be that we would not want to assist the present Government of Peru anyway. After all, it came to power in a flagrantly unconstitutional manner and gives every indication that it intends to remain in power indefinitely, a la the Ongania government in Argentina.

But following a policy of cool, correct relations is quite a different thing from moving from one point of friction to another, each more irritating than the last. This is the present framework of our relations with Peru, and this is the vicious circle which we need to break. If it is not broken, one can foresee a growing trend toward leftist, irrational nationalism, to the detriment of all concerned and of none more so, ultimately, than the Peruvians themselves.

The way to deal with this, I submit, is to leave the Peruvian Government alone—to carry on formal, arm's-length diplomatic relations but no more. I do not believe the time is now propitious for pressing the IPC matter; it took 4 years to settle the claims resulting from the Mexican oil expropriations in 1938. It may be that, the law being what it is, we shall have to invoke the Hickenlooper amendment, liquidate what is left of the aid program, and cancel the sugar quota. I do not think we need be overly concerned by Peruvian threats to expropriate other American investments—for example, in the copper industry—or by Peruvian feelers toward the Soviet bloc.

In the meantime, it seems to me that we should take to heart the lessons of Peru with respect to our Latin American policies in general. One of these lessons is that the aid program is ineffective in solving problems which are essentially irrelevant to the main purposes of aid. Another is that the simple existence of an aid program, and of threats to terminate it, complicates issues which might otherwise be more amenable to traditional diplomacy.

I hope the Foreign Relations Committee will explore all these matters in greater depth in connection with its consideration of the aid bill and the military sales bill this year.

EXECUTIVE COMMUNICATIONS, ETC.

The PRESIDING OFFICER laid before the Senate the following letters, which were referred as indicated:

REPORT OF THE MARITIME ADMINISTRATION

A letter from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Maritime Administration for the fiscal year 1968 (with an accompanying report); to the Committee on Commerce.

WORLD WEATHER PROGRAM

A letter from the Secretary of Commerce, transmitting, pursuant to law, the first annual plan for U.S. participation in the World Weather Program dated March 1, 1969 (with an accompanying document); to the Committee on Commerce.

HYDROELECTRIC POWER RESOURCES OF THE UNITED STATES, DEVELOPED AND UNDEVELOPED, 1968

A letter from the Chairman, Federal Power Commission, transmitting for the information of the Senate a copy of the publication "Hydroelectric Power Resources of the United States, Developed and Undeveloped, 1968, dated January 1, 1968 (with an accompanying document); to the Committee on Commerce.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate, or presented, and referred as indicated:

By the PRESIDING OFFICER:

A concurrent resolution of the Legislature of the State of South Dakota; to the Committee on Commerce:

"S. CON. RES. 510

"A concurrent resolution memorializing the Congress of the United States to take whatever action might be necessary to require planes to be equipped with a downed aircraft locator beacon for rescue purposes

"Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

"Whereas, this past year has seen the tragic loss of some of the outstanding citizens of this state en route from Colorado Springs, Colorado, to Sioux Falls, South Dakota, by airplane; and,

"Whereas, the number of private planes has increased and is expected to keep increasing significantly in the years ahead; and,

"Whereas, the loss of aircraft is becoming a growing problem in this state and throughout the country; and,

"Whereas, planes could be equipped with a Downed Aircraft Locator Beacon (DALB) with a transmitter which would activate on impact or could be manually activated in case of an emergency to broadcast on 121.5 Mc/s and 243 Mc/s to pinpoint the location of downed aircraft for rescuers; and,

"Whereas, Downed Aircraft Locator Beacons which have a minimum operating time of 48 hours and cost approximately two hundred dollars per unit are now available; and,

"Whereas, the required use of Downed Aircraft Locator Beacons would result in the saving of much time, money, property and human life; and,

"Whereas, the basics of a national system of locating downed aircraft through the use of automatic locator beacons correlated with an air-borne search plan appear technically feasible by reason of having already been explored and their effectiveness demonstrated experimentally; and,

"Whereas, the Federal Aviation Agency has requested comment on an 'Advanced Notice of Proposed Rule Making—Docket GC-24, Mandatory Crash Locator Beacon Regulation'; and,

"Whereas, a bill (S. 3430) amending the Federal Aviation Act to require planes to be equipped with a downed aircraft beacon or transmitter was introduced by the Honorable Senator Magnuson of the State of Washington in the United States Senate on May 3, 1968; and,

"Whereas, planes are of a very transient nature and requiring the use of a Downed Aircraft Locator Beacon on a statewide basis would pose significant enforcement problems; and,

"Whereas, a requirement of the use of the Downed Aircraft Locator Beacons on all airplanes should be uniform throughout the country:

"Now, therefore, be it resolved, by the Senate of the Forty-fourth Legislature of the State of South Dakota, the House of Representatives concurring therein, that the Congress of the United States be memorialized to take whatever action might be necessary to require within a reasonable period of time that all appropriate aircraft be equipped with a Downed Aircraft Locator Beacon; and,

"Be it further resolved, that copies of this Concurrent Resolution be transmitted by the Secretary of the Senate of the State of South Dakota to the offices of the President and Vice President of the United States, the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States, the members of the Congressional delegation of the State of South Dakota, the Administrator of the Federal Aviation Agency, and the Governor of the State of South Dakota.

"Adopted by the Senate March 3, 1969 and Concurred in by the House of Representatives March 7, 1969.

"D. H. GUNDERSON,
"Speaker of the House.
"PAUL INMAN,
"Chief Clerk.
"JAMES ABDNOR,
"President of the Senate.
"NIELS P. JENSEN,
"Secretary of the Senate."

A concurrent resolution of the Legislature of the State of South Dakota; to the Committee on Finance:

"S. CON. RES. 503

"A concurrent resolution, memorializing the Congress of the United States to give serious consideration to the implementation of a users' tax upon airport facilities and the dedication of the revenues derived therefrom to a special trust fund for the development of a program similar in nature to the federal-aid highway program to meet the immediate and long-range needs of the Nation's air transportation system

"Be it resolved by the Senate of the State of South Dakota, the House of Representatives concurring therein:

"Whereas, airports are as necessary for a

growing nation, state or community as are its highways; and

"Whereas, in many areas of the United States, including South Dakota, airports have become the centers of transportation for goods and for passengers; and

"Whereas, airports provide a transportation network essential to the existing and developing economic well being of the entire nation, including South Dakota; and

"Whereas, despite the investment of over five billion dollars in airport facilities by state and local governments and over one billion dollars by our federal government in matching funds, our national airport system is inadequate to meet today's travel and commerce needs; and

"Whereas, estimates indicate the need for the investment of another six billion dollars in airport facilities alone during the next eight years to keep up with the increasing growth in traffic and the radical changes in aircraft technology; and

"Whereas, state and local governments do not have the resources to fund this massive investment in the time period within which these improvements are needed or within the immediately foreseeable future; and

"Whereas, the United States Senate Subcommittee on Aviation has endorsed the need for a massive airport and airways construction program, and has recommended that an airport trust fund be established similar to the existing highway trust fund with revenues coming from passenger and cargo user fees; and

"Whereas, it is anticipated that the Senate Subcommittee on Aviation will be conducting further hearings on this matter:

"Now, therefore, be it resolved, that the Senate of the Forty-fourth Session of the Legislature of South Dakota, the House of Representatives concurring therein, respectfully urge the Congress of the United States to seriously consider and implement a users' tax upon airport facilities and service and the dedication of the revenues derived therefrom to a special trust fund for the development of a program similar in nature to the federal-aid highway program to meet the immediate and long-range needs of the nation's air transportation system, in recognition of the need for vast improvements and new construction of airports and airways systems; and

"Be it further resolved, that such Congressional considerations should include feasibility studies of levies on domestic and foreign air travel and the transportation of commodities as well as other methods of raising revenues for airport improvements and construction, including federal grant-in-aid programs, bond issues, tax incentives and other available general revenues and trust fund concepts; and

"Be it further resolved, the South Dakota Legislature has adopted this resolution in affirmation of its continuing interest in the efficient and orderly development and integration of the overall transportation systems requirements of our nation and upon all of the considerations contained herein and for many more important reasons urges the Congress of the United States to take expeditious action in this regard; and

"Be it further resolved, that copies of this concurrent resolution be transmitted by the Secretary of the Senate of the state of South Dakota to the Offices of the President and Vice-President of the United States, the Secretary of the Senate and Clerk of the House of Representatives of the United States, the chairman and members of the Senate Subcommittee on Aviation of the United States Senate, the members of the Congressional delegation of the state of South Dakota, the Secretary of the United States Department of Transportation, and the Governor of South Dakota.

"Adopted by the Senate February 7, 1969 and Concurred in by the House of Representatives February 28, 1969.

"D. H. GUNDERSON,
"Speaker of the House.
"PAUL INMAN,
"Chief Clerk.
"JAMES ABDNOR,
"President of the Senate.
"NIELS P. JENSEN,
"Secretary of the Senate."

CONCURRENT RESOLUTION OF LEGISLATURE OF SOUTH DAKOTA RELATING TO SOIL CONSERVATION

Mr. McGOVERN. Mr. President, I ask unanimous consent to have printed in the RECORD a concurrent resolution of the South Dakota Legislature urging Congress to provide sufficient funds to assure that soil conservation districts receive adequate technical assistance through the Federal Soil Conservation Service.

I would like to add my personal endorsement to the sentiment expressed in the resolution. It is economy of the poorest sort to allow our basic soil resources to deteriorate in order to balance a budget unwisely burdened by such projects as the supersonic transport, the race to the moon, and the anti-ballistic-missile system, and a tragic war in which we should not be involved.

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

H. CON. RES. 513

A concurrent resolution memorializing the Congress of the United States to give priority consideration to the needs of technical assistance by the Soil Conservation Service to Conservation Districts for the conservation and development of soil, water and all related natural resources

Be it resolved by the House of Representatives of the State of South Dakota, the Senate concurring therein:

Whereas, there is a national shortage of technical personnel to tend the growing demand for technical assistance to Conservation Districts and their cooperating land occupiers; and

Whereas, manpower ceilings and budget proposal reductions have resulted in a steady decline of assistance; and

Whereas, South Dakota has eleven Conservation Districts without a District Conservationist and many Districts operating without Conservation Technicians; and

Whereas, the Soil Conservation Service has less funds and personnel to now serve over 40,000 Conservation District cooperators in South Dakota than was necessary to serve 25,000 cooperators:

Now, therefore, be it resolved, by the House of Representatives of the forty fourth Legislature of the State of South Dakota, the Senate concurring therein, that the Congress of the United States be memorialized to take whatever action it deems appropriate to assure that additional funds and manpower be made available to provide necessary technical assistance to South Dakota's seventy Conservation Districts for the conservation of soil, water and related natural resources.

Be, it further resolved, that ways and means be provided to assure funds and technical personnel necessary to carry out the program of each Conservation District and district cooperator to assure the conservation and development of soil, water and related natural resources of South Dakota and the nation.

Be, it further resolved, that copies of this Concurrent Resolution be transmitted by the Clerk of the House of Representatives of the State of South Dakota to the offices of the President and Vice-President of the United States, the Speaker of the House of Representatives of the United States, the members of the Congressional delegation of the State of South Dakota and the Governor of the State of South Dakota.

Adopted by the House of Representatives February 20, 1969.

Concurred in by the Senate February 27, 1969.

DEXTER H. GUNDERSON,
Speaker of the House.
JAMES ABDNOR,
President of the Senate.

Attest:

PAUL INMAN,
Chief Clerk of the House.
NIELS P. JENSEN,
Secretary of the Senate.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. MATHIAS:

S. 1535. A bill for the relief of Mrs. Chung Sook Paik; to the Committee on the Judiciary.

By Mr. TYDINGS:

S. 1536. A bill to provide for an Assistant Secretary of State for Food and Population, an Assistant Administrator for Population in the Agency for International Development, and a National Council on Food and Population, and to amend the provisions of the Foreign Assistance Act of 1961 and the Agricultural Trade Development and Assistance Act of 1954 relating to family planning and population control programs; to the Committee on Foreign Relations.

S. 1537. A bill to amend the Tariff Act of 1930 to remove the prohibition against importing articles for preventing conception; to the Committee on Finance.

(See the remarks of Mr. TYDINGS when he introduced the above bills, which appear under a separate heading.)

By Mr. CURTIS:

S. 1538. A bill to abolish the Commission on Executive, Legislative, and Judicial Salaries; to the Committee on Post Office and Civil Service.

(See the remarks of Mr. CURTIS when he introduced the above bill, which appear under a separate heading.)

By Mr. DOLE:

S. 1539. A bill to amend the Agricultural Adjustment Act of 1938, as amended to permit advance payments to wheat producers; to the Committee on Agriculture and Forestry.

By Mr. JAVITS:

S. 1540. A bill to amend the Public Health Service Act to extend and improve the provisions thereof authorizing contracts and grants to encourage full utilization of nursing education talent; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. JAVITS when he introduced the above bill, which appear under a separate heading.)

By Mr. MONTOYA:

S. 1541. A bill to amend title II of the Social Security Act to provide for periodic cost-of-living increases in monthly benefits payable thereunder; to the Committee on Finance.

(See the remarks of Mr. MONTOYA when he introduced the above bill, which appear under a separate heading.)

By Mr. DODD:

S. 1542. A bill for the relief of Dorothy C. Hamilton; to the Committee on the Judiciary.

By Mr. PEARSON:

S 1543. A bill for the relief of Hoi Shan Keung; to the Committee on the Judiciary.

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 1544. A bill to provide that certain lands shall be held by the United States in trust for Indians of the Burns Paiute Indian Colony of Harney County, Oreg.; to the Committee on Interior and Insular Affairs.

By Mr. McGOVERN:

S. 1545. A bill to redesignate the Badlands National Monument as the Badlands National Park; to the Committee on Interior and Insular Affairs.

By Mr. MONTOYA:

S. 1546. A bill for the relief of Refugia Gurriola Alvarez; to the Committee on the Judiciary.

By Mr. FANNIN:

S. 1547. A bill to amend the National Labor Relations Act so as to make it an unfair labor practice for a labor organization to require an employer to pay for unnecessary services; to the Committee on Labor and Public Welfare.

By Mr. JORDAN of North Carolina:

S. 1548. A bill for the relief of Wai Fong Kan;

S. 1549. A bill for the relief of Chung Pui Wong;

S. 1550. A bill for the relief of Ping Sum Yuen;

S. 1551. A bill for the relief of Pui Nam Tong;

S. 1552. A bill for the relief of Fu Keung Au-Yeung;

S. 1553. A bill for the relief of Sing On Cheung;

S. 1554. A bill for the relief of Chung Cheung;

S. 1555. A bill for the relief of Ma Kei Lok;

S. 1556. A bill for the relief of Yuen Chun Cheuk; and

S. 1557. A bill for the relief of Chi Ming Lo; to the Committee on the Judiciary.

By Mr. MOSS:

S. 1558. A bill to provide for airports on Indian reservations; to the Committee on Interior and Insular Affairs, by unanimous consent.

(See the remarks of Mr. Moss when he introduced the above bill, which appear under a separate heading.)

By Mr. HARRIS (for himself and Mr. BELLMON):

S. 1559. A bill to amend the act entitled "An act to provide for the disposition of judgment funds now on deposit to the credit of the Cheyenne-Arapaho Tribes of Oklahoma," approved October 31, 1967 (81 Stat. 337); to the Committee on Interior and Insular Affairs.

By Mr. MILLER (for himself, Mr. GRIFFIN, and Mr. COOK):

S. 1560. A bill to amend the Internal Revenue Code of 1954 to limit losses allowable with respect to farming operations which are incurred by taxpayers whose principal business activity is not farming; to the Committee on Finance.

(See the remarks of Mr. MILLER when he introduced the above bill, which appear under a separate heading.)

By Mr. HRUSKA (for himself, Mr. BAYH, Mr. BURDICK, Mr. DIRKSEN, Mr. FONG, Mr. HART, Mr. MATHIAS, Mr. SCOTT, and Mr. TYDINGS):

S. 1561. A bill to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States; to the Committee on the Judiciary.

(See the remarks of Mr. HRUSKA when he introduced the above bill, which appear under a separate heading.)

By Mr. SCOTT:

S. 1562. A bill to establish a Judicial Service Commission; to the Committee on the Judiciary.

By Mr. HARRIS (for himself, Mr. BURDICK, Mr. CANNON, Mr. EAGLETON, Mr. FULBRIGHT, Mr. HUGHES, Mr. METCALF, Mr. MUNDT, Mr. PACKWOOD, Mr. SPARKMAN, Mr. YOUNG of North Dakota, and Mr. YOUNG of Ohio):

S. 1563. A bill to promote the advancement of science and the education of scientists through a national program of institutional grants to the colleges and universities of the United States; to the Committee on Labor and Public Welfare.

(See the remarks of Mr. HARRIS when he introduced the above bill, which appear under a separate heading.)

By Mr. MURPHY (for himself, Mr. CRANSTON, Mr. DIRKSEN, Mr. JAVITS, and Mr. GOODELL):

S.J. Res. 78. Joint resolution to designate 1969 as Diamond Jubilee Year of the American Motion Picture; to the Committee on the Judiciary.

(See the remarks of Mr. MURPHY when he introduced the above joint resolution, which appear under a separate heading.)

By Mr. PELL (for himself and Mr. BOGGS):

S.J. Res. 79. Joint resolution granting the consent of Congress to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia to negotiate and enter into a compact to establish a multistate authority to construct and operate a passenger rail transportation system within the area of such States and the District of Columbia; to the Committee on the Judiciary.

(See the remarks of Mr. PELL when he introduced the above joint resolution, which appear under a separate heading.)

S. 1541—INTRODUCTION OF A BILL TO MODERNIZE SOCIAL SECURITY—AUTOMATIC COST-OF-LIVING INCREASES

Mr. MONTOYA. Mr. President, during the next few days I intend to introduce a series of bills which will make a number of badly needed changes in the social security program if adopted. The changes which I will be proposing would: First, increase widows' benefits; second, lower the age at which old-age benefits are paid; third, increase the amount of earnings allowed social security beneficiaries; fourth, reduce the age at which special benefits are paid to people who never worked under social security; and fifth, increase benefits to take account of rises in the cost of living.

In addition to these measures, I will, of course, continue reviewing the changing circumstances and needs of our elderly and shall propose whatever measures are necessary as the need arises.

Mr. President, the need for these changes should be obvious if one takes a few moments to think about them in relation to the whole social security program.

At the present time, about 24.5 million people receive over $2 billion a month in social security benefits. Now $2 billion a month is a large sum, even to those of us who have learned to think in terms of large amounts of money as part of our daily tasks. Therefore, we hesitate to make any changes in a program of the magnitude of social security unless the changes are necessary and the funds to pay for them are available. I believe this is the way we should operate, and I am happy to say that the changes I propose meet both tests.

Mr. President, the proposals I will be making are necessary if social security is to provide a reasonable income to retired workers, to disabled workers, to their dependents, and to the survivors of deceased workers. Moreover, the recent report of the trustees of the social security trust funds shows that there is money to pay the foreseeable costs of the changes I propose.

Since the last increase in social security benefits, February 1968, the consumer price index has gone up about 4½ percent. Or to put it another way, people living on social security benefits have had to reduce their spending by 4½ percent.

Studies by the Social Security Administration indicate that most social security beneficiaries have little or no income other than their benefits. These benefits are not so large that there is any fat in them to be used to absorb the effect of rising prices. As a result, every rise in prices means that the social security beneficiary must cut down his standard of living. No matter how small the rise, he must give up something. A small rise in prices may mean a slice of bread less each day. A larger rise, another meatless day. This, I think, is too much to ask or expect of social security beneficiaries.

In the past, when prices have risen we have raised social security benefits from time to time, but generally long after the price rise. As a result of the lag between benefits and prices, social security beneficiaries are probably the group that is hit hardest by inflation. Other Federal retirement programs have provisions for automatic increases in pensions when the cost of living goes up. After a Federal employee retires, his pension is automatically increased. Is there any good reason why social security benefits should not go up automatically when the cost of living goes up? I think there is not.

The measure which I propose today provides for increasing social security benefits each January by the same amount as the rise in the consumer price index for the previous year. The first of these increases would be for January 1970 and would take into account the rise in the index from the date of the last benefit increase, February 1968 through December 1969.

Mr. President, I adopted the yearly increase instead of the more general provision which calls for a benefit increase whenever the consumer price index rises by some specified percentage in consideration of the size of the social security program and the time involved in recomputing benefits. It just did not seem reasonable to require a program with 25 billion or so beneficiaries to increase benefits except on some fixed schedule. In arriving at this decision, I was forced to make some compromises in what I would like to do—that is, to get increased benefits out as fast as the cost of living rises. My proposal calls for the benefits to be increased as of each January in proportion to the rise in the cost of living for the previous year. Now, as a practical matter, I know that it probably will not be possible to send out the increased checks for January early in February. But I do want to establish the principle

that increased benefits should follow hard on the heels of increased prices. And, under my bill the increased benefits would be due for January. Even if the actual increase had to be paid at a later date, the beneficiary should know that he is going to get it for January.

Because the expense of providing a cost-of-living increase in social security benefits can not be foreseen with any accuracy, my bill would require the Secretary of Health, Education, and Welfare, each time benefits are increased, to send to Congress his recommendations for any additional financing that might be needed to meet the cost of paying the additional benefits.

Whether any additional financing might be needed in a particular year would depend on the relationship of increases in wages to increases in prices. When wages rise, the income to the social security program also rises because the program is financed by a payroll tax. In some years the additional income would be sufficient to pay for the cost-of-living benefit increase, in other years it might not be.

For these reasons, it seemed advisable to require the Secretary to report to Congress whenever the cost-of-living increase required additional financing. In this way we would be warned in plenty of time that action is needed and could take whatever action we thought necessary early enough to avoid any financial strain on the social security program.

The need for a cost-of-living provision in the Social Security Act is something I think Senators on both sides of the aisle can agree on. In the recent presidential campaign both Democrat and Republican platforms favored some such provision.

Mr. President, this proposal, plus those I will be proposing during the next few days, should be adopted if we wish to assure that the social security program will remain a vital force in assuring a cash income to a large and important segment of our population. A social security program that adapts to the needs of a dynamic society was the goal envisaged by the planners of the Roosevelt era and the objective which has been carried forward by Congress since that time. As I see it, the great achievement of the program has been its preventing people from slipping into poverty when a worker retires, becomes disabled, or dies. However, as the economic climate of the Nation changes, the social security program must change if it is to fulfill its role.

The changes I am now proposing and will be proposing are the natural development of the social security program in our present socioeconomic climate. I hope the Senate will have an opportunity to work its will on this measure at an early date.

Mr. President, I ask unanimous consent that the text of my bill be printed at this point in the RECORD.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 1541) to amend title II of the Social Security Act to provide for periodic cost-of-living increases in monthly benefits payable thereunder, introduced by Mr. MONTOYA, was received, read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

S. 1541

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"COST-OF-LIVING INCREASES IN BENEFITS

"(w) (1) For purposes of this subsection, the term 'price index' means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"(2) During the month of December 1969, the Secretary shall determine the percentage of increase (if any) in the price index for November 1969 over the price index for February 1968, and, during December 1970 and each December thereafter the Secretary shall determine the percentage of increase (if any) in the price index for the preceding November over the price index for the preceding December. If the Secretary determines that a price increase has occurred, there shall be made, in accordance with the succeeding provisions of this subsection, an increase in the monthly insurance benefits payable under this title equal to the percentage of the rise in the price index, adjusted to the nearest one-tenth of 1 per centum.

"(3) Increases in such insurance benefits shall be effective commencing with the month of January following the December in which the Secretary's determination under paragraph (2) was made, but shall only be applicable to individuals who were entitled to monthly benefits under this title for such December.

"(4) In determining the amount of any individual's monthly insurance benefit for purposes of applying the provisions of section 203(a) (relating to reductions of benefits when necessary to prevent certain maximum benefits from being exceeded), amounts payable by reason of this subsection shall not be regarded as part of the monthly benefit of such individual.

"(5) Any increase to be made in the monthly benefits payable to or with respect to any individual shall be applied after all other provisions of this title relating to the amount of such benefit have been applied. If the amount of any increase payable by reason of the provisions of this subsection is not a multiple of $0.10, it shall be reduced to the next lower multiple of $0.10."

SEC. 2. In January 1970 and in each succeeding January the Secretary of Health, Education, and Welfare shall submit to the Congress his recommendations with respect to any additional funds that may be necessary to defray the costs brought about by reason of the amendment made by the first section of this Act.

S. 1558—INTRODUCTION OF A BILL RELATING TO AIRPORTS ON INDIAN RESERVATIONS

Mr. MOSS. Mr. President, I introduce, for appropriate reference, a bill to provide for airports on Indian reservations.

There are already a few airports located on Indian reservations, but there has been no pattern to their establishment. This bill would give the Department of the Interior general authority to establish such airports, provided, of course, that the airport is included in the then curent revision of the national airport plan formulated by the Administrator of the Federal Aviation Administration, pursuant to the provisions of the Federal Airport Act. The bill also provides that the airport must be maintained in accordance with the standards, rules, and regulations prescribed by the Administrator of the Federal Aviation Administration. I ask unanimous consent that the bill be referred to the Committee on Interior and Insular Affairs.

The PRESIDING OFFICER. The bill will be received; and, without objection, the bill will be referred to the Committee on Interior and Insular Affairs.

The bill (S. 1558) to provide for airports on Indian reservations, introduced by Mr. Moss, was received, read twice by its title, and, by unanimous consent, was referred to the Committee on Interior and Insular Affairs.

S. 1561—INTRODUCTION OF A BILL RELATING TO APPELLATE REVIEW OF CRIMINAL SENTENCING

Mr. HRUSKA. Mr. President, I introduce a bill to amend chapter 235 of title 18 of the United States Code, to provide for the appellate review of Federal criminal sentences. I ask unanimous consent that the full text of the bill be printed at the conclusion of my remarks and that the bill be appropriately referred.

The PRESIDING OFFICER. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

(See exhibit 1.)

Mr. HRUSKA. I am pleased to announce that eight of my colleagues on the Judiciary Committee have joined with me in introducing the bill: Mr. BAYH, Mr. BURDICK, Mr. DIRKSEN, Mr. FONG, Mr. HART, Mr. MATHIAS, Mr. SCOTT, and Mr. TYDINGS.

This legislation is identical to S. 1540 which was passed unanimously by the Senate in the last Congress. Unfortunately, S. 1540 was not acted on by the House. It is my sincere hope that the Senate and the House both will promptly consider and pass the bill this session.

The bill will correct one of the greatest single injustices existing in our Federal criminal process today: the lack of authority and machinery to review unreasonable sentences. Extensive studies have shown that unreasonably harsh sentences are imposed on many individuals who stand convicted of a violation of our laws. Many of these unreasonable sentences are imposed on individuals with fine families and good backgrounds, on individuals who strayed from the path on a single occasion and under trying circumstances, on individuals whose only offense was minor in comparision to those of others who have yet received far lesser sentences.

The problem of disparity of sentences has concerned Congress, bar associations and legal societies, students, and workers in the field of penology and, indeed, the executive branch of our Government and the courts for many years.

Putting aside what may be the ultimate or most desirable goals of a rational and humane sentence, we have in modern times been receding from the practice of enacting statutes calling for a mandatory fixed sentence. A greater number of our criminal laws now provide

for a wide range of permissible sentences. The practical effect of this is obvious. As the final determining factor in the sentence to be imposed, the judge's discretionary power becomes increasingly important.

By and large the wisdom of this policy of delegating the function to the trial judge has been clearly demonstrated. Our district judges are exceedingly conscientious, knowledgeable, and experienced. They are best able, informed, and qualified to deal fairly with the convicted defendant. However, they are the first to recognize the inadequacies in the present system. The exercise of judgment in this delicate area is not easy.

The responsibility for determining the proper sentence is so great as to justify and warrant the means of review. There is little wonder that judges have openly commented on the incongruity of the situation that the power to impose a sentence is the only discretionary power vested in the Federal trial judge which is not subject to appeal.

A study of the Federal statutes and the interpretation given them by the courts establishes that no authority exists for an appellate review of the sentence imposed by the judge in a criminal case so as to determine whether the sentence is excessive. A sentence will be modified only when it is unauthorized by law as not being within the limits fixed by a valid statute.

In the 85th Congress the concern about the problem of sentence disparities brought about pioneering legislation: the Sentencing Act of 1958 which provided for institutes and joint councils on sentencing. Their value cannot be overestimated. The institutes have been described as giving "the Federal judges themselves an opportunity to assume the initiative in eliminating sentences which may appear biased, capricious, or the result of defective judgment."

However, this and other related legislation have not been a complete answer to the problem. The Judicial Conference of the United States rejected appellate review legislation in 1958, reconsidered it in 1961, and then approved appellate review legislation in 1964. When we review the actions of the Judicial Conference, it is logical to ask what caused such a substantial shift in judicial opinion. While a redraft of the bill and increased interest in the problem may have played a part in this change, it is clear that the original objection of the Judicial Conference was to the principle of appellate review, and not the language of any particular bill. In retrospect, it seems that a consensus in favor of the principle did not develop until it became manifest that the problem of excessive sentences was not going to be resolved by the extensive use of the facilities provided in the Sentencing Act of 1958 or by other existing legislation.

Ten years of experience under the act has demonstrated that such procedures and techniques are not enough.

Nor has indeterminate sentencing proven to be the answer to the problem. For various reasons, many judges have declined to impose indeterminate sentences, or have imposed such sentences only infrequently.

To adequately cope with the problem of excessive sentences—to correct injustices once they have occurred—the practice of appellate review is required.

For illustration of the injustices which this bill attempts to correct, let me bring to the Senate's attention three or four of the many cases that were documented during the study of this problem.

In one of our district courts a bookkeeper who had assisted in an income tax fraud was given consecutive sentences totaling 31 years and 31 days—perfectly legal though considered as incredibly harsh by those who have reviewed the case.

In another case the defendant was a 20-year-old boy with an IQ of 52, who had become addicted to heroin while being treated for epilepsy. He had a friend, aged 17, with whom he "palled"; when one had dope, he would supply the other. The defendant, the boy with an IQ of 52, was picked up, charged and convicted of selling narcotics to his friend who was a minor. The sentence was life imprisonment without parole. Why was not he sentenced to an institution which could provide the needed help and guidance to return this young handicapped boy to society? The judge who imposed the sentence agreed that the sentence was not proper. However, he was disposed to a harsher rather than a more remedial sentence. He stated that the defendant should really have been given death.

In one penitentiary there were two men who had each been convicted of illegally cashing a check under $60. The first man's wife had become ill and he needed the money for rent, food, and doctor bills. He had no prior criminal record. The other man's wife had left him for another man. His prior record consisted of a drunk charge and a nonsupport charge. An examination of the cases indicated no significant differences for sentencing purposes. How were these cases handled? The second man, whose wife had left him, was given 30 days. The first man, the man who had tried to help his family, was sentenced to 15 years imprisonment.

Mr. President, such shocking injustices cannot be permitted to continue. Excessive and disparate sentencing prevents the rehabilitation of those who have been unjustly sentenced, they contribute to disorder in our prisons, and they increase disrespect for our criminal process which weakens the moral fiber of our citizens and which can only result in increasing violations of our laws.

As Justice Potter Stewart wrote in 1958, prior to the time of his appointment to the Supreme Court of the United States:

> Justice is measured in many ways, but to a convicted criminal its surest measure lies in the fairness of the sentence he receives.

The importance of the sentencing process is evident when it is observed that in 1967, 23,131 defendants were convicted in our district courts by pleas of guilty and nolo contendere, whereas only 1,040 defendants were convicted by jury and court trials.

Mr. President, the real anomaly and injustice of the existing lack of review of sentences was pinpointed by the introductory statement of the tentative draft of the American Bar Association's Advisory Committee on Sentencing and Review, "Standards Relating to Appellate Review of Sentences" when it stated:

> One of the most striking ironies of the law involves a comparison of the methods for determining guilt and the methods for determining sentence. The guilt-determination process is hedged in with many rules of evidence, with many procedural rules, and, most importantly for present purposes, with a carefully structured system of appellate review designed to ferret out the slightest error. Yet in the vast majority of criminal convictions in this country—90 percent in some jurisdictions; 70 percent in others—the issue of guilt is not disputed.
>
> What is disputed and, in many more than the guilty-plea cases alone, what is the only real issue at stake, is the question of appropriate punishment. But by comparison to the care with which the less-frequent problem of guilt is resolved, the protections in most jurisdictions surrounding the determination of sentence are indeed minuscule.

The protections in our Federal courts surrounding the determination of sentences are indeed minuscule and the situation must be corrected.

Mr. President, the concept of appellate review of sentences is not new to criminal law in the United States. Prior to 1891 the Federal Code provided a right to appeal a case on the basis of a disproportionately severe sentence. However, due to an oversight or inadvertence, a revision of the statute in 1891 did not mention sentences and the courts subsequently held that the power had been withdrawn by Congress.

The situation that presently prevails in the Federal courts stands in marked contrast to the practice of 17 States, many foreign nations, including England and Canada, and our military courts. Indeed, the Federal jurisdiction is a singular example of an advanced system of jurisprudence that does not allow review of sentences.

Under our existing Federal law the determination of the sentence in a criminal case is the only matter that is left to the unsupervised discretion of the district judge before whom the case is pending. As long as the sentence imposed is within the statutory limits provided by the law, the sentence is unreviewable by appeal. No matter how excessive or unjust the sentence might be, an appellate court is legally powerless to modify it in any way.

This basic shortcoming in our criminal procedure is unique to our judicial system and has allowed serious inequities and disparities in the sentences which have been imposed.

Another unfortunate aspect of the present practice is that harsh and irrational sentences have often led appeal courts to reverse convictions on technical or minor points and on strained interpretations of the law, interpretations which ill serve justice and society in future cases.

I do not suggest that this bill will solve all of the difficult problems in the determination of proper sentences. However, it will provide a significant tool for improving the sentencing process and for

correcting unjust sentences when they are imposed. It also will facilitate the development of proper sentencing practices and standards. In other words, an important gap in the present system will be closed.

Other phases of the work of trial judges are subject to appellate review and supervision. Only sentencing errors are immune to correction on appeal. The reasons for such a gap are for the most part historical. Such reasons are becoming irreconcilable with the standards of due process and are not in step with the need for a fair and just sentencing system.

This legislation will not allow one judge or a panel of judges, simply to substitute their judgment for that of the trial judge. Mere whim or fancy will be insufficient reason to modify the sentence. Only when it reasonably appears from the circumstances that a sentence was excessive will the appellate court act. Although the system will be made flexible by allowing review, it will remain the trial judge's duty to weigh the facts and appraise the defendant.

Valid reasons exist for variations in sentences for the same crime. Certainly a sentence which may be quite proper in a case involving one defendant and one set of circumstances may be grossly inadequate in dealing with the same offense committed by a different type of individual or under aggravated circumstances. But where the same crime has been committed by similar offenders under similar circumstances, the punishment should be reasonably uniform. Disparities based solely upon the personality of the judge passing sentence are unjust.

The determination of a proper sentence involves many considerations. Sentencing is not nor can it be reduced to an exact science. The exercise of sound judgment is an indispensable part of the process, but that does not justify arbitrary determinations. When judgments cannot be reconciled with reason, the appellate courts will be empowered to prevent a miscarriage of justice.

Mr. President, it is my hope that Congress will correct this injustice. Every effort has been made to produce a bill in the best form possible. Briefly, it provides as follows:

Subsection (a) provides that a defendant may apply to the court of appeals for leave to appeal a felony sentence of imprisonment or death imposed by a district court.

Subsection (b) provides that the court of appeals may in its sole discretion grant or deny an application for leave to appeal a sentence. A denial of leave to appeal is final in the matter. If leave to appeal is granted, the court may review the sentence to determine if it is excessive.

Under subsection (c) the court of appeals is authorized to take or direct any action on the sentence that it believes is required under the circumstances of the case, except to increase the sentence.

Subsection (d) provides that the appeal procedure is to be synchronized with the appeal rules generally and if an appeal is taken from an order of conviction as well, it allows the matter to be heard at the same time.

Subsection (e) provides that the defendant shall have the same access to presentence reports on appeal as he had at the district court. The sentencing judge is required to state for the record his reasons for selecting the particular sentence imposed in each felony case where a felony sentence of imprisonment or death is imposed.

Subsections (f) through (i) insure that appellate review does not complicate other phases of criminal procedure. Subsection (f) defers the time for filing an application for leave to appeal whenever a diagnostic study is ordered prior to imposing sentence. Subsection (g) makes certain that credit is given for time served during the pendency of a sentence appeal. Subsection (h) makes explicit that bail opportunities would not be enlarged by the enactment of the bill. Subsection (i) provides that the act shall apply only to sentences imposed 6 months after the effective date of the act. This latter provision avoids the argument about retroactivity and affords the courts time to prepare for the new procedures.

Mr. President, there are two scholarly writings in favor of an improved sentencing procedure which I wish to bring to the Senate's attention today. They are: "Appellate Review of Sentences: To Make the Punishment Fit the Crime," 20 Stanford Law Review 405 (1968) by Hon. Stanley A. Weigel; and "Appellate Review of Legal but Excessive Sentences: A Comparative Study," 21 Vanderbilt Law Review 411 (1968) by Prof. Gerhard O. M. Mueller and Fré La Poole. Mr. President, I ask unanimous consent that these two law review articles be printed in the RECORD at a point immediately following the printing of the bill in the RECORD.

Mr. President, I also ask unanimous consent that a brief appendix, which I have prepared listing several additional examples of cases where excessive sentences have been imposed, be printed in the RECORD immediately following the close of my remarks here on the floor.

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

(See exhibit 2.)

Mr. HRUSKA. As a member of the Judiciary Committee, I have authored and coauthored a number of proposals concerning crime and improvements in our legal system. Many of these bills, including those on wiretapping and investment of income derived from criminal activities, have been to assist the prosecution in bringing criminals to justice. At the same time, I have been concerned with the rights of the defendant. We must strive to insure that the criminal legal process is at all times fair and just.

Excessive sentences, which are inexplicable by any circumstance or logic, are an injustice to the individual and are a discredit to the entire criminal justice system. This is why the principle of appellate review is supported by the Judicial Conference of the United States, the Department of Justice and the American Bar Association, and why appellate review is the practice in many foreign nations, including England and Canada, in our Armed Forces, and in 17 of the States.

The bill is intended to correct this injustice.

Again, I express the sincere hope that the Senate and the House both will promptly consider and pass this needed legislation.

The bill (S. 1561) to amend chapter 235 of title 18, United States Code, to provide for the appellate review of sentences imposed in criminal cases arising in the district courts of the United States, introduced by Mr. HRUSKA, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD.

EXHIBIT 1

S. 1561

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 235 of title 18, United States Code, is amended by inserting immediately after section 3741 thereof the following new section:

"§ 3742. Appeal from sentence

"(a) An application for leave to appeal from the district court to the court of appeals the sentence of imprisonment or death imposed may be filed by a defendant with the clerk of the district court in any felony case in the following instances:

"(i) after a finding of guilt by a judge or jury, whether following a trial or the acceptance of a plea;

"(ii) after the revocation or modification of an order suspending the imposition or execution of a sentence or placing the defendant on probation;

"(iii) after a resentence under any other applicable provision of law.

"(b) Upon granting leave to appeal, the court of appeals may review the merits of the sentence imposed to determine whether it is excessive. This power shall be in addition to all other powers of review presently existing or hereafter conferred by law. If the application for leave to appeal is denied by the court of appeals, the decision shall be final and not subject to further judicial review.

"(c) Upon consideration of the appeal, the court of appeals may dismiss the appeal, affirm, reduce, modify, vacate, or set aside the sentence imposed, remand the cause, and direct the entry of an appropriate sentence or order or direct such further proceedings to be had as may be required under the circumstances. If the sentence imposed is not affirmed or the appeal dismissed, the court of appeals shall state the reasons for its action. The defendant's sentence shall not be increased as a result of an appeal granted under this section.

"(d) The application for leave to appeal from sentence shall be regarded as a notice of appeal for all purposes, and the procedure for taking an appeal under this section shall follow the rules of procedure for an appeal to a court of appeals. A denial of the application for leave to appeal on the ground that the sentence imposed is excessive shall not prejudice any aspect of the appeal predicated on other grounds. If the application is granted all issues on appeal shall be heard together.

"(e) When an application for leave to appeal is filed, the clerk of the district court shall certify to the court of appeals such transcripts of the proceedings, records, reports, documents, and other information relating to the offense or offenses of the defendant and to the sentence imposed upon him as the court of appeals by rule or order may require. Any report or document contained in the record on appeal shall be available to the defendant only to the extent that it was in the district court. In each felony case in which sentence of imprisonment or death is imposed the judge shall state for

the record his reasons for selecting that particular sentence.

"(f) When a judge has adopted the sentencing procedure set forth in section 4208 (b) of title 18, United States Code, an application for leave to appeal may only be filed after a judgment or order is entered by the judge following the completion of the study provided by such section.

"(g) The provisions of section 3568 of title 18, United States Code, shall be applicable to any defendant appealing under this section.

"(h) This section shall not be construed to confer or enlarge any right of a defendant to be released following his conviction pending a determination of his application for leave to appeal or pending an appeal under this section.

"(i) This section shall become effective six months after its approval and shall apply only to sentences imposed thereafter."

(b) The analysis of chapter 235 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"3742. Appeal from sentence."

The matters, presented by Mr. HRUSKA, are as follows:

EXHIBIT 2

[From the Stanford Law Review, February 1968]

APPELLATE REVISION OF SENTENCES: TO MAKE THE PUNISHMENT FIT THE CRIME

(By Stanley A. Weigel*)

Unjustifiable disparities in the sentencing of criminal offenders have become a matter of serious concern to many observers of the criminal process.[1] The key word is "unjustifiable." Reasonable disparity is necessary to achieve the purposes of sentencing, which include prevention of further criminality on the part of the offender, rehabilitation, and deterrence of the commission of similar offenses by others. Such purposes cannot be achieved without providing some range of sentencing alternatives to allow adjustment for the special facts of each crime as well as the record and character of each convicted individual.

These considerations are reflected in the broad discretion allowed the sentencing judge by statute in the federal and in many state jurisdictions. However, most of these jurisdictions, including the federal, fail to provide any effective remedy for abuse of that discretion.

The absence of such a remedy is a serious defect in the sound administration of the criminal law, even though the number of unjust or aberrant sentences may be very few. In the words of Mr. Justice Stewart, "It is an anomaly that a judicial system which has developed so scrupulous a concern for the protection of a criminal defendant throughout every other stage of the proceedings against him should have so neglected this most important dimension of fundamental justice." [2]

The seriousness of that neglect is underscored by the fact that sentencing is the only significant adjudication performed by the trial judge in the overwhelming majority of criminal cases. This is so because the overwhelming majority of criminal defendants plead guilty or nolo contendere.[3] Moreover, sentencing is generally the most difficult determination a judge must make, one made even more difficult by the increasing variety of possible dispositions and by the paucity of meaningful guidelines to assist the judge in his choice.

In light of the foregoing, it is indeed surprising that few American jurisdictions offer meaningful remedies to the victims of unjustified severity in sentencing, This absence is all the more striking in that a comparison with other nations indicates that those American jurisdictions failing to provide a remedy stand largely alone in this respect.[4]

Recognizing that inequitable and disparate sentences constitute "a major and justified complaint against the courts," [5] the President's Commission on Law Enforcement and Administration of Justice has recommended that "[p]rocedures for avoiding and correcting excessive, inadequate, or disparate sentences should be devised and instituted." [6] Progress has been made in the federal judiciary in recent years to encourage the development of rational, uniform sentencing criteria and practices. There are sentencing institutes for district judges,[7] and a number of district courts have set up a system of panels to assist the sentencing judge in his determination of the proper sentence.[8] However, there is a need to supplement these practices with procedures designed for the correction of grossly inequitable sentences.

I. DISPARITY AND INEQUITY IN FEDERAL SENTENCING

The past few years, then, have been marked by increasing concern over the breadth of the disparities in sentences meted out for the same crimes.[9] This concern is especially applicable to the federal system, in which the wide range of sentencing alternatives available to its trial courts [10] and great regional diversity tend to invite sentencing disparities.

Congress has, over the years, added significantly to the choices available to district courts in setting sentences.[11] A brief summary will be illuminating.

(1) Imprisonment for a determinate length of time. Offenders so sentenced are eligible for parole after having served one-third of the sentence.[12]

(2) Imprisonment of indeterminate length. Under this alternative the sentencing court may reduce or eliminate minimum terms for parole eligibility, leaving the release of the offender to the discretion of the board of parole.[13]

(3) Probation. Probation cannot exceed a period of 5 years but may otherwise be granted upon "such terms and conditions as the court deems best." [14]

(4) Split sentence. This procedure allows a court to split a sentence between confinement of up to 6 months in a penal or treatment institution and probation for the remainder of the sentence.[15]

(5) Youth Corrections Act. This Act [16] is applicable to offenders under the age of 22 and, at the discretion of the sentencing judge, to those between 22 and 26.[17] Offenders sentenced under the Act may be placed on probation, committed for treatment and supervision for fixed or indeterminate terms, or sentenced under any other applicable penal provision.[18]

(6) Juvenile Delinquency Act. This Act [19] applies to offenders under the age of 18.[20] Proceedings under the Act are regarded as adjudications of status rather than as criminal trials.[21] Juveniles found to be delinquent may be placed on probation for a period not exceeding their minority, or committed to special custody and treatment for a term not exceeding their minority or the maximum term for the offense committed, whichever is less.[22]

(7) Other dispositions. These include fines, suspended sentence, deportation, and disqualification. In addition, a district court may defer sentencing and commit an offender for a period of study, by the Bureau of Prisons, not to exceed 6 months.[23]

In my view, the number of incidents of unjustifiable disparities in sentencing by federal district judges is very small in relation to the large number of offenders sentenced.[24] Nevertheless, that such disparities do occur despite all efforts to eliminate them is suggested by a number of relevant facts.

There have been significant variations in the terms of imprisonment imposed by federal district court judges [25] and in the use of the various sentencing alternatives that are available. Average terms of imprisonment for all offenses vary widely from circuit to circuit [26] and from district to district within the circuits.[27] There is great deviation in the average terms for specific types of offenses.[28] Similar variations are to be found in the frequency of use of split sentences [29] and indeterminate sentences,[30] in the application of provisions of the Youth Corrections [31] and Juvenile Delinquency Acts,[32] and in the use and duration of probation.[33] To some extent these disparities may be attributable to variations in the types of offenses committed within particular districts or circuits. The Administrative Office of the United States Courts has devised weighted averages, however, which take account of such variations and which show disparities of a magnitude almost equal to those indicated by the raw data.[34]

Certainly, careful analysis of these incidents of disparity would reveal rational justifications for a great majority of the sentences imposed. It would show, for instance, that many similarities between offenders and offenses are more apparent than real, and that many sentencing deviations result from proper considerations of factors unique to individual defendants. But such analysis would certainly also expose a small but important residue of cases in which the disparities are so excessive and the facts so similar that they preclude such justifications. That such cases do exist is confirmed by the reports of federal judges who regularly point to cases from their own experience in which substantially different treatment was accorded offenders with similar records, ages, and backgrounds who had committed the same or similar offenses.[35]

The principal reason for the existence of inequities is clear. They occur because each judge, just as each person he sentences, is a unique individual. Each judge is the product of a different inheritance and life experience. It follows inexorably that there are differences among judges in senses of values, reactions, predilections, and points of view.

There are at least some judges who tend habitually to "lay it on" convicted or confessed offenders.[36] They may do so out of antiquated or misguided notions about the functions of sentencing, or as a consequence of more obscure personal factors. Whatever the reasons for their actions, the results are aberrant and unfair sentences. These few judges do not seem to respond to persuasion or reason in regard to their sentencing practices. Since most of them are excellent judges in every other respect, discipline or removal would be a remedy worse than the disease and, if applied to the federal judiciary, would unwisely undermine its independence.

There are also a few judges who apparently regard one type of offense as particularly heinous. They may, for example, impose the maximum sentence allowable in every instance of narcotics violation or bank robbery. Their appraisals of the danger or evil of these crimes may be quite right, but the automatic imposition of the maximum penalty for a particular crime contradicts the judgment of Congress in providing for a range of punshment, and contributes to irrational disparities in the system as a whole. Differences in regional attitudes toward certain crimes may similarly contribute to disruption of the uniform implementation of national penal policies.

Finally, the best of judges make mistakes. Some federal judges in metropolitan districts sentence as many as 1,000 defendants in a single year, and rare indeed is the federal judge in any district who sentences fewer than 100. In each case the judge must study carefully the presentence reports, make his personal assessment of the defendant, and

Footnotes at end of article.

appraise the sentencing alternatives available to him. Not only is this judgmental task complex, but the judge can turn to few standards to guide him. The limited statutory criteria are nebulous,[37] and because there is no relevant appellate review, no common-law standards have evolved. It is hardly surprising, therefore, that seriously inequitable disparity is occasionally to be found in the sentences imposed.

Sentencing disparities create serious problems for the federal courts and correctional institutions quite apart from the manifest unfairness of subjecting some offenders to inordinately severe penalties. The recipient of an excessive sentence will learn, through comparison of his own sentence with those of his fellow prisoners, that he has been the victim of injustice.[38] His resentment inevitably breeds unrest and disciplinary problems,[39] and, in addition, may well undermine his reformation.

Furthermore, the impossibility of direct challenge to unfair sentences results in a great volume of appeals on tenuous technical grounds [40] and a corresponding tendency on the part of the appellate courts to find merit in otherwise questionable allegations of error, or to find error prejudicial where it would normally be considered harmless.[41] Needless to say, these attempts to redress indirectly the inequity of excessive sentences make bad law.

Finally, public confidence in the judicial system must suffer when grossly unfair sentences go unredressed, in visible violation of a most basic principle of legal justice—that similarly situated individuals be treated alike. This loss of public confidence becomes particularly troublesome where members of minority groups interpret uncorrected disparities as a form of legally sanctioned discrimination.

II. PRESENT MEANS FOR ALLEVIATING SENTENCING ERRORS IN THE FEDERAL SYSTEM

The federal system does provide for some limited means of correcting inequitable sentences. While they have been used more frequently in recent years than in the past, analysis will indicate they are inadequate.

A. The present scope of appellate review

Federal defendants may, of course, obtain redress for illegal sentences,[42] such as those that exceed statutory limits for the offense charged,[43] or are ambiguous with respect to the time and manner in which the term is to be served,[44] or do not adequately specify punishment for individual counts.[45] However, where the trial judge remains within statutory bounds and observes formal and procedural requirements, review of his sentencing discretion is sharply limited.

In the 19th century the circuit courts as then constituted exercised review over the sentences imposed by federal trial courts.[46] Save for that brief historical exception, federal appellate courts have consistently refused to review the sentencing discretion of district-court judges if sentences were within the prescribed statutory limits.[47] They have occasionally suggested in dicta that they might intervene if a trial court were to exercise extreme abuse of its legal discretion,[48] but such extreme abuse has apparently never been discovered. The refusal to review district-court sentences is more commonly stated in absolute terms: "If there is one rule in the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence which is within the limits allowed by a statute." [49]

A few limited exceptions to the rule of nonreview have developed over the years. Where an offense has no statutory maximum penalty, as in the case of criminal contempt, the appellate courts will review the discretion of the sentencing court.[50] This review is justified on the grounds that "where Congress has not seen fit to impose limitations on the sentencing power . . . [a]ppellate courts have . . . a special responsibility for determining that the power is not abused, to be excised if necessary by revising themselves the sentences imposed." [51]

Additional exceptions have been recognized by the courts of appeals as a result of the decisions of the Seventh Circuit in *United States v. Wiley*.[52] In that case the trial judge refused to consider probation for Wiley, one of several codefendants, because he would not plead guilty on charges of possession of property stolen from an interstate shipment.[53] The circuit court reversed this "arbitrary" refusal to consider Wiley's application for probation, but the trial judge, on remand, considered and denied Wiley's application and reinstated his term of imprisonment. In a second appeal the Seventh Circuit again set aside the sentence and remanded, this time on the ground that the district court had arbitrarily sentenced Wiley more severely than it had his codefendants who had pleaded guilty.[54]

Although several federal courts have limited the *Wiley* doctrine to cases of disparity among codefendants based upon different pleas,[55] the language of *Wiley* supports the broader proposition that any demonstrably arbitrary disparity among codefendants may require remand for resentencing.[56] While *Wiley* has failed to provide the basis for any significant review of disparate sentences, it has obliged a number of courts to hear challenges similar to those in *Wiley* and to assess the reasons for the disparities involved in those cases.[57]

Arbitary refusal to utilize diagnostic procedures provided by statute may also constitute grounds for appellate review of sentencing.[58] Lastly, in a series of recent cases, several courts of appeals have held that increases of sentence on retrial must be acceptably justified and will be reversed if arbitrary.[59]

These exceptions to the rule of nonreview are important steps in developing means of redress for sentencing inequities in very limited areas. But even if they were firmly established in all the circuits, these exceptions would reach only a small fraction of all the disparities that demand consideration.

A few commentators and judges [60] have argued that the federal appellate courts have always had authority to review all sentences by virtue of section 2106 of the Judicial Code, which empowers them to "affirm, modify, vacate, set aside or reverse any judgment, decree, or order . . . and direct the entry of such appropriate judgment . . . as may be just under the circumstances." Others have argued that review and correction of disproportionate sentences is constitutionally required, either because excessive and irrational sentences constitute cruel and unusual punishment [61] or because unreasonable disparity in the treatment of essentially similar defendants violates the equal protection clause.[62]

Whatever the merits of such arguments, federal courts have shown little inclination to adopt them. For the present, federal appellate judges are likely to continue to express the view, perhaps with some reluctance that "[u]nless we are to over-rule sixty years of undeviating federal precedents, we must hold that an appellate court has no power to modify a sentence," [63] and that problems relating to the power of the judiciary to review sentences are "peculiarly questions of legislative policy." [64]

B. Some nonappellate remedies

1. Indeterminate Sentencing

Indeterminate sentencing might appear, at first glance, to provide a solution to the problem of disparate sentences. Because the judge simply sentences the defendant to "the term prescribed by law," [65] he is relieved of the responsibility for any disparities in the length of imprisonment. But the real effect of the indeterminate sentence is to shift the burden of social justice from the judge to a parole board or parole authority. While I have the highest respect for such bodies, I believe that for some time to come, in view of the methods of their appointment and the shortage of qualified personnel to assist them,[66] they will certainly be no more competent to determine lengths of imprisonment than is a conscientious and independent judge. Moreover, because parole authorities of necessity operate on a committee basis, have relatively little time for each prisoner, and use more or less standard classifications, they are likely to be less responsive to the special situation of a particular offender than is a single judge concerned solely with the case before him.

The day may come when the quality, qualifications, and quantity of prison personnel and of assisting psychiatrists and sociologists, and the methods of their selection and tenure, will combine to make the indeterminate sentence the best means of avoiding unjustifiable disparity in sentencing. But that day is not here nor likely soon to be. The great majority of district-court judges apparently agree, if one may judge by the reluctance of so many to impose indeterminate sentences.[67]

2. Panels of Judges for Advance Consideration of Sentences

Various district courts have experimented with "sentencing councils," in which panels of judges regularly consider dispositions proposed by the sentencing judge and offer nonmandatory recommendations for his consideration.[68] This is a step in the right direction, but, for several reasons, it is not the best solution now available.

To begin with, nearly half of the federal districts have fewer judges than are required for such a system.[69] In these districts, to convene sentencing panels would entail travel, delay, and other complications. Even in districts with enough judges, such panels would encroach upon the working time of already overburdened jurists. Furthermore, those judges most in need of such guidance would likely be those least affected by the views of their peers.

III. THE CASE FOR APPELLATE REVIEW

The reasons that have been stated for supporting appellate review in the federal system are not claimed to be novel or unique. So much has been said and written on the general subject that there are few new arguments for or against it.[70] The best that a trial judge can offer is a point of view that is part the product of personal experience and part a personal evaluation of the considerations urged both for and against appellate review.

I am convinced that sentencing, at least for the present, ought to remain a judicial function. Courts should not abdicate their powers or responsibilities in this area. At the same time, they should be armed with every means of assuring wise, reasonable, and just exercise of this heavy power to deprive individuals of property and freedom. At present, trial judges are granted very broad discretion by Congress in the sentencing of criminals. Surely that discretion over the fate of human beings should not be held sacrosanct, particularly since no such immunity attends the exercise of discretion by trial judges in civil cases.

Some contend that appellate judges are not qualified to ascertain whether a trial judge has abused his discretion in imposing sentence.[71] This argument seems to me to be invalid. For one thing, many judges of the courts of appeals serve there after long experience on the trial bench. For another, it seems to me to be plainly desirable, in case of harsh sentences, to permit review by a group of jurists detached from the pressures and immediacies of the trial courtroom. The passage of time between sentencing and review may afford a better perspective. There is nothing so esoteric about sentencing that

Footnotes at end of article.

the decision of one man should be held sacred and beyond the proper scope of appellate review.

Some have argued that the trial judge is better acquainted with the true character of the defendant because of personal contact or observation.[72] For a number of reasons, this contention cannot withstand careful scrutiny. Frequently the judge's contact with the defendant is limited to visual observation because, in many cases, defendants do not testify. But whether the observation is exclusively visual or is supplemented by an assessment of the defendant's testimony and demeanor on the witness stand, is it really a reliable basis on which to judge whether the defendant should be imprisoned for 2 years or for 20? Who, as a defendant, would want to have that vital determination turn upon one man's assessment of his personality under such unusual and difficult circumstances? My admiration for my brothers on the federal trial bench throughout the country and for their exceptional insights into human beings is second to none, but it has not convinced me that they or I possess some unique capacity to make a sentence fit the crime on the basis of personal observation of a defendant during the course of his trial.

One more consideration should be adduced against the argument that the judge's opportunity to observe the defendant is a *sine qua non* for justice in sentencing. The great majority of defendants convicted of federal crimes have pleaded guilty.[73] In these cases, the "eyeball-to-eyeball" confrontation between judge and defendant, including the colloquy involved in the defendant's right of allocution,[74] is usually a matter of 10 or 15 minutes at the most. I do not urge that this person-to-person communication is without value. It has worth to all concerned. But great as that value is, it is not a sound predicate for the notion that, lacking such confrontation, an appellate court cannot adequately review a sentence imposed by a trial judge. So far as justice in sentencing turns upon appraisal of the defendant's personal traits, I doubt that there is a worse time to make that evaluation than when that always anxious, often frightened, individual stands before the judge for sentencing.

The federal trial judges recognize this. The principal sentencing aid for nearly all is the written presentence report of trusted and independent probation officers.[75] If these reports are available to the court of appeals along with the full record of the lower court proceedings, the appellate court will have before it all the material most significant to the trial court's imposition of sentence.

I should add that the trial judge, in his consideration of the presentence report, can and often does confer informally with the probation officer who prepared it. These conferences aid the judge in a better understanding and evaluation of the presentence report. The court of appeals might not have the benefit of these informal conferences. But such a lack, even if it were substantial, would not negate the wisdom of appellate review. To have an adequate basis for wise and effective review, an appellate court need only have sufficient information to examine intelligently what the trial court did. Then, giving due weight to the advantages that the trial court had in making its original decision, the appellate court can determine whether the trial court abused its discretion. The courts of appeals can be given more than sufficient information to make such a determination in the review of sentencing.

Furthermore, it is highly unlikely that any court of appeals would regularly substitute its judgment of the proper sentence in a case for that of the federal trial judge. On the contrary, exercise of the power to change a sentence imposed by a district judge would undoubtedly be restricted to those relatively infrequent—but extremely serious—instances where the sentence imposed was clearly excessive. Such a scope of review would no more demean the power and dignity of the federal trial judge than does the similar scope of review now exercised by the courts of appeals over innumerable rulings and decisions that are generally within the discretion of the district courts.

One hears the argument made against appellate review of sentencing that to allow it would be to open the gates to a flood of frivolous appeals. The best answer to this contention is that experience does not support it. Appellate courts review trial-court sentences regularly in 15 states and occasionally in others; [76] the same practice has been a regular feature of other civil-law and common-law jurisdictions for many years.[77] There has been no such flood of appeals in these jurisdictions.[78] If it be true, as I think it is not, that a very large number of defendants are victimized by excessive sentences, then justice would call for a great number of appeals. And even if there were many frivolous appeals, I have observed no incapacity in our courts of appeals to make short shrift of them.

In fact, I think it is likely that appellate review will ultimately reduce the total number of appeals. As mentioned above,[79] many appeals on the merits are generated only because of the imposition of an unduly harsh sentence, and many appellate courts, dealing with an appeal on the merits where the sentence has been unduly severe, are prone to seize upon error in the trial as a sufficient ground for reversal and retrial. Provision for review of trial-court sentences would eliminate any need for unmerited appeals and for reversals motivated primarily by the harshness of the sentences involved.

IV. PROPOSALS FOR APPELLATE REVIEW IN THE FEDERAL SYSTEM

In recent years a number of proposals to permit review of sentences by the courts of appeals have been introduced in Congress.[80] The last of these was reported favorably by the Senate Committee on the Judiciary [81] and passed in the Senate on June 29, 1967.[82] The Advisory Committee on Sentencing and Review of the American Bar Association has also suggested statutory provisions for appellate review.[83] Each of these proposals would empower appellate courts to review sentences appealed on the ground of excessiveness. They differ, however, in the categories of sentences made reviewable, the powers of the reviewing court, and the procedures for review of sentences.

A. Sentences reviewable

The ABA advisory committee's report on appellate review of sentences recognized that although "[i]n principle, judicial review should be available for all sentences imposed in cases where provision is made for review of the conviction . . . it may be desirable, at least for an initial experimental period, to place a reasonable limit on the length and kind of sentence that should be subject to review." [84]

The first five of the recent series of bills would have permitted review of all convictions where no mandatory sentence was required by law.[85] Each of the other bills would limit review to sentences of imprisonment or death in felony cases,[86] or to sentences of imprisonment exceeding specified periods.[87]

Appellate review would probably not prove very useful in correcting excesses in short sentences. Given present workloads and appellate procedures, most defendants who have been sentenced to terms of less than 1 year will have been freed for good behavior before their appeals can be heard. Furthermore, however invalid the argument that the courts of appeals would be overwhelmed by a flood of appeals, it may be wise initially to limit review to sentences of appreciable severity, where the more critical disparities would occur.[88] Review could readily be extended to lesser periods of imprisonment, terms of probation, fines, and commitments under the Youth Corrections and Juvenile Delinquency Act [89] as the courts of appeals acquire experience in handling such cases and develop techniques for the prompt disposition of frivolous claims.[90]

B. Powers of the reviewing court

The ABA Advisory Committee on Sentencing and Review has recommended that courts reviewing sentences be empowered to remand for resentencing or to substitute any disposition of the offender originally available to the sentencing court—except that the offender's sentence could not be increased either on appeal or on remand.[91] All of the proposed bills [92] would permit reduction of sentences by the courts of appeals. Several would permit modification of sentences,[93] and of these almost all would permit increase of sentences within limits.[94] The most recent bill would authorize the reviewing court to "dismiss the appeal, affirm, reduce, modify, vacate, or set aside the sentence imposed, remand the case, and direct the entry of an appropriate sentence or order or direct such further proceedings to be had as may be required under the circumstances," but would forbid any increase in sentences.[95]

The reviewing court should be empowered to select from the full range of statutory alternatives open to the district courts, but neither the reviewing court nor the trial court on remand should be empowered to increase the original sentence. To do so would raise serious constitutional objections, particularly in view of the recent line of federal cases holding increases of sentences on retrial unconstitutional.[96] Also, because of the threat of an increase in sentences, such a procedure would deter legitimate appeals and thus make appellate review illusory for many aggrieved defendants. Finally, experience in those jurisdictions that permit review but deny power to increase sentences indicates that, contrary to the argument urged in favor of allowing longer resentences, the absence of this threat does not result in a flood of frivolous appeals.[97] The courts of appeals can readily control the volume of appeals in other, less objectionable, ways—through limitations on the category of cases subject to review and procedural techniques in the handling of appeals.

C. Review procedures

The ABA advisory committee recommended that all appeals from sentences be of right except to courts with discretion to refuse consideration of appeals from convictions.[98] A few of the bills in Congress likewise specified that all appeals from sentences would be of right.[99] However, other bills, including the latest, require defendants to seek and be granted leave to appeal by the courts of appeals.[100] Although it may be thought that aggrieved defendants should have an appeal of right against the severity of their sentences, it is undoubtedly wise as an initial step to give the courts of appeals discretionary review to allow adjustment to and control over the new caseloads that might be generated by sentence review.[101] Similarly, at first the decisions of the courts of appeals should be final,[102] at least until experience under the new procedures demonstrates that such an added caseload can be handled without further overburdening the Supreme Court and that the problem of disparity among the circuits deserves the Supreme Court's attention.[103]

The ABA advisory committee [104] and the last few bills in Congress [105] would require the sentencing judge to state reasons for the imposition of each sentence that might later be subject to review. The object of these provisions, of course, is to encourage carefully considered and reasoned sentences by the trial judge and to inform the review-

Footnotes at end of article.

ing court of the factors that led to the particular sentence imposed. However, I doubt that these objectives would be very well served by such a requirement. Most judges do state their reasons for sentences, and these statements are readily available to the courts of appeals.[106] To require a statement of reasons in every case might well focus concern on making a record rather than on matters of substance. Plausible rationalizations can often be adduced to support excessive sentences and, conversely, infelicitous reasoning can confuse and cast doubt upon reasonable sentences. I think that the possibility of review will in itself do enough to ensure more careful and complete consideration by trial judges of all relevant factors. It should be sufficient to authorize the courts of appeals to order statements by the sentencing judge where such statements are deemed particularly useful.

Finally, special provision is made in nearly all of these proposals empowering the reviewing court to order the production of all materials available to the sentencing judge.[107] This is, of course, undoubtedly desirable as a general proposition and is usually feasible. Special problems arise, however, with respect to material given in confidence to the sentencing judge by probation officers. There has been great controversy over the propriety and constitutionality of withholding such reports from defendants.[108] Nonetheless, while these reports must of course be available to the courts of appeals, they should not be disclosed to defendants without prior consultation with the probation officers who prepared them.[109] Such precaution is necessary to prevent family bitterness or even violence, which might result if a defendant learned the source of frank information given in confidence, and to avoid drying up confidential sources. I realize that, although the defendant usually knows the facts about himself and his actions that are revealed by such reports, there is some unfairness in withholding from the defendant any of the factors that may have been taken into account in sentencing. I realize, too, that "confidential" information is often not worth much and that trial judges are little influenced by it. On balance, I think it best to provide the probation officer with an opportunity to acquaint the reviewing court with the possible consequences of disclosure.

In all other respects, procedures for review of sentences should be identical to procedures for review of convictions, and all appeals on the same case should be considered together. This would eliminate the possibility of confusion and of fragmented appeals. The most recent proposals so provide.[110]

CONCLUSION

There are many good reasons for adopting a means of appellate review of federal district-court sentencing: It would right serious wrongs to individuals. It would promote public respect for and confidence in the law and the judiciary. It would ease the problems of discipline in prison and aid in the rehabilitation of those prisoners who otherwise might be permanently alienated from society by the knowledge that a cruel wrong imposed on them had not been righted. It would encourage greater rationality in sentencing practices. Overall, the institution of general appellate review would bring needed improvement in an important aspect of the administration of criminal justice. The latest bill before Congress, with the few modifications I have outlined, would appear to be a sound vehicle for achieving this much-needed reform.

FOOTNOTES

* A.B. 1926, J.D. 1928, Stanford University. Judge, United States District Court for the Northern District of California. The author wishes to acknowledge the research assistance of Michael John Matheson, editor, *Stanford Law Review*.

[1] The problem of disparity in sentencing is treated generally in JOINT COMM. ON CONTINUING LEGAL EDUCATION OF THE ALI AND THE ABA, THE PROBLEM OF SENTENCING 56–77 (1962); M. PAULSEN & S. KADISH, CRIMINAL LAW AND ITS PROCESSES 162–68 1962); *id.* at 55–56 (Supp. 1967); McGuire & Holtzoff, *The Problem of Sentence in the Criminal Law*, 20 B.U.L. REV. 423 (1940); Rubin, *Disparity and Equality of Sentences*, 40 F.R.D. 55 (1966).

[2] Shepard v. United States, 257 F.2d 293, 294 (6th Cir. 1958).

[3] During fiscal year 1964, 91.2% of all cases ending in conviction were concluded without trial. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FEDERAL OFFENDERS IN THE UNITED STATES DISTRICT COURTS 1964, at 15, table 8 (1965).

[4] *See Hearings on S. 2722 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 2d Sess. 83–102 (1966).

[5] PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 145 (1967).

[6] *Id.* at 146.

[7] The Judicial Conference of the United States is authorized under 28 U.S.C. § 334 (1964) to convene institutes and councils of federal judges to study sentencing.

[8] *See generally* Smith, *The Sentencing Council and the Problem of Disproportionate Sentences*, FED. PROBATION, June 1963, at 5; Doyle, *A Sentencing Council in Operation*, FED. PROBATION, Sept. 1961, at 27.

[9] *E.g., Hearings on S. 2722, supra* note 4, at 10–54, 69–82, 109–22; Address by Mr. Chief Justice Warren, American Law Institute Annual Meeting, May 18, 1960, *reprinted in* 25 F.R.D. 213 (1960).

[10] For an analysis of the sentencing structures of American jurisdictions see Note, *Statutory Structures for Sentencing Felons to Prison*, 60 COLUM. L. REV. 1134 (1960).

[11] Congress has authorized the following procedures: in 1925, the use of probation in lieu of imprisonment, Act of Mar. 4, 1925, ch. 521, § 1, 43 Stat. 1259, 18 U.S.C. §§ 3651–58 (1964); in 1938, special custody and treatment for juvenile offenders, Federal Juvenile Delinquency Act, ch. 486, § 4, 52 Stat. 765 (1938), 18 U.S.C. § 5034 (1964); in 1950, special custody and treatment for youth offenders under the age of 22, Federal Youth Corrections Act, ch. 1115, § 2, 64 Stat. 1087 (1950), 18 U.S.C. §§ 5006(e), 5011 (1964); in 1958, indeterminate sentencing, special commitments for study by the Bureau of Prisons, and commitments of offenders under the age of 26 as youth offenders, Act of Aug. 25, 1958, Pub. L. No. 85–752, §§ 3–4, 72 Stat. 845–46, 18 U.S.C. §§ 4208–09 (1964); and, finally, in 1966, special confinement and treatment of offenders addicted to narcotics, Act of Nov. 8, 1966, Pub. L. No. 89–793, § 201, 80 Stat. 1443, 18 U.S.C. § 4253 (Supp. II, 1965–66).

[12] 18 U.S.C. § 4202 (1964).

[13] 18 U.S.C. § 4208(a) (1964).

[14] 18 U.S.C. § 3651 (1964). The power of the court to impose conditions of probation is fairly broad. *Compare* Berra v. United States, 221 F.2d 590 (8th Cir. 1955) (employment or office holding in labor union forbidden), *and* United States v. Worcester, 190 F. Supp. 548 (D. Mass. 1961) (disclosure of evidence required), *with* Karrell v. United States, 181 F.2d 981 (9th Cir. 1950) (restitution of funds in transaction not involved in indictment improper).

[15] 18 U.S.C. § 3651 (1964).

[16] 18 U.S.C. §§ 5005–26 (1964).

[17] 18 U.S.C. §§ 4209, 5006(e) (1964).

[18] 18 U.S.C. §§ 5010, 5017 (1964).

[19] 18 U.S.C. §§ 5031–37 (1964).

[20] 18 U.S.C. § 5031 (1964).

[21] *See* United States v. Borders, 154 F. Supp. 214 (N.D. Ala. 1957), *aff'd*, 256 F.2d 458 (5th Cir. 1958).

[22] 18 U.S.C. § 5034 (1964).

[23] 18 U.S.C. § 4208(b) (1964).

[24] Others have been of the opinion that the frequency of unjustifiable disparities is relatively great. *See* authorities cited note 1 *supra; Hearings on S. 2722, supra* note 4, at 10–54, 69–82, 109–22. Mr. Chief Justice Warren, for example, expressed concern in 1960 about "the wide diversity in the use of probation and other sentencing practices in our several courts and the great disparity in the sentences pronounced by our judges." Address by Mr. Chief Justice Warren, *supra* note 9, at 215.

[25] *See* Glueck, *The Sentencing Problem*, FED. PROBATION, Dec. 1956, at 15, 17–18; Note, *Due Process and Legislative Standards in Sentencing*, 101 U. PA. L. REV. 257, 259–60 (1952); Note, *Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study*, 69 YALE L.J. 1452, 1458–59 (1960).

[26] The average sentence in each of the circuits for all persons committed to federal institutions in fiscal year 1965 varied from 28.3 months in the First Circuit to 45.1 months in the Seventh Circuit, *Hearings on S. 2722, supra* note 4, at 150–53.

[27] The range of lowest and highest districts in average sentences for all offenses within the various circuits is as follows: First Circuit, 21.9 months to 40.3 months; Second Circuit, 16.6 months to 37.2 months; Third Circuit, 18.0 months to 45.1 months; Fourth Circuit, 19.4 months to 57.0 months; Fifth Circuit, 20.9 months to 44.8 months; Sixth Circuit, 22.1 months to 49.6 months; Seventh Circuit, 27.7 months to 50.0 months; Eighth Circuit, 23.4 months to 63.5 months; Ninth Circuit, 0.5 months to 67.4 months; Tenth Circuit, 30.3 months to 44.3 months. *Id.*

[28] For example, the average sentence for narcotics violations varied from 44.4 months in the Third Circuit to 82.3 months in the Eighth Circuit and 82.8 in the Tenth Circuit; for forgery, from 15.8 months in the First Circuit to 35.9 months in the Eighth Circuit; for liquor violations, from 8.4 months in the Ninth Circuit to 22.3 months in the Third Circuit. Variations among individual districts were even more extensive. *Id.*

[29] The frequency of use of split sentences in fiscal year 1964 varied from 2.5% of all convictions in the Fifth Circuit to 7.4% in the Fourth Circuit, and more widely among districts within the circuits. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 3, at 76–77.

[30] Use of indeterminate sentences varied from 1.7% of all convictions in the First Circuit to 8.0% in the Sixth Circuit, with wider variations among the districts. *Id.*

[31] Use of the Youth Corrections Act varied from 1.7% of all convictions in the First Circuit to 7.8% in the Tenth Circuit, with wider variations among the districts. *Id.*

[32] Use of the Juvenile Delinquency Act varied from 0.3% of all convictions in the First Circuit to 8.6% in the Tenth Circuit, with wider variations among the districts. *Id.*

[33] Use of probation in fiscal year 1965 varied from 44.3% of all convictions (excluding violations of immigration laws, wagering tax laws, and federal regulatory acts) in the Sixth Circuit to 63.8% in the Third Circuit, with wider variations among the districts. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, PERSONS UNDER THE SUPERVISION OF THE FEDERAL PROBATION SYSTEM, FISCAL YEAR 1965, at 102–05 (1967). The percentage of probationers under supervision for less than 2 years varied from 69.3% in the Fourth Circuit to 83.7% in the First Circuit. *Id.* at 94–95.

[34] *See* ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 3, at 26–27, 32–33, 78–83. A total of 20 districts exceeded or fell short of the national weighted average by 20% or more in the use of probation, and 19 districts by a similar percentage in the overall severity of sentences. *Id.*

[35] As examples of possible abuses, Judge Sobeloff of the Court of Appeals for the Fourth Circuit points to the 15-year sentence imposed upon a first offender who wrote a $58 bad check to pay for rent, food, and his ailing wife's medical bills, and to the sentence of life imprisonment without parole

given a feeble-minded 20-year-old Mexican boy who sold a shot of narcotics to his 17-year-old friend. *Hearings on S. 2722, supra* note 4, at 25–26. For examples of abuses in consecutive sentencing on multiple counts see *id.* at 14; 46 IOWA L. REV. 159 (1960).

[36] *See* Glueck, *The Sentencing Problem,* FED. PROBATION, Dec. 1956, at 15, 17.

[37] The following standards are typical of the statutory criteria governing the use of the various sentencing alternatives: "when in its opinion the ends of justice and best interests of the public require . . . ." 18 U.S.C. § 4208(a) (1964) (indeterminate sentencing); "when satisfied that the ends of justice and the best interest of the public . . . will be served . . .," 18 U.S.C. § 3651 (1964) (probation); "[i]f the court is of the opinion that the youth offender does not need commitment . . . ," 18 U.S.C. § 5010(a) (1964) (probation for youth offenders).

[38] *See* Ashe, *A Warden's Views on Inequality in Sentences,* FED. PROBATION, Jan.-Mar. 1941, at 26–27.

[39] *See Hearings on S. 2722, supra* note 4, at 166–67. *But see* Ashe, *supra* note 38, at 27.

[40] *Hearings on S. 2722, supra* note 4, at 11, 35.

[41] *See, e.g.,* United States v. Hoffman, 137 F.2d 416, 422 (2d Cir. 1943).

[42] 28 U.S.C. § 2255 (1964) states: "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

Furthermore, under FED. R. CRIM. P. 35, a court "may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner" within 120 days of the imposition of sentence, dismissal of appeal, or denial of review by the Supreme Court.

[43] *See, e.g.,* Herndon v. United States, 207 F.2d 412 (4th Cir. 1953); United States v. Baldwin, 128 F. Supp. 739 (S.D. Ohio 1953).

[44] *See* Scarponi v. United States, 313 F.2d 950 (10th Cir. 1963) (dictum).

[45] *See* Benson v. United States, 332 F.2d 288 (5th Cir. 1964).

[46] Act of Mar. 3, 1879, ch. 176, § 1, 20 Stat. 354, which remained in effect until the appellate jurisdiction of the circuit courts was transferred to the circuit courts of appeals in 1891, was interpreted as empowering the circuit courts to modify excessive sentences on appeal. *See* Bates v. United Stats, 10 F. 92 (C.C.N.D. Ill. 1881). *See generally* Hall, *Reduction of Criminal Sentences on Appeal,* 37 COLUM. L. REV. 521 (1937).

[47] *See, e.g.,* Gore v. United States, 357 U.S. 386, 393 (1958); United States v. Baysden, 326 F.2d 629 (4th Cir. 1964); Boerngen v. United States, 326 F.2d 326 (5th Cir. 1964); Martin v. United States, 317 F.2d 753 (9th Cir. 1963). For an exhaustive compilation of cases denying review in each of the circuits see 10 DEPAUL L. REV. 104, 105 n.8 (1960).

[48] *See* United States v. Hetherington, 279 F.2d 792, 796 (7th Cir. 1960) ("manifest abuse"); Livers v. United States, 185 F.2d 807, 809 (6th Cir. 1950) ("gross abuse"); Tincher v. United States, 11 F.2d 18, 21 (4th Cir.), *cert. denied,* 271 U.S. 664 (1926) ("gross or palpable abuse").

[49] Guerera v. United States, 40 F.2d 338, 340–41 (8th Cir. 1930).

[50] *See* Yates v. United States, 356 U.S. 363 (1958); Green v. United States, 356 U.S. 165 (1958) (dictum); *cf.* United States v. United Mine Workers, 330 U.S. 258 (1947).

[51] Green v. United States, 356 U.S. 165, 188 (1958).

[52] 267 F.2d 453 (7th Cir. 1959); 278 F.2d 500 (7th Cir. 1960) (second appeal).

[53] The trial judge stated flatly: "Had there been a plea of guilty in this case probably probation might have been *considered* under certain terms, but you are all well aware of the standing policy here that once a defendant stands trial that element of grace is removed from the consideration of the Court in the imposition of sentence." United States v. Wiley, 184 F. Supp. 679, 681 (N.D. Ill. 1960) (emphasis in original).

[54] Wiley, a minor participant in the crime, received a sentence of 3 years, while the ringleader and three other minor participants received terms of from 1 to 2 years. Wiley's criminal record was less serious than those of some of his codefendants. *See* United States v. Wiley, 278 F.2d 500 (7th Cir. 1960).

[55] *See* United States v. Martell, 335 F.2d 764, 766 (4th Cir. 1964); Ellis v. United States, 321 F.2d 931, 933 (9th Cir. 1963); *In re* Cohen's Petition, 217 F. Supp. 240, 244 (E.D.N.Y. 1963).

[56] The Court of Appeals for the Seventh Circuit stated that "where the facts appearing in the record point convincingly to the conclusion that the district court has, without any justification, arbitrarily singled out a minor defendant for the imposition of a more severe sentence than that imposed upon the co-defendants, this court will not hesitate to correct the disparity," United States v. Wiley, 278 F.2d 500, 503 (7th Cir. 1960). However, "the presumption is that the court acted reasonably," and an appellant "must make allegations at least indicating some unreasonable basis for the disparity of sentences." Simpson v. United States, 342 F.2d 643, 645 (7th Cir. 1965).

[57] *See, e.g.,* United States v. West Coast News Co. 357 F.2d 855 (6th Cir. 1966); United States v. Gargano, 338 F.2d 893, 897 (6th Cir. 1964); United States v. Vita, 209 F. Supp. 172, 173 (E.D.N.Y. 1962).

[58] *See, e.g.,* Leach v. United States, 334 F. 2d 945 (D.C. Cir. 1964) (refusal to order mental examination of prisoner under previous psychiatric care); Peters v. United States, 307 F. 2d 193 (D.C. Cir. 1962) (unreasonable refusal to order presentence investigation).

[59] Patton v. North Carolina, 381 F. 2d 636 (4th Cir. 1967); Marano v. United States, 374 F. 2d 583 (1st Cir. 1967); Short v. United States, 344 F. 2d 550 (D.C. Cir. 1965).

[60] *See, e.g.,* Smith v. United States, 273 F. 2d 462, 468 (10th Cir. 1959) (Murrah, C. J. dissenting).

[61] *Cf.* Rudolph v. Alabama, 375 U.S. 889 (1963) (Goldberg, Douglas, Brennan, JJ., dissenting from the denial of certiorari), which suggests that the imposition of a sentence of death upon a convicted rapist might constitute cruel and unusual punishment.

[62] *See* Rubin, *supra* note I, at 62–69.

[63] United States v. Rosenberg, 195 F. 2d 583, 604 (2d Cir. 1952).

[64] Gore v. United States, 357 U.S. 386, 393 (1958).

[65] *E.g.,* CAL PENAL CODE § 1213.5(b)(3) (West 1956).

[66] For a discussion of the problems of the lack of adequate resources and qualified personnel available to parole authorities see D. DRESSLER, PRACTICE AND THEORY OF PROBATION AND PAROLE 231–34 (1959).

[67] About 6% of the federal offenders sentenced in fiscal year 1965 received indeterminate sentences. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 3, at 18.

[68] *See* authorities cited note 8 *supra.*

[69] *See Hearings on S. 2722, supra* note 4, at 13.

[70] *See, e.g., Hearings on S. 2722, supra* note 4, at 2–3, 7–8, 34–38, 61–66, 111–12; ABA, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES 21–31 (1967); Sobeloff, *A Recommendation for Appellate Review of Criminal Sentences,* 21 BROOKLYN L. REV. 2 (1954). For a complete bibliography see *Hearings on S. 2722, supra* note 4, at 146–49.

[71] *See Hearings on S. 2722, supra* note 4, at 127.

[72] *Id.*

[73] *See* note 3 *supra.*

[74] FED. R. CRIM. P. 32(a)(1) provides: "Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment."

[75] FED. R. CRIM. P. 32(c) requires a presentence investigation and report "unless the court otherwise directs." The report must contain "any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court."

[76] ABA, *supra* note 70, at 13. A more complete survey of the law in the various states may be found in Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences,* 15 VAND. L. REV. 671, 688–97 (1962).

[77] *Hearings on S. 2722, supra* note 4, at 83–100.

[78] Studies of several such jurisdictions have been made, and in no case was there found to be an excessively troublesome problem of administering numerous frivolous appeals. In Britain, only 8% of convicted prisoners appeal their sentences. *Id.* at 29. In Massachusetts, procedures for sentence review have apparently even reduced the number of appeals taken with regard to the merits of criminal cases. *Id.* at 163. *See also* Note, *Appellate Review of Primary Sentencing Decisions: A Connecticut Case Study,* 69 YALE L.J. 1453, 1464 (1960).

[79] *See* notes 40–41 *supra* and accompanying text.

[80] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[81] S. REP. No. 372, 90th Cong., 1st Sess. (1967).

[82] CONGRESSIONAL RECORD, vol. 113, pt. 14, pp. 17986–17988.

[83] *See* ABA, *supra* note 70.

[84] *Id.* at 13. States permitting review of sentences generally limit the scope of review according to the length or type of sentence, the type of proceeding for determining guilt or sentence, or the general authority of the reviewing court. *Id.* at 15–16.

[85] S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[86] S. 1540, 90th Cong., 1st Sess. § 3742(a) (1967).

[87] S. 2722, 89th Cong., 1st Sess (1965) (aggregate of more than 1 year); S. 823, 88th Cong., 1st Sess. (1963) (5 years or more); S. 2879, 87th Cong., 2d Sess. (1962) (5 years or more).

[88] About ¾ of all possibly appealable sentences of imprisonment exceed 1 year; about ¼ exceed 5 years. *Hearings on S. 2722, supra* note 4, at 39. It has been estimated that a 1-year limit would reduce the average volume of sentence appeals to 88 annually for each circuit, and that a 5-year limit would further reduce it to about 32 per circuit. *Id.* at 29.

[89] *See* text accompanying notes 16–22 *supra.*

[90] The courts of appeals should, of course, have authority to review sentences imposed after revocation of orders suspending sentence or granting probation, and after periods

of confinement for study. The latest congressional bill specifically provides for such review. *See* S. 1540, 90th Cong., 1st Sess. §§ 3742 (a), (f) (1967).

[91] ABA, *supra* note 70, at 53–55.

[92] *See* authorities cited note 80 *supra*.

[93] S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[94] S. 2722, 89th Cong., 1st Sess. (1965); H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[95] S. 1540, 90th Cong., 1st Sess. § 3742(c) (1967).

[96] *See* Patton v. North Carolina, 381 F. 2d 636 (4th Cir. 1967); *cf.* Marano v. United States, 374 F. 2d 583 (1st Cir. 1967); United States v. Russell, 260 F. Supp. 265 (M.D. Pa. 1966). *See also* 80 HARV. L. REV. 891 (1967).

[97] All but three of the states that provide for review permit no increase of sentences by the reviewing court. *Hearings on S. 2722, supra* note 4, at 38. The Uniform Code of Military Justice provides for mandatory review of the sentences of courts-martial without possibility of increase, 10 U.S.C. § 871 (1964), and this system appears to have functioned without difficulty. *See Hearings on S. 2722, supra* note 4, at 140. European jurisdictions rarely permit increases in appeals by defendants, and then only with careful safeguards such as a requirement of unanimity on the part of the reviewing court. *Id.* at 85. After 60 years of experience with a system of sentence review permitting increases, the British Parliament withdrew from its appellate courts the power to increase sentences imposed at trial. Criminal Appeal Act 1966, § 4(2), c. 31.

[98] ABA, *supra* note 70, at 36.

[99] H.R. 270, 85th Cong., 1st Sess. (1957); S. 1480, 84th Cong., 1st Sess. (1955); H.R. 4932, 84th Cong., 1st Sess. (1955).

[100] S. 1540, 90th Cong., 1st Sess. (1967); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960).

[101] At the very least, the courts of appeals should not be required to grant a full hearing on all such appeals. *See* S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[102] The latest bill in Congress provides specifically that the court of appeals' denial of appeal is final. S. 1540, 90th Cong., 1st Sess. § 3742(b) (1967).

[103] *See* notes 26–28 *supra*.

[104] ABA, *supra* note 70, at 42.

[105] S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[106] At present, the court reporter is required to transcribe and certify all "proceedings in connection with the imposition of sentence in criminal cases. . . ." 28 U.S.C. § 753(b) (Supp. II, 1965–66). This transcript would be available to the courts of appeals through FED. R. CRIM. P. 39(b), and also through provisions, in most of the bills, authorizing the courts of appeals to order the production of all trial documents. *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960).

[107] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965); S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962); S. 1692, 87th Cong., 1st Sess. (1961); S. 3914, 86th Cong., 2d Sess. (1960); ABA, *supra* note 70, at 42.

[108] *Compare* Smith v. United States, 223 F.2d 750, 754 (5th Cir. 1955), *and Hearings on S. 2722, supra* note 4, at 117–18, *with* United States v. Durham, 181 F. Supp. 503 (D.D.C. 1960), *and* Barnett & Gronewold, *Confidentiality of the Presentence Report*, FED. PROBATION, Mar. 1962, at 26.

[109] Two of the bills in Congress specifically require the courts of appeals to "take such appropriate measures as may be necessary to safeguard the secrecy of any such presentence reports and other evaluations." S. 823, 88th Cong., 1st Sess. (1963); S. 2879, 87th Cong., 2d Sess. (1962).

[110] *See* S. 1540, 90th Cong., 1st Sess. (1967); S. 2722, 89th Cong., 1st Sess. (1965).

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APPELLATE REVIEW OF LEGAL BUT EXCESSIVE SENTENCES: A COMPARATIVE STUDY

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(The American criminal statutes do not generally establish criteria to be followed by the trial judges in sentencing; therefore, the right of judicial review of sentences as a matter of law is largely unavailable due to the almost total exercise of judicial discretion in the sentencing process. The authors will examine and evaluate the continental system in which the criminal codes generally provide sentencing guidelines, thus enabling sentence review to be obtained as a matter of law.)

I. EMERGENCE OF SENTENCE REVIEW

Classical penology was conceived in France in the eighteenth century,[1] and then eclipsed all over the world in the nineteenth, when Lombroso conjured up the picture of the born criminal. It was finally laid to rest in the United States in the twentieth century. Its basic tenet had been simple enough: the legislature in its infinite wisdom would seek and find the appropriate punishment for every crime. This can be accomplished if a crime is defined narrowly enough, perhaps by the creation of subcategories of that crime, so as to encompass all potential perpetrators who will each incur the same amount of criminal guilt. All perpetrators in the same subcategory are then entitled to the exact same amount of punishment in expiation of their criminal guilt. This system, so it was thought, ideally adjusts the punishment to achieve a balance between the crime and its harm and the criminal and his guilt, without going into undue subtleties of minute variations in the guilt of perpetrators in the same subcategory. Consequently the codes of the eighteenth and nineteenth centuries could satisfy themselves with defining and categorizing crimes in terms of the harm created and the specific means are in question.

The punishments in such a scheme of things, being almost entirely designed to serve the goals of retribution and deterrence of all nondescript members of a class, could be almost entirely stereotyped. A system which does not admit of variation among members of its various categories of perpetrators needs little variability of its punishments. Therefore, whether in an American state or European nation in the nineteenth century, nearly all first degree murderers were rewarded with death, and nearly all thieves received a stereotyped penitentiary sentence. To the extent that the need for variability was recognized, such variability—like its historical ancestor, the benefit of clergy—was regarded primarily as a matter of mercy to be dispensed by the sovereign. However, in nearly all countries the legislative scheme of crimes and punishments did permit a minimum of variation, usually in terms of alternate punishments, or sometimes regarding the quantum of punishment. "The duration and quantity [of fine and imprisonment] must, says Blackstone, frequently vary from the aggravations, or otherwise of the offence, the quality and condition of the parties, and from innumerable other circumstances . . ."[2]

In a system of relatively stereotyped punishments for static guilt and harm, practically no question of reviewability of sentence can arise as long as each sentence is within the narrow legislative frame. However, such an arrangement could not survive a recognition that the infinite variety of subjective and objective factors, which exist in the personality of every offender, and in the harm and guilt, must be reflected in the criminal sanction. Likewise, the criminal sanction must be adjusted to serve the needs of a variety of aims of penal policy. While the new variants in the personality of the perpetrator and in the aims of penal policy were first scientifically recognized and stated in Europe, especially by the Italian positivists, it was in this country that the first significant breaks with the established stereotyped and static penal scheme occurred. Among the devices of the new penology we find the following: (1) the mini-max statute, which allows the court to choose an appropriate sentence within a framework of a minimum and maximum sentence provided by the legislature; (2) the alternate sentence, providing for either one form of punishment or another, or both; (3) additional sentences, *e.g.*, forfeiture of office, added to imprisonment; (4) the open-ended sentence, which allows the court to individually fix either the minimum or the maximum and to make the other limit to the sentence depend on subsequent factors; (5) good conduct and good time provisions, resulting in deductions from initial punishment; (6) parole rights and duties; (7) probation; and (8) an infinite variety of commitments to special institutions.

With such a potpourri of penal dispositions available, the modern judge needs a degree of guidance unimagined in the nineteenth century. Now, a significant choice has to be made in every case, a choice which was generally not possible a few decades ago. Therefore, it seems that a legal machinery is needed to guard against the wrong choice. How does the law usually protect the defendant against a wrong choice on the part of a judge? It grants appellate review. But our system has not yet adapted itself to the novelty. Appellate review is largely unavailable to question the exercise of sentencing discretion. While a system without appellate review of criminal sentences was workable and lawful in the nineteenth century, it can be neither proper nor lawful at the present time. It can be attributable only to chance or ignorance that the American system, which permits no review of judicial choice in sentencing, has not been declared unconstitutional.

Elsewhere we have demonstrated that a movement is underfoot to provide American convicts with a machinery for the review of criminal sentences alleged to be excessive, though lawful. From the modest beginning of a single American jurisdiction which granted such review in 1858, we now have reached the point at which such remedies are available in fifteen jurisdictions, albeit on a very limited scale.[3] It does not take much courage to predict that in the foreseeable future, all American jurisdictions will adopt sentence review procedures.

II. THE LACKING CRITERIA OF SENTENCE REVIEW AT HOME

While the need for reviewing the exercise of judicial choice in sentencing may be quite apparent, what makes one pause is the lack of criteria by which we can measure the propriety of a given choice. It must be noted that we are here interested primarily in the judicial choice. There is also a legislative choice, which is subject to review. Thus, the constitutionality of a statute permitting any prison sentence from one day to life and/or a fine of any magnitude for the crime of shoplifting may well be subject to some doubt. Indeed, the supreme courts of the nineteenth century at first were considerably hesitant to uphold as constitutional, against charges of uncertainty and vagueness, statutes allowing penological variety which

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Footnotes at end of article.

seemed to permit the exercise of judicial choice, unguided by fixed legislative criteria. For all practical purposes, the legislatures have not provided the judiciary with criteria to guide them in exercising sentencing discretion. If there are no criteria to begin with, how can it be charged that the wrong criteria have been used? Our system has muddled along with vague expressions like "the sound exercise of judicial discretion," "recognition of the crime and the criminal," "the gravity of the deed," "the guilt of the perpetrator," and "the protection of society." None of these slogans is law. Appellate review, however, has been customarily available for judicial violations of law—not slogans, and it is arguable that slogans are not entitled to appellate review.

Elsewhere we have endeavored to state the real criteria which have prompted courts to play with the legislative choices in sentencing and which we found to be conditioned by the infinite variety of life, manifested in the perpetrator and his crime, but always limited by the scope of the penal purposes. This limitation, designed to protect society from initial or repeated harm through crime, extends to vindication of the law, retribution for the wrong committed, penitence of the perpetrator, neutralization of the still dangerous actor, deterrence of potential wrongdoers, and above all, resocialization of the offender.[4] While these observations may properly describe reality, they are not positive law. There is a need for appellate review of criminal sentences. But upon what criteria should such review proceed and to what end?

To solve these perplexing problems we have turned to the experiences of other members of the family of civilized nations. While their experiences are not likely to be dispositive of our problems, they are likely to be helpful, for all nations are endeavoring only to find the most appropriate method of insuring the establishment and continuance of the most effective sentencing policies. Although these problems appear predominantly theoretical at first glance, they have the potential of becoming explosively practical in the not-too-distant future. The Supreme Court of the United States recently held unconstitutional for vagueness a statute which permitted the jury to impose costs upon an acquitted criminal defendant, *without guidance as to when costs were or were not to be imposed.*[5] By dictum the majority added that the distribution of varying punishments based solely upon the reprehensibility of a convicted offender would certainly violate the due process clause. Mr. Justice Stewart, concurring, contended that much of the reasoning in the opinion cast grave constitutional doubt upon the settled practice of many states to allow the jury in its unguided discretion to determine the nature and degree of punishment to be imposed.[6] Also, consideration must be given to the problem of the judge's use of his unguided discretion in the sentencing process. It appears that in the near future sentencing criteria and the aims of penal policy may become matters of positive law and, therefore, subject to appellate review as questions of law. By looking at the advanced continental experience, we may be able to delineate the course that we should follow.

III. GENERAL SCHEME IN CIVIL LAW COUNTRIES

As in our system, continental code provisions contain sentencing alternatives and sentence ranges. Many foreign codes set some guidelines for the exercise of sentencing discretions, both in the penal provisions and in special sentencing sections of the more general parts of the codes. These sentencing frames and criteria have become matters of positive law, and, like all other matters of law, are subject to appellate review. However, there are many code and statutory provisions which contain no criteria for guiding sentencing choice; frequently these are found in cases where a crime category (*e.g.*, homicide) has been subdivided into minute subcategories which are descriptive of different offender types. Thus, the old, but still subsisting German Penal Code provides in section 211 that "murder shall be punished by confinement in a penitentiary for life." This stereotype sentence for all murderers is understandable only if it is considered that this provision also describes a murderer in terms of specific personality characteristics and that the murder provision is followed by eight subsequent provisions on homicide which are descriptive of other stereotypes, including: manslaughter (section 212); manslaughter under extenuating circumstances (section 213); mercy killing (section 216); infanticide (section 217); genocide (section 220a); negligent homicide (section 222); and assault and battery with fatal consequences (section 226). Each of these variations from the basic form of criminal homicide carries its own penal sanction which differs from that of the basic form. Some of these penal sanctions also allow a certain amount of variation (*e.g.*, for "mitigating circumstances," as in section 216.2, or for "serious cases," as in section 212.2).[7]

By far the most frequent sentencing variables which the continental codes place at the disposition of judges are in terms of minimum-maximum sentences and alternative sentences. For example, under the Italian Penal Code the punishment for mercy killing is "confinement in a penitentiary from six to fifteen years." [8] As regards imprisonment, the legislature has sometimes set only maximum [9] or only minimum terms [10] for each offense. Under statutes with open-ended provisions, the judge has to find the limit for the open-end in the penal provisions of the General Part of his code. For example, the Dutch Code provides: "Temporary imprisonment may be imposed for a term of at least one day and not exceeding fifteen years . . . ." [11] Under some codes the minimum and maximum standards may be extended in case of mitigating or aggravating circumstances, which may be of either a general or a more limited nature.[12] Some codes/statutes set further standards for judges by establishing what might be termed "judicial arithmetics." [13] For example the Spanish Penal Code presents a veritable "price list" of criminal wrongs by giving consideration to a multitude of aggravating and mitigating circumstances, which is, in effect, a catalogue of human emotions (*see* Appendix A.).

We do not regard it as possible or desirable to emulate the Spanish example. Apart from the hopelessness of any effort to achieve completeness in the list of factors to be considered in sentencing, the attribution of weight measures to these human emotions amounts to an objectification of applied psychology, which is totally at odds with an individualized system of criminal justice, administered by relatively sophisticated judges and correctional officers, rather than automatons.

IV. GUIDELINES FOR AND EVIDENCE OF JUDICIAL DISCRETION

Within the legal framework described and with variations to be noted, sentencing in civil law countries has remained a matter of some judicial discretion. The legislature, however, may provide guidelines. Many criminal codes (*e.g.*, the Brazilian, Bulgarian, Danish, Greek, Swedish, Swiss and Yugoslav Codes and the German Draft Penal Code) tell the judge what factors should be taken into account when imposing sentence. Different legislatures have shown a fair amount of agreement on this subject. Factors frequently mentioned are: the dangerousness of the offense and its harmful consequences; the motives of the offender; the intensity of his criminal intent or criminal negligence; his previous criminal record; his personal and economic conditions; and his behavior during and after the act (*see* Appendix B).

From the nature of the different factors to be taken into account in sentencing, it is apparent that punishment is not meant to serve one goal exclusively. Rather, multiple goals—such as retribution, deterrence (both general and specific prevention), and rehabilitation—seem to have their place. Some legislatures seem to express a preference for one of these goals, while others allow the judge to determine which goal should be primarily considered in a specific case. The latter is the position of those codes which contain specific provisions on the goals of punishment (e.g., the Soviet Union and Czechoslovak Codes) (*see* Appendix C). These lists of goals are not dissimilar to those compiled by American criminologists and are comparable to the American Model Penal Code provisions in point.[14] All such lists are subject to the criticism that they remain codified social science and philosophy and are scarcely subject to empirical validation as to their effectiveness. Nevertheless, the codification of correctional policy may be a necessary first step toward effective judicial administration of the ultimate preventive goal of all penal law.[15]

All correctional policy exhortations in penal codes are bound to remain ineffectual until there is evidence of the extent to which such exhortations have influenced judicial choice in sentencing. Consequently, in most European countries trial judges are obligated to write detailed opinions justifying their sentences in terms of the codified correctional policy.[16] A judge who fails to give evidence that he abided by the codified standards is likely to have his sentences set aside on motion of either party.[17] The Italian Supreme Court has ruled expressly that it will not accept standardized or cliché formulas adhering only formally to the codified standard.[18]

V. APPELLATE REVIEW OF SENTENCES

Most continental countries do no distinguish between appellate review of convictions and sentences. They do, however, distinguish between appellate review on matters of fact and law and on matters of law only. The former is primarily meant to serve the purpose of correction of errors of the trial court; while the latter primarily assures the uniform interpretation of the law. Generally, appeal solely on matters of law is available only if all other appellate rights have been exhausted. An appeal concerning matters of fact and law may result in a review of the sentence. This is due to the fact that European codes, unlike American statutes, prescribe sentencing rules which must be respected by the trial judge. Also, in some countries, the appellate courts interpret "law" broadly and, consequently, have an extensive power of review.

In some countries, the system of appeal differs from that just described. Norwegian law provides that a so-called "appeal proper" may be directed against a sentence for the reason, among others, that the punishment is not appropriate because it is too severe or too lenient.[19] This indicates that such appeals may be brought by either prosecution or defense; [20] however, it is not likely that a defendant will appeal a sentence he considers too lenient. The prosecutor, who is legally obligated to see that the law is properly applied, may appeal a sentence which is too severe, as well as one he considers too lenient. So as not to discourage sentence appeal by convicts, many codes provide that "the judgment may not be amended to the prejudice of the defendant, insofar as kind and amount of punishment are concerned, if the appeal was initiated by the defendant alone." [21] This doctrine, which is referred to as the prohibition of *reformatio in pejus*, has no applicability when the sentence is appealed by the prosecution for being too lenient. In that case, the appellate tribunal could

Footnotes at end of article.

either increase or decrease the punishment. This is also true where both defendant and prosecutor have appealed the sentence, as long as the sentence increase is not the result of the defendant's appeal. In the Netherlands the punishment may be increased even if only the defendant has appealed, provided that all judges of the appellate court concur.[22] Finally there is some doubt in Europe, as there is in this country,[23] as to what in fact constitutes an increase of punishment (*i.e.*, an amendment of the sentence prejudicial to the defendant). Thus, while both the German and Dutch courts hold a longer suspended sentence to be heavier than a shorter nonsuspended sentence,[24] it can be doubted that the defendants agree.

VI. PERMISSIBILITY AND SCOPE OF APPEAL ON FACT AND LAW

Most European nations permit, as of right, an appeal on fact and law. In France and the Netherlands, an appeal lies from practically all criminal judgments, except those involving very small penalties.[25] However, in France no such appeal is possible from the judgment of a jury court,[26] since there, as formerly in England,[27] the judgment of the jury is regarded as unimpeachable. Also, in France no fact-and-law appeal is possible from the judgments of a number of special courts.[28] In the Netherlands and some other countries, a defendant may not appeal a judgment of acquittal rendered "for lack of evidence," despite the fact that such a judgment leaves him under a shadow of suspicion, which he may wish to have removed by the more favorable judgment of acquittal because of "innocence." [29] In Germany, the only difference between the two types of acquittal lies in the availability of compensation for detention suffered pending trial for those acquitted because of "innocence." [30] The German Code of Criminal Procedure, which is generally regarded as providing the most limited appeal on fact and law (*Berufung*), only allows such appeal against judgments of some of the least significant criminal courts. This results in allowing a defendant tried in a minor court for a minor offense to have a fact-and-law appeal and a pure-law appeal; while a defendant tried in a major court for a major offense is limited to an appeal of law only.[31] This is regarded as one of the most serious shortcomings of the German Code of Criminal Procedure.[32]

Where partial appeals (*i.e.*, those restricted to a single issue) are permissible, the judgment unlike that of the general appeal, is subject to review only insofar as it has been attacked.[33] Ordinarily it is not advisable for a defendant to lodge a partial appeal, since this may be held to bar the appellate court from amending the judgment in the defendant's favor with respect to matters not called to its attention. Thus, the German Supreme Court has held that where a convict appeals solely on the ground that his sentence is excessive, the court has no jurisdiction to reverse and enter a judgment of acquittal for lack of criminal responsibility.[34] Where the defendant chooses to appeal the sentence only, it has been held that an appeal may not be limited to the type of punishment, and therefore, type and duration of punishment are also regarded as being reviewable.[35] Thus, when not limited by a partial application, the reviewing court will proceed to a re-examination of the entire case. It may receive new evidence,[36] or it may use only the evidence before the trial court which has become a matter of record.[37] If the court considers the appeal well-founded, it will either render a new judgment or remand the case for a new trial. Rarely will it remand the case to the trial court whose judgment was attacked.[38] The German courts have held themselves competent to review such questions as whether a commitment to an institution for cure and care was justified [39] and whether the lower court had been right in cancelling the defendant's driver's license or in imposing other supplementary penalties.[40]

VII. PERMISSIBILITY AND SCOPE OF APPEAL ON LAW ONLY

In practially all continental countries final criminal judgments are subject to appeal on matters of law. However, there are a few exceptions, such as acquittals rendered by French jury courts [41] and judgments rendered which acquit for lack of evidence or are appealable by another remedy of which the defendant has not availed himself.[42] If the appellate court finds that the law appeal is well-founded, it may reverse the judgment attacked, or it may decide the matter itself, if it can do so without a further inquiry into the facts.[43] Generally, however, it will remand the matter to a trial court other than the one which rendered the judgment attacked.[44] In Germany and the Netherlands, the court to which the case is remanded is bound to respect the higher court's decision.[45] In an appeal solely on law, the scope of inquiry is much narrower than in an appeal on fact and law.[46] The court is bound to the facts as stated in the judgment below and the review is limited to points listed in the petition for review.[47] As stated previously, appeal on law only includes sentences which under American law would not be reviewable.

In Switzerland and Austria the appellate courts hold themselves incompetent to review the determination of punishment, as long as the judge has exercised his discretion within the legal framework, but in case of clear arbitrariness, a sentence might be reversed.[48] Thus, these two alpine countries follow the same procedure as the Supreme Court of Pennsylvania.[49] According to German theory, the discretion of the trial judge is not subject to review in an appeal on matters of law.[50] But a judgment and sentence are subject to such a review if the standards of law have not been properly applied by the judge. The following are examples of successful reviews of legally "improper" sentences which nevertheless had been within the statutory framework: the trial judge had only taken into account deterrence without considering the retributive guilt of the offender; [51] the punishment imposed though within the legal framework was not proportionate to the guilt of the offender and, in that sense was excessive; [52] the trial court had not considered all aspects of the offense and the offender by taking into account all essential goals of punishment; [53] and the maximum penalty had been imposed, although it was "obvious" that the punishment should have been closer to the minimum.[54]

In Norway, the Supreme Court has full authority to reverse sentences when the punishment is too lenient or too severe, that is, excessive in either direction. Nevertheless, the Norwegian judge is given a wide discretion in sentencing.[55] Extracts from the Norwegian Supreme Court decisions show that the Court does not limit itself to reviewing sentences which are truly outrageous, but in fact does sometimes substitute its own discretion for that of the trial judge (*see* Appendix D). The Supreme Court considers the particulars of each offender and offense and decides what should be the principal objective of punishment in that particular case. If there is a reasonable possibility of rehabilitation, the Court tends to let this consideration prevail over reasons of general prevention. The Norwegian judges, as those of all other nations which have not catalogued the objectives of punishment, are ultimately driven to finding the right criteria in their own internalized notions of the proper objectives of criminal justice.

VIII. CONCLUSIONS

This study of continental schemes of appellate review of legal but excessive sentences has the reassuring effect of informing us that we do not stand alone with our problems. The benefit of comparative study extends beyond theoretical reassurance; it reveals that continental law, more readily than ours, regards a proper criminal sentence within the legislative framework to be a matter of law, and therefore reviewable. The difference between review of an ordinary error of law and an error in legal sentence is one of standards for determining the error. While our legislatures have rarely seen fit to provide the judiciary with legal criteria for the imposition of legally proper sentences, many European legislatures have provided their judges with such criteria. These criteria are of two kinds: (1) the recognized aims of penal-correctional policy; and (2) the proper criteria by which the perpetrator and his deed should be evaluated.

We are not convinced that any foreign code has provided a truly acceptable list of penal-correctional aims. Nevertheless, even a hodgepodge of stated aims, as that contained in the Model Penal Code of the American Law Institute, can usefully serve as a convenient guide, the total disregard of which would be considered illegal. In any event, in accordance with continental experience, a statement of penal-correctional aims appear to us to be a necessary step toward developing a sound sentencing and sentence review system. We are totally unimpressed by the efforts of some nations in cataloguing the enormous range of human emotions and character. This approach, designed to provide a legal (and thus reviewable) framework in which the trial court may evaluate the crime and the perpetrator in imposing sentence, views man, including both the judge and the judged, as a mechanical monster.

If the European experience teaches us anything, it is that an imaginative, free-thinking judge, properly guided by the codified basic penal-correctional objectives, must be trusted to find the right sentence. Since the sentence is then a matter of law, it is subject to review and revision by an appellate court which has its own criteria and approach for interpreting the legal goals of punishment and correction. These appellate court interpretations make precedent and build tradition. Several European judges have assured us in personal conversation that no one factor is as strong a sentence review criterion as the custom of the court.

Criteria and custom have been developed through appellate decisions in several European countries (Norway and Germany have been cited as leading examples). While we have cited Norway as a leading example of an enlightened practice, Norway also acquaints us with an all-to-liberal law of sentence review. We wonder whether an appellate court's view of a sentence is truly more expert than that of a trial judge. It strikes us that the proper limitation for sentence review may have been stated by the English Court of Criminal Appeal:

"In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial judge has seen the prisoner and heard his history and any witness to character he may have chosen to call. It is only when a sentence appears to err in principle that the Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene." [56]

It is doubtful whether the appellate court should be empowered to increase the sentence. In Europe, an increased sentence usually prevails only on an appeal by the prosecutor, a procedure which is not available in the United States. In England, the Court of Criminal Appeal has such power, but it has recently been proposed that this power, which was rarely used, be abolished. In 1963, out of 1976 applications for leave to appeal

Footnotes at end of article.

received by the English Court, the sentence was reduced in one hundred forty-five, quashed in thirteen and increased in only six cases. In England, as elsewhere, it is felt that an increase in sentence on appeal is basically unfair. Nor is there any evidence that the existence of the power to increase a sentence on appeal serves as a substantial barrier to frivolous appeals.[57] If, per chance, there are policy reasons—which we cannot detect—favoring the existence of the power to increase sentences on appeal, we would urge that the Dutch practice, requiring unanimity of all judges of the appellate court, be followed.

FOOTNOTES

*Professor of Law, Director, Comparative Criminal Law Project, New York University School of Law. Ploen College, Germany, 1947; Keil University Faculty of Law, 1949; J. D. University of Chicago Law School, 1953; L.L.M. Columbia University, 1955. This article is based upon a study made by the authors as advisors to the Senate Committee on the Judiciary and is a follow-up of Professor Mueller's American study. *See* Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences*, 15 VAND. L. REV. 671 (1962).

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[1] *See* Canals, *Classicism, Positivism and Social Defense*, 50 J. CRIM. L.C. & P.S. 541 (1960).

[2] Frese v. State, 23 Fla. 267, 270, 2 So. 1, 2 (1887), upholding fine provision without maximum as constitutional.

[3] Mueller, *Penology on Appeal: Appellate Review of Legal but Excessive Sentences*, 15 VAND. L. REV. 671 (1962).

[4] Mueller, *Punishment, Corrections and the Law*, 45 NEB. L. REV. 58–98 (1966).

[5] Giaccio v. Pennsylvania, 382 U.S. 399 (1966).

[6] *Id.* at 405.

[7] All citations of the German Penal Code are to G. MUELLER & BUERGENTHAL (transl.), THE GERMAN PENAL CODE (Vol. 4, American Series of Foreign Penal Codes, 1961).

[8] ITALIAN CRIMINAL CODE (hereinafter IT. C. PEN.) art. 579 (1930).

[9] *E.g.*, in the Netherlands.

[10] *E.g.*, IT. C. PEN. art. 575.

[11] DUTCH PENAL CODE art. 10 (1881).

[12] *Compare, e.g.*, DUTCH PENAL CODE art. 44 *with* art. 288; *see also* note 8 *supra* and accompanying text.

[13] See SCHMIDT, DIE STRAFZUMESSUNG IN RECHTSVERGLEICHENDER DARSTELLUNG 124 (1961).

[14] MODEL PENAL CODE § 1.02 (Official Draft 1966).

[15] *See* Mueller, *Punishment, Corrections and the Law, supra* note 4, at 86.

[16] *See, e.g.*, DUTCH CODE OF CRIMINAL PROCEDURE (hereinafter WvSv) art. 359; FRENCH CODE OF CRIMINAL PROCEDURE (hereinafter FR. C. PRO. PEN.) arts. 485, 543; GERMAN CODE OF CRIMINAL PROCEDURE (hereinafter StGB) art. 267.

[17] *See, e.g.*, WvSv art. 359; ITALIAN CODE OF CRIMINAL PROCEDURE (hereinafter It. D. C. PRO. PEN.) art. 574.

[18] Court of Cassation, Jan. 30, 1935 (La giustizia penale 1935, 310).

[19] NORWEGIAN MINISTRY OF JUSTICE, ADMINISTRATION OF JUSTICE IN NORWAY 80 (1957).

[20] *Compare* FR. C. PRO. PEN. art. 497, *with* WvSv art. 404, *and* StGB ¶ 296.

[21] StGB ¶ 331; StGB art. 358; FR. C. PRO. PEN. art. 515; WvSv art. 424.

[22] WvSv art. 424.

[23] See State v. Fisher, 126 W. Va. 117, 27 S.E. 2d 581 (1943).

[24] Oberlandesgericht (hereinafter OLG) Oldenburg (Monatschrift für Deutsches Recht 55, 436); Hoge Raad (hereinafter H.R.) December 18, 1933 (Nederlandse Jurisprudentie 1934, 298).

[25] FR. C. PRO. PEN. art. 546; DUTCH LAW ON COURT ORGANIZATION (hereinafter WET R. O.) 44.

[26] FR. C. PRO. PEN. art. 370. But cases brought before the Jury Court have been evaluated in the pre-trial stage by two judicial authorities, the investigating magistrate and the Chamber of Indictments.

[27] In England, before the introduction of the Criminal Appeal Act in 1907, there was no appeal as of right from the verdict of a jury in a criminal trial. Only in very few cases did the trial judge decide to reserve a point of law for consideration by the Court for Crown Cases Reserved which could quash the conviction. Under the 1907 Act (§ 3), a person convicted on indictment may appeal against conviction as of right if a question of law, alone is involved. If his appeal is based on a question of fact or mixed law and fact, he may appeal only after having obtained the leave of the Court of Appeal or of the judge who tried the case. Appeal against sentences is permissible only on leave of the Court of Appeal. Compare: INTERDEPARTMENTAL COMM. ON THE COURT OF CRIM. APP., REPORT, CMD., No. 2755, at 3, 6 (1965).

[28] Court of State Security, Military Courts, etc. *See* STÉFANI-LEVASSEUR, PRFCÉDURE PÉNALE 18 (1964).

[29] WvSv art. 404; StGB § 267.*V* distinguishes between the two kinds of acquittals, but the distinction has no bearing on the permissibility of appeal. (*See* StGB § 313).

[30] *See* German Law Concerning Compensation for Innocently Suffered Preliminary Detention of July 4, 1904.

[31] StGB ¶ 312–13.

[32] *See* HIRSCHBERG, DAS AMERIKANISCHE UND DEUTSCHE STRAFVERFAHREN 33 (1963).

[33] FR. C. PRO. PEN. art. 509; StGB ¶ 327.

[34] Reichsgericht (hereinafter RG) (Deutsche Rechtszeitung 22 (1930).

[35] RG (Juristische Rundschau 1927 nr. 667).

[36] FR. C. PRO. PEN. art. 513; WvSv art. 414; StGB ¶ 323.

[37] FR. C. PRO. PEN. art. 513; WvSv art. 422; StGB ¶ 325.

[38] FR. C. PRO. PEN. art. 514–20; WvSv art. 423; StGB ¶ 328.

[39] Compare ¶ 42b GERMAN PENAL CODE.

[40] Court Freiburg (Deutsche Rechtszeitung 140 (1941)).

[41] FR. C. PRO PEN. art. 572.

[42] WET R.O. 96; WvSv art. 430. The rule is otherwise in Germany, where a defendant may waive his initial right to appeal on fact-and-law and proceed immediately to his appeal on law only (so-called "leap revision"). *See* StGB § 335.

[43] StGB ¶ 353–54; FR. C. PRO. PEN. art. 617; WvSv art. 441. Compare MINKENHOF, NEDERLANDSE STRAFVORDERING 296 (1948).

[44] FR. C. PRO. PEN. art. 609 et seq.; WvSv art. 441; StGB ¶ 354.

[45] In France this is not the case. If, however, after reversal of a first decree or final judgment, the second decree or second final judgment, rendered in the same case between the same parties, is attacked on the same grounds as the first, it will be decided by the united divisions of the Supreme Court. If a reversal results, the court to which the matter is remanded is bound to respect the decision of the united divisions, unless the decree rendered by these is different from that passed by the Criminal Division in the first place. FR. C. PRO. PEN. art. 619.

[46] FR. C. PRO. PEN. art. 567; WET R.O. 99; StGB ¶ 337.

[47] StGB ¶ 353.

[48] Compare SCHMIDT *supra* note 13 at 29 & 43 (1961).

[49] Commonwealth v. Green, 396 Pa. 137, 151 A. 2d 241 (1959).

[50] KERN STRAFVERFAHRENSRECHT 208 (1959).

[51] RG 76, 325; OLG Freiburg (Höchstrichterliche Entscheidungen in Strafsachen 2, 112).

[52] OHGst 1, 174. Compare State v. O'Dell, 240 Iowa 1157, 39 N.W.2d 100 (1949). But within this range of factors the trial judge's discretion is decisive. *See* OHGst 2, 145. Compare State v. Sullivan, 241 Wis. 276, 5 N.W.2d 798 (1942).

[53] OGHst 2, 94.

[54] Bundesgerichtshof 2 StR 45, 50. Compare DALCKE, STRAFRECHT UND STRAFVERFAHREN 1365 (1955); LÖWE-ROSENBERG, STRAFPROZESSORDNUNG 1301 et seq. (1962).

[55] Compare NORWEGIAN PENAL CODE 52–65.

[56] Regina v. Ball, 35 Crim. App. 164, as quoted by INTERDEPARTMENTAL COMMITTEE ON THE COURT OF CRIMINAL APPEAL, REPORT, CMD. No. 2755, at 43 (1965).

[57] *Id.* at 42–47.

APPENDIX A

PROVISIONS ON SENTENCING TAKEN FROM THE SPANISH PENAL CODE

(1870, modified in 1944)

CHAPTER III: MITIGATING CIRCUMSTANCES

Article 9

The following are mitigating circumstances:

1. All those mentioned in the preceding chapter, when the requirements needed for complete exemption from liability in each situation did not concur.

2. Intoxication which is neither habitual nor self-induced for purposes of committing an offense.

3. Minority below the age of eighteen years.

4. The fact that the criminal harm caused is more severe than the perpetrator intended.

5. Sufficient antecedent provocation or threats on the part of the victim.

6. When the act was committed in proximate vindication of a grievous offense against the actor, his spouse, his ascendants or descendants, his legitimate, natural or adoptive brothers, or his relatives by affinity in the same degrees.

7. The fact that the deed was motivated by moral, altruistic or patriotic reasons of considerable importance.

8. The fact that the deed was committed under such powerful excitement as to cause rage or loss of self-control.

9. The fact that the perpetrator, prior to having knowledge of the institution of judicial proceedings against him, and moved by his own voluntary repentance, proceeded to make amends in whole or in part for the harm caused, to offer satisfaction to the victim, or to confess his infraction to the authorities.

10. And lastly, any other circumstance of like significance to the above.

CHAPTER IV: AGGRAVATING CIRCUMSTANCES

Article 10

The following are aggravating circumstances. The fact that:

1. The act was committed with perfidy. Perfidy is present whenever the perpetrator commits an offense against persons through such means, forms or kinds of execution which directly and particularly insure the success of the criminal act without those risks to his own person which would result from the defensive action the victim might otherwise take;

2. The offense is committed for a price, reward or promise;

3. The offense is committed by means of flood, fire, poison, explosion, destruction of an aircraft, grounding of a ship or other willful damage, derailment of locomotives, or by any other highly destructive means;

4. The offense is committed by means of printed matter, radio broadcasting or other means facilitating publicity;

5. The ordinary harm of the offense is willfully aggravated by causing additional harm unnecessary for the commission of the offense;

6. The act is perpetrated with known premeditation;

7. Trickery, fraud, or disguise are employed;

8. Advantage is taken of superior strength or through the use of means which weaken the victim's defense;

9. The victim's confidence is misused;

10. The perpetrator makes use of his official position;

11. The crime is committed during a fire, shipwreck or other calamity or misfortune;

12. The offense is committed with the aid of armed companions or persons who provide or secure impunity;

13. The act is committed at night, in secluded locations, or by a gang; a gang is present whenever three or more armed persons jointly engage in the commission of an offense;

14. The perpetrator is a general recidivist. A general recidivist is one, who at the time of the commission of the deed, has previously been sentenced for another offense which carries an equal or greater punishment, or for two or more offenses which carry a lighter punishment.

15. The perpetrator is a specific recidivist. A specific recidivist is one who, at the time of the commission of the deed, has already been (executorily) sentenced for one or more offenses within the same Title of this Code.

16. The deed was committed against public authority or with disrespect toward the dignity, age or sex of the victim, or in the victim's home, provided the victim did not provoke the act.

17. The deed was committed in a sacred place.

CHAPTER V: CIRCUMSTANCES WHICH MAY EITHER MITIGATE OR AGGRAVATE CRIMINAL LIABILITY, DEPENDING ON THE FACTS

Article 11

The fact that the victim is the perpetrator's spouse, ascendant, descendant, legitimate, natural or adoptive brother, or a relative by affinity within the same degress of relationship, may attenuate or aggravate his criminal liability depending on the nature, motives or effects of the offense.

Article 61 *

Whenever the punishment prescribed by law is composed of three degrees, the Courts shall impose it according to the following rules depending upon the concurrence of aggravating or mitigating circumstances:

1. If only one mitigating circumstance is present in the deed, the punishment prescribed by law shall be applied in its minimum degree.

2. If one aggravating circumstance is present, the punishment shall be applied in its maximum degree.

However, in cases where the maximum degree is the death sentence, and only one aggravating circumstance is present, the Courts, after considering the nature and circumstances of the felony and of the perpetrator, may refrain from imposing the death sentence.

A death sentence shall never be imposed due to the aggravation of a punishment prescribed for a felony unless prescribed in this Code for such felony.

3. When both aggravating and mitigating circumstances concur, the punishment shall be determined after reasonably weighing them in view of their relative importance.

4. In the absence of either aggravating or mitigating circumstances, the Courts shall apply the punishment prescribed by law in the degree they consider adequate, in view of the harm caused by the deed and the personality of the offender.

5. When two or more, or when one highly mitigating circumstance alone, concur in the absence of aggravating ones, the Courts may impose a punishment one or two grades lower than the one prescribed by law, in whatever degree they consider reasonable in view of the number and importance of such mitigating circumstances.

6. Regardless of the number and importance of aggravating circumstances, Courts shall not impose a punishment higher than the one prescribed by law in its maximum degree, unless the aggravating circumstance described in number 15, Article 10 is present, in which case a punishment one or two grades higher shall be imposed, starting with the second conviction for the same offense, to the extent they consider reasonable.

7. Within the limits of each degree, the Courts in determining punishment shall consider the number and importance of aggravating or mitigating circumstances and the greater or less harm produced by the offense.

Article 62

If the punishment prescribed by law does not consist of three degrees, the Courts shall apply the rules set forth in the preceding article, and shall divide the term of each punishment in three equal parts, each constituting a degree.

Article 63

Courts may impose fines as widely as allowed by law, determining the amount not only on the basis of the mitigating or aggravating circumstances present in the deed, but especially on the basis of the financial status or capabilities of the perpetrator.

Footnotes at end of article.

APPENDIX B

EXAMPLES OF GENERAL GUIDELINES FOR SENTENCING

1. Provisions which express a preference for several theories of punishment: Section 81, DANISH CRIMINAL CODE: [1]

"In determining the penalty, account shall be taken, not only of the gravity and dangerousness of the offense, but also of the previous record of the offender, of his age and of his general conduct before and after the deed, of the persistence of his criminal tendencies and of the motives underlying the act."

Article 79, GREEK PENAL CODE: [2]

"JUDICIAL CALCULATION OF THE PUNISHMENT

"1. In the calculation of the punishment within the defined limits of the statute, the court shall consider on the one hand, the quality of the act committed, and, on the other hand, the personality of the offender.

"2. In order to determine the gravity of the offense the court shall consider: (a) the damage resulting from the offense, or the threatened danger; (b) the nature, the kind and the purpose of the offense, as well as all factors accompanying its preparation or commission, circumstances of time, place, means and manner; (c) the intensity of the intention, or the grade of the negligence of the perpetrator.

"3. In the evaluation of the personality of the offender the court weighs particularly the degree of the criminal propensity of the perpetrator, as evidenced by the act, and for a more precise determination thereof: (a) the reasons which prompted him to commit the offense, the origin and the purpose which he sought; (b) his character, and the grade of his development; (c) the individual and social circumstances and his prior life; (d) his conduct during and after the act; especially his remorse and his willingness to compensate for the harm he has inflicted.

"4. The judgment shall state the reasons explaining the decision of the court for the imposition of the sentence."

Articles 132, 133 ITALIAN PENAL CODES [3]

"DISCRETIONARY POWERS OF THE JUDGE IN IMPOSING THE PUNISHMENT: LIMITS

"Within the limits established by law, the judge shall apply the punishment in his discretion; he must state the grounds which justify the use of such discretionary power.

"In increasing or reducing the punishment, the limits established for each kind of punishment may not be exceeded, except in the cases expressly established by the law."

"GRAVITY OF THE CRIME: VALUATION FOR THE PURPOSES OF PUNISHMENT

"In the exercise of the discretionary powers specified in the preceding Article, the judge must take into account the gravity of the crime as inferred from:

"(1) The nature, character, means, object, time, place and any other circumstances of the act.

"(2) The gravity of the harm or the danger caused to the person injured by the crime.

"(3) The intensity of criminal intent or the degree of culpable negligence.

"The judge must also take into account the perpetrator's propensity for delinquency, as inferred from:

"(1) The motives to commit delinquency and the character of the offender.

"(2) The criminal and judicial precedents and, in general, the conduct and life of the offender prior to the crime.

"(3) The conduct contemporary with or subsequent to the crime.

"(4) The individual, domestic and social conditions of life of the offender."

Article 54, POLISH PENAL CODE: [4]

"The court shall impose penalty according to its discretion having regard primarily for the motives and the manner of acting of the offender, and his relation to the person injured, to the degree of mental development and the character of the offender, to his past life, and to his behavior after committing the offense."

Article 37, USSR CRIMINAL CODE: [5]

"GENERAL PRINCIPLES FOR ASSIGNMENT OF PUNISHMENT

"The court shall assign punishment within the limits established by the articles of the Special Part of the present Code which provide for responsibility for a committed crime, in strict accordance with the provisions of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics and of the General Part of the present Code. At the time of assigning punishment the court, guided by socialist legal consciousness, shall take into consideration the character and degree of social danger of the committed crime, the personality of the guilty person, and circumstances of the case which mitigate or aggravate responsibility."

Article 38, YUGOSLAV CRIMINAL CODE: [6]

"For a particular criminal offence the Court shall fix the degree of punishment within the limits provided by law for that offence, with due consideration for all the circumstances influencing the punishment to be severer or milder (aggravating and extenuating circumstances), and especially, the degree of criminal liability, the motives from which the offence was committed, the intensity of the danger or wrong to the protected object, the circumstances under which the offence was committed, the earlier life, the personal circumstances and the behaviour of the offender after the commission of the criminal offence."

2. Provision which consider *retribution* as the primary goal of punishment: Section 60, GERMAN DRAFT PENAL CODE: [7]

"(1) The basis for fixing a punishment shall be the guilt of the perpetrator.

"(2) In fixing a punishment the court shall weigh against each other such circumstances, other than definitional elements, as speak for and against the perpetrator.

"Especially there shall be considered:

"The motives and aims of the perpetrator,

"The state of mind which the act bespeaks and the exercise of volition involved,

"The extent of breach of duty,

"The manner of perpetration and the wrongful effects of the act,

"The prior life of the perpetrator, his personal and economic circumstances, as well

as his conduct after the act, especially his endeavor to make restitution."

Article 63, Swiss Criminal Code: [8]

"Sec. 1. General Rules. ART. 63. The court shall mete out penalties in accordance with the guilt of the offender, considering the motives, previous conduct and the personal situation of the convicted person."

3. Provisions which consider *correction* (*rehabilitation*) as the primary goal of punishment:

Section 7, Swedish Penal Code: [9]

"In the choice of sanctions, the court, with an eye to what is required to maintain general law obedience, shall keep particularly in mind that the sanction shall serve to foster the sentenced offender's adaptation to society."

FOOTNOTES

*The provision refers to the complicated schemes and charts ruling the grades and degrees of punishment which are contained in art. 68–79 of the Penal Code.

[1] Giersing (transl.), The Danish Criminal Code 49 (1958).

[2] Lolis (transl.), The Greek Penal Code (mimeo. ed. 1962).

[3] Translated by the Comparative Criminal Law Project, per J. M. Canals.

[4] Lemkin & McDermott (transl.), The Polish Penal Code of 1932 (1939).

[5] Berman & Spindler (transl.), Soviet Criminal Law & Procedure (1966).

[6] 10 The New Yugoslav Law (3–4) 17 (1959).

[7] Ross (transl.), The German Draft Penal Code (1965).

[8] Friedlander & Goldberg (transl.), The Swiss Federal Criminal Code, in supplement to, 30, J. Crim. L.C. & P.S. (1969).

[9] Sellin (transl.), The Penal Code of Sweden (1965).

APPENDIX C

EXAMPLES OF PROVISIONS SOLELY STATING THE VARIOUS GOALS OF PUNISHMENT

Section 17. Czechoslovakian Criminal Code: [10]

"1. The goal of punishment is:

"(a) to make the enemy of the working people harmless;

"(b) to prevent the offender from committing other offenses and to educate him towards respecting the rules of socialist society;

"(c) to contribute to the education of other members of society.

"2. The execution of the punishment shall not lower human dignity."

Article 20, USSR Criminal Code: [11]

"Purposes of punishment. Punishment not only constitutes a chastisement for a committed crime, but also has the purpose of correcting and re-educating convicted persons in the spirit of an honorable attitude toward labor, of strict compliance with the laws, and of respect toward socialist communal life; it also has the purpose of preventing the commission of new crimes both by convicted persons and others.

Punishment does not have the purpose of causing physical suffering or the lowering of human dignity."

FOOTNOTES

[10] Translated from Schmidt, *supra* note 13, at 216.

[11] Berman & Spindler, *supra* note 5A, at 151.

APPENDIX D

EXTRACTS FROM DECISIONS OF THE SUPREME COURT OF NORWAY CONCERNING SENTENCE REVIEW

(The decisions were kindly made available to the authors by Prof. Johs. Andenaes, a former Justice of the Supreme Court of Norway, and a member of the International Advisory Board of the Comparative Criminal Law Project of New York University.)

December 18, 1951 (Norsk Retstidende 1166 et seq.)

The defendant had been convicted of attempted homicide and sentenced to a term of imprisonment of one year and six months, less 154 days already spent in custody, as well as deprivation of the right to hold office. He appealed on the ground that the sentence was too severe.

From the opinion of the leading judge:

"I believe the appeal should be granted.

"The crime considered here is a very serious one, but in view of the fact that the Jury found that the act was committed under especially mitigating circumstances and during a strong reduction of the level of consciousness, c.f., the Penal Code, Section 56, No. 1b, I consider a punishment of 1 year's imprisonment suitable. I also attach importance to the fact that Johansen immediately after the act repented it, helped his victim to bed, "stanched" the bleeding, lay down beside her and was lying crying when people arrived. He attempted afterwards to commit suicide. The Court has been informed that after hospitalization for about 14 days, the woman he stabbed was discharged with a clean bill of health and has suffered no permanent injury. She has not put in any request for prosecution.

"The expert witnesses have found Johansen to be a person with inadequately developed mental faculties, but the Jury has given a negative answer to the question whether there is any danger that he may again commit an act as specified in Section 39 point 2 of the Penal Code. The Court has been informed that after being released from custody he has again moved into the said woman's home and that it is his and the woman's intention to marry as soon as the latter has obtained her divorce.

"Under these circumstances and in view of the fact that Johansen is an able workman, who works for the said woman and her children, whose home he has taken part in rebuilding, I find compelling reasons for not sentencing him to serve a long term of imprisonment. I find special grounds in the case for presuming that the execution of the sentence is not necessary in order to keep Johansen from committing new offenses . . ."

Execution of the sentence was suspended.

September 8, 1959 (Norsk Retstidende 799 et seq.)

The defendant has been convicted of attempted rape and had been sentenced to a term of imprisonment of 3 years subject to deduction of one day for custody sustained. He had appealed from the judgment on the ground that the sentence should have been suspended.

From the opinion of the leading majority judge:

"I have found the case extremely doubtful, but have come to the conclusion that it is justifiable to apply a suspended sentence . . . Among the special reasons to which I attach importance, I mention that Appellant, who is married and has two children under age, has according to our information lived a normal married life, that he has no previous convictions whatsoever, and that in general nothing discreditable is known about him. These circumstances support the assumption, which also seems to be upheld by the medical certificate produced in the Court: that the offense was committed on the spur of the moment, that it was an act of emotional excitement caused by excessive alcohol consumption and committed during a consequent reduction of his powers of judgment and ability to reason."

The execution of the sentence was suspended for a trial period of 2 years.

From the dissenting opinion:

"In my opinion, considerations of general deterrence must weigh heavily in determining the punishment for a crime of this nature. In addition, it is only permissible, in this case where the Code's minimum penalty is imprisonment for 3 years, to hand down a suspended sentence when special reasons so indicate, cf. the Penal Code Section 52, No. 2, second paragraph. Although Appellant has no previous convictions, I cannot find any such special reasons in the present case. Appellant is a married man of mature age. As pointed out by the Court of Appeal, he showed considerable brutality during the attempt at rape, and he did not abandon his attempt until his victim obtained assistance. True, the execution of the sentence will have very serious consequences for his family—wife and 2 boys, but I cannot find that these detrimental effects are greater than must normally be expected from the serving of a prison sentence of such long duration. Nor do I find it decisive that the punishment imposed is far higher than that which I would have voted for under the general principles governing the determination of sentences, if I had not been bound by the minimum penalty provided by the Code. In my opinion, this should not lead to the conclusion that the entire sentence be suspended.

"From the conference I know that a majority of the Court are for allowing the appeal, whereby the sentence will be suspended. If the appeal had been dismissed, I would have recommended—as is the case quoted in Rt. 1959, pp. 43 et seq.—that the punishment imposed be considerably reduced or in part suspended, by reprieve."

March 2, 1963 (Norsk Retstidende 231 et seq.)

Defendants had been convicted of bank robbery and sentenced to a term of imprisonment of one year and three months, subject to deduction of 71 days of sustained custody for each of them, as well as to pay compensation to the victim.

On the appeal of the Public Prosecutor, the sentence was converted to imprisonment for two years and three months less 155 days of sustained custody.

From the majority opinion:

"I come to the conclusion that the appeal ought to be allowed. It is true that the prisoners are very young. However, this is a case of a carefully premeditated crime, which has been planned and discussed by the prisoners for some time, and had been carried out cynically and in cold blood according to the plan. The amount robbed was considerable, as the offenders assumed it would be. The planning and execution of the offence were particularly likely to attract attention notably among adventurous young people; for that reason as well as the crime must be regarded as particularly dangerous to the community. In these circumstances considerations of general deterrence weigh heavily. The prisoners, both of whose intellectual qualifications and social environment should have given them every reason to behave properly, have flagrantly failed to live up to expectations."

April 6, 1963 (Norsk Retstidende 365 et seq.)

Defendant had been convicted of driving when under influence of alcohol and sentenced to imprisonment for 21 days to be suspended subject to a trial period of two years without probation, as well as a fine of Kr. 300.—or, if the fine was not paid, to imprisonment for nine days. The local Chief of Police appealed against the sentence on the ground that it should not have been suspended. The appeal was dismissed.

From the majority opinion:

"Further, I attach importance to A's young age—as mentioned in the statement of appeal he was 19 years and 4 months old at the time when the driving took place—although this age is not so low that this fact alone would have been sufficient to justify a suspension of the sentence. I also attach importance to the fact that A is at present doing his military service which he commenced on January 10, 1963. If the prison sentence is made non-suspended the effect will be either that he must leave his military services in order to serve his sentence—with the result that his

military service would be extended accordingly—or that he would have to serve his sentence after the military service has been completed in July, 1964."

May 15, 1957 (Norsk Retstidende 541 et seq.)

Defendant had been convicted of grand larcenies and sentenced to a term of imprisonment of 120 days, subject to deduction of 31 days for sustained custody. Defendant appealed, on the ground that the sentence should have been suspended. The Supreme Court decided to suspend the remaining punishment with a probation period of two years.

From the majority opinion:

"In considering the appeal, I have felt serious doubts, especially in view of the fact that Appellant has on several previous occasions been guilty of similar offences, that he has a previous conviction for robbery (Penal Code Section 267) and that the conditions are now satisfied for applying a heavier punishment for repeated crimes pursuant to the Penal Code Section 263, first paragraph. Nonetheless, I have come to the conclusion that in view of the special circumstances in the case, it is justifiable to let the execution of the prison sentence be suspended in accordance with the Penal Code Sections 52 et seq. I have attached importance to the fact that the thefts concerned very modest values, that most of the stolen objects have been returned to their owner and that the offences are partly of a casual nature. Appellant's previous convictions are not to my mind of decisive importance in view of the comparatively long period of time—almost 6 years—that has passed since his last offence. Appellant has been unemployed for some time when the offences were committed; he has not obtained more permanent employment and one may suppose that the execution of the sentence, by depriving him of his employment, would have a particularly serious effect on himself, his wife and unsupported children. According to the information in the case, there is reason to believe that Appellant has received a strong warning and that he will now make a serious effort to mend his ways and not again come into conflict with the criminal law. I find it reasonable that, under these circumstances, he be given a last chance and I add that the Mayor of his home town has recommended this in a letter to the Supreme Court dated March 12, 1957."

APPENDIX

In one of our district courts a sentence of 52 years without parole was imposed on a first offender for the sale and possession of narcotics. There was no indication that this was an aggravated case and, when appealed, the Court of Appeals for the 10th Circuit agreed that the sentence was excessive but held that it was powerless to reduce the sentence imposed.

In another case, a 25 year sentence was imposed on an individual for the theft from the mail, forgery and cashing of a Treasury check in the sum of 380.51. The defendant's only prior convictions had occurred 20 and 7 years respectively prior to the theft of the check. On appeal, the Court of Appeals for the 5th Circuit also held that it had no power to reduce a legally permissible sentence; however, it reversed the conviction for legal error.

A 12 year term of imprisonment was imposed on a bank clerk for embezzlement of approximately $70,000, much of which he used for the benefit of harrassed debtors of the bank. This defendant was not motivated by personal gain in most of the embezzlement, instead he manipulated the books of the bank to cover up the accounts of delinquent depositors. The judge was on assignment from another district and imposed the sentence without securing even a presentence report by the probation officer.

In 1961, two bank embezzlers were committed to the same Federal institution from the same district within the same week. Yet, sentenced by different judges, one received a term of six months, to be followed by eighteen months probation, and the other received a term of 15 years.

The above are not isolated examples. In the fiscal year ended June 30, 1969, the average sentence for transportation etc. of stolen motor vehicles varied from 13.5 months in the District of Massachusetts to 48 months in the Southern District of Iowa and 50.5 months in the District of Minnesota. Terms for forgery ranged from an average of 12 months in the Southern District of Georgia to 70.3 months in the District of Kansas. In fact, the overall average of time imposed varied from 24.2 months in the Middle District of North Carolina and 23.1 months in the Western District of Wisconsin to 74.7 months in the District of Maryland and 75.3 months in the Northern District of Oklahoma.

SENATE JOINT RESOLUTION 78—INTRODUCTION OF A JOINT RESOLUTION TO DESIGNATE 1969 AS DIAMOND JUBILEE YEAR OF THE AMERICAN MOTION PICTURE

Mr. MURPHY. Mr. President, today I, on behalf of myself and Senators CRANSTON, DIRKSEN, GOODELL, and JAVITS introduce a joint resolution which would designate 1969 as the "Diamond Jubilee Year of the American Motion Picture."

The motion picture is the only indigenous American art form, born 75 years ago. Since then, it has transformed the popular arts, communications, entertainment, dramatic and literary expression and education not only in the United States but throughout the world.

The birthplace of motion pictures was at 1155 Broadway in New York City. There, on April 14, 1894, 10 kinetoscopes, invented by Thomas Edison, were set up to exhibit ten 13-second films. They immediately captured the public's imagination.

Mr. President, I would like to highlight a few of the motion-picture industry's growth statistics since its fragile birth 75 years ago:

Today, box office income of 13,700 U.S. theaters exceeds $1 billion a year.

The annual payroll of the industry's 190,000 employees is about $1 billion.

The capital investment in its studios and theaters is $3 billion.

More than 80,000 students are enrolled in 3,000 graduate and undergraduate film courses in 200 American institutions of higher learning.

Mr. President, having been a member of the motion-picture industry for so many years, I have long known of its many contributions not only to our Nation but to the entire world.

Consider that on an average day, 10.5 million people in foreign countries see an American film. There are 3.7 billion admissions to foreign theaters to see such films each year. These motion pictures clearly rise above barriers of language and nationality in showing America to the world, and they occupy more than half the screen time in foreign theaters.

No other American medium or industry reaches so many persons abroad.

Also, U.S. film companies contribute a substantial dollar surplus to our balance of payments at a time of pressing needs to the Nation's fiscal and economic well-being.

It is, therefore, my sincere hope that the Congress of the United States will designate 1969 as the "Diamond Jubilee Year of the American Motion Picture."

Mr. President, the motion picture is the greatest form of mass entertainment in the world. If properly used and utilized to its potential, there would be no greater force for good on earth. This should be the goal of motion pictures as they move toward their centennial year.

Since April 14 will be the 75th birthday of the motion picture, I would hope that the Congress might act expeditiously so that we could have the measure enacted prior to this important date.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 78) to designate 1969 as "Diamond Jubilee Year of the American Motion Picture," introduced by Mr. MURPHY (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary.

SENATE JOINT RESOLUTION 79—INTRODUCTION OF A JOINT RESOLUTION RELATING TO CONSTRUCTION AND OPERATION OF A RAIL TRANSPORTATION SYSTEM IN THE NORTHEAST CORRIDOR

Mr. PELL. Mr. President, in each of the last four Congresses, I have introduced legislation permitting the eight States of the Northeast Corridor, plus the District of Columbia, to form a multistate authority with power to construct and operate a passenger rail transportation system.

I continue to believe that a regional authority ultimately will be found to be the most advantageous mechanism for providing modern rail passenger service in this region as well as other megalopolitan areas of the country. I have been encouraged by the increasing interest being shown in this approach, and I am today together with the junior Senator from Delaware (Mr. BOGGS) introducing again a joint resolution granting the consent of Congress to the formation of such an authority.

The PRESIDING OFFICER. The joint resolution will be received and appropriately referred.

The joint resolution (S.J. Res. 79) of granting the consent of Congress to the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia to negotiate and enter into a compact to establish a multistate authority to construct and operate a passenger rail transportation system within the area of such States and the District of Columbia, introduced by Mr. PELL, was received, read twice by its title and referred to the Committee on the Judiciary.

ADDITIONAL COSPONSORS OF BILLS

Mr. INOUYE. Mr. President, I ask unanimous consent that, at its next

printing, the names of the senior Senator from Alabama (Mr. SPARKMAN) and the senior Senator from Tennessee (Mr. GORE) be added as a cosponsor of the bill (S. 1520) to exempt from the antitrust laws certain combinations and arrangements necessary for the survival of failing newspapers.

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

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that, at its next printing, the names of the Senator from Maine (Mr. MUSKIE) and the Senator from Nevada (Mr. BIBLE) be added as cosponsors of the bill (S. 335) to prevent the importation of endangered species or parts thereof into the United States; and, to prohibit the interstate shipment of any domestic species taken contrary to State law.

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

Mr. TALMADGE. Mr. President, I also ask unanimous consent that, at its next printing, the name of the junior Senator from California (Mr. CRANSTON) be added as a cosponsor of the bill (S. 1479) to amend chapter 19 of title 38, United States Code, in order to increase from $10,000 to $15,000 the amount of servicemen's group life insurance for members of the uniformed services.

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

Mr. TALMADGE. Mr. President, I ask unanimous consent that, at its next printing, the name of the junior Senator from California (Mr. CRANSTON) be added as a cosponsor of the bill (S. 1471) to amend chapter 13 of title 38, United States Code, to increase dependency and indemnity compensation for widows and children, and for other purposes.

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

SENATE CONCURRENT RESOLUTION 11—SUBMISSION OF A CONCURRENT RESOLUTION TO CONVENE A WORLD WILDLIFE CONFERENCE

Mr. YARBOROUGH. Mr. President, I submit, for appropriate reference, a concurrent resolution calling for U.S. initiative to convene a worldwide conference for the preservation of endangered species of wildlife.

I have already introduced in this session of Congress, a bill, S. 335, to prevent the importation of endangered species or parts thereof into the United States when illegally taken in the country of origin; and to prohibit the interstate commerce of any domestic species of fish or wildlife taken contrary to state law. This bill is an effort to stop the widespread illegal poaching that is contributing to the rapid decline in the numbers of many beautiful and exotic species. My bill is substantially the same as H.R. 11618, the bill voted favorably out of the Senate Commerce Committee on October 10, 1968. I had introduced a similar bill, S. 2984 of the 90th Congress last year which has received much attention and support.

Already this year, hearings have been held by the House on similar bills which seek to provide protection for various endangered species. I am hopeful that the Senate will also take swift action in considering this matter.

One of the purposes of S. 335, and the other endangered species bills, is to encourage other countries to enact similar protective legislation. To this end, I am proposing in the resolution that a worldwide conference for the preservation of endangered species of wildlife be called. It is my hope that a conference such as this could begin to find significant answers to the threats facing wildlife.

The resolution proposes that the conference consider measures in three principal categories:

First. International trade in wild animals and wildlife products must be brought under control. Much of the illicit exploitations of endangered species would be drastically reduced if the line between the poacher and the wholesaler could be pinched off. The demand for horn, ivory, skins, pelts, and other products far exceed the legal limits on taking them, and this provides an incentive to poachers which ought to be eliminated. S. 335, or a similar bill, passed in the United States would be of great value in dealing with this problem. It would not be enough, however, to put import or export restrictions in only one country. These have to be worldwide, and to be enforced, for them to be effective in ending this terrible slaughter of wildlife.

Second. The vital economic importance and use of wild animals can be explored by this conference. Even more than poaching, man's expansion into wildlife habitats threatens their continued existence. The new settlers regard the wild animals of Africa as a threat to themselves and their crops. Wildlife is seen as an obstacle to progress in Africa.

In reality, this is not so. In a continent starved for protein, game animals can provide the major source of meat. The carcasses of animals such as antelopes contain more meat than most common range cattle in Africa, they mature faster, and a given range can support more of them. Experiments in South Africa indicate that it is more profitable to promote the growth of wild herds and cropping of the resulting surplus than to raise cattle. One square mile of east African savannah can support 16,000 pounds of cattle. The same area can support 66,000 to 90,000 pounds of wildlife because the different species of wildlife grazes grass, shrubs, or tree leaves, at different levels above the ground. A program of education is necessary, not only to teach the techniques of game ranching, but to overcome a social system, prevalent in east Africa, which counts wealth and social prestige in terms of numbers of cattle, however little meat is on their bones. The problem is large and complex, but the return potential is enormous, once a conference begins to determine what specific steps are needed.

The economic uses of wildlife are not exclusively agricultural however. The legitimate export of such articles as hides can be a major source of income as long as steps are taken to insure that the supply is safeguarded. And in countries where tourism is a major source of income, animals which attract visits by tourist should not be wantonly destroyed.

Third. The conference should explore ways of helping developing countries to undertake conservation programs of their own. The conference should consider both conservation programs which might profitably be undertaken by the developing countries, and forms of increasing assistance from the United Nations and the developed countries to them for this purpose. It will be fruitless to cut off trade in illegally obtained wildlife if the countries from which it comes cannot conserve it adequately to keep it alive. These programs might take the form of game reserves, stricter game laws and better enforcement of them, wildlife conservation specialists.

I have submitted similar resolutions in other Congresses, Senate Concurrent Resolution 52 on August 23, 1965; and Senate Concurrent Resolution 41 on August 28, 1967, of the 90th Congress. In the 90th Congress, the proposal was endorsed by Secretary Udall and was supported by the Fish and Wildlife Commission and by the Department of State. The problem has not abated in these years of delay and it will only grow more serious in the future. Another species, or several, will perhaps have been irretrievably lost in the delay.

Mr. President, action by the Senate is urgent. This is no mere sentimental question; there are hard economic reasons for conservation. There are even more pressing moral ones. The wildlife which remains to us is not ours. We hold it in trust for the future. We cannot by act of Congress retrieve and restore the passenger pigeon in the skies, the Carolina parakeet to the southern forests, or the great auk to our eastern seashores. They are gone forever. Let us not be the exterminators of additional species of nature's heritage to the earth.

Man has, and has shown, an infinite capacity for destruction. Let us make this one effort to show that he is also capable of preservation.

I ask unanimous consent that the concurrent resolution be printed in full at this point in the RECORD.

The PRESIDING OFFICER. The concurrent resolution will be received and appropriately referred; and, without objection, the concurrent resolution will be printed in the RECORD.

The concurrent resolution (S. Con. Res. 11), which reads as follows, was referred to the Committee on Foreign Relations:

S. CON. RES. 11

Whereas it is in the common interest of mankind to preserve the world's wildlife;

Whereas the United States and other countries have an obligation, pursuant to international agreements, such as the migratory bird treaties and the Inter-American Treaty on Nature Protection and Wildlife Preservation, 1940, to conserve and protect the species of wildlife;

Whereas more effective international measures for the protection of wildlife are urgently needed;

Whereas nearly two hundred and fifty species of wildlife are in danger of becoming extinct;

Whereas many other species of wildlife are being dangerously reduced in numbers: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the United States shall

promote the worldwide conservation of wildlife, particularly of species that are rare or threatened with extinction and that the United States, through the Secretary of State, in consultation with the Secretary of the Interior, shall take all necessary steps to convene an international conference on the conservation of wildlife after consultation with the United Nations and its specialized agencies.

SEC. 2. The Secretary of State and the Secretary of the Interior should cooperate with such United Nations agencies and other international organizations as may be interested in developing an agenda which includes—

(a) action by each country to control international trade in wildlife and its products, especially rare and endangered species;

(b) studies by the developed and developing countries to determine how wildlife conservation and management in the latter can increase their production of food, make optimum use of marginal lands, and increase tourist revenues; and

(c) assistance by developed countries to developing countries, either unilaterally or multilaterally through the United Nations or other international agencies, to establish or improve training schools for wildlife and conservation specialists, to establish conservation departments in the developing countries, to prepare wildlife conservation laws and regulations, and to carry out needed world conservation programs.

SEC. 3. As used herein, the term "wildlife" means wild mammals, wild birds, reptiles, amphibians, fish, mollusks, crustacea, and all other classes of wild animals, excluding oceanic animals.

SEC. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this resolution.

SENATE RESOLUTION 166—SUBMISSION OF A RESOLUTION TO PROVIDE FOR AN INTERNATIONAL CONFERENCE ON PROBLEMS OF HUMAN ENVIRONMENT

Mr. TYDINGS submitted a resolution (S. Res. 166) to provide for an International Conference on Problems of Human Environment, which was referred to the Committee on Foreign Relations.

(See the above resolution printed in full when submitted by Mr. TYDINGS, which appears under a separate heading.)

NOTICE OF HEARING

Mr. JACKSON. Mr. President, I wish to announce for the information of the Members of the Senate that the Committee on Interior and Insular Affairs will hold an open hearing on Tuesday, March 18, on the nomination of Mr. Peter A. Bove to be Governor of the Virgin Islands.

The hearing is scheduled to begin at 10:30 a.m. in room 3110 New Senate Office Building. Any Member of the Senate is, of course, welcome to attend and participate.

Mr. President, I ask unanimous consent that a brief biographical sketch of the nominee be included in the RECORD following my remarks.

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

PETER A. BOVE

Born: Rutland, Vermont, September 21, 1906.

Party affiliation: Republican.

Education: Graduate of St. Peter's Parochial School, Rutland. Graduate of Rutland High School in 1925. Graduate of Holy Cross College in 1929, PHB. Graduate of St. John's Law School in 1934.

Positions: City Attorney, Rutland, Vermont (Elective) 1939–40; Secretary of Civil & Military Affairs of the State of Vermont, January 8, 1947 to May 15, 1947, reappointed November 15, 1948 to June 7, 1949; Chairman, Vermont State Liquor Control Board, May 1947 to July 11, 1951; Member Parole Board 1947–49; Member of the Joint Committee of States on alcoholic beverage control; President of the National Alcoholic Beverage Control Association 1951–1952. (Organization comprises 17 monopoly states.); Lawyer; appointed Comptroller of the Virgin Islands by President Eisenhower and served in the capacity for a little over eleven years resigning in September of 1968.

Award: Department of Interior Meritorious Award, Sept. 1967.

Activities: Coached football at West Rutland High School and helped at Rutland High School one year. Helped organize the Northern League Baseball League. President of the Rutland Royals and Vice President of the Northern League. Past President of the Rutland County College Alumni Association of Catholic Colleges. Past President of the Rutland County Bar Association. Member of the Executive Board of the Green Mountain Council of Boy Scouts. Chairman of the New York Herald Tribune Fresh Air Fund for Vermont for eleven years.

Married: June Lounsbury, April 15, 1967.

Current address: Box 1459, Christiansted, St. Croix, Virgin Islands.

NOTICE OF RECEIPT OF NOMINATION BY THE COMMITTEE ON FOREIGN RELATIONS

Mr. FULBRIGHT. Mr. President, as chairman of the Committee on Foreign Relations, I desire to announce that today the Senate received the following nomination:

Henry Loomis, of Virginia, to be Deputy Director of the U.S. Information Agency.

In accordance with the committee rule, this pending nomination may not be considered prior to the expiration of 6 days of its receipt in the Senate.

A PACIFIC PERSPECTIVE—A MAJOR ADDRESS BY SENATOR MANSFIELD

Mr. PEARSON. Mr. President, I invite the attention of Senators to a speech by the distinguished majority leader which was delivered March 10, 1969, at Kansas State University as a part of that university's prestigious Alfred M. Landon lecture series.

Under the title "A Pacific Perspective," Senator MANSFIELD delivered one of the most lucid and cogent statements on America's present and future role in Asia. His analysis of the present state of relations between the United States and Japan and the policy alternatives with which we must soon come to grips, his discussion of our future relationship with mainland China, and his review of the situation in the Philippines and Indonesia are all most perceptive and represent a major contribution to the dialog on the future of U.S. foreign policy.

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

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

A PACIFIC PERSPECTIVE

(Lecture of Senator MIKE MANSFIELD, of Montana, for the Alfred M. Landon Lecture Series, Kansas State University, Manhattan, Kans., Mar. 10, 1969)

I

We have been an Atlantic-minded nation and understandably so. Fourteen of the states border the Atlantic. The majority of our ancestors reached America via the Atlantic. Most of us follow religions of trans-Atlantic origin. The languages that are learned in our schools are primarily those of the nations across the Atlantic. Americans who travel abroad usually begin their journeys by crossing the Atlantic. Fashions, architecture, routines of living in this nation all show strong influences from the opposite side of the ocean. We are, in short, preponderantly "Atlantic" by heredity, tradition, and proclivity.

However, the authority as well as the territory of the United States stops at the western edges of the ocean. The Atlantic has been a kind of sea barrier for us in the sense that the Pacific has not been. In the Pacific, not only do five states reach the ocean, but one of them—Hawaii—literally emerges from it. In addition, we have territories of various sizes, shapes, and legal relationships spread through its distant reaches. The Aleutian Islands which project towards the Soviet Union and Japan are part of the State of Alaska. American Samoa, Guam, Wake, Johnston, Midway and the Howland, Baker and Jarvis Islands are far-flung dependencies. The Canton and Enderbury Islands are an American-British condominium. The Trust Territory of the Pacific Islands has been administered by the United States since the end of the Second World War; it comprises over 2,000 islands and atolls which together total only 678 square miles of land but which are dispersed over three million square miles of ocean. World War II left a provisional American administration in Okinawa and the other Ryuku Islands; there it has remained for a quarter of a century, almost within sight of the Asian mainland. More than a frontier, more than an avenue of communication and trade, the Pacfiic is a vast marine-arena within which lie states, territories, and dependencies appertaining in large part to the United States.

I would like to make clear that in referring to the Pacific, I do not include the Asian mainland or the waters immediately adjacent. On that mainland, there are no American possessions but there are more American forces than anywhere else in the world outside the United States. Not only is there the immense consignment in Viet Nam but large American military contingents are also stationed in Thailand and South Korea. For the first time in history, we have deployed military power in mass along the whole arc of the Asian mainland.

In this manner, almost without realizing it, we have cast ourselves in the role of Asian power. We have extended the outposts of our Pacific power to China's borders. We have done so on the assumption that China is bent on military expansion and that it is essential for the United States to contain that expansion. That we have erred in the form of our response, even if the assumptions are accurate, is illustrated, in my judgment, by the war in Viet Nam. The war has not contained China in any sense. Nor has it even decreased Chinese influence in Viet Nam. If anything, it may be having the opposite effect.

What needs most to be learned from the tragic experience in Viet Nam is that there is no national interest of the United States which requires us to perform the functions of an Asian power. On the contrary, it is as

self-damaging as it is futile to presume that that role can be exercised by an outside power anywhere on the Asian land-mass. The fact is that the nations of Asia are going to develop along economic and political lines which are determined by themselves. The development will spring from their history, philosophy, and tradition. It will be based on their human and material resources. It will reflect the political realities of their surroundings.

Nations outside the region, perhaps, can participate economically in limited ways in this process, but they cannot control the social evolution of Asia. What applies to other outside nations applies to us. We have never been a part of the Asian continent. We are not now. We will not be in the future.

However, we are a part of the Pacific, as I have already observed, and we will continue to be. Whether we will remain a Pacific power is not in question; we have no choice. What is at issue is our future role with respect to Asia. On that score, it seems to me, the character of our commitment is largely a matter of our choice. We were not forced, for example, into the present involvement in Viet Nam. Largely by a pyramiding of successive unilateral declarations and acts, the commitment was built to its great dimensions. The choice was ours. By the same token, this nation, through the President, still retains, in my judgment, the capacity to increase, reduce, or even to dismantle that commitment by its own calculated decisions.

Whatever else may prove true of our future role in Asian affairs, I am persuaded that it will differ from the role we have played in the past. The postwar World War II era has ended, whether or not we recognize it. Whether or not we realize it, we are in a period of transition in our relations with the nations of the Western Pacific.

II

That such is the case is best illustrated by reference to Japan. Our relations with that nation have been relatively quiescent for many years. Time has brought changes in Japan which have now reached a point just short of crisis.

The cloud on the horizon is the U.S.-Japan security treaty. Under the terms of the treaty, beginning in 1970 either party may announce an intent to amend or terminate the agreement. As this date has drawn closer, the political debate in Japan over the treaty has grown in intensity. It has centered on two specific points.

The first is the question of the American bases in Japan—number, location and use. Among the Japanese, there has been a growing resentment of these bases. They are not uniformly regarded as sources of a benevolent American protection. Often, they are seen as symbols of excessive foreign influence as well as hazardous nuisances. Furthermore, U.S. military airfields, on occasion, act to disturb the populace, not only because they occupy scarce land, but also because they pose dangers of accidental explosions and crashes. In the case of naval bases there is, in Hiroshima-conscious Japan, the additional concern with the assumed danger of radiation whenever nuclear-powered U.S. vessels call at these facilities.

The second specific issue around which the debate has centered in Japan is the question of the Ryukyu Islands (notably Okinawa), which were an integral part of Japan before World War II. At the end of that conflict, the United States occupied these islands and has since administered them through the Defense Department. The Japanese peace treaty of 1951, however, left dangling, so to speak, certain matters pertaining to their final disposition. While the United States retained administrative control, Japan was not required to relinquish sovereignty. Moreover, this nation has since stated on more than one occasion that there is no question that Japan possesses "residual" sovereignty over the Ryukyus.

Nevertheless, the United States has converted Okinawa into a great military depot. Bases on the island are specifically exempted from certain restrictions which are in effect on similar U.S. installations in Japan proper. In 1960 the United States agreed that bases on the Japanese main islands cannot be used for "military combat operations" without the agreement of the Japanese government but by contrast the same inhibition is not in effect in Okinawa which has served as a staging area for the war in Viet Nam and for B–52 bomber operations. Finally, there is a most fundamental difference: we have agreed not to store nuclear weapons in Japan proper; there is no such agreement respecting Okinawa.

The military bases relate to the larger issue of Japan's future military role in the Pacific. What is involved in this question is the continuance of a situation in which the primary responsibility for defending Japan, and indeed the entire Western Pacific, falls to the United States. Over the years, this state of affairs has cost us untold billions of dollars. Its persistence is now beginning to appear somewhat anacronistic a quarter of a century after World War II and with a Japan that is the third greatest industrial power in the world.

Many Japanese are restless under U.S. military surveillance of their homeland and adjacent waters. On the other hand, there is also a conflicting factor of Japanese anxiety that American military protection may be withdrawn. Out of the dichotomy has come a view that Japan should rearm beyond the modest "self defense" forces which it possesses and assume a part of the defense functions which are now being discharged by this nation. The view has adherents not only in Japan but in certain quarters in the United States.

All of the issues which I have discussed so far have a significant characteristic in common: they are military matters. There are, of course, also non-military matters in dispute between Japan and the United States as, for example, certain barriers to trade and investment. The fact remains, nevertheless, that the main source of friction in U.S.-Japanese relations, today, is to be found in disagreement over military questions. I emphasize this point because there has been some tendency to avoid public consideration of these matters in connection with foreign policy. Yet, the questions are fundamental. The future of the U.S.-Japanese relationship will be very shaky, indeed, if we proceed to try to base it preponderantly on our military convenience in the Pacific, notwithstanding the irritation and hostility which may be caused thereby in Japan.

It seems to me there is a need for great alertness to changing Japanese attitudes respecting our military activities. While some sentiment already exists in Japan for the removal of all U.S. military bases, I do not think that that is the dominant view. There is, rather, a general desire to see a reduction in the number of U.S. bases in Japan. A prompt response to this desire, I believe, not only would meet Japanese wishes but would also correspond to the interests of this nation. Certainly, it would dovetail with our present effort to reduce federal expenditures and, in particular, expenditures abroad. In my judgment, it would also act, in timely fashion, to preserve an accommodating tone in U.S.-Japanese relations.

Indeed, I am persuaded that much of the growing controversy with Japan could be dispelled if it were simply stated that we are prepared to abide by Japanese desires respecting the bases. The installations are maintained at great cost to this nation on the grounds of the contribution which they make to Japanese security and, hence, indirectly to the security of the United States. If the bases have now ceased to have that function in Japanese calculations, how can they possibly serve a useful purpose in ours? They become, in fact, a growing liability if they cause mounting friction between this nation and the Japanese populace.

Whatever the sentiments on the question of American bases in Japan, Okinawa is the looming issue in Japanese-American relations. It is the lightning rod, so to speak, which has attracted most of the arguments, most of the protests, and most of the attention.

There is strong and growing pressure within Japan and Okinawa for the immediate repossession of full control over the Ryukyus. It seems to me that we have delayed a long time—perhaps too long—on this sensitive issue. Okinawa is Japanese; we have never claimed otherwise. I see no just or rational alternative other than to try to arrive at a fixed time-schedule for the progressive and prompt return of administrative control over the Ryukyu Islands to Japan. In restoring Japanese administrative control over Okinawa, moreover, it seems to me that there are also strong arguments against insisting on a "deal" which will permit the use of the military bases in ways which are not acceptable to the Japanese people.

There will be, I am sure, cries of anguish in some quarters at any significant modification of our right to unrestricted use of Okinawa. Nevertheless, entrenched parochial interests cannot be permitted to prevail in this critical matter. Okinawa is undoubtedly a great military convenience but it is by no means indispensable. The fact is that there have been enormous technological developments in the military field since World War II. We now have missiles which can carry nuclear weapons into space. We have planes which can carry them in the atmosphere over the ocean. We have ships which can carry them on the ocean, and submarines which can carry them under the ocean. We also have other bases in the Pacific—bases which are under unchallenged American sovereignty—where nuclear weapons can be stored and where Strategic Air Command planes with nuclear weapons may be based without question or complaint.

As I have already noted, the issues of the bases and Okinawa relate to the larger question of Japan's future military role. Here, too, it seems to me, that a greater sensitivity to Japanese popular sentiment is essential. It would appear particularly ill-advised for the United States to try to push the Japanese towards a new and expanded military role in the Western Pacific. To be sure, the Japanese may one day raise the present level of their self-defense forces. They may even, one day, amend their constitution in order to possess other than self-defense forces. Any such decisions, however, should result from Japanese political processes which reflect Japanese judgments of Japanese needs—judgments for which the Japanese accept full responsibility. They should not result from American pressures reflecting American judgments of American needs and, for which, this nation in the end will have to bear responsibility.

III

If the Japanese do not assume the military burdens which the U.S. would relinquish when the bases in Japan are reduced in number and those on Okinawa are restricted in use, some will ask: who will defend the Pacific? Presumably, it is fear of China which gives rise to this question. It does not follow, however, if the Chinese are bound on expansion, that they are capable of trans-Pacific aggression. Indeed, President Nixon has made it clear that he does not buy the contention of some defense advisors that a "thin" anti-ballistic missiles system is needed because of the Chinese threat.

A thrust of military power across the Pacific is quite a different matter from ex-

pansion on the Asian continent. Even in the latter case there is a difference of view as to the nature of Chinese continental pressure and what constitutes the principal danger to orderly progress in Asia. Among the nations of Southeast Asia, for example, it is commonplace to find that the threat of Chinese militiary aggression is rated a more remote menace than the immediate problems of economic underdevelopment and political instability which, in some cases, stem from internal economic disparities and in others from conflicts between two or more countries within the region.

These latter problems can hardly be met by U.S. defense outposts in the Western Pacific. Rather, their solution requires cooperation for constructive purposes among the Southeast Asian nations and with other nations outside the region. In fact, such cooperation has begun and it is taking two forms. First, there are groups of states within the region, such as the newly formed Association of Southeast Asian Nations. Second, there are regional organizations with outside members, such as the Asian Development Bank. The Bank includes European and North American subscribers whose modern resources can play an important, if peripheral, part in the progress of the Asian nations.

In this connection, there seems to me to be considerable merit in Japanese suggestions that the United States, Canada, Australia, New Zealand, and Japan should form a Pacific community to help developing countries. I should add, that in a grouping of this kind, Japan can play a most significant part. Indeed, in my judgment, it is in the sphere of economic development wherein lies Japan's principal potential for a contribution to the peace and progress of the Western Pacific.

IV

I have talked of several facets of the situation in an effort to place the needs of our Asian policies in clearer perspective; of the distinction between a Pacific power which we have no choice but to be and an Asian power which we can and should choose not to be; of our military relations with Japan and the heat which is rising from the issues of the bases, Okinawa, and the overall Japanese role in the security of the Western Pacific; and, finally, of economic development in the Asian countries and the possibilities of cooperative aid. There are several other related questions which need to be touched on to complete this discussion. One concerns our relations with mainland China.

Strictly speaking, China is not of the Pacific but of Asia. Yet, the very vastness of China projects its relevance not only over the Asian mainland and the Pacific but, in fact, throughout the entire world. It is not possible to talk about the future of international peace, let alone about our future in the Pacific, without reference to the great nation which lies on its farther shore.

China will not remain forever, as is now the case, in substantial isolation. Its proper role is as a leading nation in the councils of the world. Sooner or later China will assume that place. It seems to me the Japanese have long since come to recognize that prospect. And there are indications that they are seeking to bridge the gap with China. Even if we could, there is no cause for this nation to impose obstacles of any kind—either spoken or unspoken—to increasing Japanese contacts with China. On the contrary, such efforts—whether in the economic, cultural, or political fields—might well be encouraged. They can serve not only Japan's needs for trade, they can contribute to clearing up a whole range of enigmas involving China and the security of the Western Pacific. In that fashion, they can be helpful in bringing about an enlightened approach to the building of a stable peace in that region.

For our part, and for much the same reasons, I see no purpose in imposing any special restrictions on the travel of Americans to China. Nor do I see any reason not to place trade with China in non-strategic goods on the same basis as trade with the Soviet Union, Poland, and other Communist countries. For a decade and a half we have sought to maintain a rigid primary and secondary boycott of Chinese goods. The effort is unique in our history and it finds no parallel among the present practices of other nations with respect to China. In my view, we would be well advised to abandon this antiquated pursuit of China's downfall by economic warfare and treat with the Chinese in matters of trade as we treat with European Communist countries—no better and no worse.

It seems to me, the Nixon Administration's announced intention to reopen previous offers to exchange journalists, scientists, and scholars with China is well founded. The cancellation of the meeting in Warsaw on February 20, at which these offers were to be reiterated, is regrettable. One can only hope that another opportunity will soon present itself and, hopefully, that the official offers will be made and accepted.

Trade, travel, and cultural and scientific exchanges are relatively tangible issues in our relationship with China. Hence, they seem to be more readily amenable to solution; perhaps, that is why current discussion of the relationship with China tends to concentrate on them. Similarly, the present debate is intensive on the questions of Chinese admission to the United Nations and U.S. diplomatic recognition of Peking. These issues, too, seem susceptible to clear solution. They are not, however, at the root of the difficulties. To try to resolve them at this point may be a useful intellectual exercise but it also tends to put the cart of the difficulty before the horse.

The fundamental problem of U.S.-Chinese relations is the status of Taiwan. It is a problem which is as complex as it is crucial. It is not an either-or issue. It is not really soluble, in an enduring sense, in terms of two Chinas as has been suggested in recent years because there are not two Chinas and the attempt to delineate them is synthetic. The fact is that China is a part of Taiwan and Taiwan is a part of China. Both Chinese governments which are agreed on little else are agreed on that score. The question is not whether the twain shall meet but when and in what circumstances. While we are not aloof from this question, the decisions which appertain thereto involve primarily the Chinese themselves—the Chinese of the mainland and the Chinese of Taiwan. Sooner or later the decisions will have to begin to be made. Only then will the other part of the Chinese puzzle—such questions as U.S. recognition and U.N. admission—fall into a rational place in our policies.

V

While I have spoken today principally about the United States, Japan, and China, two other major nations are of immediate concern. I refer to the Republic of the Philippines and to Indonesia.

There are signs of difficulties in our relations with the Philippines, principally in the field of trade and investment and with respect to U.S. military bases. In my judgment, however, none of the problems which confront us is of a nature as to be beyond reasonable solution in the light of the general cooperation which we have long enjoyed with the Philippines. Yet it is precisely this basic cooperation which seems to me now to be in jeopardy. It is adversely affected by a vestigial tendency—a hang-over from preindependence days—to continue to think almost automatically in terms of special economic privileges and concessions. Similarly in the field of foreign relations there is an inclination to expect that the policy of the Philippines government, inevitably, will mirror our own attitudes. Therefore, such departures as the recent Philippine initiation of contact with Communist countries seems somehow inimical to continued warm U.S.-Philippines relations. That is ironic inasmuch as we have long since had contact with most of these countries.

It is not a law of nature—it is an Aesopian fable—that familiarity must always breed contempt. A half century of familiarity which was crowned with the common sacrifices of World War II laid the basis not for a mutual contempt but for an enduring friendship between the Filipino and American people. It seems to me that we need to bestir ourselves now if this mutually valuable tie is not to be lost. Indeed, it would be my hope that the new Administration would give prompt attention to this matter.

To allow barriers of estrangement to be raised, by negligence or nonsense, is to admit a serious disability in our capacity to order our relations with other countries, notably those which have gained independence since World War II. After all, if we cannot hold the confidence, the friendship, and the respect of a people with whom we have been intimately associated for half-a-century, what can be expected with regard to other nations in Asia with which we have had little or no historic connection?

Indonesia is one such nation. Formerly the Dutch East Indies, this immense island chain was largely unknown to Americans during the colonial era. In the post-independence period, there has been a considerable contact but it has been uneven and unpredictable. In recent years, there has been a deterioration which, at times, has reached almost the point of outright mutual hostility. The pendulum apparently is now swinging and hope exists once again for a more agreeable situation.

It will take time, however, for us to form a balanced view of this enormous island-nation which in terms of population is the sixth largest in the world. It will take time, too, for Indonesia to emerge from its accumulated political and economic ills. The burden of the past is heavy and pervasive.

The United States can do little to speed up the development of a better association with Indonesia. Indeed in present circumstances the best policy is to accept our own limitations in this regard. To be sure, there are the gestures of goodwill which can be made in the form of technical, scientific, and educational cooperation. Moreover, through regional aid channels, such as I have already discussed, some assistance can be provided to Indonesia for economic development. That is a far cry, however, from self-delusive assumptions that by sending Americans to fight in Viet Nam we have somehow saved Indonesia from Communism or that the astute efforts of U.S. agencies and enough money in some miraculous fashion can act to delineate the emerging structure of the Indonesian nation.

VII

Having described the problems which confront the United States in the Pacific, I feel that I have an obligation to close with a few general words of prescription. Almost fifty years of association with the Pacific—as a student, Marine, teacher, and freqeunt visitor—prompt me to do so. A quarter of a century of political experience, on the other hand, impel me in the other direction. In these years of specializing in foreign relations both in the House of Representatives and in the Senate I have come to recognize the general absence of finality in the disposition of major international problems.

Nevertheless, I did remark at the outset that whatever our future in the Pacific, that future will be unlike the past. I am now under some compulsion to fill in details which sustain the general observation. The most fundamental new factor in the situation, as I see it, is the appearance of at

least one new generation since my generation began to grapple with the post-World War II Asian situation and, in particular and with a singular lack of effectiveness, with the monumental upheaval of the Chinese revolution. This new generation is a source of hope for the future. It is a hope which derives largely from the interest young people now take in the affairs of the other side of the Pacific. That interest is more profound and far better informed than was the case two decades or more ago.

It used to be that in an "Atlantic-minded" nation the consideration of Asian questions was left largely to a relative handful of Americans, to "old Asian" or "old China hands," whose attitudes were churned out of a mixture of 19th century religious altruism, political idealism, cold-cash imperialism, and unscrupulous adventurism. World War II altered this mixture; the Korean War modified it further; and now Viet Nam has changed it greatly. The attitudes which once held sway in this nation with respect to our relations with Asia and the Pacific have lost most of their relevance and much of their potency.

If there is to be a worthwhile future in the Pacific, it seems to me that U.S. policies for the problems of the Asian littoral will not be left in "old Asian hands." Rather they will take on the sense and sensitivity of "young American hands." The problems will be dealt with in a new spirit of cooperation and collaboration, free of attitudes of dominance or condescension. The keynote of a new policy for contemporary Asia, as I see it, is mutuality. Its characteristics will be mutual respect, mutual appreciation, and mutual forebearance.

For us there is no choice. We must make the effort to put our policies into that perspective. We will not only continue to live in the Pacific, we will also have to learn to live with the Pacific and the nations of its western reaches, basing our relations with its peoples—with the Chinese, Japanese, Filipinos, Koreans, Indonesians, and others—henceforth, on a profound respect for the equal dignity and worth of all.

BOB BARTLETT

Mr. CHURCH. Mr. President, I understand that Bob Bartlett's likeness will soon be placed in the U.S. Capitol, 6,000 miles from the State he loved so much and served so well.

We of the Senate have known a man who is insured a high place in the history of his State. Such a distinction is rare, but Bob Bartlett was a rare kind of man.

Our regard for him was fully shared by the people of Alaska. In 10 elections, he never faced a serious challenge. He knew and respected the people of Alaska; they knew and respected him. Together, they loved Alaska and worked to make it a thriving State.

He built an enviable legislative record here—even though for 14 years he could not cast a vote. The 49th star on our flag is also Bob Bartlett's star, for he did the most to put it there. His Senate years were filled with accomplishment for Alaska and America.

The ties between Idahoans and Alaskans are strong. Both like plain language and lots of elbow room. Both have a frontier heritage that is still close to the life of the people. Both are users of vast public lands. Common problems abound.

For these reasons, and even more because of the nature of the man, Bob Bartlett was my personal friend; and I miss him.

So, when visitors gaze upon Bob's likeness in Statuary Hall, let us hope that our successors in the Senate stand among them; that they will reflect upon this man who was our contemporary; and that they will benefit from his example, which will always be contemporary.

Mr. President, I was in the West on the day set aside for tributes to Bob Bartlett. Consequently, I was unable to participate in the round of rememberances for our late colleague on that day, nor in the many expressions of sympathy extended to his wonderful wife, Vide. I ask, therefore, unanimous consent that my tribute today may appear with the rest in the commemorative volume.

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

FIGHT ON INFLATION—TOO LITTLE AND TOO LATE

Mr. PROXMIRE. Mr. President, after several days of hearings by the Joint Economic Committee, I have come to the conclusion that the action proposed by the Council of Economic Advisers, the Treasury, the Federal Reserve Board, and by both labor and industry are wholly insufficient to stem the inflationary tide now moving in this country. I have said I believed it was too little and too late.

In today's New York Times I find confirmation of what I believe to be true from Mr. James A. McCullough, who is an economist with the highly respected Wall Street firm of Scudder, Stevens & Clark.

He is quoted as saying that it was too much to expect that our fight to reduce inflation will "bear fruit in any important way in calendar 1969."

He is quoted further as saying:

At most, we can expect a deceleration of the inflation from the 4 per cent range to about 3.5 per cent average for all of 1969.

I ask unanimous consent that the relevant section of the column, "Marketplace," written by Robert Metz, in which Mr. McCullough's statement appears, be printed in the RECORD.

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

MARKETPLACE: INFLATION THEORY TAKES DRUBBING

(By Robert Metz)

James A. McCullough, a tall, professional economist at the respected Wall Street firm of Scudder, Stevens & Clark, took a long-range view of the economy yesterday, touching on the influences of inflation and the flow of funds into the stock market.

Mr. McCullough denounced the theory that inflation is good for stocks. At a business conference he noted that in Continental Europe, in the early 1960's, inflation was at a far higher rate than in the United States and was not brought under control until the second half of the decade.

"For more than half of the decade of the 1960's, the Continental stock markets as a whole experienced an almost steady deterioration," he observed. "More recently, these Continental markets have emerged with considerable strength."

As for our own inflationary spiral—which now exceeds the rate in the stronger Continental European economies—he said it was too much to expect that our fight to reduce inflation will "bear fruit in any important way in calendar 1969."

He continued, "At most, we can expect a deceleration of the inflation from the 4 per cent range to about 3.5 per cent average for all of 1969."

Mr. McCullough made an interesting point regarding the pension funds which have provided a strong base of support for the stock market for years. "In another 10 years, the growth in resources of these funds may peak out as payments to beneficiaries match receipts."

However, he added that increasing stock market purchases by life insurance companies and the state and local retirement funds would offset "with something to spare" the loss of new money from the private pension funds in the years ahead.

THE SENIOR SENATOR FROM GEORGIA—A WARM AND CANDID PROFILE

Mr. McGEE. Mr. President, William Grigg, of the Washington Star, wrote a very warm and candid profile of the distinguished Senator from Georgia (Mr. RUSSELL), the President pro tempore, which was published in the Sunday Star of March 9. It is appropriate that this profile of a dedicated man of the Senate should appear in the pages of the RECORD. I ask unanimous consent that it be so printed.

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

SENATOR RUSSELL, OF GEORGIA: HIS CLUB IS ON CAPITOL HILL

(By William Grigg)

A strictly reared son of the dust and rote-learned Bible verses of rural Georgia, Richard Brevard Russell loosened up a bit when he went to college. He drank illegal "pop-skull" whiskey and wine with his brothers in Sigma Alpha Epsilon and managed to make no mark as either a scholar or student leader. (His dad, Judge Russell, had been both.)

Now 71—and long accustomed to being one of America's most powerful men—Senator Russell smiles shyly to recall those careless years.

He glances across his desk at his interviewer, who could be his grandson, and perhaps wonders if any product of today can grasp the feeling of selectness and freedom which a college afforded a country boy then.

Oh, he did well enough in the courses he liked such as Blackstone, he says quietly, and he "got by" in the others. He held a post on the fraternity council for a time and helped arrange some campus dances. And he made some solid friendships.

When the college interlude ended, the dust and the Bible verses of hometown Winder, Ga., reasserted themselves. But there was also the law now. And Russell's discovery that he—with his big hands, his pitcher ears and his plain-as-Georgia-clay manner—had the capacity to gain the trust of others.

A LONG ERA

Almost by accident he was propelled into the Georgia legislature, the governorship and on into history—including that long era when he led the Southern defense of states rights, a cause now as lost as the Confederacy.

Today, Russell defends the Union. Chairman of the Senate Appropriations Committee, he stands in the way of those who would like to slash military spending to gain a painless source for domestic spending.

He is today both a stalwart advocate of preparedness and a cautious advocate of accommodation.

"I want to keep this country prepared, so

that we needn't back down," he says fervently. "Although we sometimes have backed down, I don't want us ever to have to."

Yet he has advocated discussions with Red China and has backed treaties with the Soviet Union—as long as there are sufficient guarantees against a double-cross.

Toward this work, Russell conserves his energy. Although there is something grand about the man, his style of life is plain. This permits him to work long hours and look rested and fit, despite emphysema.

This deterioration of lung tissue was diagnosed in 1958—and, in 1965, it was complicated by a bout with pneumonia that almost carried him off.

It was tough giving up his three packs of cigarettes a day after the emphysema diagnosis. "But I saw Bill Fulbright and he said he had stopped two weeks before and then I saw Milt Young and he had quit.

"I figured I could do anything they could," Russell says.

STRONG DESIRE

The desire to smoke held strong for weeks, but Russell resisted. Finally, it was no longer a struggle. "And then I learned Bill and Milt had long been back smoking again!" That made Russell's victory that much sweeter.

Cigarette smoking itself had been a departure from his upbringing. Until he was a grown man, he didn't dare let his father see him smoke. Then he was surprised to see a younger and bolder brother light up in front of their father and get away with it.

Russell was one of 15 children born and 13 surviving infancy, but he had the special relationship of a "junior." Richard B. Russell Sr. was chief justice of Georgia and widely respected.

The judge was both stricter and more emotionally open than most men today. After 39 years of marriage, he began a letter to his wife, "My precious little sweetheart," and ended it "with a sense of love and gratitude that is overpowering, I can only say, God bless you, darling of my heart."

The Judge raised his family near Winder.

The town was renamed Winder, as promised, after the engineer who found a way to get the railroad to go through what was previously known as Jug's Tavern.

The Russell place was a cotton farm which had once been operated as a slave plantation by "old man Jackson," Sen. Russell recalls. "Oh, shaw—what was his first name?"

Ina Russell, to whom Russell wrote so lovingly, noted in her diary that she made 184 pieces of clothing in the spring of 1912.

She got the family around the piano each Sunday afternoon to sing hymns to her accompaniment. At these times, each child had to recite a new Bible verse he had learned. But these sessions were not overly severe; a youngster could get by, at least once, with "Jesus wept" for his verse.

The Senator once said that as a small child he thought that mothers never had to rest. When at 10, he discovered his mother asleep, "I still recall how shocked I was."

She too could express her emotions, warmly but realistically. She wrote a daughter, "You have been a fortunate girl, born with a good little body, a fair amount of good looks and a bright mind. Also you found a fond father and a loving mother awaiting you. You young people can't realize how much you are loved."

And to a child who complained she was tired of being poor: "Oh, my child, that hurts me."

And to a son away from home: "How I do want to see you, but how proud I am that you are sticking it out and not coming home."

When his mother died, Sen. Russell wrote a long inscription for her memorial. It said in part: "There has never been a marriage relationship more tender and true than existed between this noble woman and her eminent husband."

Springing from such a family, Dick Russell Jr. must have felt an obligation to do well. Judge Russell had wanted to be Georgia governor and a U.S. senator. Dick would do it.

After graduating from the University of Georgia in 1918, and spending a year in the Navy Reserve just as World War I was ending, Russell toyed with going to Atlanta to join a city law firm but decided to return to Winder because he liked the more general practice that could be provided there.

He hadn't been back long before he started thinking it would be a good thing to run for the state legislature. First, it would provide an excuse to buy an automobile. Second, the campaign would spread his name around and, even if he lost, produce additional clients for his law practice.

But the most important reason for running was simply that "I had the political bug," Russell says.

Surprising himself, he won easily. Thus, in 1921, when he was hardly out of college, he began 10 years in the legislature that would lead to his election as governor—Georgia's youngest—at 33. He was an adept reformer of the state's government and proved a popular man, electable to the U.S. Senate—at 35.

Two years later, he was leading a successful filibuster against a federal anti-lynching law. And again and again, over the next two decades, he was to lead the forces of the South.

Disarmingly, Russell says of these filibusters and anti-civil rights votes: "I guess they look pretty bad to any liberal today. But I was brought up to believe that the states should exercise all powers not specifically vested in the federal government."

PUSHED BY SOUTH

Twice, once against Truman and once against Stevenson, the South pushed Russell seriously as a candidate for President. In 1952, against Stevenson, Russell seems to have been giddy enough to take his bid seriously.

But Southerners seem destined to find their strength in the Senate, not the White House. In large part, their Senate strength is built on the status that comes simply from seniority, which is aided by the South's one-party system. Here Russell is king, now serving his 37th year in the Senate.

As the most senior in service in the Senate, he was this year elected as Senate President Pro Tempore—an honorary post traditionally recognizing seniority. Seniority also made him chairman of the Senate Armed Services Committee for many years. He is now the ranking member of that committee but has given up its chairmanship to head the most powerful committee in the Senate, Appropriations.

The chairmanship gives Russell a great deal of bargaining power.

He derives additional influence from his continuing leadership of his fellow Southerners, who listen to his views on policy and his ideas on strategy. Fellow Senators say there is no better parliamentarian in the Senate.

Thoroughly reliable, sure to do as he promises, Russell also makes a fine negotiator.

Excepting on civil rights, Russell also enjoys a reputation for depth and openness of mind.

He also is farsighted. For example, as governor in the depression years, he somehow found the money for research in the utilization of pine trees—now a major crop in the state, replacing cotton on the Russell family farm and many others.

Russell has been boosting research ever since, particularly if it is located in Georgia.

But besides these mental capacities, parliamentary and leadership skills, plus seniority, there is another major source of Russell's influence. This is the club-like feeling among many in the Senate. Here, as in a Greek letter fraternity, there is a lot of importance placed on warmth, wit, personality and fairness.

As some men devote their lives and entire personalities to their college fraternities, Russell devotes his to the more serious and important Senate club. After the daily treatment he gives himself with a device that spreads a mist of medication through his lungs, he arrives for breakfast at the Capitol at 8:45 a.m. or so. Often, he'll still be working in his office 10 hours later. He likes to read all the mail from his constituents and check the replies his staff has made, or reply himself, occasionally in longhand.

He comes in on Saturdays too. "Sometimes I've wished he had a wife who would call him to come home to dinner, so I could get home to my wife," an aide says. But he married none of the Georgia girls he was linked with as a young man. He lives alone in a small apartment, reading history or watching a ballgame on television.

He is the perfect clubman, the friendly bachelor whose club is his family.

If the Senate club got out a yearbook, as the University of Georgia at Athens did in 1918, Russell would be called, once again, "a friendly and unassuming fellow . . . one of the most popular men we have." But there would have to be an addition: "And one of the most powerful."

OPPOSITION TO DEPLOYMENT OF PROPOSED ANTI-BALLISTIC-MISSILE SYSTEM

Mr. SCHWEIKER. Mr. President, today the Senator from Kentucky (Mr. COOK), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and I wrote to President Nixon, urging him to decide against the deployment of the proposed anti-ballistic-missile system at the present time.

We expressed our doubts about the military effectiveness of the ABM system, and expressed our concern that deployment at this time would adversely affect the possibility of significant disarmament talks with the Soviet Union and the ratification of the Nuclear Nonproliferation Treaty. We also mentioned as a disturbing factor the enormous cost of such a system.

Although we expressed our support for continued research and development of an ABM system, we stated our belief that the case for the Sentinel system has not been made and that it should not be deployed at this time.

I ask unanimous consent that the text of our letter to the President be printed in the RECORD.

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

DEAR MR. PRESIDENT: This morning you approach the moment of final decision on whether or not to deploy the Sentinel Anti-Ballistic Missile. Though first-term Senators, we feel compelled by the urgency of this matter to present our views directly to you.

We have heard and participated in the Senate debate on the A.B.M. We have listened to experts—those who favor and those who oppose—in committee testimony and elsewhere. We have concluded that the case for deployment of the Sentinel has not been made, and while we favor continued research and development, we urge you, Mr. President, not to deploy it at this time.

From the scientific and military standpoint there is grave doubt that the Sentinel could function effectively against increas-

ingly complex weapons systems and amidst the chaos and confusion of a nuclear attack.

Diplomatically, the United States finds itself on the verge, perhaps, of meaningful steps toward disarmament with the Soviet Union. By disturbing the precarious strategic balance that now exists between us we could destroy the possibility of those steps being taken. There is also the Nuclear Non-Proliferation Treaty, upon which the Senate will soon be voting. By ratifying it the United States will, in effect, urge other nations not to enter the arms race. Can America ignore its own admonition by taking a step which might well embark us on another arms race, and might also jeopardize the Treaty?

Finally there must be considered the Sentinel's great cost—estimated at anywhere from five billion to hundreds of billions of dollars at a time when America's domestic needs cry out for action.

We share with you the goal of peace—the goal to which you have dedicated your Administration. And we feel strongly that the cause of peace can only be enhanced by the action we urge upon you today: a decision not to deploy the Sentinel.

TV STATEMENT BY SENATOR BYRD OF WEST VIRGINIA ON THE NUCLEAR NONPROLIFERATION TREATY

Mr. BYRD of West Virginia. Mr. President, on March 11, 1969, I made a statement for television regarding the Nuclear Nonproliferation Treaty.

I ask unanimous consent that the transcript of the statement be printed in the RECORD.

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

ROBERT C. BYRD FAVORS TREATY

I am for the treaty because it provides for the development of safeguards to insure that nuclear materials in non-nuclear weapons countries be used for peaceful purposes instead of for weapons purposes. It does not impose any obligation on us to unilaterally withhold deployment of an ABM defense system or any offensive strategic system. I would be against unilateral disarmament, but I am in favor of doing all that we can to slow down proliferation of nuclear weapons, because every additional nation that gets nuclear weapons is just one more finger on the trigger for a nuclear war. I hope that the treaty will operate to discourage such proliferation.

CRIME AND JUSTICE

Mr. McCLELLAN. Mr. President, often there is a significant difference in the attitudes of those who deal with crime on an everyday basis and those who pontificate on criminal rights from lofty ivory towers. The Honorable Edward M. Curran, chief judge of the U.S. District Court for the District of Columbia, deals with and observes crimes and criminals during the course of his daily work.

On March 8, 1969, before the Federation of Business Associations of the District of Columbia, he shared his conclusions drawn from his experience in a speech. He recognized the necessity of affording justice to victims and society as a whole as well as to those who commit criminal acts and exploit and oppress our law-abiding citizens. I would hope that those members of our judiciary who are far less experienced with the tragic takeover of our city streets by hoodlums and the ever-increasing exploitation of our society by organized criminals would take heed of Judge Curran's words, acknowledge the greater experience from which he speaks, and adjust their judicial philosophies to the present realities of the crime menace in American life.

I ask unanimous consent that significant excerpts from Judge Curran's speech be printed in the RECORD.

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

ADDRESS BY HON. EDWARD M. CURRAN, CHIEF JUDGE, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, PRESENTED TO FEDERATION OF BUSINESS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA, MARCH 8, 1969

In the Nation's Capital, on the walls of the magnificent stone edifice that houses the Department of Justice, is carved the following inscription: "Justice is the great interest of man on earth—wherever her temple stands there is a foundation for social security, general happiness and the improvement and progress of our race."

One of the great problems facing this country today is the crime problem. We cannot conquer crime by any simple formula. We cannot eliminate crime, but we can reduce it. We must apply against it the same painstaking research, the same willingness to sacrifice preconceived notions, the same high-minded dispassionate spirit that we would gladly apply to the control of an even less destructive plague. One of the aims of democratic governments is to achieve justice in a true sense. That no man should be condemned without being given his day in court and without being proved guilty beyond a reasonable doubt are the basic principles of criminal justice. We try to achieve speedy justice, but the safeguards that are placed around the accused bring irritating delays in securing their conviction. This crime problem has become so acute that President Johnson, in signing the Law Enforcement Assistance Act, declared, "The control of crime is a major target of this Administration."

* * * * *

Organized crime in its present form, in my opinion, is the result of an increasing intelligence on the part of the criminal classes. Crime is as ancient as civilization and begins at a time older than recorded history. A competent history of organized crime, carried through to the development of the movement under present-day conditions, with its underlying sources and philosophy, would require a treatise dealing with human relationships over the centuries. It would concern the feudal system, the feats of the old buccaneers, the slave traders, the caravan highwaymen of the Far East, the smugglers, the Molly Maguires of more recent times, and many others of their ilk. It would concern not only the material but the spiritual, with considerations of religion, environment, and geographical mobility; the passions and the greed of men; and it would lead logically to those operations of criminal groups which we face today. I believe that widespread lawlessness is a symptom of widespread paganism, and a growing paganism could prostrate the soul of America.

There is no more sinister force in the United States than that of the millions who are engaged, by day and night, in the commission of felonies which occur every few seconds. Nearly 3 million serious offenses are committed every year. These offenses continue, with five serious offenses being recorded every minute. * * *

There are many causes of crime. Poverty is one; unemployment is one; slum areas are one; lax parents are one; and lenient courts are another and the trend of leniency keeps growing. Constitutional rights are all right, but in these days there often are criminal cases in which it appears that the main concern of some courts is for the rights of the perpetrator of the crime and not for the rights of the victim or society.

In thousands of cases the parents are at fault. There is a breakdown of the family unit. It is in the home that respect and authority must first take shape. I feel that the solution of the crime problem to a great extent lies with the family, the schools, the church and the community.

Why is it that some parents do not try to understand their children? Why is it that they are not interested in the difficulties and problems which their children may run across?

I think it is very necessary that parents perform their duty in attempting to raise their children with the idea of obedience and respect for them, for, as they grow older, such obedience and respect will develop into respect and obedience for the law.

* * * * *

The school is an important factor in our civilization, for today our teachers are more qualified and better fitted than ever before in the nation's history. It is not necessary, however, that a curriculum should be laid down to apply to all children alike, because if this is done, the handicapped boy or girl would not receive the proper training and his education would go for naught. In the New York City schools there have been shocking cases—assaults on teachers, vandalism and displays of vicious attacks. Facing such a situation, the teachers are helpless. I believe that it is necessary that those in the teaching profession should deal more in individuals, rather than in groups.

You cannot ignore the church as an important part of our everyday life. Today is the age of irreverence and criticism. This is a world of greed, lust and power; a world besmirched and bedraggled by the most brazen carnival of materialism that ever blackened the reputation of self-respecting people; a world which knows not God's commandments; a world which needs a panacea in the recount of moral values. The churches of all denominations should awaken the spiritual appreciation of living. Years ago parents attended church, and children attended Sunday School, where they were taught the underlying principles of morality and character. Today parents are less prone to attend, and the children attend Sunday School intermittently or not at all. If this pace keeps up, the church is bound to lose the influential place it held, in days gone by, as an effective weapon in crime prevention.

The community, being a part and parcel of American life, is most important in this ever increasing problem. Neighborhoods of various kinds and characteristics bob up through this country of ours with all types of families, foreign and domestic, rich and poor, educated and illiterate—neighborhoods where one is not content; regions where one is dissatisfied; residences where there exists ill influence. In the slum areas, there are too many broken homes, too many working mothers, too many children running loose in the streets, learning about liquor, narcotics and crimes, such as mugging, yoking, purse snatching, gang assaults, and violence just for the sake of violence. Conditions existing such as these do not offer much encouragement to the boy or girl who may desire to live an exemplary life.

There are four important elements to be considered in the crime situation. They are the public, the police, the prosecuting agencies and the judiciary. These, functioning together, become an effective instrument in the suppression of crime. Operating independently, they hearten the criminal element to the detriment of the law-abiding citizen. Sometimes they may work at cross purposes; sometimes they may criticize each other; and sometimes they may not be interested in harmonizing their differences to

the end that the commonweal might be best served. I believe that there should be a better understanding among them, in order that we may have a closer cooperation as a bulwark of defense in this war on crime. And the time has come when we must recognize that society has certain rights, as well as the accused. You have the right to life, liberty and the pursuit of happiness. As a distinguished Judge of the United States Court of Appeals for the District of Columbia Circuit, the Honorable Wilbur K. Miller, once said, "Nice people have rights, too." * * * Your wife has the right to walk down the street without fear of being raped or molested. Your family has the right to feel secure in your home. Putting it bluntly, the law-abiding citizens of this country have the right to be left alone, and when some of the judges in this country realize that the rights of society should be balanced against the rights of the individual, then law enforcement will be more effective.

As the distinguished Bishop of Rochester, the Most Reverend Fulton J. Sheen, has said, crime is increasing because of a "false compassion" for criminals. He defines false compassion in these words, "A pity that is shown not to the mugged, but to the mugger; not to the family of the murdered, but to the murderer; not to the woman who is raped, but to the rapist". The Bishop deplored "social slobberers" as those "who insist on compassion being shown to the junkies, the dope fiends, the throat slashers, the beatniks, the prostitutes, the homosexuals, and the punks. Today the decent man is practically off the reservation."

I think a study should be made to determine whether or not court decisions are causative factors in the commission of crime. I say this because it is clear to me that some appellate court decisions have unduly tipped the scale in favor of the criminal and against society's rights to be protected.

There is no substitute for swift, certain and impartial justice, with less attention paid to the technicalities which appear aimed at the protection of the criminal and not society.

Respect for law and the maintenance of order are among the bulwarks of our republic.

Morality, law and order, and other great principles of our heritage, are fighting for their very existence. They are under attack from certain influences which, if not stopped, will wreck every trace of decency and orderliness in our society.

It is even argued by some groups that profane verbal abuse directed at the police is a Constitutional right.

The best interests in this country lie in a law-abiding and orderly society. The citizens of America cannot live with lawlessness, vulgarity, obscenity and blasphemy.

The time has come for us to cease being led toward the hole of self-destruction by certain do-gooders and to get on with the perpetuation of those self-evident truths which have served our country so well.

The only way to fight these organized crusaders of filth, immorality and crime is to get tough.

Liberty cannot exist without law, for the law protects liberty. We should remember, however, that liberty is not absolute but relative, for no person may infringe or transgress on the liberty of another.

The most effective deterrent to crime is the apprehension and punishment of criminals. If the factor of punishment is ignored, then there can be no deterrent.

The courts of this country are courts of justice—not courts of mercy. A trial should truly represent an enlightened search for truth, so that deception, surprise, technicalities, and delays will be obliterated. The atmosphere of some courtrooms is still polluted by some jurors, who close their minds to the evidence before them, and some of our judges seek out technicalities rather than guilt or innocence.

Forty odd years ago an experienced attorney and jurist in New York issued this strong warning, "It is not the criminals, actual or potential, that need a neuropathic hospital. It is the people who slobber over them in an effort to find excuses for their crime". What we need today, in attempting to minimize crime, are jurors with conscience and vision, judges with courage and fortitude, and penitentiaries which are neither country clubs nor health resorts.

In this war on crime, we stand as men and women in the ranks of humanity, who are under the law of duty that allows us no stopping place short of our utmost capabilities. Whatever in human nature is hopeful, generous, aspiring—in love of God and trust in man—is arraigned on one side, and on that side, let us stand.

U.S. AID TO INDIA—DOES THIS AID SUBSIDIZE THE PURCHASE OF MILITARY AIRCRAFT FROM THE SOVIET UNION?

Mr. SYMINGTON. Mr. President, the other day, I made a statement on the floor of the Senate concerning the mounting criticism of U.S. aid to India; and placed in the RECORD an article to that effect written by Ernest Weatherall and published in the Christian Science Monitor.

That article noted:

There have been recent rumblings in Washington that American aid has subsidized India's hard-currency purchases of Soviet arms and submarines.

As a followup, Mr. Weatherall has written a second article reporting that India has already purchased a substantial number of fighter aircraft from the Soviet Union and plans to reach additional defense agreements with that country in the near future.

I ask unanimous consent that this subsequent article, entitled "Indian-Soviet Accord on Defense Looms?" be printed in the RECORD.

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

INDIAN-SOVIET ACCORD ON DEFENSE LOOMS?

(By Ernest Weatherall)

NEW DELHI.—Military cooperation between the Soviet Union and India, along with stepped-up arms assistance, is seen here as a possible outcome of the early-March visit to India of Soviet Defense Minister Andrei A. Grechko.

The Soviet Union, eager to contain Chinese Communist expansion, could only benefit from such cooperation, it is reasoned. And Indian ability to defend the troubled northern border with Chinese-ruled Tibet would be increased.

In the event of a Moscow-Peking confrontation, an agreement with India would give the Soviets the use of Indian Air Force forward airbases. These are nearer Chinese military installations in Tibet and southern China than are the Soviet bases in Siberia.

Marshal Grechko showed extreme interest in the Indian Air Force during his visit. He stopped off at the IAF base at Chandigarh, in northern India, to watch Indian pilots fly their Soviet-built MIGs.

LOCAL ASSEMBLY PLANNED

According to reports here, India has bought 100 Mig-21's from the Soviet Union and plans to build 300 more in India, with Russian technical help.

The Soviet defense chief also visited a plant at Nasik, near Bombay, where airframes of the Migs are assembled.

Unofficial figures put the number of Mig squadrons in the Indian Air Force at six. Indications are that the IAF plans to equip another 15 squadrons with these jet interceptors. It has also been reported that India has bought 100 Sukhoi SU-7B close-support fighters, with an option to buy a hundred more. Deliveries of the plane, to be used to equip four squadrons, began in 1968.

But the Mig-21's and SU-7's do not belong to the latest generation of Soviet planes. There has been some criticism that by the time India's Mig factories start manufacturing the jet fighters without Soviet components, the plane will be obsolete.

India's Defense Minister, Sardar Swaran Singh, admitted in Parliament that he was looking into the possibility of acquiring planes that would perform better than the present Mig.

Aviation experts hold that the IAF is going to require a different type of aircraft from those with which it defended India during the war with Pakistan in 1965. China's Tibet bases are pretty much beyond the range of the Hunter, the Mystere, and the Canberra. Even Pakistan has moved its airbases as far away from India as it could—to the West Pakistani-Iranian border. To strike at Pakistan's new airbases and targets in Tibet, India will need a longer-range aircraft which can carry larger loads, to replace its aging British-made Hunters and Canberras.

These needs, in view of the latest Sino-Soviet border clash, were almost certainly discussed with Marshal Grechko during his visit to India, observers maintain.

ANOTHER HOSTILE ASIAN NATION

Mr. YOUNG of Ohio. Mr. President, friendship between the United States and Thailand dates back to the time when Siam's King Mongkut offered President Abraham Lincoln war elephants to help the North in the Civil War.

We now have over 45,000 soldiers and airmen in Thailand. In early November 1963 we had fewer than 4,000. Recently, Kukrit Pramoj, editor of the Bangkok pro-Western newspaper Siam Rath, published a lead editorial denouncing our military presence in Thailand. He wrote:

The Americans are the real enemies of our people, not the communists.

President Nixon and the Congress would do well to reconsider our situation in Thailand before our militarists—our CIA and the generals of our Joint Chiefs of Staff—cause us to blunder into another Vietnam.

THE PASSENGER PIGEON—A REMINDER OF MAN'S DEPREDATIONS

Mr. MUNDT. Mr. President, the March 1 issue of Farmer magazine, published in St. Paul, Minn., contains a most informative article on the passenger pigeon, written by Benny Bengtson. I think a reading of the article can point the way for many who are interested in being of assistance to our presently threatened species of wildlife. I ask unanimous consent that it be printed in the RECORD.

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

THE WILD OR PASSENGER PIGEON

(By Benny Bengtson)

Many years ago, the late Mr. P. O. Fryklund, of Roseau, Minnesota, showed me the egg of a wild or passenger pigeon that he had in his collection of birds' eggs. It was white in color, unmarked and resembled the egg of the mourning dove, only larger. He had collected it during the 1890's, before these pigeons became extinct and vanished forever from the earth.

In color, the passenger pigeon was quite similar to the mourning doves we so often see in our fields, or perching on telephone and highline wires. Perhaps a bit more of bluish around the head and on the wings and back, and a little darker on the breast, but otherwise much the same. But they were larger—some 16 to 18 inches long, compared with the mourning dove's average length of around a foot.

They were beautiful birds, as are the mourning doves, with their soft, grayish and grayish-blue shades—colors so much associated with doves and pigeons that we have come to call them "dove-like." Around the head, neck and shoulders, especially when the sunlight struck them, there was an iridescent sheen, a mingling of bronze, green and purplish shades. The breast was washed with a rosy tinge. Altogether, as is the case with the mourning doves, they were a study in pastels.

When the white man first came to America, and through most of the 1800's, they were extremely abundant. Some ornithologists have estimated that, at one time, the passenger pigeon alone made up 25% to perhaps 40% of the total bird population of this country. A poet of Colonial times wrote:

"The pigeons in such numbers we see fly
That like a cloud they do make dark the sky."

Flocks of incredible size sometimes were reported during spring migration. Alexander Wilson, the famous ornithologist, recorded his observations of one such flock that he saw in Kentucky. The birds, "flying with great steadiness and rapidity," in a column well over a mile wide, kept on passing by for most of one afternoon. Trying to arrive at a credible estimate of their numbers, he figured the length of the column at 240 miles and the number of birds at three to each square yard. He concluded that there were 2 billion, 230 million birds in the flock. "An almost inconceivable multitude," he wrote, "yet probably far below the actual amount."

John James Audubon, the great bird painter, watched another flock pass, and estimated the number of birds at two to a square yard. More conservative than Wilson, he figured its length at 180 miles, but his estimate of the total number of birds was still well over a billion.

They sometimes nested in immense colonies. John Muir, in "The Story of My Boyhood and Youth," tells of "one nesting-place in Wisconsin 100 miles long and from 3 to 10 miles wide. Every tree, some of them quite low and scrubby, had from 1 to 50 nests each. Some of the nests overflow from the oaks to the hemlock and pine woods." This was in 1871. Other nesting sites in Michigan, Kentucky and Pennsylvania varied in size from 1 to several miles in width, and from 30 to 50 miles in length.

Many of the wild pigeons nested in smaller colonies, however, and as single pairs. So far as I know, there is no record of any large nesting colonies in Minnesota or the Dakotas. But they were fairly abundant in the wooded sections of Minnesota. Being birds of the forest, they occurred only in those parts of the Dakotas and Montana where there were trees. They were found in the greatest numbers from Wisconsin eastward through Michigan, Ohio and Pennsylvania to the Atlantic Coast.

Henry David Thoreau, when he was in Minnesota during the summer of 1861, found nests of the passenger pigeon. Alexander Henry, traveling through Manitoba in April of 1800, saw wild pigeons "in great abundance." And it is recorded that many nested along the Red River south of Pembina in 1873. They often nested in aspen groves, but preferred hardwoods, like oaks and coniferous trees, when available.

Favorite food included beechnuts and acorns, and great flocks congregated where and when these nuts were plentiful. But they ate many other things as well—grain and tree seeds of many kinds, weed seeds, berries, wild rice, rose hips, earthworms, caterpillars, grasshoppers and other insects.

Why was it that a bird so abundant became extinct? The answer is plain and cannot be avoided—it was due to the greediness and lack of vision of man.

They were shot, caught in nets and traps, even killed with poles and clubs by men who raided their roosts at night. When the great flocks passed over in spring, small armies of men fired continually into the dense mass of birds—one shot sometimes bringing down 50 and even 70 birds! Their roosts and nesting colonies were raided by market hunters who killed them by the hundreds of thousands. Often, so many were slaughtered that most of them never were picked up, but left to rot where they fell. When shot at, the pigeons became confused and returned again and again to their roost, only to be greeted with another barrage. Sometimes, even cannons were used!

In 1874, market hunters at one nesting site in Michigan shipped out 100 barrels of dead birds daily for 30 days. Each barrel contained some 300 or more birds, or a total for the season of nearly a million. In 1878, from a large nesting near Petoskey, Mich., 1½ million pigeons were shipped out. Prices obtained varied greatly—from a penny apiece, if the market was glutted or they were in danger of spoiling, to $2.50 for a dozen. A fair average probably was around 25¢ to $1.25 a dozen.

The worst feature of this carnage was that, when a nesting site was ravaged and destroyed, the young as well as the old birds died. Unable to reproduce and replenish their numbers, and persecuted during migration and at their roosts, it is not to be wondered that, by 1900, the last passenger pigeon in the wild had been exterminated! A few in zoos survived another decade or so—the last one dying in September of 1914 in Cincinnati.

The wild pigeons never received any protection worthy of the name. A few state laws, attempting to stop the indiscriminate killing, never were enforced and most of them came too late. When a bill to protect the pigeons was introduced into the Ohio State Legislature, it was killed by a committee report stating bluntly: "The passenger pigeon needs no protection." That seems to have been the opinion of the majority of people.

And, so today, visitors to Wyalusing State Park in Wisconsin, located where the Wisconsin River empties into the Mississippi, can see a monument erected to the passenger pigeon. Dedicated on May 11, 1947, the bronze tablet reads:

"Dedicated to the last Wisconsin passenger pigeon, shot at Babcock, Sept. 1899. This species became extinct through the avarice and thoughtlessness of man. Erected by the Wisconsin Society for ornithology."

CLARKSVILLE, TEX., TIMES POINTS OUT DISCREPANCY AGAINST VICTIMS OF VIOLENCE

Mr. YARBOROUGH. Mr. President, every day, we read in the newspapers or see on our television screens reports of new crimes and violence in Washington and throughout the country. All of us in the Senate are concerned with the problems of rising crime. All of us are eager to find ways to deal with this serious problem.

But all too often, I think, our concerns stop with capturing, convicting, and punishing the criminal. Too few of us, it seems, are concerned with what can be done for the victim.

On January 19, 1969, I introduced a bill, S. 9, to provide compensation to innocent victims of violent crime in the District of Columbia and certain other federally administered areas. I introduced this bill in two previous Congresses and on each occasion, I was gratified by the large amount of public support that my proposal received. Once again, I am receiving indications of popular support for this measure.

An example of this support is demonstrated in an editorial published in the Clarksville, Tex., Times of February 20, 1969. The editorial strongly endorses my proposal and also brings up a matter which is of great personal concern to me; namely, that the bill will receive more consideration by both Houses of Congress this year, than in any previous years. I ask unanimous consent that this fine editorial be printed in the RECORD.

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

DISCREPANCY AGAINST VICTIMS OF VIOLENCE

California and New York have passed state laws to reimburse persons injured by violent actions of criminals. Discussions relating to this growing problem of loss in varying degrees sustained by innocent victims of law violators are due in a number of legislatures as well as Congress this year. Sen. Ralph Yarborough of Texas has advocated legislation for years to provide relief to persons attacked by criminals. He introduced Senate Resolution 9 in January dealing with this matter.

"The question of compensation to victims is a critical issue," Yarborough asserted, "and it must receive careful consideration if we are to deal with all aspects of violent crime properly.

"Every day in this country we witness a gross discrepancy in the way we attempt to administer justice. A violent crime against a person occurs, perhaps as an assault, a murder, a stabbing or a rape. The attacker is apprehended. What takes place? The attacker may receive free legal counsel, free psychiatric examinations and treatment, hospitalization, food, clothing, and even vocational training or an education, all paid for by the state.

"The victim suffers serious injury, entails great expense, pain and personal loss, but is in no position to obtain any type of adequate compensation from the government that throws every cloak of protection around the criminal."

Yarborough makes a strong case for the victim of violent crimes, but, as he points out, the issue has critical aspects that require much study. Lawmakers at both the state and national levels will likely give it more consideration during the year than previously.

SUPPORT FOR SENATE RATIFICATION OF HUMAN RIGHTS CONVENTIONS—XXVI

Mr. PROXMIRE. Mr. President, the case for support and ratification of the

human rights conventions is indeed strong. The basic principles behind the Declaration of Independence and the Constitution are the same as those which inspired men of our time to draft the human rights treaties. Our entire American legal tradition seeks to protect the rights of the individual and to shield him from the arbitrary action of government. That is precisely the objective of these treaties.

These human rights treaties are backed by such respected American organizations as: The National Catholic Conference for Interracial Justice, the National Conference of Christians and Jews, the national board of the YWCA, the NAACP, the American Baptist Convention, the American Jewish Congress, the American Jewish Committee, and the United Church of Christ.

Such distinguished Americans as John Kennedy, Lyndon Johnson, Dean Rusk, Arthur Goldberg, and Willard Wirtz—and now President Nixon—have given their strong support to the ratification of these treaties.

I urge Senators to add their "aye" to the American chorus of support for these treaties and ratify the Conventions on Genocide, Forced Labor, and Political Rights of Women.

SUPPORT FOR MONTOYA PRESCRIPTION DRUG BILL

Mr. MONTOYA. Mr. President, on January 29, 1969, I reintroduced a vitally-needed bill to assist the elderly of this country meet their burdensome, catastrophic prescription-drug costs. The measure is being backed by 31 cosponsors from both sides of the aisle. The measure is urgently needed, and I firmly believe that the chances of enacting legislation along these lines at this session of Congress are very good.

Recently the National Council of Senior Citizens, which represents some 2,500,000 senior citizens of the Nation, called attention to my bill, S. 763, noting:

> The National Council of Senior Citizens supports the Montoya drug legislation because it is well conceived, offers a measure of relief from the burden of soaring drug prices and has the backing of nearly a third of the U.S. Senate, Hutton (Mr. William R. Hutton, NCSC Executive Director) declared.

Mr. President, I am greatly encouraged by this strong endorsement from an organization that has the best interests of the elderly of the country at heart. I have enjoyed working with the NCSC on this and other measures beneficial to our older citizens, and I once again welcome their support. I have the highest praise for the NCSC's executive director, Mr. William R. Hutton, and feel the senior citizens of America are fortunate in having an organization such as NCSC looking out for their welfare and in having such an outstanding individual such as Mr. Hutton at the helm.

Mr. President, I ask unanimous consent to have the text of the article, published in the Senior Citizens News, printed in the RECORD.

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

[From the Senior Citizens News, March 1969]

THIRTY-ONE SENATORS ASK MEDICARE PAYMENTS FOR OUT-PATIENT DRUGS

WASHINGTON, D.C.—Coverage of out-of-hospital drugs under Medicare had the support of 31 U.S. Senators as this issue of *Senior Citizens News* went to press.

These Senators seek enactment of a bill—S. 763—drafted by Senator Joseph M. Montoya (D., N.M.) to protect the elderly against catastrophic drug expenses.

Under this legislation, seniors would pay the first $25 of prescription drug expense. Then, Medicare would pay an amount to be set in a Federal drug formulary or four-fifths of the retail purchase price—whichever is lower.

HOW LEGISLATION WOULD WORK

The eligible drugs would be determined by a committee of experts.

It is expected most drugs prescribed for treatment of chronic ailments that afflict older persons would be covered under the legislation, Senator Montoya has said.

In a speech on the Senate floor upon introducing the legislation, the New Mexico lawmaker said reimbursement for prescription drugs would be on the basis of the full allowance to be determined by the Government for a covered drug or four-fifths of the out-of-pocket payment for the same drug at a drug store—whichever is less.

A Government drug formulary would be set up giving essential information on drugs to be covered and setting the reimbursement considered reasonable for each drug listed.

DOCTORS NOT AFFECTED

Senator Montoya emphasized that use of the proposed formulary for reimbursement of insured drugs would place no restriction on doctors in writing prescriptions nor would it permit druggists to fill prescriptions with any other product than specified by the doctor.

"In no way would a patient be denied the particular drug his doctor wants him to have," the Senator explained.

Appealing for early action on the legislation, Senator Montoya said: "The views of older people on the need for extension of Medicare to out-of-hospital drugs are well known.

"The elderly have a right to expect that the Senate will move to bring about changes in the present Medicare system which will provide at least some measure of protection against catastrophic out-patient drug expenses."

The need for extension of Medicare to prescription drugs arises from the unconscionably high prices charged for their products by drug manufacturers, William R. Hutton, the National Council's Executive Director, declared.

The National Council of Senior Citizens supports the Montoya drug legislation because it is well conceived, offers a measure of relief from the burden of soaring drug prices and has the backing of nearly a third of the U.S. Senate, Hutton declared.

A drug insurance measure, sponsored by Senator Montoya and 27 other Senators, passed the Senate in 1966 but died in the House of Representatives.

PROSPECTS MORE FAVORABLE

Prospects for Senate enactment of the new Montoya drug bill are good with favorable consideration of the legislation in the House of Representatives considered better than in 1966, the National Council leader declared.

"The reason is the shocking escalation of prescription drug prices since 1966," Hutton said.

As a result, he declared, an estimated 3,000,000 low income elderly must spend between $100 and $250 a year on drugs they need to preserve life and promote health.

Hutton asserted public opinion generally has been aroused by the rapacity of drug manufacturers, as revealed at public hearings conducted over the last two years by Senator Gaylord Nelson (D., Wis.).

TEXAS CLUBWOMEN SUPPORT BIG THICKET NATIONAL PARK

Mr. YARBOROUGH. Mr. President, the Texas Federation of Women's Clubs is a highly respected organization that has lent its support to a great many worthy causes. These women have always worked hard for the improvement of their communities and for the advancement of the State of Texas. That is why I am especially pleased that they have decided to work for the preservation of the Big Thicket in southeast Texas, and to support S. 4, my bill to establish a Big Thicket National Park.

Mrs. Henry F. Shaper, president of the Texas Federation of Women's Clubs, has chosen as one of her special projects, the preservation of the Big Thicket as a national park. The clubwomen have been urged to support my Big Thicket Park bill. They are also involved in educational activities which support the preservation of the Big Thicket.

At a recent meeting of the Women's Shakespeare Club in Denton, Tex., Mrs. Carl Marder presented a program on the Big Thicket in which she outlined the steps being taken to protect this beautiful land. I ask unanimous consent that an article entitled "Club Women Asked To Help Support Texas' Big Thicket," published in the Denton, Tex., Record Chronicle of January 30, 1969, be printed in the RECORD.

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

[From the Denton (Tex.) Record Chronicle, Jan. 30, 1969]

CLUBWOMEN ASKED TO HELP SUPPORT TEXAS' BIG THICKET

Mrs. Carl Marder III presented a program on The Big Thicket at the general meeting of the Women's Shakespeare Club.

Mrs. Henry F. Shaper, Texas Federation of Women's Clubs president, has chosen as one of her special projects the preservation of the Big Thicket in East Texas as a national park.

Clubwomen have been urged to write United States government officials to urge support of the Big Thicket Park bill S4 which has been introduced by Sen. Ralph Yarborough.

Mrs. Marder said that the area is one of the nation's most remarkable wildernesses and it is disappearing at an alarming rate. It once covered 3.2 million acres in all but now covers only about 300,000 acres. She said it is being destroyed at the rate of 50 acres a day.

Mrs. Marder explained that the Big Thicket, located in Polk, Liberty, Tyler, and Hardin counties, is valuable to botanists, scientists, students, tourists and others but is a disappointment to visitors because facilities are so bad.

Over 300 species of birds are found there including the magnificent Ivory Billed Woodpecker, for some years considered extinct, she said.

The Thicket contains trees thought to be as old as 1,000 years. There are rare leatherwood and golden pines as well as the tallest cyprus trees in the world. Mrs. Marder commented that much of the region had been destroyed by logging operations.

The area contains rare wild orchids and four of the five meat-eating plants found in

America. Scientists estimate the presence of more than 1,000 species of fungi and algae yet unclassified.

Panthers, bobcats, ocelots and black bears weighing up to 400 pounds are found in the Thicket. At one time, a colony of monkeys were spotted there, Mrs. Marder told the club.

The only Indian reservation in Texas is located in the Big Thicket.

Clubwomen and others interested were asked to write letters to the following people stating that they favor preservation of 100,000 acres of the Big Thicket as a National Park; President Richard M. Nixon, The White House, Washington, D.C.; Hon. Ralph Yarborough, Senate Office Bldg., Washington, D.C.; Hon. John Tower, Senate Office Bldg., Washington, D.C.; Hon. John Dowdy, House Office Bldg., Washington, D.C.; Hon. Walter Hickel, Secretary of the Interior, Washington, D.C.

Aid is possible also by joining the Big Thicket Association (dues $5, tax deductible). Checks should be made payable to The Big Thicket Association and mailed to Mrs. Laura Mitchell, Saratoga, Texas.

Hostesses for the club meeting were from the Modern Arts and New Horizons department.

UNION BACKS STEEL IMPORT RESTRICTIONS

Mr. HARTKE. Mr. President, on February 25 I introduced S. 1164, a bill to establish limitations on steel imports. The bill rests in part on findings in a Finance Committee study concerning the industry and its diminishing capacity to cope with the flood of steel imports, which results in part from the establishment of new steel production facilities in other parts of the world. With capacity outrunning their own national needs, and with the assistance of their governments, foreign firms are increasingly making inroads both on our traditional export market and, even more dangerously for our own economy, on our own U.S. market.

As I have noted previously in speaking of the bill, in which more than 30 other Senators have joined me, support for restrictive legislation comes not only from leaders of the industry and such organizations as the Iron & Steel Institute, but also from leaders of the United Steelworkers of America. Such a united labor-management position indicates the undeniable fact that the situation not only has potential threat for the profitability of the industry but also poses a real threat to jobs within the industry, which of course is the primary concern of the union.

Recently, the Steelworkers' president, I. W. Abel, spoke on this topic before the Cleveland City Club Forum. His February 7 address, which preceded the introduction of my bill, points up precisely the facts upon which it is based. I ask unanimous consent that a report of Mr. Abel's address, published in the current issue of Steel Labor, may be printed in the RECORD.

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

ABEL SCORES OVERCAPACITY, OVERPRODUCTION AS CAUSES OF IMPORT CRISIS

CLEVELAND, OHIO.—USWA President I. W. Abel has reiterated the union's serious concern over the rapid rise in foreign steel imports which threaten the jobs and wage standards of Steelworkers.

In an address Feb. 7 before the Cleveland City Club Forum, Mr. Abel said "we have been urging the Congress—and so has the industry—to pass legislation establishing import quotas, in order to halt the inroads of foreign producers.

"We have not succeeded in winning such legislation but there has been progress on another front. Just a few weeks ago, the State Department announced that Japanese and European steel producers have agreed to restrain their exports to the United States for three years—through 1971."

The countries, which he identified as Japan, France, Italy, Belgium, Luxembourg, The Netherlands and West Germany, are going to hold their exports to the United States to 11.5 million tons this year but the total will be allowed to increase five per cent next year and another five per cent in 1971, Mr. Abel pointed out.

"This means that when you include the imports of nations not party to the agreement, imports this year will total about 14 million tons—about 4 million less than were imported last year. However, without any restriction," President Abel emphasized, "it was estimated that foreign steel imports would have gone to 22 million tons by 1971."

He said that while this is a step in the right direction and represents progress on the import problem, it doesn't do what the USWA thinks must be done to fully protect the jobs of Steelworkers. Instead, he said the USWA believes that imports should be held to a total of 12 million tons per year—and they be allowed to increase only two per cent a year—not five per cent.

To dramatize the seriousness of the steel import problem, Mr. Abel told the Cleveland Forum what last year's total imports would mean to Cleveland's economy and to the USWA members in that area: "The 18 million tons imported last year is about six times greater than the shipments of steel mill products in 1968 by Republic Steel's operation in Cleveland and about 2½ times greater than Republic's total tonnage throughout the country."

He cited "over-capacity" and "over-production" as the real reasons for the import problem and said that a recent study by the U.S. Senate's Finance Committee estimated that steel capacity would continue to exceed world demand—that from 1965 to 1970 world capacity would be increasing at the rate of 33 million net tons a year.

The study, which was completed before the voluntary agreement on imports was reached, noted that "foreign steel producers have a tradition of cutting export prices below total costs rather than to restrict operations." Mr. Abel pointed out that there is reason, therefore, to fear that foreign steel industries will not act prudently and adjust output and prices to levels permitting a reasonable return on sales and investment.

The USWA spokesman, quoting the study, added that "the concern is that foreign steel producers, facing further deterioration of their financial status, will continue to sell increasing quantities of steel in the United States at prices which do not fully reflect their full and direct costs, with the collaboration of their governments."

The study concluded that "no private industry can, in the long run, survive in competition with foreign industries which have become 'instruments of governments,' unless its own government helps against subsidized imports."

President Abel assured that the Steelworkers Union will continue to press for a more permanent solution to the steel import problem "so that a fair trade relationship can be established and the jobs of our members can be protected more effectively."

LABOR LAW REFORM ARTICLES

Mr. FANNIN. Mr. President, the Chamber of Commerce of the United States, in its Washington Report on Labor, has begun a series of articles dealing with needed reform in certain areas of labor law. It was my privilege to have the opportunity to explain one of my bills, S. 424, as the first article in the series. I think the coming series will do much in the way of informing American businessmen of the specific labor law reform proposals as they are introduced in the 91st Congress.

The chamber is to be commended for this educational effort to spread information concerning specific abuses of the current labor laws. I ask unanimous consent that the introductory article and other items relating to it be printed in the RECORD.

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

SERIES OF ARTICLES WILL EXPOSE UNION ABUSES

WHY WE NEED LABOR LAW REFORM

More than three years have passed since the National Chamber initiated an intensive study of the growing labor problem through a new Blue Ribbon Committee of 100 Lawyers for Labor Law Reform. The need was obvious to all businessmen.

Today the need is even more compelling as unions abuse their power and scorn individual rights under the shelter of a friendly National Labor Relations Board.

Growing evidence of the problem has widened business support and mobilized the public to the point where congressional reaction—and action—is within reach.

Proof of this can be found in public opinion polls and results of the November elections. A poll by Opinion Research Corp. released last year showed increases in the number of citizens who believe that unions are strong enough or have grown too large, and should be regulated by the government, or were critical of unions in one way or another.

In the last election, the AFL–CIO's Committee on Poltical Education (COPE) made Labor Law Reform an issue and went all-out, investing a record amount of money and manpower, in futile efforts to defeat Richard M. Nixon for President and most Republican candidates for Congress.

Support of the Labor Law Reform program has widened to include other business organizations. Recommendations stemming from careful analysis of existing laws and the problems are being constantly reviewed and revised and will be presented to Congress at the appropriate time.

It is no surprise that the NLRB is the prime target. Its decisions have been widely condemned as biased not only by employers, but by many who could be described as neutrals. NBC Commentator David Brinkley has charged that this supposedly judicial agency "behaves like a Department of the AFL–CIO and is about as neutral as George Meany (AFL–CIO president)."

The co-author of the 1959 Landrum-Griffin labor reform law, Sen. Robert P. Griffin (R-Mich.), accused the Board of being "determined to impose its own policies" with little or no regard for those laid down by Congress.

With this article, Washington Report on Labor introduces a series which will illustrate by case examples the need for labor law reform. Abuses covered will include:

Union members fined for crossing a picket line.

Union members fined for exceeding production quotas set by the union.

Featherbedding and other restrictive union practices which add to costs and fan the inflation threat.

Union monopoly power which has created an imbalance in collective bargaining power.

Forcing workers into a union which they have not selected by secret ballot and does not have majority support.

Special privileges for unions will be removed and equity restored for individual workers and management alike when a majority of Congress is convinced of the need. We hope this series will help get the message across. We invite your support and cooperation.

PROBLEM: UNION WHIPS MEMBER FOR EXERCISING RIGHTS

WHY WE NEED LABOR LAW REFORM

Richard C. Price has good reason to wonder how his government protects him when his *rights* conflict with the *privileges* granted to unions.

As a member of United Steelworkers Local 4028 in Santa Clara, Calif., he was put on "trial," fined, harassed, suspended, blacklisted and deprived of his job—all with the later approval of the National Labor Relations Board. Mr. Price's crime? Circulating a petition seeking to decertify Local 4028 as bargaining agent and replace it with another union that he and other employees felt would better serve their interests.

Mr. Price didn't object—at first—when he was required to join the union in 1951 because of a union shop contract. He worked his way up from helper to crane operator. Eventually he became disillusioned with the union because, as he told fellow workers, "it didn't fight for us." That's when he stopped advancing in his work and his troubles began.

The unionist not only dared to voice his opinions, but even drove 50 miles to NLRB's regional office to find out what more he could do to protect his interests. With assurances from the Board attorney that he had a legal right to do so, Mr. Price took the leadership of a group that was dissatisfied with Local 4028.

Leaders of Local 4028 retaliated quickly. In 1964 Mr. Price was brought before a kangaroo court and put on trial for "undermining the union." The president at first peremptorily refused to poll the members, allow him to speak in self defense, or take a secret ballot. The verdict was rendered by a show of hands, and Mr. Price stood convicted. Less than one-third of the local's membership was at this meeting. He was fined $500 (later withdrawn), suspended and charged the cost of his "trial."

He returned to the NLRB, expecting support and help. While waiting for a decision, he was harassed continuously and told by his foreman to "stop filing petitions." When he left work for an operation, the union prevailed upon the company to refuse to take him back.

After a year of this, word came back from Washington. The Board, admitting that he did have the legal right to file the petition, nevertheless ruled the unions "disciplinary action" to be permissible. The decertification petition, the Board reasoned, threatened the union's "very existence."

Still not giving up, the victim appealed all the way to the Supreme Court. Last June—four years after his union "trial"—his request for review was turned down.

At 35 years of age, Richard Price is nervous, bewildered, and unable to find a job in the industry for which he is trained. He is a beaten man.

"The NLRB listened to the company and to the union," he muses. "They paid no attention to me. The little guy just doesn't stand a chance."

It's for the "little guy" that we need labor law reform.

ONE SOLUTION: FANNIN LABOR LAW REFORM BILL LIMITS UNION FINES

(NOTE.—Senator PAUL J. FANNIN, Republican, of Arizona, a former member of the Senate Labor Committee and longtime supporter of the Chamber's reform efforts, is introducing a series of bills to achieve various labor law reform objectives. In this article, Senator FANNIN explains how one bill, S. 424, would prevent inequities to union members.)

S. 424, dealing with the opportunity for unions to levy fines against members, is one of a series of bills which I have sponsored to protect the rights and privileges of the individual union member or employee.

This bill would amend the National Labor Relations Act to prohibit the levying of punitive fines by unions against members for exercising their rights under the Act. Presently a member may be fined by a union for simply doing what the law says he has a right to do.

Under this proposal, for example, a union could not fine a member for exceeding production quotas set by unions, nor could it levy a fine for crossing union picket lines, or filing decertification petitions to get rid of a union no longer representing the employee's best interests. Unions have even fined members who testified in proceedings before the National Labor Relations Board!

My bill would outlaw all such punitive union measures presently exercised against members when they utilize their legal rights.

The argument has long been advanced that a union should have the right to discipline its own members. I will accept that argument *if* the unions will allow a man to voluntarily associate himself—or choose not to associate himself—with the union. The big problem is that the unions want to have their cake and eat it, too.

It seems plainly unfair to me to require that a man join a union and then require that he agree with every action of that union or pay a fine. We are not just discussing token fines here. Some of these union-imposed levies run into the thousands of dollars.

It seems to me that unions which can compel payment of dues or their equivalent fees cannot be regarded in the same light as private voluntary organizations, which are, and should be, free to impose on their voluntary members any set of rules they choose.

Passage of this bill will carry out the intent of Congress that the rights given to unions should be balanced by an equally heavy scale of responsibilities.

HONESTY AND INTEGRITY AT AUGUSTA COLLEGE, GA.

Mr. TALMADGE. Mr. President, in these times of student turmoil and youthful unrest we hear too much, I believe, of those young people who erupt in violence on college campuses and in the streets, who seem bent on the complete disruption and even destruction of society, and who have shown a total lack of integrity and responsibility in dealing with their own campus problems and the problems of the Nation.

It is, therefore, refreshing to read for a change of someone who stands taller and straighter than all the rest who have been making headlines across the country and to hear about a young man who demonstrates the honesty, responsibility, and perseverance that characterizes an overwhelming majority of American youth.

Danny Egan, a student from Augusta, Ga., having to work his way through Augusta College, happened upon a sack containing $4,000 in currency. No one was around and that money would have solved a lot of Danny's financial problems. But as we read in the Augusta Chronicle-Herald, there was a question of honesty and integrity.

I like to see things in the newspaper about young people who are too busy working to get through school to have time to riot and create all kinds of disorder. They set a very good example. They are the ones in whom I prefer to put my trust for the future of America, and not the others, the troublemakers and the rabble-rousers.

I bring the Augusta newspaper article to the attention of the Senate, and ask unanimous consent that it be printed in the RECORD.

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

HONESTY IS BYWORD FOR DANNY

So you think the younger generation is "going to the dogs?"

Take a look at Danny Egan, and you might change your mind.

Egan, 20, works nights at a local mill to pay his tuition at Augusta College. A couple of weeks ago he had a chance to make a quick $4,000, and he turned it down.

It never crossed his mind to do otherwise.

What happened was this:

Egan was reporting for work at John P. King Manufacturing Co., where his timekeeping job helps to pay the bills of today's higher education.

"I went up a couple of steps to unlock a door to the mill to get in," said Egan. "When I bent over to unlock the door, I kicked a sack. I saw that it wasn't empty, so I picked it up."

The bag was full of money.

Egan started counting it. The total came to $4,000.

There was a note attached to the money: "I stole this from King Mill and want to give it back."

Egan, son of M. Sgt. and Mrs. Joseph Egan of 3044 Jeanne Rd., tried to call his supervisor and, when that failed, he called the police.

No one saw Egan pick up the paper bag or count the money. He could have kept it, but the thought never entered his mind. There was no question of need. College would be out of the question without the job.

But there was a question of honesty and integrity.

So the money went to officials at the mill, who added it to the company's assets.

Authorities at the firm studied the note, but they were unable to find any leads in the scribbled note. The firm speculated that the money was repayment for stolen material, merchandise or cash taken many years ago. Egan was given a $100 reward.

Meanwhile, Egan continues to work his split shift at the mill, meeting his college bills and academic requirements on a schedule that leaves little free time.

So you think the younger generation is "going to the dogs?"

Take a look at Danny Egan, and you might change your mind.

THERAPEUTIC EQUIVALENCY OF DRUGS

Mr. NELSON. Mr. President, the issue of therapeutic equivalency as between drugs sold under their official—generic—and by their trade names has been a major matter of consideration during the

hearings of the Senate Small Business Committee's Monopoly Subcommittee which we have been conducting in our investigation of competitive problems in the drug industry.

The November 18, 1968, issue of the Journal of the American Medical Association carried as its lead article a paper entitled "The Generic Inequivalence of Drugs," written by Alan B. Varley, M.D. An editorial in the same issue of the AMA Journal was entitled "Generic Drugs and Therapeutic Equivalence" and drew a number of conclusions based in large part upon Dr. Varley's article.

Dr. Varley reported on a laboratory study conducted between "Commercial Tolbutamide Tablets" and "Experimental USP Equivalent Tablets." The only commercially available tolbutamide tablets in the United States are manufactured under the trade name of Orinase by the Upjohn Co. of Kalamazoo, Mich. Dr. Varley himself is medical director of pharmaceutical marketing for the Upjohn Co.

On the very same day that Dr. Varley's article was published in the AMA Journal, Dr. John G. Wagner, of the University of Michigan, College of Pharmacy and University Hospital, read Dr. Varley's paper before a national meeting of pharmaceutical scientists in Washington, D.C. While only Dr. Wagner's present affiliation was listed in the program, he had been employed by the Upjohn Co. until a few months earlier.

Dr. William Bean of the University of Iowa Medical Center testified before the Senate Small Business Committee's Monopoly Subcommittee on December 11 and referred to Dr. Varley's AMA Journal article. Dr. Bean testified that—

When influential M.D.s have important academic and administrative posts as drug promoters, the conflict of interest is automatic rather than merely possible.

Dr. Bean has also stated in a published article that—

A physician who is in the pay of a pharmaceutical manufacturer is in no position to keep public confidence in his objectivity.

The concern expressed by Dr. Bean to the Monopoly Subcommittee appears to have been neither idle speculation nor exaggeration. Dr. Varley's article had the professed purpose of denigrating the official compendium standards as evidenced by his repeated assertions that "USP-type specifications are clearly not a satisfactory answer." Dr. Lloyd C. Miller, the highly respected Director of Revision of the USP, has taken strong exception to the Upjohn Co.'s Dr. Varley's statements and has replied vigorously to Dr. Varley's attack on this world-recognized authority in the establishment of drug standards. Dr. Miller points out:

The pharmaceutical scientists of the USP try to set standards that will give the physicians reproducible results both between lots of a given brand and between brands of the same generic drug product.

Dr. Miller also points out that Dr. Varley, as a physician, has a personal professional responsibility to contribute in a positive way toward the improvement of USP drug standards. Dr. Miller also points out that the Upjohn Co. is the sole American manufacturer of this article and, as such, the company and Dr. Varley, as its representative, have a moral obligation to call any deficiencies which may exist in the USP standards to the attention of the USP authorities.

While it has been months since this article was published and even additional months since the study was conducted, it is my understanding that neither Dr. Varley nor the Upjohn Co. have as yet conveyed such information to the USP authorities. This is a typical example of the propaganda effort which the drug industry has been engaging in on a broad scale with the obvious purpose to destroy public confidence in the official standards and the general quality of drug products.

Dr. Lloyd Miller in a letter to me stated that:

This article reports nothing more than the successful execution of a pharmaceutical trick. For medical newsworthiness, it doesn't begin to compare with some of Houdini's exploits. Thus it seems to me that the Editor of JAMA is due criticism for assigning the lead-article position to this report and for making the very exceptional grant of 2-color treatment to the two charts. You may note the mention made of the fact that Mr. Graham of the Upjohn staff is one of the 60 members of our current Revision Committee. Mr. Graham was not aware that the article was in preparation and has been unable to obtain for our testing any of the two lots of Tolbutamide Tablets that Dr. Varley studied. In short, through accident or deliberate company policy, this attack on U.S.P. standards was planned to exploit the differences observed and to avoid making use of the most effective means of correcting them.

Mr. President, I ask unanimous consent that Dr. Miller's March 4, 1969, letter to Dr. Varley be printed in the RECORD.

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

MARCH 4. 1969.

ALAN B. VARLEY, M.D.
Kalamazoo, Mich.

DEAR DR. VARLEY: Perhaps the long delay in its arrival will be the only cause for surprise in our offering comment on your article, "The Generic Inequivalance of Drugs," *J. Am. Med. Assoc.* 206:1745 (Nov. 18) 1968 which obviously has the object of downgrading the U.S.P. Actually, we are not sure we would be writing had you not repeatedly included the name of the Pharmacopeia in your blanket condemnation of physical-chemical specifications of drugs and drug products. However, we do see other grounds for criticism also.

Clarification of the semantically muddled concepts of "equivalence" is a laudable objective; however, we wonder if at this stage the muddling is not far beyond the corrective efforts of any single individual. The Academy of Pharmaceutical Sciences has recently issued a draft of a statement and, in our view, that distinguished body has failed utterly to improve matters. Your former colleague, Dr. John Wagner, has perhaps kept you advised on that score.

On the constructive side, we believe that it would help greatly to reserve the word "drug" for the active agent only, and to use the term "drug product" for the drug combined with other ingredients in the form by which the drug reaches the physician, pharmacist, nurse, and ultimately, the patient. These two terms seem to be on their way to acceptance through rather consistent use by the Pharmaceutical Manufacturers Association, the American Society of Hospital Pharmacists' computer file of drugs, by FDA staff in recent talks, and in much of the recent, pharmacy-oriented literature. I am sure that, on re-reading your article, you would find it clearer if this distinction had been made, and we will use the terms, drug and drug product, in that context in the following comments enumerated below.

1. A general condemnation of "chemical" specifications (your last sentence) for drug products is not justified, we believe.

a. Pharmaceutical manufacturers generally have had excellent results in controlling batch-to-batch consistency of most of their drug products with physical and chemical tests alone;

b. Such tests are usually far more sensitive in establishing differences among drug products than clinical studies of therapeutic efficacy can possibly be. For example, with physical-chemical tests we can reasonably require that Aspirin U.S.P. be 99.5% pure acetylsalicylic acid and be sure that water accounts for almost all of the remaining 0.5%; with these same tests, we might require that Aspirin Tablets U.S.P. contain 99.5 to 100.5% of the labeled amount of pure acetylsalicylic acid—but this would scarcely be reasonable, since there are more variables in the manufacture of the drug product than in making the drug. Therefore, the U.S.P. standard for Aspirin Tablets, a *chemical equivalence specification*, sets 95% and 105% of the labeled amount as the limits on the content of pure acetylsalicylic acid. This is a reasonable production standard even though it represents a degree of precision quite beyond that attainable by measurement of therapeutic response. On the basis of some personal experience with tests of analgesics and other drugs, I suggest that your "ideal criterion for establishment of therapeutic equivalence—trial of comparative efficacy in appropriately disease-afflicted patients" is wholly unrealistic for distinguishing among Aspirin Tablets or for that matter, different formulations of most other drug products. In short, at best, physicians can seldom detect drug product differences of the sort generally picked up readily by properly chosen and applied chemical and physical tests.

2. Your general condemnation of "U.S.P.-type" specifications for drug products is not justified, in our view.

a. Equating "chemical" and "U.S.P.-type", as you have, betrays a glaring unfamiliarity with U.S.P. specifications. For reasons set forth above, the U.S.P. Revision Committee prefers the precision of physical-chemical tests whenever they are appropriate. However, numerous U.S.P. drug and drug product specifications are biological in nature, e.g. insulin, digitalis, tubocurarine, etc. Prior to the development of physical-chemical methods for quantifying cyanocobalamin, your "ideal criterion" was the best we could muster in standardizing Liver Extract, Liver Injection, and Crude Liver Injection on a batch-by-batch basis for nearly 15 years. The U.S.P. has a solid history of using the types of tests consistent with the expertise and scientific knowledge of the times which are best suited to the needs of the particular drug product.

b. We heartily agree with the substance of your comment that "The fact remains that it *is* (italics yours) clearly possible to produce considerable differences in both availability of drug to the human patient and in eventual therapeutic usefulness by making tiny changes in the formulation which are clearly within present U.S.P. chemical equivalence standards." In short, the ingenuity of our very talented pharmaceutical chemists can be put either to good or bad use.

In the light of this, what sets U.S.P. policy in this area? Briefly stated, the pharmaceutical scientists of the U.S.P. try to set standards that will give the physicians reproducible results both between lots of a given brand

and between brands of the same generic drug product.

All too often, physicians are of no help whatever in this regard. For example, there has never been an assay for Coal Tar because no one seems to know what it contains that accounts for its usefulness to dermatologists. Thus, in effect, neither the active ingredient nor its vehicle are standardized. As another example, the physicians on the U.S.P. Revision Committee have agreed that 1.1% of hydrocortisone acetate is a desirable amount of drug to have in an ointment but decree that the choice of base should be left to the individual prescriber for the particular condition he is treating and the area of the body being treated. We might elaborate at length on the differences, but the fact is that they are numerous and substantial. We have exchanged considerable correspondence with experts in your company on this very point.

There are U.S.P. scientists and practitioners who believe that every U.S.P. drug product should have a specified formula. The very thought of such a requirement would raise hackles a foot high all through the drug industry!

3. It should be recognized that tightening of standards is rarely due to physicians' requests as a result of therapeutic failures but nearly always to efforts of pharmaceutical scientists aimed at improving the product. A case in point is the dissolution testing which you report using with Tolbutamide Tablets. Studies of dissolution rates came about as a result of attempts to improve on the disintegration properties of tablets and to correlate those properties with absorption of the drug from the drug product into the blood.

I do not wish to imply that physicians are not interested in drug standards, least of all the physicians of the U.S.P. Committee of Revision. I am merely saying that the physical-chemical methods of the pharmaceutical scientist generally lead to more sensitive and precise standards for drug products than do any measurement of therapeutic response by a physician.

The foregoing applies to "availability equivalence." The pharmaceutical scientist can set dissolution rates which help to assure batch-to-batch uniformity of the drug product. Your article reported this as the distinguishing measurable difference between the two Tolbutamide Tablets discussed. Yet absorption does not vary consistently with differences in dissolution rates. When does a dissolution rate profile, obtained with a specific instrument and procedure, reflect real differences in availability equivalence? If we can establish that for a U.S.P. drug product, it will promptly become a part of the standard even if availability equivalence is *not* an indication of *detectable* therapeutic differences!

This position evolves from the conclusion that a dissolution rate test is a reasonable addition to the physical-chemical testing armamentarium, and that some day the art of therapy using that drug product may advance to a point of greater sensitivity in detecting therapeutic differences. Conversely, if availability equivalence can indicate therapeutic differences but no dissolution rate test can be devised which consistently reflects availability from different formulations of a particular drug product, the absorption test itself can become a part of the U.S.P. standard. Then the U.S.P. Revision Committee will have to decide how the standard shall be applied; i.e., whether all formulations of that drug product should meet a specific availability standard, or whether to allow variations in the rate of availability provided the label declares the rate for each specific formulation.

4. As a physician, *you* individually have a responsibility for U.S.P. standards.

a. In almost all other countries, an agency of the government sets the standards of quality for drugs and drug products. In America the professions do it (except for antibiotics and biologicals where, for one reason or another, a government agency has been given specific authority by the Congress). The United States Pharmacopeial Convention antedates both the American Medical Association and the American Pharmaceutical Association, not to mention federal food and drug legislation. The U.S.P. Convention is the only organization in this country based equally on institutions and organizations representing the scientist-educators and practitioners of medicine and pharmacy and supplemented by organizations of scientists of related skills. The members of the U.S.P. Committee of Revision, 20 physicians and 40 pharmaceutical scientists, are elected by the delegates from these organizations. Many of those elected are associated with pharmaceutical manufacturers, either at the time of their election or subsequently during their term of service. As a physician and as a researcher employed by a pharmaceutical manufacturer, you should have a special interest in ensuring that this professionally-responsible organization establishes the best standards for drug products of your manufacture. U.S.P. standards are not set by the U.S.P. staff; they are worked out through the concensus of the experts on each drug and drug product, whoever and wherever they may be.

b. At present, your company is the only American manufacturer of Tolbutamide U.S.P. and Tolbutamide Tablets, U.S.P. Therefore, our U.S.P. standards largely reflect the experience and needs of your company. If there is any deficiency in these standards, we would expect your firm to be the first to call them to our attention. As a matter of fact, the late Dr. Glenn Bond and Mr. C. Leroy Graham of your firm were elected to the U.S.P. Committee of Revision in 1960. In rendering service on the U.S.P. Committee, both distinguished themselves as first-rank statesmen. Mr. Graham also serves on the National Formulary Board and, furthermore, is a member of the U.S.P./N.F. Joint Panel on Physiological Availability, a panel which has been working diligently on the very object of your complaint.

The Panel has recently advised the U.S.P. and the N.F. to standardize on two dissolution test procedures from among the many which have been proposed. To build up experience and data, we welcome the receipt of samples of two formulations of any chemically equivalent drug product which have been found to provide consistent and significantly different blood levels.

Sincerely yours,

LLOYD C. MILLER, Ph. D.,
Director of Revision.

RICHARD GOODWIN DISCUSSES THE SOURCES OF THE PUBLIC UNHAPPINESS

Mr. McGOVERN. Mr. President, one of the most thoughtful and informed commentaries I have read in recent weeks dealing with the discontent and ferment in our society, is a piece by Richard Goodwin, entitled "Sources of the Public Unhappiness." The article appeared in the January 4, 1969, issue of the New Yorker magazine. I believe that this article, authored by one of the Nation's most brilliant and creative men, will be of interest to my colleagues. I therefore ask unanimous consent that it be printed in the RECORD.

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

SOURCES OF THE PUBLIC UNHAPPINESS

All political movements are efforts to redistribute power. That's all politics can do. It can't create wealth or bestow happiness. It can, however, grant to people and institutions the power to decide public issues that can affect our economic welfare, the physical setting of our lives, and even our personal contentment. The character of men chosen to hold office, the nature of the office, and the limits placed on the range of the officeholders' public actions often determine the substance of those decisions. That's why politics is important. The United States government has been unusually stable partly because political issues have rarely been discussed in terms of power. Candidates promise to help the poor or suppress them, to end wars or escalate them, to reduce spending or rebuild cities, and sometimes to do all these things at once. Rarely do they challenge the distribution of power directly, even though their policies may compel large shifts. (For example, in the course of fighting a depression the Roosevelt Administration took much of the power of economic decision away from scattered private centers.) This observation yields at least one useful dividing line between the blending concepts of evolution and revolution. Evolution occurs when power shifts in the course of an attack on particular problems. A revolution is a direct and explicit assault on those people or institutions that hold power in favor of those that want it. (Of course, particular grievances help trigger revolutions, as, in our own, opposition to British taxation became opposition to British rule.)

The temperament we brought from Britain, combined with extraordinary resources taken from nature and the Indians, has made us a rational and pragmatic people—the creators of an evolutionary nation. (That is not the whole story, of course, since it is possible to be rational and pragmatic in pursuit of foolish or monstrous goals, but one source of values is an acute sense of possibility.) Generally, we become aware of a problem, decide to solve it, and, in doing so, find that reason or expediency requires some change in the structure of power. We may set up a new government bureau or pass a law. Today, however, we are in one of those rare periods in our history marked by a large and serious revolutionary movement. There is serious discontent not only with what we as a nation are doing but with who is doing it. There is a challenge to the "power structure" itself, which means simply the methods, institutions, and people by which decisions affecting the public are made. We see this explicitly in the recent pronouncements by George Wallace, the manifestos of the New Left, and the demands of black militants. However, it is also a principal focus for the new politics of the middle class, as the response to Eugene McCarthy and Robert Kennedy revealed. Although this "movement" takes its tone and its issues from the nature of modern life, it returns us to the seminal debate between the forces of Alexander Hamilton and those of Thomas Jefferson. That, too, was a debate about power. Putting aside the relative merits of Jefferson's agrarianism and Hamilton's capitalism—both largely irrelevant—one side of the argument called for the centralization of power, in the interests of order and the economy, and the other, Jefferson's side, demanded the diffusion of power and the right of the citizen to participate in decisions, even at the price of economic efficiency. (Today's conservatives are trapped in the insoluble dilemma of demanding more order, even on a world scale, and less power for government, but when a choice is forced, they invariably prefer order; this is why the new conservatives, like Goldwater, are rejected by the old conservatives, like George Aiken, of Vermont—one lives by fear and the other by trust.) For years, textbooks have routinely praised Jefferson's idealism while asserting that Hamilton's view was the wave of the future, bound to dominate American devel-

opment for all time to come; Jefferson was a wonderful romantic, and Hamilton was the realist, and in proof of this historians invoke Jefferson's own conduct in the Presidency, which aggrandized the nation.

Whatever modern revisionists do to this traditional analysis, it appears that Jefferson's day may yet come. Much that he said, if it were stripped of eighteenth-century stateliness and equipped with one or two four-letter words, could be incorporated into an S.D.S. manifesto or shouted at a Yippie rally. For example, he warned, "Were we directed from Washington when to sow, and when to reap, we should soon want bread," and "When all government . . . shall be drawn to Washington as the centre of all power, it . . . will become as venal and oppressive as the government from which we separated," and "If ever this vast country is brought under a single government, it will be one of the most extensive corruption, indifferent and incapable of a wholesome care." And he stated his general principle of government by asserting, "It is not by the consolidation, or concentration of powers, but by their distribution, that good government is effected." (Almost a century later, Emerson added the advice to "do your thing" to this political theory, which also contained warnings against a military establishment, foreign involvements, and any use of coercive power.) Today, these Jeffersonian ideas have a greater vitality than at any other time since they were written. If anything, their relevance has been increased by modern technology, for it has stripped us of the protections of distance and time, which once compelled a certain diffusion of power.

The issue of power—who shall have it and how it shall be exercised—is the overwhelming political issue of modern times. In fact, it is far more than a political issue; it penetrates our social, economic, and personal life. Nor is it simply an American problem; it plagues the entire affluent West. And if it is different in the developing countries, that is only because they are preoccupied with urgent difficulties of poverty and oppression which we have largely overcome. Thus, their politics reflect more traditional clashes between economic and social groups. The issue, more than any other, explains the appeal and the ascendancy of Senator McCarthy and, more ominously, the attraction of George Wallace. It is now a source of enormous turbulence, but it can become the cement of a new style of national unity. The year 1968, with its monstrous dislocations, has forced this issue to awareness. The campaign against President Johnson was one of the currents that helped bare the roots of public unrest.

At the beginning of 1968, the country, although far from quiet, seemed set in a relatively conventional political pattern. The president would run for reelection, stressing his domestic accomplishments and defending the war in Vietnam. To those then in power and to expert outside observers, Senator McCarthy's campaign seemed a trivial and somewhat puzzling annoyance. The Senator himself said at first that his purpose was only to give people a chance to make a "reasoned judgment" about the war, to conduct a sort of "referendum" on Vietnam—and ultimately his campaign illuminated and reinforced an overwhelming public discontent with our policies in Vietnam. As he campaigned, however, it became apparent that the public unhappiness far transcended the war. If Senator McCarthy had campaigned on that issue alone, it is doubtful if he would have received more than twenty per cent of the vote. But other issues began to emerge. People were unhappy about our leadership, about the direction of our society, and about President Johnson personally. They gradually became engaged and then excited by the possibility, however remote at the time of the New Hampshire primary, that it was within their power to bring about change. McCarthy's campaign rapidly shifted to embrace these larger issues, placing less and less emphasis on the war itself. In the final two days before the vote in New Hampshire, his campaign repeated a single radio spot every half hour on every station: a voice simply urged, "Think how you would feel to wake up Wednesday morning to find out that Gene McCarthy had won the New Hampshire primary—to find that New Hampshire had changed the course of American politics." By then, there was little doubt that many of those who stopped to think would quickly realize that such an outcome would delight them. For the campaigners had uncovered the "gut" issue of 1968 in its most generalized and explicit form: the desire for change, and its mirror image of discontent with the present. Equally unanticipated, but inevitable in retrospect, was the arrival of students, first by the hundred and then in numbers so large that busloads were intercepted on the roads to New Hampshire because the campaign organization could not handle them all. They came because they opposed the war and the President, but they also came because they had an opportunity to share in the political process, to personally affect important issues. They participated for the sake of their convictions, but they also participated for the sake of participating.

As his campaign progressed, McCarthy introduced a new kind of discourse. He talked about the war and the cities and many of the classic political staples, such as taxes and inflation, but, in addition, he said that the role of government was to liberate people, and not to organize them, that the Presidency had assumed too great power, and that we were threatened by an arrogant and powerful military establishment. These were abstract ideas for politics, and perhaps it was as much the manner and style of the man as anything else that conveyed the message. He did not use the traditional rhetoric of the politician, and he did not feel compelled to present a program or an answer for every ill. But he seemed to be saying that our welfare and our lives did not have to be at the mercy of forces we did not understand and institutions and men we could not control. In so doing, he touched the most sensitive nerve in the American consciousness: the individual's desire for mastery over his own life and environment.

At first, people talked almost exclusively about McCarthy's appeal to the young, and today it seems we have come back to that misunderstanding by focussing on youthful protesters. However, much of McCarthy's support and most of his votes did not come from the young, or the intellectuals, or the liberals. His strength was among the members of the great middle class, the inhabitants of suburban America, who are—more than any other group—our rebels without a cause. The students and the urban poor do have a cause, or a multiplicity of causes: war and injustice and poverty. It is the middle class whose discontent and uneasiness lack aim, and some of whose members found through McCarthy a hope that purpose and value could be restored. How different this is from the usual political dogmas. For these supporters were not asking to be promised better schools or lower taxes, although they want them. They were looking for some way in which they could regain control of and play a real part in the enterprises of society. It was this same nerve that Robert Kennedy touched in two other groups—the blacks and the poor whites—when he talked of the need for community control and local power. No one was more surprised than Kennedy himself when he found that, next to peace in Vietnam, the words that brought the loudest response were a call for decentralizing the government—a term so ponderous that a skilled speechwriter would use it only when he was too tired to think of anything else.

It would be hard to overstate the extent to which the malaise of powerlessness has eaten its way into our society, evoking an aimless unease, frustration, and fury. It is probably least pervasive among the poor urban blacks, around whom so much of the surface debate about local control and Black Power now revolves. Their grivances are, for the most part, closer to the classic ills that the New Deal was designed to solve. They want jobs and decent homes, a higher standard of living, and freedom from the welfare bureaucracy. If a beneficent government were to provide these rudimentary components of the just life, it would meet most of the present demands of the black community. Of course, even among America's poor, questions of power are more important than they were thirty years ago. For the poor of today are inevitably caught up in the main currents of our society and partake of the general atmosphere of helplessness and drift, and the resistant nature of racial feelings is forcing black Americans toward a kind of separatism as an alternative to the assimilation that was their initial goal. However, these questions can be seen most acutely among those who are neither poor nor black—the American majority. Their psychological plight is both worse and more dangerous than that of the black militant leading a slum riot. For he at least has a cause and a purpose, an enemy, and comrades in the struggle. No such outlets and no human connections so satisfying are available to the man who lives in a middle-class suburb or a lower-income city apartment. And his discontents, unlike those of the poor, have real political weight.

It is impossible to provide an accurate and uniform description of a group of people as large and varied as non-poor Americans. For the most part, such an American commutes to a job that he may like or hate but is most probably indifferent to—indifferent not to the income status it provides but to the products of his labor. It is the job that counts, not the refrigerators or vacuum tubes he produces. He would be among a minority if he felt that his work made an improving difference to the life of his country or his neighbors. At home, he can either sit amid his many purchases or get back into his car and drive to visit friends. There is probably no place for him to talk, and, almost certainly, no neighborhood gathering place where he can meet with friends, discuss the day's events, and share in the satisfactions and concerns of community. If he stays home, he probably watches television, wishing both that he had something better to do and that he could buy the goods that float alluringly across the screen. It is this increasingly atomized and insulated existence that we have created with our wealth. And if this is the suburban man's life, how much less exciting is that of his wife. Perhaps she has gone to college. Yet she does not have a job, nor are there many outlets for her intelligence or her energies. She is expected to stay home, care for children, and shop and clean house, even though hospitals and schools and many other vital services are deteriorating for want of the skills she could provide. What an incredible monster women's education has become. We spend decades instilling the same values of competition and achievement in girls as in boys, even though we can clearly foresee an ultimate collision with the socially imposed responsibilities of housewife and mother and with the mythic compulsions of lover and servant-helpmate. Some of the most ambitious women in the world hasten to confide that they have an "Oriental" streak, as well they may have. The society that sets up this clash of desires provides neither daycare centers for children nor opportunities for the use and development by women of their wasted skills. The frustrations thus generated are aggravated by the absence, especially in our better sub-

urbs, of any communal park or neighborhood center where women can naturally meet and share experiences.

The life of the lower-income urban white shares many characteristics with that of the suburban citizen. However, the urban white is also trapped in a no man's land between black poverty and what he sees or imagines of middle-class affluence. He has the advantage of being able to express many of his wants in traditional economic terms. However, his discontent is fed both by envy of the more prosperous and by anger at the blacks—not just because he fears the blacks but also because their problems, and not his, seem to be the focus of national concern. That is why it was possible for many members of this group to support Wallace after having supported Robert Kennedy: both men, in very different ways, could be identified with their wants, and both conveyed a deeply emotional sympathy with the importance of their fears and their plight.

The unexciting and envy-producing tone of the non-poor citizen's private life is heightened by the growing remoteness of public life. The air around him is poisoned, parkland disappears under relentless bulldozers, traffic stalls and jams, airplanes cannot land, and even his own streets are unsafe and, increasingly, streaked with terror. Yet he cannot remember having decided that these things should happen, or even having wished them. He has no sense that there is anything he can do to arrest the tide. He does not know whom to blame. Somehow, the crucial aspects of his environment seem in the grip of forces that are too huge and impersonal to attack. You cannot vote them out of office or shout them down. Even the speeches of mayors and governors are filled with exculpatory claims that the problems are too big, that there is not enough power or enough money to cope with them, and our commentators sympathize, readily agreeing that this city or that state is really ungovernable. Even when a source of authority can be identified, it seems hopelessly detached from the desires or actions of individual citizens. Thus, the citizens of Boston woke up one day not very long ago to read that two hundred million dollars' worth of antimissile missiles were scheduled to replace hundreds of acres of nearby woodland. And who could say no? And who was asked? More grotesque and more shattering, we find ourselves in a major war, and our young people shipped off to battle, without any formal expression of consent or support, even by the members of Congress. And we are also aware, in some dim psychic recess, that our President, along with a few people whose names we can't remember, can blow us all up.

This powerlessness, in large measure a product of the complexity and the sheer size of modern society, is a problem in itself. It is a problem in the same way that lack of money or of useful work is a problem. For individuals have a fundamental, instinctive need for a degree of personal mastery over their lives and their environment. The sense of powerlessness is, moreover, greatly aggravated by the failure of our institutions and our social processes to respond to more specific ills. If we were providing good schools, inspiring cities, and safe streets, the degree of public discontent would be far less. If the quality of individual life were being steadily raised, we would be less concerned that we had little share in the process. But that is not the case. The desire to increase our national wealth and distribute it more broadly—a desire that was idealistic in origin and welcome in its consequences—led us to create machinery for both stimulating and regulating the economy. It is not simply that power was withdrawn from private centers and brought to Washington. It is that the use of that power was judged in terms of economic growth, which meant that construction, technology, and expansion were made into self-sufficient virtues. Build a better mousetrap or a bigger housing development and you not only made money, you were a hero of the Republic. Added to this were the exigencies of the Cold War, which persuaded us of the necessity of a large standing army. This was a historic decision, constituting the first irrevocable departure from almost two centuries of compliance with the warning of the founding fathers that such a military force would be a danger to democracy. The military-budget cutting of President Truman marked the last effort to return to the earlier tradition, and the farewell speech of President Eisenhower was an echo of those early warnings. The half peace of the past twenty years has made military forces essential, yet we are victims of some of the consequences against which we were warned. The military establishment has assumed a life of its own, developing more weapons and new ones, often unrelated to rational considerations of security, and, more subtly, leading policymakers to look at diplomatic problems in terms of force. After all, if you are the strongest kid on the block, any passionate argument is bound to evoke at least the passing thought that you could end it with a couple of blows.

Unfortunately, the policies and the institutions we evolved to make ourselves wealthy are not appropriate to the needs of a society in which lack of wealth is not the problem for the country as a whole or for most of the people. It is not simply that we need new values but that our institutions are facing demands they were never shaped to meet. A classic example is the federal housing programs, which were designed to stimulate construction and avoid a postwar depression, and which have failed miserably under the pressure of social demands for slum clearance and the creation of livable neighborhoods. These programs can do a job, but it is not the job we now need done. Moreover, many of our institutions, including our political parties themselves, are led by men who developed their ideas in response to earlier demands, and are therefore unable to understand or cope with a newer set of problems. The worst of these men no longer care for anything except the power and influence they have won, and the best of them are angry because their beneficient and humane intentions are not appreciated. The occasional violence of their response to opposition shows their unawareness that time and change, not particular individuals, have been their remorseless critics.

Asking many of today's institutions to respond to new needs is a little like putting a man on a windowsill and asking him to fly. not only he was not built for flight but if you keep insisting he's likely to turn around and punch you in the nose. When institutions and leaders are faced with demands they barely understand, their reaction is often to become rigid and defensive, and even angry. Perhaps the ultimate symbol of this reaction was the contorted fury of Mayor Daley at the Chicago Democratic Convention, lashing out at a group whose values and aims were totally alien to his experience. It is precisely this phenomenon that led Thomas Jefferson to assert the necessity of periodic rebellion. It seems almost inevitable that the repositories of power and control will react to changing circumstances and a changing environment by hardening their attitudes, narrowing the avenues of access for new ideas and men, and losing the flexibility that gave them their initial glow and effectiveness. What is even more ominous, beliefs that were once tentative and responsive to changes in circumstance tend to stiffen into dogma when confronted by conceptual challenge. When this happened in the nineteen-thirties, we were fortunate enough to get Franklin Roosevelt and a peaceful revolution. When it happened in the eighteen-fifties—a period like our own in many ways the system collapsed in civil war. Unfortunately, the profound nature of modern change resembles the eighteen-fifties more than it does the nineteen-thirties, and there is no Roosevelt in sight.

The same stiffening of established patterns invades the relationship between private institutions and the public interest. The basic pattern of government regulation of business has hardly changed for decades, although much of it is irrelevant, some is oppressive, and many new abuses are unrestrained. The Internal Revenue Code of 1954, despite its grotesque inequities—some of which are actually harmful to wealth and business—appears to be engraved in marble. We cannot stop incredibly wasteful subsidies to groups like the shipbuilders and large-scale farmers, even though their political power has almost evaporated, while at the same time it is extraordinarily difficult to supplement the income of more needy and numerous groups. No demonology of power and wealth can explain a rigidity that is part of a general resistance to new assertions of what is desirable and good. When we understand the fact that what now seems wrong may once have been right, then we can understand the fierceness of the defense.

Another example of this process in action is the Democratic Party itself. It has clung to the ideas and attitudes that made it the country's leading party, and its leaders, once ensconced, have clung to positions of control, often closing the door behind them. The result is that the governors of eight out of the ten largest states are Republican, and much of the vigorous new talent in the Congress is Republican. Increasingly, new Democrats" are coming from underpopulated states like Idaho, South Dakota, and Iowa, where they do not run up against rigidified Party structures. More harmful in the long run is the shift in the locus of intellectual debate. It seems that almost all the ideological ferment and the passionate clash of new ideas come either from the alienated left or from the alienated right. The once fertile soil of liberal and Democratic thought finds it difficult to produce new concepts or institutions, and its Presidential candidate could only—and with the best of intentions—point to the liberal past and promise more and better of the same.

This phenomenon is not just political. In almost every aspect of life, men are confronted by institutions and processes that seem unresponsive to their needs. There is, for example, no way in which the citizen can even begin to create a community—a place where he can both work and play in some kind of shared fellowship with neighbors. Our society is simply not equipped to deal with such a demand, and our political leaders are not even able to articulate it, since it transcends their own professional assumptions.

Powerlessness is made more acute by the seeming opposite of rigidity—by the swirling inconstancies of modern life. We are like boats tied to a riverbank with the rapid waters constantly seething beneath us while rope after rope breaks away. It is now commonplace to observe the weakening of the ties of family and community. However, it is not merely that we are being deprived of important values. These institutions, and others, gave us a resting spot, an association within which we could have some secure sense of our own value and place regardless of our fate in the world outside. In a more subtle and profound way, the increasing incredibility of religious doctrines and the complexities of science, which have made it impossible to understand the natural world, have deprived us of anchors against the storm of events. Even our physical environment has betrayed our memories. The other day, I drove through Harvard Square, where I had

gone to school ten years before. There were new buildings, shops, and roads. The familiar place of law-school days had changed beyond recognition. In fact, it did not exist. There was no place for the past, and the present, one knew, would also fade. Yet man has nearly always anchored his sense of reality, his sense of himself, to a fixed place, amid familiar landmarks. Our world has become nomadic as the scenery of our life is constantly shifted. It is small wonder if we sometimes feel as unreal as actors moving from part to part.

To all this is added the torrent of events: wars and riots, inventions and spaceships. One day we are informed that we must fear a man called Castro, on the next day that our security requires the end of strife in the Congo, and on the next that de Gaulle menaces the grandeur of our nation. And we pass through all this tumult, great and small, seated before the inexorable shadows of a television set—certainly the greatest psychic disturber ever created by man. Only it is capable of producing unrest, fear, and unbridled envy, and, at the same time, of numbing us to the human reality of that which disturbs us.

A people suffering from institutions that can't respond, problems that are virtually left untouched, and the myriad uncertainties of their own private and public existence must inevitably rise in protest. That is just what is happening in America. Frustration breeds anger, and anger has increasingly become a feature of our national life. Even people on the streets and in stores seem more easily provoked and more sullen. The most widespread reaction is a demand for change, coupled with an increasing dislike and contempt for those responsible for the present. Few people can be expected to have any clear idea of the direction that change should take. The problems are too far-reaching and profound. So they look for leadership. And precisely at this point in our history we lack the necessary leadership.

For a while, in the early nineteen-sixties, it seemed as if President Kennedy were moving toward new responses as the old dogmas of the Cold War and of New Deal economics gradually lost ground. Oswald prevented us from ever knowing how far and in what direction that movement would have continued. The assassin's bullet unlocked chaos, and thus his act became the most important historical event of our time. In the beginning of the Johnson Administration, it seemed as if this barely articulated movement would continue, but then the poison of Vietnam paralyzed act and attitude. Of course, the war cannot bear the responsibility for all our other ills. It has contributed to them by draining off resources and energies, and, most of all, by blunting our sense of moral purpose. But to a large extent it has only catalyzed an awareness of more profound problems and intensified a protest that reaches far beyond Vietnam. We can almost say of ourselves what Lord Radcliffe said of the Athens of Plato: "Failure abroad had led to failure of spirit at home and a democracy, so recently united, self-confident, and proud of its leaders, had turned to a rout of little men more anxious to blame others than to take responsibility upon themselves."

There is no more foreboding fact than the absence of leadership that combines insight and forcefulness. A people increasingly beset by restless discontent and uncertainty need leaders who can point out to them that exit from their malaise. Much of our present uneasiness has specific causes: the war in Vietnam and racial strife. However, much of it flows from the deeper causes I have discussed, and even the widespread discontent with the war and with Negroes and hippies is enormously magnified by broader dislocations. These objects of passion serve as a necessary focus for the general unhappiness, just as a man troubled by the general failure of his ambitions might turn on his family or his coworkers or his neighbor. The aimless and chaotic nature of the present unrest has profound political consequences, for it is basically non-ideological; it does not respond to traditional notions of right and left. It is often oblivious of the shibboleths and dogmas that encrust politicians who came to maturity in an earlier era. Thus, Eugene McCarthy called for the recognition of Red China, attacked the military establishment, and promised to fire J. Edgar Hoover without causing a discernible ripple of adverse reaction in his moderate, suburban constituency. Still, many who favored him voted for Richard Nixon, or even for George Wallace.

Even more dramatically, many of the lower-income whites who voted for Robert Kennedy in the Indiana primary and would have supported him for President voted for George Wallace. Yet one was the black man's champion and the other is his enemy, and race is supposed to be the most important issue in Lake County. The fact is that the search for leadership is not motivated by a desire to move to the right or the left, to the extent that those terms are relevant at all. It is manifesting itself as a demand for men who offer a sense of direction and purpose, who appear to possess guiding values and a philosophical insight into the nature of our problems. The majority of people have little interest in the customary catalogue of programs and promises. Indeed, they no longer believe in them. They do want someone who seems to know why we are in trouble and where we should go. This explains a large part of George Wallace's appeal. He analyzed issues with a simple clarity and proposed answers that were certain. In this respect, he was a leader. The one overwhelming consensus is in rejection of the present, and that was the decisive asset of Mr. Nixon's candidacy. In fact, many people are prepared to rebel against the entire system that has brought us to our present state of affairs. Part of McCarthy's appeal and much of Wallace's lay in the fact that these men appeared to stand outside the system. They did not talk in the increasingly hollow and banal rhetoric of most politicians. They spoke with candor, discussed new issues, offered fresh approaches. In different ways, each of them defied the traditional party structure, ignored the customary political rites, and incurred the hostility of party regulars. In McCarthy's case, his manner and language, although often abstract, conveyed a hope of beneficial change. Robert Kennedy's strength also derived not from his specific programs but from his manner, which radiated a passionate commitment to change. For the United States is prepared to move, and rather rapidly, either to the right or to the left. Or, in terms better suited to our time, it is prepared to move either toward repression or toward liberation. Tragically, both the leaders who promised most forcefully to take us toward liberation were removed—one by a bullet and the other by the Democratic Party. Now the President-elect, unless he is to prove only a transitional figure, will be compelled to initiate a process of serious change.

This is because you cannot simply soothe the discontent of today with traditional remedies. It is not only that many problems—the black ghettos, for example—will require immense efforts toward solution but that the forces that disrupt the mental peace of the more affluent have deep roots in our institutional structure and our historical circumstances. Race and Vietnam contribute, but we see a similar unrest all across the affluent West, in countries neither at war nor in the midst of racial conflict. In outlining some of the more subtle causes, I compared our present condition to that of the eighteen-fifties. The United States was then turning away from expansionist goals and responsibilities; the conquest of the continent was complete, and, for almost the first time in our history, we had no significant external ambitions or threats. In our time, we are similarly turning away from Cold War globalism, and, if we are lucky, Vietnam may prove the last convulsive gasp of that policy. In any event, we are now looking to ourselves more intently than before. Far more important in the eighteen-fifties was that, underlying all the crises and the violent turmoil, a new industrial age was making its glacial advance on the values of an earlier period, uprooting fixed ways of life, traditional institutions, and customary expectations. America was never to be the same again—a change that was not caused by the Civil War, but, rather, was undoubtedly productive of the rigidity of leadership and the human uncertainty that led to that war. In our time, also, a new type of society is tearing into the now settled patterns of the industrial age. It has never been given a name, for that is the historian's job. However, economic and population growth and changing technology and beliefs are creating a different kind of world, whether it is called the computer age, the atomic age, the media age, or simply the post-industrial age. This is a dislocation of a kind that is common to all periods of history but that happens only at long intervals in the life of a particular society.

It is a rhetorical cliché to point out that our world has grown small. That is obviously true in a technical sense. We can travel rapidly and communicate instantly. It is also true in terms of the concerns of foreign policy, although much of our feeling that we must necessarily be affected by events in every corner of every continent is surely a product of the simple fact that we know what is happening there, rather than of any ideological preconception or any concrete national interest. Yet for the individual the opposite is true. Our world is too big—too crowded, too abstract, too remote. Everywhere we go, the crowd of strangers goes with us, clogging our streets and our parks. Cities spread, computers perform their mysteries, world leaders cast their shadows and disappear. The comforting walls that set off a host of little worlds have been broken open, exposing to us a limitless and kaleidoscopic vista—one that is reflected in our fragmentary and borderless art and in the world of drugs. How many of us in turning inward to escape or make sense of a turbulent environment simply recreate external disorder, almost as if our time were now beyond intellectual grasp? That feeling in itself contributes to powerlessness. For understanding is a form of control, if often illusory, and when we cannot understand how things work or why they happen—whether laws of nature or the television pictures that are corrupting us—we feel helpless. Perhaps one can no longer understand the world—only experience it. If that is true, politics can offer no real answer. And we must also face the possibility that there are too many people—that only through organization, and its counterpart, coercion, can we maintain civilized order among so vast a throng.

Such philosophical reflections, however, are irrelevant to politics, which must assume that problems can be dealt with, and also, in our own national context, that individual liberty can be maintained. If the forces feeding discontent are as profound and powerful as I have suggested, then political thinking and, ultimately, national policy must move toward an entirely new dimension. The last time the American establishment thought seriously about national goals was during the late Eisenhower and early Kennedy years. The formulations from this period of the more enlightened and liberal politicians are already out of date. A strong domestic defense establishment, economic growth, NATO, and so on, though they are still with

us, barely touch the principal sources of our dissatisfaction. Other goals of that very recent time—such as the frantic desire to measure every national program, from education to overseas propaganda, in terms of competition with the Russians—are now irrelevant, and some are forgotten. Yet almost all our political leaders seem rooted in the old rhetoric, even if it is clothed in new facts and circumstances, and thus have lost their hold on the popular sensibilities.

The material out of which relevant national objectives can be shaped is at hand in the work of some social critics and a few economists, and even in the insights of a few of the more sensitive politicians. In the process, we must focus not only on solving "problems" as defined in the usual sense—education, pollution, and the rest—but also on the ways in which we solve them. This is a familiar idea within a democratic tradition that has, for example, valued many individual liberties above the alluring, if often illusory, efficiency of coercive techniques.

We have always placed certain abstract values—those which cannot be measured or weighed—above economic, logical, or physically tangible goals. Confronted with the overwhelming and uncertain complexities of modern life, and informed by a greatly increased awareness of our limited ability to predict or control the forces loosed by our obsessive industry and invention, we must add to the list of such values. They have traditionally included not only the rights mentioned in the Bill of Rights and allied civil liberties but equality of opportunity, the freedom to develop individual talent, and, more recently, freedom from starvation and destitution. And all these, imperfectly realized though they may be, still exert a powerful hold on our national thinking and shape our political rhetoric and policy. I have no wish to coin a new set of slogans, but certainly the individual must also have the freedom to share in those public decisions which affect his private life beyond merely casting a vote in periodic elections. This does not mean a plebiscite on every problem but, rather, a distinct prejudice in favor of community and neighborhood control. We should also be guided by a desire to preserve freedom from isolation, which means, at least, that environmental decisions should be shaped to re-create the possibilities of community and neighborhood life. It is equally important that the individual be given freedom to participate in the important enterprises of our society, from working in the underdeveloped world to improving the life of the ghettos. If citizens are to find a purpose beyond their daily lives, it will come from having a personal share in important public causes, and the causes must be large and worthy enough to tap moral will and energy. Only in this way can we combat the increasing isolation and remoteness that are eroding the moral drive of our society.

Much of this resolves itself into a widening of one of the oldest staples of political language: freedom of choice. For all the talk about our permissive society, that freedom has steadily narrowed. In fact, much of the release of inhibitions on private behavior is surely a reaction to the confinements imposed by our ideology and social structure. (Successful revolutions tend to be puritanical.) When a young man sees no alternative to spending his youth in a classroom and his manhood in a modern suburb, he may want to assert himself by growing a beard. Conversely, the students who turned out to work for McCarthy cut their hair and shaved not because of adult dictates but through self-organization and self-discipline. They were involved in something more important than this kind of assertion. These are trivial things, but they are tokens of the fact that much frantic liberation of private behavior is a futile effort to alter or escape the hardening mold that envelops social man. We virtually demand, for example, that a young man go to college, and beyond, if he is to have a job that uses his abilities, At one time, a boy could go to sea or go West or start working in a factory and still aspire to success in a wide range of demanding tasks. The fact is that a lot of young men would develop more fully outside the regular educational system. The answer is not simply providing more and better schools but making alternative institutions, training, and experience available, and making them acceptable to those who guard the gates to achievement. Similarly, by huddling industry, commerce, and even intellectual life together in great urban areas we have seriously limited the kinds of places in which a man can live. Much of this is a product of the obsessive urge toward system and order, and of the fact that as systems grow larger they swiftly outpace the individual imagination or intelligence and assume a conforming life of their own. It is almost as if our society were afflicted with some kind of compulsive neatness, which it equated with efficiency or high purpose.

The fact is that organizational neatness and central control not only limit human scope but are often inefficient. Government programs break down or prove inadequate not merely because they are badly conceived but because the problems they seek to deal with are far too large for the limited abilities of a few administrators. Even a genuine philosopher-king equipped by I.B.M. could not hope to deal with the varied complexities of dozens of American cities. Central direction is inefficient in a more profound way, too. Given human nature in the context of our society, such oppressive structures are bound to breed discontent. This discontent necessarily impairs our ability to solve problems and maintain traditional values. Restless and unhappy people cannot easily be persuaded to join in enterprises of high purpose, especially those involving sacrifice.

Unless we are to move toward repression, the political platform of the future must contain words still alien to serious public dialogue—words such as "community," "power," and "purpose." This does not mean we will no longer worry about matters like economic policy and defense. For large elements of our population, economic questions are still critical, although they are increasingly fused with other desires. However, since poverty or a low standard of living is not the root of much of our unhappiness, wealth and its distribution do not point the way toward a solution. Words like "community," "power," and "purpose" seem rather abstract and vague, but then so do more traditional goals, such as "liberty" and "opportunity." And, like these more familiar terms, they can be given concrete content, yielding specific and tangible programs. Effective government action toward these ends will respond to the demands of the subject matter, and not to any master plan for their attainment, just as devotion to liberty does not tell you what kind of speech can be restricted or whether the State Department can limit travel to Cuba. Without trying to anticipate a report by a future Presidential task force, I would like to discuss some specific examples, simply to show that they do exist.

Many of the programs designed to re-create community will concern the physical environment, although the power to act as a community and the consequent sense of shared purpose are also critical. This will require that we concentrate not on the quantity of construction but on assembling the components of daily living within an area that a man can comprehend and easily traverse. Along with housing should go hospitals and government services, recreation and meeting centers, parks, and, to the extent that this is possible, places of work. This does not mean breaking up our cities but restoring the concept of neighborhood under modern conditions—a place where a man can live with other men. Some of this is happening by itself under pressures of growth, as shopping centers move to the suburbs and industry seeks sites outside the city. This beginning can proliferate and expand through programs ranging from tax incentives for businesses resettling in residential areas to the construction of new satellite cities. Much can be done, for example, simply by changing and enforcing zoning ordinances, building codes, and tax laws, without a cent of public expenditure. There is a lot more to community than this. Its roots go into the powerful cementing emotions of pride, belonging, friendship, and shared concern, yet these, in turn, depend on the physical possibilities. Not only is it within our power to create those possibilities but it is probably a more practical course than our present unthinking and hopelessly scattered mixture of government programs and private enterprise.

Increasing the individual's power over the conditions of his life involves the blended methods of transferring authority, creating it where it does not exist, and lessening the coercive weight of the state. At other times, I have discussed the need for decentralizing the operations of government—allowing communities, private groups, cities, and states to make public decisions that are now vested in the central government. Although the Constitution contains a prescriptive mandate for a federal system, the actual distribution of authority and responsibility has been worked out over two centuries and is constantly changing. Today, for example, the federal government exerts a power over the economy that would have been inconceivable only a few decades ago. Decentralization is another remodelling of the federal system, and to achieve it will require a patient pragmatism. The state may be the logical unit for dealing with river pollution, the metropolitan area for transportation programs, the neighborhood for schools and even post offices. The general guide should be to transfer power to the smallest unit consistent with the scale of the problem. Many conservatives have welcomed the idea of decentralization, hearing in it comforting echoes of old battle cries about states' rights. They are mistaken, for decentralization, if it is to work, will require even larger public programs and even more money for public needs. Otherwise, the momentum on which local interest and involvement depend will be lost. Nor does decentralization mean the absence of rigorous national standards for the use of national revenues. For example, money given for education must in fact be used for education open to all. Such standards are necessary to protect citizens against unresponsive government, and local government against the pressures of private interests. Of course, even with decentralization, most people will not actually make decisions. Still, those who do not make them will be within reach of their fellow-residents of the community, and thus will be far more familiar and readily accessible than federal officials. This, in itself, will yield at least the potential of influence and effective protest, which may be as close as we can come to the ideal of the town meetings.

Power is conferred in other ways: by a government that feels compelled to explain its policies and intentions with candor, that seeks the counsel of informed private groups and citizens, and that adheres to an honorable observance of the separation of powers. It will also be yielded by increased citizen control over the private institutions and processes that often determine the quality of our private lives. It is incredible, for example, that private builders, acting out of purely economic considerations, should be allowed to determine the shape of our urban environment—that individuals unresponsive to the public will should decide how the public will live. In addition, the expanding machinery

of secret police, investigation, bugging, and wiretapping must be halted and dismantled. Fear and suspicion are the most paralyzing agents of all, and the most likely to provoke unrest.

The use of power is also an expression of purpose. All acts have their intention. But you can share in purpose without sharing in power. As a member of a society, the individual's pride and sense of well-being are inevitably enhanced or diminished by the purpose of his nation—what it stands for and where it is going. If money and power, self-indulgence and self-protection are the goals of our society, they will become the goals of its citizens, with damaging consequences. Nothing would do more for our national health than a feeling that we were engaged in enterprises touched with some kind of nobility and grandeur. It is this feeling that enriches the life of social man. Even the most pessimistic and critical literature written in other countries during their periods of greatness is infused with a sense of pride in the nation, despite doubts about, or even fierce opposition to, its contemporary acts. This sense of a noble destiny infused our country from the beginning, and in terms of our potential not only as a home for freedom and opportunity but as a guiding force in world affairs. Jefferson looked upon the United States as an example that would undermine despotism and monarchy; some of our other early leaders took a more direct hand by helping South American revolutionaries. This does not mean we must succumb to the naïve belief that it is possible to create a Great Society or a New Deal-style democracy among the varied cultures of the world, or that we should actively intervene to impose values bred of the American experience. However, our wealth and military power give us an unavoidable weight in world affairs. Therefore, it is unnecessary to decide the critical questions surrounding the wisdom of intervention in order to recognize that our acts are important to others. For example, when a military dictatorship takes over in an allied country, we can recognize it or not, suspend aid or continue it, continue preferential trading or interrupt it.

There is no way to avoid decision, since failure to act will have its own meaning. The issue is whether we base our policies on unthinking reflex and an immediate mixture of attitudes and interests or whether our acts are consistent with a long-range purpose. We may decide to adopt a less active and ambitious foreign policy, but we cannot do without any policy at all. And a foreign policy actively devoted to social justice, increased liberty, and the institutionalization of peace on a worldwide scale can enlist the best impulses of the American people. Such a policy often collides with the thinking of global "realists," who led us into Santo Domingo and Vietnam; who failed to maintain a constructive common purpose among the Atlantic nations while contriving such monstrosities as the Multilateral Force; who allowed the United Nations to become trivialized; who supported Batista and ended up with Castro; and who have been unable to bring about the control of nuclear arms, which is clearly in the interests of both great powers. In fact, "realistic" policy now seems to have become no policy at all, aside from maintaining the territorial status quo with the Soviet Union and China, and hoping that Israel will survive. It is a policy virtually without long-range goals or any clear perception of the social and political forces at work on other continents, and—what is more dangerous—without any guiding concept of the kind of world community in which we will be safest and most comfortable. This is the ultimate romanticism of the ostrich.

Without elaborating particular issues, and while recognizing the need for protection against force, we can assert that the most powerful global social force is the drive for recognition and fulfillment of popular needs and desires. This is a force fully consistent with our national values, and, therefore, one that we should support. This is what President Kennedy was trying to accomplish when, for example, he refused recognition to military takeovers in Peru and Honduras. It was believed not that our disapproval would change governments but that it would strengthen forces that, in the long run, might build a stronger and more congenial hemispheric community. This policy was later dropped in favor of dealing with the "fact" of military rule, which meant ignoring the first principle of good politics: Don't spend yourself on those who have nowhere else to go. We elected to play it safe even though we were already safe. This change in policy helps illuminate the truth that the basic obstacle to a foreign policy shaped by long-range purposes and resting on national values is not malevolence or a hidden imperialism, but timidity or lack of confidence. It is far easier to move from crisis to crisis than to act when events do not demand action. For decision and action create responsibility, and only men with some confidence in their own perception and judgment are willing to take such responsibility. Because our professional foreign-policy structure has been designed to discourage, and even to punish, those who disrupt the illusion of tranquility, only a President can compel a different course. Yet such inaction is fraught with danger. Many of our recent crises can be traced to a failure of consistent purpose during periods of relative calm. By allowing our relations with Arab leaders to deteriorate, we forfeited whatever influence we might have had to prevent war in the Middle East. In Santo Domingo, we failed in our responsibility to help improve the economic and social welfare of a people whose dictator we had helped remove. And if the siren announcing Armageddon ever sounds, it will probably interrupt some official as he explains to a crowded room why an arms-control agreement is too risky this year.

A foreign policy founded on traditional American values not only is wise but is essential to our domestic well-being, since shared purpose is the only enduring cement of national unity. In it lies our only hope of finding a moral equivalent of war—or, in this case, a partial alternative to domestic unrest and division. Of course, there is much within our own borders to capture the imagination and inspire worthy effort, but only for some, and, even then, probably not on a sufficiently large or lasting scale. We are so significant a nation that the nature of our role in world affairs must pervade every man's sense of himself as a citizen. John Kennedy's appeals to greatness and sacrifice evoked so strong a response not because they were expressions of a self-deceptive idealism but because they led toward the only realistic path for maintaining individual pride.

There are, of course, grave problems that do not fit easily into the rubric of power and purpose. One can add little to the interminable discussion of the race problem except to observe that politically there is no black problem at all—only a white problem. We can easily command the resources to meet the immediate needs and demands of black Americans. But we cannot do this until white Americans are persuaded of their responsibility to act. That will require more than public education and Presidential speeches. Unless we move to remedy the afflictions and grievances of white Americans, they will never consent to a concentrated effort in the ghettos. This is particularly true of the lower-income whites, who feel trapped in a relatively shabby material existence and a scorned social position. (A Chicago policeman said, pointing to the hippies in Grant Park, "I had to work for a living, and so did my mother, and look at those kids. They do nothing and they got an education." Then he joined the charge.) It is little wonder that this group turns its wrath impartially on Negroes and college students—a perfect combination for the Wallace appeal. Its members feel scorned by the upper middle class, and, at the same time, they are deeply envious. Meanwhile, the Negro is a constant object of national discussion and attention, and a recipient of special programs. Racial feelings are very resistant, but many obstacles would fall before a national policy directed at enriching the life of *all* our citizens. Without it, the barriers will continue to rise.

Another problem specific to our age is the incursion of a large military establishment into public life. This is not because generals are especially power-hungry or malevolent but because size and importance, especially when they are touched with permanence, necessarily bring power. Public men from Jefferson to Eisenhower have warned us about the perils of a large standing military. And now we have one. Nothing better illuminates the hazards of the systematic and efficient mind than the experience of the last several years. Robert McNamara not only enlarged our armed forces but rationalized them. Over the resistance of officers with little imagination, he unified the operations of the services, eliminated many old rivalries, and instituted the deceptive techniques of modern computer management. As a result, the military has more influence on public policy than ever before in our history. The power that was once held in check by rivalries and folk wisdom is now exerted as a single, fused force on the civilian economy and its decision-makers. Independent-minded and free-wheeling officers were moved into the background, lest they publicly challenge civilian leaders. The result was a group of limited and conforming men at the top who could envisage no solution to any problem other than the accretion and use of military strength. The trouble with yes-men is that they are likely to say yes to anything. The trouble with limited men is that they are likely to lack the imagination to see their limitations, or even to disbelieve their computers. And this is the first group of generals to come to leadership during our reign as a great military power. The Eisenhowers and MacArthurs and Ridgways, in their early days, always had to contend with severely limited resources, and therefore had to consider what they could do only with allies and what they could not do at all. The new group is accustomed to ever-increasing largesse and to having the power to bring about unlimited destruction at the touch of a button. The monstrous system created during the McNamara regime now has a life of its own. Civilians will make the ultimate policy judgments, but the sheer size and momentum of our military structure, the enormous investment it represents, and the needs of the industries dependent on it inevitably affect national decisions.

Thus, we continue to build new weapons and new systems constructed on the basis of the most rational considerations of cost efficiency but without any rational relationship to national security. Even McNamara himself was finally trapped when he was compelled, against his own judgment, to go ahead with an anti-ballistic-missile system. Yet the "Whiz Kids" laid the groundwork. Moreover, the very importance of our military machine means that generals no longer sit outside the door of our highest council ready to respond to technical questions. Rather, they share in policy discussions for which they have no qualification or experience. In doing so, they breach the oldest and most rigorous ethic of the American soldier. The Joint Chiefs of Staff advised that the Bay of Pigs might work, even though any hope of success obviously depended on the degree of political unrest within Cuba. More disastrously, we depend heavily on military men to tell us what

it might take to "win" in Vietnam, though such calculations should have been based on cultural, political, and human factors as well. Of course, civilian officials should not have listened. Yet it is very hard to avoid attributing some wisdom to those who control the enormous power that has occupied such a large part of the American consciousness in recent years, and who, moreover, can speak with precision of their capacities in so uncertain and chaotic a world. The temptation to heed those with answers is strong, and can subtly infect the most skeptical of minds.

The hazards of a large standing military ramify into many areas. It represents a constituency against arms control, not because generals want war or oppose disarmament on principle but because their necessary professional caution demands that they overestimate every advantage of a potential opponent and underestimate their own capacities. In narrowly professional terms, it is inevitable to estimate that any agreement is risky, even if the only reason for doing so is an assumption that the other parties to it would not agree unless agreeing gave them an edge. Also, the availability of force is a constant temptation to use it. Part of the reason we sent the Marines into the Dominican Republic was that we had the capacity for moving large numbers of combat troops with great speed. The buildup of our conventional forces and their increased mobility—which came into being for reasons involving the Soviet Union, many of which are now irrelevant—have made it more likely that we will use force. In view of our nuclear deterrent and our capacity for rapid mobilization, recent history lends strength to the belief that it may be riskier to have such forces than to go without. Here again, however, we have a conclusion that depends on admitting the human weaknesses of policymakers—a calculation that, because of its vagueness, cannot be used by rational-system builders. Thus, we can consider discarding the wisdom of our history because it can't be fed into the computers.

We cannot yet escape the need for military forces, but it will require leadership and authority of the most determined and enlightened kind to keep those forces in rational relationship to our need while we work toward arms control, spurred by the urgent awareness that men cannot be trusted with the power to destroy themselves. And that effort is obstructed not simply by cautious policymakers but also by a deeply troubling, elusive, and ambiguous phenomenon—the fear of nuclear weapons. Any observer must be struck by the difficulty of stimulating public support for arms control, or even of provoking widespread public discussion of nuclear weapons. One could attribute this to an indifference bred of acceptance if it were not for the force of the reaction that seems to await any political figure who touches the nuclear nerve. The day Curtis LeMay verbally toyed with nuclear possibilities, George Wallace's fortunes began to wane. Nixon's speech advocating nuclear superiority was certainly among the factors precipitating his near-fatal decline. Goldwater had to spend his entire 1964 campaign explaining that he would not drop atomic bombs. When President Kennedy advocated fallout shelters, he set off a popular reaction that had every Democratic leader on the phone to the White House and that ultimately caused cancellation of the program—and he was greatly surprised at the enthusiasm evoked by mention of the test-ban treaty during his 1963 trip through the Western states. Perhaps we can understand these reactions by recalling the late nineteen-forties and the early fifties, when the horrors of nuclear holocaust were a pervasive topic. Almost everyone must at least once have been struck with sudden apprehension at the sound of an airplane, or gone to sleep with the thought that all could be over before morning. One of the young girls who worked for McCarthy during his campaign told an interviewer of the air-raid drills in her grammar school, and how for a while she was afraid every time she heard a plane. Thus, the atomic age has been a personal emotional experience for many Americans, and even, perhaps, for most. After a while, such feelings are put away or repressed, but they are never eliminated. They lie under the surface of reason and memory, evoking hostility toward any who may touch them. Although such fears help keep the peace, they are also a barrier to the reminder implicit in mobilizing public support for arms control. However, despite the seeming lack of concern, any political leader can be sure that real achievement in reducing danger will be rewarded by warm and grateful relief.

The agency through which we can hope to formulate new policies is that strange American contraption the political party. My own repository of hopes for change is the Democratic Party, for the Republicans seem unlikely to discard their historical role as defenders of things as they are. Since Nixon's victory, political men have begun to discuss the future of the Democratic Party. Such discussion must come to grips with one essential fact: There is no Democratic Party. There is the party of Daley in Illinois and the party of the county leaders in New York. There is the fragile alliance of liberals and leaders in California, and there is Kennedy in Massachusetts. In the South, there is almost nothing left at all. It is a truism to state that American political parties are not ideological in nature, since they embrace many diverse groups. Still, in the past most elements of the Democratic Party agreed on certain broad goals and assumptions. There was, with some dissent, general agreement on the economic goals of the New Deal. It was broadly assumed that the Democratic Party represented the disadvantaged and the poor against the great interests, and that it stood for alliance and tolerance in world affairs. There was, in other words, a base of generally accepted belief and emotional attitude. That this has largely dissolved becomes clear when we compare the parties of Daley, Meany, McCarthy, and Kennedy. The cause of the dissolution is that the issues of the past thirty years have lost their vitality. The consequence is that the Democratic Party is little more than an institutional mechanism through which individuals hope to acquire public office. If the Democratic Party has a future, it will come not by raising more money or by hiring better advertising agencies but by developing a purpose and a program. I have outlined some of the possible elements of purpose and policy in support of which it might be possible to create a new, progressive coalition to replace the alliance of minorities, labor, and the South which has now fragmented and dissolved. The South has left; labor no longer exists as a coherent electoral force having divided into upper and lower middle class; and the minorities are often at each other's throat. A new coalition will have to be made up of the populations of the inner cities, including some lower-income whites, and of the new suburbs inhabited by those who work in offices, electronics factories, and so on. This is the coalition that both Kennedy and McCarthy were trying to build, with McCarthy moving inward from the suburbs and Kennedy outward from the inner city. Neither quite got across the bridge, but the fact that their divergent constituencies responded to men who stood for enlightened and progressive change is evidence that the possibilities of coalition are there. However, the issues that will unite these groups are not only traditional economic concerns—although there are specific economic problems that must be met—but issues of the type I have set forth. For example, both in the ghettos and in the suburbs there is a desire for increased control and power over local affairs and public policy. If I am right in the belief that such desires respond to deeply felt national needs, then failure to move in this direction will leave public-spirited men with no alternative but to try to form a new party to combat the forces of repression.

Finally, a few words of unsolicited advice to the next President. Since we need fundamental changes in public policy, it would be a serious mistake to begin the work of the next Administration in the traditional way: preparing budgets and policies for programs neatly tailored to old categories such as health, housing, and conservation. For the assumption of fundamental change is that the old categories and ways of looking at problems are no longer valid and that the structure of government itself is the treshold barrier to new approaches and policies. The powers of the Department of Housing and Urban Development, for example, are fashioned and limited in such a way that the Department cannot hope to deal with the problems of the city, however vigorous its leadership. The first task of a new Administration should be to construct institutions with authority and jurisdiction adapted to the policies they are to administer, and to concern itself with reallocating responsibility within the federal system. The secret of Roosevelt's success was his willingness to ignore or dismantle existing structures and to set up new ones, shaped to his purposes. Freud said that "anatomy is destiny." In government, structure is policy. If the existing structure of government is accepted, then serious change rapidly becomes impossible as bureaucracies, administrators, and ongoing programs begin to generate their inevitable and almost irresistible drive for survival. It is important to make structural changes early, and not only because a President is far more likely to have the necessary power at the beginning of his administration. The appointment of Cabinet officers, administrators, and even task forces immediately creates powerful vested interests. When a man becomes the chief of a large department, he assumes a new constituency of workers and bureaus, authority and appropriations. His natural urge, reinforced by the need to keep the loyalty of his subordinates, is to maintain his domain relatively intact and to minimize disruption and controversy. Thus, the Department of Labor under President Johnson fought against the poverty program, with some success, simply because it felt that it was the proper repository of such an effort. Examples could be multiplied. It would be a great mistake to misjudge the rapidity with which new men develop loyalties to old patterns, or the ability of an established bureaucracy to frustrate the most determined of Presidential designs. That is why the fundamentals of strucure must be determined before operations begin if there is to be a serious and effective effort to chart new directions for public policy.

This is little more than counsel to "think big," not in terms of huge expenditures or sweeping new programs but in terms of the hardest kind of innovation: liberating the public imagination from old categories, concepts, and structures. Our present inclination to look upon every national ill as a subject for federal action within the framework of existing departments is like trying to devise a way to go to the moon by putting a man in an automobile. We need not only new institutions but a fresh sense of which matters are appropriate to public action, and of where, within the federal system, responsibility and power should be vested.

Beyond such concrete and practical acts, there is a need to explore the deeper causes of our discontent. Again, as in the eighteen-fifties, we can sense that we are at the beginning of a new age—or, rather, a new way

of living—which is forcing its values and demands on a society not equipped to cope with them. This kind of dislocation, this gap between realities and custom, is characteristic of revolutionary historical periods. To pursue this analogy, the insulation and barrenness of the modern suburb are counterparts of the misery that enveloped the mid-nineteenth-century factory, and Mayor Daley is as one with the Southern agrarian in defending a system that history will find not to have been an unmixed evil. Without judging the efforts of men like Marshall McLuhan to abstract a single, seminal cause from the complexities of social change, we can agree with many that the ascendancy of technology is a principal feature of modern society. To that we must add growth, both of population and of our physical artifacts, such as houses, factories, and roads. The problem, however, is not technological but ideological. We are threatened not by our creations but by our beliefs. In another place, I have written, "All nations . . . are governed on the basis of ideas and values . . . which are not derived either from the necessities of nature or the command of God. If a man snatches his hand from a hot stove, that is not ideological. If he then decrees there shall be no more hot stoves in order to prevent burning, he has imposed an ideology (and one wholly alien to our own)." There is, for example, nothing in the development of the automobile which makes the clogging of our cities and the poisoning of our air logically inevitable. It is simply that we have preferred these consequences—perhaps without anticipating them—to restrictions on the use of automobiles.

No one has more bluntly stated the inward passion of the time than Lewis Strauss, who summed up the faith of two centuries when he was asked if nuclear physics might not have overstepped itself. "No," he answered. "I would not wipe out any part of it, not the bomb nor any other part of it, if I could. I believe everything man discovers, however he discovers it, is welcome and good for his future. In me this is the sort of belief that people go to the stake for." This is not a reasoned formula but an affirmation of an ideological belief verging on the mystical. Guided by such a belief, our society has developed virtually no mechanism for weighing technological change against the social consequences and enforcing its judgment. Only the great religious institutions engage in a similar process, and then, as in the case of Pope Paul and the pill, they are condemned because the values they seek to defend have lost their hold on men. This is not the place to pursue such philosophical abstractions. Yet they are at the heart of the problem. In political terms, we are barred from much effective action because we have not regarded human values—except for those related to survival, civil liberty, and prosperity—as appropriate objects of public protection. This reluctance to allow government to become concerned with the quality of individual life has its historical roots in a healthy fear of the state and a desire to insure secular liberty. It now works against us, having been outdistanced by our material circumstances. Thus, traditional principles of private enterprise join with modern construction technology to create suburban blight. But there is no inherent reason a builder should not be under as much compulsion to provide open spaces, parks, and community centers as he is to provide safe wiring and sound structures. We can also maintain that clear air and freedom of movement are as important to us as the economic advantages of urban concentration. On a broader scale, we need to reexamine all our institutions in order to determine whether what they do *for* people is worth what they do *to* them. This is not an easy job, especially since we must often match abstract or felt values against the formulations of logic and numbers. How, for example, does one explain an instinctive revulsion against the idea of a national computer center to store all the available information about every citizen, except to say that neatness and system and organization can be oppressive in themselves, and to draw upon our experience of human weakness to assert that increasing the capacity for control will increase the likelihood of control?

This kind of ideological reformation will not be easy for a people as little inclined to theory as our own. It will come, if it does come, in the context of relieving particular afflictions. Still, there is no other way that we can guide ourselves between the twin perils of uncontrollable turbulence and repression. We will be strengthened by the fact that such change corresponds to deeply felt human wants, many of which are manifesting themselves in our present disorders.

"WELL DONE"—PEARL HARBOR NAVAL SHIPYARD

Mr. FONG. Mr. President, after fire and explosions rocked the aircraft carrier U.S.S. *Enterprise* during flight operations in Hawaiian waters last January 14, causing 28 deaths and many injuries, Pearl Harbor Naval Shipyard was assigned its biggest repair job since World War II.

It is gratifying to be able to report that the shipyard has not only completed its task but completed it well ahead of schedule.

As a result the *Enterprise* was returned to service within 7 weeks—an accomplishment which has earned well-deserved praise for the shipyard and all personnel connected with the repair job.

The Shipyard Log, published at the Pearl Harbor Naval Shipyard, has printed in its March 7, 1969, issue an article and messages of "well done" from Adm. T. H. Moorer, Chief of Naval Operations, and Adm. John J. Hyland, commander in chief, Pacific Fleet.

I wish to add my personal commendation for the outstanding accomplishment. Pearl Harbor Naval Shipyard has again lived up to its reputation as a most efficient, dependable, and strategically important naval establishment.

I ask unanimous consent to have the article and messages printed in the RECORD.

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

[From "Shipyard Log" Mar. 7, 1969]

"WELL DONE"—U.S.S. "ENTERPRISE" BEGAN SEA TRIALS ON WEDNESDAY

We did it.

Every Shipyarder was entitled to throw his chest out with pride . . . and at the same time . . . to heave a sigh of relief on Wednesday morning, as the U.S.S. *Enterprise* moved away from the 1010 dock for her sea trials.

Despite the first estimates that the repairs on the *Enterprise* would take upwards of three months; and in spite of our revised estimates that the work would take ten weeks, the repairs were completed only six and a half weeks after we started the job.

Each of us has every reason to feel proud of our Shipyard's accomplishment.

Top credit, of course, goes to the men on the waterfront, who cheerfully worked 12 hours a day, seven days a week, to get the work done. Each of them earned praise for their spirit, initiative and craftsmanship.

Despite the long hours and the pressure of the work, Shipyarders aboard the *Enterprise* found time to work safely. The accident rate was 75 per cent lower than the Yard's overall rate.

Laurels should also go to members of all the Shipyard's departments—Design, Supply, Q&RA—who supported the workmen aboard the ship.

We didn't do the work singlehanded, however. Our achievement required the support of the entire Naval Ship Systems Command. Material had to be ordered and expedited, manpower loaned, design work provided.

Enterprise today has steel in her hull that was still iron ore on the day of the fire. It took almost the entire Navy industrial establishment, the United States Steel Company, and a huge assist from the Air Force, to get it here.

At one time or another, 101 workmen from the Puget Sound Naval Shipyard were employed on the *Enterprise*, as well as 45 from Hunters Point, 25 from Long Beach, 30 from Boston and six from the Public Works Center here.

A special tip-of-the-hat is due the ship's company. Without their whole-hearted assistance, the job could have never been done as rapidly.

There will be many more surface ships and submarines to repair and send back to the Fleet. But, no matter what the extent of the jobs the Shipyard is assigned in the future, for years there'll be men to boast, "I worked on the *Enterprise*."

"WELL DONE" CNO MESSAGE

The repair of *Enterprise*, returning her to service in only seven weeks—well before the original estimated date, is an accomplishment which is a source of great pride. This happy result could not have occurred without the wholehearted cooperation of our great Navy team, and I wish to particularly commend the Pearl Harbor Naval Shipyard and *Enterprise*. I also fully appreciate the efforts of the Commander in Chief Pacific Fleet, the Chief of Naval Material, the Commander Naval Ship Systems Command and all those subordinate echelons who contributed to this outstanding accomplishment. Well done to all.

T. H. MOORER,
Admiral, U.S. Navy.

CINCPACFLT MESSAGE

It was with great personal pleasure that I observed *Enterprise* depart Pearl Harbor. The successful and rapid repairs to this valuable ship were the result of a great team effort by Pearl Harbor Naval Shipyard and the *Enterprise* crew backed up by outstanding support from the material commands. I share the pride expressed by CNO and convey my own well done to all who contributed to this outstanding accomplishment.

Adm. JOHN J. HYLAND.

SCHOOL DESEGREGATION

Mr. MONDALE. Mr. President, I recently read a lengthy interview with Secretary Finch, on the Department of Health, Education, and Welfare, published in the U.S. News & World Report, and came away confused about a program which I have made a studied effort to understand. After rereading the interview, I frankly still believe I understand the title VI program and how the court decisions relate to it. But I seriously question whether Secretary Finch was fully informed when he granted the interview.

A few days ago, I placed in the RECORD

an editorial from the Atlanta Constitution and expressed my hope that the recent comments by the Secretary and the President could be interpreted to mean that there would be no further vacillation or indecision in the administration of the title VI school desegregation program. The U.S. News interview has again raised serious questions in my mind about this administration's commitment to the title VI program.

The tone of this interview is very defensive—almost as if the Secretary has been handed a program in which he has very little enthusiasm but which he will reluctantly administer because he is forced to do so by acts of Congress and decisions of the courts. One would like to believe that the Secretary of Health, Education, and Welfare would enthusiastically embrace this program, which, after all, is designed to help assure equality of educational opportunity for all American youngsters.

Any program devised by man can stand improvement, and I am sure that this one is no exception. But I question whether it is helpful for Secretary Finch to deprecate the conscientious efforts of those who worked in the title VI program before his arrival with statements that they have not been concerned about education. I am getting a little tired of his comments about "pushing additional buttons," the "chemistry" of each community, the "meat axes," the "sledge hammers" and all the rest.

I wish the Secretary would recognize—if he has not—the fact that black children are being cheated of their right to an equal education and focus upon this national disgrace instead of apologizing for why he must administer the title VI program. It is, after all, almost 15 years since the Supreme Court ruled that the dual, racially segregated school system is unconstitutional. And it's almost 5 years since the adoption of title VI as part of the Civil Rights Act declaring that Federal funds should not be used to support programs or activities which discriminate on the basis of race, color, or national origin.

Secretary Finch's predecessors—whether he recognizes it or not—have constructed a solid foundation upon which we should now be building in order to improve the title VI compliance program. The Secretary can count upon my support to help in bringing about improvements to hasten the day that equality of educational opportunity is a reality for all American youngsters. But, by the same token, he can count upon my opposition if he insists in dealing in cliches and failing to recognize the real issues in his discussions of this very important civil rights compliance program.

ADJOURNMENT UNTIL MONDAY, MARCH 17, 1969

Mr. BYRD of West Virginia. Mr. President, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 noon on Monday next.

The motion was agreed to; and (at 5 o'clock and 20 minutes p.m.) the Senate adjourned until Monday, March 17, 1969, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate March 13 (legislative day of March 7), 1969:

DEPARTMENT OF LABOR

Lawrence H. Silberman, of Hawaii, to be solicitor for the Department of Labor.

U.S. INFORMATION AGENCY

Henry Loomis, of Virginia, to be Deputy Director of the U.S. Information Agency.

DEPARTMENT OF COMMERCE

Larry A. Jobe, of Illinois, to be an Assistant Secretary of Commerce.

Myron Tribus, of New Hampshire, to be an Assistant Secretary of Commerce.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

William Hill Brown III, of Pennsylvania, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1973, to which office he was appointed during the last recess of the Senate.

U.S. ATTORNEYS

William F. Clayton, of South Dakota, to be U.S. attorney for the district of South Dakota for the term of 4 years, vice Harold C. Doyle.

George W. F. Cook, of Vermont, to be U.S. attorney for the district of Vermont for the term of 4 years, vice Joseph F. Radigan.

James L. Treece, of Colorado, to be U.S. attorney for the district of Colorado, for the term of 4 years, vice Lawrence M. Henry.

Harold O. Bullis, of North Dakota, to be U.S. attorney for the district of North Dakota for the term of 4 years, vice John O. Garaas.

Daniel Bartlett, Jr., of Missouri, to be U.S. attorney for the eastern district of Missouri for the term of 4 years, vice Veryl L. Riddle.

Richard Van Thomas, of Wyoming, to be U.S. attorney for the district of Wyoming for the term of 4 years, vice Robert N. Chaffin.

Victor R. Ortega, of New Mexico, to be U.S. attorney for the district of New Mexico for the term of 4 years, vice John F. Quinn, Jr.

Herbert F. Travers, Jr., of Massachusetts, to be U.S. attorney for the district of Massachusetts for the term of 4 years, vice Paul F. Markham.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 13 (legislative day of March 7), 1969:

DEPARTMENT OF STATE

Walter H. Annenberg, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Great Britain.

Jacob D. Beam, of New Jersey, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Union of Soviet Socialist Republics.

John S. D. Eisenhower, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Belgium.

INTERNATIONAL MONETARY FUND, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, AND INTER-AMERICAN DEVELOPMENT BANK

David M. Kennedy, of Illinois, to be U.S. Governor of the International Monetary Fund for a term of 5 years, U.S. Governor of the International Bank for Reconstruction and Development for a term of 5 years, and a Governor of the Inter-American Development Bank for a term of 5 years and until his successor has been appointed.

ASIAN DEVELOPMENT BANK

David M. Kennedy, of Illinois, to be U.S. Governor of the Asian Development Bank.

DEPARTMENT OF TRANSPORTATION

James D. Braman, of Washington, to be an Assistant Secretary of Transportation.

Paul W. Cherington, of Massachusetts, to be an Assistant Secretary of Transportation.

Secor D. Browne, of Massachusetts, to be an Assistant Secretary of Transportation.

DEPARTMENT OF COMMERCE

Kenneth N. Davis, Jr., of New York, to be an Assistant Secretary of Commerce.

James T. Lynn, of Ohio, to be General Counsel of the Department of Commerce.

Andrew E. Gibson, of New Jersey, to be Maritime Administrator, Department of Commerce.

INTERSTATE COMMERCE COMMISSION

Donald L. Jackson, of California, to be an Interstate Commerce Commissioner for the remainder of the term expiring December 31, 1973.

OFFICE OF EMERGENCY PREPAREDNESS

James D. O'Connell, of California, to be an Assistant Director of the Office of Emergency Preparedness.

U.S. TRAVEL SERVICE

C. Langhorne Washburn, of the District of Columbia, to be Director of the U.S. Travel Service.

CORPORATION FOR PUBLIC BROADCASTING

Albert L. Cole, of Connecticut, to be a member of the board of directors of the Corporation for Public Broadcasting for the remainder of the term expiring March 26, 1974.

DEPARTMENT OF TRANSPORTATION

James M. Beggs, of Maryland, to be Under Secretary of Transportation.

FEDERAL HOME LOAN BANK BOARD

Preston Martin, of California, to be a member of the Federal Home Loan Bank for the remainder of the term expiring June 30, 1970.

DIPLOMATIC AND FOREIGN SERVICE

The nominations beginning Lloyd C. Burnett, to be a consular officer and secretary, and ending Robert B. Bannerman, to be a consular officer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 6, 1969; and

The nominations beginning Alfred L. Atherton, Jr., to be a Foreign Service officer of class 1, and ending Joseph L. Romanelli, to be a Foreign Service officer of class 6 and consular officer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 9, 1969; and

The nominations beginning Gilbert F. Austin, to be a Foreign Service information officer of class 1, and ending Mary C. Smith, to be a Foreign Service information officer of class 6, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 9, 1969; and

The nominations beginning John E. McGowan, to be a Foreign Service information officer of class 1, a consular officer and a secretary, and ending Jean Elizabeth Mammen, to be a Foreign Service information officer of class 6, a consular officer and a secretary, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on January 19, 1969.

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

The nominations beginning Eugene A. Taylor, to be captain, and ending Newell W. Wright, to be ensign, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 10, 1969.