not rich, the nonrich collectively own many assets.

We have come a long way from the time three decades ago when F. A. Hayek said something about the road to serfdom. A serf was a person who did not own his own labor. Although he was not himself owned by another—that is, he could not be bought and sold like a slave—the feudal nobility, the state of that time, had rights over the serf's labor. When we say that a peasant was enserfed, we mean that he owed a certain amount of his working time to the state. Over time and regions this obligation averaged about one-third of a serf's working life.

The serf's position provides a perspective that lets us sum up the success of reactionary forces in this century in simple economic terms. In 1929 government in the U.S. had a claim to only 12 percent of the national income. By 1960 government had a claim to 33 percent of the national income. By 1976 government had extended its share to 42 percent. In relative terms our position today is worse than that of a medieval serf who owed the state one-third of his working time.

Many may reject this parallel. They may say that we have a democratic government controlled by the people, and that high taxes and big government merely reflect the voters demands for public goods in the public interest. Such an argument is reassuring but problematical. The income tax was voted in under one guise and retained under another. Furthermore, it was the action of a past generation. For us it is an inherited obligation, as were feudal dues, and it is seen that way by the Internal Revenue Service. All of us have been born to the statist gospel that government is the instrument of social progress. Any clamors for tax reduction are translated into proposals for tax reform, which are further transformed into proposals for securing more revenues for government. As we hear the talk about tax reform and "equity," we might pause to consider, if our cultivated progressive image will allow, that "equity" means more taxes on the productive to provide the revenues that build the spending constituencies of Congress and the federal bureaucracy. What is operating is not equity, but the government's self-interest.

The advent of several major tax increases in tandem will destabilize the economy, but from the government's perspective that is desirable. There will have to be more government programs to deal with the consequences of instability. Every sophisticated person is aware of how special interests use the legislative process for their own benefit, but the same sophisticate is badly schooled in how the legislative process furthers the special interests of those in government. Inflation leads to the imposition of wage and price controls and credit allocation, all of which increase the spoils, money, and influence divvied up in Washington. Unemployment means more CETA jobs and public works, and what member of the government class is hurt by that? Put simply, instability increases the demand for the services of bureaucrats and for pork-barrel legislation that builds the spending constituencies of both Congress and the Executive branch. It advances the careers of academics and technocrats who move back and forth from their think tanks and universities and in and out of government.

Perhaps all of this won't come to pass all at once. Government might so engorge itself with Social Security and energy taxes that it can't reach the tax-reform dish. Or perhaps in a last-gasp effort the vested interests of old will flex their flabby biceps and hammer through a tax cut that will stave off enserfment and economic stagnation for a while longer.●

LEONARD LEVY CELEBRATES HIS 75TH BIRTHDAY

HON. HENRY A. WAXMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 7, 1978

● Mr. Speaker, the American Trade Union Council for Israel Histradrut will hold its annual labor management dinner dance on May 13, 1978, in Los Angeles. A most happy and appropriate choice of the person to be honored this year is Leonard Levy. Devoting almost half a century to the needs of working people. Leonard Levy will be celebrating his 75th birthday on the date of the event. The positions he has held, and is holding, and his community activities have certainly earned for him a place high on the list of those who work for the betterment of their fellowmen and women. He is vice president of the Amalgamated Clothing and Textile Workers Union, AFL-CIO; manager of the West Coast Regional Joint Board and of the Southern California Joint Board, ACTWU. In addition, he has been a vice president of the Los Angeles County Federation of Labor since 1957, and a member of the executive board, Federacion Interamericana de Trabajadores de la Industrial Textil, Vestuario y Cuero (Interamerican Textile Leather and Garment Workers Federation) Bogota, Columbia, since 1976.

Leonard Levy was a member of the Los Angeles City Planning Commission from 1973 to 1977, vice president of the Greater Los Angeles Industrial Union Council, CIO from 1949 to 1957, and executive vice president, Retail, Wholesale, and Department Store Employees Union from 1942 to 1949. One would assume that Mr. Levy, constantly occupying positions which demand vastly more for their proper administration than an 8-hour day, would have little time or energy left for outside endeavors, but this has not been the case with Leonard Levy. His other activities include service as a member of the regional board of directors, Jewish Labor Committee (1951–1971); member of the administrative board, Israel Histradrut, Los Angeles (1955–), vice chairman, Californias for Liberal Representation (1965–), member of the board of directors, Americans for Democratic Action, Southern California (1968–), delegate to the Democratic Party National Convention in 1968 and 1972. He is a member of the Workmen's Circle, the National Association for the Advancement of Colored People, and of the American Civil Liberties Union.

Naturally, looking at this most impressive list of Leonard Levy's services, we are not surprised that he has received recognition for his work. His awards include the Meritorious Award for Distinguished Service Greater CIO Council (1949–59); the Distinguished Service Award as chairman of the Education Committee, Los Angeles County Federation of Labor AFL–CIO (1963), and a citation for distinguished service to the Israel Histradrut Campaign (1966).

Now, the American Trade Council for Israel Histradrut is carrying on a tradition by honoring Leonard Levy once again. His wife, Sandra, and his two children will, we know, be sharing with all of his many friends the pleasure of his being honored. I ask the Members to join with me in congratulations to Leonard Levy on his 75th birthday celebration.●

SENATE—*Wednesday, March 8, 1978*

(Legislative day of Monday, February 6, 1978)

The Senate met at 12 noon, on the expiration of the recess, in executive session, and was called to order by Hon. WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

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

Gracious Father of our spirits, amid the darkness and discouragement of these stressful days Thou standest sure, the same yesterday, today, and forever. We know not what the future holds, but we know who holds it. We put our lives in Thy hands and our work under Thy direction.

Today is ours. Help us to seize it, to command it, to shape it to Thy purpose. Strengthen our weakness. Sharpen our intellect. Steady our wills. Breathe upon us Thy benediction that we may work as best we may, confident that the kingdoms of this world shall yet become the kingdom of our Lord, in whose blessed name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 8, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. PROXMIRE thereupon assumed the chair as Acting President pro tempore.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in legislative session, that the legislative Journal be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, which the clerk will report.

The legislative clerk read as follows:

Executive N, 95th Congress, 1st session, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

The ACTING PRESIDENT pro tempore. The pending question is on amendment No. 64, by the Senator from Alaska (Mr. STEVENS); but under the previous order, the Senator from Mississippi (Mr. STENNIS) is recognized.

Mr. STENNIS. Mr. President, what is the pending business in the Senate, please?

The ACTING PRESIDENT pro tempore. The pending business is amendment No. 64, by the Senator from Alaska.

Mr. STENNIS. As I understand, we are not speaking under a time limitation. Is that correct?

The ACTING PRESIDENT pro tempore. The Senator from Mississippi has no time limitation. Once Senator STEVENS begins speaking, there is a time limitation.

Mr. STENNIS. Mr. President, first, I want to express my very warm appreciation for the opportunity to address the Senate without a time limitation, but I can assure the Senate that I do not expect to take a great deal of time.

I will be glad to yield if someone wishes me to yield, but I would like a chance to complete my speech before I yield, unless something of an urgent nature might arise.

Mr. President, the quality and the completeness of the discussion of this very grave issue and pending question has been of the very highest order. Even though we could have had circumstances under which there could have been better attendance, I am one of those who know the pressure on the membership because of all the hearings that are going on now with reference to legislation, including appropriation bills. These bills become more and more demanding every year as they are considered by the respective committees. I am sure that all Members of the Senate have kept up with this debate, nevertheless, and are becoming fully informed on the subject.

AN UNNECESSARY GAMBLE

Mr. President, the title I have given to my fairly brief remarks today is "An Unnecessary Gamble." After more than just ordinary consideration of this matter, those words seem to be what I think the situation adds up to—that the treaties are fraught with a great deal of uncertainty and chance, and it is unnecessary to ratify a treaty that has the content that this one has, and I will elaborate on that part of it later.

Recently, Mr. President, I spoke at some length on the financial issues related to these Panama Canal treaties. I am concerned with the cost, and I am concerned with the potential for disagreement between our countries that will arise because of the vaguely worded and misunderstood financial provisions of the treaties. When I say "our countries," I mean, of course, Panama and the United States.

But my gravest concern is that these treaties are an unnecessary gamble with our national security interests. I have heard all our current Joint Chiefs speak in support of the treaties, and I understand their position; but, with great deference to them I cannot understand nor can I agree with the logic that leads them to support the treaties. All the Joint Chiefs agree that the canal is extremely important to the national security interests of the United States. They would prefer to maintain a U.S. military presence in Panama for the indefinite future.

Mr. President, I have said many times privately and in our committee—and perhaps publicly—that I do not know of any time when we have had a finer and a more capable group of men for our Joint Chiefs and Chairman than we have now. They represent the four services, including the Marine Corps. They are highly competent and dedicated, of course, and they have made a good team. It is no reflection on them to say in this sort of situation—the President of the United States being not only the President but also the Commander in Chief of all the armed services—if the chief of one of the services cannot find himself at some ease with a major policy of the President, there is nothing left for him to do except to ask to be excused from further service.

That is a part of the system, as I said. It is fully understood, and it has worked all these years.

I am sure that from time to time even our finest military men have to yield in part, sometimes in great part, in their judgment. I am sure if either one of these men thought, though, that this was a great harm or could be a fatal harm to our Nation that they would have asked to have been excused.

So I have no complaint with the Joint Chiefs. I do point out their fine work, but I do have to point out that they are part of the executive branch of the Government, and the Constitution of the United States does not put the Members of this body in the same group with the Joint Chiefs.

The Constitution of the United States expressly adopts this body as not only the judge, but the final judge, of the validity and the wisdom of a treaty with a foreign nation.

The Constitution not only makes the individuals serving here now the final judge, but it does not include the House of Representatives, just as capable a body and just as capable men.

We are acting now in our sole responsibility as Members of the legislative branch of the Government, as Members of the U.S. Senate. On this we are here solely to judge the wisdom, and the propriety, and the timeliness of this particular treaty.

Now, Mr. President, there is no guarantee that Panama will be satisfied if these treaties are merely ratified. To the contrary, I think the treaty language may generate increased friction between our governments. Certainly I do not want it to, should the treaty be approved, and I am not positive it will if the treaty is approved, but I am compelled to say that I think this treaty language may generate increased friction between our governments.

Nowhere do I undertake to castigate or downgrade that fine country of Panama, cast any reflections on them or on their prerogatives. This matter is too serious a business for anything of that nature. But Panama seems to expect that these treaties will provide a financial windfall of a kind—and I use that term in its better sense—a financial windfall of a kind that may well not happen.

It appears to me that we are hastily taking a gamble, and an unnecessary gamble, with our national security, Mr. President, not only unnecessary but with the odds too high and leaning against us.

I would like to develop the key components of the national security issues: First, and again, I want to dispel any doubt about the importance of the Panama Canal to our national security interests. I warn now, let no Member of this body discount too much the importance of the Panama Canal.

I next want to dwell a moment on a common misconception that the canal is ultravulnerable, even indefensible.

Finally, I want to look briefly at the necessity for a long-term U.S. military presence in Panama.

Today the Panama Canal is more important to the national security interests of the United States than it has ever been, and its strategic importance will continue to grow with the foreseeable future.

Three factors combine to substantiate this growing importance. Certainly this illustrates that we are living in a different world from what it was even a few years ago. First, it is a fact that the U.S. Navy has less than 500 ships today as compared to nearly 1,000 ships only 10 years ago. Certainly, that is not the only way to measure a navy, nor the effectiveness of a navy. But it is just a physical fact of life to find that we have entrusted our naval power to a greatly lessened number of individual ships.

Most contingencies involving our naval forces require that the Atlantic Fleet reinforce the Pacific Fleet or vice versa, and the Panama Canal is a vital link. Every ship now in our inventory, every ship except the aircraft carriers, the larger ones, can transit the canal, and this includes the newest LHA, large new ships that carry our Marine "con-

tingency forces," which are so important to our contingency plans.

Despite the fact that our Navy is now smaller than it has been since World War II in numbers strength, our globe has not shrunk. Today it would add 3½ weeks and 8,000 miles to the transit between oceans if we did not have the Panama Canal.

Second, the threat to our naval forces is the greatest now than it has been since World War II, and that threat is growing.

Admiral Holloway, presently the Chief of Naval Operations, in recent testimony before the Senate Armed Services Committee, said that it was his estimate that, and I quote him:

> If current trends are allowed to continue, the balance of maritime superiority could tip substantially in favor of the Soviets in 10 years.

Now, there is something we could and should do about those things, apart from the canal, but that statement ought to be a valid warning that time can run out. And, more particularly, this is no time to be weakening in any substantial way any sea passages that are to our advantage, particularly one we now control.

In time of national emergency, the availability of the Panama Canal could be decisive if we are to be able to counter the growing Soviet threat. That threat is certainly increased by the presence of a Communist Cuba astride the Atlantic approach to the canal. Cuba, a Soviet satellite, now has over 30,000 military troops in faraway Africa, and is growing in military sophistication each day. Who would have dreamed of a situation like that coming true? Who would have dreamed of it, just a few years ago? Certainly it tells us today, "Do not go too fast, and do not go too far in assuming that if you pull out of that canal some other powers are not going to immediately try to find a way to come in." Those with the power and enough cooperation will find a way to come in. They will get in.

How can we ignore that fact?

Thus, the Soviets have a growing, active, vigorous satellite here in the Western Hemisphere, eager, as I believe, for us to depart and give up the canal. In surrendering the canal, we are surrendering strength, we are surrendering position, we are yielding an element of preparedness.

No one has argued against that fact. The Joint Chiefs did not argue against it. They said "but" and "however" and so forth, but they did not deny the forceful strength of this position here. I have no doubt we are creating a possible hazard and an added trouble area.

Talking about trouble, now: I believe it is possible for us to settle any differences that we have with Panama without just a lock, stock, and barrel surrender, without getting off the premises. Because I believe that if we get out now, the great chances would be 20 years from now, we would be told, "You are out, you stay out."

Finally, as our adversaries become better equipped and more sophisticated, the time available for us to prepare for any engagement is shrinking.

Let me say before I leave this Soviet-Cuba matter, Members will recall, I am sure, that they have never heard me stand here asking for appropriations, asking for authorizations, or asking for manpower, harping eternally on the Soviet threat, saying "We better do this and we better do that." I do not habitually clothe the requests that I make here in connection with the military in such terms or in emergency calls of that kind. I have not just blundered in here conveniently with this argument about Cuba and the possibilities that they may get in their minds, or their temptation to make a move.

Many Senators are here now who were not here during what we called the Cuban crisis. None of us who was here then believed that such a thing was going to happen, such facts as brought about that crisis. But it did. It came about. Fortunately, it was handled well. But it was not handled by negotiation, either, or by getting out of Cuba. It was handled on altogether another plane.

I regret, and I am sick at heart, to see us here, as it were, deserting our position in Panama under the set of facts that exist today, and under the terms that are in this treaty, although it was negotiated in good faith, I am sure, by very honorable and able people, and I make no attack on them.

As I said, as our adversaries became better equipped and more sophisticated, the time available for us to prepare for any engagement is shrinking. This can best be seen in our NATO contingencies, where planning that was formerly based on weeks and months of preparation—mobilization of men and equipment—is now down to hours and days. This is one of the tremendous changes that have been brought about in the last few years. Without the Panama Canal much of our Navy would not be available at the critical opening round of an engagement. As Admiral Moorer so aptly states, "our contingency plans collapse" without the Panama Canal.

Think of that. Admiral Moorer is a fine naval officer, with no grievance against anyone or anything, with a great, distinguished, outstanding military career, having attained what is supposed to be the highest rank and position of any military officer, Chairman of the Joint Chiefs. If I may make a personal reference, he was Chairman of the Joint Chiefs during a part of this war in South Vietnam. And I remember that I was not the only one who went to that man from this body, time and again, for advice from his head and from his heart, for advice and counsel from him in his professional and his—political is not the word—governmental position. Not only because of his position, but going to him because of the character of the man.

I know I made some far-reaching decisions as far as my position was concerned, and positions that I came to this floor later and argued for to this great body, were based primarily on the advice and counsel of this same Admiral Moorer. That was in cases where I had been to him even beyond the President of the United States.

Admiral Holloway, now, our present valued Chief of Naval Operations, said in testimony before the Senate Armed Services Committee that the canal was extremely important, but it was not "vital," in his opinion.

I am not pitting those men one against the other; the very opposite. And during our hearings, any effort by anyone to pit one witness against the other was discouraged, and in effect ruled out of order by the chairman, because that was not our purpose, and neither was it fair.

So I would not come here trying to pit one against the other. Admiral Holloway said he did not want to give up that military position there and would rather keep it, and Admiral Moorer has testified, as I said, that upon leaving there our contingency plans collapsed. His testimony throughout was in opposition to this treaty in its present terms.

In all of the vast preparations as to the defense of Western Europe, and we have been pouring out billions there for years and years and years—almost 30 years—under the NATO alliance, the most uncertain and unknown element of our defenses now is the question of warning time, and this is the very point that this treaty causes and increases the problems. This treaty increases that problem automatically. No one denies that.

You might argue about the extent of of the problem but no one would deny that if we do not have the canal, that is a serious problem regarding our ability just to get there.

And the time has swung around and that has become the most important of the uncertain and unknown elements of this defense of Western Europe.

Now, Mr. President, many people, not having all the facts, I think, picture the Panama Canal as a delicately balanced system of mechanisms that can be completely disrupted by a determined opposing force of any size. This is not the case, Mr. President.

The Panama Canal is better characterized as a massive ditch of earth and water, with relatively few vital points that can be readily defended against most threats. No force can defend the canal from harassment and occasional, short-duration disruption; but, on the other hand, it is only the most dire of scenarios that would destroy the canal or deny its use to our naval forces. There are three general scenarios that characterize the spectrum of threats that the canal might face—general nuclear war, general nonnuclear war, and internal insurgency.

In a general nuclear war, the Panama Canal is of little significance. A nuclear exchange will be of relatively short duration and the canal would be so inconsequential that it might not even be targeted. Obviously, it cannot be defended against a no-warning nuclear strike.

To the contrary, in a general nonnuclear war, there is every reason to expect that the Panama Canal could be defended and preserved to the extent that it would be available to our naval forces and their support ships. It would obviously require substantial reinforcement of the forces now committed to the canal's defense to counter the more sophisticated, long-range threat, but Ad-

miral Holloway summarized the prospects by saying,

In the case of general war, nonnuclear in nature, I think we have a very high chance of defending the canal from destruction or seizure.

Finally, there is the threat to the canal from within. This threat ranges from the proverbial, but wholly misleading, "workman's glove in the gear box" to an externally supported, guerrilla threat that could have the support of the Panamanian Government. It is within the context of this threat scenario that the figures of 40,000- and 100,000-men reinforcements have surfaced. Any threat within this range can be dealt with effectively—the canal is not ultravulnerable.

Now, on the question of the necessity for long-term U.S. military presence.

The Panama Canal Treaty terminates the U.S. military presence in Panama after the year 1999. Since the canal is of unquestioned strategic importance to the United States, the necessity for long-term U.S. military presence deserves careful consideration.

The primary purpose of the U.S. military force stationed in the canal is to defend and protect the canal. However, this is by no means the only purpose for a military presence. The U.S. military installations provide critical communications links; they serve as refueling and repair facilities for our ships and aircraft that must operate in the area; and they provide a central point of operation to control responses to natural disasters or other emergencies that may arise in that part of the world. Above all, our bases provide a tangible U.S. military presence that deters intervention or adventurism by others.

Without exception, the ranking military men in the country today, active and retired, would prefer for the United States to retain a long-term military presence in Panama.

(Mr. FORD assumed the chair.)

Mr. STENNIS. That is a significant statement, Mr. President. Without exception, the ranking military men in the country today, active and retired, would prefer for the United States to retain a long-term military presence in Panama.

Now, if the United States does terminate its military presence, it must be prepared to go back into Panama in the event that our national security interests dictate.

There is no question that we have the military capability to reenter Panama after the year 2000 if the situation requires that we do so. It will be more costly, in terms of time, dollars, and possibly American lives, but it can certainly be done, if there is the national will. And that is not in any way in the way of a threat; it is just a reference to a condition.

Without question, we could protect and defend the canal better with a continuing military presence than if we are forced to create a presence. Furthermore, the need to defend the canal is much less likely to arise if we maintain a continuing military presence.

Now, it seems unfortunate that our negotiators apparently linked two separable issues—the operation or ownership of the canal and the U.S. military presence in Panama. Who operates the canal is not all-important as long as it is available to all on an equitable basis; however, to agree to terminate the U.S. military presence in Panama 22 years in advance is to gamble unnecessarily with a vital link in our national security chain.

CONCLUSION

Mr. President, the most disturbing statement I have heard from a military leader came when our committee was told that we ought to support the treaties because the treaties would "appease our allies." We cannot afford to gamble with our national security to appease Panama—that is irrational—or to appease others with whom we are friendly.

Many of us who today oppose these particular hastily drafted treaties are in complete agreement with the general concepts behind them. I, for one, would support an arrangement which shared the canal with the Panamanians under a plan to insure continuity of operations—provided that, the United States maintained a long-term military presence and the right to insure the availability of the canal which is so vital to our national security interests.

It is unfortunate that some feel so unalterably bound to these documents. The foundation for a sound treaty exists. There is no sufficient reason to gamble with our national security with this one-sided treaty. We should go back to the negotiating table and repair these serious flaws.

If this treaty should be approved, then we will be taking a step that is in contradiction to other major policies that we are maintaining in other parts of the world. We would be taking a step here by paying up, giving up, and getting out, with a strong chance that we would be told later to stay out.

Elsewhere, we are attempting to strengthen our position. In Western Europe, concerning the military posture of NATO, which is close to 30 years old, we are shoring up further by added appropriations, which will be before the Senate soon, for appreciable increases in firepower and other phases of military strength. In the Middle East, we have continued definite concern and positive programs on several fronts. I know of no one in this body who expects an early termination of affairs there. Definitely, we do not think that our problem, nor their problems, are resolved; nor do we think of withdrawing, either. How far would a resolution progress, should there be one, calling for withdrawal from the Middle East?

In the vast Pacific area, I do not know of any plan or serious thought that advocates withdrawal, just an adjustment, in Korea.

This is so noticeable to me as I am fresh from the hearing rooms this year. Concerning major parts of our 1979 budget items, there is money for the world areas and problems heretofore mentioned, problems vital to them and of concern to us. Only in the Panama area, an area so vital to us, are we receding and getting out. I believe it is being done too hastily and is a grave mistake.

Mr. President, I have just one additional thought. This is an impression. After getting into this matter, and we did have hearings which were not extensive in days but very extensive in preparation, after hearing these men from the military testify, some in office and some retired, just from the testimony, and not going outside to receive hearsay, I get the very definite idea that there was never any push by our side to keep military strength on this canal. I just do not believe it ever happened that way.

I have not talked to any of the joint chiefs about this beyond what they have testified to, but it is very clear and very evident that they were not given a chance to advocate the good side of our continued presence there, for Panama or for the United States.

I do not know the extent to which they had a chance to urge consideration of this matter upon our own negotiators, all acting, as I emphasized, in the utmost good faith and fulfilling their responsibilities. But, you know, Mr. President, you do not listen to a certain type of witness for years and years without being able to get a feel for a situation.

I asked Admiral Holloway, for whom I have a very high regard, whether the Chiefs of Staff had fought spiritedly for a continued presence of military strength on Panama. I read Admiral Holloway's reply, taken from pages 30 and 31 of our printed hearings:

No, sir, I can't say that I led a spirited fight to retain a U.S. presence in Panama beyond a certain year. * * * I remember us all generally agreeing that there could be no treaties if there were to be a U.S. presence beyond a certain specified date. * * *

We all moved along together pretty much in our conclusion that there couldn't be a treaty without the withdrawal of U.S. presence.

That is what these men seem to have been faced with. Admiral Holloway is a rather articulate man. I will read the rest of his statement in just a minute.

He said, and I repeat it for emphasis:

We all moved along together.

The reference there was as to whether or not he and the other Chiefs made a fight for this:

We all moved along together pretty much in our conclusion that there couldn't be a treaty without the withdrawal of U.S. presence.

Continuing the quote:

I must say that as a naval officer I tended to accept the advice of the Chief of Staff of the Army when he explained to me how difficult it would be to maintain the canal in working order in the very hostile environment

The main point there is about having a chance to make a fight for this vital matter. His recollection was:

I remember us all generally agreeing that there could be no treaties if there were to be a United States presence beyond a certain specified date.

So Panama did not seem to have had any benefit of the advice and counsel of these men; nor our negotiators, if the tone of that statement is to be followed.

In answer to a later question as to whether there were provisions about which the Joint Chiefs of Staff felt very strongly, but were completely ignored in the process of establishing the U.S. negotiating position, Admiral Holloway replied:

Yes; I think there was a proposal that the Chiefs made to provide language concerning the termination of our presence there. If my recollection serves me properly, we proposed that we not terminate our presence unless both parties agreed to it 1 year prior to the desired date of U.S. withdrawal, not sooner than a specific date in the future, which turned out to be the year 2000.

I quote that from pages 70 and 71, not because it is so illuminating, but it certainly is relevant and sheds a little light on the other quotation. I thought it would be unfair to leave it out.

So, Mr. President, I have no purpose to serve—that is true of other Senators, too—except what is necessary and what is best and what is more effective for our Nation. When we are in the very year that we are launching forth on these more positive, affirmative programs elsewhere and pouring more and more money into them, including billions of dollars and a stepup even in the arms for the ground troops this year—fiscal 1979 they all point in the same direction except one, and that one is the Panama Canal, pointing in the opposite direction; in terms of withdrawal and vacating and giving up and surrendering, with no one having a very certain concept of what may be the situation 20 years from now. I hope that there is some way, Mr. President, to save this situation yet, to go back for what I respectfully call a more realistic determination of some of these points and this position that is more in keeping with the realities and the protection of all parties concerned. I believe that, in that way, there would be a chance to get an agreement that would reflect far more safety for the United States, and would reflect a fair degree of agreement on the part of all parties.

Mr. President, again, I thank the Senate for the time that is allotted to me, the unlimited time allotted to me to speak on this subject. At some time later, I expect to have some additional words to say on another aspect of this matter.

I yield the floor.

AMENDMENT NO. 64

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska (Mr. STEVENS) is recognized on his amendment No. 64.

Mr. STEVENS. Mr. President, the Senator from Texas seeks some time. I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Chair indicates that, under the previous order, time for debate on this amendment is limited to 3 hours, to be equally divided and controlled by the Senator from Alaska (Mr. STEVENS) and the Senator from Idaho (Mr. CHURCH).

The PRESIDING OFFICER. The Senator from Texas is recognized for a period of 10 minutes.

Mr. TOWER. I thank the Chair.

I thank my colleague for yielding.

Mr. President, I ask unanimous consent that, as if in legislative session, I may proceed for 2 minutes for the purpose of a RECORD insertion of the statement of an interview with the distinguished minority leader (Mr. BAKER).

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

THE ALARMING COURSE OF OUR FOREIGN POLICY

Mr. TOWER. Mr. President, last Sunday our distinguished minority leader (Mr. HOWARD BAKER) appeared as a guest on "Issues and Answers." In his remarks, Senator BAKER called into question the present alarming course of our foreign policy, and in my view he correctly expressed a growing uneasiness which is shared by a number of my Republican colleagues over the administration's conduct in this vital area.

Expressing particular concern over current SALT negotiations, and by what appear to be large-scale American concessions, Senator BAKER warned that our own national security could be severely jeopardized if we maintain our present strategy. Having been a recent observer to the negotiations myself as a congressional advisor, I must say that his cogent appraisal of the SALT situation, as well as the deteriorating situations we face in Africa and the Middle East is compelling.

Certainly the message in Senator BAKER's statements cannot be ignored—the United States can ill afford to be perceived by other nations as weak or unprepared to deal with foreign pressures or intrigues. I commend to the attention of my colleagues the comments of Senator BAKER, and I ask unanimous consent that a transcript of the March 5 segment of "Issues and Answers" be printed in the RECORD.

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

TRANSCRIPT

Mr. CLARK. Senator Baker, welcome back to Issues and Answers.

The vote on the coal mine settlement this weekend is running level against acceptance, as you know, with the very serious prospect at the moment that the settlement may be rejected by the miners. If this happens, President Carter is expected to invoke the Taft-Hartley Act, but he may ask Congress at the same time for authority to seize the mines, to nationalize the mines.

If he does this, would you support such a request and do you think it would be acted on quickly by Congress?

Senator BAKER. As far as I am concerned, Mr. Clark, I will support anything it takes within reason to end this strike, because I think that the consequences of prolonged strike much beyond this point would be so grave that the Congress would have to act and certainly should act in response to a presidential request.

I don't know exactly what the President would request or when he would request it, so I reserve judgment on the details but, yes, I would support that.

I have recommended to the President and stated publicly that I think he should do whatever he can do with his present tools, which would include Taft-Hartley, and even a request for new legislation such as forced seizure in order to avert this crisis.

Mr. CLARK. The Senate has a particular problem in that it is tied up in debating the Panama Canal Treaty at the moment. Would you foresee any trouble in getting speedy action on a request for seizure legislation?

Senator BAKER. Well, that is a possibility. You know the Panama Canal debate is going on now in the Senate and I would not try to delay that because I think if the President requests extraordinary legislation to end the strike that the Senate should turn to it and dispose of it quickly, but I must say in all candor that I could not rule out the possibility that there would be some delay. Some whip-saw between the Panama Canal Treaty debate on the one hand and labor legislation on the other, and both of them cause strong emotions.

Getting into the debate wouldn't be difficult. That is into the labor request, but getting out it might be very difficult.

Mr. FARMER. Are you suggesting proponents of the Panama Canal treaties might use the coal strike issue as a means to further delay consideration of the treaty.

Senator BAKER. I don't charge that but it is certainly a possibility. The question of proceeding to the consideration of another matter such as legislation to end the coal strike is fully debatable and, if someone wanted to use that, it is there for the asking. I would not do that and I would hope that did not happen and the nature and urgency of the situation would probably militate against it, but I certainly couldn't rule out that possibility.

I indicated earlier that I thought it would take some time for the Senate to act on that and my concern would be that it might.

Mr. FARMER. Senator, does it bother you that some of the miners perhaps we are told have been voting against the contract, with the idea that perhaps they would get a better deal from the government under government seizure and control of the mines.

Do you think that is a legitimate action on their part and how do you feel about it?

Senator BAKER. If that is in fact so, I think it is a mistake because I don't think the miners in the long term are likely or even in the short term are likely to have a better deal from the government as an operator of the mines temporarily than they would through collective bargaining, through this contract that apparently is being rejected.

I really don't know why the vote is going so heavily against the ratification of the contract. If, in fact, it turns out the way it looks now, it is going to be overwhelmingly opposed. But I don't think that they are likely to get an improved situation in government operation over that which they might have in private negotiations.

Mr. CLARK. Is that a problem that could be handled in the seizure legislation? Could you write in restrictions assuring that the miners, if they waited for the government to order them back to work, the legislation would insure that they would not get any better deal than they would have if they had gone back to work before voting down the settlement?

Senator BAKER. It could be written that way. As I say, I don't know what the President would submit so I reserve judgment on it. My guess is that legislation would be designed and structured so that there was an incentive to end the strike, to negotiate a satisfactory settlement through the regular collective bargaining processes rather than an advantage and a premium to retain government operations, so I don't know exactly how that would be approached.

I think the President must do whatever he can do and I would prefer not to limit his options at this time, except to say—I will support him in any reasonable request that he makes to try to get coal back into production.

Mr. CLARK. And Secretary of Energy Schlesinger suggested today that as a carrot to get the miners back to work if Taft-Hartley does have to be invoked the Adminis-

tration might try to work out a deal with the coal mine operators where they would agree that there would be some raise in pay, that the miners would not have to go back to work at what they were earning some 90 days ago before the strike began. Could that be done, in your view?

Senator BAKER. I don't think it could be done, Bob, without legislation. I think under the present law—that is the Taft-Hartley—that the most the government can do is ask for an injunction to require the miners to go back to work for the 80-day cooling off period. I doubt that you could offer them something better than the '74 contract. If, however, the President asked for and Congress gives him seizure legislation you could provide that. But I think we should be very careful that we don't create a situation that makes it more advantageous to continue the seizure than it is to negotiate a contract.

I would be very, very wary of any offer to increase and improve pay rates under a Taft-Hartley injunction. I frankly would personally prefer to see some sort of special seizure legislation instead of offering an inducement to go to work under Taft-Hartley.

Mr. FARMER. How fast do you think Congress would act on that, Senator, and what specifically might delay Congressional action?

Is there something that he might ask for which would not go down well?

Senator BAKER. Well, I am sure there is, Don, but I don't know what particular aspects of it might be particularly objectionable in the Senate. I think the greatest danger is that labor legislation might be whipsawed against the Panama Canal debate. The Panama Canal debate now has gone on for two weeks and, you know, I respect those who are fully and thoroughly discussing and ventilating these issues, although I confess sometimes I think it has taken us almost longer to debate it than it did to dig it; but the temptation to play one off against the other might appeal to someone. It would not to me.

Mr. FARMER. Don't you think the public would have a right to be angry if the Senate did in fact play games with these two important pieces of legislation?

Senator BAKER. Well, they are both vitally important legislation and the consequences of the failure of the Panama Canal treaties or the consequences of a national power crisis as a result of the continuation of this strike, both, I believe, the consequences of both, would be socially and politically unacceptable to this country. And I think that the Congress would act promptly. But I must say that there is the danger of delay because of the legislative configuration with the on-going of the debate at this time on the Canal treaties.

Mr. CLARK. Senator Baker, we want to ask you about a totally different matter.

There has, as you know, been a mounting concern in the past couple of weeks, both in the Carter Administration and in the Congress, over the growing number of Soviet technicians and officers and Cuban troops who are pouring into Ethiopia, with Cuban troops now actually at the front lines in Ethiopia's war with Somalia. You are one of those I know who is concerned about that. Do you have any thoughts about what can be done about it?

Senator BAKER. Bob, I think the President has a very serious problem on his hands in Africa vis-a-vis the Cuban troop presence there. I think the time has come to draw the line, to blow the whistle and to make it unmistakably clear to Cuba and to Russia that the action that is being undertaken now in Somalia and Ethiopia is unacceptable in the long-term national security interests of the United States, and unless it can stop this massive troop buildup of Cuban troops, this direct involvement by Russian officers, the billion dollar supply of military equipment by Russia in Ethiopia and surrounding areas, simply can't be tolerated by the United States.

Now, Cuban troops are not in Africa as an extension of Cuban foreign policy; they are there as an extension of Russian foreign policy. And I think we ought to tell the Russians, now look, you, now this is enough, now stop; and if you don't stop, we are going to do two or three things that come to mind immediately.

The first thing we might do is close the mission we just opened in Havana. It is the worlds' worst time to be cozying up to Cuba, and I think as long as they are sending a third of their armed services to Africa we ought to stop right now any effort to normalize relations with Cuba. We ought to close that mission. That is one thing we could do. I think it would be appropriate for President Carter to speak directly with high Russian officials and say, "Look, you know, we aren't going to get caught up in this debate over linkage, but we are going to tell you right now, if you persist in this overt aggression—" and that is what it is in Africa—"if you persist in that, using Cuban troops as a surrogate, I think there ought to be a temporary suspension of SALT negotiations."

Now, I think these things might get their attention. If they don't then we can move on to something else.

Mr. CLARK. Let me note, Senator Baker, President Carter thinks he has a promise from top Soviet leaders that they would not advance beyond the borders of Somalia, that this would not be turned into an aggressive war. Are these things that you would do, such as suspending SALT talks, would be done only if they do turn this war into an aggressive conflict, if they moved beyond the Somalian borders?

Senator BAKER. No, I would do it far short of that. You know, I am delighted to know and I am happy that President Carter was able to obtain a representation that the surrogate Russian troops—in this case the Cubans and the Ethiopians—would not actually cross the Somalian border. That is good to know. But I see no indication that it has slowed down their troop flow. As a matter of fact, in addition to the 37,000 Cubans in Africa now there are significant numbers of additional troops and technicians coming to Africa both by air and by sea. So unless the troop buildup stops, I think we still have a serious problem, notwithstanding the border. And, you know, even if the Russians and the Cubans don't cross that border I can visualize the possibility of the Ethiopians crossing, and who is to say who has them under control?

I think we can't be involved with something as tenuous as stopping at an arbitrary boundary, which smacks too much of retreat to a fixed position. I think we have to simply say to Russia and to Cuba: This is unacceptable in terms of the national security interests of the United States, and we are just going to stop, boys, and take a look.

(Announcements.)

Mr. FARMER. Senator Baker, why do you think the Cubans, and therefore of course the Russians, are doing what they are doing in the Horn of Africa? Is it to advance their own military interests; is it to hamper ours; is it to hurt the sea lanes there; or is it to embarrass the President—or all of the above?

Senator BAKER. Probably all of the above, Don. I think the Russians have tested every new President we have had in this country since World War II, with President Kennedy of course in the Bay of Pigs and on down the line. There has been a recognizable challenging of wills, and this may be the Russian test of Jimmy Carter.

I don't know what their overall strategy is, except to push and to test and to decide whether America's resolve and determination in foreign policy is adequate to the challenge or not. I rather suspect that is the primary purpose.

Control of the sea lanes from the Middle East which supply us with almost 50 percent of our oil now might be one of the objectives, although I doubt that it is an immediate objective.

The major effort I suspect—a major effort may be simply to establish additional military and economic power bases in Africa. I think that we forfeited Africa for practical purposes when we got out of Angola, and I think we are now paying the price and suffering the consequences of that course of action, when Congress stopped our efforts in Angola to contain the Cuban troops at that time.

Mr. FARMER. I am sure you wouldn't suggest a course of action to the President in terms of a threat or a warning to the Soviets unless you were willing for him to carry that out. Do you really think, Senator, that it would be in the best interests of this country in terms of strategic arms limitation to use SALT as a threat, or the suspension of SALT talks as a threat to the Cubans in Ethiopia?

Senator BAKER. I do, Don. Let me tell you why.

The ultimate purpose of Strategic Arms Limitation Talks is to reduce the level of tension and the threat to the United States and the Soviet Union, each from the other. In my view, Russian intervention in Africa directly in terms of materiel and supervision, indirectly in terms of massive Cuban troop build-up is a greater threat, for instance, than the containment and limitation of some weapons systems. So Strategic Arms Limitation ought to take account of troop deployments of military, action, of aggressive intervention as you find in Africa, as well as the limitation of intercontinental ballistic missiles.

Now, Russians traditionally respect a strong, determined position, and I think we have not shown a strong, determined position lately, so I think that we are in danger in the SALT talks of giving away the store, in any event, and I think that if we add to that the toleration of Russian mischief in Africa that we have substantially reduced the national security of this country beyond anything we could expect by way of enhancement from a successful SALT treaty.

Mr. CLARK. Senator Baker, Let me note, there is a suspicion among some supporters of a SALT treaty that some Republicans and particularly perhaps some who have their eye "on a presidential nomination in 1980, are moving onto position to shoot down a SALT treaty whatever is in that treaty and whether or not it is related to what is going on in Africa. And let me read the current publication "First Monday" put out by the Republican National Committee, and the lead article is entitled "Defense in Salt" and written by Bill Brock, the National Chairman, and it says, "The great national debate over the foreign and defense policies of the United States will begin this year when the Carter Administration asks the Senate to ratify a SALT treaty with the Soviet Union.

"In the forefront of this debate will be the Republican National Committee and its best team of defense and foreign policy experts."

Then it goes on with much criticism of the Carter Administration defense policies and the general attitude of detente toward the Russians. But I get the impression from this that there are those in the Republican party who are already strongly against SALT. Is that true?

Senator BAKER. Oh, undoubtedly true, but you see, Bob, the reason they are is because they have some insight into what the negotiating position of the United States at Geneva is now.

For instance, I have been briefed, as have other members of the Senate, by Mr. Paul Warnke, who is our negotiator there, on a number of occasions, with the Senate leadership and others, and I frankly told Mr. Warnke, as others, that in certain respects the treaties, if they come back to us in the form he described simply would not pass the Senate.

I confess to something of a predisposition of my own. I opposed Mr. Warnke's nomination and there were forty votes against his nomination in the Senate, but still in all I think on balance and on its merits there is ample justification for the criticism of the present relationship of the American negotiating position and what likely will come out in the SALT treaties.

I have some view that the administration may not submit those treaties this year and I hope they don't because, as I told the President, I'd rather have no treaty than have a bad treaty. I think we should have a SALT II treaty but I don't think we should have the SALT II treaty that I have discussed from our negotiators in Geneva.

Mr. CLARK. The other part of this problem, the Russians got very upset this last week at what is being called linkage here in Washington, linking what they are doing in Africa to the SALT II treaty, and with the implication that they are certainly going to lose enthusiasm for a SALT treaty if we continue talking this way.

Isn't everything we are saying here, doesn't it bode rather badly for SALT II prospects?

Senator BAKER. It might, but, as I told Don Farmer a minute ago, the question of Russian mischief in Africa, a billion dollars worth of military supplies, a third of Cuba's standing armed forces in Africa, is so serious in terms of arms limitation that I think the two should be considered together.

If the Russians are upset then it would mean to me that there is some reasonable expectation that this would be a useful tool in trying to stop that aggression.

Mr. CLARK. Now, if the Russians would turn around and say, "All right, we will stop. We will pull our technicians and advisors and whatever out of Ethiopia," then would you be for a SALT treaty?

Senator BAKER. Of course, I am for a SALT treaty now but I would not retreat from my opposition to certain aspects of it.

Mr. CLARK. You mean you are for a SALT treaty but not the sort of treaty you see emerging in the SALT talks?

Senator BAKER. I think that President Ford and Secretary Kissinger were on the brink of a SALT II treaty that would have been eminently satisfactory to this country. I think when the President cancelled the B-1 bomber, and when we flirt with the idea of putting severe limitations on the testing and deployment of new weapons systems, such as the cruise missile, that they have converted a good potential SALT II treaty into a very bad one.

Mr. FARMER. Senator, you seem to be making a case, if I understand you, that the President has already failed some of these tests that the Russians may have been administering to him. Is that not fair?

Senator BAKER. I don't think so, Don.

I think, as I said a moment ago, that the Russians may indeed be testing President Carter in Africa as they tested President Kennedy in Cuba, and I think the returns are still out.

I don't know how that finally will go.

Mr. FARMER. Do you think part of the test is SALT as well?

Senator BAKER. I think SALT is certainly a part of it, but, as I said a moment ago, I am not certain the administration is going to submit a treaty this year or that the final position will be the one that has been described to us by Mr. Warnke.

On more than one occasion some of us in the Senate have indicated to the administration that certain positions simply were not attractive to a majority of Senators and it is my impression that some of those positions have changed.

So, in this particular case I think time has been an ally of ours and that the administration has wisely altered some of its positions in the course of the last several months.

Mr. FARMER. You would like him to take action against the Cubans, the mission closing, and all of that, before he takes action against the Soviets?

Senator BAKER. We can talk about linkage all you like, but it is important to recognize that Cubans are there in my judgment because Russians asked them or ordered them to go. Russians are doing it for their foreign policy purposes, not for Cuba's foreign policy purposes, and I would treat the Cubans and the Russians together.

I would say to Cuba, "As long as you are engaged in this military adventure, aggression, we will stop today any efforts to try to normalize relations between our countries and we will close our mission in Havana."

Mr. FARMER. An ultimatum?

Senator BAKER. I would say to the Russians, "Look, we understand what you are about, and there are a range of things that we can discuss in terms of your new military adventurism and one of them is a temporary suspension of SALT talks. Now, stop this nonsense or we are going to consider the temporary suspension of these negotiations."

Mr. CLARK. Senator, we want to talk with you briefly about another area that has been of special concern to you and that is the Middle East. You were several months ago very critical of President Carter's actions in the Middle East. You became more sympathetic with the Begin and Sadat peace initiatives. Now, with the new hassle developing over selling jet fighter planes to Saudi Arabia and Egypt, as well as Israel, what is your latest view of the way the Carter administration is proceeding in the Middle East?

Senator BAKER. Well, to begin with, I think when the President, when the administration proposed an immediate resumption of the Geneva conference that it had the effect I feared it would have. That is, our friends, both the Israelis and the Egyptians, had a great concern about reinviting the Russians into those negotiations without having some idea of where they were likely to go. I suspect that President Sadat certainly had in his mind that it had only been a few months since he pitched the Russians out, and that those Russians might remember that. So I can understand why he was concerned about it. But after that I saw a moderation of the Administration's position in support of the Begin-Sadat initiative, and I think that was appropriate.

Now, on the question of the present package proposal for weapons sale to Egypt, to Saudi Arabia and to Israel, let me say these things: (1) I am not opposed to the package concept. I think a general balance of power in that area is essential to monitor and to keep in view. (2) I don't think it is inconsistent with our determination to protect the survival of Israel or to honor the courage of Sadat or to protect our interests in Saudi Arabia. I do think that the proposal coming as it did when it did may have been ill timed. I do think that we maybe ought to consider this for a little while, for a few weeks or a few months, before we finally decide, because the proposal itself may have impeded negotiations.

Mr. CLARK. Senator, at this point we are out of time. Thank you very much for being with us on Issues and Answers.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The Senate continued with consideration of the treaty.

Mr. TOWER. Mr. President, I rise to express my opposition to the proposed Panama Canal treaties. I would like to briefly address the specific concerns which I have with regard to certain military and economic issues related to these agreements.

The Senate has already rejected certain amendments that would permit a continued U.S. military presence in the Canal Zone. A major focus of the Senate's debate on these treaties continues to be the arguments for and against the removal of our military forces. Our withdrawal from military bases in the Canal Zone will, in my view, increase the level of risk for future instability in Panama. The Panamanian Government is expected by these treaties to assume a substantial burden for sustaining the security of their nation and the canal. Were our world one in which the future intentions of nations could be readily perceived, then any risks associated with our withdrawal from Panama could be determined with some precision. But as we daily witness around the globe, the most difficult task in deriving our foreign policy goals is that of assessing the future intentions of others.

With respect to Panama, we must recognize that its unique position in our hemisphere serves to bestow upon it a strategic significance which requires us to minimize the risks to its security by whatever means necessary.

Considering both domestic and international pressures which are evident, I cannot believe that we are lessening these risks by withdrawing our military forces from Panama. Assurances with respect to U.S. intervention rights cannot begin to equal the deterrent value of forces that are ready and in place.

There are those who have argued that the canal is virtually indefensible, and that, therefore, our forces stationed in the zone are useless and should be recalled. I say to those of this persuasion that they have overlooked the more important strategic considerations as to the considerable deterrent value of our military presence in Panama, and that the risks to peace are substantially diminished simply because this presence exists.

So, to my colleagues who are satisfied with the adequacy of clarifying the rights of U.S. intervention, I say that no intervention guarantee can sustain the credibility and effectiveness of our commitment to the future security of the Panama Canal as can a sustained U.S. military presence of at least some proportion. Should these treaties be ratified in their present form, I fear that the course of future developments in Latin America could turn on our willingness to assume risks which clearly we should recognize as unacceptable. For this reason, I believe that, in the interests of security, the Senate should reject these treaties.

Though some of my colleagues have repeatedly stressed the economic impact of these agreements, far too little public attention has been focused on the potential costs of implementing the treaties. The Committee on Armed Services has given thorough consideration to this matter and has provided a substantial amount of information drawn from stud-

ies and committee hearings that clearly reflects the potential for financial difficulties in the proposed Panama Canal Commission and major costs to the U.S. taxpayer.

First, with respect to the canal's operation, there is clearly a distinct possibility that the canal will operate at a substantial deficit over the next 22 years. Depending on future rates of inflation and the extent of canal toll increases, this cumulative deficit could run as high as $3.5 to $3.75 billion by 1999. Even if it is assumed that major toll increases would not reduce the level of canal traffic, tolls would have to be increased by 149 to 168 percent in order to fully offset these deficits. In this connection, it is estimated that about one-third of the total $3.6 billion increase in toll charges—some $1.2 billion—would be borne by U.S. shippers and consumers in the form of higher costs. Particularly affected by such cost increases would be the gulf coast ports which regularly ship and receive a substantial amount of goods through the Panama Canal.

A second economic consideration involves the estimated value of U.S. assets which under the terms of the treaties would be transferred to Panama. The administration assesses the book value of all assets in the Canal Zone at $920 million. Current value or replacement cost of these assets including the canal itself, the company, and military assets, is projected at $9.8 billion.

Third, certain costs will accrue to the United States that will not be paid for by revenues gained from canal tolls. These have already been itemized in statements previously made by my colleagues. The Committee on Armed Services has estimated that these potential costs could well exceed $1 billion. Other possible liabilities have been cited that include Export-Import Bank credits, aid housing guarantees, foreign military sales credits, and the overseas private investment corporation loan guarantee. These liabilities could total another $345 million.

At this point, Mr. President, I would like to have printed in the RECORD a table taken from the Armed Services Committee staff study which summarizes these four major categories of the potential costs of these treaties.

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

ATTACHMENT A

ESTIMATED POTENTIAL COST OF PANAMA CANAL TREATIES AND RELATED MATTERS

I. ILLUSTRATIVE POTENTIAL PANAMA CANAL OPERATING DEFICIT UNTIL 2000 A.D.

	With full North Slope oil	75 percent loss of North Slope oil after 1980
(a) If tolls are not increased above current rates (loss in billions)	$3.57	$3.75
(b) If tolls are raised only 75 percent (the total currently available increase estimated to produce maximum revenue was 75 to 100 percent; loss in billions)	$0.99	$1.16
(c) Cumulative toll increase needed to fully offset deficits (assuming no toll caused traffic loss after 1st 20 percent toll increase; percent)	+149	+168

II. ESTIMATED VALUE OF ASSETS TRANSFERRED TO PANAMA BY 2000 A.D.

	Book value (millions)	Replacement cost (billions)
Panama Canal	$310	$5.0
Panama Canal Zone	257	3.6
Military plant	353	1.2
Total	920	9.8

III. POTENTIAL COST TO UNITED STATES FOR ITEMS NOT COVERED BY PANAMA CANAL TOLLS UNTIL 2000 A.D.

	Millions
Military relocation construction cost	$43
Civil service early retirement	135
Incremental cost for DOD schools/hospitals	110
Foregone interest payment to U.S. Treasury	505
Contingent payment to Panama ($10,000,000 per year)	220
Foregone payment for past services to Panama	8
Cost of inventory/evaluation of assets	2
Payment of employee accrued leave	(?)
Increased training for PCC employees	(?)
Total	+1,023

IV. OTHER POSSIBLE LIABILITIES OF U.S. GOVERNMENT

	Millions
Military assistance (FMS credits)	$50
AID housing guarantees	75
Export-Import Bank credits	200
Overseas Private Investment Corporation loan guarantee	20
Total	345

Mr. TOWER. Mr. President, finally, no economic assessment of the potential impact of these treaties can disregard the continuing disagreement over ambiguous financial issues which have arisen from the treaties in their current form. These issues include, among others:

First. The priority of the $0.30 per ton and fixed $10 million payments to Panama in a year when operating costs exceed toll revenues;

Second. The calculation and carryover obligations of the so-called $10 million surplus payment; and

Third. The actual management of toll charges, particularly since Panama will receive $0.30 per ton regardless of the tolls actually charged.

In these and other financial areas, the seeds for potential conflict between the United States and Panama are undeniably present. These are matters which should be clarified by written understandings between the parties involved, in order to avoid future disputes which could seriously disrupt the implementation of the treaties should they be ratified in their negotiated form.

Mr. President, for the reasons which I have outlined regarding both the international security and economic impacts of the proposed treaties, I urge my colleagues to insist that a more prudent course be adopted with respect to the future relationship between the United States and Panama than is possible under the terms of these agreements.

I thank my distinguished friend from Alaska for yielding me this time.

The PRESIDING OFFICER (Mr. INOUYE). Who yields time?

Mr. CHURCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I would like to address my remarks to the subject that has clearly dominated the discussion this morning on these treaties, both with respect to the address given by the distinguished Senator from Mississippi (Mr. STENNIS) and the one we have just heard, delivered by the Senator from Texas (Mr. TOWER).

In both speeches, both Senators have spoken of their concern about the future security of the canal after the end of this century when American troops leave the Canal Zone.

In direct contradiction to the arguments these two distinguished Senators have presented, we have the testimony of our own military leaders. Their appraisal of the impact of the pending treaties on our security interests in the Isthmus of Panama is contrary to the arguments presented thus far this morning.

Listen to the Chief of Naval Operations, Adm. James L. Holloway:

> I am convinced that the continuing use of the Panama Canal for national security purposes is best assured through the provisions of the new treaties.

Listen to Gen. Lewis H. Wilson, the Commandant of our Marine Corps:

> Defense of the Canal through 1999, accomplished in a combined and cooperative atmosphere with the Panamanian government, would in my opinion be more effective than under present treaty arrangements, given the attitudes of Panama towards the present treaty and the antagonisms which would very likely develop if those arrangements were to continue.

Listen to Adm. E. R. Zumwalt, former Chief of Naval Operations:

> In my judgment, the ratification of the Panama Canal Treaty by the Senate would enhance, and nonratification by the Senate would harm, U.S. security interests.

Listen to Gen. M. B. Ridgway, former Commander in Chief of the Caribbean and later Chief of Staff of the U.S. Army, and, incidentally, commander of our expeditionary forces during the Korean war:

> I am convinced that ratification of these documents is a major, if not a vital U.S. strategic interest.

Listen finally, Mr. President, to the American general presently in command of the American forces in the Canal Zone, the officer presently responsible for the security of the canal, Gen. D. P. McAuliffe:

> Let me say that it is my professional and personal opinion that the proposed treaties adequately provide for the defense of the Canal and the rights of the members of the Armed Forces out to the year 2000; in addition they provide the legal basis for the United States to take such actions as would be necessary to insure Canal neutrality beyond that year.

With all deference to the Senators who have spoken out against the treaties this morning, the best professional opinion from the military rebuts their position. The Chiefs of Staff have clearly indicated that the security of the canal is enhanced, not impeded, by the ratification of these treaties.

Mr. President, one might ask, Why is this so? The answer is simple. The effective measures that can be taken in the

isthmus itself to keep the canal safe, to keep it open, to keep it neutral for the unimpeded use of maritime commerce, can be accomplished effectively only in combination with the Panamanians.

I can recall when General McAuliffe said to me, on the occasion of my visit to Panama along with other members of the Senate Foreign Relations Committee, that we could always mount a military operation on the isthmus sufficient to put our Navy through the canal in a time of emergency. And he told how our forces would have to be augmented in the event we were faced with open hostility from the Panamanians.

Finally, I recall the telling point that there was no way that the canal could be made immune from harassment, regardless of how many troops we stationed in the Canal Zone.

The purpose of the canal, Mr. President, the value of the canal, is its use. Ninety percent of the time, the canal will be used for the peaceful transit of vessels. Those ships are not going to transit the canal if their captains doubt that they can safely step out on to their decks during passage. Ships will stay away if the canal is subject to a continuing threat of harassment.

So let us not talk of pushing the Navy through. Of course, in a time of emergency, we can do that, although we had best do it before the war begins; because if we are involved against an opponent that can mount a threat to the canal, then it is very unlikely, in this day of missiles, that we would want to concentrate our Navy at the canal and make it a sitting duck as it passes through.

No, Mr. President, we should not be talking about a wartime situation. The use and importance of the canal is greatest in time of peace.

We have it from no less an authority than General McAuliffe that no military force, however large, stationed in the Canal Zone can protect the canal from harassment of a kind that would deter ships of peace from using it.

So I can understand why our Chiefs of Staff have concluded that the most effective means to protect our interests in the Isthmus of Panama, to secure the canal, to keep it safe and open and functioning, is in collaboration and cooperation with the Panamanian people. That is what we are most likely to secure with the ratification of these treaties. But if we fail to seize the moment, if the Senate rejects these treaties, then I think we will live to rue the day and wonder why we acted so unwisely.

Mr. President, in the argument presented by the distinguished chairman of the Armed Services Committee (Mr. STENNIS), he described a world in which we were maintaining our bases everywhere in the Pacific, in Europe—everywhere but Panama. He said that these treaties prescribe the eventual relinquishment of American bases in Panama, and that was a kind of surrender.

I do not read recent history that way. I do not think it is accurate to say that we maintain bases everywhere as if at our pleasure, or that the only place we have agreed to withdraw our forces is in Panama, at the end of this century. The fact is that today we cannot maintain bases anywhere abroad without the consent of the government concerned.

We used to have big military air bases in Morocco. I remember, when visiting Morocco years ago, being shown those vast airfields, for our B-46 bombers. I am sure we still would be maintaining them, except that the Government of Morocco decided that it no longer wished to host foreign military bases. When the Government of Morocco said close these bases, we closed them.

I can recall visiting Libya years ago and being taken to an American Air Force base there we used for training purposes for ourselves and our NATO allies. It was thought to be very important at the time. Well, we did not keep it long, after the Government of Libya asked us to leave.

We cannot maintain a foreign military base anywhere in the world against the will of the foreign power, the foreign government, the foreign country, in which that base is located.

Have we forgotten so soon the decision of General de Gaulle, taken a decade ago? When the Government of France, the oldest of our allies, told us that the honor of France called for the removal of foreign bases on French soil, what did we do? We did what we had to do. We acquiesced in the decision of the Government having authority over French territory, and we withdrew our bases.

Have we forgotten Turkey, still our ally, the anchor point of the NATO alliance in the eastern Mediterranean? We had numerous bases in Turkey. But when we encountered problems with the Turkish Government over Cyprus, some of these bases were denied to us by the Turkish Government and others were taken over by the Turkish Army. What did we do? Why, we accepted the decision of the Turkish Government.

Mr. President, it is quite misleading to talk as though we maintain military bases in foreign lands without the consent of their governments. It defies all experience; it is nonsensical. Look at the major bases we maintain now, which the distinguished chairman of the Armed Services Committee must have had in mind when he spoke as he did. We maintain major bases in the Philippines, in Spain, Greece. We still maintain some bases in Turkey.

But, in each of these cases, we do so with the consent of the host government. In each of these cases, we pay large sums for the privilege of keeping the bases, sums which make the amounts involved in these treaties pale by comparison.

So, Mr. President, the fact that we must accept the decision of foreign governments if we are to maintain bases on their soil is recognized—and properly so—in negotiating the treaties now before the Senate.

We acknowledged that Panama, even though a tiny, relatively helpless country, has the same sovereign right to insist that foreign troops be removed from her soil. With these treaties, to our everlasting credit, we do not say: "We will abide by the decision of foreign governments everywhere else in the world, with the exception of Panama. In Panama, we insist on retaining our forces, not only until the end of the century, to which the Panamanians have agreed, but forever after, despite how the Panamanians may feel, with or without their consent, and we will do it because we have the power to impose our will."

Well, Mr. President, if that were the position of the United States in dealing with one of the smallest countries of this hemisphere, how could we expect to exert moral leadership in this world? How could we expect to maintain our influence in this hemisphere, where all the other governments are united behind Panama in its right, as a sovereign government, to insist upon the removal of foreign forces from its soil?

How are we going to deal with the current crisis in the Middle East, which turns upon such questions as the restoration of occupied lands? Who will listen to the United States, in such delicate and difficult matters upon which future war or peace may hinge, if we, ourselves, will not abide by the principles we preach?

So, Mr. President, I not only emphatically disagree with the arguments we have heard, but I think they do not reflect real life at all. They ignore everything we are actually doing throughout the world and rest upon a double standard, which we can apply only at the price of being hypocritical, and at the loss of the very thing these treaties give us, which is an opportunity, by adhering to our own principles, to improve our relationship with all of Latin America and the Third World.

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

Mr. CHURCH. I am happy to yield to my friend from Maryland.

Mr. SARBANES. I wish to underscore the point which the able Senator from Idaho has made with respect to the fact that, under these treaties the United States, by agreement of Panama, by Panama's agreement, will maintain military facilities for the next 22 years, until the end of the century, in that country.

No arrangement that we have elsewhere provides us with that length of term with respect to how long the United States can maintain military facilities in those other countries. In many other places we are spending enormous amounts of money to establish and to develop military facilities with no guarantees that we will be allowed to maintain them over any sustained period of time.

Here by agreement of the Panamanians we have, first of all, the continuance of every military facility that we need. There has been talk here about cutting back on the number of facilities, but that is primarily a play upon numbers. The fact is we consolidate certain facilities and in such a way that we have every facility we need in terms of our military needs; and, second, Panama has agreed that after the turn of the century—they have agreed to this far-reaching authority—the United States will have the power and the authority to take whatever action we deem necessary to maintain the regime of neutrality pertaining to the canal.

Mr. President, those who take a position in opposition to these treaties have the responsibility to sketch out for the

American people what the alternative is. This is not a free choice situation. There are choices to be made and consequences to be paid in any event. Those who argue that these treaties should be rejected have the responsibility to sketch out what will take place if that should occur.

Yesterday some said, "Well, we will go back and negotiate new arrangements with Panama."

Does anyone realistically anticipate that if these treaties are rejected that we will be able to negotiate and reach agreement with Panama on terms that are more accommodating or more favorable to the United States? I suggest that will not be the case and that the choice we will eventually face is either maintaining the American position in Panama against the resistance and opposition of the Panamanian people—in other words, maintain our position without an agreement—or eventually concluding that such a situation is not stable, that we cannot have a situation where we have this bitter hostility between the two peoples, and that we thus have to reach an agreement to govern our relationship.

If that happens my prediction is that such a subsequent agreement will fall far short of this one in terms of protecting and accommodating American interests.

Then we will hear the lamentations and the wailings as people will say, "Oh, if we had but accepted the agreements that were before the Senate in 1978 how much better our position would have been than the agreements before us"; whether that is 3 years, 5 years, or 10 years from now, if indeed an agreement can subsequently be reached.

Absent agreement, the choice for the United States is to maintain its position through imposition by the use of its force and its power—not a stable situation, and not one that we would prefer. We will use our power to protect our interests, but how much better it is to use our power consistent with agreements such as the ones pending before us, agreements which give us the legal and the moral basis for protecting our interests. They give us the legal and the moral basis to use our force and our power if it should prove necessary to do so.

To reject these treaties is to lose the opportunity to place our relationship with Panama on a stable basis with a friendly environment, with every safeguard which the United States may need to take whatever action it deem necessary in order to safegard its interests. It is a tremendous step forward over the present situation, and it opens up opportunities for cooperation with the Panamanian people and opportunities for our dealings with all of Latin America which we ought not to lose sight of.

It is extremely important that it be understood that the choice before us is not simply maintenance of the status quo or the change involved in the treaties. The choice before us is the change which comes with the treaties or the change which will come about without the treaties. I do not want to come back to the floor of the Senate in 2 years, 4 years, or 6 years and face the lament, "What an opportunity was lost in 1978 to establish a normal, stable, cooperative, productive, and constructive relationship with the people of Panama," in contrast to the situation which we may then have on our hands concerning that area.

As the President said in his address to the Nation:

> I as President would not hesitate to deploy whatever armed forces are necessary to defend the canal, and I have no doubt that even in a sustained combat we would be successful. But there is a much better way than sending our sons and grandsons to fight in the jungles of Panama. We would serve our interests better by implementing the new treaties—an action that will help to avoid any attack on the Panama Canal. What we want is a permanent right to use the canal, and we can defend this right through the treaties, through real cooperation with Panama. The citizens of Panama and their government have already shown their support of the new partnership, thereby showing their strong approval.

We have an opportunity here to establish a new relationship which will give us the chance of exerting strong and principal leadership throughout the world. We ought not to lose that opportunity.

The PRESIDING OFFICER. Who yields time?

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

One of the most crucial questions which must be considered during the debate on the Panama Canal treaties is: Will the security of the United States and the Western Hemisphere be adversely affected by the proposed treaties? Historically, the safety of America and of the hemisphere has depended on the ability of the U.S. Navy to maintain restricted control over the trade route of the Caribbean as well as the Atlantic and Pacific approaches.

For better or for worse, the Monroe Doctrine has guided U.S. policy since 1823. The vast majority of Americans, including myself, view the United States as the protector of the hemisphere. Mr. President, I have said, and I will say again: We do need a new relationship with Panama. It is apparent that such a change could improve our standing in South America. But, I do not believe that this means we must throw our national security to the wind.

My amendment addresses itself to a security problem in the proposed treaties. My amendment would prohibit the transit of vessels of war and the military support vessels of nations engaged in armed conflict with the United States, further it treats Panama as a coequal and applies to vessels of war and military support vessels of nations in a state of belligerency with either the United States or Panama. As I stated yesterday, we have been in a state of belligerency as far as this Nation is concerned, on many occasions—when the Chinese came south of the Yalu River we were in a state of belligerency with China, but not at war. When President Kennedy announced the blockade with Cuba, we were in a state of belligerency with both Cuba and Russia, but not in a declared war. Under similar circumstances it would not be possible, under my amendment, for Russian ships to either follow our Navy through the canal or transit the canal in order to confront our naval vessels.

I see absolutely no reason why Panama or the United States should be compelled to permit vessels of war or military supply ships of nations which are in a state of belligerency with either of us to use the canal. The Panama Canal is a tactical necessity for Panama, for the United States and for the Western Hemisphere.

The Neutrality Treaty as presently constructed entitles nations in a state of belligerency with the United States or with Panama to free and undisturbed transit of the canal:

> Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected as a condition of transit, to inspection, search or surveillance. Art. III(1)(e).

It has been suggested that we do not need an amendment to correct this deficiency because our Navy could engage such ships out at sea, prohibit them from reaching the sanctuary of the canal and if, by chance, they did get to the canal, we would stop them on the other side.

Mr. President, I submit that the scenario portrayed by the opponents of this amendment is absurd. Imagine, a U.S. naval blockade several miles from the canal. Maybe, just maybe, 1 of 20 ships gets through. If it gets to the canal, it must be welcomed with open arms under the present provisions of the Neutrality Treaty. After it leaves the canal it, at some point, becomes a belligerent vessel again and we can then take action. This is not so unlikely as we might like to believe. I hope that we have sufficient military strength to meet and engage enemy vessels outside the Canal Zone. But, I do not believe that we should ignore the growing disadvantage at which our fleet has been placed relative to the Soviet Navy.

A decision was made in 1969 to retire many of the aging World War II ships. The cost for operation and maintenance of these ships was to be put toward the construction of new ships. Unfortunately there were several unanticipated problems. There was an inflation of 50 percent between 1969 and 1975, the cost of the All-Volunteer Force dramatically increased military expenditures and the rise in price of oil resulted in a large rise in cost of operation of naval ships. These three problems have hindered the rebuilding of the Navy to the level of a two-ocean force.

As our distinguished colleague from Nevada pointed out yesterday, in 1974 when the Soviet Fleet was much smaller than it is today, our Joint Chiefs of Staff said that we would need 800 ships to support our national security. Today we have less than 459 ships. This is down 976 in 1968. Considering the present trend, who knows how many ships we will have or not have at the end of this century.

On the other hand, events of the last decade show that Moscow is using seapower to extend its sphere of influence around global sealanes and restrict unimpeded access to the oceans. In the

1970's we saw the formidable Soviet Mediterranean Fleet operating close to the Suez Canal, which had long been a former American prerogative. Soviet naval forces have moved into the Red Sea and the Indian Ocean. The Western Pacific has been open to Soviet naval ships and merchant vessels.

It is particularly unlikely that the United States could be confident of engaging a submarine before or after transiting the canal, if the United States were heavily engaged assuring that sea lines of communication were kept open over our worldwide trade routes. Were we in a state of belligerency with the Soviets, it is likely that they would employ tactical aircraft from Cuba and could dramatically inhibit the U.S. Fleet from stopping Soviet submarines. Further, it is tactically absurd to tie up portions of our fleet to protect ourselves in waters we should easily control.

It is not difficult to lose track of submarines. In the Mediterranean for example, after submarines submerge upon leaving the Bosphorous, we do lose track of them. In a situation of stress, it is quite possible that we simply would not have the means to insure that enemy submarines did not get through the canal. This is particularly true with submerged submarines on the Pacific side where there is a great deal of room for maneuver.

The opponents of this amendment have also suggested that it has been the practice during the last two world wars to deal with enemy ships before or after they went through the canal. I assume the argument is that, since it has been the practice in the past, it will do for the present, and the future. I hope that they are not ignoring the fact that the relative advantage of the United States during the last two world wars has changed dramatically. When we consider the growing advantage of the Soviet fleet, which is now 1,200 vessels and the continuing Soviet threat and naval encroachment in the Carribean with Soviet bases in Cuba from which to operate, along with intransigent Cuban policies in Jamaica, our role in Panama cannot be to allow enemy warships free and unimpeded transit through the Panama Canal.

Further, the opponents of this amendment say that if passage is denied to enemy vessels, we will be making a target of the Panama Canal. I think they should think again. I am not suggesting that we fight a battle in the canal. What I am suggesting is that when a vessel, which is an enemy of the United States or Panama during a state of belligerency presents itself at the canal, it should not be entitled to privilege of transit. Further, this argument is a contradiction in terms. If the Soviets are unable to transit through the canal because we are stopping all of their ships before they get to the canal, they would most likely blow it up anyway. There is very little difference, if, as the proponents say, our Navy will be able to engage any enemy vessel.

I think one of the things the opponents seem to forget is the position of Panama. Under the previous treaty, we guaranteed the neutrality of Panama. We do not guarantee them anything under this treaty. We guarantee the neutrality of the canal itself.

We now have the situation where Cuban forces are engaging in voyageurism throughout the world—Angola, Ethiopia. The Cubans are the pawns of the Soviets.

What are they going to do when those hostilities are over? Are those troops coming back to Cuba to settle down, or are they going to foment revolutions in Central and Latin America?

Will we be faced with a time when we will have to guarantee the neutrality of the Panama Canal, even if Panama itself is under attack? I think that is sheer stupidity. We will no longer provide that nation with the defense it should have and here we are saying that we approve a canal, which our people thrust upon them. Here we, as the United States, undertake to guarantee the neutrality of that canal through their country, and even if they are under attack, the vessels of their enemy must go through the canal because we are protecting the neutrality of that waterway.

I have never heard such an absurd argument. Why do we not guarantee Panama the protection it should have? Why do we not tell the world that the Panama Canal is still strategic to our defense and to our economy and we consider it to be the principal asset of the Government of Panama?

Are we to assume, and it seems that the opponents do assume, that we will not be on the best of terms with the Panamanians after this treaty is put into effect? Why should we not protect them? Why should we not protect the canal, which means so much to us?

Mr. President, I had a discussion with my oldest son the other night about this. He had heard about the statement I had made concerning the Panama Canal, and he said:

> Dad, you know, we are just going to have to trust you to do what is right but I hope you will remember that when I am your age, if we need the canal, I don't want to have to fight for it then. If the canal is going to be important to us when I reach your age and we have got to fight for it, I would rather do it now.

And I think that is really the way the young people of this country feel. When we see these polls that come in from throughout the country, that 70, 75, 78 percent of the people of this country of all age groups are opposed to these treaties, I think it is time for us to listen.

Are we, as the people who have been elected to represent our respective States, to believe that we have more power to determine what the people of the United States want than the people themselves?

I think, really, that the problem is with the concept of a treaty. I hear the proponents saying we must articulate what the scenario will be if these treaties are defeated. Not many of us want to see them defeated. We want to see them changed. We want to see them reflect the will of the people of the United States.

And I certainly cannot believe that anyone in this country would believe that we ought to be putting the United States in the position where the United States must guarantee the neutrality of the Panama Canal under a treaty such as this. Particularly when Panama itself might be under attack.

When our country is in a state of belligerence with a nation of the world, why should we be put in the position of paying 30 cents a ton for their warships, as they come through the canal, even if they are at war with us. My God, where were the minds of the people who negotiated these treaties? They certainly cannot be reflecting the viewpoint of the U.S. people. The prior treaties guaranteed that we had control. They specifically referred to vessels of war engaged in belligerence and denied them access, if in coming through the canal as neutrals, they violated the terms of their neutrality.

Now I cannot believe—I cannot believe that this Senate would approve treaties which would put us in the position that the only way we can get back into the Panama Canal and protect it is through the use of force. Well, that is what my son was telling me. He was saying why put us in the position where if the canal means something to me when I am your age, that the only way my generation can get back in there and protect the canal is by having an amphibious landing?

You know, some of us—and I am delighted to see the current occupant of the chair, because I know he knows what I mean—went through a war which we thought was going to end wars. We saw the bloodiest landings in the history of the world, and now we stand here in this body and are asked to blindly approve documents which would put our sons in the positions we were in 30 years ago, and we are asked to think that just because this protects us for 20 years, or 22 years, that that is enough.

Well, I do not know about the rest of you, but it was over 30 years ago that I came back and since that time we have had two belligerencies that meant a great deal to the young men of this country, Korea and Vietnam.

Now in the 22 years between now and the end of the century I take it that this reduced military force would at least give us the presence to protect the canal, but what about after that. What about after that? That is what this amendment is. As to the Treaty of Neutrality we really are talking about post the year 2000. After the year 2000, under what terms do we guarantee the neutrality of this canal?

And I say that I, for one, do not believe we should be put in the position where we say that we guarantee all the warships and military support ships of the world unimpeded passage through the Panama Canal, despite the fact that they might be in a state of belligerency or at war with Panama or in a state of belligerence, or at war with our Nation.

I like to think that the situation occurred in 1962 when our young President took a dramatic action and put the Soviets on notice of where we stood

with regard to the missile fleet that we do the same thing again.

He brought the Pacific Fleet into the Atlantic. The records are clear—they are in our hearing records—as to how many vessels came through.

Again, are we to allow the Pacific Soviet fleet to follow them through? Are we to say that if Panama is attacked in future years by some voyager in the Caribbean who seeks to foment revolutions all over that we are to guarantee that voyager free passage through the canal that we built and we will maintain until the end of the century?

I again point out that the amendment I have offered is slightly different from that of the distinguished Senator from Alabama. My amendment talks about a state of belligerency in the first place. That, to me, is short of war. It encompasses situations such as I have described.

Secondly, this raises Panama to the same position we were in under the Allen amendment. It means that we say we will protect the canal if Panama is the one that is threatened, not just that the United States is threatened.

Third, it means that when we are involved in a state of belligerency, the resupply vessels, the merchant ships used to supply the fleet of the belligerent nation, may be denied access to that canal, too. I think that is highly important. I would hope that my good friend from Alabama realizes we analyzed his amendment and we tried to go a little further in terms of the coverage of that amendment.

I believe that the situation we are in now with the proponents of these treaties—some people call it stonewalling—is an unfortunate position, where they refuse to accept any amendments because the acceptance of the amendments might cause a plebiscite in Panama; refuse to accept changes which the American people, I feel, want and have a right to demand.

That government in Panama promulgated the new constitution, by the way. We talked to General Torrijos about that. He issued that new constitution since he became the leader of his coup. That constitution does provide for a plebiscite. But if he could get the last plebiscite approved, he could get another one approved. If a plebiscite in Panama is the thing we are afraid of, then we better stay in Panama, we better improve our defensive position in Panama, because the first 22 years are going to be worse than the years after the year 2000.

These people who are proposing these treaties without amendments are presuming that the interests of the United States are going to continue to dwindle; that the Panama Canal, as it is known today, will be unimportant to the United States after the year 2000. In my opinion, if they are right, the treaties are a hoax on Panama anyway.

I think it is time we got down to talking about specifics, in terms of these treaties, in regards to our rights. My amendment is a basic right, the right to deny a belligerent access to an engineering marvel that we built.

I would hope that the Senate will reconsider its position with regard to the Allen amendment, and that it will think twice about this. This is a very specific amendment.

If Senators vote to table my amendment or vote against this amendment, what they are telling their constituents is that Cuba can go through the Panama Canal even if it has attacked Panama; that Russia can go through the Panama Canal even if it is resisting a demand such as President Kennedy made on Russia at the time it moved missiles into Cuba.

That is unconscionable, to think that we should have to harbor, provide safe haven, to the vessels of an enemy. That would not happen under the existing treaties, and I see no reason for it to happen under a future relationship between the United States and Panama.

Mr. CURTIS. Will the Senator yield?

Mr. STEVENS. Mr. President, I ask unanimous consent that my assistant, Mr. Steven Silver, be granted the privileges of the floor.

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

Mr. ALLEN. Will the distinguished Senator yield me about 2 minutes?

Mr. STEVENS. I yield such time to the Senator as he may require.

Mr. ALLEN. I thank the distinguished Senator, the author of this amendment, for yielding me time.

Mr. President, this is the start of the fourth week, I believe, of debate on the Panama Canal treaties, more specifically on the Neutrality Treaty.

Not one single amendment has been agreed to here in the Senate because the proponents of the treaties are resisting every amendment, no matter how constructive it may be, no matter how beneficial it may be to our national interest.

The reason assigned is that this might not be acceptable to Dictator Torrijos, it might not be acceptable to him, and, therefore, a new plebiscite might have to be called.

In the first place, Torrijos jumped the gun in calling this plebiscite that was held in Panama. He knew full well that under our constitutional process, the Senate has the right to advise and consent, or, in the alternative as to consent, to nonassent to the treaties. So in calling the plebiscite before the Senate had ever given its advice to the President on the treaties, he certainly acted prematurely.

What is wrong with a new plebiscite? Why should not the U.S. Senate discharge its constitutional duty, its constitutional obligation, of shaping these treaties in the best interests of all concerned, and certainly in the best interests of the United States and our national interests?

If the Senate is to be deprived of its constitutional rights and its constitutional duties of improving on treaties submitted to the Senate for its consideration, then I feel that the Senate is abdicating its constitutional duties and its constitutional responsibilities.

This amendment offered by the distinguished Senator from Alaska (Mr. STEVENS), as he stated, is an improvement and a perfection of the amendment which I offered earlier in the Senate and which received 40 votes out of 92 votes cast.

I am somewhat amused, Mr. President, by the fact that the first vote that we had in the Senate on these issues was a vote on the motion which I made to reverse the order of consideration of these treaties. One would think that the first treaty to be considered would be the Panama Canal Treaty which provides for transferring the canal to Panama and the conditions under which it is being transferred.

That is not so. The leadership has seen to it that we are considering the Neutrality Treaty, which, in effect, does not come into operation until the year 2000.

When I made a motion to reverse that order and take up the Panama Canal Treaty first, 30 votes, I believe, were cast for my motion and some 67 votes, I believe, were cast against it.

The media was quick to take note of the fact that since the opponents of the treaties had mustered only 30 votes, therefore it seemed likely that this was a test vote, and since it takes 34 votes to kill the treaties that the treaties were sure of being approved, that this was a test vote. Thereafter, we received 34 votes on the amendment, then 38 votes and, lastly 40 votes. Never once has it been suggested that this 40 votes amounted to a test vote on the opinion in the Senate with regard to the treaty.

Along the way, as other amendments were offered, they mustered fewer votes. One amendment, I believe, got as few as 15 votes. But the fact remains, Mr. President, that if the Senators were allowed to express their independent judgment on these amendments, if they did not feel inhibited and bound by their commitment to vote for the treaties and did not feel that that commitment bound them to vote against amendments, we could shape this treaty and these treaties in such a way as to protect our national interest.

Mr. President, it is quite apparent that Dictator Torrijos is having greater influence in the U.S. Senate in shaping these treaties than any Member of the Senate or any group of Members of the Senate; because, obviously, he is able to say that we do not want any amendments and apparently, the leadership is going along with that thought.

The present amendment, the amendment under consideration, seeks to nullify this cynical and demagogic and hypocritical provision of the treaty. Let us see what it says in article III, section (e):

Vessels of war and auxiliary vessels of all nations—

Enemy nations, friendly nations, allied nations, all nations—

shall at all times—

During war or peace—

be entitled to transit the canal, irrespective of their internal operation, means of propulsion, origin, destination, or armament—

And listen to this—

without being subjected, as a condition of transit, to inspection, search, or surveillance.

The answer of the distinguished proponents of the amendment and the leadership is, yes, that is there, but, after all, that is meaningless, because we are going to catch enemy vessels out at sea and destroy them. If they should happen to elude the blockade and get through the canal, we will stop them on the other side.

How cynical can you get, Mr. President—to insert a provision that gives enemy warships the opportunity and the right to go through the canal undisturbed, without search, without inspection, or without surveillance?

Down a little further we find:

> In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination.

They just have carte blanche. Well, they say, they will get them before they get to the canal or after they get to the canal. Suppose the mission of a ship——

Mr. CURTIS. Will the Senator yield right there?

Mr. ALLEN. Yes, in just a moment.

Suppose the mission of a ship was not to go through the canal and get to the other side, but to stop in the middle of the canal, in a lock, and blow it up? The amendment of the distinguished Senator from Alaska says that if any nation is in a state of belligerency, not only with the United States—which my amendment provides for—but also with Panama, they shall not have free and undisturbed access to the canal. That would make a realistic provision out of the treaty rather than to have such a cynical and demagogic and hypocritical provision as is now provided in the treaty.

Yes, I yield to the distinguished Senator from Nebraska (Mr. CURTIS).

Mr. CURTIS. Is it not true that a right established by a treaty duly ratified has a high standing so far as carrying the force of the Constitution?

Mr. ALLEN. I beg the Senator's pardon. I did not quite hear the question.

Mr. CURTIS. I said, is it not true that a right established by a treaty duly ratified has a high standing among other competing rights because of the force of the Constitution back of a treaty?

Mr. ALLEN. Yes, it does. Yes, indeed, it ranks above a statute and right alongside a constitutional provision.

Mr. CURTIS. Now, if a treaty right backed by our Constitution grants to all countries passage through the canal, what right do we have to intercept it at sea?

Mr. ALLEN. Well, we would not have any legal right. That is the very point I am making, I say to the distinguished Senator from Nebraska. Why agree to a treaty provision that the proponents say would not be observed and that we all know, as a matter of pragmatism, would not be observed? We would not allow it, so why do we go through the mockery of having such a provision in the treaty? The amendment of the distinguished Senator from Alaska would make a realistic provision here and say that no enemy nation in a state of belligerency with the United States or Panama would have this right of undisturbed transit of the canal.

Mr. CURTIS. If the Senator will yield further, permit me to say that many Americans are grateful for the efforts of the distinguished Senator from Alabama in reference to this treaty.

Also, I want to observe that one of the strongest speeches made in the Senate on any subject was the speech we just heard from the distinguished Senator from Alaska, who is a veteran of the Armed Services of our Republic, and whose clear thinking and concern for the future of the United States has prompted this amendment. I do not know what the Senate will do with it. I do predict that when the historians write the record of this day, they will say of this amendment that it was a most important amendment, and certainly well presented.

Mr. ALLEN. I thank the distinguished Senator from Nebraska.

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

Mr. ALLEN. Yes, sir, I yield to the distinguished Senator from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. President, I notice that article VI indicates that the Republic of Colombia and Costa Rica shall have the right of transit toll free. The United States shall have the right to expeditious passage through the canal, but it does not say anything about tolls. Does the distinguished Senator know whether or not the United States would have to pay tolls for its warships to go through the canal?

Mr. ALLEN. Yes; we would have to pay tolls for warships, possibly running as high as $50,000 per ship.

Mr. SCOTT. The article starts out by saying:

> In recognition of the important contributions of the United States of America and the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal . . .

They are recognizing the importance of what we have done, but then the other countries can go through free and we have to pay.

Mr. ALLEN. Yes.

Mr. SCOTT. That does not seem like the type of recognition we need.

Mr. ALLEN. I might say that is a violation of the Hay-Pauncefote Treaty, because it provides that a vessel shall have access to the canal, transit of the canal, on an equal basis. So the very provisions here giving Costa Rica and Colombia the right of free transit violates the Hay-Pauncefote Treaty.

Mr. SCOTT. I assume that if Panama actually controls the canal after we get out, Panama is not going to charge its own vessels for going through the canal; so that means that would make three nations that would get free passage and we built the thing and we are going to have to pay to send our warships through. I see some inequality there.

Mr. SARBANES. Will the Senator yield on that point?

Mr. ALLEN. Let me answer the question first.

I do not believe that the treaty provides that Panama would get free transit of the canal. Colombia and Costa Rica would have.

But I do not believe it provides it free.

Mr. SCOTT. Certainly, I agree with the distinguished Senator on that point. But I am thinking that when the time comes, after December 31, 1999, and when Panama has complete control, it would not seem reasonable they would charge themselves and then let their two neighbors go free.

So I would submit, just as a reasonable thing, that they, too, after expiration of the treaty time would go free.

But I do not see if we cannot go free during the existence of the treaty that later they would say, "Well, the treaty is over, now you can go free." That would not seem like a reasonable assumption.

Mr. ALLEN. No. But whether they charge or not amounts to the same thing because Panama would own the canal, and they would have——

Mr. SCOTT. It would be a bookkeeping operation.

Mr. ALLEN. All the tolls to them.

Mr. SCOTT. A bookkeeping operation. I thank the Senator.

Mr. ALLEN. I will yield for a question to the distinguished Senator from Maryland, on his time, I might say.

Mr. SARBANES. I think it is important, at least trying to keep the facts straight in this debate, to make it very clear the United States now pays tolls on all of its ships that go through the Panama Canal.

Mr. ALLEN. I did not say they did not. He asked if we would have to pay for our warships, and I said we would.

Mr. SARBANES. The distinguished Senator from Virginia was suggesting that if we paid under these proposed arrangements that somehow would be a change from present practice.

Mr. ALLEN. I did not so understand that and it was not so stated.

The Senator misunderstood. Nothing like that was stated.

Mr. SARBANES. Maybe if I could engage the distinguished Senator from Virginia——

Mr. ALLEN. No. The Senator from Alabama has the floor. If the Senator wishes to direct a question to me on his time, I would be delighted to answer.

Mr. SARBANES. Well, does the Senator from Alabama recognize that under the present arrangements the United States pays tolls on all of its ships, commercial and military, that transit the canal?

Mr. ALLEN. I have said nothing to the contrary.

Mr. SARBANES. So that is correct?

Mr. ALLEN. That is correct. They pay now and they will pay afterward. Yes.

Mr. SARBANES. I thank the Senator.

Mr. ALLEN. Mr. President, what we have here is resistance by the proponents of the measure to any and all amendments, no matter how good. That has been proved and it is going to be proved throughout the consideration of these treaties, that they are so anxious that no amendment be passed to displease the Panamanian authorities, shall I say.

They have stated on the floor time and time again that this amendment or that amendment is a killer amendment, if it is passed it will kill the treaties.

I say no Senator can make that state-

ment categorically and with certainty. Who knows whether an amendment will kill the treaties or not? Dictator Torrijos first said he would not take any amendment. Now he is willing to take the so-called leadership amendments. What would there be to prevent him from accepting 100 amendments if the Senate in its wisdom would see fit to agree to 100 amendments? I would predict he would say, "Well, this is in the spirit of the treaty, I accept it," then exchange notes with the President of the United States and the treaty would be ratified.

But to cut the Senate off from any right to shape this treaty, even though we have been discussing it now for over 3 weeks, seems to me to be an affront to the Senate itself and the duties and responsibilities that we have, to take the position that no amendments must be passed.

We have to accept it as Mr. Torrijos wants it. That is what it boils down to.

Now, this is a good amendment of the distinguished Senator from Alaska (Mr. STEVENS). It will nullify this ridiculous provision in the treaty that enemy ships in time of war with the United States or with Panama can have undisturbed transit of the canal without any search or inspection or surveillance of their ships, and without giving any information as to the cargo that it has.

It could be crammed full of explosives, and under the treaty, the operators of the canal, whether they be Panamanians or Americans, would have no right to check on that cargo.

Mr. STEVENS. Will the Senator yield?

Mr. ALLEN. I am delighted to.

Mr. STEVENS. And a belligerent nation having acquired access could scuttle one of their old warships in the lake or in a lock and maybe tie it up for a long time.

Mr. ALLEN. Yes. I believe that is what Admiral Hobson did.

Mr. STEVENS. That is right.

Mr. ALLEN. Sink a ship there in the mouth of it, that can very well be done and be put out of operation for months and possibly years.

I thank the distinguished Senator for his suggestion.

Mr. President, I yield the floor inasmuch as I have used the time allotted to me.

Mr. STEVENS. Mr. President, how much time does the distinguished Senator from North Carolina seek?

Mr. HELMS. Could the distinguished Senator from Alaska spare 15 minutes?

Mr. STEVENS. I yield 15 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Senator very much.

Mr. President, the distinguished Senator from Alaska has performed a significant service for the United States in offering his amendment to permit the prohibition of transit to warships and auxiliary vessels of nations which are in a state of belligerency with either the United States or Panama.

The effect of this amendment is simply to continue the present practice and the historical rights of the United States with regard to the passage of enemy vessels.

It has been asserted many times here on the floor of the Senate that we have no rights under international law to prohibit the passage of enemy vessels through the Panama Canal. It has been asserted that the Hay-Pauncefote Treaty with Great Britain requires us to keep the canal free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality.

Neither the text nor the diplomatic history surrounding the Hay-Pauncefote Treaty supports that conclusion; nor has our historical practice been in accord with the principle. It has been asserted that our only right was the right of belligerents on the high seas to intercept and destroy enemy vessels. But the fact is that the Hay-Pauncefote Treaty was understood by both parties as permitting the United States to defend the canal itself by prohibiting enemy passage.

To interpret the Hay-Pauncefote Treaty correctly, it is necessary to go back into the diplomatic history surrounding it. There were actually two Hay-Pauncefote treaties. The first one was rejected after being amended by the U.S. Senate; the second one is the one that was approved. Those who have been talking about the destructive intent of every attempt to amend the present treaties under debate ought to go back and look at history. In the case of the Hay-Pauncefote Treaty, the Senate's amendments played a very constructive role in bringing about a very good treaty, the treaty that cleared the way for the building of the Panama Canal by the United States.

Mr. President, the Hay-Pauncefote Treaty has been much discussed on this floor; but, in the judgment of the Senator from North Carolina, it has never been put into the proper perspective. The proper perspective is provided by the memorandum set forth by Lord Lansdowne, the British Foreign Minister on August 3, 1901.

The distinguished Senator from Iowa, Mr. CHURCH, has repeatedly said that the Hay-Pauncefote Treaty requires the United States to admit warships of all nations, including those which are belligerents against the United States. On February 20, the distinguished Senator spoke as follows:

> Under the existing treaty governing the present operation of the canal, the United States is formally obligated to respect and maintain a regime of neutrality. The provisions are written into the Hay-Pauncefote Treaty, and the governing article reads as follows:
>
> "The Canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise. . . . Such conditions and charges of traffic shall be just and equitable."
>
> From the moment the United States opened the Panama Canal for international traffic in 1914 the canal has been administered in strict accordance with the terms of the treaty I have just quoted. It has been a neutral waterway, open to the passage of all ships, including warships, of any nation. Nothing in the pending treaty changes this arrangement in any way detrimental to the United States, and to suggest that it does is contrary to fact.

On February 22, the distinguished Senator from Idaho returned to the topic, and once again insisted that we did not rely upon the Hay-Pauncefote Treaty to keep enemy ships from transiting the canal. The distinguished Senator said:

> In the First and Second World Wars, no enemy vessel ever presented itself for transit through the canal. Our Navy was in a position to prevent any enemy vessels from approaching the canal. That is how we denied the use of the canal to enemy ships—on the high seas. This was the only practical way of doing it, anyway, since to allow an enemy ship to come within firing distance of the canal would, of course, have jeopardized the canal itself. . . .
>
> There was no paper agreement we relied upon for that purpose; we relied upon the U.S. Navy, and we will again if ever we should engage in another war. . . .
>
> Under the new treaties, Panama and the United States, between now and the end of the century, and then, for the indefinite future, would guarantee a continued regime of neutrality for transit through the canal. Nowhere in the new treaties does the United States undertake to guarantee enemy vessels transit to the canal. We would continue to rely, as we have in the past, upon our ability to control access to the canal on the high seas, for this is the only truly effective protection that exists.

I find it very curious, Mr. President, that when the distinguished Senator from Idaho, Mr. CHURCH, quoted the Hay-Pauncefote on the Senate Floor on February 20, he quoted it by including the words "in time of war as in time of peace," words which were pointedly dropped from the version which was ratified. The able Senator's quote appears on page 3797 of the RECORD, yet if he and other Senators will consult the Foreign Relations Committee's compilation of background documents and read the Hay-Pauncefote Treaty on page 128, they will note the correct reading which omits the words "in time of war as in time of peace." And of course, those nine words make all the difference in the world to the problem of the passage of enemy ships in time of war.

Yet the distinguished Senator from Idaho has continued to rely upon this argument ever since. Now the Senator from North Carolina recognizes that this is a powerful argument, and a strongly emotional argument. After all, are not all Americans proud of the U.S. Navy? Do we not take pride in its strength and its power? Of course we do, and we depend for our security upon that strength. But it has nothing to do with the debate at hand, namely, whether or not our international agreements are sufficient in themselves.

For what the distinguished Senator has been saying, in effect, is that in the Hay-Pauncefote agreement the United States pledged to keep the canal open to the warships of all nations, even in time of war, but that the United States used the U.S. Navy to frustrate that agreement.

Now the Senator from North Carolina agrees that, if the Hay-Pauncefote

Treaty had actually required us to open the canal to belligerents of the United States, then we would have had no other recourse than to do as the Senator from Idaho asserts. But in point of fact, the Hay-Pauncefote Treaty did not—repeat, did not—require the United States to keep the canal open to belligerents of the United States. Thus the actions of the U.S. Navy in preventing enemy ships from presenting themselves for transit was an action wholly in accord with our obligations under the Hay-Pauncefote Treaty.

HISTORY OF THE HAY-PAUNCEFOTE TREATY

To interpret the Hay-Pauncefote Treaty correctly, it is necessary to go back into the diplomatic history surrounding it. There were actually two Hay-Pauncefote Treaties, as any one can easily ascertain by examining the volume of Background Documents Relating to the Panama Canal, printed by the Foreign Relations Committee, on pages 116–17, and pages 127–9.

It is very instructive to go back into this history because of all the talk there has been on this floor about so-called killer amendments destroying the treaty-making process. To characterize every constructive action taken to improve these treaties as a destructive process is to derogate from the dignity and responsibility of the Senate. The Senate has both the duty and the obligation to propose amendments intended to improve such agreements. Furthermore, it has every right to expect that, in negotiations between mature nations, there is a give-and-take process that recognizes the possibility of changes.

That is exactly what happened with the Hay-Pauncefote Treaty. Secretary of State Hay made the mistake of negotiating the first treaty without consulting the Senate. When the Senate took it up, the Treaty was amended in three places:

First. Article I was amended so as to abrogate specifically the Clayton-Bulwer Convention, under which the United States had formerly agreed not to build a canal.

Second. Article II, rule 5, was amended so as to provide for U.S. defense of the canal as follows:

> It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own forces the defense of the United States and the maintenance of public order.

Third. The original article III was deleted, under which other signatories had been invited to adhere.

When the amended treaty was presented to Great Britain, the British took several months to consider it, and then rejected it as amended.

Mr. President, did the sky fall in when the treaty was rejected? Did the British people rise up in revolt? Did world opinion turn violently against the United States?

Of course not, Mr. President. The United States and Great Britain patiently went to work again and came up with the second Hay-Pauncefote Treaty, a much improved version, which is still in effect after being ratified calmly by both parties.

It is instructive to see what changes were made in the second version, changes which took note of the proper interests of both parties. By any objective analysis, the new treaty was even better than the amended version of the first one.

First. The abrogation of Clayton-Bulwer was given the dignity of a separate article, since the British had complained that the Senate amendment appeared to abrogate it only in passing.

Second. The Senate amendment providing that the United States could take defense measures was dropped; but—and this is very important to our present consideration, Mr. President—two other provisions not touched by the Senate were also dropped. The first was the omission of the phrase "in time of war as in time of peace" from rule 1, the antidiscrimination stipulation. The second was the deletion of the entire rule 7, prohibiting the fortification of the canal by the United States.

THE LANSDOWNE MEMORANDUM

The British understanding of these changes was embodied in a document prepared by Lord Lansdowne, the British Foreign Minister, on August 3, 1901. That document may be found on pages 119–23 of the Foreign Relations Committee compilation of background documents.

Let us therefore look at what the Lansdowne Memorandum had to say on the problem of defense of the canal:

> The various points connected with the defense of the canal may conveniently be considered together. In the present draft the Senate amendment has been dropped, which left the United States at liberty to apply such measures as might be found "necessary to take for securing by its own forces the defense of the United States." On the other hand the words "in time of war as in time of peace" are omitted from Rule 1, and there is no stipulation, as originally in Rule 7, prohibiting the erection of fortifications commanding the canal of the waters adjacent.
>
> I do not fail to observe the important difference between the question as now presented to us and the position which was created by the amendment adopted in the Senate.
>
> In my despatch I pointed out the dangerous ambiguity of an instrument, of which one clause permitted the adoption of defensive measures, while another prohibited the erection of fortifications. It is most important that no doubt should exist as to the intention of the Contracting Parties. As to this, I understand that by the omission of all reference to the matter of defense the United States Government desire to reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies. On the other hand, I conclude that, with the above exception, there is no intention to derogate from the principles of neutrality laid down by the Rules. As to the first of these propositions, I am not prepared to deny that contingencies may arise when not only from a national point of view, but on behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defence of the canal at a moment when they were themselves engaged in hostilities.
>
> . . . exception could not be taken to an arrangement under which, supposing that the United States, as the power owning the canal and responsible for the maintenance of its neutrality, should find it necessary to interfere temporarily with its free use by the shipping of another power, that power would thereupon at once and *ipso facto* become liberated from the necessity of observing the Rules laid down in the new Treaty

Mr. President, the key sentence of the Landsdowne Memorandum is this:

> I understand that by the omission of all reference to the matter of defense the United States Government desire to reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies.

Mr. President, that sentence makes it absolutely clear that it was the British understanding that the Hay-Pauncefote Treaty did not prohibit the United States from forbidding belligerents of the United States to transit the canal. Needless to say, the United States was of the same opinion. President Theodore Roosevelt, in transmitting the second treaty to the Senate, wrote that it "guarantees to this Nation every right that it has ever asked in connection with the canal."

RELATION TO THE NEUTRALITY TREATY

Mr. President, it is instructive at this point to compare the Hay-Pauncefote Treaty with the Neutrality Treaty in this regard. The Hay-Pauncefote Treaty, as we have just seen, deliberately omitted the phrase "in time of war as in time of peace," and it was omitted specifically so that the United States could exclude belligerent vessels in time of war. The Neutrality Treaty includes the phrase, in article III, "at all times," which obviously includes "in time of war" and frustrates a key principle of Hay-Pauncefote.

Indeed, article III further provides that "vessels of war and auxiliary vessels of all nations" at all times shall be entitled to transit the canal. This is also completely at odds with Hay-Pauncefote, as understood by both parties to that treaty. "All nations" obviously includes belligerents of the United States. Yet Hay-Pauncefote, according to the Lansdowne memorandum, was intended to 'reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies."

WORLD WAR I

The Neutrality Treaty also flies in the face of the historical practice of the United States. It is true that the U.S. Navy prevented enemy vessels from approaching the canal; and I have no doubt that they will do so in the future. Yet, in the past, this action of the Navy was intended to enforce a recognized treaty right, and not a mere act of belligerency. We were acting totally in accord with the principles of international law, instead of setting aside international law in favor of the rules of war.

As long as the United States was neutral before the two World Wars, the

President of the United States proclaimed that the canal was neutral, and laid down rules for the conduct of belligerents while in the waters of the canal. This is what President Woodrow Wilson did in 1914.

Yet when the United States entered the war, President Wilson issued a proclamation, on May 23, 1917, that specifically prohibited enemies of the United States from entering the Canal Zone. Rule 15 of that proclamation reads as follows:

In the interest of the protection of the Canal while the United States is a belligerent no vessel of war, auxiliary vessel, or private vessel of an enemy of the United States or an ally of such enemy shall be allowed to use the Panama Canal nor the territorial waters of the Canal Zone for any purpose, save with the consent of the Canal authorities and subject to such rules and regulations as they may prescribe.

Mr. President, for some reason this important document was not included in the Foreign Relations Committee's compilation of documents. Perhaps that is why the distinguished Senator from Iowa appears to be unaware of the practice of the United States with regard to vessels of war in the canal zone.

S.S. "WIMBLETON" CASE: 1923

In 1923, the Permanent Court of International Justice at the Hague, in the case of the S.S. *Wimbleton*, cited with approval the Hay-Pauncefote Treaty and the joint interpretation of the United States and Great Britain. The Court said pointedly:

There is no clause guaranteeing the free passage of the canal in time of war as in time of peace without distinction of flag and without reference to the possible belligerency of the United States, nor is there any clause forbidding the United States to erect fortifications commanding the Canal.

WORLD WAR II

Mr. President, the same practice was followed during World War II. On September 5, 1939, President Franklin D. Roosevelt issued a proclamation of neutrality forbidding any U.S. citizen to assist the belligerents in any way, a proclamation that specifically included the canal zone within its area of force and effect. On June 28, 1940, another proclamation by President Franklin D. Roosevelt issued the following rules for belligerent vessels while in the neutral waters of the canal zone:

The Secretary of the Treasury may make . . . rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specifically authorized by him to go or remain on board thereof.

Within the territory and waters of the Canal Zone the Governor of the Panama Canal, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury.

Mr. President, this proclamation is particularly significant since the Neutrality Treaty specifically says in article III that vessels of war and auxiliary vessels of all nations shall be entitled to transit the canal "without being subjected, as a condition of transit, to inspection, search or surveillance."

However, Mr. President, when the United States entered the war, President Franklin D. Roosevelt changed the neutrality rules to take cognizance of the altered situation. On December 27, 1941, President Roosevelt issued Executive Order 9001 laying down the war powers of the Secretary of War. On January 14, by Executive Order 9023, those powers were extended to the Governor of the Canal Zone, and by a proclamation of that date, the regulations for the control of the Cristobal and the Gulf of Panama maritime control areas, directing the U.S. Naval authorities to use force against any vessel or person taking actions "inimical to the defense of the United States."

CONCLUSION

It is clear, therefore, that the historical practice of the United States completely contradicts the so-called regime of neutrality that is laid down in this so-called Neutrality Treaty. U.S. practice has been completely consonant with the Hay-Pauncefote Treaty and the principles of international law.

Mr. President, the amendment of the distinguished Senator from Alaska will only continue historical precedent and practice. It is based upon commonsense, and the need to defend the canal. I urge its adoption.

Mr. President, in the interests of the historical record, I ask unanimous consent that the documents to which I have referred in the course of my remarks be printed in the RECORD at the conclusion of my remarks; they include:

First. The first Hay-Pauncefote Treaty.

Second. The second Hay-Pauncefote Treaty.

Third. The Lansdowne memorandum.

Fourth. The proclamation of President Wilson of May 23, 1917.

Fifth. Excerpts from the case of the S.S. *Wimbleton*.

Sixth. The proclamations and Executive orders of President Franklin D. Roosevelt of:

First. September 5, 1939, and Executive Order 8232.

Second. June 29, 1940.

Third. January 14, 1942, including Proclamation 2536 and Executive Order 9023.

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

HAY-PAUNCEFOTE TREATY OF FEBRUARY 5, 1900, BETWEEN THE UNITED STATES AND GREAT BRITAIN [1]

Feb. 5, 1900, Mr. Hay, Secretary of State, and Lord Pauncefote, British ambassador, signed at Washington a convention, the object of which was declared to be "to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, and to that end to remove any objection which may arise out of the convention of April 19, 1850, commonly called the Clayton-Bulwer treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Art. VIII, of that Convention." [2]

The convention of Feb. 5, 1900, was communicated to the Senate, with a message of the President bearing date as of the same day [3]

The Senate gave its advice and consent to the exchange of ratifications, with certain amendments,[4] with are denoted below in italics, except in the case of Art. III., which, as is indicated by brackets, was stricken out, Art. IV. being made Art. III.:

Article I. It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost or by gift or loan of money to individuals or corporations or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Convention, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

Article II. The High Contracting Parties, desiring to preserve and maintain the "general principle" of neutralization established in Article VIII. of the Clayton-Bulwer Convention, *which convention is hereby superseded*, adopt, as the basis of such neutralization, the following rules, substantially as embodied in the convention between Great Britain and certain other Powers, signed at Constantinople October 29, 1888, for the Free Navigation of the Suez Maritime Canal, that is to say:

1. The canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay, in accordance with the regulations in force, and with only intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same rule as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war or warlike materials in the canal except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this article shall apply to waters adjacent to the canal, within three marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

It is agreed, however, that none of the immediately foregoing conditions and stipulations in sections numbered one, two, three, four, and five of this article shall apply to measures which the United States may find it necessary to take for securing by its own force the defense of the United States and the maintenance of public order.

6. The plant, establishments, buildings, and all works necessary to the construction, main-

tenance and operation of the canal shall be deemed to be part thereof, for the purposes of this convention, and in time of war as in time of peace shall enjoy complete immunity from attack or injury by belligerents and from acts calculated to impair their usefulness as part of the canal.

7. No fortifications shall be erected commanding the canal or the waters adjacent. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

[Article III. The High Contracting Parties will, immediately upon the exchange of the ratifications of this Convention, bring it to the notice of the other Powers and invite them to adhere to it.]

Article IV. The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at Washington or at London within six months from the date hereof, or earlier if possible. (Sen. Doc. 85, 57 Cong. 1 sess. 7.)

FOOTNOTES

[1] Moore, A Digest of International Law (1906), v. 3, pp. 210–211. See also U.S. Senate, Canal Treaties: Executive Documents Presented to the United States Senate Together With Proceedings by the Senate Thereon Relative to the Panama Canal. Washington, Govt. Print. Off., 1914. 63rd Congress, 2d session. Senate Document No. 456, pp. 9–19. JX1398.5.A5 1914c.

[2] See Mr. Hay, Sec. of State, to Mr. White, chargé at London, No. 976, Dec. 7, 1898, MS. Inst. Gr. Br. XXXIII. 40; and Mr. White's No. 613, of Dec. 22, 1899.

[3] S. Doc. 160, 56 Cong. 1 sess.

[4] See, as to the amendments, report of Mr. Davis, Com. on For. Rel., March 9, 1900, and statement of Mr. Morgan, for the minority, S. Ex. Report, No. 1, 56 Cong. 1 sess., printed as S. Doc. 268, 56 Cong. 1 sess.

SHIP CANAL (HAY-PAUNCEFOTE TREATY)[1]

Treaty signed at Washington November 18, 1901
Senate advice and consent to ratification December 16, 1901
Ratified by the President of the United States December 26, 1901
Ratified by the United Kingdom January 20, 1902
Ratifications exchanged at Washington February 21, 1902
Entered into force February 21, 1902
Proclaimed by the President of the United States February 22, 1902

32 Stat. 1903; Treaty Series 401

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850,[2] commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honorable Lord Pauncefote, G. C. B., G. C. M. G., His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their full powers which were found to be in due and proper form, have agreed upon the following Articles:

ARTICLE I

The High Contracting Parties agree that the present Treaty shall supersede the aforementioned Convention of the 19th April, 1850.

ARTICLE II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE III

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th [29th] October, 1888,[3] for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy complete immunity from attack or injury by belligerents, and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

ARTICLE V

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

IN FAITH WHEREOF the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

DONE in duplicate at Washington, the 18th day of November, in the year of Our Lord one thousand nine hundred and one.

JOHN HAY [seal]
PAUNCEFOTE [seal]

FOOTNOTES

[1] Bevans, Treaties and Other International Agreements of the United States of America, 1776–1949 (1972), v. 12, pp. 258–260.

[2] TS 122, *ante*, p. 105.

[3] For text, see *British and Foreign State Papers*, vol. 79, p. 18.

U.S.-BRITISH NEGOTIATIONS AND SECOND HAY-PAUNCEFOTE TREATY OF NOVEMBER 18, 1901[1]

"In the despatch which I addressed to Lord Pauncefote on the 22nd February last, and which was communicated to Mr. Hay on the 11th March, I explained the reasons for which His Majesty's Government were unable to accept the amendments introduced by the Senate of the United States into the convention, signed at Washington in February 1900, relative to the construction of an interoceanic canal.

"The amendments were three in number, namely: . . .

"2. The objections entertained by His Majesty's Government may be briefly stated as follows:

"(1) The Clayton-Bulwer convention being an international compact of unquestionable validity could not be abrogated or modified save with the consent of both parties to the contract. No attempt had, however, been made to ascertain the views of Her late Majesty's Government. The convention dealt with several matters for which no provision had been made in the convention of February, 1900, and if the former were wholly abrogated both powers would, except in the vicinity of the canal, recover entire freedom of action in Central America, a change which might be of substantial importance.

"(2) The reservation to the United States of the right to take any measures which it might find necessary to secure by its own forces the defence of the United States appeared to His Majesty's Government to involve a distinct departure from the principle of neutralization which until then had found acceptance with both Governments, and which both were, under the convention of 1900, bound to uphold. Moreover, if the amendment were added, the obligations to respect the neutrality of the canal in all circumstances would, so far as Great Britain was concerned, remain in force; the obligation of the United States, on the other hand, would be essentially modified. The result would be a one-sided arrangement, under which Great Britain would be debarred from any warlike action in or around the canal, while the United States would be able to

[1] Moore, A Digest of International Law (1906), v. 3, pp. 212–222. See also U.S. Senate, Canal Treaties (1914) cited above, pp. 20–55.

Footnotes at end of article.

resort to such action even in time of peace to whatever extent they might deem necessary to secure their own safety.

"(3) The omission of the Article inviting the adherence of other powers placed this country in a position of marked disadvantage compared with other powers; while the United States would have a treaty right to interfere with the canal in time of war, or apprehended war, and while other powers could with a clear conscience disregard any of the restrictions imposed by the convention of 1900, Great Britain alone would be absolutely precluded from resorting to any such action or from taking measures to secure her interests in and near the canal.

"For these reasons His Majesty's Government preferred, as matters stood, to retain unmodified the provisions of the Clayton-Bulwer convention. They had, however, throughout the negotiations given evidence of their earnest desire to meet the views of the United States, and would sincerely regret a failure to come to an amicable understanding in regard to this important subject.

"3. Mr. Hay, rightly apprehending that His Majesty's Government did not intend to preclude all further attempt at negotiation, has endeavoured to find means by which to reconcile such divergencies of view as exist between the two Governments, and has communicated a further draft of a treaty for the consideration of His Majesty's Government.

"Following the order of the Senate amendments, the convention now proposed—

"(1) Provides by a separate Article that the Clayton-Bulwer convention shall be superseded.

"(2) The paragraph inserted by the Senate after section 5 of Article II is omitted.

"(3) The Article inviting others powers to adhere is omitted.

"There are three other points to which attention must be directed:—

"(*a*) The words 'in time of war as in time of peace' are omitted in Rule 1.

"(*b.*) The draft contains no stipulation against the acquisition of sovereignty over the isthmus or over the strip of territory through which the canal is intended to pass. There was no stipulation of this kind in the Hay-Pauncefote convention; but by the surviving portion of Article I of the Clayton-Bulwer convention, the two Governments agreed that neither would ever 'occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America," nor attain any of the foregoing objects by protection offered to, or alliance with, any State or people of Central America.

"(*c.*) While the amendment reserving to the United States the right of providing for the defence of the canal is no longer pressed for, the first portion of Rule 7, providing that 'no fortifications shall be erected commanding the canal or the waters adjacent,' has been omitted. The latter portion of the Rule has been incorporated in Rule 2 of the new draft, and makes provision for military police to protect the canal against lawlessness and disorder.

"4. I fully recognize the friendly spirit which has prompted Mr. Hay in making further proposals for the settlement of the question, and while in no way abandoning the position which His Majesty's Government assumed in rejecting the Senate amendments, or admitting that the despatch of the 22nd of February was other than a well-founded, moderate, and reasonable statement of the British case, I have examined the draft treaty with every wish to arrive at a conclusion which shall facilitate the construction of an interoceanic canal by the United States, without involving on the part of His Majesty's Government any departure from the principles for which they have throughout contended.

"5. In form the new draft differs from the convention of 1900, under which the High Contracting Parties, after agreeing that the canal might be constructed by the United States, undertook to adopt certain Rules as the basis upon which the canal was to be neutralized. In the new draft the United States intimate *their* readiness 'to adopt' somewhat similar Rules as the basis of the neutralization of the canal. It would appear to follow that the whole responsibility for upholding these Rules, and thereby maintaining the neutrality of the canal, would henceforward be assumed by the Government of the United States. The change of form is an important one, but in view of the fact that the whole cost of the construction of the canal is to be borne by that Government, which is also to be charged with such measures as may be necessary to protect it against lawlessness and disorder, His Majesty's Government are not likely to object to it.

"6. The proposal to abrogate the Clayton-Bulwer convention is not, I think, inadmissible if it can be shown that sufficient provision is made in the new treaty for such portions of the convention as ought, in the interests of this country, to remain in force. This aspect of the case must be considered in connection with the provisions of Article I. of the Clayton-Bulwer convention which have already been quoted, and Article VIII. referred to in the preamble of the new treaty.

"Thus, in view of the permanent character of the treaty to be concluded and of the 'general principle' reaffirmed thereby as a perpetual obligation, the High Contracting Parties should agree that no change of sovereignty or other change of circumstances in the territory through which the canal is intended to pass shall affect such 'general principle' or release the High Contracting Parties, or either of them, from their obligations under the treaty, and that the Rules adopted as the basis of neutralization shall govern, so far as possible, all interoceanic communications across the isthmus.

"I would therefore propose an additional Article in the following terms, on the acceptance of which His Majesty's Government would probably be prepared to withdraw their objections to the formal abrogation of the Clayton-Bulwer convention:—

"In view of the permanent character of this treaty, whereby the general principle established by Article VIII. of the Clayton-Bulwer convention is reaffirmed, the High Contracting Parties hereby declare and agree that the Rules laid down in the last preceding Article shall, so far as they may be applicable, govern all interoceanic communications across the isthmus which connects North and South America, and that no change of territorial sovereignty, or other change of circumstances, shall affect such general principle or the obligations of the High Contracting Parties under the present treaty.' [This article is referred to as III. A, in the subsequent discussion.]

"7. The various points connected with the defence of the canal may conveniently be considered together. In the present draft the Senate amendment has been dropped, which left the United States at liberty to apply such measures as might be found 'necessary to take for securing by its own forces the defence of the United States.' On the other hand, the words 'in time of war as in time of peace' are omitted from Rule 1, and there is no stipulation, as originally in Rule 7, prohibiting the erection of fortifications commanding the canal or the waters adjacent.

"I do not fail to observe the important difference between the question as now presented to us and the position which was created by the amendment adopted in the Senate.

"In my dispatch I pointed out the dangerous ambiguity of an instrument of which one clause permitted the adoption of defensive measures, while another prohibited the erection of fortifications. It is most important that no doubt should exist as to the intention of the Contracting Parties. As to this, I understand that by the omission of all reference to the matter of defense the United States' Government desire to reserve the power of taking measures to protect the canal, at any time when the United States may be at war, from destruction or damage at the hands of an enemy or enemies. On the other hand, I conclude that, with the above exception, there is no intention to derogate from the principles of neutrality laid down by the Rules. As to the first of these propositions, I am not prepared to deny that contingencies may arise when not only from a national point of view, but on behalf of the commercial interests of the whole world, it might be of supreme importance to the United States that they should be free to adopt measures for the defense of the canal at a moment when they were themselves engaged in hostilities.

"It is also to be borne in mind that, owing to the omission of the words under which this country became jointly bound to defend the neutrality of the canal, and the abrogation of the Clayton-Bulwer treaty, the obligations of Great Britain would be materially diminished.

"This is a most important consideration. In my despatch of the 22nd February, I dwelt upon the strong objection entertained by His Majesty's Government to any agreement under which, while the United States would have a treaty right to interfere with the canal in time of war, or apprehended war, Great Britain alone, in spite of her vast possessions on the American continent, and the extent of her interests in the East, would be absolutely precluded from resorting to any such action, or from taking measures to secure her interests in and near the canal. The same exception could not be taken to an arrangement under which, supposing that the United States, as the power owning the canal and responsible for the maintenance of its neutrality, should find it necessary to interfere temporarily with its free use by the shipping of another power, that power would thereupon at once and *ipso facto* become liberated from the necessity of observing the Rules laid down in the new treaty.

"8. The difficulty raised by the absence of any provision for the adherence of other powers still remains. While indifferent as to the form in which the point is met, I must emphatically renew the objections of His Majesty's Government to being bound by stringent Rules of neutral conduct not equally binding upon other powers. I would therefore suggest the insertion in Rule 1, after 'all nations,' of the words 'which shall agree to observe these Rules.' This addition will impose upon other powers the same self-denying ordinance as Great Britain is desired to accept, and will furnish an additional security for the neutrality of the canal, which it will be the duty of the United States to maintain.

"As matters of minor importance, I suggest the renewal of one of the stipulations of Article VIII. of the Clayton-Bulwer convention by adding to Rule I the words 'such conditions and charges shall be just and equitable,' and the adoption of 'treaty' in lieu of 'convention' to designate the international agreement which the High Contracting Parties may conclude.

"Mr. Hay's draft, with the proposed amendments shown in italics, is annexed."

PROCLAMATIONS BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[Rules and Regulations for the Regulation, Management and Protection of the Panama Canal and the Maintenance of Its Neutrality]

Whereas the United States exercises sovereignty in the land and waters of the Canal Zone and is responsible for the construction, operation, maintenance, and protection of the Panama Canal:

Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby declare and proclaim the following Rules and Regulations for the regulation, management and protection of the Panama Canal and the Maintenance of its Neutrality which are in addition to the general "Rules and Regulations for the Operation and Navigation of the Panama Canal and Approaches Thereto, including all Waters under its jurisdiction" put into force by Executive Order of July 9, 1914

Rule 1. A vessel of war, for the purposes of these rules, is defined as a public armed vessel, under the command of an officer duly commissioned by the government, whose name appears on the list of officers of the military fleet, and the crew of which are under regular naval discipline, which vessel is qualified by its armament and the character of its personnel to take offensive action against the public or private ships of the enemy

Rule 2. An auxiliary vessel, for the purposes of these rules, is defined as any vessel, belligerent or neutral, armed or unarmed, which does not fall under the definition of Rule 1, which is employed as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea; but a vessel ship is up and used exclusively as a hospital ship is excepted.

Rule 3. A vessel of war or an auxiliary vessel of a belligerent, other than the United States, shall only be permitted to pass through the Canal after her commanding officer has given written assurance to the Authorities of the Panama Canal that the Rules and Regulations will be faithfully observed.

The authorities of the Panama Canal shall take such steps as may be requisite to insure the observance of the Rules and Regulations by auxiliary vessels which are not commanded by an officer of the military fleet.

Rule 4. Vessels of war or auxiliary vessels of a belligerent, other than the United States, shall not revictual nor take any stores in the Canal except so far as may be strictly necessary; and the transit of such vessels through the Canal shall be effected with the least possible delay in accordance with the Canal Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of a belligerent.

Rule 5. No vessel of war or auxiliary vessel of a belligerent, other than the United States, shall receive fuel or lubricants while within the territorial waters of the Canal Zone, except on the written authorization of the Canal Authorities, specifying the amount of fuel and lubricants which may be received.

Rule 6. Before issuing any authorization for the receipt of fuel and lubricants by any vessel of war or auxiliary vessel of a belligerent, other than the United States, the Canal Authorities shall obtain a written declaration, duly signed by the officer commanding such vessel, stating the amount of fuel and lubricants already on board.

Rule 7. Fuel and lubricants may be taken on board vessels of war or auxiliary vessels of a belligerent, other than the the United States, only upon permission of the Canal Authorities, and then only in such amounts as will enable them, with the fuel and lubricants already on board, to reach the nearest accessible port, not an enemy port, at which they can obtain supplies necessary for the continuation of the voyage. Provisions furnished by contractors may be supplied only upon permission of the Canal Authorities, and then only in amount sufficient to bring up their supplies to the peace standard.

Rule 8. No belligerent, other than the United States, shall embark or disembark troops, munitions of war, or warlike materials in the Canal, except in case of necessity due to accidental hindrance of the transit. In such cases the Canal Authorities shall be the judge of the necessity, and the transit shall be resumed with all possible dispatch.

Rule 9. Vessels of war or auxiliary vessels of a belligerent, other than the United States, shall not remain in the territorial waters of the Canal Zone under the jurisdiction of the United States longer than twenty-four hours at any one time, except in case of distress; and in such case, shall depart as soon as possible.

Rule 10. In the exercise of the exclusive right of the United States to provide for the regulation and management of the Canal, and in order to ensure that the Canal shall be kept free and open on terms of entire equality to vessels of commerce and of war, there shall not be, except by special arrangement, at any one time a greater number of vessels of war of any one nation, other than the United States, including those of the allies of such nation, than three in either terminal port and its adjacent terminal waters, or than three in transit through the Canal; nor shall the total number of such vessels, at any one time, exceed six in all the territorial waters of the Canal Zone under the jurisdiction of the United States.

Rule 11. The repair facilities and docks belonging to the United States and administered by the Canal Authorities shall not be used by a vessel of war or an auxiliary vessel of a belligerent, other than the United States, except when necessary in case of actual distress, and then only upon the order of the Canal Authorities, and only to the degree necessary to render the vessel seaworthy. Any work authorized shall be done with the least possible delay.

Rule 12. The radio installation of any public or private vessel or of any auxiliary vessel of a belligerent, other than the United States, shall be used only in connection with Canal business to the exclusion of all other business while within the waters of the Canal Zone, including the waters of Colon and Panama Harbors.

Rule 13. Air craft, public or private, of a belligerent, other than the United States, are forbidden to descend or arise within the jurisdiction of the United States at the Canal Zone, or to pass through the air spaces above the lands and waters within said jurisdiction.

Rule 14. For the purpose of these rules the Canal Zone includes the cities of Panama and Colon and the harbors adjacent to the said cities.

Rule 15. In the interest of the protection of the Canal while the United States is a belligerent no vessel of war, auxiliary vessel, or private vessel of an enemy of the United States or any ally of such enemy shall be allowed to use the Panama Canal nor the territorial waters of the Canal Zone for any purpose, save with the consent of the Canal authorities and subject to such rules and regulations as they may prescribe.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this *twenty-third day of May* in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States of America the one hundred and forty-first.

By the President:

WOODROW WILSON.

Robert Lansing, *Secretary of State.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

[Letters Patent—Germany.]

Whereas, the laws of the German Empire provide that letters patent granted or issued to citizens of other countries shall lapse unless certain taxes, annuities or fees are paid within stated periods;

And whereas, the interests of the citizens of the United States in such letters patent are of great value, so that it is important that such payments should be made in order to preserve their rights;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that citizens of the United States owning letters patent granted or issued by the German Empire are hereby authorized and permitted to make payment of any tax, annuity or fee which may be required by the laws of the German Empire for the preservation of their rights in such letters patent.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 24th day of May, in the year of our Lord Nineteen Hundred and Seventeen and of the Independence of the United States, the One Hundred and Forty-First.

By the President:

WOODROW WILSON.

Robert Lansing, *Secretary of State.*

PERMANENT COURT OF INTERNATIONAL JUSTICE

[On August 17th, 1923.]

Before: MM. Loder, President, Weiss, Vice-President, Lord Finlay, MM. Nyholm, Moore, de Bustamante, Altamira, Oda, Anzilotti, Huber, Judges; Wang, Deputy-judge, Schücking, German national judge.

CASE OF THE S.S. "WIMBLEDON"

The Government of His Britannic Majesty, represented by Sir Cecil Hurst, legal adviser to the Foreign Office,

The Government of the French Republic, represented by M. Basdevant, Professor at the Faculty of Law at Paris,

The Government of His Majesty the King of Italy represented by Commendatore Pilotti, former judge of the Court of Rome, and

The Government of His Majesty the Emperor of Japan represented by M. N. Ito, first Secretary of Legation, Japanese Chargé d'Affaires a.i. at The Hague; *Applicants.*

And the Government of the Polish Republic, represented by M. Gustave Olechowski, First Secretary of Legation, temporarily detached from the Ministry of Foreign Affairs and attached to the Polish Legation at The Hague; *Intervener.*

Versus

The Government of the German Empire, represented by M. Schiffer, former Minister of Justice; *Respondent.*

The law

The question upon which the whole case depends is whether the German authorities were entitled to refuse access to and passage through the Kiel Canal to the S.S. "Wimbledon" on March 21st, 1921, under the conditions and circumstances in which they did so.

The reply to this question must be sought in the provisions devoted by the Peace Treaty of Versailles to the Kiel Canal, in Part XII,

entitled "Ports, Waterways and Railways", Section VI. This Section commences with a provision of a general and peremptory character, contained in Article 380, which is as follows:

"The Kiel Canal and its approaches shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality".

Then follow various provisions intended to facilitate and regulate the exercise of this right of free passage.

Article 381, after mentioning that "the nationals, property and vessels of all Powers, shall, in respect of charges, facilities, and in all other respects, be treated on a footing of perfect equality in the use of the canal. . . .", adds that "no impediment shall be placed on the movement of persons or vessels other than those arising out of police, customs, sanitary, emigration or immigration regulations, and those relating to the import and export of prohibited goods, and that such regulations must be reasonable and uniform and must not unnecessarily impede traffic."

Again, Article 382 forbids the levying of charges upon vessels using the canal or its approaches other than those intended to cover, in an equitable manner, the cost of maintaining in a navigable condition, or of improving, the canal or its approaches, or to meet expenses incurred in the interests of navigation; furthermore, Article 383 provides for the placing of goods in transit under seal or in the custody of customs' agents, and Article 385 places Germany under the obligation to take all suitable measures to remove any obstacle or danger to navigation and to ensure the maintenance of good conditions of navigation, whilst, at the same time, forbidding Germany to undertake any works of a nature to impede navigation on the canal or its approaches.

The claim advanced by the Applicants, that the S.S. "Wimbledon" should have enjoyed the right of free passage through the Kiel Canal, is based on the general rule embodied in Article 380 of the Treaty of Versailles.

This clause, they say, could not be more clear as regards the provision to the effect that the canal shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany; it follows therefore, that the S.S. "Wimbledon", belonging to a nation at that moment at peace with Germany, was entitled to free passage through the Canal.

The Applicants have also maintained that this interpretation of Article 380 is confirmed by the terms of paragraph 2 of the following Article, providing for certain restrictions or impediments which may be placed by the German Government upon free movement in the canal, since none of these restrictions or impediments, which are enumerated exclusively, can be applied to the S.S. "Wimbledon" by reason of the nature of her cargo.

The Court considers that the terms of Article 380 are categorical and give rise to no doubt. It follows that the canal has ceased to be an internal and national navigable waterway, the use of which by the vessels of states other than the riparian state is left entirely to the discretion of that state, and that it has become an international waterway intended to provide under treaty guarantee easier access to the Baltic for the benefit of all nations of the world. Under its new régime, the Kiel Canal must be open, on a footing of equality, to all vessels, without making any distinction between war vessels and vessels of commerce, but on one express condition, namely, that these vessels must belong to nations at peace with Germany.

The right of the Empire to defend herself against her enemies by refusing to allow their vessels to pass through the canal is therefore proclaimed and recognised. In making this reservation in the event of Germany not being at peace with the nation whose vessels of war or of commerce claim access to the canal, the Peace Treaty clearly contemplated the possibility of a future war in which Germany was involved. If the conditions of access to the canal were also to be modified in the event of a conflict between two Powers remaining at peace with the German Empire, the Treaty would not have failed to say so. It has not said so and this omission was no doubt intentional.

The intention of the authors of the Treaty of Versailles to facilitate access to the Baltic by establishing an international regime, and consequently to keep the canal open at all times to foreign vessels of every kind, appears with still greater force from a comparison of the wording of Article 380 with that of the other provisions to be found in Part XII.

Although the Kiel Canal, having been constructed by Germany in German territory, was, until 1919, an internal waterway of the state holding both banks, the Treaty has taken care not to assimilate it to the other internal navigable waterways of the German Empire. A special section has been created at the end of Part XII, dealing with ports, waterways and railways, and in this special section rules exclusively designed for the Kiel Canal have been inserted; these rules differ on more than one point from those to which other internal navigable waterways of the Empire are subjected by Articles 321 to 327. This difference appears more especially from the fact that the Kiel Canal is open to the war vessels and transit traffic of all nations at peace with Germany, whereas free access to the other German navigable waterways referred to above is limited to the Allied and Associated Powers alone. This comparison furnishes a further argument with regard to the construction of Article 380, over and above those already deduced from its letter and spirit.

The provisions relating to the Kiel Canal in the Treaty of Versailles are therefore self-contained; if they had to be supplemented and interpreted by the aid of those referring to the inland navigable waterways of Germany in the previous Sections of Part XII, they would lose their "raison d'être", such repetitions as are found in them would be superfluous and there would be every justification for surprise at the fact that, in certain cases, when the provisions of Articles 321 to 327 might be applicable to the canal, the authors of the Treaty should have taken the trouble to repeat their terms or re-produce their substance.

The idea which underlies Article 380 and the following articles of the Treaty is not to be sought by drawing an analogy from these provisions but rather by arguing *a contrario*, a method of argument which excludes them.

In order to dispute, in this case, the right of the S.S. "Wimbledon" to free passage through the Kiel Canal under the terms of Article 380, the argument has been urged upon the Court that this right really amounts to a servitude by international law resting upon Germany and that, like all restrictions or limitations upon the exercise of sovereignty, this servitude must be construed as restrictively as possible and confined within its narrowest limits, more especially in the sense that it should not be allowed to affect the rights consequent upon neutrality in an armed conflict. The Court is not called upon to take a definite attitude with regard to the question, which is moreover of a very controversial nature, whether in the domain of international law, there really exist servitudes analogous to the servitudes of private law. Whether the German Government is bound by virtue of a servitude or by virtue of a contractual obligation undertaken towards the Powers entitled to benefit by the terms of the Treaty of Versailles, to allow free access to the Kiel Canal in time of war as in time of peace to the vessels of all nations, the fact remains that Germany has to submit to an important limitation of the exercise of the sovereign rights which no one disputes that she possesses over the Kiel Canal. This fact constitutes a sufficient reason for the restrictive interpretation, in case of doubt, of the clause which produces such a limitation. But the Court feels obliged to stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly granted.

The argument has also been advanced that the general grant of a right of passage to vessels of all nationalities through the Kiel Canal cannot deprive Germany of the exercise of her rights as a neutral power in time of war, and place her under an obligation to allow the passage through the canal of contraband destined for one of the belligerents; for, in this wide sense, this grant would imply the abandonment by Germany of a personal and imprescriptible right, which forms an essential part of her sovereignity and which she neither could nor intended to renounce by anticipation. This contention has not convinced the Court; it conflicts with general considerations of the highest order. It is also gainsaid by consistent international practice and is at the same time contrary to the wording of Article 380 which clearly contemplates time of war as well as time of peace. The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignity. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.

As examples of international agreements placing upon the exercise of the sovereignty of certain states restrictions which though partial are intended to be perpetual, the rules established with regard to the Suez and Panama Canals were cited before the Court. These rules are not the same in both cases; but they are of equal importance in that they demonstrate that the use of the great international waterways, whether by belligerent men-of-war, or by belligerent or neutral merchant ships carrying contraband, is not regarded as incompatible with the neutrality of the riparian sovereign.

By the Convention of Constantinople of October 29th, 1888 the Governments of Austria-Hungary, France, Germany, Great Britain, Italy, Holland, Russia, Spain and Turkey, declared, on the one hand, that the Suez Maritime Canal should "always be free and open, in time of war as time of peace, to every vessel of commerce or of war without distinction of flag" including even the vessels of countries at war with Turkey, the territorial sovereign, and on the other hand, that they would not in any way "interfere with the free use of the canal, in time of war as in time of peace", the right of self-defence on the part of the territorial sovereign being nevertheless reserved up to a certain point; no fortifications commanding the canal may be erected. In fact under this regime belligerent men-of-war and ships carrying contraband have been permitted in many different circumstances to pass freely through the Canal; and such passage has never been regarded by anyone as violating the neutrality of the Ottoman Empire.

For the regime established at Panama, it is necessary to consult the Treaty between Great Britain and the United States of November 19, 1901, commonly called the Hay-

Pauncefote Treaty, and the Treaty between the United States and the Republic of Panama of November 18th, 1903. In the former, while there are various stipulations relating to the "neutralization" of the Canal, these stipulations being to a great extent declaratory of the rules which a neutral State is bound to observe, there is no clause guaranteeing the free passage of the canal in time of war as in time of peace without distinction of flag and without reference to the possible belligerency of the United States, nor is there any clause forbidding the United States to erect fortifications commanding the Canal.

On the other hand, by the Treaty of November 18th, 1903, the Republic of Panama granted to the United States "in perpetuity the use, occupation and control" of a zone of territory for the purposes of the canal, together with the use, occupation and control in perpetuity of any lands and waters outside the zone which might be necessary and convenient for the same purposes; and further granted to the United States in such zone and in the auxiliary lands and waters "all the rights, power and authority . . . which the United States would possess and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority". The Treaty further conceded to the United States the right to police the specified lands and waters with its land and naval forces "and to establish fortifications for these purposes". In view of these facts, it will be instructive to consider the view which the United States and the nations, of the world have taken of the rights and the liabilities of the United States as the builder and owner of the Panama Canal exercising, subject always to the stipulations of existing treaties, sovereign powers and exclusive jurisdiction over the Canal and the auxiliary territory and waters.

By the Proclamation issued by the President of the United States on November 13th, 1914, for the regulation of the use of the Panama Canal and its approaches in the world war, express provision was made for the passage of men-of-war of belligerents as well as of prizes of war, and no restriction whatever was placed upon the passage of merchant ships of any nationality carrying contraband of war. But, by the Proclamation of May 23rd, 1917, issued after the entrance of the United States into the war, the use of the canal by ships, whether public or private, of an enemy or the allies of an enemy, was forbidden, just as, by Article 380 of the Treaty of Versailles, the Kiel Canal is closed to the vessels of war and of commerce of nations not at peace with Germany.

In the Proclamation of May 23rd, 1917, the carriage of contraband is not mentioned; but, by the Proclamation of December 3rd, 1917, issued under the Act of Congress of June 15th, 1917, the Secretary of the Treasury was authorized to make regulations governing the movement of vessels in territorial waters of the United States; and by a subsequent Executive Order, issued under the same law, the Governor of the Panama Canal was authorized to exercise within the territory and waters of the canal the same powers as were conferred by the law upon the Secretary of the Treasury. By a Proclamation of August 27th, 1917, it was made unlawful to take munitions of war out of the United States or its territorial possessions to its enemies without license.

It has never been alleged that the neutrality of the United States, before their entry into the war, was in any way compromised by the fact that the Panama Canal was used by belligerent men-of-war or by belligerent or neutral merchant vessels carrying contraband of war.

[From the Federal Register, Sept. 6, 1939]

THE PRESIDENT: PROCLAIMING THE NEUTRALITY OF THE UNITED STATES IN THE WAR BETWEEN GERMANY AND FRANCE; POLAND; AND THE UNITED KINGDOM, INDIA, AUSTRALIA AND NEW ZEALAND

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A proclamation

Whereas a state of war unhappily exists between Germany and France; Poland; and the United Kingdom, India, Australia and New Zealand.

And whereas the United States is on terms of friendship and amity with the contending powers, and with the persons inhabiting their several dominions;

And whereas there are nationals of the United States residing within the territories or dominions of each of the said belligerents, and carrying on commerce, trade, or other business or pursuits therein;

And whereas there are nationals of each of the said belligerents residing within the territory or jurisdiction of the United States, and carrying on commerce, trade, or other business or pursuits therein;

And whereas the laws and treaties of the United States, without interfering with the free expression of opinion and sympathy, nevertheless impose upon all persons who may be within their territory and jurisdiction the duty of an impartial neutrality during the existence of the contest;

And whereas it is the duty of a neutral government not to permit or suffer the making of its territory or territorial waters subservient to the purposes of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, in order to preserve the neutrality of the United States and of its citizens and of persons within its territory and jurisdiction, and to enforce its laws and treaties, and in order that all persons, being warned of the general tenor of the laws and treaties of the United States in this behalf, and of the law of nations, may thus be prevented from any violation of the same, do hereby declare and proclaim that by certain provisions of the act approved on the 4th day of March, A.D. 1909, commonly known as the "Penal Code of the United States" and of the act approved on the 15th day of June, A.D. 1917, the following acts are forbidden to be done, under severe penalties, within the territory and jurisdiction of the United States, to wit:

1. Accepting and exercising a commission to serve one of the said belligerents by land or by sea against an opposing belligerent.

2. Enlisting or entering into the service of a belligerent as a soldier, or as a marine, or seaman on board of any ship of war, letter of marque, or privateer.

3. Hiring or retaining another person to enlist or enter himself in the service of a belligerent as a soldier, or as a marine, or seaman on board of any ship of war, letter of marque, or privateer.

4. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be enlisted as aforesaid.

5. Hiring another person to go beyond the limits or jurisdiction of the United States with intent to be entered into service as aforesaid.

6. Retaining another person to go beyond the limits or jurisdiction of the United States to be enlisted as aforesaid.

7. Retaining another person to go beyond the limits or jurisdiction of the United States with intent to be entered into service as aforesaid. (But the said act of the 4th day of March A.D. 1909, as amended by the act of the 15th day of June, A.D. 1917, is not to be construed to extend to a citizen or subject of a belligerent who, being transiently within the jurisdiction of the United States, shall, on board of any ship of war, which, at the time of its arrival within the jurisdiction of the United States, was fitted and equipped as such ship of war, enlist or enter himself or hire or retain another subject or citizen of the same belligerent, who is transiently within the jurisdiction of the United States, to enlist or enter himself to serve such belligerent on board such ship of war, if the United States shall then be at peace with such belligerent.)

8. Fitting out and arming, or attempting to fit out and arm, or procuring to be fitted out and armed, or knowingly being concerned in the furnishing, fitting out, or arming of any ship or vessel with intent that such ship or vessel shall be employed in the service of one of the said belligerents to cruise, or commit hostilities against the subjects, citizens, or property of an opposing belligerent.

9. Issuing or delivering a commission within the territory or jurisdiction of the United States for any ship or vessel to the intent that she may be employed as aforesaid.

10. Increasing or augmenting, or procuring to be increased or augmented, or knowingly being concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the jurisdiction of the United States was a ship of war, cruiser, or armed vessel in the service of a belligerent, or belonging to a national thereof, by adding to the number of guns and such vessels, or by changing those on board of her for guns of a larger caliber, or by the addition thereto of any equipment solely applicable to war.

11. Knowingly beginning or setting on foot or providing or preparing a means for or furnishing the money for, or taking part in, any military or naval expedition or enterprise to be carried on from the territory or jurisdiction of the United States against the territory or dominion of a belligerent.

12. Despatching from the United States, or any place subject to the jurisdiction thereof, any vessel, domestic or foreign, which is about to carry a warship, tender, or supply ship of a belligerent any fuel, arms, ammunition, men, supplies, despatches, or information shipped or received on board within the jurisdiction of the United States.

13. Despatching from the United States, or any place subject to the jurisdiction thereof, any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the jurisdiction of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, and which is to be employed to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of a belligerent nation, or which will be sold or delivered to a belligerent nation, or to an agent, officer, or citizen thereof, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas.

14. Despatching from the United States, or any place subject to the jurisdiction thereof, any vessel built, armed, or equipped as a ship of war, or converted from a private vessel into a ship of war (other than one which has entered the jurisdiction of the United States as a public vessel), with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to any agent, officer, or citizen of such nation, or where there is reasonable cause to believe that the said vessel shall or will be employed in the service of such belligerent nation after its departure from the jurisdiction of the United States.

15. Taking, or attempting or conspiring to take, or authorizing the taking of any vessel out of port or from the jurisdiction of the United States in violation of the said act of the 15th day of June, A.D. 1917, as set forth in the preceding paragraphs numbered 11 to 14 inclusive.

16. Leaving or attempting to leave the jurisdiction of the United States by a person belonging to the armed land or naval forces of a belligerent who shall have been interned within the jurisdiction of the United States in accordance with the law of nations, or leaving or attempting to leave the limits of interment in which freedom of movement has been allowed, without permission from the proper official of the United States in charge, or willfully over staying a leave of absence granted by such official.

17. Aiding or enticing any interned person to escape or attempt to escape from the jurisdiction of the United States, or from the limits of internment prescribed.

And I do hereby further declare and proclaim that any frequenting and use of the waters within the territorial jurisdiction of the United States by the vessels of a belligerent, whether public ships or privateers for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of an opposing belligerent must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the fifth day of September instant, and so long as this proclamation shall be in effect, no ship of war or privateer of any belligerent shall be permitted to make use of any port, harbor, roadstead, or waters subject to the jurisdiction of the United States as a station or place of resort for any warlike purpose or for the purpose of obtaining warlike equipment; no privateer of a belligerent shall be permitted to depart from any port, harbor, roadstead, or waters subject to the jurisdiction of the United States; and no ship of war of a belligerent shall be permitted to sail out of or leave any port, harbor, roadstead, or waters subject to the jurisdiction of the United States from which a vessel of an opposing belligerent (whether the same shall be a ship of war or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last mentioned vessel beyond the jurisdiction of the United States.

If any ship of war of a belligerent shall, after the time this notification takes effect, be found in, or shall enter any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, such vessel shall not be permitted to remain in such port, harbor, roadstead, or waters more than twenty-four hours, except in case of stress of weather, or for delay in receiving supplies or repairs, or when detained by the United States; in any of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as the cause of the delay is at an end, unless within the preceding twenty-four hours a vessel, whether ship of war or merchant ship of an opposing belligerent, shall have departed therefrom, in which case the time limited for the departure of such ship of war shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any ship of war or merchant ship of an opposing belligerent which may have previously quit the same port, harbor, roadstead, or waters.

Vessels used exclusively for scientific, religious, or philanthropic purposes are exempted from the foregoing provisions as to the length of time ships of war may remain in the ports, harbors, roadsteads, or waters subject to the jurisdiction of the United States.

The maximum number of ships of war belonging to a belligerent and its allies which may be in one of the ports, harbors, or roadsteads subject to the jurisdiction of the United States simultaneously shall be three.

When ships of war of opposing belligerents are present simultaneously in the same port, harbor, roadstead, or waters, subject to the jurisdiction of the United States, the one entering first shall depart first, unless she is in such condition as to warrant extending her stay. In any case the ship which arrived later has the right to notify the other through the competent local authority that within twenty-four hours she will leave such port, harbor, roadstead, or waters, the one first entering, however, having the right to depart within that time. If the one first entering leaves, the notifying ship must observe the prescribed interval of twenty-four hours. If a delay beyond twenty-four hours from the time of arrival is granted, the termination of the cause of delay will be considered the time of arrival in deciding the right of priority in departing.

Vessels of a belligerent shall not be permitted to depart successively from any port, harbor, roadstead, or waters subject to the jurisdiction of the United States at such intervals as will delay the departure of a ship of war of an opposing belligerent from such ports, harbors, roadsteads, or waters for more than twenty-four hours beyond her desired time of sailing. If, however, the departure of several ships of war and merchant ships of opposing belligerents from the same port, harbor, roadstead, or waters is involved, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation.

All belligerent vessels shall refrain from use of their radio and signal apparatus while in the harbors, ports, roadsteads, or waters subject to the jurisdiction of the United States, except for calls of distress and communications connected with safe navigation or arrangements for the arrival of the vessel within, or departure from, such harbors, ports, roadsteads, or waters, or passage through such waters; provided that such communications will not be of direct material aid to the belligerent in the conduct of military operations against an opposing belligerent. The radio of belligerent merchant vessels may be sealed by the authorities of the United States, and such seals shall not be broken within the jurisdiction of the United States except by proper authority of the United States.

No ship of war of a belligerent shall be permitted, while in any port, harbor, roadstead, of waters subject to the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew in amounts necessary to bring such supplies to her peace standard, and except such fuel, lubricants, and feed water only as may be sufficient, with that already on board, to carry such vessel, if without any sail power, to the nearest port of her own country; or in case a vessel is rigged to go under sail, and may also be propelled by machinery, then half the quantity of fuel, lubricants, and feed water which she would be entitled to have on board, if dependent upon propelling machinery alone, and no fuel, lubricants, or feed water shall be again supplied to any such ship of war in the same or any other port, harbor, roadstead, or waters subject to the jurisdiction of the United States until after the expiration of three months from the time when such fuel, lubricants and feed water may have been last supplied to her within waters subject to the jurisdiction of the United States. The amounts of fuel, lubricants, and feed water allowable under the above provisions shall be based on the economical speed of the vessel, plus an allowance of thirty per centum for eventualities.

No ship of war of a belligerent shall be permitted, while in any port, harbor, roadstead, or waters subject to the jurisdiction of the United States, to make repairs beyond those that are essential to render the vessel seaworthy and which in no degree constitute an increase in her military strength. Repairs shall be made without delay. Damages which are found to have been produced by the enemy's fire shall in no case be repaired.

No ship of war of a belligerent shall effect repairs or receive fuel, lubricants, feed water, or provisions within the jurisdiction of the United States without written authorization of the proper authorities of the United States. Before such authorization will be issued, the commander of the vessel shall furnish to such authorities a written declaration, duly signed by such commander, stating the date, port, and amounts of supplies last received in the jurisdiction of the United States, the amounts of fuel, lubricants, feed water, and provisions on board, the port to which the vessel is proceeding, the economical speed of the vessel, the rate of consumption of fuel, lubricants, and feed water at such speed, and the amount of each class of supplies desired. If repairs are desired, a similar declaration shall be furnished stating the cause of the damage and the nature of the repairs. In either case, a certificate shall be included to the effect that the desired services are in accord with the rules of the United States in that behalf.

No agency of the United States Government shall, directly or indirectly, provide supplies nor effect repairs to a belligerent ship of war.

No vessel of a belligerent shall exercise the right of search within the waters under the jurisdiction of the United States, nor shall prizes be taken by belligerent vessels within such waters. Subject to any applicable treaty provisions in force, prizes captured by belligerent vessels shall not enter any port, harbor, roadstead, or waters under the jurisdiction of the United States except in case of unseaworthiness, stress of weather, or want of fuel or provisions; when the cause has disappeared, the prize must leave immediately, and if a prize captured by a belligerent vessel enters any port, harbor, roadstead, or waters subject to the jurisdiction of the United States for any other reason than on account of unseaworthiness, stress of weather, or want of fuel or provisions, or fails to leave as soon as the circumstances which justified the entrance are at an end, the prize with its officers and crew will be released and the prize crew will be interned. A belligerent Prize Court cannot be set up on territory subject to the jurisdiction of the United States or on a vessel in the ports, harbors, roadsteads, or waters subject to the jurisdiction of the United States.

The provisions of this proclamation pertaining to ships of war shall apply equally to any vessel operating under public control for hostile or military purposes.

And I do further declare and proclaim that the statutes and the treaties of the United States and the law of nations alike require that no person, within the territory and jurisdiction of the United States, shall take part, directly or indirectly, in the said war, but shall remain at peace with all of the said belligerents, and shall maintain a strict and impartial neutrality.

And I do further declare and proclaim that the provisions of this proclamation shall

apply to the Canal Zone except in so far as such provisions may be specifically modified by a proclamation or proclamations, issued for the Canal Zone.

And I do hereby enjoin all nationals of the United States, and all persons residing or being within the territory or jurisdiction of the United States, to observe the laws thereof, and to commit no act contrary to the provisions of the said statutes or treaties or in violation of the law of nations in that behalf.

And I do hereby give notice that all nationals of the United States and others who may claim the protection of this government, who may misconduct themselves in the premises, will do so at their peril, and that they can in no wise obtain any protection from the government of the United States against the consequences of their misconduct.

This proclamation shall continue in full force and effect unless and until modified, revoked or otherwise terminated, pursuant to law.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this fifth day of September in the year of our Lord nineteen hundred and thirty-nine, and of the Independence of the United States of America the one hundred and sixty-fourth.

[SEAL] FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,

Secretary of State.

[No. 2348]

[F. R. Doc. 39-3240; Filed, September 5, 1939; 8:54 p. m.]

EXECUTIVE ORDER

CONTROL OF THE PANAMA CANAL AND THE CANAL ZONE

By virtue of the power and authority vested in and conferred upon me by section 8 of title 2 of the Canal Zone Code, approved June 19, 1934 (48 Stat. 1122), and as President of the United States, it is hereby ordered that the Officer of the Army commanding the United States Troops stationed in the Canal Zone shall, until otherwise ordered, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone; and, while this order is in force, the Governor of the Panama Canal shall, in all respects and particulars as to the operation of the Panama Canal and all duties, matters and transactions affecting the Canal Zone, be subject to the order and direction of the Officer of the Army herein designated.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *September 5, 1939.*

[No. 6232]

[F. R. Doc. 39-3241; Filed, September 5, 1939; 5:57 p. m.]

[From the Federal Register, June 29, 1940]

THE PRESIDENT: CONTROL OF VESSELS IN TERRITORIAL WATERS OF THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A proclamation

Whereas, A proclamation issued by me on September 8, 1939,[1] proclaimed that a national emergency existed in connection with and to the extent necessary for the proper observance, safeguarding and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peace-time authorizations, and that specific directions and authorizations would be given from time to time for carrying out these two purposes,

Whereas, The continuation of the conditions set forth in said proclamation of September 8, 1939, now calls for additional measures within the limits of peace-time authorizations,

Whereas, Under and by virtue of section 1 of title II of the Act of Congress approved June 15, 1917, 40 Stat. 220 (U.S.C. title 50, sec. 191), it is provided as follows:

"Section 1. Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessels, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

"Within the territory and waters of the Canal Zone the Governor of the Panama Canal, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury."

And, whereas, It is essential, in order to carry into effect the provisions of said Act, which are quoted herein, that the powers conferred therein upon the President, the Secretary of the Treasury and the Governor of the Panama Canal be at this time exercised, or available for exercise, with respect to foreign and domestic vessels.

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, by virtue of the powers conferred upon me by the provisions of the said Act of Congress quoted herein, do hereby declare the continuation of the conditions set forth in my proclamation of September 8, 1939, and the existence of a national emergency by reason of threatened disturbance of the international relations of the United States.

And, I, therefore consent to the exercise, with respect to foreign and domestic vessels, by the Secretary of the Treasury and the Governor of the Panama Canal, of all the powers conferred by the provisions of said Act.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 27th day of June in the year of our Lord nineteen hundred and forty and of the Independence of the United States of America, the one hundred and sixty-fourth.

[SEAL] FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL, *Secretary of State.*

[No. 2412]

[F.R. Doc. 40-2639; Filed June 28, 1940; 10:05 a.m.]

[From the Federal Register, Jan. 16, 1942]

THE PRESIDENT: ESTABLISHING THE CRISTOBAL AND THE GULF OF PANAMA MARITIME CONTROL AREAS AND PRESCRIBING REGULATIONS FOR THE CONTROL THEREOF

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A Proclamation

Whereas the United States is now at war, and the establishment of the maritime control areas hereinafter described is essential in the interests of national defense; and

Whereas the Government of the Republic of Panama has requested the cooperation of the Government of the United States in exercising control in Panamanian waters adjacent to the Panama Canal, in accordance with the joint obligation of the two countries under their General Treaty of March 2, 1936, and otherwise, to insure the effective protection of the said Canal:

Now, therefore, I, Franklin D. Roosevelt, by virtue of the authority vested in me as President of the United States and as Commander-in-Chief of the Army and Navy of the United States, and in accordance with the principle of self-defense of the Law of Nations, do hereby establish and proclaim the following-described areas as the Cristobal Maritime Control Area and the Gulf of Panama Maritime Control Area for the purposes of safeguarding the Panama Canal and for national and hemispheric defense, and prescribe the following regulations for the control thereof:

Cristobal Maritime Control Area

All waters contained within the seaward limit of an arc described with the western breakwaster entrance light at Cristobal, Canal Zone, as a center, a radius of 36 sea miles, and meeting the shore line in the east in the vicinity of position Latitude 90°35′ North, Longitude 79°21′ West, and in the west in the vicinity of position Latitude 09°06′ North, Longitude 80°29′ West.

Gulf of Panama Maritime Control Area

All waters of the Gulf of Panama to the North of Latitude 8° North.

REGULATIONS FOR THE CONTROL OF THE CRISTOBAL AND THE GULF OF PANAMA MARITIME CONTROL AREAS

1. A vessel not proceeding under United States naval or other United States authorized supervision shall not enter or navigate the waters of the above-described Maritime Control Areas except during daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within the said Areas must be made, preferably by application at a United States Naval District Headquarters in advance of sailing, or by radio or visual communication on approaching the seaward limits of either Area. If radio telegraphy is used, the call "NQO" shall be made on a frequency of 500 kcs, and permission to enter the port requested. The name of the vessel, purpose of entry, and name of master must be given in the request. If visual communications are used, the procedure shall be essentially the same.

2. Even though permission has been obtained, it is incumbent upon a vessel entering the said Areas to obey any further instructions received from the United States Navy, or other United States authority.

3. A vessel may expect supervision of its movements within the said Areas, either through surface craft or aircraft. Such controlling surface craft and aircraft shall be identified by a prominent display of the Union Jack.

4. These regulations may be supplemented by regulations of the local United States naval authority as necessary to meet local circumstances and conditions.

5. Should any vessel or person within the said Areas disregard these regulations, or regulations issued pursuant hereto, or fail to obey an order of the United States naval authority, or perform any act threatening the efficiency of mine or other defenses, or take any action therein inimical to the defense of the United States, such vessel or person may be subjected to the force necessary to require compliance, and may be liable to detention or arrest, or penalties or forfeiture, in accordance with law.

The Secretary of the Navy is charged with the enforcement of these regulations.

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[1] 4 F.R. 3851.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 13th day of January in the year of our Lord nineteen hundred and forty-two, and of the Independence of the United States of America the one hundred and sixty-sixth.

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL, *Secretary of State.*

[No. 2536]

[F.R. Doc. 42-402; Filed January 15, 1942; 10:16 a.m.]

EXECUTIVE ORDER—EXTENSION OF THE PROVISIONS OF EXECUTIVE ORDER NO. 9001 OF DECEMBER 27, 1941, TO CONTRACTS OF THE TREASURY DEPARTMENT, THE DEPARTMENT OF AGRICULTURE, THE FEDERAL WORKS AGENCY, THE PANAMA CANAL, THE GOVERNMENT PRINTING OFFICE, AND THE NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS

By virtue of the authority vested in me by the act of Congress entitled "An Act to expedite the prosecution of the war effort" approved December 18, 1941, and as President of the United States, and deeming that such action will facilitate the prosecution of the war, I hereby extend the provisions of Executive Order No. 9001 of December 27, 1941[1] to the Treasury Department, the Department of Agriculture, The Panama Canal, the Federal Works Agency, the Government Printing Office, the National Advisory Committee for Aeronautics, and such other agencies as I may from time to time designate, with respect to all contracts made or to be made by such agencies, and subject to the limitations and regulations contained in such Executive Order, I hereby authorize the Secretary of the Treasury, the Secretary of Agriculture, the Governor of The Panama Canal, the Administrator of the Federal Works Agency, the Public Printer, the Chairman of the National Advisory Committee for Aeronautics, and the heads of such other agencies as may be designated, and such officers, employees, and agencies as each of them may designate, to perform and exercise, as to their respective agencies, all of the functions and powers vested in and granted to the Secretary of War, the Secretary of the Navy, and the Chairman of the United States Maritime Commission by such Executive Order.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 14, 1942.*

[No. 9023]

[F.R. Doc. 42-394; Filed, January 14, 1942; 3:32 p.m.]

Mr. SARBANES. Mr. President, the Senator from Alabama stated that the disposition by the Senate of these various amendments was reflecting cynicism and hypocrisy. I suggest that the disposition of these amendments really reflects the judgment of how we can best protect American interests.

As I have noted earlier in the debate with the Senator from Alabama, in commenting on a couple of the amendments he brought forth, I took the position, not as he suggested people were saying that his amendments were unnecessary or that they went to the heart of the matter, but rather that the amendments were harmful to American interests. One was proposed that would have cast doubt on the American right to take whatever action we deem necessary on the high seas in times of conflict. Another amendment was offered which created a doubt or raised a question as to our head of the line rights of passage under these proposed treaties. So those amendments that were brought up were harmful, in fact, to American interests and created problems for American interests.

I suggest that the amendment now pending, which has been offered by the distinguished Senator from Alaska, carries with it the same defect.

I am not going to engage in the wider ranging comments which seem to surround the discussions of these amendments, but I am going to address the specifics of this proposal that is before us.

What this amendment would do is, first of all, destroy the neutral status of the Panama Canal. The premise on which the canal is now used and the premise which is carried forward in the proposed treaties is that the canal is to be a neutral international waterway open for free passage of all vessels.

I submit if we want to have an open canal continually in use, which is very much to our advantage, the best way to maximize the chances that this will occur is to have a neutral canal. If you do not have a neutral canal by denying passage to someone, you shift the canal from being neutral to being in a belligerent status. You then make the canal a target, a legitimate and legal target, for the nations being denied transit through the canal.

With a neutrality treaty, with a neutrality arrangement, any nation attacking the canal would be violating its neutrality under international law and infringing upon the neutrality of Panama.

If you shift the status of the canal from being neutral to involving it in a conflict by denying its use to certain nations, then the canal and its operations, its neutrality having been breached, can no longer claim a nonbelligerency status. In other words, the canal will have been placed in the position of taking sides in a wartime situation, and by taking sides it will be subject to reprisal and attack, just like any other belligerent site or facility.

Then the question is raised, "But do you mean to suggest that you are going to let vessels of nations with whom we are engaged in conflict transit the canal?" The legal requirement is that they are allowed to transit the canal. The practical fact is that American power at sea will prevent vessels from getting to the canal and transiting it. That is how we have done it in the past, and that is how we will do it in the future. In a sense, it gives us the best of both worlds.

Now, if the distinguished Senator from Alabama wants to say that is cynical or that is hypocritical, he can use those terms. What I see this as doing is providing the best protection we can have for American interests. What we do is maximize the likelihood that the canal itself will not be attacked because we keep it in a neutral status, instead of involving the canal in the conflict which would make it a legal and legitimate target of attack.

So by keeping it neutral we maximize the likelihood it will remain in use, and yet, at the same time, because of our naval and air power and our location and our situation we are in a position to interdict and stop and prevent access to the canal out on the high seas of vessels from those countries with whom we are engaged in conflict.

It ought to be recognized that such an arrangement is important to the United States. We are protecting very vital American interests with this arrangement. The amendment, which would alter that arrangement, in effect, will weaken the American position.

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

Mr. SARBANES. I yield to the Senator.

Mr. LEAHY. I thank the Senator from Maryland.

I made the statement the other day on the floor, Mr. President, that I felt at least one thing was being done by these debates, and I commended public radio in large part for that. The views that have been expressed by just about everybody throughout the country both for and against the treaties, as the views that have been expressed in my own State, where the latest opinion reading is almost exactly 50-50—half the people are for and half against—would be expressed on the floor of the Senate. That Senators would be expressing what they thought was in the best interest of the United States—both those Senators who were opposed to the treaties and those who are for them, both Democrats and Republicans.

I feel in my own heart the Senators who have spoken on both sides of this issue have one guiding point, and that is what is in the best interest of the United States of America.

Again, because of public radio, this matter has been brought out to the American people probably in a way that no other debate the U.S. Senate ever had. As a student of history and political science, I know of no other debate which has been so well carried to the American people.

But, having said that, Mr. President, I also said that after 4 or 5 weeks of debate on these treaties and all of these amendments, that at a time when this country faces grave problems in energy, the unresolved energy crisis, when it faces the grave unresolved problems of the farmers throughout the country, when it faces grave tax problems and other matters before Congress, that with the intelligence and learning of my distinguished colleagues, you would think that after 4 or 5 weeks we would not only know all the issues and all of the answers; we would know how we were going to vote.

I likened it somewhat to a soap opera, when, if somebody watches them—and, of course, one thing I found after making that analogy was that everybody I spoke with in the Senate agreed with me but hastened to state that they would never watch a soap opera themselves, but have heard from those who had—if you watch a soap opera and then leave town for a few weeks and come back you find you are right where you left off. As I said, a soap opera is the only place where pregnancy can take 18 to 20 to 30 months,

[1] 6 F.R. 6787.

depending upon how long the viewer's interest would be carried.

Having said that, I would hope as we go along on amendment after amendment that we do not lose sight of basic factors, and they are these: We have the canal, even though some of its commercial importance is lessening over the years and will lessen into the future; it is still important to maritime interests; it is still important to the United States; it is still important to the rest of the world. That is No. 1.

Second, by anybody's standards, anybody in the world, it is one of the outstanding engineering achievements ever accomplished. The distinguished Presiding Officer even pointed out how well done it was and how simple it was that even the two Senators from Vermont at one point were able to put a ship through a lock, which he pointed out emphasized that if we could then anybody could. That is a matter we should not lose sight of.

It is a fantastic engineering feat, but let us not lose sight of the overall consideration, and that is twofold: One, we want to keep the canal operating; and, two, we want the canal to continue the distinguished history of neutrality it has had. Those are the only two issues. The whole thing could be looked at in just that way. Is the world's interest served by keeping it operating however some of the commercial interests might diminish over the next quarter of a century or more; and, second, should we keep it neutral? These treaties do that. These treaties do that as they are, with the Byrd-Baker amendments.

They make sure that it stays open and stays neutral.

I quite frankly, Mr. President, will be constrained to vote against the amendment that is before us now. I see a certain number of hobgoblins that pop up in it. It certainly makes it clear to me that if Panama, for example, found itself in a state of belligerency with a country that might be one of our close allies, under this arrangement our close ally could have the canal closed to them, and that is truly contrary to everything we have been trying to do here, which is to preserve an open, free, neutral canal.

While I have the utmost respect for the sponsor of the amendment, I see it as going absolutely contrary to what, as an American and a U.S. Senator, I want to see here, which is a neutral canal and a canal that will continue to operate.

We have heard questions. It is funny; I have spent, I think, 3 to 4 hours on the floor every day of this debate, but if I leave for one reason or another, when I come back every time I hear the same thing: The military question, what happens if a belligerent wants to use that canal?

You know, Mr. President, if I were Chief of Naval Operations, and we were at war with another maritime power, I would sit there every night and pray that that belligerent power would send its greatest naval armada down to transit the Panama Canal, because when they sit out there, lined up along a predetermined channel, and they are all lined up head to toe, ready to transit that canal, my God, if our military power was not sufficient to blow them out of the water we had better surrender right now, because we are going to have to worry about taking on other lesser——

Mr. STEVENS. Mr. President, will the Senator yield right there?

Mr. LEAHY. I will in just a moment. Other lesser national powers. Because I have gone down there and talked with the Navy about this. I have gone over it at some length, and I have asked, "Are we in such a state that we would not have the power to pick out and destroy ships of any country arriving there?"

I was told, "Of course not." In fact, the inference is such that in a time of utmost belligerency against a major naval power, we would be very concerned, in today's warfare, about sending our own naval forces there, because of being vulnerable under the same circumstances.

The Senator from Maryland had the floor and yielded to me temporarily, so I suspect he still has the floor.

Mr. STEVENS. Mr. President, I would like, on my time, to ask either of the Senators a question.

Mr. SARBANES. Mr. President, I yield to the Senator on his time, because I made the point yesterday that Senators were not yielding, but simply reading statements, and that this was not conducive to an exchange of views in a debate. If the Senator from Alaska could be recognized on his time, without my losing my right to the floor, to make the point he wishes to make, I think it would be conducive to constructive debate.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I merely ask the Senator from Maryland and the Senator from Vermont if, at the time of the Cuban missile crisis, they would have wanted to have placed the United States in a position where, in order to prevent the Russian Pacific fleet from coming through the canal, we would have had to blow them out of the water.

We were not in a state of war, but that would have been an act of war. We had demanded that they remove their vessels; we had put a blockade around Cuba and made a demand on Russia that they leave.

At that time, the Russian fleet and its support vessels could not have gone through the canal. Under this treaty, we would have had to protect them in going through the canal and about 50 miles on each side of it.

I ask the Senators, is that what you want to foist upon your sons and mine?

Mr. SARBANES. The answer to the Senator's question, very simply, is that under the Senator's amendment the Russian fleet could have transited the canal had they presented themselves.

Mr. STEVENS. That is not correct.

Mr. SARBANES. Yes; it is correct.

Mr. STEVENS. When a country is in a state of belligerency, that nation loses the right to transit the canal.

Mr. SARBANES. The Russian fleet, had it presented itself, had a legal right to transit the canal at the time of the Cuban missile crisis.

Second, I say to the Senator from Alaska that his amendment does not deal with that situation, unless you assume that we were in a state of war as defined here and under international law. As I understand the language of your amendment, it would not cover the situation.

Mr. STEVENS. I say to the Senator from Maryland, a state of belligerency is well understood. In this country, a state of war is understood as being declared by the United States with the approval of Congress.

If you are talking about international law and telling me that international law is going to supersede the Constitution of the United States with regard to the Panama Canal, then I can only tell you that as far as I am concerned, the Senator from Maryland is in error.

There is a specific provision in the treaties which, under the existing relationship, denies access to the canal for a vessel that has been involved in an act of belligerency.

Mr. SARBANES. No, that is not correct, if I may say so to the Senator.

Mr. LEAHY. Mr. President, could I say one thing to the Senator from Maryland? I wonder if the Senator is confusing a blockade of Cuba with a blockade of the Soviet Union.

Mr. STEVENS. We were blockading Cuba, and had a state of belligerency with Russia at the time. If you do not believe it, I would urge you to take a look at the crisis involved at that time. We did move our fleet, and did it on emergency orders.

Mr. SARBANES. That is right, and we would have every right under these treaties, with the clarifying amendments to be offered by Senator BYRD and Senator BAKER with respect to our right to priority passage, to continue to move our fleet.

Mr. STEVENS. Let me read to the Senator from Maryland the protocol of an agreement signed at Washington, October 10, 1914, entered into force October 10, 1914, and confirmed by agreement of August 25, 1939. It states:

> That hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months.

So, as a practical matter, I can tell you that any vessel that would have presented itself would have been restricted. But it does not go as far as my amendment would go, I will tell you that.

Mr. SARBANES. Let me respond to the Senator with respect to the protocol he quoted, because it is a classic example of misunderstanding and therefore diverting the debate.

I guess the Senator from Alaska was not on the floor when the Senator from Alabama and I had an extended discussion with respect to the protocol that was just read.

What that protocol was designed to deal with was that, in the state of international law prevailing prior to World

War I and again prevailing prior to World War II, belligerent vessels which fueled in a neutral nation's ports could not do so again in less than 3 months. The protocol was designed to get at the possibility that a belligerent vessel would refuel in the port of Panama, and in less than 3 months come back and refuel in a port in the Canal Zone. For that purpose, the protocol treated the ports of Panama and the ports of the Canal Zone as one, for the purpose of applying the 3-month limitation on refueling rights.

That is what the protocol dealt with. That was the purpose of the protocol at the time it was entered into by the United States and Panama. That was the meaning that was given to it, and that is how it was applied.

So that protocol does not support the contention which the Senator from Alaska is now making on the floor of the Senate. That subject has been gone into at great length in prior discussions on the floor of the Senate with respect to its meaning.

Mr. STEVENS. I disagree with you. You can interpret it the way you want.

Would the Senator tell me why under the Isthmian Canal Treaty, which was ratified in 1904, the United States specifically guaranteed? It is stated in article I:

> The United States guarantees and will maintain the independence of the Republic of Panama.

Where in the existing treaties do we guarantee the independence of Panama?

Mr. SARBANES. Well, first of all, the provision which the Senator refers to was eliminated as between the United States and Panama in the treaty of 1936 between our two nations.

Mr. STEVENS. Understanding that, where is the relationship between the United States and Panama with regard to the Treaty of Neutrality?

Mr. SARBANES. Since 1936 that guarantee which the Senator made so much about earlier in presenting his amendment has not been present since 1936, 42 years ago. Now the Senator may cite it and he may use it to try and support his argument for his amendment, but it seems to me that a good deal goes out of his argument when it is finally pointed out that in 1936 that provision was removed in the treaty revision entered into between the United States and the Republic of Panama.

Now the power we have in the future deals with the neutrality of the canal, but the power that you are talking about is the guarantee of the neutrality of Panama, which was such an important part of the opening argument that you made for your amendment, which was taken out in the 1936 treaty. The protocol that you contend denies the transit had nothing to do with the transit.

The 1914 protocol between the United States and Panama, as reaffirmed in 1939, had to do with the question of refueling rights for belligerents in neutral ports.

Mr. STEVENS. I think the Senator is misunderstanding me. It is a matter of communication, perhaps, but I am saying that if we are going to be in the position of guaranteeing the neutrality of this canal, what are we doing with regard to Panama?

Mr. SARBANES. The Senator made the argument.

Mr. STEVENS. The provision of the treaty states now that we guarantee the neutrality; right?

Mr. SARBANES. No. It was removed in 1936.

Mr. STEVENS. We are talking about a Neutrality Treaty. I am afraid we are not communicating.

I would say to the Senator from Maryland——

Mr. SARBANES. No. Let me——

Mr. STEVENS. We guarantee the neutrality of this canal under this treaty you are proposing; is that not true?

Mr. SARBANES. In his opening statement the Senator from Alaska made a great deal to do about the provision in the 1903 treaty by which the United States guaranteed the neutrality of the Republic of Panama.

Only a few minutes ago he again raised that guarantee of the neutrality of the Republic of Panama. The fact of the matter is that guarantee was dropped in the 1936 treaty.

Mr. STEVENS. I would say to the Senator from Maryland again, the subject before us is that we are guaranteeing the neutrality of the canal. That is the proposal of this treaty.

Mr. SARBANES. We have the right to take actions to assure its neutrality, if we choose to do so. That is correct.

Mr. STEVENS. Let me finish.

We say we are going to undertake to Panama to guarantee the neutrality of the canal.

Is that not the proposition that you are supporting?

Do you not support this treaty?

Mr. SARBANES. I do support this treaty very strongly.

Mr. STEVENS. I say to the Senator from Maryland that in doing so, it raises a question to me that if we are going to guarantee the neutrality, why should we not guarantee the neutrality of Panama itself rather than the canal?

What are we doing when we create an obligation allowing the warships from nations that are in a state of belligerence with either the United States or Panama to transit the canal when we are no longer guaranteeing the neutrality of the canal itself?

I say, we ought to guarantee to the Panamanians—and my amendment will do it, whether you understand it or not. My amendment will guarantee that we are saying to Panama that we will help them, we will assist them if foreign warships from nations in a state of belligerence with Panama attempt to come through there. We are not merely guaranteeing the neutrality of the canal under those circumstances.

And I will go further. I have some amendments coming. We intend to go further.

I will say to the Senator from Maryland that I believe the documents must be amended to set forth the relationship between the United States and Panama after the year 2000. Again I say that because I do not believe that the only way we should be able to go back into that canal after the year 2000 is through the use of force.

I challenge you to tell the people of the United States how you are going to get back in there except by the use of force under the documents that are before the Senate today.

Under what circumstances can we go back in there to protect our security interests or to protect the Government of Panama itself under these circumstances?

Maybe, we are two ships passing in the dark here, my friend, but I would say to the Senator from Maryland this is not to me a subject that can be glossed over by saying, you know, we do not understand history. I am talking about the future. You can write all the history you want. I am worried about the future.

Mr. LEAHY. Will the Senator from Maryland yield?

Mr. STEVENS. Let me say one thing and I will yield my part of the floor.

Between 1945 and 1977 there were 10,090 transits of United States vessels, not auxiliary vessels.

In the same period of time, 1945 to 1977, there were 1,124 foreign naval vessels, not counting support vessels for those naval vessels that transited this canal.

We are saying 10 percent plus of the number of our own vessels that went through there were vessels of war of foreign nations. We are saying under this amendment that I am offering, you can go through that canal and we guarantee its neutrality, unless you are in a state of belligerence with either Panama or the United States.

And I wish the Senator from Maryland would address himself to that issue and let the Senate know does he believe we ought to guarantee the neutrality of that Panama Canal to a vessel that represents a nation that is in a state of belligerence with either Panama or the United States.

Mr. SARBANES. Mr. President.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. In response to the direct question of the Senator from Alaska, I assume he was off the floor when I first began to speak to his amendment because I pointed out that what his amendment would do by denying access to the vessels of any particular nation would be to destroy the neutrality of the canal.

Now, once the neutrality of the canal is breached, then the canal and its operations can no longer claim a neutral status. In effect, the canal has been involved in a wartime situation by taking sides and it is there as a legal and legitimate target of enemy reprisals because it is not neutral. It has taken sides.

Now, if we want to maintain the canal open so we can use it, and that is important to us, then I submit to you that the United States loses a great deal from a situation in which the canal is shifted from being neutral to being involved in the conflict, because the canal then is a legal legitimate target for those nations that are being denied access.

It makes no sense to create that situation because if we can keep it netural,

we can use it and we have the power to prevent others from using it by intercepting them and interdicting them at sea and preventing them from gaining access to the canal.

The fact of the matter is, the canal has always enjoyed a neutral status under the terms of the existing neutrality terms, under the Hay-Pauncefote Treaty and our naval vessels have always taken whatever action was necessary on the high seas.

Defense Secretary Brown, when he was before the committee in discussing this particular subject, said:

> I think that the United States attempt to prevent ships of a nation belligerent to us, at war with us, from transiting the canal would be made outside the canal. We would depend upon our military power in the approaches to the canal and further out to do what we had to do. The last place we want to sink a ship, ours or anyone elses', is in the canal, and therefore we will depend upon our military power outside of the canal to serve our interests.

The new treaties do guarantee passage through the canal just as the existing treaties do. They make no change in that regard. They maintain the neutrality of the canal.

The Secretary said:

> The new treaties do guarantee passage through the canal. They don't guarantee passage to the canal to us or to anyone else.

The adoption of the pending amendment will result in making the canal a legitimate target of enemy reprisal in time of war, and, therefore, does not serve our interests.

Second, it establishes a precedent with respect to the use of international waterways which could be extremely harmful to American interests in other parts of the world. It is to America's advantage and to America's benefit that the concept of the neutrality of international waterways be a recognized concept of international law and respected by all nations. That gives us the access through those waterways, some of them in other areas of the world not as easily subject to our control. Yet, through the use of our power with respect to this waterway, on the high seas we are able to control who can use the canal.

So we do the best we can to insure that the canal stays neutral and usable and, at the same time, we are in a position to stop or interpose a block to our enemies.

Finally, the amendment carries this notion of being evenhanded with respect to both Panama and the United States, which, of course, raises a number of possibly difficult situations in which a nation may be in a state of war or conflict with the United States or Panama but not with the other. Then what is the nature of the rights of that nation with respect to entry to the canal, one country might exercise authorities the other one does not want exercised and what situation does that get us into?

In effect, what this amendment does is really to undercut the protections which have been written into these treaties with respect to American interests.

We want to keep a canal which is open. The best way to do that is to maintain it neutral, because, if it is neutral, it then is not a legitimate object of attack.

If we shift it from its state of neutrality, then it becomes a legal and legitimate object of attack for the nation being denied the transit. It is that simple.

In practical terms, with respect to its use by nations that we do not want to use it because of a conflict relationship between us, we are in a position, through the use of our power, as Secretary Brown said, to deal with the ships of those nations as they approach the canal, as the Senator from Vermont pointed out very ably, deal with them where they, in effect, maneuver themselves into a position where they are extremely vulnerable to the use of American power.

The provisions as written are more protective of American interests than the amendment which the Senator from Alaska seeks to place in these treaties. This amendment, in effect, would make it more difficult for us to be assured of the continued use of this canal and would not contribute to our ability to prevent others from using it.

For that reason, Mr. President, I oppose the amendment.

Mr. President, how much time remains on the amendment?

The PRESIDING OFFICER. The Senator from Alaska has 18 minutes remaining, and the Senator from Maryland has 32 minutes remaining.

(Mr. HART assumed the chair.)

Mr. STEVENS. Mr. President, I find very interesting the arguments which are being made against the pending amendment.

I have before me the rules which were issued by Woodrow Wilson in a proclamation by the United States concerning the maintenance of the neutrality of the Panama Canal. In that proclamation the President, at that time, said in rule XV:

> In the interest of the protection of the canal while the United States is a belligerent, no vessel of war, auxiliary vessel, or private vessel of an enemy of the United States or an ally of such enemy, shall be allowed to use the canal nor the territorial waters of the canal for any purpose, save with the consent of the canal authorities and subject to such rules and regulations as they may prescribe.

I am informed that President Roosevelt issued similar orders in World War II.

The argument of the opponents to this amendment seems to be that because, if we had a declared state of war, we could intercept the foreign naval vessels and blow them out of the water. If we have a state of belligerency such as we had with China, such as we had with North Vietnam, such as we had with North Korea, such as we had with Russia and Cuba, within my lifetime and since I left the service of the Air Force, then the opponents say we do not need this amendment because we should blow their ships out of the water.

Well, that is a nice declaration of war. I wonder whether that was though of by President Kennedy, whether President Eisenhower thought about it, or President Truman, President Johnson, or President Nixon.

I do not think I have heard an argument that left the United States in such an untenable position.

We are going into a new treaty and we will no longer have the control we had over the canal during World War I, World War II, Korea, Vietnam, and the Cuban crisis. We will not have that control any more. What we will have is a new proposal that we guarantee the neutrality of this canal. Again my friend misses the point. At one time we guaranteed the neutrality of Panama. We will not do that any more. Now we are going to guarantee the neutrality of the canal itself. In spite of the fact that the belligerent might be a belligerent against Panama or against the United States, we are going to guarantee the neutrality of this canal.

God help us if we ever get into World War III under these circumstances. In the last two world wars we served notice on the world that no belligerent or any ally of a belligerent—think of that—could come through that canal. Now we are told, "We guarantee, we must guarantee, the neutrality of this canal because our naval strategy is we will blow them out of the water."

That is absurd, just patently absurd.

Mr. SCOTT. Will the Senator yield?

Mr. STEVENS. I yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I, too, find it difficult to understand the position of the distinguished Senator from Maryland.

As I recall, during World War II we did control access to the canal. I have been advised that we had minefields and antisubmarine nets at the entrances of the canal.

It is understandable that we can do things when the ownership and control of the canal is under our jurisdiction that we might not be able to do if the ownership and control is with the country of Panama.

This seems to be a reasonable amendment that the Senator from Alaska has offered, providing that the vessels of war and auxiliary vessels of all nations shall, at all times, except during periods of belligerency between such nations and the Republic of Panama or the United States, be entitled to transit the canal.

It seems reasonable to me that during the time of war we should not be having our enemies utilizing the canal.

Parting with title to the canal is bad enough, giving the canal away after we have spent the amount of money we have spent, and also agreeing in the future to give hundreds of millions of dollars to Panama for taking the property.

To be saying that in time of war our enemies can use the canal just as we can just seems to me to be totally untenable. I would urge that we adopt this amendment by the distinguished Senator from Alaska. To me, it is just a reasonable thing to do. I think we would be very foolish to let our enemies use a valuable asset that we constructed after we give it

away to the country of Panama. I thank the distinguished Senator for yielding to me.

Mr. STEVENS. I thank the Senator from Virginia.

Mr. President, again, I point out that the relationship we have had in the past on this canal gave rise to our ability, through our Presidents—President Wilson and President Roosevelt—to declare by virtue of the fact that it was under our control, in effect, the same regime that my amendment would create. We are losing the control if these treaties are approved. We lose all control to promulgate similar rules and state to the world that the belligerents or their allies cannot use this canal. The only thing that would be left would be force. The only thing that would be left to us would be war.

Mr. SARBANES. Mr. President, I yield such time as he may use to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise to the important and sensitive point which the Senator from Alaska has introduced about the question of the role of force in the future of the Panama Canal, the maintenance of its neutrality in the access of the United States, and to speak to the clear concern and, I dare to say—and I hope it will be understood when I say it—what I fear to be the confusion of many of the opponents of the canal with respect to the whole regime of international law that developed in the course of the 19th century, and which so surrounds and seduces the treaty history of the canal itself.

To have this sense of time, one has to go back to a period before that which most Americans have ever lived or even remember; a 19th century when, for almost a century, there had been no major war in the world; a 19th century in which the rise of Democratic institutions seemed as inevitable as the rising of the morning sun; a 19th century in which, when Lord Bryce wrote his book, "The American Commonwealth," he could say of our country, "America sails a summer sea."

The world over, men and women looked to the day when, soon or late, their institutions would emulate ours.

That was an era in which the great European powers set out diligently to construct a rule of law, a regime of law, for the whole of the world and diligently sought to involve us in that regime. The Hay-Pauncefote Treaty was one of the first large achievements of that time, and there were endlessly detailed descriptions of the rights of neutrals and the rights of belligerents, and the bringing of a kind of Marquis of Queensberry etiquette into the whole idea of conduct.

The Senator from Alaska, for example, has called attention to the agreement of the United States and Panama as to how often a belligerent power might avail itself of the right to use a neutral port for refueling. It has been decided that one could do that once every 3 months—2 months being too soon, 4 too often—that kind of regulation.

It was specifically in this context that the idea arose, and it was a great advance in the world, that the two great isthmian canals, the Suez Canal and the Panama Canal, should be neutral, should be available at all times to ships of all countries, and would do so in the context of a regime of law that clearly anticipated very little war, expected that wars, in the main, would be averted through arbitration treaties.

Secretary Bryan devoted the whole of his life to the idea of arbitration treaties as a way of avoiding war. The International Court in The Hague became a center for this notion that mediation and arbitration and cooling off and strict observance of well-defined rules would be the way in which mankind would leave a world in which war really was, in fact, an extension of national policy, leave that world altogether.

Mr. President, that world went down with the Lusitania. The United States entered the First World War precisely because the German High Command began systematically violating the rights of neutrals, the regimes of belligerency, the rules that had developed. What did not go down with the Lusitania was blown to pieces when the Nazi dive bombers descended on the neutral and unprotected city of Rotterdam in 1940.

We have lived in a very different and a much harsher and an incomparably bloodier world. The United States went through the whole of the agony of Vietnam and never declared war. We were not even technically belligerent. The whole concept of finely gradated distinctions of belligerency and neutrality and the careful observance of understood rules by a community of nations which had its largest interest in peace and comity has disappeared. That has not been the 20th century. America has not sailed a summer sea.

The point about these treaties—and it may as well be said. Indeed, I can only speak for this Senator, but I speak with conviction on this: Far from it being a drawback of the treaties we are going to approve in the Senate that they permit the use of force to pursue American objectives in the canal, it is their essential quality that they do permit it. No one has lived in the 20th century who does not understand that it may be necessary. And no one seeing us advise and consent to these treaties should have any illusion, no foreign power should have any illusion that if the protection of American interests requires the deployment of our Armed Forces in the canal as the treaties give us the right to deploy, we will do so, regardless of the nature and quality and sexual preferences of the regime in Panama City. Regardless of the good or bad opinion of the world, we acquire rights under this treaty as amended and they will be exercised.

We prudently and appropriately preserve the regime of neutrality which originally accompanied the creation of this canal. It is one of the great achievements of international law.

It is one of the few surviving principles from an age almost gone now. But we are right to preserve it because, as the Senator from Maryland has said, it is when that neutrality is threatened that our rights to commit American forces become operative.

And let it be understood, we will do so. We are not afraid to do for this canal what we have been prepared to do from the time it opened in 1914. We will defend and maintain its neutrality.

No one who has experienced the 20th century can suppose that there are any such things as rights in this world that cannot be defended with power. It is precisely the value of these treaties that they make the exercise of American power a right and not simply a dicta of Real-politik.

These treaties give us the right to do what in extreme situations it may be necessary to do. The treaties will be meaningless if we do not continue to maintain the power that we are allowed to exercise.

But if we do the one, we have the right under the other, and in a rather rare circumstance the United States could look to the defense of its immediate and real interests, not simply as a matter of what we will do, but a matter of what we have obtained through fair and open negotiations the right to do.

Mr. President, it seems to me that the present amendment is based on a serious misreading of the origins of the international principles involved in the neutrality of straits and canals, and much more grievously, I hope it is not the case that the Senator from Alaska genuinely supposes, but what became known as a piece of paper will protect this canal. This canal will be protected by the U.S. Navy and the U.S. Marines if it is under attack.

The point is that if it ever should be, that that may be, and those marines have a right to do what they will have to do.

I thank the Chair.

Mr. STEVENS. Mr. President, what is the time situation?

Mr. ALLEN. Will the Senator yield me a couple of minutes?

Mr. STEVENS. I will be happy to yield if I can find out the amount of time I have left, I say to the Senator from Alabama.

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

Mr. ALLEN. Will the Senator yield to me?

The PRESIDING OFFICER. The opponents of the amendment have 22 minutes remaining.

Mr. STEVENS. I yield the Senator from Alabama 2 minutes.

Mr. ALLEN. Mr. President, it seems to me the distinguished Senator from New York (Mr. MOYNIHAN) made a most eloquent plea, not against the amendment of the Senator from Alaska, but a strong plea for the amendment.

He stated that the treaty is designed to allow the United States to take such action as is necessary to defend the canal and to protect our interests.

The treaty does no such thing. That is what the amendment of the distinguished Senator from Alaska would do.

Without the amendment of the Senator from Alaska, we are bound by the treaty to permit enemy ships to have

free access, undisturbed transit of the canal.

Is that allowing the United States to protect its interests? It is not. And only with the amendment of the Senator from Alaska will we have that right.

So it seems to me the distinguished Senator from New York has an erroneous view of what the treaty does and an erroneous view of what the amendment does, because it is only with the amendment of the Senator from Alaska that the United States will have the right which the distinguished Senator from New York ascribes to the United States under the treaty.

We do not have that right under the treaty, and we are going to have to disregard the treaty if we protect the canal from enemy warships which are guaranteed free access under the treaty, but are denied that access under the Stevens amendment.

I thank the Senator from Alaska.

Mr. MOYNIHAN. Will the Senator from Idaho yield me time, or the Senator from Maryland?

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

Mr. MOYNIHAN. Mr. President, I rise simply to say that, clearly, there is a different view in this Chamber. But I hope it would be equally clear the majority view and, in my judgment, the correct view, is that we are building on a tradition of international law which we helped create, which we retain the powers that we have always had and have effectively used.

Does it mean nothing that the provisions about free and unhampered transit of belligerent vessels have obtained through two world wars and have never in any remote way jeopardized American control of the canal?

Two world wars, in which these rights have existed, and they have never in any way infringed upon or even threatened our control.

But were we now to have tried to reconstruct that whole history and move the very conception of a new canal, to retrospectively dismantle it, we would, one, never have had a treaty; two, we clearly would not have gotten a treaty with Panama, but violated the treaty with nations such as Britain, from that era; and three, and ultimately importantly, we would not have the right to continue to maintain that regime of neutrality in the future. That, in the ironic way, is our responsibility to maintain neutrality that fundamentally gives the right to commit force to that effort, if necessary.

We stand for a rule of law, and that rule of law is all we require. But that rule of law can only be law if there are those recognized agencies with the right and the will to enforce it. That agency is the Armed Forces of the United States as exercised by the President and the Congress of the United States.

That is present in this treaty, by the people who negotiated it, and the people who will vote for it on the floor. We do not look to a world in which that is written on paper is sufficient to insure the observance of adversaries. We look to a world in which we act on the basis of right and we act with the authority of power.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, I yield the Senator from Alabama——

Mr. ALLEN. Two minutes.

Mr. STEVENS. Two minutes.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, again I say that the distinguished Senator from New York ascribes and attributes to the U.S. rights above and beyond the rights given in the treaty.

He states, in effect, that despite what the treaty says the United States by force of arms in two wars and by its desire to protect its national interest can exert the power that it has, irrespective of the provisions of the treaty.

That is a sort of cynical approach, that no matter what the treaty says we are going to exert the rights we have as a mighty nation.

What is the use of having a treaty if we are going to do that?

So it would seem to me to get the thinking of the distinguished Senator from New York in line with the facts as we see them under the treaty and as we see them under the Stevens amendment, we are going to have to have the Stevens amendment added to the treaty to give us the force of law in exercising the power that he says that we have to protect our national interests, a power that goes beyond the rights given us under the treaty.

So, to be realistic about it, he says that irrespective of what the treaty says, we are going to protect our national interests by force.

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

Mr. ALLEN. May I have an additional 1 minute?

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Will the Senator yield an additional minute?

Mr. STEVENS. I yield to the Senator from Alabama an additional minute.

Mr. ALLEN. So, in order to attribute realities to the existing situation rather than to exercise a right beyond what the treaty gives us, we are going to have to adopt the Stevens amendment to keep us as a nation of laws rather than one exerting the power that we have, irrespective of what is contained in the treaty.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, this treaty proposes a change in the relationship of the United States to the Panama Canal for the year 2000. It would leave us in the position where the President of the United States could not issue, as President Wilson and President Roosevelt did, rules that would prohibit the warships and supply ships of our enemies or their allies from using this canal. We would no longer have that right to issue such rules after the year 2000, and we would be in the unfortunate position of having guaranteed the neutrality of the canal.

The amendment also covers Panama, in that it would give Panama the same protection—that is, Panama would not be required to permit the warships and supply ships of a belligerent nation against Panama from using this canal, under the terms of this treaty as amended. I think it is a necessary amendment.

I say to the Senator from Idaho that after he completes his statement, I will be pleased to yield back the remainder of my time.

Mr. CHURCH. Mr. President, this amendment, like its brothers, states a very attractive proposition, one that is exceedingly difficult to vote against from a political standpoint. But the amendment simply will not withstand close examination; it is defective.

Let us suppose that, in the future, Panama finds itself at war with a nation that is at peace with the United States, perhaps one of our close allies. Under the provisions of the Stevens amendment, the warships of our ally could not use the Panama Canal. This would be so even though our national interests might be better served by having the canal open for the transit of those ships.

The point is that the adoption of the Stevens amendment would permit Panama to discriminate against the warships of any nation that Panama is at war with, regardless of whether or not the United States is at war with that nation. I do not want to give Panama that kind of option. I do not think it serves American interests to amend the treaty in this way; neither does our Navy.

We have received from the Navy a statement of its position on the amendment, and it is interesting to note what the Navy says:

> The proposed amendment is unnecessary. Denial of enemy access to the canal would be conducted from its approaches. In other words, we would prevent an enemy from reaching the canal.

Additionally, the Navy opposes the amendment because it would set an unfavorable precedent with respect to other international waterways.

Finally, the Navy observes:

> The proposed amendment could be considered a violation of the customary international law relating to international waterways.

Mr. President, we want the Straits of Gibraltar subject to a regime of neutrality. We want the Suez Canal subject to a regime of neutrality. We want the Dardanelles subject to a regime of neutrality.

Now, are we to say that a different regime should apply at the Panama Canal? Are we to say it in an amendment so defective that it gives Panama an option to close the canal to allies of the United States?

Yet, there is another, and, unfortunately, related point I must mention. Again and again I have heard it said on this floor, ad nauseam, that there is a kind of conspiracy against any and all amendments; that we dare not adopt an amendment unless Torrijos approves it. This is an absurd proposition. We are

100 free people in the Senate. Each of us can vote his or her conviction. We are subject to no rule, no conspiracy, no ultimatum laid down by the leadership or anyone else which can bind any Senator. It is nonsense to conduct a debate on such terms.

The Senate has been rejecting these amendments because they are defective and often foolish, and I hope the Senate continues to do so by decisively rejecting this amendment as well.

I am prepared to relinquish the remainder of my time, after which I will move to table the amendment.

Mr. STEVENS. Mr. President, I think the Senator from Idaho needs to look at the report that came from the Foreign Relations Committee. It discusses in several places the necessity to obviate the need for a new plebiscite in Panama. It states:

> The committee is informed by the Department of State that the Government of the Republic of Panama has concluded that no new plebiscite will be required for the approval of the two amendments.

Those of us who feel that some of the amendments are necessary might be heartened if there would be at least some amendment adopted that would reflect the worry and concerns of the people of the United States.

So far as the Dardanelles and the other areas of the world where we have neutrality are concerned, I again call to the attention of the Senator from Idaho that at the time this Nation saved the world from two holocausts, in World War I and World War II, they were closed, just as the Panama Canal was closed.

The unfortunate part of it is that should we approve these treaties and there should come World War III, we would have no right to close the Panama Canal. If we wanted to close it, we would have to land troops. We would have to attack the creature of our own ingenuity. We would have to send our sons and the sons of many other Americans in there to take back the canal. I do not say this lightly.

As I grow older, I listen to my sons a little more, and I listened to one of them on this matter very acutely.

I will repeat for him what I said earlier today. He said to me:

> Dad, do what you think is right with the canal, but if I need it, my generation needs it, when I am your age, just make sure we do not have to fight for it.

I yield back the remainder of my time.

Mr. CHURCH. Mr. President, in the first place, we did not close the Panama Canal in either the First World War or the Second World War. Our Presidents on both occasions issued unilateral declarations that we would see to it that enemy ships did not transit the canal.

We did not do that by closing the canal. We kept it open. We prevented enemy ships from transiting the canal by using our naval power to keep any enemy away from the canal, far enough away so that the canal itself would not be threatened. That is how we did it in two world wars, and how we will do it in the future. Nothing in the pending treaties prevents us from doing so.

As I have said before, this line of argument, once examined, simply does not hold up. The amendment is defective, and I hope the Senate will reject it.

I now relinquish back the remainder of my time and I move to lay this amendment on the table. I ask for the yeas and nays.

The PRESIDING OFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Alaska.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ABOUREZK (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from West Virginia (Mr. RANDOLPH). If he were present and voting he would vote "nay." If I were at liberty to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), the Senator from Montana (Mr. MELCHER), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I also announce that the Senator from North Dakota (Mr. BURDICK) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from North Dakota (Mr. BURDICK) and the Senator from Arizona (Mr. DECONCINI) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Oregon (Mr. PACKWOOD) is necessarily absent.

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

[Rollcall Vote No. 44 Ex.]

YEAS—59

Anderson	Hatfield, Paul G.	Muskie
Baker	Hathaway	Nelson
Bayh	Heinz	Nunn
Biden	Hodges	Pearson
Bumpers	Hollings	Pell
Byrd, Robert C.	Huddleston	Percy
Case	Humphrey	Proxmire
Chafee	Inouye	Ribicoff
Chiles	Jackson	Riegle
Church	Javits	Sarbanes
Clark	Kennedy	Sasser
Cranston	Leahy	Sparkman
Culver	Magnuson	Stafford
Danforth	Mathias	Stevenson
Eagleton	Matsunaga	Stone
Ford	McGovern	Talmadge
Gravel	McIntyre	Weicker
Hart	Metzenbaum	Williams
Haskell	Morgan	Zorinsky
Hatfield, Mark O.	Moynihan	

NAYS—34

Allen	Garn	McClure
Bartlett	Glenn	Roth
Bellmon	Goldwater	Schmitt
Bentsen	Griffin	Schweiker
Brooke	Hansen	Scott
Byrd, Harry F., Jr.	Hatch	Stennis
Cannon	Hayakawa	Stevens
Curtis	Helms	Thurmond
Dole	Johnston	Tower
Domenici	Laxalt	Wallop
Eastland	Long	Young
	Lugar	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Abourezk, for.

NOT VOTING—6

Burdick	Durkin	Packwood
DeConcini	Melcher	Randolph

So the motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

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

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until order is restored. Senators will take their seats.

The Senator from Idaho is recognized.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CURTIS. Mr. President, I have been greatly concerned——

Mr. ROBERT C. BYRD. Will the Senator from Nebraska yield?

Mr. CURTIS. I am very happy to yield to the leader.

Mr. ROBERT C. BYRD. I would like to propound a question. It being as late as it is, are there any Senators who have further amendments to articles of the treaty?

Mr. ALLEN. I have one.

Mr. ROBERT C. BYRD. The Senator from Alabama has one. Any others?

Mr. THURMOND. I say to the majority leader, I may have one.

Mr. ROBERT C. BYRD. Senator THURMOND may have one.

I wonder if it would be possible to get some idea as to whether or not the Senator from Alabama will lay down his amendment and possibly allow us to vote on it?

Mr. CURTIS. Mr. President, may we have order?

The PRESIDING OFFICER. Will the Senate be in order?

Will the Senators take their seats?

Mr. ROBERT C. BYRD. Does the Senator from Alabama feel that he could call up the amendment today and, if so, what would be the prospects of the Senators voting on it today?

Mr. ALLEN. Yes, I think so. I would be willing to offer it after a somewhat brief explanation.

Mr. ROBERT C. BYRD. Yes.

Then, what about the Senator from South Carolina? May I ask the same question?

Mr. THURMOND. I think I can offer mine tomorrow, but I would not like to have it come while any committee is in session. I will take it up, say, after 12 o'clock.

Mr. ROBERT C. BYRD. Very well.

I wonder if we could work out an agreement whereby once the Senator from Nebraska completes his statement, the Senator from Alabama would be rec-

ognized to call up his amendment, and if we could reach an agreement to vote in relation to that amendment today, with the further understanding that Mr. THURMOND then on tomorrow will be recognized to call up his amendment and have a certain amount of time for debate thereon.

It might be possible that he would go forward tonight.

Could we just go as far as getting an agreement on the amendment by Mr. ALLEN?

Would the Senators be agreeable?

Mr. ALLEN. I do not feel that I would want to delay consideration beyond today with it, but at the same time I would not like the strictures resulting from a definite time limit. But I will certainly work toward having the vote tonight but I would not want a restriction of time, too.

Mr. ROBERT C. BYRD. I ask unanimous consent, Mr. President, that when the distinguished Senator from Nebraska (Mr. CURTIS) completes his statement that the distinguished Senator from Alabama be recognized to call up his amendment.

The PRESIDING OFFICER. Without objection, so ordered.

Mr. ROBERT C. BYRD. I thank all Senators.

The PRESIDING OFFICER. The Senator from Nebraska.

THE U.S. HAS NOT BEEN A COLONIAL POWER IN PANAMA

Mr. CURTIS. Mr. President, I have been greatly concerned to note the continual references to the United States as a "colonialist" or "imperialist" presence in Panama. I might expect this from some of the press, which have often been overly critical of U.S. efforts to protect its national security, but I was surprised to see Members of this body making such remarks.

In actual fact, Mr. President, the U.S. presence in Panama has been anything but a colonialist effort, and the United States can be quite proud of the role it has played over the years in the development of the Republic of Panama to the point where it has one of the highest per capita incomes in all of Latin America.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senator has a right to be heard.

Will the Senators move their conversations to the cloakrooms?

Will the Senate be in order.

Will the Senators in the aisle immediately aft of the chairs remove themselves?

The Senate will be in order.

If the Senators wish to discuss matters with each other, will they remove themselves from the Chamber.

The Senator from Nebraska.

Mr. CURTIS. Mr. President, first of all, the record needs to be made clear with respect to the U.S. role in the independence of Panama. The fact is that the United States did not "create" Panama. There had been numerous rebellions in Panama over a period of decades, and the people of Panama wanted their independence very badly. We did not force Panama to become independent, nor did we force its leaders to request U.S. aid in obtaining that independence. The Panamanian leaders, fully aware that they could not achieve their goal on their own, made the decision calmly and rationally, in full realization of the consequences, to seek U.S. aid.

The Panamanian leaders were willing, in return for U.S. aid in achieving independence, and in return for our construction of a canal, which obviously neither they, nor in fact any other nation but the United States, were capable of constructing, to strike a bargain with the United States sacrificing some of their sovereign rights in return for that aid and construction effort. It is also clear that without such agreement by Panama to give the United States sovereign rights, the United States would never have agreed to the construction of the canal in Panama, a canal which has brought relative prosperity to that area when compared to much of Latin America. Let us also not forget that the leaders of Panama ratified the treaty presented by the French negotiator, Bunau-Varilla, as did local councils throughout Panama. In fact, they also placed in their constitution a provision specifically recognizing the 1903 treaty. In short, Mr. President, the treaty was not foisted on an unwilling Panama by duress or coercion; rather it was a legitimate bargain in which each side got something from the other that it needed and wanted.

It can well be contended that the Government of Panama extended much more solid support for the 1903 treaty than they have for the 1977 treaties. In 1903, both the provisional government and later the freely elected Government of Panama ratified the treaty with the United States. In contrast, the 1977 treaty was only approved by a tightly controlled plebiscite held under the jurisdiction of military dictator who had overthrown the last freely elected Government of Panama. In the plebiscite held, the former President and other Panamanians who dissented from the proposed treaty were not even allowed to return to the country, let alone lead a free campaign against ratification of the treaties.

Mr. President, may I have order?

The PRESIDING OFFICER (Mr. PELL). Will the staff and the Senators in the back of the room cease chatting so we can hear the Senator speak.

Will the gentleman in the pink shirt stop talking.

Thank you.

Proceed.

Mr. CURTIS. Mr. President, I also would like to address the specific question of whether our presence in the zone over the years has had a colonialist character. This is a rather serious charge, Mr. President. Colonialism is that which we fought against in achieving our independence as a nation, and we have traditionally been sympathetic to nations trying to achieve their independence—as we were sympathetic to Panama in 1903. I disagree completely with those who charge that our presence has been colonial, and I deny that we have been an imperialist power in Panama.

Let us look at the facts: What are the characteristics of a colonial power, and does the U.S. presence in Panama have these characteristics? The answer, is clear; it does not. First of all, colonial powers usually remove great quantities of natural resources from the foreign area they dominate; just as today the Soviet Union removes wealth from Eastern Europe, which it can only do because of the overwhelming number of troops it keeps there by force. The record is clear that the United States has never removed anything of value from the Republic of Panama. In fact, precisely the opposite is the case. The United States created, rather than exploited the resource that exists on the Isthmus of Panama.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. CURTIS. Mr. President, we built the canal that has made Panama the relatively wealthy nation it now is. Panama could never by herself have invested the money in such a project or sustained its operation over the past 63 years. Overall, according to Hanson Baldwin, former military affairs editor of the New York Times:

> The United States has spent . . . some $6 to $7 billion on the military defense and security of the canal, much of which has found its way into Panamanian pockets.

In acquiring the canal zone itself, the United States paid Panama $10 million—in 1903 dollars—and paid another $3,965,254 to individual property holders for the land in the zone. As I indicated in the discussion on the floor of the Senate on February 28, this amount in 1977 dollars would be $34,184,454 according to Governor Parfitt see RECORD, 4902. A colonialist does not pay for land he acquires, he just seizes it as the Soviet Union did at the end of World War II.

Moreover, the United States has contributed much of value to Panama beyond the construction of the canal itself. Since World War II, Panama has received $342 million in total U.S. aid, as brought out in hearings before the House Appropriations Committee. This means that Panama has received more aid per capita from the United States than any other nation in the world—this is hardly the nature of a colonial relationship.

Much has been said of the $2.3 million paid to Panama each year as a residual commitment to Colombia for the use of the Panama Railroad—not rent for land as many have contended. But this amount pales into insignificance compared to other payments that Panamanians receive from the canal and thus the Panamanian Government, through taxation, receives indirectly. In 1975, Panama received a total of $236.9 million in revenue due to the existence of the canal adjacent to their territory. This includes wages, retirement and disability benefits as well as purchases for goods and services. This figure rose to $243 million in 1976. It is because of these enormous benefits flowing to Pan-

amanians and Panama that the country has the highest per capita income in Central America, twice as high as Colombia, of which they were once a part. This enormous windfall of wealth can hardly be characterized as exploitation by any reasonable person. Panama may want more, but as the old saying goes, life is an underpaid occupation. But this should not make us feel guilty and consent to the construction of a Panamanian monopoly over interocean travel that they can exploit.

Panama might not exist as a nation were it not for the United States, and I sincerely doubt that it would have achieved anywhere near the standard of living it now has, or even economic viability, were it not for the tremendous investment that the United States made in the construction of the canal. Of course, we built the canal for our own interests as well, but that does not take away from the fact that we did not coerce Panama in any way, but instead enabled them to willingly reap untold benefits from its construction.

Another aspect of colonialism, Mr. President, is the use of slave or coerced labor from the native population to carry out the task of the colonial power. When the United States constructed the canal, it paid its laborers a reasonable wage for that time; and, in fact, most of the workers were not even Panamanian, but rather West Indian. Further, in recent years, Panamanians who have been employed in the zone have received higher wages than those of their compatriots working in Panama. I might also note that, whereas colonial powers traditionally used the inhabitants of the colonial area as cannon fodder, the United States has never at any time sought to force Panamanians into the service of the United States in time of war; we have asked nothing more than that Panama as a nation be cooperative with our legitimate defense needs in protecting the free world.

A third aspect of colonialism, Mr. President, is the use of a foreign area as a base for aggression or territorial expansion. Again, the record here is very, very clear. The United States has never sought possession of 1 inch of territory, other than the use of necessary defense sites during wartime, outside the boundaries of the Canal Zone. Costa Rica, Colombia, and other nearby nations have never had at any time any reason to be concerned about possible expansion of the American presence in the zone into their nations. In fact, the United States has always been very sensitive to the strict legalities of its arrangements with Panama. After World War II, we withdrew from our bases outside the zone even though there was a strong legal argument that we had a right to remain. In our relations with Panama, a generous spirit has always prevailed.

Finally, Mr. President, I want to point out that the United States, unlike many colonial powers, has never sought to impose its culture or way of life on the people of Panama. Many colonial powers sought to wipe out the indigenous culture of the nation they occupied; for example, the Spanish in Latin America, or the Japanese in Korea. But the United States has never at any time had a deliberate policy of discouraging Panamanian self-expression. This is aside from the fact that the American presence is confined to a well-defined area, and does not extend in Panama itself.

Of course, anytime a large and developed nation such as the United States rubs shoulders with a small, undeveloped nation such as Panama, frictions may develop, and the culture of the larger nation will influence that of the smaller one. But these are matters inherent in the situation, it exists along the Mexican border, for example, and there is nothing that we or anyone else could do about them. The point is that we have never deliberately done anything to impose ourselves and our way of life upon an unwilling people.

In sum, Mr. President, the labeling of our presence in Panama as colonialist or imperialist is totally inaccurate. If some people or nations perceive it that way, that is because they are misusing the terms, or they do not know the facts. Whatever one's judgment of the treaties, it should not be influenced by the mistaken notion that we have been a colonial power in Panama.

Mr. President, I ask that there be printed in the RECORD at this point an excerpt from a study by Hanson Baldwin which deals with the question of the alleged exploitation of Panama by the United States and a point-by-point refutation of this notion.

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

THE MYTH OF U.S. EXPLOITATION

(By Hanson Baldwin)

The other argument, that the United States has exploited Panama, is obvious nonsense. Panama had been no more than a pestilential swamp in 1903; it is a potentially prosperous little nation today almost entirely because of Uncle Sam's munificence and the golden flood of dollars that poured into the region because of the canal.

In addition to the approximately $2 billion spent by the United States in acquiring, building, maintaining, and improving the canal and its supporting infrastructure in the Canal Zone, the United States has spent, over the years, some $6 to $7 billion on the military defense and security of the canal, much of which has found its way into Panamanian pockets. To offset these expenditures, about $1.125 billion has been paid back into the U.S. Treasury in tolls and other revenues, leaving the U.S. taxpayer in the hole over the seventy years of our hegemony in the zone to the tune of almost $8 billion.

These figures are in themselves an index of U.S. policy. The United States has regarded the Panama Canal as a major strategic asset but also as an international utility of great benefit to the world. Tolls have been kept low purposely, and the canal has been open impartially to the ships of all nations, in accordance with the Hay-Pauncefote Treaty with Britain.

There is no question that it is the canal and its efficient operation and the tremendous economic stimulus provided by direct and indirect U.S. grants that have made little Panama, with its 1.7 million people, a viable, if restless, entity. The canal, to Panama, is the goose that laid the golden egg. The country could not exist without it.

Consider some figures: In 1975 Panama received—including an annuity which now totals $2.32 million per year—some $236.9 million from the United States, of which about $103 million was paid in wages and retirement and disability benefits to Panamanians employed in the zone. About 10,000 people, 72 percent of the total work force of the Panama Canal Company and the Canal Zone government, are Panamanian nationals; other thousands work for the U.S. military. The canal is larger than any other single source of employment in Panama. Between 1946 and 1973, according to House Appropriations Committee hearings, Panama was the recipient of $342 million in total U.S. aid, more per capita than any other country in the world. Net income to the Panamanian *government* originating in the zone totalled about 12.5 percent of the gross domestic product of Panama in 1975.

In addition to these direct economic infusions Panama has received all sorts of benefits from literally hundreds of projects. A bridge and highway across the canal were built at U.S. expense to link the two parts of Panama; the country's deep-water ports are U.S. built and operated; its principal international airfield was U.S. built and its transisthmian road and railroad were U.S. constructed or operated. Its water supply comes largely from reservoirs and purification systems constructed by the United States. Its sanitation system was largely a product of U.S. organization and equipment; until some years ago, when by mutual agreement the responsibility was transferred to Panama, the United States collected the garbage in the terminal cities of Panama and Colón and directed the mosquito elimination program which safeguarded the health of residents in Panama and the Canal Zone alike.

U.S.-owned merchant ships, flying Panama's flag of convenience, add to the revenues in Panama's coffers, and tourism attracted primarily by the canal provides a stream of dollars, particularly for the merchants in Panama City, a free port. U.S. private capital has invested fairly heavily in hotels and other projects or in direct loans to the Panamanian government, and a number of the largest U.S. banks have established branches in Panama City.

All of this golden stream has made Panama—despite its unstable governments, mismanagement, and a greedy elite—one of the most favored nations in Latin America. If "poor little Panama" has been exploited, none of the economic, health, or social statistics show it. It has one of the highest GNPs per capita among all the nineteen Latin American nations; it had, from 1960 to 1974, a per capita growth rate surpassed only, and barely, by that of Brazil; until 1975 it had one of the lowest inflation rates in Latin America; thanks to American medicine, infant mortality has been the lowest in all Latin America and the mortality rate, second lowest. Panama's literacy rate is considerably higher than most in the region, and its life expectancy has been fourth among all the Latin American nations.

Far from being exploited, it is quite clear that Panama has derived benefits from the American presence in the Canal Zone that have made it fortunate among nations. The canal is Panama's single greatest revenue source. The exploitation myth is just that—a propaganda ploy fostered by Panama's politicians, by Castro's Cuba, and by the Soviet bloc to help force the United States out of the zone. It has no basis in fact.

Mr. CURTIS. Mr. President, I yield the floor.

Mr. MUSKIE addressed the chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama is recognized.

Mr. ALLEN. I shall be delighted to yield to the distinguished Senator from Maine. The Senator will then recognize me, Mr. President.

Mr. MUSKIE. I thank my dear friend from Alabama. I simply wanted to make a brief reference to the comments just made by my good friend from Nebraska (Mr. CURTIS).

I devoted several hours on February 28 to some of the issues which he has just touched upon. For a more complete exposition of a different point of view, I want to make reference to those.

Whether or not we have been a colonial power in Panama depends upon one's definition of colonialism. The Senator from Nebraska, of course, has provided us with his own definition and then, by this definition, undertaken to measure our performance in Panama. I am not going to try to respond in detail to what he has had to say.

However, I was struck by one description the Senator has given us of his evaluation of our performance in Panama over the last 75 years vis-a-vis the Panamanians. I think this is the exact quote.

He said: "A generous spirit has always prevailed" in our attitude toward the Panamanians. Let me refer to the record. With respect to employment in the Panama Canal Zone of Panamanians and non-U.S. citizens generally, the fact is that the United States imported labor from Asia and from the West Indies to the zone for the purpose of getting cheaper labor than we could get from among Panamanians themselves, thus undermining Panamanian wage rates and denying employment to Panamanians.

Both during the construction phase of the canal and since, we also established separate wage scales for Americans as against non-U.S. citizens, reserving the best-paying jobs for our countrymen.

In the 1936 treaty, we pledged to work toward greater employment equality for Panamanians, that being one of the issues raised in the negotiations in that year, 22 years after we began operating the canal, both countries determining that it was an inequity that needed to be addressed. So, in the 1936 treaty, we pledged to correct an inequity and to work toward greater employment equality for Panamanians. Yet, legislation was passed reserving all high-paying canal jobs for U.S. citizens.

Following World War II, the War Department's two-tier hiring practice became official U.S. policy. Thus, we established and maintained a system which was both separate and unequal.

Now, whether or not that performance makes us a colonial power by all definitions which might be developed by any of us, it surely was not a generous spirit that moved us to establish that kind of discrimination as between Americans and Panamanians.

My good friend from Nebraska, in addition, made a great deal of the point that we had not tried to impose our culture on Panamanians. That is true. What we did was try to establish our culture with its obvious higher standard of living for Americans in the Canal Zone, and denied Panamanians equal access to that standard of living in the zone, while they, living a markedly lower standard of living outside the zone, were left to look at the doggy in the window which was beyond their reach.

That class system which we established was one of the reasons why, over the 75 years since the canal began operating, Panamanians have felt they were being treated as inferiors. There, up against their borders, were privileged people, people working in their country, making use of their resources, isolated from them by the higher American standard of living and culture for which they had to beg for crumbs from the table. That may not be colonialism by some definitions, but it was hardly the kind of generous spirit that we like to think of as motivating Americans in our relations with the less privileged in our own country, as well as the less-developed countries outside our borders.

So, whether or not we are a colonial power is not a question that I think is particularly relevant if we have to argue about what the definition is. But if we measure the performance against what I think most Americans would regard as fair treatment, the record supports the conclusion that, over 75 years, we have always manifested a generous spirit toward the Panamanians and toward their country and their government. Indeed, the conclusion is unavoidably 180 degrees opposite to that.

Mr. President, I shall not devote more time to this point at this time. I express my appreciation to my good friend from Alabama for yielding to me. I shall now resume my seat and listen to his amendment and to his case for it.

Mr. ALLEN. I thank the distinguished Senator from Maine. It was a pleasure for me to yield to him in order that he might make this speech on this occasion.

Mr. President, later on this afternoon, I shall offer what will be my last amendment to article III. In the Committee of the Whole, we have a very fair and complete set of rules as to the order of consideration of amendments to the treaty. Amendments are not allowed to the treaty throughout its four corners, but we have to proceed in an orderly fashion. The leadership's so-called amendments—whereas I referred to the leadership's so-called amendments in the past as the leadership amendments, in the future, I shall refer to them as the leadership's so-called amendments, or the leadership's understandings.

I shall explain that later.

Mr. President, the procedure in the Committee of the Whole, allowing us to offer amendments to the various articles in order, has allowed considerable discussion of the Neutrality Treaty and the Panama Canal Treaty prior to the introduction and consideration of the leadership understandings. I think this is very fine, indeed, because ordinarily, and I guess properly so, the leadership is recognized for the introduction of such amendments as it wishes to offer when any bill, constitutional amendment, or resolution is pending before the Senate. They have priority, and that is entirely proper.

But since their understandings are addressed to articles IV and VI of the treaty, that necessarily has allowed us to offer constructive, substantive amendments to the various articles before we go into the matter of the leadership understandings.

Of course, that was the strategy of the leadership from the start when they set the Neutrality Treaty before the Senate for consideration first, a treaty having to do with defending the canal and its neutrality starting with the year 2000, rather than to consider first the Panama Canal Treaty which transfers the canal to Panama and sets the conditions under which the transfer takes place.

It, of course, was the strategy of the leadership to quickly move to the approval of the leadership understandings and then claim victory in the treaty fight and to expect a quick rubberstamping by the Senate of both treaties. That has not taken place.

Mr. President, we have had considerable debate on the merits of both treaties, the advisability of giving the canal away and paying Panama hundreds of millions of dollars to take it, then the matter of a proper defense of the canal starting with the year 2000.

Whereas under the treaty and the leadership understandings we would be allowed to defend the canal and to maintain its neutrality starting with the year 2000, given that right, it was stated in possibly less precise terms in the treaty itself. We were given that right, but denied the means to enforce that right, because under the treaties we are supposed to have all of our troops out of the canal zone by the year 2000. Yet, supposedly, given the right to defend the canal, we necessarily would have had to have invaded Panama by amphibious landing or landing of paratroopers in order to defend the canal.

When we sought to add an amendment giving the President the right, if the maintaining of the military presence of the United States in the canal beyond the year 2000 was deemed necessary by the President to defend the canal and maintain its neutrality, he could continue that military presence for the term of 20 years.

Oh, that was a terrible amendment. It struck right at the heart of the treaty and could not be accepted under any circumstances. It killed the treaty.

I was somewhat amused just a few moments ago when the distinguished Senator from Idaho (Mr. CHURCH) was saying, "We proponents of the treaties are being charged in the consideration of amendments to make sure that it is all right with Mr. Torrijos."

He says that is not correct. That is not correct at all. We are not interested in that.

The distinguished Senator from Alaska (Mr. STEVENS) very quietly, but effectively, figuratively knocked Mr. CHURCH out of the Senate Chamber when he read from the Foreign Relations Committee report where it outlined just that very strategy.

The Senator from Idaho (Mr. CHURCH), of course, is the ranking Democrat on the Foreign Relations Committee and I am sure was cognizant of the lan-

guage of the report—or possibly he was not.

This is what it says in the Foreign Relations Committee report:

All of the other measures presented for consideration were rejected by the committee.

That is, amendments that Senators have put in.

In the committee's view, this action was necessary because the adoption of any of them would serve only to cripple the treaties and to render them unacceptable.

Why should that be? Why should a construction amendment cripple the treaties and render them unacceptable? Unacceptable to whom, Mr. President? The necessary implication is, unacceptable to Mr. Torrijos.

Additionally, reading from the Foreign Relations report:

Approval of any of these provisions would seriously raise the prospect of requiring the Government of Panama to hold another plebiscite. In the committee's view, it is desirable to avoid such a requirement to the maximum extent possible.

The leadership has followed that recommendation assiduously. They have sought to avoid such a requirement to the maximum extent possible by stonewalling against every amendment offered here in the Senate.

I predict that is going to be the state of every amendment that is offered, to avoid a plebiscite.

How do we know, Mr. President, whether any number of amendments would require a plebiscite? Mr. Torrijos first said that he was not going to accept any amendments, that that would require a plebiscite.

Now he says, "Well, I'll take the leadership amendments."

I am going to show in a moment the leadership amendments are not amendments. It might be a difficult task, but I will not have any difficulty showing that. They are not amendments.

It has been stated on the floor that adoption of these amendments, or any amendment, would kill the treaty. How could that be?

The distinguished Senator from Montana (Mr. MELCHER) on yesterday in declaring against the treaties, I believe somewhat to the surprise and chagrin of the proponents of the treaty, said, "Even if we reject the treaties, that is not the end of the road."

There are many benefits that can be conferred on Panama without a treaty and the negotiating table is open to the two Governments to draft a treaty more acceptable to the U.S. Senate.

So, Mr. President, I do not believe that any Senator can properly claim, as has been claimed by the proponents of the treaties time and time again, that the adoption of this amendment or that amendment or the other amendment would cause a new plebiscite in Panama. We are dealing with a one-man government, and Mr. Torrijos, even if we adopted a hundred amendments, could say, "That's all right. I'll sign the note of ratification, and we will have a treaty." And who would there be to say that he had acted improperly? Would our Government say that? I daresay not, because they seem so anxious to get a treaty.

What would be wrong with another plebiscite? Why should not our Government, why should not the people's representatives in the Senate, have a right to shape this treaty, and why should not the people of Panama have a right to act on what the Senate of the United States has done? I see nothing wrong with a new plebiscite. So why are we going through all these stonewalling motions on the part of the leadership to prevent amendments?

We have the leadership understanding, and beyond that, not a single amendment was proposed by the Foreign Relations Committee after considering these treaties week after week. The leadership admits of the necessity of no amendments other than the so-called leadership amendments. This complex issue took 13 years to be resolved at the negotiating table, and the U.S. Senate is not allowed to offer even one added suggestion, other than the so-called leadership amendment.

Mr. President, the first vote we had in the Senate, after these treaties were laid before it, was a vote on a motion to reverse the order of consideration of these treaties. Those who made the motion felt that it was more proper to consider first whether we were going to give the canal away, before a word about defending it in the year 2000. The leadership decreed otherwise, however, and we are now on the Neutrality Treaty. But on that motion we received 30 votes; or, to state it more precisely, there were 30 votes cast against the motion to table the amendment.

The national news media were quick to seize on that vote and say, "Well, it takes 34 votes to kill the treaties. On this test vote the opponents got 30 votes. Therefore, the treaties, are going to be agreed to."

Well, the treaties may be agreed to, Mr. President, but not because of that test vote. I did not read in the newspaper media or hear over the electronic media any speculation on the 40 votes we received on one of my amendments. It was not suggested that that was a test vote and that since we got 40 votes and 34 votes would kill the treaties, the treaties were in danger. But I suppose we can draw our own conclusions from that.

Mr. President, I anticipate that on tomorrow the leadership effort will be offered in the form of a so-called amendment to Article IV, because I believe we will be down to Article IV on tomorrow.

I stated last night, about a quarter to six, that when the leadership so-called amendment is offered, I am going to raise a point of order that is not an amendment. At the top of the instrument called an amendment, we have the word "amendment" in great big, bold, type. But when is an amendment not an amendment? It is not an amendment when it does not amend anything. This amendment and the one following it, amendment No. 21, do not amend anything. I invite Senators to read amendments 20 and 21. They will see that they add not a single word to the substance of the treaty—not one. They do not change any word in the treaty. They do not add any wording to the substance of the treaty. Oh, yes, they insert these words in the treaty. But let us examine what the words say.

I have no doubt that they will draft this amendment onto the treaty, this so-called amendment, but after that is done, let us see what it says. It does not amend anything; it does not add anything to the treaty.

Let us consider amendment No. 20:

At the end of article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding—"

That describes what this document is. It is not an amendment; it is an understanding.

"—issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of The Panama Canal (The Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations."

In other words, they are describing what is already in the treaty:

"The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal . . ."

Et cetera, et cetera, et cetera, ad infinitum.

It merely gives our understanding of the language already in the treaty. Why is that important? It is important, in the first place, because we were promised an amendment. We were promised a leadership amendment that is going to be something of a panacea for the ills of the treaties. We are going to have an amendment. But do we have an amendment? We have an interpretation; we have an understanding. No new words added. No words knocked out.

What is the significance of that? We might say, so what? It is very important if we read from Senate Procedure, by the eminent parliamentarian, Dr. Floyd M. Riddick, who served with distinction as a Parliamentarian of the Senate for many years and now is Parliamentarian Emeritus of the Senate. I read from page 826 of this book:

Reservations and understandings are treated as amendments to the resolution of ratification and are not in order until the resolution of ratification has been presented to the Senate.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. Will the Senator also read the first sentence on page 821?

Mr. ALLEN. I was reading from 20. I will get to 21, if I have it here, and I assume I have.

Mr. ROBERT C. BYRD. It is in the book, just five pages ahead of where the Senator is reading.

Mr. ALLEN. I understood the Senator wanted to read amendment 21. Is that correct?

Mr. ROBERT C. BYRD. No. The Senator misunderstood me. Will he read the first sentence on page 821 of the book that was authored by the distinguished Parliamentarian Emeritus?

Mr. ALLEN. Well, obviously, that is taken out of context. I will read the sentence before that and then read both sentences, if the Senator wishes that.

Mr. ROBERT C. BYRD. All right.

Mr. ALLEN [reading].

A point of order that a reservation was not in fact a reservation by an amendment to the treaty should be submitted to the Senate.

This is the reverse of what the Senator from Alabama is talking about.

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. We are talking about an amendment here being a reservation rather than a reservation being an amendment. The rules do not define the scope and nature of amendments or reservations.

Mr. ROBERT C. BYRD. Good. That is precisely what I wanted the Senator to read. Would he read that again?

Mr. ALLEN. Well, the Senator has such a book, does he not?

Mr. ROBERT C. BYRD. I want the Senator, if he will be just kind enough, to read it once more.

Mr. ALLEN. I will read it once more, and then I will read the sentence I was reading to the Senator.

Mr. ROBERT C. BYRD. Very well.

Mr. ALLEN. The rule does not define the scope and nature of amendments or reservations, but I am talking about the understanding, I will say to the Senator. I am not talking about amendments or reservations. I am talking about an understanding.

Mr. ROBERT C. BYRD. Of course, that same language would apply to interpretations, statements. declarations and understandings.

Mr. ALLEN. Well, the Senator says it would.

The Senator asked me to read this language. Now he is interpolating. Let me read now what I started to read to the Senator.

Mr. ROBERT C. BYRD. I heard what the Senator read.

Mr. ALLEN. I know, but I want to read it again. The Senator suggested I read the sentence before. I hope the Senator will listen to this and listen carefully.

Mr. ROBERT C. BYRD. I have both ears open.

Mr. ALLEN [reading].

Reservations and understandings are treated as amendments to the resolution of ratification and are not in order until the resolution of ratification has been presented to the Senate.

It is about as clear as Dr. Riddick has expressed.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. Yes, I yield.

Mr. ROBERT C. BYRD. I have no quarrel with what the Senator has just read. I do differ with his definition of what is an understanding in this instance. I will be glad to discuss the matter further when the Senator raises the point of order. But I want to let the Senator understand that I appreciate fully what he is saying. He is saying that the leadership amendment is not an amendment to the treaty.

Mr. ALLEN. That is correct.

Mr. ROBERT C. BYRD. But rather is an understanding.

Mr. ALLEN. That is correct.

Mr. ROBERT C. BYRD. And, therefore, should be offered to the resolution of ratification.

Mr. ALLEN. That is correct.

Mr. ROBERT C. BYRD. The Senator and I will argue that point when he makes the point of order, but I wanted him also to read the first sentence on page 821. which he has now read twice.

Mr. ALLEN. Yes, sir. But the Senator will also know that where the rules are silent then we fall back on Senate procedure, the precedents in the past, and the statements and conclusions from those precedents. That is what I was reading to the distinguished Senator when he asked that I yield to him.

Mr. ROBERT C. BYRD. The Senator was very courteous to yield. He also knows that, when the language is clear on its face, there is no need to go behind the instrument itself to interpret or to define the intent.

Mr. ALLEN. Well, if the Senator is arguing that this is an amendment just because it has got the word "amendment" written up there, we might put a label on this desk and call it a chair.

Mr. ROBERT C. BYRD. I did not argue with the Senator.

Mr. ALLEN. That does not make it a chair; it is still a desk.

Mr. ROBERT C. BYRD. The Senator does not make my argument for me as I do not make his argument for him.

I will ask the page to bring me a copy of the amendment No. 20. We might just as well join forces here.

Mr. ALLEN. That will suit me.

I might state to the distinguished majority leader——

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield to me from time to time.

Mr. ALLEN. I might state to the distinguished majority leader that the reason I brought this matter up on yesterday and the reason I bring it up today would be for the very purpose we are discussing this matter now. If you raise a point of order like this on the spur of the moment with two or three Senators present, and it not having been studied by the Parliamentarian, it leaves both Senators and the Parliamentarian at a disadvantage. So if we can discuss the matter early and give Senators an opportunity to consider the matter I rather imagine, based on the sentences that I have read there, it probably will be submitted to the Senate.

That being true, the Senator from Alabama would have very little chance, with the process we are going through here, with the large majority seeking to defeat any efforts to change the treaties by amendment.

Mr. ROBERT C. BYRD. The Senator from Alabama is a very, very clever and astute and articulate—if the Senator will yield to me, he has the floor—debater, and if one is not careful one may be persuaded by the Senator's argument that the eye does not see what is obviously before it.

Mr. ALLEN. No, I will say in answer to the Senator inasmuch as he paused then, what the Senator from Alabama is hoping would come forward would be not an understanding but a leadership amendment. The Senator from Alabama does not feel that this is an amendment since it merely places a construction on existing language and adds no new language and strikes out no old language.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. Yes, sir.

Mr. ROBERT C. BYRD. The Senator apparently bases his definition of this language as an understanding on the basis of the fact that in line 4 there appear the words "statement of understanding."

Mr. ALLEN. Not only that, but the fact that it is just an understanding.

Mr. ROBERT C. BYRD. But at least partly on this.

Mr. ALLEN. No, that is in there. If the Senator thinks that is the point, that is fine.

Mr. ROBERT C. BYRD. Well, the Senator said "not only that," so I take it that at least partly——

Mr. ALLEN. Yes, not only that but the language of the understanding shows that it is just an understanding.

Mr. ROBERT C. BYRD. So that is part of the Senator's argument that the words "statement of understanding" would lead one to define the language as an understanding and not as an amendment.

Mr. ALLEN. Well, that is the Senator's argument he is making for me, and I appreciate that.

Mr. ROBERT C. BYRD. No, I am not making the Senator's argument. I listened to what the Senator said earlier, and I do not think my ears deceive me. I think the transcript will so show.

Mr. ALLEN. It may not be the additional reason, but the main reason is it does not amend anything. It is merely a construction.

Mr. ROBERT C. BYRD. Let me respond to the Senator there. It has to amend the treaty.

If one removes a comma from the treaty, the treaty is being amended. If one inserts a comma where there is no comma, the treaty is being amended. So, very clearly, this amendment states as follows:

At the end of article IV, insert the following:

Insert the following what? The following language, which indicates that there is a change being made in the treaty. Something is being added. What is being added?

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty.

How can the Senator stand before this august body and argue to men and

women who have ears and who can hear and who have eyes and who can see that this is not an amendment to the treaty, that it adds nothing, when by the very language of the amendment itself it reads as follows: "which is hereby incorporated as an integral part of this Treaty."?

So the language that is in the leadership amendment—and I underline the word "amendment"—is incorporated into the treaty. How can something be incorporated as an integral part into a treaty, even if it were only a comma or a semicolon where there was none before, will the Senator tell me how that can be done without the treaty itself being amended?

Mr. ALLEN. Yes, I will be delighted to if the Senator will quit restating his question. The Senator from Alabama contends that after you added these words—I am not contending the words are not being added.

Mr. ROBERT C. BYRD. The Senator says it is not an amendment to the treaty.

Mr. ALLEN. There are no new words being added to the substance of the treaty. All you are doing is you are not knocking out any words, you are not adding any words to the substance of the treaty; you are not changing the words. You are merely saying that "We understand this language," that is already there—you are not substituting language—the language that is already there, means this. That is all it says.

Mr. ROBERT C. BYRD. Now the Senator has changed his tune. If I may use an old fiddler's terminology, he has changed his tune. He says, "Oh, the leadership amendment does not change the substance of the treaty," but earlier he was saying that it was not even an amendment, and he would make a point of order that it was not an amendment.

Mr. ALLEN. It is not an amendment. Show me what is amended.

Mr. ROBERT C. BYRD. All right, I will be glad to. The Senator is very kind to allow me to state it again. He wants to know what it amends.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. "1. At the end of article IV, insert the following:"

It amends article IV. It amends article IV by incorporating as an integral part of this treaty certain language.

While the Senator has the floor, could I ask him whether or not we could vote on his amendment by or before 6 o'clock p.m.?

Mr. ALLEN. Well, I do not know. I do not know at all. I do not know that we would be able to vote. The Senator has used quite a few minutes of my time here. He has left his argument hanging there, and not given me an opportunity to make a reply. As far as his arguments are concerned, the Senator from Alabama is going to answer them if it takes until midnight.

Mr. ROBERT C. BYRD. I do not mind staying until midnight.

Mr. ALLEN. I do want to answer what the Senator said about this being an amendment.

Mr. ROBERT C. BYRD. I want the Senator to answer. But the Senator talks about my argument being left "hanging there." The Senator's argument of yesterday was left hanging there. He made the same argument yesterday——

Mr. ALLEN. Wait just a moment.

Mr. ROBERT C. BYRD [continuing]. That he has been making today, the same argument over and over again.

Mr. ALLEN. That is in contradistinction with what the Senator said a moment ago. He said a moment ago I was changing my tune. Now he says I am making the same argument I made yesterday and all throughout the day. Now, which does the Senator mean?

Mr. ROBERT C. BYRD. Both.

Mr. ALLEN. I see. But in answer to the Senator as to whether this is an amendment or not, I challenge him to show me what has been knocked out of the treaty, or what words have been added to the treaty, other than as a construction of what is already there.

Mr. ROBERT C. BYRD. Oh.

Mr. ALLEN. This does not knock out language; it just says we construe the existing language to mean thus and so.

Mr. ROBERT C. BYRD. Oh, the Senator has indeed changed his tune, if I heard him correctly. I thought I heard him say earlier the amendment does not add anything.

Mr. ALLEN. It does not add anything. It construes something that is already there.

Mr. ROBERT C. BYRD. It adds language.

Mr. ALLEN. But it does not change the substance.

Mr. ROBERT C. BYRD. And it nails down and makes an integral part of the treaty the statement of understanding that was entered into between General Torrijos and the President.

If this language is not added to that treaty, then it is left dangling out there as a statement of understanding between these two heads of state some several weeks ago. But the leadership, by virtue of its desire to nail the statement into the four corners of the treaty and to chisel, as if in stone, the words of that understanding, has sought to introduce this amendment, which the Senator from Alabama has joined in cosponsoring, and which some 78 Senators have cosponsored.

That is the purpose of setting into the treaty this language, so that there can be no doubt. If people of future generations look at the treaty, the inserted words will be there, and in bold print.

Mr. ALLEN. I thank the Senator for his explanation, but it is a far cry, in the judgment of the Senator from Alabama, from being an amendment, because all it says is what we construe other language in the treaty to mean. It adds no new words to the substance of the treaty; it merely construes the words that are already there. That would make it an understanding rather than an amendment, as the Senator from Alabama would view it.

Mr. ROBERT C. BYRD. Well, the Senator from Alabama, as I say, is a very astute lawyer, he is an astute parliamentarian, he is an articulate spokesman for his cause. We simply disagree on this issue. I do not want to take any further time of the Senator; he has been kind enough to yield today, but he made this argument yesterday, and I listened to it on the radio, and he made it today and I have listened to it on the radio, and I thought that I would just come into the chamber and listen to him as he made his argument so eloquently and persuasively, but I thought it was about time that I just entered a little bit on the other side of this point.

You know, everything, even a buckwheat pancake, has two sides to it. The Senator made his argument yesterday, and I thought the record ought to show the other side; and when the Senator gets ready to make his point of order we will renew the discussion.

Mr. ALLEN. I thank the Senator for his contribution. I am delighted to hear his understanding of why this construction of existing language is in fact an amendment.

I would urge the leadership, unless it has surpassing pride of authorship in these words, to consider changing these documents, which give our understanding of existing language, and cast it in the form of an amendment that will really amend the treaty, rather than say what our view of the treaty is; that is all it does, if Senators will read it.

Taken at the value placed on it by the distinguished majority leader—a value, I might say, that I do not place on it—this statement of understanding or purported amendment is based upon the memorandum, the unsigned memorandum, entered into between President Carter and dictator Torrijos. After the agreement was reached, Mr. Torrijos put an entirely different construction on it from what our country was placing on the same language. He said it did not give us a right to intervene to defend the canal; it only gave us the duty of intervening when he pressed the button requiring us to intervene.

Now, Mr. President, the language of that memorandum has been brought forward into this purported amendment. Torrijos' statement that it does not give us any right or duty until he calls on us has not been recanted by Mr. Torrijos. If the memorandum was susceptible of two constructions, in like manner the amendment would be susceptible of two constructions; and while we would move forward with an amendment or understanding that already is the subject of a difference of opinion, that is something that I feel would just invite trouble.

Mr. President, there is another point in the leadership understanding. The other document, amendment No. 21, is susceptible to the same criticism. I believe amendment No. 21 is the one that provides for our going to the head of the line, along with Panama—for that matter, Panama has probably got a whole lot more ships than we have; I do not know how that would allow us, really, to go to the head of the line, since that privilege is given to our ships and Panamanian ships both—in an emergency. But the language fails to say who shall determine when an emergency exists. It does not give the United States the right to say that an emergency exists, and therefore we should go to the

head of the line. Panama might not think that an emergency existed even though we did. They would be in charge of the canal; how could we preserve our rights unless we went in and took over the canal to assert our right to go to the head of the line?

But I daresay, even though that is a noticeable flaw, that the leadership is not going to allow an amendment to correct that deficiency. They say, "Take it as it is. Take the treaty as it is, modify it by the leadership so-called amendments, and take them as they are. Do not take on yourselves, Members of the U.S. Senate, any right to make any change whatsoever in the language of either treaty."

If that is not the attitude here in the Senate, I would like to know what it is.

Let us see if any amendments are going to be allowed to the leadership amendments, even though they are noticeably subject to constructive criticism.

(Mr. SASSER assumed the chair.)

Mr. ALLEN. Now, Mr. President, getting to the current amendment I plan to offer at the conclusion of my remarks, article III, section 1, paragraph (e), which is a subsection that has given the Senate considerable difficulty and that is the provision which allows vessels of enemies of the United States, allows them to transit the canal undisturbed, without any search, inspection, or surveillance.

Amendments have been offered that would have nullified this section. The distinguished Senator from New York (Mr. MOYNIHAN) talked along the line that whatever the treaty provided, we are going to protect our national interests.

The Senator from Alaska sought to nullify this provision by providing that enemy warships, warships of countries that are belligerents with the United States or with Panama would not be allowed to peacefully transit the canal.

My amendment, which was defeated, after having received 40 votes out of 92 votes, provided that the Neutrality Treaty should not be construed to permit vessels of enemy nations of the United States, in times of war, to transit the canal.

Certainly, Mr. President, the elimination of this offending section would do no violence to the treaty. We already have in articles I and II statements declaring the neutrality of the canal; that the canal, both in time of peace and in time of war, shall remain secure and open to peaceful transit by all vessels, and so forth.

But that language goes as far as subsection (e) on page 17 of the State Department documents here containing the treaty. And I do not believe the argument that the leadership is taking and is not taking, depending on who is speaking for the proponents or at what time the same Senator speaking for the proponents makes a statement. Sometimes they say the opposition amendments are not because Mr. Torrijos might object. At other times they say, in effect, and as I read from the report of the Foreign Relations Committee, that the entire strategy on opposing these amendments offered both in the committee and on the floor is to defeat them because it might be displeasing to the Panamanians.

Now, that is not quite a lofty enough reason for opposing amendments in my way of thinking because they would not be pleasing to the Panamanians. Sometimes, Mr. President, they make that argument and sometimes they make another argument, but that is the true strategy of the leadership, and it is the strategy suggested and underwritten by the Foreign Relations Committee.

So, Mr. President, I do not see how Panama could object, if that is what is worrying the leadership—I do not see how Panama could object to knocking out subsection (e) of section 1 of article III, and that is what this amendment would do.

I would leave the neutrality language in articles I and II but not leave this language that the proponents claim or admit is meaningless because they are going to see to it one way or another that the ships, enemy ships, do not transit the canal. So why have a hypocritical, cynical, demagogic provision in the treaty? That is what it is, when it is asserted on the floor that we are going to assert our power to defend our interests irrespective of what the treaty says.

UP NO. 5

So, Mr. President, I send to the desk an amendment which encompasses what I have outlined and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama proposes unprinted amendment No. 5 to amend article III as follows:

Strike all of article III, section 1, paragraph (e).

Mr. SCHMITT addressed the Chair.

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

Mr. SCHMITT. Mr. President, I do not wish to question the distinguished Senator from Alabama.

Has he completed his remarks to the amendment?

Mr. ALLEN. Yes; I yield the floor.

Mr. SCHMITT. Mr. President, I do not rise at this moment to discuss the distinguished Senator from Alabama's amendment. I would rather like to talk in some general and somewhat unusual terms, unusual for this particular debate.

Mr. President, I would like to ask the distinguished floor manager a question. Is it the intention of the floor manager to go to a vote on this particular amendment?

Mr. SARBANES. Very soon although no time has actually been set. There is some hope that we will be able to vote in the next 10, 15, or 20 minutes with respect to this amendment and, therefore, dispose of it. If the Senator is preparing to speak at some length, I think it might be helpful to the procedure if he would defer so that we could deal with the amendment and vote. There has not been a unanimous-consent agreement entered, but there has been some informal discussion.

Mr. SCHMITT. Is it the preference of the Senator from Alabama that we move ahead to vote on his amendment?

Mr. ALLEN. I have no preference. The time is being taken care of by the proponents of the treaty. If the Senator wants to make some remarks which are not germane to the amendment, that would be subject to the wishes of the manager of the bill (Mr. SARBANES).

Mr. GRIFFIN. Will the Senator yield? He could ask unanimous consent to be recognized immediately following the vote.

Mr. SCHMITT. First, I appreciate the suggestion because that is exactly what I intended to do.

Mr. President, at the conclusion of the vote on the Allen amendment, I ask unanimous consent that I be recognized.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I thank the distinguished Senator from New Mexico for his consideration and courtesy in this matter.

Mr. President, I rise in opposition to the amendment. It brings us back again to the central issue of maintaining the neutrality of this canal, assuring its neutrality in its operation. The provision which it is proposed to strike covers the rights of vessels of all nations to transit the canal, an access which carry forward the requirements under the present treaty. Those same requirements are carried into the proposed treaty.

We discussed earlier in the day the strong argument as to why a neutral canal best serves the American interests and, indeed, best serves the interests of the world. I think to depart from the concept of a neutral canal is, of course, to involve us in great difficulties with respect to the status of the canal with belligerents.

As it is now, Americans have the right to protect ourselves by the use of armed force with respect to access to the canal, a right which is not limited or restricted. Of course, we would rely upon the use of our power to protect our interests.

I think the proposal to strike out all of subparagraph E of article III, paragraph 1, would strike from the proposed treaty an essential aspect of the neutrality provision, which is carrying forward arrangements which exist under the existing treaty. Therefore, I submit to my colleagues that this amendment should be rejected.

Mr. MUSKIE. Will the Senator yield?

Mr. SARBANES. I yield to the Senator from Maine.

Mr. MUSKIE. The status of the canal in the event of U.S. involvement in hostilities has been pretty well established in two World Wars, and, in a sense, in the Korean and Vietnam wars as well.

The whole purpose of this provision of the treaty is to insure that the canal, itself, shall not become the object of reprisal. If it comes to be regarded in time of war involving the United States against belligerents as a U.S. military instrument, it then becomes subject to the threat of attack. The same would be true in the event Panama should become involved in a war. It would be regarded

as using the canal as her instrument in that war against her enemy.

Panama's neutrality and security is best assured if it is made clear in these treaties that neither Panama nor the United States will use the canal against their enemies in time of war. There is no better way to protect the security of the canal. The fact is, of course, that in World War I and World War II, the canal retained this open, neutral status and no hostile nation sought to use the privilege granted to them under the neutrality concept. Germany did not presume to seek to use the canal to transit her combat vessels or to transit her support vessels because she understood that, as her vessels neared the approaches to the canal, they would be then subject to interception on the high seas by U.S. naval powers or by the allied naval power.

So there is no need to protect the canal and its use by the means suggested by the Senator from Alabama because, as a practical matter, out of the experience of two World Wars, we know that enemies hostile to us in time of war would not seek to use the canal.

The importance of this language is to avoid giving potential hostile nations an excuse to attack the canal itself, a legitimate excuse to attack the canal itself, as an instrument of U.S. war policy against U.S. enemies. I think that concept is very clear and it is very plain. I think it is very simple. It has worked in two World Wars with such effect that hostile nations have not sought to use the canal, notwithstanding the fact that the neutrality status of the canal gave them that option; and, secondly, the canal itself has not been threatened in either World War because it was protected by the concept of neutrality.

With that record of experience to support this provision in the treaty, it makes absolutely no sense to me to amend it out. I would urge my colleagues to oppose the Allen amendment.

Mr. SARBANES. Mr. President, I think all debate on the amendment has been concluded. I move to table the amendment, and I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and navs have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CANNON (after having voted in the negative). Mr. President, I have a pair with the Senator from West Virginia (Mr. RANDOLPH). If he were present and voting, he would vote "yea." I therefore withdraw my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Indiana (Mr. BAYH), the Senator from Delaware (Mr. BIDEN), the Senator from Arizona (Mr. DECONCINI), the Senator from New Hampshire (Mr. DURKIN), and the Senator from West Virginia (Mr. RANDOLPH) are necessarily absent.

I also announce that the Senator from North Dakota (Mr. BURDICK) is absent because of death in the family.

I further announce that, if present and voting, the Senator from Arizona (Mr. DECONCINI) would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from California (Mr. HAYAKAWA), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

The result was announced—yeas 58, nays 31, as follows:

[Rollcall Vote No. 45 Ex.]

YEAS—58

Anderson	Hatfield, Paul G.	Morgan
Baker	Hathaway	Moynihan
Bentsen	Heinz	Muskie
Bumpers	Hodges	Nelson
Byrd, Robert C.	Hollings	Pearson
Case	Huddleston	Pell
Chafee	Humphrey	Percy
Chiles	Inouye	Proxmire
Church	Jackson	Ribicoff
Clark	Javits	Riegle
Cranston	Kennedy	Sarbanes
Culver	Leahy	Sasser
Danforth	Long	Sparkman
Eagleton	Magnuson	Stafford
Glenn	Mathias	Stevenson
Gravel	Matsunaga	Stone
Hart	McGovern	Talmadge
Haskell	McIntyre	Weicker
Hatfield, Mark O.	Metzenbaum	Williams
		Zorinsky

NAYS—31

Allen	Garn	Roth
Bartlett	Griffin	Schmitt
Bellmon	Hansen	Schweiker
Brooke	Hatch	Scott
Byrd, Harry F., Jr.	Helms	Stennis
Curtis	Johnston	Stevens
Dole	Laxalt	Thurmond
Domenici	Lugar	Tower
Eastland	McClure	Wallop
Ford	Melcher	Young
	Nunn	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Cannon, against.

NOT VOTING—10

Abourezk	DeConcini	Packwood
Bayh	Durkin	Randolph
Biden	Goldwater	
Burdick	Hayakawa	

So the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to table was agreed to, and I move to lay that motion on the table.

The motion to lay on the able was agreed to.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from New Mexico.

Mr. SCHMITT. Mr. President, at the request of the distinguished majority leader, I will yield him such time as he requires.

Mr. ROBERT C. BYRD. Mr. President, the Senator from New Mexico is very courteous, and I thank him.

I wonder if the Senator would allow the Chair to move to article IV, if no Senator has any further amendment to article III.

The PRESIDING OFFICER. Are there further amendments to article III?

If not, the clerk will state article IV.

The assistant legislative clerk read as follows:

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

UNANIMOUS-CONSENT AGREEMENT—ORDER FOR RECESS

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield further, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 o'clock noon tomorrow; that following the prayer Mr. DANFORTH be recognized, as in legislative session, for not to exceed 15 minutes; that immediately thereafter the Senate resume consideration of the treaty; provided further that at that time the disinguished Senator from New Mexico who now has the floor be recognized for not to exceed 30 minutes; after which the Senate stand in recess, awaiting the call of the Chair, the purpose being for the taking of a photograph of the Senate in session; that upon the reconvening of the Senate following that recess, I be recognized to call up the leadership amendments to article IV and to make a statement in support thereof; that upon the completion of my statement, the distinguished minority leader, Mr. BAKER, be recognized to make a statement; that upon the completion of his statement, the distinguished Senator from Alabama (Mr. ALLEN) be recognized to make a point of order against the amendment; that upon the completion of his remarks anent the point of order, I be recognized also on that point of order.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, do I correctly understand that following that period, amendments will still be in order to the leadership amendment?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I have no objection.

The PRESIDING OFFICER. Without objection, all the requests are agreed to, and the Senator from Missouri will be recognized tomorrow as in legislative session.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senator from New Mexico yields the floor today, there be a brief period for the discussion of routine morning business, as in legislative session, with statements therein limited to 10 minutes each, such period not to extend beyond 30 minutes.

There will be no more rollcall votes today.

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

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The Senate continued with the consideration of the treaty.

Mr. SCHMITT. Mr. President, it is my intention over the next few days, as we approach a vote on the Neutrality Treaties relative to the Panama Canal, to bring to the attention of my colleagues an alternative to the present treaties, to the 1903 treaties, an alternative which looks at our hemisphere as a whole, rather than just at the relationships between two nations.

By letter and by my floor statements, I hope that my colleagues will find this alternative intriguing, as well as a practical solution to the international and political problems that face us all.

Mr. President, the Panama Canal has been treated as a chip on an international poker table for many days now. Debate over ratification has at times dimmed the view of the canal as a real thing in our present and in the past of so many Americans. Those Americans who have experienced the canal in Panama have described their feelings in varied but always human terms.

All my colleagues, I am sure, are aware of the outstanding literary work of Mr. David McCullough called "The Path Between the Seas." That work ranks with many others as one of the most outstanding examples of factual narrative that is not only an outstanding work of fact but also immensely readable. It stands well with Barbara Tuchman's works, with Freeman's works on Lee and Lee's lieutenants, and many other such literary offerings.

McCullough, in that book, provides us with numerous insights into the feelings of Americans and others who have been associated with the canal, and I draw the attention of my colleagues to a few of these.

One is with respect to the comments of Daniel Chester French and Frederick Olmsted, Jr., who were representatives of the Commission on Fine Arts, who wrote as follows, upon visiting the canal:

> The canal itself and all the structures connected with it impress one with a sense of their having been built with a view strictly to their utility. There is an entire absence of ornament and no evidence that the aesthetic has been considered except in a few instances. . . . Because of this very fact there is little to find fault with from the artist's point of view. The canal, like the Pyramids or some imposing object in natural scenery, is impressive from its scale and simplicity and directness. One feels that anything done merely for the purpose of beautifying it would not only fail to accomplish that purpose, but would be an impertinence.

McCullough, himself, writes with unusual perspective and unusual feeling on the last pages of his book, and I quote:

> The creation of a water passage across Panama was one of the supreme human achievements of all time, the culmination of a heroic dream of four hundred years and of more than twenty years of phenomenal effort and sacrifice. The fifty miles between the oceans were among the hardest ever won by human effort and ingenuity, and no statistics on tonnage or tolls can begin to convey the grandeur of what was accomplished. Primarily the canal is an expression of that old and noble desire to bridge the divide, to bring people together. It is a work of civilization.
>
> For millions of people after 1914, the crossing at Panama would be one of life's memorable experiences. The complete transit required about twelve hours, and except for the locks and an occasional community along the shore, the entire route was bordered by the same kind of wilderness that had confronted the first surveyors for the railroad. Goethals had determined that the jungle not merely remain untouched, but that it be allowed to return wherever possible. This was a military rather than an aethetic decision on his part; the jungle he insisted before a congressional committee was the surest possible defense against ground attack. . . . But for those on board a ship in transit, the effect for the greater part of the journey was of sailing a magnificent lake in undiscovered country. The lake was always more spacious than people expected, Panama far more beautiful. Out on the lake the water was ocean green. The water was very pure, they would learn, and being fresh water, it killed all the barnacles on the ship's bottom.
>
> In the rainy season, storms could be seen long in advance, building in the hills. Sudden bursts of cool wind would send tiny whitecaps chasing over the lake surface. The crossing was no journey down a great trough in the continent, as so many imagined it would be, but a passage among flaming green islands, the tops of hills that protruded still above the surface. For years after the first ships began passing through, much of the shore was lined with half-drowned trees, their dry limbs as white as bones.
>
> The sight of another ship appearing suddenly from around a bend ahead was always startling; so complete was the feeling of being in untraveled waters, so very quiet was everything.
>
> In the Cut the quiet was more powerful, there being little if any wind, and the water was no longer green, but mud-colored, and the sides of what had been the spine of the Cordilleras seemed to press in very close.
>
> Even in the locks there was comparatively little noise. Something so important as the Panama Canal, something so large and vital to world commerce, ought somehow to make a good deal of noise, most people seemed to feel. But it did not. Bells clanged on the towing locomotives now and again and there was the low whine of their engines, but little more than that. There was little shouting back and forth among the men who handled the lines, since each knew exactly what he was to do. The lock gates appeared to swing effortlessly and with no perceptible sound.

With that McCullough ended his narrative.

Mr. President, my own experience with the Canal Zone was somewhat different than most, and I would be willing to wager entirely different than that of my colleagues. One of the possibilities we prepared for as astronauts was the possibility of a return to Earth that left us on our own in equatorial jungles. Our training for this eventuality was in the jungles of the Canal Zone; the same jungles that defeated the French and deLesseps; the same jungles that killed tens of thousands dedicated to a canal in Panama; the same jungles that gave mankind one of its greatest medical triumphs, the victory over yellow fever; the same jungles without which the victory over the Cordillerian backbone of the hemisphere would have seemed far less than it was.

The modern experience of Panama came upon us gradually unlike the sudden immersal 60 years earlier that greeted new canal builders as they arrived at the edge of civilization. The monument to these builders split the hummocky green carpet beneath our plane like a ribbon of glass that fell from view only as we landed. The airbase appeared to be only temporarily claimed from the jungle; an airbase so human in its purpose but so obviously transient without human attention.

The first evening was a trip into the third world of the Panama of the 1960's. Like the more familiar border towns of northern Mexico, we were surrounded by the contrast between the prosperity and efficiency of the Canal Zone and the random poverty and civilization of Panama's "border towns." The one new, ubiquitous element was an unspoken fear, an apprehension born of news accounts and the military bearing of "La Guardia." Nowhere before or since have I felt the obvious atmosphere of a police state. Even in the Soviet Union, there is a visual subtleness to oppression.

A day of instruction in the potential bounty of the jungle followed, climaxed by a "banquet" of all the storybook meats and fruits of the jungle. Robinson Crusoe finally became a reality. Even the barbecued boa left us with the impression, soon to be dispelled, that survival in the jungle was going to be an idyllic interlude of feasting on our way to the Moon.

That this impression was wrong came with the fading sound of the departing helicopter that dropped us in a hard won clearing on top of a jungle hill. Even knowing that civilization "as we know it" was only a few miles away, the overwhelming power of nature had instantly enveloped our party. But the Sun was shining, the parrots were calling, and our guides were urging us along a path deeper and deeper into the forest. The need to survive instinctively began to be part of our thoughts, as we brushed against the millions of years of evolution of our species.

Our instruction continued: The water filled vines; the spine covered black palm; the secret hiding places for dry wood; the best thatching material; the best sources of palm heart. Finally, we were left to survive.

Our "survival" was only to last 3 days; but the realism of the location, the soon-to-be continuous rains, and the failure of most of the spacecraft survival gear we carried soon convinced us that the jungle was less a friend than a relentless, personal competitor.

As recited by the canal builders, the rain, the ever-present rain, the enveloping rain, dominates life in the jungles of Panama. Not only dominates life, but controls and monopolizes life. Fishing in the stream ceases, dry clothes disappear, and sleeping requires acquiesence to wetness. One's dominant memory is a steady and hypotizing preoccupation with a small, glowing fire buried in a mass of sodden wood, kept alive only by a frequent breath of life from the men who had begun to live for it.

In survival training, the search for food goes on in spite of the presence of

survival pack holed away for moments of uncontrolled hunger. By slipping on a muddy path, a searcher rediscovers the spines on the trunk of a black palm; releasing the grip, but too late to avoid either a fall or a hand full of searing needles. The staple food becomes that which gourmets will pay dearly for: Heart of palm. It becomes the base for the fish soup that somehow makes the image of survival real.

Suddenly we moved out of the past, out of the jungle along paths of unknown builder and purpose, leading down to the frantic, now swollen brown river. Then we floated down the river to be surprised by a home of an Indian family that materialized out of the forest. These new friends showed us all we might have learned to live with rather than live in spite of in the jungle. This is our last, maybe most important lesson as the familiar sound of civilization's helicopters is imposed again upon us.

Only in retrospect can one sense the ghosts of the canal builders, who finally beat the jungle, reliving these heroics with the ghosts of those who called the jungle home. Who is to judge the more human of the emotions they describe to man of the emotions they describe to each other? Who is to say that the more human thing is not to simultaneously learn to live with and fight against that which confronts ingenuity. It is in the balance of living with and fighting against that we create a civilization.

Mr. President, McCullough picks one of the most intriguing quotations which Theodore Roosevelt is credited for when he gives us Roosevelt's remarks to a group of several hundred Americans, including John Stevens, in an apparently off-the-cuff speech where he was describing the building of the canal in terms akin to the fighting of the Civil War, and I quote:

> When your fathers were in the fighting, they thought a good deal of the fact that the blanket was too heavy by noon and not quite heavy enough by night, that the pork was not as good as it might be . . . and that they were not always satisfied with the way in which the regiments were led. . . . But when the war was done—when they came home, when they looked at what had been accomplished, all those things sank into insignificance, and the great fact remained that they had played their part like men among men; that they had borne themselves so that when people asked what they had done of worth in those great years all they had to say was that they had served decently and faithfully in the great armies. . . . I cannot overstate the intensity of the feeling I have . . . I feel that to each of you has come an opportunity such as is vouchsafed to but few in each generation. . . . Each man must have in him the feeling that, besides getting what he is rightfully entitled to for his work, that aside and above that must come the feeling of triumph at being associated in the work itself, must come the appreciation of what a tremendous work it is, of what a splendid opportunity is offered to any man who takes part in it.

So ends Roosevelt's statement.

The question of the ratification of the Panama Canal treaties presents one of the most complex technical, international and political questions of our time. It also presents one of the most complex personal questions of our lives. Unfortunately, after 14 years of negotiations, we find ourselves in a situation where neither ratification nor rejection of the treaties are acceptable answers. But an answer must be given. This situation is not the fault of anyone; it is the fault of history and our times.

The building of the canal was "going to the Moon" for my father's generation. I caught the imagination and motivation of the country and much of the world just as did Apollo of the 1960's. It brought out what was best in the American spirit; a positive approach to civilization.

The canal began, as did Apollo, with a challenge to American technology and pride. If others fail, we will succeed; if others say it cannot be done, we say it can. The canal was successful only when the new technology of the age, the technology of the railroads was applied to moving mountains rather than crossing them. Apollo was successful half a century later because of a use of the technology of airplanes to fly above the atmosphere rather than through it.

On top of the base of railroads were created new steels, new engineering, electrical power, and remote control. This play was reenacted by Apollo upon the base of the airplane with the development of new materials, electronics, communications, energy ideas, and environmental systems.

The control of a hostile climate was essential for the building of the canal just as controlling the environment of space was essential to the movement of men to the Moon. The conquering of yellow fever and malaria in the jungles of Panama, as with the protection of human life in space, have benefited medical science and mankind beyond any dream.

The sheer scale and cost of building the canal was comparable to Apollo. The numbers still stagger the mind; 262 million cubic yards of earth were moved at a cost of about 650 million 1910 dollars by a work force that probably totaled several hundred thousand people. Apollo's effort was measured in different terms—6.5-million-pound space vehicles, a cost of about 22 billion 1965 dollars and about 400,000 workers—clearly the two projects were in the same league.

The most critical element in the construction of a canal in Panama, as in landing men on the Moon, was the motivation of young Americans who believed that it should be done. They believed that nothing they could do with their lives would be more worthwhile or more rewarding. It is this motivation that literally moves mountains and conquers other worlds. It is this motivation that has created our positive civilization and which will see us through our present and future trials.

Today, among most Americans, we find an emotional involvement in the Panama Canal issue that seems to defy any quantitative explanation. In addition to hearing about its role in the lives of our fathers or grandfathers, most Americans have some direct or indirect attachment to the canal. It may have been childhood history books, civil or military service by a member of the family, a vacation, a Christmas card, or stamp collection that implanted the image of an "American Canal in Panama."

Mr. President, the Senate has debated the proposed treaties for over 15 days now. I fear, however, that we have too often lost sight of our mission. As Alexander Hamilton wrote in the Federalist No. 75, the power of making treaties:

> Relates neither to the execution of the subsisting laws, nor to the enaction of new ones, and still less to an exertion of the common strength. Its objects are contracts with foreign nations, which have the force of law, but derive it from the obligations of good faith.

As the Senate approaches the vote next week on the first of the two treaties, I believe we would be prudent to remember Hamilton's analysis.

If we agree to remember Hamilton's thoughts, we also will agree to consider these treaties in their proper historical and "good faith" context. We must not only examine these treaties in the terms of the United States and Panama, but also in the terms of every nation that uses the canal.

In this respect, Mr. President, my efforts will continue to be directed towards what I believe is the most acceptable answer to these treaties. I call that answer "INTERSEA." Specifically, the treaties must be designed to allow for international users of the canal to participate in the operational decisions. By expanding the sole control and operational responsibilities of the canal from one nation, be it Panama or the United States, to the nations of the Western Hemisphere, it is my belief that not only will America's vital interests be protected, but the necessary "good faith," the necessary moral obligation that we have toward our friends in the hemisphere, can be assured.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period, as in legislative session, for the transaction of routine morning business of not to exceed 1 hour, with statements therein limited to 10 minutes.

The Senator from Wisconsin (Mr. PROXMIRE) is recognized.

NOMINATION OF MRS. GLORIA CUSUMANO JIMENEZ TO BE FEDERAL INSURANCE ADMINISTRATOR

Mr. PROXMIRE. Mr. President, I have been critical toward many nominations made by President Carter and other Presidents, but I wish to say a word in approbation about a nomination I am about to submit to the Senate from the Committee on Banking, Housing, and Urban Affairs.

The other day we had before our committee the nomination of Mrs. Gloria Cusumano Jimenez, of North Carolina to be Federal Insurance Administrator.

As Mrs. Jimenez came before our committee, I was most impressed by her background, her qualifications, and her record in the area of insurance regulations in North Carolina. She had a fine record there of several years of activity.

And she was a woman of considerable intelligence and one of the most remarkable things about her was her frankness and straightforwardness in answering questions, and, Mr. President, there were no false hopes, there were no doubts about where she stood. She was clear and decisive, and on the basis of her testimony and on the basis of her record, on the basis of her experience, I am convinced she is going to be an outstanding Federal Insurance Administrator.

And I hope that this nomination will be the first of a number of the nominations which will be based on qualifications and not in political connections or on some other irrelevant element that has nothing to do with the requirements of the job. This is a most difficult and exacting job, incidentally, she is being nominated for, and it is one that has been constantly under controversy from Senators and from others, because, of course, the national flood insurance program is especially controversial. So it is important that we have somebody who has that kind of experience and capability handling the job.

HUMAN RIGHTS AND THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, I am proud of this administration's commitment to the importance of human rights. I find it discouraging that in this day and age, there are still places in this world where there is virtually no respect for human rights. I have spoken in the Senate several times of the atrocities which occur daily in Uganda and in Cambodia. Idi Amin and Khmer Rouge provide us with vivid evidence of how power can be used to carry out genocide today.

The United States is known throughout the world for the respect which it accords individual freedom. The founders of this country had the foresight to write into the Constitution guarantees of rights which they felt should be basic to human existence. These included the right to freedom of expression, freedom of religion, and many others.

But there are other countries where even the most basic of all human rights, the right to live, is not guaranteed. Several years ago, after the horrible lessons learned at the hands of Nazi Germany, the United Nations drafted a treaty which makes the commission of genocide an international crime. It had the foresight to know that as the world progressed, there would still be a real need for a document stating clearly the signers' resolve to insure that genocide would never occur again, and yet genocide continues, and it continues in part because that treaty has not been made effective throughout the world.

And why? Because the Senate of the United States has not acted.

President Truman concurred with the drafters of that treaty. He signed the treaty in 1948. President Eisenhower supported the treaty. President Kennedy supported the treaty. President Johnson, President Nixon, President Ford, President Carter have all pleaded with the Senate to ratify that treaty and yet we have said no to every President of the United States since President Truman.

Mr. President, I find it incredible today that in 1978 the Senate has yet to ratify the convention. I feel that the Senate could find no better way to show its support for the President's stand on human rights than to ratify the Genocide Convention.

I might point out again that President Carter himself has indicated his full support for the provisions of the treaty. He has raised it as a principal human rights treaty. I do hope that the Senate will ratify the convention just as soon as possible.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask that the quorum call be rescinded.

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

WICHITA INDIAN TRIBE OF OKLAHOMA

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. ABOUREZK, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 773.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 773) entitled "An Act authorizing the Wichita Indian Tribe of Oklahoma, and its affiliated bands and groups of Indians, to file with the Indian Claims Commission any of their claims against the United States for lands taken without adequate compensation, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert: That, notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Act of August 13, 1946, as amended (60 Stat. 1049, 1052; 25 U.S.C. 70k), jurisdiction is hereby conferred upon the Indian Claims Commission under section 2 of the Act of August 13, 1946, as amended (60 Stat. 1049, 1050; 25 U.S.C. 70a), to hear, determine, and render judgment on any claims the Wichita Indian Tribe and its affiliated bands and groups (namely, the Wichita, Keechi, Tawakonie, and Waco) have against the United States with respect to any lands or interests therein which were held by aboriginal title or otherwise, which were acquired from such tribe, bands, or groups without payment of adequate compensation by the United States: *Provided*, That no affiliated band or group may bring a claim not held in common with the Wichita Indian Tribe. Any claim filed hereunder with the Indian Claims Commission shall be subject to the provisions of the Act of October 8, 1976 (90 Stat. 1990), relating to the transfer of cases to the Court of Claims. Any party to any action under this Act shall have the right of review with respect to any decision of the Indian Claims Commission or the Court of Claims under section 20 of the Act of August 13, 1946, as amended (60 Stat. 1049, 1054; 25 U.S.C. 70s).

Mr. ROBERT C. BYRD. On behalf of Mr. ABOUREZK, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a statement by Mr. ABOUREZK be printed in the RECORD.

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

STATEMENT BY MR. ABOUREZK

S. 773 is a bill to authorize the Wichita Indian Tribe of Oklahoma, and its affiliated bands and groups of Indians, to file with the Indian Claims Commission any of their claims against the United States for lands taken without compensation, and for other purposes.

The amendment of the House is in the nature of a substitute and revises S. 773 in several ways as follows:

First, language in the bill waiving the defense of res judicata and collateral estoppel is deleted. Since there has never been a decision on the merits of the Wichita claims, the language is unnecessary.

Second. The phrase "affiliated bands and groups" of the Wichita is given a more limited construction. The Department of Justice was concerned that tribes not holding a claim in common with the Wichita might be able to file a claim under the loose language of the bill. It is intended that the phrase apply only to the Keechi, Tawaconie, and Waco Tribes.

Third. The substitute provides that any claim filed with the Indian Claims Commission by the Wichita would be subject to the Act of October 8, 1976, providing for the transfer of cases from the Commission to the Court of Claims. The Justice Department felt that jurisdiction should be with the court rather than the Commission, since the Commission is due to expire on September 30, 1978. The amendment would confer such jurisdiction, if necessary or appropriate.

Fourth. Finally, the amendment eliminates subsection (b) which provides that no decision of the Commission or other authority relating to aboriginal lands of the Wichita shall affect any claim under this legislation. Justice feels that this is unnecessary since the Wichita would not be bound by any decision to which it was not a party.

The amendments outlined above were recommended by the Justice Department and I have been informed by representatives of the Wichita Tribe that the bill as passed by the House is entirely acceptable to them. This bill, will, finally, allow the Wichita Tribe to litigate their aboriginal title claims such as other tribes have litigated.

DENIS HAYES: SOLAR ENERGY NOW

Mr. PERCY. Mr. President, I need hardly remind my colleagues that the energy problems facing this Nation are intricate and immense; and that any time a clear thinker comes along who attempts to confront that vast array of issues, we should listen very carefully to his testimony. Such a thinker is Denis Hayes, a senior researcher at the Worldwatch Institute and one of the organizers of Sun Day. His article in the February 26 Washington Post presents a cogent case for a much stronger Federal commitment to solar energy than exists today.

Mr. Hayes points out that the National Energy Act, important as it is, only looks

as far as 1985. It is crucial to plan as far into the future as possible. A planned, gradual transition away from depleting oil and gas will be far easier than a forced, abrupt one. Mr. Hayes contends therefore, that, since (in his opinion) our most attractive eventual substitute for oil and gas is solar energy, solar government assistance should be upgraded now.

Solar energy is not a dream. Mr. Hayes details the economic state of the solar energy industry, and finds it very promising. Solar heating and cooling, for example, are already cost competitive in many parts of the world, and some parts of this country. Solar photovoltaic cells are steadily decreasing in price. In fact, while the prices of all other forms of energy will only rise, with technological advances and mass production, the price of solar energy may well decline.

Mr. Hayes concludes his article with a short discussion of the "solar society." Because of increased safety, employment, equitability and involvement, he maintains that "of the possible futures we might choose, a solar-powered one appears most inviting." But of course, the transition to such a society would not be painless.

With Sun Day, Mr. Hayes has already significantly helped smooth that transition. Sun Day, May 3 (a Wednesday) will see educational and expositional solar energy activities take place throughout this country and in at least 11 others. Fifty-six of my colleagues joined me in cosponsoring a resolution proclaiming May 3 Sun Day. I expect that many of us will take part in Sun Day activities on and around May 3. When that day is over, citizen awareness of solar energy should have increased severalfold. A strong public commitment will provide the strongest incentive for the Government to increase its assistance to solar energy.

Mr. Hayes' article is well reasoned and informative. It makes no unreasonable assumptions and comes to no unreasonable conclusions. I recommend it highly to my colleagues as a concise essay on the reasons for using solar energy now.

Mr. President, I ask unanimous consent that Denis Hayes' article, "We Can Use Solar Energy Now," from the Washington Post, February 26, 1978, be printed in the RECORD.

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

WE CAN USE SOLAR ENERGY NOW

(By Denis Hayes)

We all live in solar homes. We think we heat our houses with oil, natural gas or electricity, but 95 per cent of their warmth comes from sunbeams. In a sunless world, our dwellings would be 400 degrees Fahrenheit below zero when we turned on our furnaces. The houses of solar pioneers simply squeeze a few more degrees from the sun than do the conventional homes of their neighbors.

Twenty years ago, virtually all Americans hung up their weekly wash on "solar clothes driers." Today, few do. If I hang my wash on a line and you put yours into an electric drier, the solar energy I use will be ignored by statisticians while the electricity you use will be tabulated in next year's almanacs.

We ignore the sun for the same reasons that fish ignore water: It is abundant, free and dependable.

The solar influx is so large that it defies easy comprehension by students of conventional energy sources. Every day, the world receives 10,000 times more energy from the sun than humankind derives from all conventional fuels combined. But the official 825-page United Nations Survey of World Energy Supplies does not even mention the sun.

We know how to harness this solar influx directly as sunlight and indirectly through wind, green plants and running streams. Every essential technological ingredient for a commercial solar energy system has existed for more than a decade, although most of these devices have not yet benefited from mass production. The issue today is whether we will make the necessary policy decisions to develop these resources, or whether vested interests will coerce our continued reliance on sources that are dangerous, vulnerable to disruption and ultimately unsustainable.

Unlike fossil and fissile fuels, sunlight is a flow and not a stock. Once a gallon of oil is burned, it is gone forever; but the sun will cast its rays earthward billions of years from now, whether sunshine is harnessed for human needs or not. Technical improvements in the use of sunlight could lower prices permanently; similar improvements in the extraction of finite fuels could hasten their exhaustion.

SOLAR HEATING AND COOLING

Heating water with sunlight is simple. The collector is, in essence, a box with a black bottom and a glass top. Glass is transparent to sunlight but not to the radiation of longer wavelengths given off by the hot collector itself. Hence, heat is trapped inside. When water is pumped through the hot collector, its temperature rises. The hot water is then piped to a very well insulated storage tank where it is kept until needed.

Other countries are outpacing the United States in this field. About 30,000 American homes heat their water with sunlight. In tiny Israel, 200,000 homes have solar water heaters, and in Japan the figure is over 2 million. In remote northern Australia, where fuels are expensive, the law requires solar water heaters on all new buildings.

There is some controversy over how rapidly we will catch up. The original goal of the Carter administration's energy plan was 2.5 million solar heaters by 1985. In subsequent congressional testimony, Energy Secretary James Schlesinger trimmed this target to 1.3 million.

Wilson Clark, energy adviser to Gov. Jerry Brown of California, finds the federal figures amusing. "We will, beyond a doubt, have more solar collectors installed in California by 1985 than those guys are forecasting for the whole country," says Clark. The Solar Energy Industries Association, which represents most major solar manufacturers, considers 11 million installations a reasonable 1985 goal.

Sunshine can also be used to heat buildings. "Passive" systems store energy right where sunlight strikes the building's walls and floor. Such systems are designed to shield the structure from unwanted summer heat while capturing and retaining the sun's warmth during the colder months. Passive solar architecture is beyond doubt, the most efficient and cost-effective way to heat and cool new buildings. Modest investments will often provide 80 to 100 per cent of a building's space conditioning requirements. But passive features cannot easily be added to existing structures.

"Active" solar heating systems are more expensive, but they can be bolted onto the roofs or southern walls of existing buildings as a substitute for—or supplement to—conventional furnaces. In active systems, fans or pumps move supplement to—conventional furnaces. In active systems, fans or pumps move solar-heated air or liquid from collectors to storage areas, from which heat is withdrawn as needed. Solar self-sufficiency will usually dictate a combination of active and passive features in all but the southern rim of the United States.

Buildings can be cooled as well as heated by sunlight. Again, passive solar design is the most important first step, but active solar air conditioners are also now being marketed. Absorption solar air conditioners, which operate on the same principle as gas refrigerators, reach peak cooling capacity when the sun burns brightest, which is when they are most needed. They therefore could reduce peak demands on many electrical power grids. As solar air conditioners penetrate the housing market the overall economics of active solar heating systems will improve, because solar collectors will begin providing a year-round benefit.

Solar technologies have industrial applications as well. A study of the Australian food processing industry, for example, found that heat comprised 90 per cent of the industry's energy needs. Almost all this heat was at under 150 degrees Centigrade and 80 per cent was below the boiling point of water. Such low-temperature heat can be easily produced and stored using simple solar devices. In the United States, solar heating is now being applied to a soup-canning plant in California, a fabric-drying facility in Alabama and a concrete block factory in Pennsylvania. Solar-powered laundries and car washes are now operating in California, and a St. Louis brewery has turned to solar pasteurization.

SOLAR CELLS

The most exciting solar electric prospect is the photovoltaic cell—now the principal power source of space satellites and the main element in photographic light meters. Such cells generate electricity directly when sunlight falls on them. They have no moving parts, consume no fuel, produce no pollution, operate at environmental temperatures, have long lifetimes, require little maintenance and can be fashioned from solicon, the second most abundant element in the earth's crust.

Photovoltaic cells are modular by nature, and little is to be gained by grouping large masses of cells at a single collection site. On the contrary, the technology is most sensibly applied in a decentralized fashion—perhaps incorporated in the roofs of building—to minimize transmission and storage problems. With decentralized use, solar cells can be combined with compatible technologies to use waste heat for space heating and cooling, water heating, and refrigeration. Last summer a photovoltaic array in Mead, Neb., irrigated 80 acres of corn at a thousand gallons per minute.

The manufacture of photovoltaic cells is currently a low-volume business—only 750 kilowatts of photovoltaic capacity were produced in 1977—and the products are consequently rather expensive. But a recent U.N. report concluded that solar cells would become cheaper than nuclear power if they received a total investment of $1 billion—less than the cost of just one large nuclear power plant.

STORING SUNLIGHT

Solar energy is too diffuse, intermittent and seasonally variable to harness directly to serve some human needs. Interruptions plague all energy systems, however. Electrical power lines snap, gas and oil pipelines crack, dams run low during droughts and nuclear power plants frequently need repairs, refueling and maintenance.

Sometimes the intermittent nature of an energy source causes no problems. For example, solar electric facilities with no storage capacity can be used to meet peak demands,

since virtually all areas have their highest electrical demands during daylight hours.

Low-temperature heat can be temporarily stored in such substances as water or gravel; in fact, substantial short-term heat storage capacity can be economically designed into the structural mass of new buildings. The larger the storage container, the less surface area (through which heat can leak) it has per unit of volume. Large storage tanks serving clusters of houses can be designed to have such low leakage rates that seasonal storage becomes economically possible. Princeton physicist Theodore Taylor advocates solar "ponds" serving as many as 100 houses—collecting heat in July for use in February, and producing ice in February for air conditioning in July.

Eutectic salts, which melt at about 90 degrees Fahrenheit, provide a much more compact storage medium than water. These cheap, plentiful salts can hold prodigious amounts of heat. In the past, salt caked on the interior walls of the storage container, interfering with efficient heat transfer. General Electric has overcome this problem by rotating the storage cylinder at 3 revolutions per minute.

Electricity can be stored directly in batteries. Existing batteries are expensive, but new types may soon enter the market. For example, the "iron redox" batteries that will store 2,200 kilowatt hours of photovoltaic-generated electricity for an Arkansas community college are expected to cost less than one-fifth as much as standard lead-acid batteries when mass produced.

But nuclear reactors and large coal plants also require energy storage. These facilities cannot be geared up and down to follow the peaks and valleys of electrical demand; they produce power at a steady rate, and surplus power from non-peak hours must be stored for the periods of heaviest demand. Because more energy is used during the day than at night, the overall storage requirements for a society based on renewable energy sources may prove no greater than those of an all-nuclear society.

SOLAR COSTS

Conventional wisdom holds that while solar energy has many attractive characteristics, it is too expensive today to see widespread application. As is so often the case with conventional wisdom, yesterday's truth has become today's misapprehension.

Five years ago, solar energy could not compete economically with low-priced fuels. Most solar homes used materials that were handcrafted in small workshops. But since 1973, the cost of solar equipment has dropped steadily while the costs of all competing energy sources have skyrocketed. Today, with factory production, a typical solar collector costs about $25 a square foot; by 1981, mass production could bring average costs under $10. Solar technologies already can provide energy for many purposes at no higher cost than conventional energy sources.

Take, for example, solar heating. Throughout the lower 48 United States, solar house heating now makes economic sense at the margin. That is to say, if the energy is to come from a new solar unit or a new nuclear power plant, the solar investment will be cheapest. The homeowner, of course, will not be buying electricity just from the expensive new power plant; the utility will average the expensive new energy in with cheap energy from existing sources, so that the true cost of new power is hidden from the individual consumer (and borne, through rising utility bills, by all consumers). But for society as a whole, the new energy could be most cheaply harnessed with solar equipment.

Even where the homeowner must compare the marginal costs of new solar equipment with the average cost of competing energy sources, solar investments will generally make sense over the lifetime of the building. The most important first step is to incorporate passive solar design into the building's blueprints. Often this costs little or nothing. For example, it costs no more to place most windows in the southern wall than to place them facing north, but southern windows capture the sun's warmth while northern windows merely leak the building's internal heat. Roof overhangs, masonry floors and working shutters are not expensive. Yet, combined with tight construction and good insulation, they can lower the heating load of the building by 75 percent and more. In Arkansas, 200 well-designed houses constructed under a grant from HUD cost no more than neighboring houses built using conventional construction standards, but their fuel bills are only one-fourth as high.

More elaborate designs can lead to greater savings. In the relatively mild climate of Atascadero, Calif., Harold Hay's passive solar house was constructed with bags of water incorporated in its roof. These act like "thermal flywheels," capturing energy on winter days and storing it to meet nighttime heating requirements. In the summer, the system collects heat from the interior during the day and radiates it outward at night. The cost of the solar features was about $5,000. The solar system has provided 100 percent of the home's heating and cooling needs for several years.

In climates where passive solar design will not provide 100 percent of heating requirements, back-up fuels or active solar systems are needed. In Princeton, N.J., architect Douglas Kelbaugh's passive solar home captures energy through a huge southern window wall during the day and stores it in a concrete interior wall to meet nighttime heating requirements. Like other passive solar homes, the Kelbaugh residence employs no pumps or fans—just careful design. The solar features cost around $9,000, and they provide virtually all of the home's requirements. In the unusually cold winter of 1976–1977, the year's heating bill was just $75. Financed with a conventional home mortgage, Kelbaugh's solar energy system would require $1,800 cash at construction with monthly payments of $60—far less than his neighbors' fuel bills.

Many different solar collectors, pumps, fans and storage systems are now on the market. Prices frequently fluctuate severalfold. For example, solar collectors can be built and installed for a materials cost of about $2 per square foot. Prices of professionally installed solar collectors can range from under $10 per square foot to more than $70. The prices of thermal storage containers range from about $10 per cubic meter for hand-built systems to as much as $35 per cubic meter for commercial products. Hand-built solar systems can hold marked advantages over all competing energy sources. At the lower end of the price range, commercial solar systems also make economic sense.

Skeptics often point to the high-cost solar equipment used in some federal solar demonstration projects and claim that the buildings could have been heated with oil for a fraction of the cost. But such buildings incorporate no cheap passive solar features and they generally employ the most expensive solar hardware on the market. Morever, the price of oil is an average price—not the price of new oil—and even this average price is kept artificially low through oil depletion allowances, intangible drilling cost write-offs, foreign tax credits, unsafe tankers built for accelerated depreciation, polluting refineries in the Caribbean and direct governmental price controls. Even in this loaded contest, solar energy compares fairly well.

THE COST OF SOLAR CELLS

Even photovoltaic cells—the most expensive technology now being used to harness solar energy—are much less expensive than is commonly believed. For example, a panel of distinguished scientists assembled by the Ford Foundation incorrectly reported in 1977 that "current [photovoltaic] collector costs are about $200,000 per kilowatt of peak electrical capacity."

The most charitable thing to be said for this figure is that it is 20 years out of date. Solar cells did cost about $200,000 a peak kilowatt in the late 1950s, but by early 1975, the costs had dropped to $31,000. By September, 1978—eight months before the Ford report was issued—the costs had dropped to $15,500.

Within months of the Ford report's release, the cost of solar cells fell to $11,750 a peak watt. And last December, the Department of Energy awarded a grant for a solar cell array that "tracks" the sun across the sky and concentrates its rays into comparatively small photovoltaic cells. This system, which will be installed at the Arkansas community college, will generate 362 kilowatts at a total installed cost of $6,000 per peak kilowatt.

Making allowances for the average availability of sunshine versus the average capacity factors of large nuclear power plants and considering demand patterns, transmission and storage, solar cells are now probably about 10 times as expensive as nuclear power in the most favorable regions of the United States. Solar cells now cost about one-tenth what they cost 5 years ago; nuclear power now costs about twice as much as it cost 5 years ago.

The United States now has about 48,000 megawatts of nuclear capacity and less than 1 megawatt of terrestrial photovoltaic capacity. With mass production, solar cell costs are expected to continue falling dramatically. A 1977 report by the Federal Energy Administration contends that a $240 million purchase of 150 megawatts of solar cells, staggered over three years, would lead to a cost of just $500 per kilomatt for the 70 megawatts produced the third year.

Both solar-electric and wind-electric devices product direct current—not the alternating current we are used to. Hence, one occasionally hears the comment that the cost of a solar society should include the cost of replacing all our appliances with devices that run on direct current (as do appliances in many motor homes today). Ignoring the possible merits of converting to direct current, the issue is trifling. Many things—from incandescent light bulbs to stoves—can perform well on direct current. Devices to convert direct current into alternating current are on the market for $180 per kilowatt for home-size units. For large orders, the price can fall to $50 per kilowatt.

WHAT NEXT?

After four years of fumbling, the federal government appears to be on the verge of passing a National Energy Act. This legislative "cornerstone" of the Carter administration is—in essence—an attempt to squeak through 1985 without having to grant Saudi Arabia the mineral rights to Ft. Knox. What it lacks is what America most desperately wants: a vision of where we are going.

The transition to a sustainable, post-petroleum world will require some decades to complete. The National Energy Act—almost totally dependent on the expansion of conventional, centralized energy sources—is not even a step in the right direction. If solar energy is to play an important role in the future, several actions must be taken immediately.

First, there is no substitute for money. While competing energy sources have financially benefited from the diligent efforts of scores of high-paid lobbyists, solar energy has not. Since 1952, when the Paley Commission recommended to President Truman that solar energy be aggressively developed, solar technology has received less than 1 five-hundredth of federal energy funding.

Although solar funding increased rapidly after the Arab oil embargo of 1973, it has now remained stalled for two years with less than 4 per cent of the federal energy budget.

For solar enthusiasts, the new Carter budget is a great disappointment. Solar, wind and biological energy sources combined will receive less than one-fifth as much as is directly spent on nuclear fission. Renewable energy resources will receive $200 million less than breeder reactors alone. In fact, after adjusting for inflation, the federal solar budget is $40 million lower this year than it was last year.

The current state of solar technology would justify a budget in the $1 billion range. There would be little public opposition to this $5 per capita investment in our most promising energy source. If our current energy crisis requires "the moral equivalent of war," surely the solar, wind and biological answers to that crisis deserve at least the financial equivalent of one small weapons system.

Of course, no one wants to see tax dollars shoveled out stupidly. A good solar program will require clear-eyed managers and sufficient staff to handle the load. The current solar effort is deficient in both respects. Consequently, research has emphasized small numbers of huge projects. It is far easier for an understaffed office to manage a few big projects than many small ones.

In addition to performing research and development, the federal government should actively encourage the commercialization of solar technologies. Such proposals always stick in the craw of people who would prefer to see commercialization handled in the free marketplace. Alas, the free marketplace for energy disappeared long ago, when mineral depletion allowances, investment tax credits, accelerated depreciation schedules, federal assumption of nuclear liability, federal ownership and subsidization of uranium enrichment facilities, federal underwriting of synthetic fuel development, oil and gas price controls, the rural electrification program, and dozens of other financial and regulatory actions were instituted. Without exception, these discriminated against decentralized technologies. Today's need is for policies that will put solar energy on an even footing with its competitors.

HELPING THE BUYER

Because the initial investment is the principal cost for solar technology, prospective consumers must have access to up-front money. Different residential solar tax credits have now passed both houses of Congress; the likeliest compromise will provide a credit of 30 per cent on the first $2,500 investment and 20 per cent on the next $7,500. Businesses that install solar equipment will receive a 10 per cent credit above the existing investment tax credit.

Unfortunately, this will not begin to counterbalance the higher tax credit allowed for investments in nuclear and synthetic fuels facilities in the Senate version of the National Energy Act. Moreover, tax credits are of limited usefulness for millions on fixed incomes who are being ravaged by rising fuel prices. Poor people will require something like a Treasury rebate as a down payment before they will be able to afford solar investments.

A financing authority should be established to give the homeowner and small businessman access to investment capital on terms at least as attractive as those available to utilities to invest in centralized energy sources. This might take the form of the national Solar Development Bank proposed by Rep. Stephen Neal (D-N.C.), making 30-year loans at very low rates of interest. States could supplement such a federal effort with state institutions funded with revenues from tax-free bonds; several such proposals are now before the California legislature.

Many homeowners are reluctant to purchase solar equipment because such merchandise often carries an inadequate warranty. Warranties are considered important because the initial cost of solar technologies is generally high. Solar investments make economic sense only because they have no fuel costs and low maintenance costs in future years. But if the performance of the equipment is not guaranteed for several years, the economics of solar technologies become more questionable.

However, a warranty system can discriminate against small manufacturers. In an ascent industry, warranties are meaningful only if they are backed by performance bonds. Otherwise, businesses can simply disappear, leaving the consumer holding the bag. But setting aside scarce capital to guarantee the performance of equipment for a decade can pose an unbearable burden on small entrepreneurs.

California Energy Commissioner Ronald Doctor has suggested a solar warranty fund, analogous to the oil spill liability fund. All solar manufacturers meeting certain standards would be allowed to contribute to the fund; if anyone's equipment proved faulty, the fund would guarantee remuneration. The state would be the warrantor of last resort.

The construction of a house or other building involves a 35-to-50-year commitment to energy usage levels. By 1981, it would be reasonable to require at least passive solar design features in all new buildings. At the very least, new buildings should be required to meet vigorous regional weatherization standards, and to be built and oriented in ways that facilitate eventual retrofitting with solar equipment.

A more direct role can be played by the federal government—the largest single purchaser of almost everything in the American economy—through its procurement policies. If, for example, the Defense Department were to make a concerted effort to provide solar heat where possible to its existing residences, a market in excess of 50 million square feet would open up. The total U.S. market for solar collectors in 1977 was about 5 million square feet.

If Defense were to purchase 150 megawatts of photovoltaic capacity for $450 million (including storage batteries and power conditioning equipment), it would save $1.5 billion net over the next 25 years in fuel and maintenance costs for displaced gasoline generators. A 1977 FEA report found that such a Pentagon purchase would reduce the cost of commercial photovoltaics to $500 a kilowatt—a price that is competitive for many purposes with conventionally generated electricity.

HELPING THE THIRD WORLD

One of the most dramatic solar efforts the federal government could undertake would be in the realm of foreign assistance. Solar energy makes even more sense today in the Third World than it does domestically. Developing countries tend to be richly endowed with sunlight. Their population patterns lend themselves to decentralized energy sources: half the people in Latin America, 70 per cent in South Asia and 85 per cent in Africa still live in rural areas. And in remote Third World villages, the current high cost of conventional energy, especially electricity, makes virtually all solar options economically competitive today.

Last May, President Carter eloquently proclaimed our national interest in improving the prospects of the world's poor. Energy is vital to economic development. Since Carter is understandably cautious about the proliferation of nuclear power around the world, solar energy poses an obvious answer.

What would it cost to provide a minimum decent supply of energy to each of the world's 1 million rural villages before the end of the century? Quite a bit. If the United States were to shoulder the entire burden, it might amount to one-half of 1 per cent of our gross national product annually.

That would be a very substantial pledge, but it must be placed in perspective. American aid to Europe under the post-World War II Marshall Plan amounted to 2.8 per cent of GNP. By comparison, 0.5 per cent for solar assistance is a pittance. Next year, it would amount to over $5 billion—a large figure, but not too intimidating when compared to annual Third World arms receipts of nearly $28 billion.

Much of this foreign assistance would be spent here at home. As American manufacturers begin to mass produce photovoltaic arrays, small wind turbines, etc., the domestic prices of these items should plummet. This would be a boon to U.S. consumers, and it would help American solar companies in the world solar market. As a way to incorporate his concern for poverty, human rights and nuclear proliferation in one package, a "Carter Plan" to bring solar technology to the poor villages of the world may represent the President's most attractive opportunity.

A final area where federal assistance should aggressively harness renewable energy sources is on the farm. U.S. farmers are upset with the low prices their crops are now bringing. U.S. consumers are unwilling to see their food bills rise. One answer would be a major national effort to make America's firms independent of high-priced fuels—thus separating food prices from fuel-induced inflation. Solar, wind and biological sources can be easily tapped to meet the energy demands of American agriculture. A solar equivalent of President Roosevelt's rural electrification program, which provided subsidized loans at 2 per cent interest to extend the nation's electrical lines to the farm, could lead to energy self-sufficiency for the nation's farms by 1990.

THE SOLAR SOCIETY

Energy transitions always bring fundamental social change. In the 18th century, the substitution of coal for wood and for draft animals made possible the Industrial Revolution. The later shift to petroleum made possible the jet plane and the automobile, shrinking the world and reshaping its cities. The coming energy transition, whatever direction we take, will bring similarly far-reaching changes.

Tapping some energy sources demands ever-increasing centralization; solar resources are best used at dispersed locations. Some dangerous sources can be permitted widespread growth only under authoritarian regimes; solar energy can lead to nothing more dangerous than a leaky roof. Some energy sources invite profiteering cartels; solar sources would tend to narrow the gap between rich and poor—both within and among countries. Some energy source will tend to reduce the size of the workforce; solar sources promise large numbers of new jobs. Some energy sources involve technologies that baffle all but a few specialists; solar energy can be harnessed by individual homeowners with simple devices built of local materials.

Of the possible futures we might choose, a solar-powered one appears most inviting. But the transition will not be smooth and painless. Competing energy sources will be vigorously championed by powerful vested interests. Bureaucratic inertia, political timidity, conflicting corporate designs and the simple, understandable reluctance of people to face up to far-reaching change will all discourage a solar transition from occurring spontaneously.

If the solar transition is to be speedily undertaken, the federal government will have to play a strongly promotional role. But thus far the influence of national policy makers has probably been negative. For two years

they have caused homeowners to delay solar purchases by promising eventual tax credits—and then failed to pass the necessary legislation. They have invested the lion's share of federal solar research in elephantine technologies to the detriment of the small-scale, decentralized options best suited to solar equipment. They have spared no pains to involve electric and gas utilities in solar applications, ignoring the fact that solar energy is a textbook case of an anti-monopolistic resource.

While still hoping for leadership from Washington, many Americans are no longer waiting for it. With the sure instincts displayed by innumerable inventors, tinkerers and entrepreneurs throughout our history, these citizens are in the vanguard of a nation that, in the years ahead, must increasingly turn toward the sun.

JUDICIARY PASSES SUN DAY RESOLUTION

Mr. PERCY. Mr. President, I would like to thank my colleagues on the Judiciary Committee for their rapid action on Senate Joint Resolution 110, establishing May 3 as Sun Day. In their meeting just this morning, though overburdened with an agenda of business three pages long, the committee took the time to express its support for the solar energy celebration day. I particularly wish to thank the distinguished Senator from South Dakota for initiating discussion of the Sun Day resolution in the committee. Let me also express my gratitude to my colleagues on the committee who would have called up the resolution had Mr. ABOUREZK not done it first.

With Judiciary approval, Senate Joint Resolution is now cleared for floor action. I foresee no controversy; the resolution is cosponsored by 57 Senators. I hope the entire Senate can act rapidly on this matter. The identical resolution has already been passed by the House of Representatives. After the Senate acts, the resolution will be sent to the President. He will then make the public proclamation of Sun Day that the resolution requests.

DO-IT-YOURSELF CONSUMER PROTECTION

Mr. PERCY. Mr. President, although the House of Representatives recently voted down legislation to establish a Consumer Protection Agency, individual consumers are far from helpless to protect themselves against fraud, shoddy merchandise, and other consumer rip-offs.

In a recent Washington Post article, Thomas Daffron — presently serving as administrative assistant for Congressman WILLIAM COHEN and a former valued member of my own staff—described his time-tested techniques for dealing with consumer problems. Often, direct action by an irritated consumer produces quicker results than any bureaucratic involvement possibly could.

Mr. Daffron offers several concrete tips for prodding businesses into prompt action on a complaint. He suggests that carbon copies of a complaint letter, mailed to political figures, the media, governmental agencies, and Better Business Bureaus, will often mobilize valuable support. A factual, to-the-point account of the grievance, documented with all relevant details and available evidence, emphasizes the seriousness of a complaint and frequently yields satisfactory results.

For this reason, Mr. Daffron recommends saving bits of evidence such as faulty goods, which can be mailed to offending companies at the appropriate time.

The article demonstrates that direct consumer action, supported by evidence and responsibly pursued, can be a most effective form of redress. If practiced on a large enough scale, such direct action might promote greater sensitivity to the legitimate concerns of American consumers.

To further inform my colleagues about these possibilities, Mr. President, I ask unanimous consent that Mr. Daffron's article "How To Be Your Own Consumer Agency," from the February 19 edition of the Washington Post, be printed in the RECORD at this point.

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

[From the Washington Post, Feb. 19, 1978]

HOW TO BE YOUR OWN CONSUMER AGENCY

(By Thomas A. Daffron)

Now that the House has decided there will be no Consumer Protection Agency, we're still left to our own wits in coping with the world of commerce. This may not be a bad thing. The typewriter and the personal encounter, I have found, are frequently mightier than the government agency—and invariably quicker.

I was 11 years old, my father tells me, when I dashed off a sharp note to the president of the Daisy Air Rifle Co. lamenting the deficiencies of my BB gun. I have no memory of whether I received any satisfaction from Daisy, but the event marks the beginning of an informal career as the champion of my favorite consumer—me. Since then, I have won some battles against the free enterprise system and lost many more. But, in the process, I have formulated and refined a variety of theories that seem to have general application for the beleaguered consumer.

1. Challenge the Giants and the Dwarfs, but beware of the Medium-Sized.

The most satisfying moments in a personal consumer crusade occur when one energizes an industrial Goliath, such as the Allstate Insurance Co.

Fifteen years ago, after a surly local agent had refused me automobile insurance and offered no explanation, I sent Allstate's chairman a registered letter describing my driving record in excruciating detail. Within two weeks, platoons of Good Hands people were begging me to entrust my car to them. The key to my success was the target of my appeal: In a vast corporation, everything trickles down; nothing flows up. To deal with the local or regional manager is to invite profound depression.

Just as a large national company is normally mindful of its corporate image, so is a small neighborhood enterprise concerned about its local repute. My local cleaner, for example, muttered only briefly before paying me for my favorite tie after it was swallowed up by his mangle. And I got at least a draw with my local plumber when he created three new leaking pipes while installing a water heater. He didn't repair the pipes, but I didn't pay the full cost of the water heater, and his enthusiasm for sending dunning notices eventually waned.

It is the anonymous, medium-sized manufacturer, with no national reputation and no proximity to his customers, who can be the bane of the consumer's existence.

In 1976, for instance, I tried to capitalize on a five-year guarantee on the covering of a recently purchased attache case. Though I wrote directly to the president of the firm, and twice mailed the torn and frayed case from Washington to Chicago (at my expense), I received no satisfaction beyond two dabs of glue on the tears and cryptic messages from an unsympathetic repairman. Absolutely nothing could shake this technician's conviction that I was secretly pummeling my attache case with sharp objects and had thereby voided the guarantee.

While carrying my belongings between home and office in a manila envelope for a period of two months, I had more than enough time to reflect on my complete lack of leaverage. Clearly, there was (a) little repeat business in attache cases, (b) no national image to damage, and (c) no danger that I would spend $100 to fly to Chicago to argue over a $26 purchase—all of which leads logically to my next theory.

2. Be Persistent, but Know When to Cut Your Losses.

Obviously, any detached reader of my correspondance with the attache case factory would have advised an early retreat. This is the tactic I employed in a dispute over tuition payments to a school attended by one of my children. Recognizing the right of the school to expel my child for any reason, including whimsy, I quickly withdrew from that one-sided contest after my initial pleas were ignored. The potential return simply did not justify the risks.

On the other hand, I did not hesitate to badger the Ford Motor Co. until it had compensated me satisfactorily for the indignities heaped upon my Pinto by one of its dealer repair shops. Importuning a car manufacturer is a risk-free endeavor, and Ford presumably has an interest in its repute and in repeat business.

3. Intimate Clout, but Do Not Lie.

An individual who is, say, the local prosecutor obviously would be wise to use his professional stationery when reminding a commercial establishment of its failings, although it is a nice touch to state that one is writing as a private citizen. In general, trying to gain an initial edge is nothing more than simple prudence.

Idle threats are counterproductive, however, and nearly all threats from a single individual are idle when subjected to serious scrutiny. Lying is a particularly bad idea, since even if the ploy is successful, years of unnecessary worry will afflict the normal law-abiding citizen. Having at the age of 13 invented the firm of Coogan, Butterworth, Washwelton & Fink to hint at legal action on my behalf, I continue to hope that the statute of limitations will expire on this youthful fraud.

4. Watch for the Whipsaw (or Catch-22).

Occasionally, even the most vigilant consumer can be ensnared by circumstances that make the merits of his case irrelevant. Anticipation and avoidance are the only remedies.

Two years ago, I purchased a mildly modish suit from a clothing store which does no alterations, the saleman having alleged that a few tucks here and there would make it absolutely perfect. I then took it to a tailor who operates under the same roof, but is, in fact, an independent entrepreneur. After a bit of reckless cutting, the tailor produced a butchered garment that cut off my circulation from navel to mid-thigh. When I protested, the tailor said that a modish suit should not have been sold to someone with a body like mine (41 regular); the salesman countered that the suit was perfect until I placed it in the hands of the clumsy tailor. Ultimately the president of the clothing firm provided me with a new suit, but only

his enlightened attitude prevented a permanent stalemate.

5. Nothing Ventured, Nothing Gained.

Personal consumer advocacy is Russian roulette. Though it is possible to increase one's odds, it is impossible to state with certainty which appeals will be heeded and which ignored. Therefore, it is imperative that the initial complaint be by registered mail.

While my literary labors yielded zero attache cases, a much less extensive effort brought me three new tennis rackets in three successive months, all of them eventually reduced to kindling by mis-hits overheads. (I have switched to aluminum.)

Insurance companies are astonishingly unpredictable. I received nothing when a gale swept away several of the trees in my yard; the company argued that no "structures" were damaged. Yet the same company insisted on compensating me for the cost of painting a garage ceiling that was water-spotted by a leaking shower drain on the floor above. It made no difference that the spots had dried and the ceiling was previously unpainted.

6. Carbon Everybody.

The Russian roulette factor obtains here as well. Five carbons may be blanks and the sixth a direct hit. Politicians, the media, state and local agencies, better business bureaus—anyone with even a peripheral interest should be included. Occasionally, the carbon list spurs competition among the recipients, to the great advantage of the consumer.

7. Be Sincere, Factual and Readable, but Not Sarcastic or Contemptuous.

It is well worth noting that the company receiving a consumer appeal can, in most instances, dismiss it peremptorily without any significant economic consequences. Regardless of the legitimacy of a grievance, the consumer must appear rational and persuasive or risk consignment to the company's "crank" file.

Pejorative statements on American capitalism ad hominem assaults and sarcasm may fulfill the needs of the consumer's psyche, but they rarely help his pocketbook. A bit of urbane humor may be a net plus, however, particularly after the initial correspondence has established a comfortable rapport.

8. Overwhelm Them With Details.

The best letters are those which include times, dates, places, names of offending parties, copies of sales slips or canceled checks and any other evidence that can convey the image of an injured but temperate consumer. My letter to Ford on the Pinto was a massively documented, four-day chronology which, while tedious in parts, yielded results.

It also is often useful to volunteer mildly (but not seriously damaging information to reinforce the appearance of veracity. My letter to Allstate, for example, described at some length an unreported accident that had occurred five years earlier when my car was sideswiped by a 1929 Model A piloted by a septuagenarian.

9. Preserve Every Shred of Evidence.

In addition to the various forms of paper that can be enclosed with a letter, the broken appliance, the fire-scorched wall, the exploded tire and other forms of physical evidence can be powerful allies. They can be mailed when appropriate, or shown to a company representative, but they should not be discarded until all hope is lost.

In 1967, an adjuster for a dubious moving company visited our home to discuss our losses after protracted, three-cornered negotiations involving his company, us and the Interstate Commerce Commission had failed to produce a settlement by mail. We found him unmoved by such items as a box marked "sweaters" which was empty and a globe for a floor lamp which was unaccompanied by the lamp itself. But when we showed him our dining room table, into which his driver had permanently scratched his name and the date by grinding a ballpoint pen through onionskin paper, he finally acknowledged his firm's liability. Resisting the urge to apply furniture polish to the table saved us $200.

These nine rules are neither comprehensive nor foolproof, but I trust they suggest that asserting one's rights in the marketplace need not be a futile exercise. The rewards of personal consumer advocacy can be handsome, in money and self-esteem, and the only investment required is time.

UNANIMOUS CONSENT CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar order numbers 603 and 614, as in legislative session.

EXCHANGE STABILIZATION FUND AMENDMENTS OF 1978

The Senate proceeded to consider the bill (S. 2093) to provide that the exchange stabilization fund shall not be available for payment of administrative expenses; and for other purposes, which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Exchange Stabilization Fund Amendments Act of 1978".

SEC. 2. Subsection (b) of section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a(b)) is amended by—

(1) striking "with the Treasurer of the United States" in the first sentence and inserting in lieu thereof "in the United States Treasury";

(2) striking the second and third sentences; and

(3) amending the fourth sentence to read as follows: "The fund shall be available for expenditure, under the direction of the Secretary of the Treasury and in his discretion, for any purpose in connection with carrying out the provisions of this section, including the investment and reinvestment in direct obligations of the United States of any portions of the fund which the Secretary of the Treasury, with the approval of the President, may from time to time determine are not currently required for the purposes prescribed by this section: *Provided,* That the fund shall not be available for the payment of administrative expenses.".

SEC. 3. Section 10 of the Gold Reserve Act of 1934 (31 U.S.C. 822a) is amended by adding at the end thereof the following new subsection:

"(d) The Secretary of the Treasury may, under such rules and regulations as he may prescribe, provide to personnel performing the international affairs functions of the Department of the Treasury allowances and benefits comparable to those provided by title IX of the Foreign Service Act of 1946.".

SEC. 4. The Secretary of the Treasury is authorized, without regard to the standards and procedures of section 3324 and chapter 51 of title 5, United States Code, to appoint a total of sixty-one of the personnel of the Department of the Treasury (in addition to any positions which may be allocated to the Department of the Treasury presently or in the future at the discretion of the Civil Service Commission from those authorized under section 5108(a) of title 5, United States Code) in GS-16, 17, and 18, to carry out the international affairs functions of the Department of the Treasury: *Provided, however,* That when the person who has first filled such position leaves such position, the standards and procedures of section 3324 and subchapter 51 of title 5, United States Code, shall be applied in filling the position. For the purpose of this section, the aggregate number of positions authorized to be established by section 5108(a) of title 5, United States Code, shall be increased to reflect the sixty-one positions created by this section.

SEC. 5. Section 51 of the Act of December 30, 1970 (22 U.S.C. 276c-2) is amended by—

(1) amending the first sentence to read as follows: "Notwithstanding the provisions of any other law, the Executive Directors and Directors and their alternates, representing the United States in the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund, shall, if they are citizens of the United States, in the discretion of the Secretary of the Treasury, each be eligible on the basis of such service and the total compensation received therefor, for all employee benefits afforded employees in the civil service of the United States.";

(2) striking from the second sentence the words "the fund established pursuant to section 10(a) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(a))" and inserting in lieu thereof "funds appropriated to the Department of the Treasury"; and

(3) striking the last sentence.

SEC. 6. There are authorized to be appropriated not to exceed $23,000,000 for fiscal year 1979, including sums for official functions and receptions and representation expenses, to carry out the international affairs functions of the Department of the Treasury.

SEC. 7. The provisions of this Act shall take effect on October 1, 1978, except the amendment made by section 5(1) which shall be effective as of July 1, 1977.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-661), explaining the purposes of the measure.

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

EXCERPT

HISTORY OF THE BILL

S. 2093 was introduced in the Senate on September 14, 1977, and referred to the committee. The Subcommittee on International Finance held a hearing on the bill on October 7, 1977. Testimony was heard from: Anthony M. Solomon, Under Secretary of the Treasury for Monetary Affairs; Elmer B. Staats, Comptroller General of the United States; David E. Bodner, senior vice president, Chemical Bank; and Hans Hunsch, senior vice president, Bankers Trust. The * * * in carrying out international affairs functions during fiscal year 1979, to report S. 2093 favorably with an amendment.

The amendment agreed to by the committee would authorize appropriation of sums not to exceed $23 million to meet Treasury's expenses in carrying out international affairs functions during fiscal year 1979.

PURPOSE OF THE BILL

The purpose of the bill is to terminate the use of the Exchange Stabilization Fund (ESF) to pay certain administrative expenses of the Department of the Treasury and make necessary statutory adjustments to provide for the payment of such expenses

through appropriations beginning in fiscal year 1979. The legislation would authorize the Secretary of the Treasury to place officials presently compensated at supergrade-equivalent levels from ESF resources in regular civil service supergrade positions (GS-16, 17, and 18), and to provide allowances and benefits from appropriated funds to employees whose allowances and benefits are presently paid out of the ESF.

The bill would also place a ceiling of $23 million on appropriations for fiscal year 1979 for expenses associated with the international affairs functions of the Treasury Department. The bill, as introduced, would have permanently authorized the appropriation of such sums as might be necessary for such purposes. The bill was amended in full committee markup to provide an annual authorization ceiling.

NEED FOR THE LEGISLATION

The legislation is needed in order to subject the steadily growing expenses of the Treasury Department for international affairs to regular appropriations and congressional oversight. At present, such expenses are paid from the Exchange Stabilization Fund.

The ESF was created by section 10 of the Gold Reserve Act of January 30, 1934 (31 U.S.C. 822a) for the purpose of stabilizing the exchange value of the dollar. Congress appropriated $2 billion to the ESF from the profits realized on the revaluation of U.S. gold holdings. The Gold Reserve Act provides that the ESF is to be operated within the Department of the Treasury under the exclusive control of the Secretary of the Treasury, with the approval of the President. The Secretary is authorized to deal in gold and foreign exchange and to invest funds not immediately required for exchange stabilization fund purposes. Profits or losses realized on transactions and investments accrue to the ESF.

The Bretton Woods Agreements Act of 1945 authorized U.S. participation in the International Monetary Fund and transferred $1.8 billion from the ESF to the IMF to make partial payment of the U.S. subscription. The act also provided permanent authority for ESF operations. From 1945 to 1960, the ESF was used only modestly for gold transactions and exchange stabilization agreements. Beginning in 1960, the ESF was used more actively in support of the dollar. Congress, in 1962, authorized Treasury to advance to the ESF any foreign currencies borrowed by the United States from the IMF. When Special Drawing Rights were created by the International Monetary Fund in 1968, the Congress provided that the ESF would hold all SDR's allocated to the United States, receive and pay interest on SDR's, and be utilized for other SDR transactions.

Public Law 94-564, the Bretton Woods Agreements Act Amendments of 1976, which will take effect when the ratification of the Second Amendment to the Articles of Agreement of the International Monetary Fund is completed, changes the purpose for which the ESF may be used to take account of the policy decision to accept a floating exchange rate for the dollar. The changes made by Public Law 94-564 and Public Law 95-147 enacted on October 28, 1977, delete all reference to stabilizing the exchange value of the dollar and provide that the Secretary of the Treasury may use the ESF consistent with the U.S. obligations in the International Monetary Fund regarding orderly exchange arrangements and a stable system of exchange rates:

Provided, however, that no loan or credit to a foreign government or entity shall be extended by or through such Fund for more than 6 months in any 12-month period unless the President provides a written determination to the Congress that unique or exigent circumstances make such loan or credit necessary for a term greater than 6 months.

The ESF is used in conjunction with the Federal Reserve System's swap network of foreign currencies for exchange market intervention to counter disorderly market conditions. The ESF is also used to extend short-term credits to foreign governments when such credits are backed by assured sources of repayment and contribute to the stability of the international monetary system. During the past 2 years, the ESF was used for credits to the United Kingdom, Mexico, and Portugal. More recently, the ESF was used to swap resources with the Federal Republic of Germany (Bundesbank) to enable Treasury to conduct more active intervention in the foreign exchange markets.

In addition, the ESF has been used since 1934 to pay salaries and other administrative expenses incurred by Treasury in conducting ESF operations and related international monetary activities. The international affairs functions of Treasury have grown over the years and the administrative expenses paid from the ESF have soared. Amounts paid for salaries and expenses in each fiscal year since 1934 are indicated in Table 1.

TABLE I.—*Salaries and expenses paid from exchange stabilization fund*

Fiscal years:	
April 26, 1934 to June 30, 1935	$117,391.24
1936	138,045.05
1937	195,492.13
1938	220,611.61
1939	261,858.33
1940	279,493.77
1941	253,165.73
1942	290,018.34
1943	292,928.69
1944	567,358.15
1945	588,988.21
1946	929,713.57
1947	1,079,342.86
1948	1,177,691.23
1949	1,305,480.46
1950	1,274,140.84
1951	1,302,276.02
1952	1,545,006.59
1953	1,553,234.47
1954	1,513,675.19
1955	1,421,647.77
1956	1,464,542.14
1957	1,484,512.71
1958	1,674,741.06
1959	2,349,465.22
1960	2,121,027.98
1961	2,976,748.72
1962	2,649,287.01
1963	3,062,651.06
1964	3,288,389.89
1965	4,056,242.69
1966	5,381,630.79
1967	4,693,433.43
1968	8,388,385.26
1969	5,680,605.38
1970	6,436,696.34
1971	8,013,293.80
1972	9,555,194.88
1973	9,642,141.98
1974	11,307,117.19
1975	14,442,664.64
1976 plus 3-month period ending September 30, 1976	21,393,392.89
Total	146,369,725.31

Administrative expenses of $8 million were paid from ESF in fiscal 1971. By 1974, the cost of salaries and expenses was $11.3 million, and in 1975, the amount was $14.4 million. In fiscal year 1976, the ESF was used to pay $17.4 million in administrative expenses, and an additional $4 million was expended during the transitional quarter. Administrative expenses in fiscal 1977 were $19.6 million, and are estimated to be $19.9 million for fiscal 1978. Treasury intends to request an appropriation of $22 to $23 million for fiscal year 1979 to meet administrative expenses arising from international affairs functions, assuming this legislation is adopted.

The administrative costs covered by the ESF have come to include items only vaguely related to the purposes of the ESF. For example, the ESF is presently used to pay the salaries of: the Assistant Director of the Office of Tax Analysis, the Director of the Office of Regulatory and Legislative Policy, the Director of the Office of Foreign Assets Control, and the National Intelligence Adviser.

No external audits of income and expenditures of the ESF were made prior to 1970 when Congress, by amending the Gold Reserve Act in Public Law 91-599, provided authority for the General Accounting Office to audit the administrative expenses of the fund. Treasury has conducted its own annual audit of ESF accounts both before and since the amendments of 1970, and copies of the audits and annual reports are provided to the Congress. The GAO found Treasury initially reluctant to provide access to information which GAO believes necessary to its audit responsibility. Consequently, the first GAO audit, for fiscal year 1972, was not completed until June 20, 1974. The most recent GAO audit report was released on September 28, 1977, and covers fiscal year 1975. The Comptroller General of the United States has informed the Committee on Banking, Housing, and Urban Affairs that GAO has reached an agreement with Treasury which is expected to enable GAO to receive the information it needs for proper auditing of administrative expenses paid through the ESF. Treasury remains firmly opposed to any external audit of ESF operations for fear of jeopardizing confidential relationships with foreign governments. GAO is not presently requesting such authority. Accordingly, the committee has not considered revisions of GAO's audit authority and S. 2093 would make no change in that authority.

Treasury also previously opposed placing the administrative expenses paid from ESF in the budget. Two reasons were given: the confidentiality of the ESF operations which the administrative expenses support could be jeopardized and administrative expenses were unpredictable because of the volatility of the international economic affairs. However, in September 1976, during the closing days of the 94th Congress, Treasury agreed to support an amendment placing such expenses in the budget. The amendment was to have been offered by Senator Stevenson to legislation pending in the Senate to amend the Bretton Woods Agreements Act. At the last moment, the Senate agreed to accept the House version of the bill in order to secure adoption of the legislation before adjournment. It was agreed that legislation placing the administrative expenses paid from ESF in the regular budget would be introduced in the next Congress. S. 2093 has the support of the current administration. Under Secretary of the Treasury Solomon testified before the Subcommittee on International Finance that administrative expenses directly connected with ESF operations were a minor portion of the ESF administrative payments and that unpredictable administrative expenditures had become increasingly rare.

S. 2093 would place ESF administrative expenses on budget and require appropriations just as is the case for other Treasury expenditures. The bill would increase budgetary control over such expenses, and the provision for annual authorization added by the committee would strengthen oversight of international monetary affairs.

FISCAL IMPACT STATEMENT

In accordance with section 252(a) of the Legislative Reorganization Act of 1970, the committee estimates the bill will result in additional outlays during fiscal year 1979 of less than $20,000. This concurs with the estimate prepared by the Congressional Budget Office. (Two-page letter from Dr. Alice Rivlin, Director, Congressional Budget Office, follows, pp. 13–A and 13–B.)

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., February 15, 1978.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Room 5300 Dirksen Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2093 as ordered reported on February 1, 1978 by the Senate Committee on Banking, Housing, and Urban Affairs. This legislation is estimated to result in net costs to the U.S. Government of less than $20,000 per year, although it would have a greater impact upon the totals of the Federal budget.

This legislation would prohibit the use of the Exchange Stabilization Fund (ESF) for the payment of administrative expenses associated with the international affairs functions of the Department of the Treasury. The effect of this would be to transfer the funding of these expenses from the ESF, an off-budget Federal entity, to appropriated funds. The bill would authorize the appropriation of not to exceed $23 million for fiscal year 1979 for these activities. In addition, the legislation contains several provisions which would, upon the transfer of funding from the ESF to appropriations, provide for the continuation of ongoing international affairs activities and the maintenance of personnel benefits at current levels. These provisions would authorize an increase in the government-wide pool of supergrade positions; make personnel performing international affairs functions of the Treasury eligible for allowances and benefits comparable to those provided by title IX of the Foreign Service Act of 1946; and make U.S. representatives to international financial institutions eligible for civil service employee benefits, but require that Treasury contributions for such benefits be made from appropriated funds rather than from the ESF.

The transfer of the funding of the administrative expenses associated with the international affairs activities of the Department of the Treasury from the ESF to appropriations would increase budget outlays in function 800 during fiscal year 1979 by an estimated $21 million. Off-budget Federal outlays would decrease an equal amount, however. The transfer would result in no net cost to the U.S. Government.

The authorized increase in the governmentwide pool of supergrade positions would provide civil service status to personnel performing ongoing international affairs activities, once appropriated funds are used to finance these activities. Similarly, the granting of eligibility for allowances and benefits comparable to those provided by title IX of the Foreign Service Act of 1946, would only maintain current allowances and benefits, once appropriated funds are used to finance international affairs activities. No incremental costs result from these provisions.

The granting of eligibility—to the Executive Directors, Directors and their alternates, representing the United States in the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank and the Asian Development Bank—for civil service employee benefits, would also be required to maintain current benefit levels, once appropriated funds are used to finance international affairs activities. No incremental costs result from this provision. The granting of eligibility, for the first time, for civil service benefits to U.S. representatives in the African Development Fund, however, could result in incremental costs to the U.S. Government of less than $20,000.

The administration has indicated that, upon the enactment of this legislation, the ESF itself will be included in the budget. Under the proposed budget treatment of the fund, net outlays for the current year and budget year would reflect only estimates of the revenue to be earned by the fund (the estimate for fiscal year 1979, for example, equals $91 million). The actual outlays associated with the ESF, however, would equal the revenue earned by the fund plus/less profits or losses realized as a result of fund transactions (during fiscal year 1977, losses from fund transactions equaled $86 million). Because fund transactions, and the profits or losses that may be associated with them, are impossible to predict, no estimates of profits or losses would be prepared; the actual figures would be recorded only at the end of the fiscal year. This approach would add uncertainty to the monitoring of federal expenditures relative to the levels established by the Congress in concurrent resolutions of the budget. The CBO, therefore, is consulting with the appropriate Congressional committees regarding the proposed budget treatment of the fund.

Should the committee so desire, we would be pleased to provide further detail on this estimate.

Sincerely,

——— ———,
For ALICE M. RIVLIN.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

EXPANSION OF THE FOREST SERVICE'S VOLUNTEER PROGRAM

The Senate proceeded to consider the bill (S. 2370) to remove the limitation on the amount authorized to be appropriated under the Volunteers in the National Forests Act of 1972, which had been reported from the Committee on Agriculture, Nutrition, and Forestry with an amendment on page 1, beginning with line 7, insert the following:

SEC. 2. The amendment made by this Act to the Volunteers in the National Forests Act of 1972 shall become effective October 1, 1978.

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 section 4 of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558d) is amended by striking out ", but not more than $100,000 shall be appropriated in any one year".

SEC. 2. The amendment made by this Act to the Volunteers in the National Forests Act of 1972 shall become effective October 1, 1978.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–671), explaining the purposes of the measure.

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

SHORT EXPLANATION

S. 2370 would amend the Volunteers in the National Forests Act of 1972 to remove the $100,000 ceiling imposed on the Forest Service to carry out its volunteer program.

The Forest Service has had to turn away thousands of citizens interested in volunteering because funds were not available to pay for incidental expenses. Because of the program's nationwide success, the Forest Service would like to expand this worthwhile program, but cannot because of the authorization limitation.

BACKGROUND AND NEED FOR LEGISLATION

The Volunteers in the National Forests Act of 1972 authorized the employment of volunteers to work without compensation in areas administered by the Forest Service. The act gives the Secretary of Agriculture authority to reimburse these volunteers for incidental expenses, such as transportation, uniforms, lodging, and subsistence. The volunteers, however, are not considered Federal employees, except for purposes of tort claims and compensation for work injuries. Prior to the 1972 act, the Forest Service accepted the volunteer services of private citizens only on a nonappointed basis.

Duties of the volunteers include providing special information services to visitors, assisting at historical and special events, increasing the availability of interpretive programs, providing special skills, training volunteers in specialized cases, assisting in special research projects such as historical research of a ghost town, writing brochures on features of interest, working on special projects, and teaching special subjects. In addition, volunteers help maintain campground facilities by manning entry stations, answering questions, and training campers by explaining rules and good camping techniques. Their presence has substantially reduced vandalism, theft, and similar problems.

The volunteer program has been extremely successful. It has enabled the Forest Service to use the valuable resources of American volunteer workers to enhance the environment, and to develop the rich resources of the national forests. The Forest Service has found there are thousands of conservation-minded citizens who stand ready to assist in this program. Experience with the program shows a return of over $10 in terms of work value received for every dollar expended. For fiscal year 1976, plus the transition quarter, 11,676 persons volunteered 341 years of work valued at $2,338,606.

The present authorization limitation of $100,000 restricts the size of the volunteer program. For fiscal years 1976 and 1977, field offices of the Forest Service requested more than twice the amount of authorization that was available. Considering the vast amount of conservation work to be accomplished in the national forests, and the availability of volunteers who only need reimbursement for out-of-pocket expenses, it is believed that volunteers offer the Forest Service a most useful and cost-efficient method of accomplishing some of its work.

Reimbursement of volunteer expenses is charged to the Forest Service function or activity which benefits from the volunteer help. The net result of the volunteer program is a savings rather than an additional cost to the Federal Government. Therefore, the restriction serves no purpose and should be removed.

DEPARTMENTAL VIEWS

In a letter to Chairman Talmadge dated January 17, 1978, Secretary of Agriculture Bob Bergland stated that the Department of Agriculture recommends enactment of S.

2370. The letter to the chairman reads as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., January 27, 1978.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR TALMADGE: As you requested, here is our report on S. 2370, a bill to remove the limitation on the amount authorized to be appropriated under the Volunteers in the National Forests Act of 1972.

The Department of Agriculture recommends that S. 2370 be enacted.

The bill proposes the removal of the $100,000 ceiling on the Volunteers in the National Forests program. The Volunteers in the National Forest program was established by the act of May 18, 1972 (86 Stat. 147; 16 U.S.C. 558a). The act allows the use of up to $100,000 annually for the purposes of this program. The $100,000 ceiling has limited Forest Service use of the volunteers program.

The Volunteers in the National Forest Act eliminated two basic barriers which the Forest Service had encountered in accepting volunteer help. First, prior to the act, volunteers had to sign a waiver which cleared the Government of any liability in the event of injury. Second, many volunteers needed reimbursement of meals or travel expenses in order to offer their services, and the Forest Service lacked authority to reimburse them. With the elimination of these barriers through passage of the Volunteers Act, the Forest Service has greatly benefited from voluntary services.

Volunteers in the national forest system has been a tremendously successful program. We have found that there are thousands of conservation-minded citizens who, through individual initiative or organizations, wish to assist the Forest Service in its work. In fiscal year 1974, a total of 7,255 volunteers gave 148 man-years of work toward the Forest Service mission. The appraised value of the work accomplished by these volunteers was $698,503. Our fiscal year 1975 report shows that some 6,473 individuals gave 250 man-hours of work at an appraised value of $1,154,814. For fiscal year 1976 and the transition quarter, 11,676 persons, volunteered 341 man-years of work at an appraised value of $2,338,606.

There are far more opportunities to utilize volunteers in Forest Service programs than we can currently take advantage of. For fiscal years 1976 and 1977, our field offices requested more than twice the amount of authorization that is available. Funds were not available to pay for the costs involved. These requests represented actual opportunities to permit citizens to volunteer their services to the Forest Service. As examples, in fiscal year 1976, 60 people from the Izaak Walton League volunteered to help with cleanup and trail work in the Hell's Canyon area of the Wallowa-Whitman National Forest in Oregon. However, some reimbursement of expenses was required. This opportunity was lost because of the limitations. Also, our Pacific Northwest, Southwest, and southern regions have initiated a "volunteer host" program to provide visitor services in National Forest recreational areas. Volunteer hosts provide such important services as distributing information to visitors, assisting in maintaining campgrounds free of litter, and orienting visitors to the attractions of the forest. This has been a very successful program and well received by the public. For example, in campgrounds where volunteer hosts have been assigned, Forest Service officials report significant reduction in vandalism, litter, and unruly behavior and greater compliance with camping rules and regulations. The Forest Service would like to expand this program, but cannot because of the annual authorization limitation in the existing National Forest Volunteers Act.

Given the vast amount of conservation work to be accomplished on the national forests, and the availability of volunteers who only need reimbursement for out-of-pocket expenses, we believe volunteers offer the Forest Service a most useful means of accomplishing some of its work. For these reasons, we strongly recommend that the authorization limitation be removed.

Reimbursement of volunteer expenses is charged to the Forest Service function or activity which benefits from the volunteer help. Therefore, enactment of this legislation would not result in any additional direct costs to the Federal Government, in fact a savings would result.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

BOB BERGLAND, *Secretary.*

REGULATORY IMPACT STATEMENT

In compliance with subsection 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2370.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. There would be no impact on personal privacy since the program is voluntary. No additional paperwork would result from the enactment of S. 2370.

COST ESTIMATE

I

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the committee estimates that the additional cost that would be incurred by the Federal Government as a result of the enactment of S. 2370 would not exceed $150,000 for each of the fiscal years 1979 through 1983. This amount represents the cost of reimbursing expenses of additional volunteers working in the national forest system. The appraised value of the work which could be accomplished by this increase is estimated to be approximately $4 million per year. The committee's cost estimate is in accord with the cost estimate prepared by the Congressional Budget Office.

II

The cost estimate prepared by the Congressional Budget Office reads as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., February 17, 1978.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2370, a bill to remove the limitation on the amount authorized to be appropriated under the Volunteers in the National Forests Act of 1972, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, February 1, 1978.

Based on this review, it is estimated that removal of the appropriations limitation could result in additional costs of approximately $150,000 a year. This amount represents the cost of reimbursing expenses of additional volunteers working in the national forest system. The resultant increase in the value of work performed by volunteers in the national forests is estimated to be approximately $4 million per year.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of Herbert L. Chabot, of Maryland, to be a judge of the U.S. Tax Court, which was referred to the Committee on Finance.

MESSAGES FROM THE HOUSE

At 12:01 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 10551. An act to extend for 1 year the authority of the Commissioner of Education to waive provisions of title I of the Elementary and Secondary Education Act for certain local educational agencies; and

H.J. Res. 746. A joint resolution making urgent power supplemental appropriations for the Department of Energy, Southwestern Power Administration for the fiscal year ending September 30, 1978.

ENROLLED BILL SIGNED

At 4:39 p.m., a message from the House of Representatives delivered by Mr. Berry, announced that the Speaker has signed the following enrolled bill:

H.R. 8803. A bill to amend the National Trails System Act, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore.

HOUSE BILL REFERRED

The following bill was read twice by title and referred as indicated:

H.R. 10551. An act to extend for 1 year the authority of the Commissioner of Education to waive provisions of title I of the Elementary and Secondary Education Act for certain local educational agencies; to the Committee on Human Resources.

ORDER FOR HOUSE JOINT RESOLUTION 746 TO BE HELD AT THE DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that House Joint Resolution 746, making urgent power supplemental appropriations for the Department of Energy, Southwestern Power Administration for

the fiscal year ending September 30, 1978, be held at the desk pending further disposition.

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

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

S. 1699. A bill to provide energy conservation by alleviating current and continuing fuel waste, to reduce empty vehicle movements, and to increase efficiency in transporting goods by motor carriers which will ultimately benefit consumers, and for other purposes (Rept. No. 95-674). Referred to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

James V. Serio, Jr., of Louisiana, to be U.S. marshal for the eastern district of Louisiana.

(The nomination from the Committee on the Judiciary was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs:

Gloria Cusumano Jimenez, of North Carolina, to be Federal Insurance Administrator, Department of Housing and Urban Development.

(The nomination from the Committee on Banking, Housing, and Urban Affairs was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. HAYAKAWA (for himself, Mr. CURTIS, Mr. HANSEN, and Mr. HATCH):

S. 2685. A bill to provide incentives to private enterprise to employ unemployed unskilled teenagers in urban property areas, and for other purposes; to the Committee on Human Resources.

By Mr. DOLE (for himself, Mr. CURTIS, Mr. HANSEN, Mr. LUGAR, and Mr. TALMADGE):

S. 2686. A bill to amend the Internal Revenue Code of 1954 to permit farmers to elect the year in which crop deficiency payments are to be included in income; to the Committee on Finance.

By Mr. EASTLAND:

S. 2687. A bill for the relief of Dr. Allen Joseph Cawley; to the Committee on the Judiciary.

By Mr. LUGAR (for himself and Mr. LEAHY):

S. 2688. A bill to amend the Comprehensive Employment and Training Act of 1973; to the Committee on Human Resources.

By Mr. FORD:

S. 2689. A bill for the relief of Puangpaka Vertrees and Puangtip Vertrees; to the Committee on the Judiciary.

By Mr. TALMADGE (for himself, Mr. DOLE, Mr. ALLEN, Mr. BARTLETT, Mr. CLARK, Mr. CULVER, Mr. EASTLAND, Mr. HAYAKAWA, Mr. HELMS, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. NUNN, Mr. STONE, Mr. TOWER, Mr. YOUNG, and Mr. ZORINSKY):

S. 2690. A bill to provide emergency assistance to producers of wheat, feed grains, upland cotton, and soybeans, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. WILLIAMS (for himself, Mr. CHURCH, Mr. DOMENICI, Mr. BROOKE, Mr. SPARKMAN, Mr. CHILES, Mr. HEINZ, Mrs. HUMPHREY, Mr. RIEGLE, Mr. DECONCINI, Mr. BIDEN, Mr. ANDERSON, Mr. CRANSTON, and Mr. GLENN):

S. 2691. A bill to provide for the furnishing of congregate housing services under the United States Housing Act of 1937; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. JACKSON (by request):

S. 2692. A bill to authorize appropriations for the civilian programs of the Department of Energy for fiscal year 1979, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2693. A bill to authorize appropriations for the Department of Energy for national security programs for fiscal year 1979, and for other purposes; to the Committee on Armed Services and the Committee on Energy and Natural Resources, jointly, by unanimous consent.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HAYAKAWA (for himself, Mr. CURTIS, Mr. HANSEN, and Mr. HATCH):

S. 2685. A bill to provide incentives to private enterprise to employ unemployed unskilled teenagers in urban property areas, and for other purposes; to the Committee on Human Resources.

YOUTH EMPLOYMENT INCENTIVE AND BONUS ACT OF 1978

● Mr. HAYAKAWA. Mr. President, I believe my deep concern with the extremely high unemployment rates among white and black teenagers is by now common knowledge. In discussing this problem I bring to this subject an area of professional concern. I have been a teacher all my life, and one of the overriding concerns in my life has been how to develop boys and girls into young men and women? How do young people, in other words, mature? What is the maturation process by means of which adults are created out of children. Young men and women in their teen years are psychologically ready to carry out adult responsibilities and to do their share of whatever needs to be done in the world.

As I pointed out on previous occasions, there exist all kinds of work which could be done by teenagers but we have laws against their participation in a great number of activities. In our society every type of work is organized under elaborate structures of job eligibility. No matter how eager educators, or parents, or children are for the maturing experiences of a first job, the road is all too often closed.

Of course the Government is aware of this problem, and it has tried to deal with the issue in typical governmental fashion. All sorts of nice things have been said about organized youth programs, in which the Government would hire hundreds of thousands or millions of young people.

I believe that such programs should exist, but I do not believe we can ever make a program big enough to take care entirely of all our country. We are pouring billions into programs now. Their effectiveness has not yet been clearly established. What are we going to get as a result of hundreds of thousands of young people learning very, very early in life that the thing to do is to go to the Government for a job? Are they going to go to the Government for a job for the rest of their lives?

The Comprehensive Employment and Training Act is coming up for reauthorization this session and the National Council on Employment Policy has just issued a pertinent statement. The Council recommends the continuation of CETA but it also believes that the act ought to be revised. In its analysis of the private sector involvement, the Council offers an interesting commentary—

> Rhetoric and good intentions notwithstanding, CETA has not successfully tapped the resources of the private sector labor demand any more than prior manpower efforts. Program operators have had difficulty placing many CETA clients in jobs where they have attempted to set up work experience situations. Many factors have accounted for these problems. CETA has operated in a high unemployment economy. Rigid legislative and regulatory requirements have limited prime sponsors in making arrangements with private sector interests.

The Council then makes the following recommendation:

> Where it is feasible and not self-defeating or inequitable, private sector involvement should be encouraged. This should be done using a variety of strategies, including provisions for experimentation with wage subsidies beyond that which is already permitted under the Youth Employment and Demonstration Projects Act. Whatever is done should be accomplished in such a way as to minimize administrative complexity.

I believe my youth employment and social bonus bill, which I am introducing today fully implements this recommendation. If passed by Congress, it will be instrumental in bringing private enterprise into some of the most depressed areas of the United States. The bill gives the Secretary of Labor authority to select 10 urban poverty areas and to conduct demonstration projects in order to test the feasibility of the payment of a social bonus to business enterprises which have employed eligible youth for at least a year. The bill also includes stringent provisions against the displacement of currently employed workers.

In my judgment, this recommended new approach has at least three great benefits. First, it reduces governmental involvement. Second, because the social bonus will only be accorded after a successful employment record has been

established, there will be no experimental costs to the taxpayer. And third, a portion of the proposed bonus will be compensated by increased tax receipts and reduced welfare payments. I therefore hope that my colleagues in the Senate will join me in quickly passing this significant piece of legislation.●

By Mr. DOLE (for himself, Mr. CURTIS, Mr. HANSEN, Mr. LUGAR, and Mr. TALMADGE):

S. 2686. A bill to amend the Internal Revenue Code of 1954 to permit farmers to elect the year in which crop deficiency payments are to be included in income; to the Committee on Finance.

● Mr. DOLE. Mr. President, the Food and Agriculture Act of 1977 extended authority for crop deficiency payments granted in the Agricultural Consumer Protection Act of 1973. Deficiency payments are made when the average price received by the farmer during the first 5 months of the marketing year for wheat and feed grains is below the target price set in the law. The payment is equal to the difference between the average price and the target price, but may not exceed the difference between the target price and the price support loan level.

Because of higher market prices in the first 3 years of the program, deficiency payments were not made until last year. However, the lack of experience administering the program until last year has delayed a needed correction. Today, I am introducing legislation to correct this inequity.

Mr. President, in early January, I wrote Secretary Blumenthal detailing the tax problems associated with these deficiency payments. It seems that some farmers will be faced with paying taxes on income received in 1978 although earned in 1977, and conversely some farmers are experiencing a bunching of income problem by receiving the income in 1977 which, for tax planning purposes, was designed to be included in 1978.

My bill would allow farmers to elect which year to include the payments as income. The Federal Government will collect the taxes, however, the farmers will have greater flexibility. This proposal has precedent. In the Tax Reform Act of 1976, Congress provided a similar election to farmers receiving crop disaster payments.

Mr. President, I think all of our colleagues in the House are aware of this tax problem and the economic plight faced by the farmer. The Senator from Kansas hopes the Senate can respond with equal concern.

I ask unanimous consent that the contents of the letter to Secretary Blumenthal and the text of my bill be inserted in the RECORD at this point.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

S. 2686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 451 of the Internal Revenue Code of 1954 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(f) Special Rule for Certain Crop Deficiency Payments.—

"(1) In general.—In the case of amounts received as payments (commonly referred to as deficiency payments) under the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect—

"(A) in the case of such amounts received in the crop year, to include such amounts in income for the taxable year following the taxable year with or within which the crop year ends, and

"(B) in the case of such amounts not received in the crop year, to include such amounts in income for the taxable year preceding the taxable year of receipt.

"(2) Crop year receipts.—An amount received as a deficiency payment under such Act shall be treated as received in the crop year only if it is received in the calendar year in which the crop, in connection with which such payment is made, is harvested.".

(b) The amendment made by this section shall apply with respect to taxable years beginning after December 31, 1976.

JANUARY 10, 1978.

Hon. W. MICHAEL BLUMENTHAL,
Secretary, Department of the Treasury, Washington, D.C.

DEAR MR. SECRETARY: I have received complaints from farmers regarding the tax treatment of U.S. Government deficiency payments for the 1977 wheat crop. The farmer legislation directs a payment to be made to farmers when the average market price of the first five months of the marketing year falls below the stipulated target price. The price was below the target price for the 1977 crop wheat and thus a payment due.

Wheat farmers were told what the payment rate would be and checks were sent to some farmers starting the first of December 1977. The process of issuing the checks to farmers has been complicated by changing the formula for disaster payments in the middle of the crop year so that two calculations had to be made in each county where farmers suffered crop disasters in order to determine whether a farmer would get more under the old formula or the new legislation formula.

At present in Kansas, about 80 percent of the farmers have received deficiency payments. Those remaining to be paid are faced with checks dated in 1978 for payments on the 1977 crop. I am told by these farmers that their local I.R.S. offices tell them that, for tax purposes, those checks must be filed as income in the year in which the checks were issued.

It seems very unfair to treat some farmers one way and other farmers differently for taxing government payments on the same crop. Wheat farmers have suffered an economically disastrous year and need to have the opportunity to apply these government payments to their 1977 taxable income.

Mr. Secretary, I would appreciate your looking into this matter and taking necessary steps to correct this injustice. I would appreciate an early reply as farmers are now computing their income taxes for 1977.

Sincerely yours,

BOB DOLE,
U.S. Senate.●

By Mr. LUGAR (for himself and Mr. LEAHY):

S. 2688. A bill to amend the Comprehensive Employment and Training Act of 1973; to the Committee on Human Resources.

INTEGRATED PEST MANAGEMENT ENCOURAGEMENT AND YOUTH EMPLOYMENT ACT

● Mr. LUGAR. Mr. President, today I am introducing, along with my colleague Senator LEAHY, a bill which will address two critical problems now facing our country. The first involves undertaking a serious effort to strike a more reasonable balance between legitimate environmental concerns and an equally valid interest in increasing agricultural production. Nowhere is this conflict more pronounced than in the area of the agricultural use of pesticides. The bill I am introducing, by encouraging the use of integrated pest management, will limit the excessive application of pesticides while maximizing agricultural production through the prudent use of chemical pesticides in conjunction with nonchemical pest control methods.

The second problem addressed in my bill is youth unemployment. The absence of effective integrated pest management systems has resulted primarily from a lack of trained personnel who can undertake these labor intensive activities. By including this important activity as one which unemployed youth can undertake pursuant to existing youth employment programs, it is possible to provide constructive jobs, to minimize environmental damage from pesticides, and to assure maximum agricultural production.

Mr. President, pesticides play a critical role in the production of our Nation's food and fiber. About 700 million pounds of active pesticide ingredients are currently used for agricultural purposes, according to unofficial U.S. Department of Agriculture estimates. This represents over one-half of all the active ingredients sold last year.

The use of pesticides in agriculture increases total food and fiber production by about 10 percent—a substantial amount by anyone's standards. Unfortunately, some of these pesticides are potentially harmful to the environment if used or applied improperly. Government regulation of pesticides is necessary in order to assure a reasonable balance between the benefits and the costs of these products.

The difficulty in resolving these issues is evidenced by the fact that Congress has struggled without success with the Federal Insecticide, Fungicide and Rodenticide Act since a major change in the law of 5 years ago. Fortunately the Senate has passed a comprehensive revision of the present FIFRA law, S. 1678, on July 29, 1977, which provides a delicate balance in resolving these issues.

Even though S. 1678, if it becomes law, would solve some of the thorniest issues of pesticide regulation, it is only an interim solution. Farmers, in the near future, could be forced to reduce chemical use for two important reasons—the economics of extensive pesticide use and the need to maintain environmental quality.

Most pesticides are made from petrochemicals. Consequently, over 50 percent of the cost of making these chemicals is tied directly to the cost of energy. As the price of crude oil escalates and

farm profits decline due to low prices and increasing production costs, farmers will have no choice but to reduce the level of chemical pesticides used.

In addition to the questions of pure economics, there are the long-term considerations of pest resistance to chemicals and environmental health risks. The Agricultural Research and General Legislation Subcommittee of the Agriculture, Nutrition and Forestry Committee expressed its concern with these factors by holding 2 days of hearings last year on October 31 and November 1. We heard testimony about the potential of integrated pest management from responsible members of the environmental, agricultural and scientific communities. Their conclusions attest to the need for integrated pest management as a safe and reliable method of pest control. The ability of pests to develop resistance to pesticides continues to be a drawback to the use of conventional chemical control. While spraying may eliminate, initially, target pests, it often results in the elimination of natural predators during the spraying season. The result is twofold: increased spraying to replace natural controls and alternative pesticides which might be more potent and which, eventually, may also prove to be ineffective.

The more conventional problems, of course, are the human risks associated with pesticide use. The Environmental Protection Agency's assessment of data over the last several years has shown that some of the chemicals tested are highly toxic in nature, that they accumulate in the food chain, interfere with bone development in "higher life forms" and persist in the soil for decades.

Of the many problems that face policymakers, few involve solutions that solve a large number of concerns at once. In this situation, however, there is a solution that meets these criteria—integrated pest management. Integrated pest management, or IPM, is a crop management system that employs a combination of techniques and materials to control a wide variety of agricultural pests in the most cost-effective way. It also protects the quality of the environment by limiting the damage caused by chemical pesticides to the maximum extent possible. IPM is a systems approach to minimizing pest damage to crops which contemplates the use of certain amounts of chemical pesticides but also utilizes other means of control, including biological methods, cultural practices, and plant breeding. To describe in detail what IPM really is, I would like to submit a recent USDA Extension Service bulletin entitled, "Integrated Pest Management Saves Dollars and Environment," and I ask unanimous consent that it be printed in the RECORD following my statement.

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

(See exhibit 1.)

Mr. LUGAR. An additional and very important benefit of IPM is the potential for meaningful employment of the youth of our country to serve as "scouts" as described in the USDA bulletin. Too often, Federal programs directed at increasing employment produce makework jobs for the untrained which offer no chance of building self-confidence, good work habits, or personal skill levels.

A critical element of IPM is determining the population count of different types of pests affecting a crop at different time intervals. Such data needs to be provided with accuracy since IPM uses control measures only when pest numbers reach certain levels which are determined by scientists. The actual checking of crops for pests or evidence of pest damage must be done by a team of people physically walking the fields and conducting a count.

This outdoor activity is not only healthful, but it also seems to be an activity uniquely suited for younger Americans. The recruitment and training of large numbers of these "scouts," therefore, is essential for the widespread adoption of IPM procedures.

Mr. President, as we consider the desirability of IPM and the need to provide large numbers of workers to implement these programs, I would like to direct your attention for a moment to the serious problem of youth unemployment, with particular emphasis on the lack of jobs for rural youth. A successful solution to the overall unemployment problem must consist of several component parts, each of which will require a different solution. A small percentage of the current unemployment level is considered cyclical unemployment. A larger percentage, however, is structural unemployment which is caused by labor force skills and behavior that are not appropriate for available employment opportunities, or those that flow naturally from an improving economy. A solution to this problem will require sharply focused programs. We are all heartened by the recent improvement in the number of unemployed Americans, but it is shocking to note that more than half of those presently unemployed are persons aged 16 to 24. In light of the disproportionate burden of unemployment borne by them, it is appropriate to concentrate our efforts on the special unemployment problems of youth and minorities.

Recent Department of Labor statistics showed a 15.4-percent unemployment rate among teenagers. It is of major importance that we focus our efforts on a quick and effective response to this unsatisfactory condition. An innovative approach, I feel, would be to target some efforts toward an often overlooked group, rural teenagers, while not excluding the possibility of employing urban youths in a rural environment.

Last year, during the debate on Comprehensive Employment and Training Act legislation, my distinguished colleague from Oklahoma, Senator HENRY BELLMON, recalled legislation which he had introduced 2 years ago which would have made it possible for urban youth to accept farm employment. He introduced an amendment to the CETA bill which would allow an intraagency agreement between the Secretary of Labor and the Secretary of Agriculture to identify urban youths who seek jobs on farms and match them with farmers in need of assistance. The bill I am introducing today has a similar thrust but is more specific in its attempt to allow youth, especially those in rural areas, to be identified and employed in an agricultural setting.

The Integrated Pest Management Encouragement and Youth Employment Act allows unemployed youth to receive training and meaningful employment associated with integrated pest management activities under the Young Adult Conservation Corps, established last year as a part of the CETA program, and under other CETA projects. This will not only save farmers dollars and improve environmental quality, but will allow young Americans to be employed in a way that will give them expertise which they can use in finding employment in the private sector.

The Subcommittee on Agricultural Research and General Legislation of the Senate Agriculture, Nutrition and Forestry Committee, of which I am a member, heard testimony on IPM last fall. After listening to the expert testimony I am excited about the potential of IPM. As the subcommittee continues to press to discover ways to extend the use of IPM in farming, under the leadership of the distinguished Senator from Vermont, Senator PATRICK LEAHY, I believe that this bill provides an important starting point.

EXHIBIT 1

INTEGRATED PEST MANAGEMENT SAVES DOLLARS AND ENVIRONMENT

Cash gains for farmers . . . savings for consumers . . . a better environment for all of us . . . may come out of a new approach called "integrated pest management," or "IPM" for short.

IPM IS NEW

What is integrated pest management? It's a system that relies heavily on "scouts" going into the farmer's fields to examine crops and check on—or predict—the number of plant pests. Insect populations are always determined in scouting, but other pests, such as weeds, nematodes, and disease organisms, can be included.

Expert agricultural consultants then consider existing or predicted pest numbers, along with data on local weather, expected yield, harvest dates, etc. They put all the available information together into an integrated management system and come up with scientific and management advice for growers on the best strategies for suppressing the crop pests effectively and economically.

IPM must be tailored for each farmer. Consultants advise the farmer on how to use the least possible amount of pesticides required to control the pests in his crop, and suggest other management practices that will minimize crop losses from pests.

That's good for our total environment, too.

IPM means dollar savings for the farmer in buying pesticides, and lower costs for the labor, equipment, and fuel to apply them. For consumers, IPM could lead to lower food costs as farmers' savings are passed along.

PEST MANAGEMENT IS NOT NEW

For many years farmers rotated their crops, treated them with pesticides, and did what they could to eliminate or at least reduce pest damage. But they usually did not have adequate knowledge of pests or available technology.

Too often, they've used heavy, repeated applications of pesticides that created still more problems. Often they applied pesticides according to the calendar, without knowing whether pests were serious or even present in their fields. (Pest outbreaks are not uniform in a community, and differ from field to field even on the same farm.)

Some pests built up resistance to chemicals. Secondary insect and weed pests emerged. And unnecessary amounts of pesticides were introduced into the environment. Too much pesticide, wrong timing, and mixes that kill beneficial as well as pest organisms have cost farmers and the rest of us—financially and environmentally.

HOW IPM WORKS

Three keys to a successful integrated pest management program are *prevention, monitoring,* and *control.*

Prevention includes rotating crops, destroying plant residues that can harbor pests, conserving natural enemies of pests by selective use of pesticides, planting resistant crop varieties, and other cultural practices.

Monitoring uses scouts in the field to check plants, animals, and soil for pests. Scouting fields can be supplemented by improved pest forecasting, using knowledge of weather, crop history and growth, and pest behavior and development.

Control includes using chemical treatment only when necessary to prevent economically important damage to the crop. It includes saving beneficial insects that may help destroy the pests that damage crops. The purpose is not to get rid of all pests but to hold damage to an economically acceptable level. Control includes planning to prevent or reduce pest populations later in the year, on the next crop, or in an adjoining field.

PILOT PROJECTS

The IPM idea has been widely demonstrated in recent U.S. Department of Agriculture (USDA) sponsored pilot projects in more than 30 states. IPM is gaining acceptance and is being put to practical use in most states.

In 1971, USDA began pilot projects to demonstrate to farmers and others that crop pests can be controlled at less cost and more efficiently through an IPM program.

IPM started with two projects—one in North Carolina on tobacco insects and another in Arizona on cotton insects. Since then, there have been more than 50 projects on 23 crops, and two projects involving livestock pests.

Accurate records are kept for each field. In some states all the known data from a farmer's field goes into a central computer, usually at the state land-grant university where the Extension pest management specialist is headquartered.

In Indiana, for example, weather data from all over the state is automatically and continuously recorded by the Purdue University campus weather station. This data, along with the count of insect numbers, is used to predict increases of alfalfa insects. If it looks as if weevils are increasing, the pest management specialist informs the county agent, who then advises the farmer to spray for weevils, or to cut hay—an alternate control method—depending on the stage of alfalfa growth and weather forecasts.

Farmers like the IPM program. One farmer said there aren't enough hours in the day for him to check his many acres of corn for insects and weeds. Besides, he said he isn't always sure what to look for. Farmers feel this is so for pests on many crops.

A Michigan apple grower now sprays only when insect and disease problems are predicted, instead of by the calendar. Ground cover under the trees is managed to conserve natural enemies of pest mites.

A pear grower in California, through careful and reduced use of pesticides, has saved thousands of dollars a year since he joined the program. He applies insecticides, miticides, and fungicides only when they're needed.

Oklahoma, Virginia, and other states are using mobile diagnostic laboratories to help farmers identify pests. These labs put the pest management specialist, equipped with modern scientific equipment, directly into the field, saving valuable time, as problems can be diagnosed on the spot.

An Oklahoma county Extension agent said IPM has helped increase peanut yields by as much as 600 pounds an acre on farms participating in the program in his county.

Farmers are not the only users of IPM. A number of Maryland commercial sweet corn processors employ scouts and "black light" traps to check fields of contracted sweet corn for insects. Maryland soybean farmers are using a tiny parasitic wasp grown in a nurse crop of early planted beans on their farms. The wasps spread to other fields from the nurse crops and kill the Mexican bean beetle. This program has been so successful that these farmers seldom spray pesticides.

Costs for scouting or monitoring fields for pests may be as low as $2 per acre for grain sorghum and corn. For crops such as vegetables, tobacco, and fruit trees, costs can be as high as $25 an acre if insects, diseases, weeds, and nematodes are monitored. These programs are financially sound for farmers because IPM is designed to manage key pest problems for each farmer.

IPM educational programs have stimulated interest in, and increased, the number of private consultants offering IPM advisory services. Also, many farmers' cooperatives now offer IPM services.

BENEFITS OF IPM

Farmers who use IPM discover many benefits. Here are some of them . . .

Yields are maintained at the expected level, or have actually increased, compared with those where conventional spray programs are used. In situations where pests once were not being effectively controlled, farmers now have increased yields and profits.

Natural enemies of the pests are conserved or increased in the fields.

Net profits to farmers increase more than enough to offset the cost of IPM advisory services.

Sprays are timed for maximum effectiveness.

Pesticide resistance and secondary pest resurgence problems are minimized.

The benefits of introducing fewer pesticides into the environment are obvious and are praised by farmers and the public. There is less potential for pesticide contamination of crops, soil, and water, and less exposure of people to pesticides.

A PROMISING FUTURE

What about the future? Some think IPM will do away with pesticides. This is not the case. Pesticides will be around for a long time and are essential to producing the food and fiber this country needs. For most crops, pests cannot be managed without highly effective pesticides. What IPM has done is demonstrate that there are better ways to use pesticides. It has also helped reduce the amount of pesticides being used on farms.

Pest problems will change over the years, and as they change, IPM programs must change too. The race between population growth and food and fiber production has led to a tremendous intensification of agriculture. As pesticides become fewer and more expensive, integrated pest management is helping farmers stay in the race.

Farm use of IPM will expand rapidly in the next few years. The Cooperative Extension Service, the State Agricultural Experiment Stations, and the U.S. Department of Agriculture are conducting research and educational programs to improve IPM.

The Cooperative Extension Service can teach the principles of IPM to farmers. Extension also works closely with farmer cooperatives, commercial agricultural consultants, and industries interested in providing farmers with IPM advisory services.

Consult your county agricultural Extension office for more information about IPM programs in your area.●

By Mr. TALMADGE (for himself, Mr. DOLE, Mr. ALLEN, Mr. BARTLETT, Mr. CLARK, Mr. CULVER, Mr. EASTLAND, Mr. HAYAKAWA, Mr. HELMS, Mr. HOLLINGS, Mr. HUDDLESTON, Mr. MATSUNAGA, Mr. MCGOVERN, Mr. NUNN, Mr. STONE, Mr. TOWER, Mr. YOUNG, and Mr. ZORINSKY):

S. 2690. A bill to provide emergency assistance to producers of wheat, feed grains, upland cotton, and soybeans, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EMERGENCY AGRICULTURAL ACT OF 1978

Mr. TALMADGE. Mr. President, I am today introducing in behalf of myself, the ranking minority member of the Committee on Agriculture, Nutrition, and Forestry, Senator DOLE, several members of our Committee, and a number of other Senators, the Emergency Agricultural Act of 1978.

For the past several months, it has become increasingly evident that American agriculture is in the throes of a growing economic crisis unrivaled since the Great Depression of the 1930's.

Farmers are caught in a savage squeeze between falling prices, rising production costs, and huge overhanging surpluses.

Farm debt is near an all-time high and rising, while net farm income, when adjusted for inflation, is nearing a post-depression low and falling.

A great many farmers throughout the country face outright bankruptcy. Many are without finanical resources to plant this year's crops.

These are the grim facts of economic reality that the Committee on Agriculture, Nutrition, and Forestry has heard, reheard, and heard again from hundreds of witnesses during the past 2 weeks of hearings.

Further discussion—indeed, further hearings—are not necessary to bring the message home. American farmers are in deep, desperate trouble. They need help urgently and they need it now.

On Januray 23, even before our committee began the current hearings on the agriculture crisis, I called upon the President and the Secretary of Agriculture to exercise discretionary authority that Congress wrote into the 1977 Farm Act to give emergency assistance to farmers.

Despite repeated urgings, the administration has declined to use the tools it now has to act in the emergency.

I deeply regret and deplore this failure.

Time has now run out. Preparations for spring plantings already have begun in the southern part of my State and will proceed rapidly in the next few days and weeks throughout the Southeast, the Midsouth, and south Texas.

We can wait no longer on an uncertain and hesitant administration.

It is now up to Congress to take the initiative—and to do so at once—to avert disaster.

Today, Senator DOLE and I are introducing emergency legislation that we hope can be rushed through the Congress in time to assist farmers in planting and harvesting this year's crop. Several other members of the Senate are joining us in the sponsorship of this legislation.

The bill being introduced will require the Secretary of Agriculture to implement immediately a land retirement program under which farmers will be paid to withhold from production cropland that otherwise would be harvested or planted in wheat, corn, grain sorghums, barley, cotton, and soybeans.

The bill will provide for the retirement through a 1-year paid set-aside of not less than 31 million acres, with total payments estimated at $2.3 billion based on a per-acre average of $75. The set-aside payments would be largely offset by reduced deficiency payments, and the cost to taxpayers could prove minimal.

In the case of wheat and feed grains farmers would be required to make additional set-asides of acreage over and above those already announced in order to qualify. They would then be eligible for payments on the additional set-aside acres.

The bill provides that approximately one-half of a farmer's set-aside payment would be made as soon as the contract is signed. It also requires the Secretary to issue regulations to protect the rights of tenants and sharecroppers in order to assure their participation in the program. Payment limitations in the 1977 act would not apply to the emergency set-aside program.

Furthermore, the bill requires the Secretary to administer the program in such a way as to minimize destruction of crops already planted. It also requires him to limit total acreage in any county or community so that the local economies would not be unduly affected.

This emergency legislation would have several beneficial effects, most of which would be left by farmers and by farm communities in the immediate future.

It will put urgently needed dollars in the pockets of farmers and make it possible for many whose future is now in doubt to make this year's crop.

It will pump up the rural economy which, in turn, would have a rapid spillover from the agribusiness sector to the total economy.

It will reduce surplus stocks which otherwise will be increased to even greater unmanageable levels after this year's harvests.

It will stimulate cash and future prices for the covered commodities through a lowering of 1978 crop prospects.

It will serve notice on representatives of other nations participating in the Geneva Conference that the United States intends to bring its grain stocks into line and thus encourage them to begin serious and realistic negotiations.

Through the stimulation of market prices, the legislation's objectives are to achieve a market price of $3.50 per bushel for wheat, $2.50 for corn, with comparable increases for other grains, 60 cents a pound for cotton, and $6 a bushel for soybeans.

The production and supply objectives are to reduce this year's wheat harvest by at least 15 million acres above the existing 20 percent set-aside and to reduce carryover from 1.210 million bushels to about 600 million.

For corn, the objective is to reduce plantings by an additional 10 million acres above the announced 10 percent set-aside. Carryover would be reduced from 1.132 million bushels to about 400 million.

For cotton, the objective is to reduce acreage by 3 million acres and the carryover from 5.8 million bales to around 3 million.

Finally, for soybeans the objective is to cut plantings by 3 million acres in order to maintain a market balance and discourage an excessive shift from other crops.

In addition to the paid set-aside program, the bill contains two other features.

First, it incorporates key provisions of pending amendments to the Farmers Home Administration to liberalize the agency's farm lending authority. Second, it will increase the lending authority of the Commodity Credit Corporation to $25 billion.

I believe the bill being introduced today offers the most feasible legislative approach for giving farmers immediate relief.

It is a relatively simple and straightforward approach. It does not attempt to make major changes in the 1977 act or to write a new farm act altogether.

A number of bills have been introduced that would do both of these things. Most of them have to do with changing existing loan and target levels. But there is wide disagreement even among farmers and farm groups, as well as among congressional proponents, on these questions. I do not believe they can be resolved within the time frame under which we must operate.

This does not mean that legislation to amend the existing Farm Act or to strike out in new directions cannot, or will not, be considered at this session. Indeed, I expect this to take place.

But time is of the essence.

We need to move immediately to help farmers this year before their crops are in the ground and while there is still time to alter planting intentions.

I hope that with a crash effort we can move this legislation through the Congress and have it on the President's desk within 2 or 3 weeks.

Under the most ideal circumstances, I realize that this would be a difficult timetable. I realize also that the present legislative situation is complicated by the Panama Canal debate in the Senate and the likelihood that Congress may be asked to consider other emergency legislation dealing with the coal crisis.

But we have a farm crisis as well as a coal crisis.

The economy already has been damaged severely by both of these crises. Each requires emergency attention.

It is my hope that the Senate Committee on Agriculture, Nutrition, and Forestry will promptly report my emergency farm bill. Certainly I hope this will occur not later than our scheduled meeting on March 15.

Because of the urgency and immediacy of the farm crisis, I shall ask the leadership of the Senate to lay aside the Panama Canal treaties as soon as this legislation is reported so that it may be considered promptly.

I also have asked the chairman of the House Agriculture Committee to be prepared to move expeditiously in the other body as soon as the Senate has acted.

I intend to leave no stone unturned in the effort to pass emergency farm legislation. I urge every Member of the Congress to lend their support to this effort. To do less would be to turn our backs on the farmers of the country who are looking to Congress as their last hope.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 2690

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Agricultural Act of 1978".

ADDITIONAL SET-ASIDE PROGRAMS FOR THE 1978 CROPS OF WHEAT, FEED GRAINS, UPLAND COTTON, AND SOYBEANS

SEC. 2. Effective only with respect to the 1978 crops, title I of the Agricultural Act of 1949 is amended by adding at the end thereof new sections 112 through 115 as follows:

"1978 WHEAT PROGRAM FOR ADDITIONAL SET-ASIDE

"SEC. 112. Notwithstanding any other provision of law—

"(a) The Secretary shall formulate and carry out a program for the 1978 crop of wheat under which payments shall be made to producers on a farm who, in addition to making any required set-aside of acreage under section 107A(f) of this Act and to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with contracts entered into by the Secretary with such producers. The amounts payable to producers may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers and the rate of payment under contracts entered into under this section, the Secretary shall take into consideration the productivity of the acreage to be set aside under this section, the extent of the cropland to be set aside under this section, and the total acreage of cropland set aside from the production of wheat under this Act.

"(b) The total acreage of cropland set aside from the production of wheat under this section shall be the amount necessary to adjust the total national acreage of wheat to desirable goals, as determined by the Secretary, but in no event less than 15,000,000 acres. Notwithstanding the foregoing sentence, the Secretary shall limit the total acreage to be set aside under this section in any county or local community so as not to

affect adversely the economy of the county or local community.

"(c) The acreage set aside under this section may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies. The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentence. The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

"(d) As a condition of eligibility for participating in the program formulated under this section, producers must set aside any acreage of cropland required to be set aside under section 107A(f) of this Act.

"(e) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

"(f) The payment limitation provisions of section 101 of the Food and Agriculture Act of 1977 shall not be applicable to the program formulated under this section.

"(g) If the operator of the farm desires to participate in the program formulated under this section, the operator shall file a contract to do so no later than such date as the Secretary may prescribe. The Secretary may, by mutual agreement with the producers, terminate or modify any contract entered into under this section if the Secretary determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of agricultural commodities.

"(h) Not to exceed 50 percent of any payment to producers under subsection (a) of this section shall be made in advance of determination of performance.

"(i) In any case in which the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of payments, the Secretary may, nevertheless, make such payments in such amounts as the Secretary determines to be equitable in relation to the seriousness of the default.

"(j) The Secretary is authorized to issue such regulations as the Secretary determines necessary to carry out the provisions of this section. Insofar as practicable, the Secretary shall administer the program formulated under this section in such a manner as to avoid the destruction by producers of wheat planted for harvest. In this connection, the Secretary may permit producers to graze and harvest hay from acreage set aside under this section.

"(k) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

"1978 Feed Grain Program for Additional Set-aside

"SEC. 113. Notwithstanding any other provision of law—

"(a) The Secretary shall formulate and carry out a program for the 1978 crop of corn, grain sorghums, and barley under which payments shall be made to producers on a farm who, in addition to making any required set-aside of acreage under section 105A(f) of this Act and to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with contracts entered into by the Secretary with such producers. The amounts payable to producers may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers and the rate of payment under contracts entered into under this section, the Secretary shall take into consideration the productivity of the acreage to be set aside, the extent of the cropland to be set aside under this section, and the total acreage of cropland set aside from the production of feed grains under this Act.

"(b) The total acreage of cropland set aside from the production of feed grains under this section shall be the amount necessary to adjust the total national acreage of feed grains to desirable goals, as determined by the Secretary, but in no event less than 10,000,000 acres. Notwithstanding the foregoing sentence, the Secretary shall limit the total acreage to be set aside under this section in any county or local community so as not to affect adversely the economy of the county or local community.

"(c) The acreage set aside under this section may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies. The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentence. The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

"(d) As a condition of eligibility for participating in the program formulated under this section, producers must set aside any acreage of cropland required to be set aside under section 105A(f) of this Act.

"(e) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

"(f) The payment limitation provisions of section 101 of the Food and Agriculture Act of 1977 shall not be applicable to the program formulated under this section.

"(g) If the operator of the farm desires to participate in the program formulated under this section, the operator shall file a contract to do so no later than such date as the Secretary may prescribe. The Secretary may, by mutual agreement with the producers, terminate or modify any contract entered into under this section if the Secretary determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of agricultural commodities.

"(h) Not to exceed 50 percent of any payment to producers under subsection (a) of this section shall be made in advance of determination of performance.

"(i) In any case in which the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of payments, the Secretary may, nevertheless, make such payments in such amounts as the Secretary determines to be equitable in relation to the seriousness of the default.

"(j) The Secretary is authorized to issue such regulations as the Secretary determines necessary to carry out the provisions of this section. Insofar as practicable, the Secretary shall administer the program formulated under this section in such a manner as to avoid the destruction by producers of feed grains planted for harvest. In this connection, the Secretary may permit producers to graze and harvest hay from acreage set aside under this section.

"(k) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

"1978 Upland Cotton Program for Additional Set-aside.

"SEC. 114. Notwithstanding any other provision of law—

"(a) The Secretary shall formulate and carry out a program for the 1978 crop of upland cotton under which payments shall be made to producers on a farm who, in addition to making any required set-aside of acreage under section 103(f)(11) of this Act and to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with contracts entered into by the Secretary with such producers. The amounts payable to producers may be determined through the submission of bids for such contracts by producers in such manner as the Secretary determines appropriate. In determining the acceptability of contract offers and the rate of payment under contracts entered into under this section, the Secretary shall take into consideration the productivity of the acreage to be set aside, the extent of the cropland to be set aside under this section, and the total acreage of cropland set aside from the production of upland cotton under this Act.

"(b) The total acreage of cropland set aside from the production of upland cotton under this section shall be the amount necessary to adjust the total national acreage of upland cotton to desirable goals, as determined by the Secretary, but in no event less than 3,000,000 acres. Notwithstanding the foregoing sentence, the Secretary shall limit the total acreage to be set aside under this section in any county or local community so as not to affect adversely the economy of the county or local community.

"(c) The acreage set aside under this section may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies. The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentence. The Secretary may provide for an additional payment of such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

"(d) As a condition of eligibility for participating in the program formulated under this section, producers must set aside any acreage of cropland required to be set aside under section 103(f)(11) of this Act.

"(e) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

"(f) The payment limitation provisions of section 101 of the Food and Agriculture Act of 1977 shall not be applicable to the program formulated under this section.

"(g) If the operator of the farm desires to participate in the program formulated under this section, the operator shall file a contract to do so no later than such date as the Secretary may prescribe. The Secretary may, by mutual agreement with the producers, terminate or modify any contract entered into under this section if the Secretary determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of agricultural commodities.

"(h) Not to exceed 50 percent of any payment to producers under subsection (a) of this section shall be made in advance of determination of performance.

"(i) In any case in which the failure of a producer to comply fully with the terms and conditions of the program formulated

under this section precludes the making of payments, the Secretary may, nevertheless, make such payments in such amounts as the Secretary determines to be equitable in relation to the seriousness of the default.

"(j) The Secretary is authorized to issue such regulations as the Secretary determines necessary to carry out the provisions of this section. Insofar as practicable, the Secretary shall administer the program formulated under this section in such a manner as to avoid the destruction by producers of upland cotton planted for harvest. In this connection, the Secretary may permit producers to graze and harvest hay from acreage set aside under this section.

"(k) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

"1978 SOYBEAN SET-ASIDE PROGRAM

"SEC. 115. Notwithstanding any other provision of law—

"(a) The Secretary shall formulate and carry out a program for the 1978 crop of soybeans under which payments shall be made to producers on a farm who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with contracts entered into by the Secretary with such producers. The amounts payable to producers may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the cropland to be set aside by the producers and the productivity of such acreage.

"(b) The total acreage of cropland set aside from the production of soybeans under this section shall be the amount necessary to adjust the total national acreage of soybeans to desirable goals, as determined by the Secretary, but in no event less than 3,000,000 acres. Notwithstanding the foregoing sentence, the Secretary shall limit the total acreage to be set aside under this section in any county or local community so as not to affect adversely the economy of the county or local community.

"(c) The acreage set aside under this section may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies. The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentence. The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

"(d) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

"(e) If the operator of the farm desires to participate in the program formulated under this section, the operator shall file a contract to do so no later than such date as the Secretary may prescribe. The Secretary may, by mutual agreement with the producers, terminate or modify any contract entered into under this section if the Secretary determines such action necessary because of an emergency created by drought or other disaster, or in order to prevent or alleviate a shortage in the supply of agricultural commodities.

"(f) Not to exceed 50 percent of any payment to producers under subsection (a) of this section shall be made in advance of determination of performance.

"(g) In any case in which the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of payments, the Secretary may, nevertheless, make such payments in such amounts as the Secretary determines to be equitable in relation to the seriousness of the default.

"(h) The Secretary is authorized to issue such regulations as the Secretary determines necessary to carry out the provisions of this section. Insofar as practicable, the Secretary shall administer the program formulate under this section in such a manner as to avoid the destruction by producers of soybeans planted for harvest. In this connection, the Secretary may permit producers to graze and harvest hay from acreage set aside under this section.

"(i) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.".

INCREASE IN THE BORROWING AUTHORITY OF THE COMMODITY CREDIT CORPORATION

SEC. 3. (a) Section 4(i) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 b(i)) is amended by striking out "$14,500,000,000" and inserting in lieu thereof "$25,000,000,000".

"(b) Section 4 of the Act of March 8, 1938 (15 U.S.C. 713a-4), is amended by striking out "$14,500,000,000" and inserting in lieu thereof "$25,000,000,000".

FARMERS HOME ADMINISTRATION REAL ESTATE AND OPERATING LOANS—ELIGIBILITY AND LOAN LIMITS

SEC. 4. (a) The Consolidated Farm and Rural Development Act is amended as follows:

(1)(A) Section 302 is amended by—

(i) striking out the language down through the first comma and inserting in lieu thereof the following: "The Secretary is authoized to make and insure loans under this subtitle to farmers and ranchers, and to private domestic corporations and partnerships controlled by farmers and ranchers and engaged primarily and directly in farming or ranching, in the United States and in Puerto Rico and the Virgin Islands, who individually, or, in the case of corporations and partnerships, the principal stockholders or partners of which, (1) are citizens of the United States,"; and

(ii) inserting at the end thereof the following: "In the case of corporations and partnerships, the family farm requirement of clause (3) of the first sentence of this section shall apply to the farm or farms in which the entity and its principal stockholders or partners, as applicable, have an ownership and operator interest and the requirement of clause (4) of the first sentence of this section shall apply both to the entity and its principal stockholders or partners.".

(B) Section 304(a) is amended by striking out the word "individual."

(2)(A) Section 311(a) is amended by—

(i) striking out the language down through the first comma and inserting in lieu thereof the following: "The Secretary is authorized to make and insure loans under this subtitle to farmers and ranchers, and to private domestic corporations and partnerships controlled by farmers and ranchers and engaged primarily and directly in farming or ranching, in the United States and in Puerto Rico and the Virgin Islands, who individually, or, in the case of corporations and partnerships, the principal stockholders or partners of which, (1) are citizens of the United States,"; and

(ii) inserting at the end thereof the following: "In the case of corporations and partnerships, the family farm requirement of clause (3) of the first sentence of this subsection shall apply to the farm or farms in which the entity and its principal stockholders or partners, as applicable, have an operator interest and the requirement of clause (4) of the first sentence of this subsection shall apply both to the entity and its principal stockholders or partners.".

(B) Section 312(a) is amended by striking out the word "individual".

(b) The Consolidated Farm and Rural Development Act is further amended as follows:

(1) Section 305 is amended by striking out the first sentence and inserting in lieu thereof the following: "The Secretary shall make or insure no loan under sections 302, 303, and 304 of this title that would cause unpaid indebtedness under such sections of any one borrower to exceed the lesser of (1) the value of the farm or other security, or (2) in the case of a loan other than a loan guaranteed by the Secretary, $200,000 or, in the case of a loan guaranteed by the Secretary, $300,000. The Secretary is authorized to establish each year an amount or amounts of total unpaid indebtedness that may exist against the farm or other security, which shall apply with respect to loans made or insured during that year. Whenever such amount or amounts are in effect, the Secretary shall make or insure no loan under sections 302, 303, and 304 of this title that would cause the total unpaid indebtedness against the farm or other security at the time the loan is made to exceed the applicable amount.".

(2) Section 313 is amended to read as follows:

"LIMITATIONS AND PROHIBITIONS ON LOANS

"SEC. 313. The Secretary shall make or insure no loan under this subtitle (1) that would cause the total principal indebtedness outstanding at any one time for loans made under this subtitle to any one borrower to exceed, in the case of a loan other than a loan guaranteed by the Secretary, $100,000, or, in the case of a loan guaranteed by the Secretary, $200,000; or (2) for the purchasing or leasing of land other than for cash rent, or for carrying on any land leasing or land purchasing program.".

Mr. ALLEN. Mr. President, I appreciate the continued excellent leadership of my distinguished colleague, Senator TALMADGE, as chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and congratulate him upon the introduction of this land diversion bill and certainly wish to be listed as a cosponsor with the agreement of the chairman.

This bill can and will give emergency relief to our farmers and the agricultural sector of our economy, which is so desperately needed. It will serve as a transfusion to alleviate the financial anemia plaguing our farmers by the infusion of $1 billion in set-aside payments into their hands immediately. Time is of essence because it is planting time in Alabama and other parts of the South and Southwest. These farmers are standing by awaiting some signal from Washington as to what we intend to do to assist them out of the financial quagmire in which they find themselves through no fault of their own.

Extensive hearings on the state of American agriculture have been completed by the House Committee on Agriculture and will be completed by the Senate committee this Friday. During these hearings, it has become increasingly apparent that our greatest problem is excessive stocks of wheat, feed grains, and cotton. Planting intentions registered by our farmers indicate that the potential 1978 crop may add to these stocks by more large carryovers. Our country, the most efficient agricultural

producing nation in the world, is faced with the necessity of reduced production. This bill would make that possible by extracting some 31 million acres from production.

By reducing production we can, at the same time, raise the income of our farmers by increasing the value of their commodities at the market place, thus covering their cost of production and providing a fair return to the producer. On January 19, the first day of the second session of this Congress, I introduced S. 2392, legislation to increase target prices for cotton and corn. My bill would increase the target price for cotton to 60 cents per pound and for corn to $2.30 per bushel.

This bill introduced today by our chairman, would do the same thing through the route of a land diversion system with payments to our farmers who desire to take acreage out of production. The provisions of this legislation will not only give the farmer higher prices in the marketplace for their commodities, but will decrease excessive stocks now hanging over the marketplace driving ever downward prices received by the farmer.

It is important to note that this bill also contains emergency authority for the Farmers Home Administration to provide needed loans to our farmers and to the Commodity Credit Corporation to meet the provisions of this bill and to provide increased deficiency payments USDA may be called upon to make due to the current low prices on farm goods.

The President has asked for a $25-billion cut in Federal income taxes beginning October 1, of this year. Even now, some members of the Congress are talking in terms of increasing that figure to $34 billion.

Mr. President, I believe we could do more for our country, our farmers, and our consumers, by cutting this proposed reduction in Federal income taxes to $17 billion and putting the other $8 billion into the agricultural sector of our economy, which so desperately needs our help and on which every other sector of the economy depends. It has been estimated that this would be the cost if the administration would do everything it can do under the administrative authority provided by the 1977 farm bill. It is my hope that the administration will act upon this authority and that this bill as introduced by our chairman, will complement those actions which this body endorsed in Senate Resolution 393.

I enthusiastically endorse the bill as introduced by the distinguished Senator from Georgia, and am happy to become associated with it.

By Mr. WILLIAMS (for himself, Mr. CHURCH, Mr. DOMENICI, Mr. BROOKE, Mr. SPARKMAN, Mr. CHILES, Mr. HEINZ, Mrs. HUMPHREY, Mr. RIEGLE, Mr. DECONCINI, Mr. BIDEN, Mr. ANDERSON, Mr. CRANSTON, and Mr. GLENN):

S. 2691. A bill to provide for the furnishing of congregate housing services under the U.S. Housing Act of 1937; to the Committee on Banking, Housing, and Urban Affairs.

CONGREGATE HOUSING SERVICES ACT OF 1978

● Mr. WILLIAMS. Mr. President, in the 1970 Housing Act, Congress adopted provisions requiring the Secretary of Housing and Urban Development to encourage the development of low-income congregate housing for frail elderly and nonelderly handicapped individuals. Eight years later, these persons are still waiting for the fulfillment of that promise, for the number of congregate public housing projects in the country today can be counted on two hands. The Congregate Housing Services Act of 1978, which I am offering today, would provide local public housing authorities (LHA's) with the means to furnish necessary social services to frail and physically impaired project residents in a congregate setting, thus making congregate public housing a credible, working program, instead of just another good idea on paper. I am delighted and honored that a number of my distinguished colleagues have joined me in this endeavor.

Congregate housing may be defined as a residential environment which combines shelter with supportive social services so that individuals who are functionally impaired but not ill can maintain generally independent lifestyles, and thus avoid unnecessary, premature, and costly institutionalization, or burdensome placement with families or friends. Congregate housing services include a full meals program, personal care aid such as help with dressing and grooming, and housekeeping assistance. I want to emphasize, however, that congregate housing services are neither custodial nor medical, because congregate housing is not meant to offer a supervised environment in which residents receive round-the-clock care. Congregate housing with services is not institutional; it is residential, and its purpose is to assist those with decreased mobility or energy to retain the capacity for independent living to the greatest extent possible. In short, congregate housing is "housing with help."

A clear and growing need exists for the special kind of assistance that congregate housing with services can offer. Although young as well as elderly persons can benefit from congregate housing, it is among our senior citizens that it has the most significance due to the incremental impairments that the individuals suffer as part of the normal aging process. Nationwide, about 3.5 million senior citizens suffer some degree of mobility limitation. It is estimated that of these persons, 1 million or more are living alone or with nonrelatives and would most likely require congregate housing.

Equally important, the need for congregate housing is expanding rapidly because the proportion of our population aged 65 or more is growing so fast. From 1969–76, the total U.S. population increased 6.9 percent, while the number of people aged 65 and over increased 14.2 percent. From 1976 to 2000, the general population is expected to increase 23.3 percent, but the age group of 65 and over should climb by 33.4 percent. The post-75 age group is projected to grow the most rapidly—by 50 percent between 1970 and the year 1990. Naturally, as the population grows older, and, as a result, more and more people become less able to take full care of themselves, congregate housing with services must assume an increasingly important place among the housing choices offered to elderly people.

Congregate housing holds particular importance for the residents of public housing. Senior citizens alone comprise 40 percent of the heads of households in public housing projects. According to HUD, approximately 293,000 public housing residents are elderly, living in almost 10,000 projects designed for them, and their median age is above 71. Many of these persons have lived in public housing for years, and as they have grown older, many have suffered chronic disabilities that limit their daily activity.

Of the senior citizens now residing in public housing, the International Center for Social Gerontology estimates that approximately 40,000 require supportive services to remain independent, and could benefit from a congregate housing environment. No estimates exist on the number of nonelderly handicapped people living in public housing projects, but HUD spokespersons indicate that the number is not large. A percentage of these individuals would also be candidates for congregate housing.

Every day, in the absence of congregate public housing, elderly and handicapped project residents are removed from their units because their frailties and physical disabilities prevent them from living independently. Most are placed in nursing homes or other institutions. Those that cannot be located in institutions must find places with relatives or friends, who are usually ill-equipped financially or emotionally to handle the sudden, additional burden. The displacement of frail elderly and younger handicapped people from their units is especially tragic because it is often so unnecessary. As a result of our failure to develop a realistic housing option that recognizes the special, noncustodial service needs of these individuals, public and private institutions are crowded with people who do not belong there. A survey of nursing homes quoted in a 1975 report prepared for the Senate Aging Committee stated:

> . . . An astonishing number of the people should not be there at all. Every critical student of nursing homes has come to that conclusion, they vary only on the percentage of healthy patients. The U.S. General Accounting Office, after studying a sample of patients in Michigan, concluded that almost 80 percent (297 out of 378) did not require skilled nursing care. A 1971 study of New York City medicaid patients in nursing homes, by the State comptroller's office, found that from 53 to 61 percent of the patients did not need to be there. Daphne Krause of the Minneapolis Age and Opportunity Center, which has studied homes in that area, gave a figure of 30 to 40 percent. In Cleveland, the head of the nursing home medicaid program put the proportion of patients unnecessarily in homes under her jurisdiction at 90 percent.

Congregate housing with services can offer to many of our functionally impaired public housing residents a housing

arrangement midway between the total care situation of an institution, which they do not need, and a fully independent living environment, which they cannot maintain. Focusing her remarks on the elderly, Dr. Wilma Donahue of the International Center for Social Gerontology has written that—

> Congregate housing can extend significantly the period of time impaired, through not ill, older people are able to remain in the community enjoying the independence, autonomy, privacy, and social relationships that constitute the very essence of meaningful life.

To uproot people who with a little help could successfully function where they are, entails incalculable human costs. We can place no price tag on the anguish suffered by those who have been unnecessarily displaced, nor can we measure the irreparable loss that society experiences because it has been denied the contributions that these individuals could have made. However, there are other costs that we can measure and they are enormous. During fiscal year 1979, it is estimated that the Federal Government will spend $4.2 billion in medicaid, most of which is destined to cover the cost of nursing home care. The Social Security Administration estimates that the Federal share alone of maintaining an individual in a nursing home can reach as high as $5,500 a year. According to the International Center for Social Gerontology, we could provide congregate services to functionally impaired public housing residents for less than $1,000 a year. By maintaining people in nursing homes who do not belong there, the Federal Government is throwing away $4.50 for every dollar it could be investing to keep these same people independent in their own households.

Despite the almost universal acknowledgement of the benefits that congregate housing can offer, the program has been remarkably and regrettably unsuccesful. Ironically, the lack of success stems largely from the unique nature of congregate housing itself. Congregate housing is more than simple bricks and mortar, because for those who require such housing, shelter is not enough. A comprehensive package of social services must accompany the shelter or there can be no development of congregate public housing. The absence of continuously available social services lies at the roots of our failure in congregate public housing.

Among the most formidable barriers to the development of adequate social service packages are the service costs, the absence of commitments for the continued, long-term funding of services, the inaccessibility, unavailability, and fragmentation of existing services, and inappropriate service design and application.

The limited financial capability of public housing residents and LHA's prevents either from funding comprehensive social service packages. Now, it is true that some housing authorities are already providing some needed social services to their functionally impaired residents, drawing upon a combination of public and private resources, but these services are usually incomplete and inadequate, and they are rarely found in a congregate setting. LHA's must, therefore, turn to the private sector, or to Government sources on the local, State or Federal levels, to obtain the full range of social services their impaired residents need. But in doing so, they immediately find that existing programs cannot guarantee them long-term, continuous funding for services. Privately developed programs are often plagued by irregular and uncertain funding, and as a result, their contributions to functionally impaired public housing residents are generally inconsistent. Local, State, and Federal social service programs are subject to annual budget and appropriations processes, which fail to consider that the needs of frail elderly and younger disabled persons do not stop with the end of the fiscal year, but are constant and become more intensive as time passes.

The inability of existing social service programs to assure funding continuity has prevented the actual construction of new congregate public housing, and the adaptation for congregate living of existing public housing projects. The 1970 Housing Act requires that some or all of the units in congregate housing projects must be built without kitchens, and that the projects must be connected with congregate dining facilities fully equipped to prepare meals for congregate residents. This special kind of housing demands a commitment for service financing on a continuing basis. Otherwise, any interruption in service delivery would render the congregate units unlivable. Former U.S. Public Housing Commissioner Marie Maguire Thompson, testifying before the Senate Special Committee on Aging in October 1975, pointed out that

> No lender, either Government or banker, would risk an investment in a product when the major component cannot be reasonably assured.

Thus, virtually no congregate public housing projects have been constructed.

Some services, of course, such as housekeeping and personal care, do not require specially designed buildings. These services are delivered to functionally impaired residents within their own units. However, such services demand a long-term guarantee of funds if only because the people who need them must be secure in the knowledge that what they must have for independent living will be available to them as long as their need exists. It is intolerable that elderly and disabled people who depend on certain social services to stay in their homes must live in fear that those services will be suddenly snatched away because the money for them has run out.

Uncertainty of service availability no less than the uncertainty of service funding has also hampered congregate public housing development. Through title XX of the Social Security Act, the Older Americans Act, and other measures, the Federal Government offers to senior citizens and disabled persons a wide range of social service programs. A great many people benefit significantly from these programs, but they are not consistently available. For those in need of congregate housing, the absence of even one required service would place them in jeopardy of displacement from their units. Writing in the Department of HEW publication, "Congregate Housing for Older Americans, an Urgent Need, a Growing Demand," George Thomas Beall of the International Center for Social Gerontology describes this problem.

> Even when Federal funds are available, the flexibility granted States and communities in planning for their use frequently limits the Federal guarantees that can be offered to assure that such funds will be available to support the social and health services needed by older persons in congregate housing . . . In the absence of income benefits sufficient to enable the tenant to pay for the necessary services, there is, beyond the provisions of the Medicare and Food Stamp programs, no assurance of the availability of Federal resources for providing or financing the services. This is not the same as saying that no Federal resources are available. Resources are available, but they are limited, and competing demands are being made for them, more in fact than can be met. As a consequence, Federal program resources potentially can be applied to financing the services for low income residents of congregate housing, but their availability cannot be assured.

Particularly discouraging to LHA officials seeking social services for their functionally impaired tenants is the problem of program fragmentation. These officials face a bewildering array of legislative and regulatory requirements for the various Federal social service programs. Each program has its own unique character, and operates under separate statutes, regulations, guidelines, and procedures. Eligibility criteria, application and reporting requirements, matching financial arrangements, and cost reimbursement mechanisms may vary from program to program.

The structure and application of many of our most important Federal social service programs make them unsuitable for use with congregate public housing projects. Let me cite a few examples. The title VII elderly nutrition program under the Older Americans Act provides grants to States to establish nutrition programs for the elderly to meet both health and social needs. Although this program could be used to supplement meal service in a congregate housing development, it is inappropriate for exclusive congregate use. By law, title VII funds are not prohibited from use in a full meals program. However, in the development of the program, the Administration on Aging has been guided by its reading of congressional intent that the program was not designed for such full meal service. As implemented, the title VII program emphasizes one meal a day, 5 days a week. Thus it cannot be considered a maintenance or a full nutrition program. Frail elderly or younger disabled tenants require at the minimum two meals a day for 7 days a week. Furthermore, title VII programs are often away from the homes of the participants, and while transportation to meal sites is a component of the program, it is unrealistic to expect frail elderly and handicapped persons to

board buses or other transportation two or three times a day every day just to get to their meals. Further limiting the program's use in congregate housing are title VII provisions which establish minimum program sizes, and which require programs assisted under the title to be open to persons from outside the development in which the service is provided. Programing restrictions may or may not make it possible or desirable to open a congregate housing meal site to the community at large.

Title XX is the major Federal program for social services for low-income persons. Among its objectives is the provision of services to help people become or remain self-sufficient and avoid institutionalization. Nevertheless, there are certain limitations on the applicability of title XX to a national program of congregate public housing. Title XX is statutorily limited in the extent to which its funds can be used to support programs resembling "institutional" patterns of service. For example, title XX funds cannot be used to support a meal program of three meals a day or one which is designed to meet full nutritional needs, except when such a program is part of a broader service package meant to restore a person to independence. Even then, title XX funds can be used in this way for no longer than 6 months. A public housing resident who is frail or disabled and in need of congregate housing is likely to remain in that condition.

Clearly we must fill in the gaps in the present social service delivery system if we are to implement the congregate housing program that Congress mandated more than 8 years ago. Some have suggested that one approach might be to earmark for congregate housing a portion of HEW's annual appropriations. While this procedure would improve targeting of funds to congregate housing, it would leave unremedied other fundamental problems that have blocked the development of congregate public housing so far. First, there would still be no assurance of funding continuity. Second, and equally important, the myriad legislative and regulatory requirements that exist for the various social service programs would continue to need revision to make the programs compatible with congregate housing requirements.

The Congregate Housing Services Act of 1978 would encourage the development of congregate public housing by establishing two major concepts that congregate housing and social services are inseparable, and that secure and continuous funding for a coordinated service package must be made available to LHA's in order to establish a successful congregate public housing program. Under the legislation, HUD would be authorized to enter into 3- to 5-year renewable contracts with LHA's to provide funds for social services that these agencies furnish, either directly or through contracts with local service providers, to frail elderly and nonelderly disabled persons who require a congregate living environment. Such funding would only be provided when the LHA cannot obtain necessary services through any other means. LHA's would apply to HUD for service funding, and the services assisted would include full meals programs, personal care aid, and housekeeping assistance.

To determine which project residents need congregate services, the legislation would require LHA's to establish professional assessment committees to screen project residents. These committees must be composed of at least three persons, one of whom should be a medical professional, and all of whom must be qualified to appraise the functional abilities and service needs of elderly and handicapped project residents. The names and qualifications of the committee members must be included in the LHA's applications for funding. HUD would be required to establish procedures to insure that project residents receive fair treatment in the screening process. At present, local public housing managers have great leeway in deciding which residents must be displaced because of their frailties and which ones may stay in their units. The establishment of professional assessment committees would limit such arbitrary, nonprofessional judgments, and would provide a rational means of determining congregate public housing eligibility.

Under the legislation, elderly as well as younger persons who have a long-term impairment that substantially impedes their capacity for independent living and who could benefit from more suitable housing conditions would be eligible for assisted services. Temporarily disabled elderly persons, defined as those whose disabilities last for no more than 6 months, would also be eligible for congregate services. This provision acknowledges that the need for temporarily disabled persons during their time of disability equals the needs of those whose disabilities are chronic. Congregate housing services eligibility for temporarily disabled persons has been limited to the elderly, because the health impact of a temporary disability is greater on the elderly, and because, unlike younger persons, senior citizens suffering from short-term disabilities are often in jeopardy of displacement.

The legislation does not encourage the elderly and younger disabled persons to share the same building. It takes into account, however, that such arrangements do exist and must be accommodated in the provision of assisted congregate services. Furthermore, nothing in the bill would prevent or inhibit assisted congregate services for nonelderly disabled persons living in public housing structures, such as small group homes, which are designed specifically for them.

In developing its application to HUD for service funding, whether for the first time or for renewal, an LHA must give both its professional assessment committee and its project residents the opportunity to paricipate in the application development process.

It should be understood that the legislation is not meant to replace existing social service programs. Nor is it based on the premise that these programs, which have meant so much to so many people, have failed in their purpose. Instead, the measure recognizes that a different approach is necessary to develop and guarantee congregate housing service packages only because current programs do not respond to the unique demands of congregate public housing. Funding for services which duplicate those that are already accessible, affordable, and sufficiently available on a long-term basis to project residents from any other public or private source would be prohibited. It would not interfere in any way with ongoing HEW programs. The legislation would provide a safety net under those LHA's that cannot otherwise secure the full range of congregate housing services needed by their impaired tenants. The legislation's approach of providing HUD with a degree of responsibility for funding of congregate services not otherwise available is not a new concept, and has, in fact, been recommended for a number of years by professionals knowledgeable in the fields of congregate housing and the needs of elderly and disabled persons.

Because the present law requires the absence of kitchens in some or all units in a congregate housing project as well as the presence of a fully equipped central dining facility, it could take 2 or more years for those now living in public housing to derive any benefit from the legislation unless these requirements are revised. In order to prevent any such delay in the delivery of congregate housing services, the legislation relaxes the law's structural requirements for projects built or under construction prior to January 1, 1979. Such projects would be required only to have a central dining facility where meals could be served. Meals would not have to be prepared in these facilities although public housing authorities would be encouraged to use their modernization funds to adapt their facilities for meal preparation. Projects on which construction begins after January 1, 1979, must comply with the structural requirements of present law.

To apply for service assistance under the legislation, an LHA must first coordinate closely with its area office on aging—or its State office, if applicable—and with its local agency knowledgeable about and responsible for programs for the handicapped in order to determine what services are actually sufficiently and properly available to the LHA's residents. Following this consultation, the LHA would prepare a draft application to HUD for the funding of services not available through any other means. The LHA would then submit this draft application to its area office on aging, and to its local agency for the handicapped for their review and comments. Those comments must be taken into account in the LHA's development of its final funding application submitted to HUD. In this final application the LHA must affirm that it has followed the prescribed consultation and review process. These procedures are necessary to assure the effectiveness of the legislation's prohibition against HUD funding for services already adequately available or being provided by any other public or private agency or organization.

HUD would select among applications on the basis of merit, evaluating each application according to such criteria as the effectiveness of the LHA's proposed service plan, the lack of available services in the LHA's area, the qualifications of the professional assessment committee, and the speed with which services would be established in the project following approval of the application. HUD must approve or reject an application within 90 days of its receipt.

Funding for services would be provided for 3 to 5 years on a contract authority basis much like section 8 rental assistance is paid out. An LHA which is approved for funding would be reserved the entire amount it needs for congregate services during its contract period out of the appropriations enacted in the year that the LHA received notification of its funding approval. Through this financing mechanism, congregate services would be guaranteed security and continuity of funding. Because the legislation is designed to assist needy people as soon as possible, HUD would be authorized to reallocate an LHA's service funding if the LHA does not establish services for existing projects within 6 months of its application approval. New projects must have services in place at the time occupancy begins.

The legislation also makes provision for the establishment of a reserve fund to enable HUD to adjust its grants to LHA's when the circumstances warrant. The reserve fund may not exceed 10 percent of any fiscal year's appropriation. HUD must also adopt procedures for the recapture of unused contract authority and its reallocation to LHA's which have worthwhile but previously unfunded applications. To make certain that an LHA does not throw a cost burden to HUD that the LHA could itself shoulder, the legislation would require an LHA which is already providing a service to its residents to maintain that service. HUD, however, may waive that requirement if a waiver is necessary to maintain services at a constant level.

An LHA receiving assistance for services from HUD must provide a full meals program, but may provide assistance in grooming and dressing, housekeeping assistance, and other services necessary to foster independent living. The LHA charge participating project residents for the congregate services they receive. Fee schedules must be based on ability to pay, must be reasonable and appropriate, and must not exceed the per capita cost of the service. The degree to which fee schedules are reasonable and appropriate would be a criterion that HUD would use in evaluating LHA applications. Project residents not eligible for congregate services may purchase meals at reasonable fees which do not exceed the cost of their meals. This provision would promote social diversity in congregate dining, as well as economies of scale in delivery of meal services.

The legislation also encourages the hiring of elderly and disabled persons who are not eligible for congregate services to provide the services. Such individuals would be paid according to wage scales establish in the Older Americans Act. and would be permitted to work up to 5 hours a day for up to 20 hours per week.

The measure contains a 5-year authorization totalling $165 million. For the respective fiscal years, the authorization would be $20 million for fiscal year 1979, $25 million for fiscal year 1980, $35 million for fiscal year 1981, $40 million for fiscal year 1982, and $45 million for fiscal year 1983. Since each year's authorization is sufficient to fund a 5-year congregate services contract, the budget outlay for each fiscal year would be smaller than the budget authority until all of the 40,000 estimated public housing residents eligible for congregate services are provided assistance. To elaborate, the $20 million in budget authority for fiscal year 1979 would involve a budget outlay for that year of only $4 million. In fiscal year 1980, the budget authority would be $25 million, while the budget outlay would be $5 million in new authority, plus $4 million drawn down from the amount authorized in fiscal year 1979. This incremental funding approach encourages careful development and orderly, rational consideration of LHA applications for congregate service funding, and would give HUD ample time to accommodate its new function.

The authorization is based on the analysis of the International Center for Social Gerontology which estimates that the cost of assisting an individual to remain independent within his or her own household would be $1,000 or less per year. This cost would be reduced by the amount that each congregate housing resident contributes toward needed services, as well as by any amount that the LHA may be paying already to provide a service.

Mr. President, independence is one of our people's most precious, and long-held ideals. We cherish our freedom and our ability to retain control over our own lives. As we grow older, the physical limitations that accompany the aging process, of course diminish our capacity to cope with all the demands of normal daily life. Yet we fight vigorously to delay the time when others must take care of us. We fear dependence and we resist it because we know that independence adds to the richness of our existence, and gives life its special meaning.

National housing policy has, for many years, stated our firm belief in the personal and societal benefits that result when people are encouraged to remain independent within their own households. Regrettably this declaration has yet to translate into actual accomplishment. Housing choices rarely offer our people anything between total independence or total dependence. We have not been able to develop to any significant degree the flexible alternatives in housing design that properly match the varying capacities for independent living that exists among frail elderly and nonelderly disabled persons. The mechanisms to assure such alternatives simply do not exist.

Mr. President, I realize that the Congregate Housing Services Act does not provide a comprehensive answer to demand for congregate housing, which extends beyond those who live in public housing projects. Yet, the legislation will start us down a road we should have traveled before, and will help bridge a gap that has existed for too long in the spectrum of available housing alternatives. In so doing, the Congregate Housing Services Act will help us shape a national housing policy that more fully, and more compassionately, conforms to the multifaceted housing needs of our people.

Mr. President, I ask unanimous consent that the text of this legislation and the section-by-section analysis be printed at this point in the RECORD.

There being no objection, the bill and analysis were ordered to be printed in the RECORD, as follows:

S. 2691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Congregate Housing Services Act of 1978".

DECLARATION OF FINDINGS

SEC. 2. The Congress finds and declares that—

(a) in keeping with the traditional American principle of individual dignity and independence, innovative and comprehensive means are required to permit frail and handicapped elderly individuals the full and free enjoyment of their lives within their own households;

(b) congregate housing, supplemented by supportive services, offers a proven and cost effective means of enabling such individuals to maintain their dignity and independence through the avoidance of costly and unnecessary institutionalization;

(c) such supportive services can also provide significant assistance to non-elderly handicapped individuals in their efforts to live independently within their own households;

(d) although existing law requires the Secretary of Housing and Urban Development to encourage public housing agencies to provide congregate housing which meets the special needs of elderly and handicapped individuals, a large and growing number of such residents of public housing face premature and unnecessary institutionalization because of a gap in the spectrum of housing choices due to critical deficiencies in the availability, adequacy, coordination, or delivery of the supportive services required for the successful development of adequate numbers of congregate public housing units; and

(e)(1) within the context of public housing management, there exists an inseparable bond between congregate housing and supplementary supportive services, and

(2) security and continuity of funding for a coordinated service package addressing the full range of the needs of frail and handicapped elderly individuals are required to respond successfully to the requirements of this expanding segment of the Nations population.

AUTHORIZATION OF CONTRACT AUTHORITY

SEC. 3. (a) The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to enter into contracts with local public housing agencies (hereinafter referred to as "public housing agencies") under the United States Housing Act of 1937, utilizing sums appropriated under this Act, to provide congregate services programs for handicapped elderly households, non-elderly handicapped households, or temporarily disabled elderly households, who are residents of congregate

housing projects of those agencies (hereinafter referred to as "eligible project residents") in order to promote and encourage maximum independence within a home environment for such households capable of self-care with appropriate supportive services. Each contract between the Secretary and a public housing agency shall be for a term of not less than three years nor more than five years and shall be renewable at the expiration of such term. Each public housing agency entering into such a contract shall be reserved a sum equal to its total approved contract authority from the monies authorized and appropriated for the fiscal year in which the notification date of funding approval falls.

(b) Public housing agencies receiving assistance for congregate services programs under this Act shall be required to maintain the same dollar amount of annual contribution which they were making, if any, in support of the provision of services eligible for assistance under this Act prior to their initial notification date of funding approval; unless the Secretary determines that the waiver of this requirement is necessary for the maintenance of adequate levels of services to eligible project residents. If any contract or lease entered into by a public housing agency pursuant to section 5(a)(1) of this Act provides for adjustments in payments for services to reflect changes in the cost-of-living, then the amount of annual contribution required to be maintained by such public housing agency under the preceding sentence shall be readjusted in the same manner.

(c) The second sentence of section 7 of the United States Housing Act of 1937 is amended to read as follows: "As used in this section, the term 'congregate housing' means (A) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (B) low-rent housing constructed after, but not under construction prior to, January 1, 1979, (i) in which some or all of the dwelling units do not have kitchen facilities, and (ii) connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under the Congregate Housing Services Act of 1978.".

DEFINITIONS

SEC. 4. For the purpose of this Act—

(a) the term "elderly" means sixty-two years of age or over;

(b) the term "handicapped" means an impairment which (1) is expected to be of long-continued and indefinite duration, (2) substantially impedes an individual's ability to live independently, and (3) is of such a nature that such ability could be improved by more suitable housing conditions. Such impairment may include a functional disability or frailty which is a normal consequence of the human aging process;

(c) the term "household" means one or more persons residing in a public housing project;

(d) the term "temporarily disabled" means an impairment which (1) is expected to be of no more than six months' duration, (2) substantially impedes an individual's ability to live independently and (3) is of such a nature that such ability could be improved by more suitable housing conditions;

(e) the term "congregate services programs" means programs to be undertaken by a public housing agency to provide assistance to handicapped elderly households or non-elderly handicapped households or temporarily disabled elderly households who, with such assistance, can remain independent and avoid unnecessary institutionalization;

(f) the term "personal assistance" means service provided under this Act which may include, but is not limited to, aid given to eligible project residents in grooming, dressing, and other activities which maintain personal appearance and hygiene; and

(g) the term "professional assessment committee" means a group of at least three persons and shall include qualified medical professionals and other persons professionally competent to appraise the functional abilities of elderly and/or permanently disabled adult persons in relation to the performance of the normal tasks of daily living.

SERVICES

SEC. 5. (a)(1) Any public housing agency receiving assistance under this Act may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(2) In any case, any such public housing agency shall consult with the Area Agency on Aging (or, where no Area Agency on Aging exists, with the appropriate State agency under the Older Americans Act of 1965) in determining the means of providing services under the preceding sentence, and in identifying available sources of funding for such services other than assistance under this Act.

(3) Prior to the submission of an application for either new or renewed funding under this Act, a public housing agency shall present a draft application to the Area Agency on Aging (or, where no Area Agency or Aging exists, to the appropriate State agency under the Older Americans Act of 1965) for review and comment. A public housing agency shall consider such review and comment in the development of its final application for either new or renewed funding under this Act.

(4)(i) In any case where a public housing agency determines that non-elderly handicapped individuals are included among the eligible project residents to be served by the congregate services program, the public housing agency shall consult with the appropriate local agency, if any, as designated by applicable State law with having responsibility for the development, provision, or identification of social services to permanently disabled adult individuals. Such consultation shall be for the purpose of determining the means of providing services under section 5(a)(1) of this Act.

(ii) Such public housing agency shall also, prior to the submission of an application for either new or renewed funding under this Act, present a draft application to such appropriate local agency for review and comment. The public housing agency shall consider such review and comment in the development of its final application for either new or renewed funding under this Act.

(5) No services funded under this Act may duplicate services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Government of the United States, or any other public or private department, aegncy, or organization.

(b) Congregate services programs assisted under this Act must include full meal service adequate to meet nutritional needs, and may also include housekeeping aid, personal assistance, and other services essential for maintaining independent living.

APPLICATION PROCEDURES

SEC. 6. (a) Whenever a public housing agency applies for assistance under this Act, the agency shall include a plan specifying the types and priorities of the basic services it proposes to provide during the term of contract authority. Such plan, including fee schedules established pursuant to section 10 of this Act, must be related to the needs and characteristics of the eligible residents of the projects where the services are to be provided; shall, to the maximum extent practicable, make provision for the changing needs and characteristics of project residents during the term of contract authority; and shall be determined after consultation with eligible project residents and with the professional assessment committee. If a project where such services are to be provided is a new, unoccupied project, then such consultation shall be carried out as a part of the occupancy interview process.

(b) Each application submitted by a public housing agency for assistance under this Act shall contain a statement affirming that—

(1) the services provided will not duplicate any services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Government of the United States, or any other public or private department, agency, or organization;

(2) the Area Agency on Aging (or, where no Area Agency on Aging exists, the appropriate State agency under the Older Americans Act of 1965) has been presented with a draft application, has been given a reasonable amount of time for the review of and comment upon such draft application, and that such review and comment has been considered in the development of the submitted application for assistance;

(3) if non-elderly handicapped individuals are included among the eligible project residents, the appropriate local agency, if any, as designated by applicable State law with having responsibility for the development, provision, or identification of social services to permanently disabled adult individuals, has been presented with a draft application, has been given a reasonable time for the review of and comment upon such draft application, and that such review and comment has been considered in the development of the submitted application for assistance; and

(4) fees established for services provided under this Act are reasonable and have been set in accord with the requirements of subsection (a) and section 7 of this Act with respect to consultation with eligible project residents, and with the requirements of section 10 of this Act.

(c) Each application submitted by a public housing agency for assistance under this Act shall list the names and professional qualifications of the members of the professional assessment committee.

PROGRAM REVIEW

SEC. 7. Each public housing agency receiving assistance for congregate services programs under this Act shall review the performance, appropriateness, and fee schedules of such services with eligible project residents, and with the professional assessment committee, within twelve months prior to the submission of an application for renewed funding under this Act. The results of such review shall be included in such application, and shall be considered in the development of the application by the public housing agency and in its evaluation by the Secretary.

EVALUATION BY THE SECRETARY

SEC. 8. In evaluating applications for assistance under this Act, the Secretary shall consider at least the following—

(1) the types and priorities of the basic services proposed to be provided, and the relationship of such proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(2) how quickly services will be established following approval of the application;

(3) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(4) the professional qualifications of the members of the professional assessment committee established pursuant to section 10(a)(1) Act; and

(5) the reasonableness of fee schedules established for each congregate service pursuant to section 10 of this Act.

REGULATIONS

SEC. 9. (a) The Secretary is authorized to promulgate regulations to carry out the provisions of this Act. Such regulations shall provide for at least the following:

(1) Standards shall be established for the provision of services under this Act.

(2) (i) Procedures for the review and evaluation of the performance of grantees under this Act shall be established.

(ii) Each public housing agency assisted under this Act shall submit to the Secretary an annual evaluation of the impact and effectiveness of its congregate services programs.

(iii) The Secretary shall annually publish, and make available to Congress and the public, a report on and evaluation of the impact and effectiveness of congregate services programs assisted under this Act. Such report and evaluation shall be based, in part, on the evaluations required to be submitted pursuant to subsection (a)(2)(ii).

(3) Accounting and other standards shall be prescribed in order to prevent any fraudulent or inappropriate use of funds under this Act.

(4) (i) Appropriate deadlines for each fiscal year shall be established for the submission of applications for funding under this Act. The Secretary shall notify any public housing agency applying for assistance under this Act of acceptance or rejection of its application within ninety days of such submission deadline.

(ii) Where such funding has been approved for the establishment of congregate services in existing public housing projects, the Secretary may reallocate these funds if the services are not established within six months of the notification date of funding approval.

(iii) Where such funding has been approved for the establishment of congregate services for public housing projects under construction or approved for construction, the Secretary shall establish rules to assure that these services shall be in place at the start of the project's occupancy by tenants requiring such services for maintaining independent living.

(5) Procedures to assure timely payments to public housing agencies for assisted congregate services programs shall be established, with provision made for advance funding sufficient to meet necessary start-up costs.

(6) Procedures shall be established for the recapture of unused contract authority, the utilization of unused reserve monies from the prior fiscal year, and the reallocation of such unexpended funds to other feasible and effective applications for assistance under this Act.

(7) A reserve fund, not to exceed ten percent of the funds appropriated in each fiscal year for the provision of services under this Act, shall be established by the Secretary; and expenditures from such fund shall be made for the purpose of supplementing grants awarded to public housing agencies under this Act when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible project residents.

(8) Procedures shall be established to ensure that the process of determining eligibility of individuals for services under this Act shall accord such individuals fair treatment and due process.

(9) Procedures shall be established to ensure that changes in the membership of the professional assessment committee are consistent with the requirements of section 4(g) of this Act.

(b) No more than one percent of the funds appropriated under this Act for any fiscal year may be used by public housing agencies for evaluative purposes as required by this Act.

ELIGIBILITY FOR SERVICES FEE SCHEDULES

SEC. 10. (a)(1)(i) The identification of project residents eligible to participate in a congregate services program assisted under this Act, and the designation of the services appropriate to their individual functional abilities and needs, shall be made by a professional assessment committee whose members shall be selected by the local public housing agency.

(ii) Any public housing authority receiving assistance under this Act shall notify the Secretary of any change in the membership of the professional assessment committee within thirty days of such change. Such notification shall list the names and professional qualifications of new members of the committee.

(2) Each public housing agency shall establish fees for meal service and other appropriate services provided to eligible project residents. These fees shall be reasonable, may not exceed the cost of providing the service, and shall be calculated on a sliding scale related to income which permits the provision of services to such residents who cannot afford meal and service fees.

(b)(1) Other resident elderly and permanently disabled adult households may participate in a congregate meal service program assisted under this Act if the local public housing agency determines that the participation of these individuals will not adversely versely affect the cost-effectiveness or operation of the program.

(2) Where such service is provided, the local public housing agency shall establish fees which are reasonable and which do not exceed the cost of providing the meal service.

EMPLOYMENT OPPORTUNITIES FOR RESIDENTS

SEC. 11. Each public housing agency shall, to the maximum extent practicable, utilize elderly and permanently disabled adult persons who are residents of congregate housing projects, but who are not eligible project residents, to participate in providing the services assisted hereunder. Such persons shall be paid wages which shall not be lower than whichever is the highest of—

(1) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act applied to the resident and if he were not exempt under section 13 thereof;

(2) the State or local minimum wage for the most nearly comparable covered employment; or

(3) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

Employment provided under this section shall be limited to a maximum of five hours per day and twenty hours per week for each participating resident.

RELATIONSHIP TO OTHER LAWS

SEC. 12. (a) No service provided to a public housing resident under this Act, except for wages paid under section 11 of this Act, may be treated as income for the purpose of any other program or provision of State or Federal law.

(b) Individuals receiving services assisted under this Act shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. To carry out the provisions of this Act there are authorized to be appropriated—

(a) for fiscal year 1979, not to exceed $20,000,000;

(b) for fiscal year 1980, not to exceed $25,000,000;

(c) for fiscal year 1981, not to exceed $35,000,000;

(d) for fiscal year 1982, not to exceed $40,000,000; and

(e) for fiscal year 1983, not to exceed $45,000,000.

CONGREGATE HOUSING SERVICES ACT OF 1978—SECTION-BY-SECTION ANALYSIS

SECTION 1

SECTION 2.—DECLARATION OF FINDINGS

(a) Innovative and comprehensive means are required if frail and handicapped individuals are to be enabled to remain in their own homes. This goal of independent and dignified living is consistent with traditional American principles.

(b) Congregate housing supplemented by supportive services is an important means for the prevention of unnecessary institutionalization of the elderly. It is also cost-effective.

(c) These same supportive services which can assist the elderly can also provide assistance to handicapped persons residing within assisted housing projects.

(d) Since 1970, the Secretary of Housing and Urban Development has been required, by statute, to encourage service-supported congregate public housing. The fastest-growing segment of the elderly population are post-75 year old individuals whose independence begins to be limited by frailties associated with the normal aging process. They face premature and unnecessary institutionalization because such housing alternatives are not being developed. Hearings held by the Committee on Aging in October 1975, and supplementary information developed since that time, indicate that this gap in the spectrum of housing choices will continue to exist until the critical lack of adequate funding for coordinated service packages is remedied.

(e)(1) Congregate housing and supportive services, if they are to be successfully implemented within the context of public housing management, must be melded into an inseparable whole.

(2) Secure and continuous funding for a coordinated service package must be made available to public housing managers if the Nation is to respond successfully to the needs of the growing number of frail older Americans, many of whom now reside in public housing projects.

SECTION 3.—AUTHORIZATION OF CONTRACT AUTHORITY

(a) The HUD "Secretary" is authorized to enter into contracts with "public housing agencies" for the establishment of congregate services programs. Services will be provided to handicapped elderly, temporarily disabled elderly, and non-elderly handicapped persons residing within assisted congregate housing projects ("eligible project residents"). The purpose of such services is continued independent residence for eligible project residents. The contracts entered into shall be for a period of three to five years (report language will clarify that almost all contracts should be for five years, and that the provision for shorter periods shall be utilized only in special, appropriate situations). These contracts shall be renewable upon expiration, provided that the application for renewal is submitted and is consistent with applicable sections of the Act. The funds for each contract shall be reserved from the appropriations enacted for the fiscal year in which ap-

plication approval is obtained, and shall be drawn down periodically—this will guarantee funding continuity.

(b) Assisted public housing authorities are required to maintain any financial effort they were making in furtherance of congregate-type services prior to contract authority approval. The HUD Secretary may waive this requirement if the housing authority is experiencing financial difficulties and if enforcement of the requirement would jeopardize adequate service levels. If contracts entered into by the housing authority for the provision of congregate services contain cost-of-living escalators, then the authority's annual maintenance of effort contribution shall be readjusted accordingly.

(c) Section 7 of the U.S. Housing Act of 1937 is amended in order to permit the provision of services under the Congregate Act to existing public housing. (A) To be eligible for assistance, projects built or under construction prior to January 1, 1979, are required only to have a central dining facility where meals can be served. (B) Projects on which construction begins after that date will continue to be required to have at least some apartments without kitchens, and to have central dining facility in which meals can be prepared and served.

SECTION 4.—DEFINITIONS

(a) "Elderly" means sixty-two or older.

(b) "Handicapped" means a long-term impairment which substantially impedes independent living but is of such a nature that more suitable housing conditions can alleviate this effect. An impairment which is a normal consequence of the human aging process is included under this definition.

(c) "Household" means one or more persons residing in a public housing project.

(d) "Temporarily disabled" refers to an impairment of the type defined under "handicapped", but which is expected to be of less than six months' duration. Temporarily disabled elderly will be given assistance under the Act to assure that they do not lose their apartments due to the temporary consequences of an injury which limits their independence.

(e) "Congregate services program undertaken by housing authorities under this Act for the purpose of maintaining residents' independence and preventing institutionalization where no medical reason exists for it.

(f) "Personal assistance" means care given to eligible residents in grooming, dressing, and other activities which maintain personal appearance and hygiene. Such assistance fosters a healthy psychological attitude and physical well-being.

(g) "Professional assessment committee" means a group of at least three persons who are competent to appraise the functional abilities and service needs of elderly and/or permanently disabled adult persons requiring assistance to remain independent within their own homes. At least one of the committee members should be a medical professional. The expertise of the committee should be appropriate to the makeup of the assisted projects(c).

SECTION 5.—SERVICES

(a)(1) Housing agencies assisted under the Act may provide congregate services directly, or contract for them with appropriate agencies or providers.

(2) Prior to drafting its application for funding, the public housing agency shall consult with the local Area Agency on Aging in order to obtain advice on the best means of providing services, and to receive assistance in identifying funding sources other than this Act available to the housing agency.

(3) After the housing agency drafts its application to HUD for assistance, it shall present that draft to the Area Agency on Aging for review and comment. The housing agency must consider those comments prior to submitting its final application to HUD. The housing agency must follow this procedure for new and renewed service funding applications.

(4)(i) If non-elderly handicapped persons reside in a project wherein congregate services will be provided, the housing authority must also consult with the local agency, as designated by State law, which has responsibility for the development, provision, or identification of social services for permanently disabled adults. It is anticipated that, in most cases, this will be the local vocational rehabilitation agency supported under the State-Federal program administered by the Rehabilitation Services Administration. This consultation will be for the purpose of obtaining advice on the best means of providing services, and assistance in identifying funding sources other than this Act available to the housing agency. (ii) In this case, after the housing agency drafts its application to HUD for assistance, it shall present that draft to this previously identified local agency for review and comment. The housing agency must consider those comments prior to submitting its final application to HUD. The agency must follow this procedure for new as well as renewed applications for service funding.

(5) A prohibition is established against the use of funds under this Act for services of the type it subsidizes which are already properly available or already being provided to the residents of projects seeking assistance. This prohibition applies to Federal, State, local, and private or charitable programs if they are able to provide or are providing, to project residents, social services which they can afford; which can be easily reached on a daily basis; and which are expected to be sufficiently available over a term of at least 3–5 years.

(b) A full meal service, provided at least twice-daily and adequate for the nutritional needs of persons receiving assistance, is required in any services program assisted under this Act. Other services eligible for subsidization are housekeeping, personal assistance, and other services essential for maintaining independent living. Such other services might, for example, include transportation assistance to reach shopping and doctors when the housing authority was unable to provide this service under another applicable Federal program; but could not include full on-site medical care or other services which would tend to turn the housing project into a medical care institution.

SECTION 6.—APPLICATION PROCEDURES

(a) When it applies for assistance, the housing authority must submit to HUD a plan which specifies the types of services it wishes to provide, and their relative priorities, during the term of contract authority requested. This plan, including proposed resident fee schedules for services, must be related to the physical condition, service needs, and financial capabilities of eligible project residents. It also must make provision for changes in the residential composition of the project during the term of contract authority. Finally, the plan must reflect the opinions of both the residents to be assisted and the professional assessment committee; where the project to be assisted is a new, unoccupied one, then consultation with residents as to service needs must constitute part of the interview process prior to occupancy.

(b) Each application submitted by a housing authority to HUD must certify that the review and comment and nonduplication requirements of sections 5(a)(3), (4)(ii), and (5) have been complied with; and that the fee schedule has been established in accord with sections 6(a) and 7 (consultation with residents) and 10 (reasonableness; maximum cost; and eligibility for subsidy).

(c) Each application submitted to HUD must also contain the names of the members of the professional assessment committee, and their professional qualifications which demonstrate expertise in evaluating the functional abilities of the elderly, and/or permanently disabled adults.

SECTION 7.—PROGRAM REVIEW

A public housing authority receiving assistance under the Act must, within the twelve month period prior to the submission of an application for renewed funding, review the congregate services program with eligible residents and the professional assessment committee. This review must specifically address the performance of service providers; the appropriateness of available services and the need for others; and the reasonableness of the fee schedule in relation to assisted residents' financial condition. The results of this review must be considered by the housing authority when developing its application for renewed funding; and must be submitted to the Secretary, with the renewal application, to aid in HUD's evaluation.

SECTION 8.—EVALUATION BY THE SECRETARY

In evaluating the adequacy and worth of proposed service plans, and in determining the relative needs of housing authorities applying for assistance under this discretionary grant program, the Secretary must at least consider these factors: (1) The types of services proposed to be provided, their prioritization by the housing authority, and the relationship of these services to the needs and characteristics of eligible project residents. (2) How rapidly the service program can be established following application approval. (3) The degree to which social services already available in the project's community are adequate for assisting project residents in staying independent and avoiding unnecessary institutionalization. (4) The qualifications of the professional assessment committee for their appraisal duties. (5) The reasonableness of the fee schedules proposed to be established in relation to the financial capabilities of the persons who will receive assistance.

SECTION 9.—REGULATIONS

(a) The Secretary is authorized to issue such regulations as are necessary to carry out this Act. These regulations must provide for at least the following:

(1) Standards for the provision of services.

(2)(i) Procedures for the review and evaluation of the performance of assisted housing authorities. (ii) The submission of an annual evaluation of congregate services programs from assisted housing authorities. (iii) The annual publication of a report and evaluation of assisted programs by the Secretary. This report must be made available to Congress and the public and shall be based, in part, on the annual evaluations submitted to the Secretary by local housing authorities.

(3) Accounting standards, and other safeguards, to prevent the fraudulent or inappropriate use of funds made available by this Act.

(4)(i) Appropriate application submission deadlines for each fiscal year. Housing authorities applying for assistance must be notified of approval or rejection by the Secretary within the ninety day period following this deadline. (ii) Procedures to permit the reallocation of funds made available to existing projects if service programs are not established within the six month period following the notification of funding approval. (iii) Rules to assure, where funding has been provided for programs within projects which are under or approved for construction, that

the services will be operating when persons requiring assistance begin occupancy.

(5) Procedures to ensure that payments are made to assisted housing authorities on a timely basis. These procedures should include a means of providing advance funding which is sufficient for normal start-up costs.

(6) Procedures which permit the recapture of unused contract authority, the utilization of unexpended reserve funds from the prior fiscal year, and the reallocation of these monies to pending applications for congregate services programs.

(7) The establishment of a reserve fund by the Secretary. This fund, which is not to exceed ten percent of the sum appropriated under the Act in the fiscal year that the reserve is available for, shall be used for supplementing the grants made to those housing authorities which subsequently require increased assistance to maintain adequate congregate services to eligible residents. Such a situation could arise if a service provider breaches its contract, forcing the housing authority to contract for substitute services at a higher cost.

(8) Procedures to ensure that the process by which the professional assessment committee, acting in concert with the housing authority, identifies eligible project residents and their service requirements is one which accords project residents fair and even-handed treatment.

(9) Procedures to ensure that new (additional or replacement) members of the professional assessment committee, joining during the term of contract authority, are professionally competent to evaluate the functional abilities of elderly persons and/or permanently disabled adults.

(b) Up to one percent of the funds appropriated under the Act in a given fiscal year may be utilized by public housing agencies for preparation of the evaluations required by the Act.

SECTION 10.—ELIGIBILITY FOR SERVICES, FEE SCHEDULES

(a)(1)(i) The professional assessment committee is given the responsibility of identifying project residents eligible for subsidized congregate services; and for designating the services which are appropriate for each such resident. The committee membership shall be determined by the local housing authority.

(ii) Assisted housing authorities are required to notify the Secretary of any changes in the membership of the professional assessment committee within thirty days of its occurrence. This notification must include the names and professional qualifications of the new member or members.

(2) Fees for meal service and other congregate services provided to eligible project residents shall be established by the housing authority. These fees are required to be reasonable, are prohibited from exceeding a service's cost, and are to be calculated on a sliding scale related to income which permits the provision of fully subsidized services to the most needy residents.

(b)(1) Elderly and physically disabled project residents who are not eligible for congregate services are permitted to partake of congregate meals. This participation is subject to the housing agency's determination that the meal service's cost-effectiveness will not be adversely affected; it is anticipated that, in most cases, the participation of such persons will in fact provide economies of scale and will also promote worthwhile socialization.

(2) Such persons will be charged reasonable fees which do not exceed the per capita cost of providing the meal service. These fees will not be calculated on a sliding scale; only eligible project residents receive such subsidization under the Act.

SECTION 11.—EMPLOYMENT OPPORTUNITIES FOR RESIDENTS

Assisted public housing agencies are required, to the maximum extent practicable, to employ elderly and physically disabled project residents who are not so frail or impaired as to qualify for subsidized assistance. These individuals will be compensated for the provision of congregate services (such as assistance in food preparation, aid in dressing, and light housekeeping and maintenance) at the same wage scale established for Title IX (Community Service Employment) of the Older Americans Act. The employment of residents under this section is limited to a maximum of five hours per day and twentv hours per week each.

SECTION 12.—RELATIONSHIP TO OTHER LAWS

(a) Service benefits received under the Act, with the exception of wages paid to those employed under the provisions of section eleven, are barred from being treated as income for the purpose of determining eligibility for or benefits from any other State or Federal program. The purpose of this subsection is to assure that assisted individuals do not lose their eligibility for SSI, Medicaid, or other means-tested programs because of their receipt of such assistance. This is consistent with the fact that all income received by such persons, including SSI, will be considered when their payment obligations are established in accordance with the sliding-scale fee schedule.

(b) Individuals receiving assistance under the Act are to be regarded as residing within their own households, and not within a public institution, for the purpose of determining benefits under any other State or Federal program. The purpose of this subsection is to assure that assisted individuals are not considered to be "inmates of a public institution" under applicable Social Security Administration regulations, thereby becoming ineligible for Medicaid and SSI assistance. Those SSA regulations were not drafted with this type of congregate assistance program in mind; ambiguous language within the regulations might result in benefit losses without this clarification.

SECTION 13.—AUTHORIZATION OF APPROPRIATIONS

The following sums are authorized for carrying out the Act; FY 79—$20 million; FY 80—$25 million; FY 81—$35 million; FY 82—$40 million; FY 83—$45 million.

The progressive increase in funding assumes an increase in the scope of the program as local housing agencies gather valuable insights from the initial years of others' programs, and as HUD develops expertise in administering the Act. This progressive arrangement also recognizes that many existing housing projects will have to complete some renovation activities for the establishment of central dining areas before they are eligible to receive congregate services assistance. The fiscal year 1983 funding level has been set to be sufficient to support the provision of congregate services to all of the persons who are estimated to currently reside in public housing designed for the elderly and to be in need of such assistance.●

● Mr. CHURCH. Mr. President, I join with Senator HARRISON WILLIAMS, and with many other distinguished colleagues, in introducing the Congregate Housing Services Act of 1978. This bill is but one part of the emerging strategy, given much attention by the Senate Committee on Aging, for the extension of services to the frail elderly to help keep such persons in their homes and out of nursing homes and other institutions.

The need for such innovative and effective means is great now and will continue to grow—new data recently made available to the Committee on Aging indicates that, between now and the year 2000, the number of Americans between the ages of 65 and 75 will increase by 23 percent, but the number who are between 75 and 85 will increase by 57 percent. This "aging of the elderly" will increase the percentage of older Americans more than 75 years of age from 38 percent of the 65 and older population in 1976 to 45 percent in the year 2000.

And it is precisely this segment of the population which is likely to need some assistance to maintain independent lives within their own residences. Without that assistance, they are likely to be institutionalized unnecessarily and prematurely, at great psychological harm to them and great expense to the Government.

The Congregate Housing Services Act demonstrates that good public policy can be humane and cost-effective at the same time. The Federal share alone for the annual maintenance of a low-income elderly person in a nursing home currently stands at $5,500 under the medicaid program. In contrast, by subsidizing the difference between the cost of supportive services and the ability of elderly public housing residents to pay for them, this bill can sustain independence at a cost of approximately $1,000 annually.

The Congregate Housing Services Act will finally implement housing law enacted in 1970 by providing a missing element—the availability of long-term financing for comprehensive service packages to local housing authorities. Hearing held by the Special Committee on Aging in October 1975 revealed that only a handful of congregate public housing facilities had been established across America. That situation remans unchanged today. This 1970 program has been halted in its tracks by the Catch-22 situation which has faced housing authorities: They have been unwilling to expend funds on the central dining facilities and other special features required for congregate housing without some assurance of long-term service funding, and that funding has not been available. While many excellent support programs have been established by the Congress, several contain restrictions which make them inapplicable to a system of full-time support, and all of them receive their authorizations on a year-to-year basis which is incompatible with the congregate housing concept.

This bill is not the single answer to the needs of the frail elderly. Rather, it is the best and most effective method for assisting those public housing residents who need assistance to remain independent, but who do not require daily medical care, to stay in their homes. The Committee on Aging is also exploring ways to make such assistance available to those elderly who reside in other types of federally supported housing, such as section 202 facilities. And a continuing series of committee hearings on alternatives in long-term care has shown that similar help is needed by many older Americans who reside in their own homes and private apartments.

The Congregate Housing Services Act assures that programs funded under it are not duplicative of existing community resources, and maintains a coordinated local effort on behalf of the elderly by mandating that housing agencies seek the advice and the review and comment of area agencies on aging before submitting applications to HUD. In this way, interagency liaison is achieved at the level of Government where it is most important for such programs, and where it is least likely to become bogged down in bureaucratic redtape.

This bill contains two further provisions which I wish to draw to my colleagues' attention. First, it provides employment opportunities for those elderly project residents who are capable of providing assistance to their neighbors. And second, it permits the extension of these supportive services to younger handicapped persons residing within assisted projects, and can in fact become the funding basis for new HUD innovations in independent living arrangements for the handicapped.

It is my hope that 1978 will be the year in which congregate public housing ceases to be an unfulfilled promise and becomes instead a life-enhancing reality.●

● Mr. CHILES. Mr. President, I am pleased to join Senator WILLIAMS, chairman of the Senate Human Resources Committee in sponsoring the proposed Congregate Services Act of 1978.

This bill is very timely and important, and I urge all my colleagues in the Senate to give it full consideration.

The Congregate Services Act of 1978 tackles one of the most basic and severe problems facing thousands of disabled and impaired older Americans residing in public housing all across the Nation. Even though a basic need for shelter is being met, too many elderly public housing residents find themselves temporarily disabled without access to basic support services. Too often they then have to give up these apartments and move to a nursing home or other institution where this basic support is available.

As a member of the Senate Special Committee on Aging, I am only too well aware of the need for such services. I recently chaired a series of hearings for the committee which made it clear that, for thousands of slightly handicapped elderly, the availability of even the simplest support services means the difference between remaining in a home environment and being prematurely institutionalized. This is often true whether one is living alone or living with relatives.

This bill will make it possible, for the first time, for local public housing authorities to provide or contract for needed services for elderly and handicapped residents, and represents a significant step forward in the development of supported housing options.

The bill would provide funding for a wide range of services—help in apartment maintenance, assistance in personal care, nutritious meals in a congregate setting, counseling, transportation for doctor visits and other health services, or whatever is needed to assure continued independent living.

Some public housing authorities have already taken steps to insure the availability of such services to residents in need, usually through arrangements with local service providers. In some cases, public housing authorities have donated space within apartment buildings for the use of service agencies, in effect creating a comprehensive service center right on the premises.

This bill would not replace these innovative arrangements, as it would not provide service funds where services are already available to residents. But there are many, many more public housing authorities not able to get services to residents.

This bill would provide a stable source of funding for these housing authorities, encouraging new and expanded service programs.

Public housing authorities could provide services directly, or contract with existing service agencies to expand their services to housing residents. In this way, the bill will also serve as an incentive for building the overall capacity of community agencies in in-home service provision.

Another important aspect of the bill, if enacted, would be the precedent set for all HUD-assisted housing for the elderly and handicapped.

The Special Committee on Aging has examined the congregate housing concept in depth and determined that supported housing is an essential part of a broadly defined spectrum of community-based systems of long-term care. Current Department of Housing and Urban Development programs concentrate primarily on construction assistance and rent subsidies. If the bill is enacted, the Department will, for the first time, be required to turn attention to supported housing issues and develop insights and expertise required if congregate housing is to become a major housing strategy for older Americans.

While the bill requires housing authorities to consult with local experts in provision of services to the elderly as service plans are developed, it also offers housing authorities the kind of flexibility needed for truly innovative programs.

An innovative concept in the bill is the involvement of public housing residents in deciding what services should be made available. Participation of consumers of services in decisions about the kind and quality of service provided is an important keystone which will help insure that services are appropriate, timely, and wisely used.

If enacted, the bill would also assure that all those in need of support will have access to them, regardless of income. A local housing authority could set a sliding scale for payment for services which would allow full subsidies of service costs for those with the lowest incomes, but would not deny services to higher income residents with service needs. This is an important concept which will both help keep program costs low and assure equitable treatment of resident needs.●

● Mr. DOMENICI. Mr. President, I rise to speak today in support of a bill introduced by my colleague, the distinguished Senator from New Jersey (Mr. WILLIAMS), which will provide for social and nutritional services for older Americans living in congregate housing.

In a report issued in November 1975, by the Senate Special Committee on Aging called "Congregate Housing and Older Americans," it was noted that the number of persons aged 75 and over is growing faster than that of any other age group. This trend has become more apparent over the past few years. Because of this continued increase in the population of those over 65 and because of the younger generation's mobility, the need has become greater for residential living arrangements with services similar to those rendered in a family setting.

There are a number of basic facts which spell out my interests in congregate housing services for the elderly. As we get older, according to a national health survey, 40 percent of us will have significant disabilities. The needs of the elderly who are impaired or disabled have been thoroughly studied. Some of these studies indicate that 10 to 15 percent of our elderly population will require congregate housing in order to avoid institutionalization. Among those older persons who are institutionalized, 20 to 40 percent do not require the complete range of nursing home services. It is apparent then that this country is making an unnecessary investment in institutional care.

By providing our older Americans with adequate housing and sufficient social services in a congregate setting, we could minimize institutionalization and allow the elderly to enjoy the more independent lifestyle to which they are accustomed.

This bill would assist Federal, State, and local governments to achieve this end.●

By Mr. JACKSON (by request):

S. 2692. A bill to authorize appropriations for the civilian programs of the Department of Energy for fiscal year 1979, and for other purposes; to the Committee on Energy and Natural Resources.

S. 2693. A bill to authorize appropriations for the Department of Energy for national security programs for fiscal year 1979, and for other purposes; to the Committee on Armed Services and the Committee on Energy and Natural Resources, jointly, by unanimous consent.

ENERGY AUTHORIZATIONS, 1979

● Mr. JACKSON. Mr. President, I introduce two bills which together are the measure proposed by the administration to authorize appropriations for the Department of Energy for fiscal year 1979. The measure is being introduced as two separate bills in order to simplify the referral of the matter to the appropriate committees and to facilitate congressional action.

One of these bills includes only civilian programs of the Department of Energy and will be referred to the Committee on Energy and Natural Resources.

The second bill involves primarily the national security programs of the Department which are within the jurisdiction of the Committee on Armed Serv-

ices. Title II of this bill, however, covers program items which have implications both for national security and for possible future civilian applications and which are of interest to both committees.

I ask unanimous consent, therefore, that the bill cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Act of 1979" be jointly referred to the Committees on Armed Services and on Energy and Natural Resources with the understanding that the consideration of the bill by the Committee on Energy and Natural Resources be limited to the matter of title II of the bill.

This referral procedure has been discussed with the distinguished chairman of the Armed Services Committee (Mr. STENNIS) and has his concurrence.

Mr. President, I ask unanimous consent that both bills be printed in the RECORD at this point.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2692

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as "The Department of Energy Civilian Program Authorization Act for Fiscal Year 1979".

SEC. 2. In accordance with section 660 of the Department of Energy Organization Act, there is hereby authorized to be appropriated to the Department of Energy for fiscal year 1979 the following sums, which may be made available until expended, under Titles I through IV:

TITLE I—ENERGY

Subtitle A—Energy supply-research and technology development

SEC. 101. For the following energy supply-research and technology development programs, a sum of dollars equal to the total of the following:

(a) Coal, $519,925,000;

(b) Petroleum, $78,150,000;

(c) Gas, $25,650,000;

(d) Solar, $274,800,000;

(e) Geothermal, $126,700,000, including an additional $7,500,000 for the 50 megawatt geothermal demonstration plant;

(f) Magnetic confinement fusion, $225,000,000;

(g) Fission, $742,851,000;

(h) Hydroelectric, $8,000,000;

(i) Biomass, $26,400,000;

(j) Basic energy sciences, $175,600,000;

(k) Advanced technology and assessment project, $21,000,000;

SEC. 102. For energy supply-research and technology development capital investment, including: project planning, construction, acquisition, or modification of facilities (including land acquisition), and related activities, and acquisition or fabrication of capital equipment not related to construction, an additional sum of dollars equal to the total of the following:

(a) Coal

(1) Project 79-1-a, Morgantown Energy Research Center Warehouse Building, Morgantown, West Virginia, $350,000.

(b) Fission

(1) Project 79-1-b, Modifications to Reactors, $4,000,000.

(2) Project 79-1-c, Security Improvements, Richland, Washington, $12,000,000.

(3) Project 79-1-d, Second Power Tieline, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $2,600,000.

(4) 79-1-e, Fire Safety and Protection Improvements, Idaho National Engineering Laboratory, Idaho Falls, Idaho, and Argonne National Laboratory, Argonne, Illinois, $3,100,000.

(5) Project 79-1-f, Radioactive Waste Facility, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $2,000,000.

(6) Project 79-1-g, Test Area North Radioactive Liquid Waste Storage and Transfer System, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $1,000,000.

(7) Project 79-1-h, Maintenance and Storage Facility, Richland, Washington, $16,700,000.

(8) Project 79-1-i, AWBA Test and Examination Facilities, Bettis Atomic Power Laboratory, West Mifflin, Pennsylvania, $9,000,000.

(9) Project 79-1-j, Reactivation of Radioactive Material Laboratory and Hot Cell Annex, Test Area North, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $3,000,000.

(c) Basic Energy Sciences

(1) Project 79-1-k, Intense Pulsed Neutron Source-I, Argonne National Laboratory, Argonne, Illinois, $6,400,000.

(d) Capital Equipment Not Related to Construction, $110,601,000.

SEC. 103. For energy supply-research and technology development projects previously authorized:

(a) For Project 78-2-c, Low-Btu Fuel Gas Small Industrial Demonstration Plant, an additional sum of $19,000,000 (making a total project authorization of $25,000,000).

(b) For Project 76-1-b, High-Btu Synthetic Pipeline Gas Demonstration Plant, an additional sum of $191,000,000 (making a total project authorization of $246,000,000).

(c) For Project 76-2-b, Ten Megawatt Central Receiver Solar Thermal Power Plant, Barstow, California, an additional sum of $24,250,000 (making a total project authorization of $71,500,000).

(d) For Project 78-5-b, Advanced Fuel Recycle Integrated Equipment Test Facility, Oak Ridge National Laboratory, Oak Ridge, Tennessee, an additional sum of $12,400,000 (making a total project authorization of $15,400,000).

(e) For Project 78-5-a, Facilities for the National Waste Terminal Storage Program, site undetermined (land acquisition, A-E and long-lead procurement), an additional sum of $45,000,000 (making a total project authorization of $55,000,000).

(f) Project 78-6-e, Liquid Metal Engineering Center Facility Modifications, Liquid Metal Engineering Center, Santa Susana, California (A-E and long-lead procurement only), an additional sum of $1,600,000 (making a total project authorization of $5,600,000).

Subtitle B—Energy Supply-Production, Demonstration and Distribution

SEC. 104. For the following energy supply-production, demonstration and distribution programs, a sum of dollars equal to the total of the following:

(a) Coal, $2,930,000;

(b) Petroleum and shale reserves, $199,005,000;

(c) Solar, $64,381,000;

(d) Uranium enrichment activities, $976,400,000;

(e) Uranium resource assessment, $91,200,000;

(f) Multiple resources, $1,000,000.

SEC. 105. For energy supply-production, demonstration and distribution capital investment, including: project planning, construction, acquisition or modification of facilities (including land acquisition), and related activities, and acquisition or fabrication of capital equipment not related to construction, an additional sum of dollars equal to the total of the following:

(a) Uranium Enrichment Activities

(1) Project 79-2-a, UF_6 Tails Cylinders and Storage Yards, Gaseous Diffusion Plants, $11,000,000.

(2) Project 79-2-b, Coal and Ash Handling Modifications, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio, $2,300,000.

(3) Project 79-2-c, Upgrade Uranium Recovery, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio, $3,600,000.

(4) Project 79-2-d, Technology Test Facilities, various locations (A-E and long-lead procurement only), $7,000,000.

(b) Capital Equipment Not Related to Construction, $24,200,000.

SEC. 106. For energy supply-production, demonstration and distribution projects previously authorized.

(a) For Project 78-14-b, Process Control Modifications, Gaseous Diffusion Plants, an additional sum of $1,100,000 (making a total project authorization of $18,500,000).

(b) For Project 76-8-g, Enriched Uranium Production Facilities, Portsmouth, Ohio, an additional sum of $220,000,000 (making a total project authorization of $582,630,000).

(c) For Project 71-1-f, Process Equipment Modifications, Gaseous Diffusion Plants, an additional sum of $70,000,000 (making a total project authorization of $990,000,000).

Subtitle C—Conservation

SEC. 107. For the following conservation programs, a sum of dollars equal to the total of the following:

(a) Utilities, $52,793,000;

(b) Residential and commercial, $262,000,000;

(c) Industrial, $48,600,000;

(d) Transportation, $96,000,000;

(e) Federal, $10,190,000;

(f) State and local, $368,300,000;

(g) Multiple sector, $163,380,000.

SEC. 108. For conservation, for capital equipment not related to construction, $8,300,000.

Subtitle D—Regulation

SEC. 109. For the regulation program, $103,720,000, of which $43,670,000 is for the Federal Energy Regulatory Commission.

Subtitle E—Emergency Preparedness

SEC. 110. For the emergency preparedness program, $4,255,360,000.

Subtitle F—Energy Information

SEC. 111. For the energy information program, $63,405,000.

Subtitle C—Environment

SEC. 112. For the environment program, $183,988,000.

SEC. 113. For environment capital investment, including: project planning, construction, acquisition or modification of facilities (including land acquisition), and related activities, and acquisition or fabrication of capital equipment not related to construction, a sum of dollars equal to the total of the following:

(a) Project 79-3-a, Modifications and Additions to Biomedical and Environmental Research Facilities, various locations, $4,000,000.

(b) Capital Equipment Not Related to Construction, $14,600,000.

Subtitle H—Policy and Management

SEC. 114. For policy and management programs, a sum of dollars equal to the total of the following:

(a) For program direction and management support, $286,849,000.

(b) For supporting activities, $161,060,000.

SEC. 115. For policy and management, capital investment, including: project planning, construction, acquisition or modification of facilities (including land acquisition), and related activities, and acquisition or fabrication of capital equipment not related to construction, a sum of dollars equal to the total of the following:

(a) Project 79-4-a, Modifications for Energy Management, various locations, $25,000,000.

(b) Project 79-4-b, Heating, Ventilating, and Air Conditioning Heat Recovery, Richland, Washington, $4,000,000.

(c) Project 79-5, Plant Engineering and Design, $10,000,000.

(d) Project 79-6, General Plant Projects, $51,535,000.

(e) Capital Equipment Not Related to Construction, $5,800,000.

SEC. 116. For policy and management projects previously authorized:

(a) For Project 78-19-a, Program Support Facility, Argonne National Laboratory, Argonne, Illinois, an additional sum of $10,600,000 (making a total project authorization of $15,600,000).

TITLE II—GENERAL SCIENCE AND RESEARCH

SEC. 201. For the general science and research program, $306,600,000.

SEC. 202. For general science and research capital investment, including: project planning, construction, acquisition, or modification of facilities (including land acquisition), and related activities, and acquisition or fabrication of capital equipment not related to construction, an additional sum of dollars equal to the total of the following:

(a) Project 79-9-a, Hadron Bubble Chamber Facility, Fermi National Accelerator Laboratory, Batavia, Illinois, $2,200,000.

(b) Project 79-9-b, Energy Saver, Fermi National Accelerator Laboratory, Batavia, Illinois, $38,900,000.

(c) Project 79-9-c, Fire Protection Improvements, Brookhaven National Laboratory, Upton, New York, $1,300,000.

(d) Project 79-9-d, Accelerator Improvements and Modifications, various locations, $4,500,000.

(e) Project 79-9-e, Accelerator Improvements and Modifications, various locations, $1,500,000.

(f) Project 79-6, General Plant Projects, various locations, $6,700,000.

(g) Capital Equipment Not Related to Construction, $49,800,000.

SEC. 203. For general science and research projects previously authorized:

(a) For Project 78-10-b, Intersecting Storage Accelerator (ISABELLE) 400 x 400 Gev, Brookhaven National Laboratory Upton, New York, an additional sum of $264,500,000 (making a total project authoriaztion of $275,000,000).

TITLE III—POWER MARKETING ADMINISTRATIONS

Subtitle A—Alaska Power Administration

SEC. 301. For the Alaska Power Administration, including expenses for engineering and economic investigation to promote the development and utilization of the water, power, and related resources of Alaska, $2,614,000.

Subtitle B—Western Area Power Administration

SEC. 302. For the Western Area Power Administration, $101,252,000 for construction, rehabilitation, operation and maintenance of electric power transmission facilities, and power marketing activities, of which $90,007,000 shall be derived from the reclamation fund.

SEC. 303. For the Western Area Power Administration, $200,000 for the Emergency Fund established pursuant to 43 U.S.C. 502 to assure continuous operations during unusual or emergency conditions, all of which shall be derived from the reclamation fund.

SEC. 304. For the Western Area Power Administration for continued work on the transmission system of the Upper Colorado River Storage Project, authorized by Section 1 (1) of the Act of April 11, 1956 (Public Law 485 of the Eighty-Fourth Congress; 70 Stat. 105) and legislation supplementary thereto, including the Act of August 10, 1972 (Public Law 92-370), $2,286,000.

Subtitle C—Southwestern Power Administration

SEC. 305. For the Southwestern Power Administration, $19,909,000.

Subtitle D—Southeastern Administration

SEC. 306. For the Southeastern Power Administration, $1,212,000.

TITLE IV—SPECIAL FOREIGN CURRENCY

SEC. 401. For international cooperation in nonnuclear technology, special foreign currency, $2,000,000.

TITLE V—OTHER PROVISIONS

SEC. 501. (a) In the exercise of authority vested in the Secretary for the performance of research, development, and demonstration activities, facilities or major items of equipment may be constructed or acquired at locations other than installations of the Department.

(b) Agreements, contracts and grants entered into in furtherance of the authority of subsection (a) may provide for the transfer of title of other interests in property of the United States when the Secretary determines the transfer is in the best interests of the Government.

SEC. 502. Except as otherwise provided in this Act—

(a) no amount appropriated pursuant to this Act may be used for any program in excess of either (1) 120 per centum of the amount authorized for that program by this Act, or (2) five million dollars more than the amount authorized for that program by this Act, whichever is the lesser, and

(b) no amount appropriated pursuant to this Act may be used for any program which has not been presented to, or requested of, the Congress,

unless (1) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Secretary containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (2) each such committee, before the expiration of such period, has transmitted to the Secretary written notice waiving the remainder of such thirty-day notice period.

SEC. 503. The Department is authorized to start construction of any line item construction project set forth in this Act, only if the currently estimated cost of that project does not exceed by more than 25 per centum, the estimated cost set forth for the project. Further, the total cost of any project undertaken shall not exceed the estimated cost set forth for that project by more than 25 per centum unless and until additional appropriations are authorized: *Provided*, That limitations in this section will not apply to any project with an estimated cost less than $5,000,000.

SEC. 504. The Department is authorized to start any project provided for under the general plant projects authority set forth in this Act only if it is in accordance with the following:

(a) The then maximum currently estimated cost of any project shall not exceed $750,000 and the then maximum currently estimated cost of any building included in such project shall not exceed $300,000 *Provided*, That the building cost limitation may be exceeded if the Secretary determines that it is necessary in the interest of efficiency and economy.

(b) The total cost of all projects undertaken shall not exceed the total amount authorized by this Act for general plant projects by more than 25 per centum.

SEC. 505. Amounts appropriated pursuant to this Act for Policy and Management activities, for general plant projects, and for plant engineering and design are available for use, when necessary, in connection with all Department programs.

SEC. 506. In addition to construction design services performed with Plant Engineering and Design funds, the Secretary is authorized to perform construction design services for any Department construction project whenever (a) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Secretary, and (b) the Secretary determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

SEC. 507. When so specified in fiscal year 1979 appropriation Acts, any moneys received by the Department from uranium enrichment and other reimbursable programs may be retained and used, notwithstanding the provisions of Section 3617 of the Revised Statutes (31 U.S.C. 484), and may remain available until expended.

SEC. 508. Appropriations authorized by this Act for salary, pay, retirement or other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases authorized by law.

TITLE VI—BASIS FOR GOVERNMENT CHARGE FOR URANIUM ENRICHMENT SERVICES

SEC. 601. Subsection 161v. of the Atomic Energy Act of 1954, as amended, is amended as follows:

(a) by striking out the word "Commission" each time it appears in the subsection, and inserting in lieu thereof the words "Secretary of Energy" or "Department of Energy" as appropriate;

(b) by deleting from the first proviso in this subsection the words after "(iii)" of the first proviso to the beginning of the second proviso and inserting in lieu thereof the following:

"any prices established under this subsection shall be on such a basis as will assure the recovery of not less than the Government's costs over a reasonable period of time and when combined with a percentage of such costs will result in the recovery of revenues no greater than the sum of all Government costs and the normal and ordinary business expenses, taxes, and return on equity which would otherwise be reflected in the prices charged by a private operator providing similar services:" and

(c) by deleting the third proviso in this subsection and inserting in lieu thereof the following:

"*Provided further*, That before the Secretary establishes such criteria, the Secretary shall transmit the criteria to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and wait a period of forty-five days (not including any day in which either House of Congress is not in session because of adjournment of more than three days), unless prior to the expiration of such period each such committee has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action."

TITLE VII—AMENDMENTS TO THE NATIONAL ENERGY EXTENSION SERVICE ACT (TITLE V, P.L. 95-39)

SEC. 701. (a) Section 505(b)(9) of the National Energy Extension Service Act is amended by deleting the following:

": *Provided*, that there shall be no requirement for matching State or local funds in

the guidelines, unless such requirement is included in an annual authoriaztion".

(b) Section 512(c) of the National Energy Extension Service Act is amended by deletion from paragraph (2)(ii) of the following parenthetical clause:

"(determined on the basis of the most recent decennial census)" and the addition of a new paragraph (4) as follows:

"(4) Obligation of funds allocated under subsection (c)(2) of this section, including funds for implementation of any plan developed by the Director, pursuant to section 506(f)(1) of this Title, shall be conditioned by a requirement for matching State or local funds equal to Federal funds."

TITLE VIII—LOAN GUARANTEES FOR ENERGY DEMONSTRATION

SEC. 801. (a) Section 7(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906) is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (5),

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and'", and

(3) by adding at the end thereof the following new paragraph: "(7) Federal loan guarantees and commitments thereof as provided in subsection (d) of this section."

(b) Section 7(d) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906) is amended by striking "(d)" at the beginning of such section and inserting in lieu thereof "(e)'".

(c) Section 7 of the Federal Nonnuclear Energy Research and Development Act of 1974 is amended by adding the following new subsection:

"(d) Except to the extent that the authority to issue loan guarantees and commitments to guarantee is provided to the Secretary by Title II of the Geothermal Energy Research, Development and Demonstration Act of 1974 (P.L. 93-410) and Section 10 of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1974 (P.L. 94-413) guarantees and commitments may be entered into by the Secretary under this subsection subject to the following requirements and limitations:

(1) The Secretary shall determine the types and capacities of the commercial-size facility or other operation which would demonstrate the technical, environmental or economic feasibility of a particular nonnuclear energy technology. In making this determination, the Secretary shall consider the criteria set forth in Section 8(a) of this Act.

(2) The Secretary shall, to the maximum extent possible, encourage competition among guarantee applicants in a particular technology area.

(3) No guarantee shall be extended unless the Secretary finds that credit is not otherwise available on reasonable terms and conditions.

(4) For any loan guaranteed, the borrower shall have a minimum invested equity in any project equal to at least 10 per centum of the project cost. The guarantee shall not exceed 95 per centum of the total amount of the outstanding obligation of principal and interest; *Provided*, that in no case shall the amount guaranteed exceed 80 per centum of the project cost.

(5) No loan shall be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1954, or if the guarantee provides significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.

(6) Loans guaranteed shall provide for complete amortization within a period of not to exceed 30 years, or 75 per centum of the useful life of the project to be financed by the loans whichever is less, as determined by the Secretary.

(7) No guarantee or commitment to guarantee under this subsection in an amount exceeding $50,000,000 shall be issued by the Secretary except as further authorized by Congress. The total amount of guarantees and commitments to guarantee issued under this subsection shall not exceed such amounts as may be specified by Congress in authorization and appropriation acts.

(8) The approval of the Secretary of the Treasury shall be required of the interest rate, timing, and other terms and conditions of the financing of any guaranteed obligations, except that the Secretary of the Treasury may waive this requirement with respect to the financing of any guaranteed obligation when he determines that such financing does not have a significant impact on the market for Government and Government-guaranteed securities.

(9) There are hereby authorized to be appropriated from time to time such amounts, which shall remain available until expended, as may be necessary to carry out the purposes of this subsection; including, but not limited to, the payments of interest and principal.

(10) The Secretary shall charge and collect fees for guarantees in amounts sufficient in his judgment to cover applicable administrative costs and probable losses on guaranteed obligations; Provided, that the Secretary may waive any fee in excess of 1 per centum per annum of outstanding indebtedness covered by each guarantee upon a finding that such waiver is in furtherance of the demonstration program and the interests of the United States.

(11)(a) Any loan guarantee or commitment to guarantee shall be issued by the Secretary only if he determines there is reasonable assurance of repayment of the loan by the borrower under the guaranteed obligation. Any guarantee agreement entered into by the Secretary shall include such detailed terms and conditions as the Secretary deems appropriate to protect the interest of the United States in the case of default. For purposes of this subsection, any invention made or conceived in the course of or under such guarantee, shall be treated as a project asset in the event of foreclosure by the Secretary for default.

(b) The guarantee agreement may provide for the payment to holders of the obligation, for and on behalf of the borrower, of principal and interest which become due if the Secretary finds that—

(1) the borrower is unable to meet such payments, it is in the public interest to permit the borrower to continue to pursue the purposes of such project, and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which will result in the event of a default; and

(2) the borrower agrees to reimburse the Secretary for such payment on terms and conditions, including interest, which are satisfactory to the Secretary.

(c) The guarantee agreement may provide that the Secretary shall, after a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Secretary shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Secretary is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies.

(12) To the extent that moneys available to the Secretary for the purposes of this subsection are insufficient to fulfill his authorized obligations pursuant to any loan guarantee issued under this subsection, the Secretary shall, to such extent or in such amounts as are provided in appropriations acts (to be available without fiscal year limitations), issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemptions of such notes or obligations shall be made by the Secretary from appropriations or other moneys available to him. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the second Liberty Bond Act; and the purposes for which securities may be issued under that Act are extended to include any purchase of such note or obligations. All of such transactions by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(13)(a) If the Secretary makes a payment pursuant to any loan guarantee made by him pursuant to this subsection, the Secretary shall be subrogated to the rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or to permit the borrower, pursuant to an agreement with the Secretary to continue to pursue the purposes of the project for which a loan was guaranteed if the Secretary determines that this is in the public interest.

(b) Whenever the Secretary determines it necessary to secure the project assets in the event of defualt on any guarantee under this section, the Secretary shall notify the Attorney General, who shall take action as may be appropriate to recover the amounts of any payments made pursuant to the loan guarantee from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

TITLE IX—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1980

SEC. 901. There is hereby authorized to be appropriated to the Department of Energy to be available no earlier than October 1, 1979, such sums as may be necesary for Fiscal Year 1980 for the following:

(a) Energy

(b) General science and research

(c) Power marketing administrations

(d) Special foreign currency

SEC. 902. All of the provisions of this Act which are applicable to amounts appropriated pursuant to Titles I, II, III, and IV shall apply in the same manner to amounts appropriated pursuant to subsection 1011 (a), (b), (c), and (d) respectively.

S. 2693

Be it enacted by the Senate and House of Representatives of America in Congress assembled, That, this Act may be cited as the "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1979".

TITLE I—NATIONAL SECURITY PROGRAMS

OPERATING EXPENSES

SEC. 101. Funds are hereby authorized to be appropriated to the Department of Energy (hereinafter in this Act referred to as the

"Department") for fiscal year 1979 for operating expenses incurred in carrying out national security programs, including scientific research and development in support of the armed services, strategic and critical materials necessary for the common defense, and military applications of nuclear energy as follows:

(1) For Weapons Activities, $1,232,694,000;

(2) For Defense Intelligence and Arms Controls, $28,400,000;

(3) For Special Materials Production, $501,500,000; and

(4) For Program Direction and Management Support Related to National Security Programs, $47,151,000.

PLANT AND CAPITAL EQUIPMENT

SEC. 102. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979, for plant and capital equipment, including planning, construction, acquisition, or modification of facilities (including land acquisition), and for acquisition and fabrication of capital equipment not related to construction, necessary for national security programs, as follows:

(1) For weapons activities:

Project 79-7-a Tonopah Test Range upgrade, Phase II, Sandia Laboratories, Albuquerque, New Mexico, $4,000,000.

Project 79-7-b, fire protection improvements, Los Alamos Scientific Laboratory, Los Alamos, New Mexico (A-E and long lead procurement only), $2,000,000.

Project 79-7-c, proton storage ring, Los Alamos Scientific Laboratory, Los Alamos, New Mexico, $16,700,000.

Project 79-7-d, water cooling station upgrade, Lawrence Livermore Laboratory, Livermore, California, $2,300,000.

Project 79-7-e, production and assembly facilities, Pantex Plant, Amarillo, Texas, $10,000,000.

Project 79-7-f, stockpile quality evaluation facility, Y-12 Plant, Oak Ridge, Tennessee, $2,300,000.

Project 79-7-g, facilities for B43 modernization, various locations, $18,000,000.

(2) For special materials production:

Project 79-7-h, utilities replacement and expansion, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $10,500,000.

Project 79-7-i, transmission and distribution systems upgrading, Richland, Washington, $14,000,000.

Project 79-7-j, pollutant discharge elimination, Savannah River, South Carolina, $9,000,000.

(3) For defense waste management:

Project 79-7-k, waste management facilities, Savannah River, South Carolina, $75,000,000.

(4) For project 79-6, general plant projects—

(A) for weapons activities, $21,400,000;

(B) for special materials production, $10,250,000; and

(C) for waste management, $5,950,000.

(5) For project 79-8, plant engineering and design—

(A) for special materials production, $12,000,000;

(B) for defense waste management, $1,500,000; and

(C) for military application, $10,000,000.

(6) For capital equipment not related to construction—

(A) for weapons activities, $86,400,000;

(B) for special materials production, $32,000,000;

(C) for waste management, $8,000,000; and

(D) for program direction and management support, $300,000.

ADDITIONAL AUTHORIZATIONS FOR PREVIOUSLY AUTHORIZED PROJECTS

SEC. 103. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979, for national security projects previously authorized by law, as follows:

(1) For project 74-1-b, replacement ventilation air filter, F Chemical Separations Area, Savannah River, South Carolina, $2,100,000; for a total authorization of $7,300,000.

(2) For project 75-7-c, intermediate-level waste management facilities, Oak Ridge National Laboratory, Oak Ridge, Tennessee, $1,000,000; for a total authorization of $11,500,000.

(3) For project 77-13-a fluorinel dissolution process and fuel receiving improvements, Idaho Chemical Processing Plant, Idaho National Engineering Laboratory, Idaho Falls, Idaho, $100,400,000; for a total authorization of $115,400,000.

(4) For project 77-13-f, waste isolation pilot plant, Delaware Basin, southeast New Mexico, $40,000,000; for a total authorization of $68,000,000.

(5) For project 78-16-d, weapons safeguards, various locations, $11,000,000; for a total authorization of $28,000,000.

(6) For project 78-16-g, radioactive liquid waste improvement, Los Alamos Scientific Laboratory, Los Alamos, New Mexico, $11,900,000; for a total authorization of $12,500,000.

(7) For project 78-16-i, laboratory support complex, Los Alamos Scientific Laboratory, Los Alamos, New Mexico, $14,000,000; for a total authorization of $16,000,000.

(8) For project 78-17-a, production component warehouse, Pantex Plant, Amarillo, Texas, $2,550,000; for a total authorization of $2,800,000.

(9) For project 78-17-c, core facilities office building, utilities and roads, Lawrence Livermore Laboratory, Livermore, California, $11,000,000; for a total authorization of $12,300,000.

(10) For project 78-17-d, steam plant improvements, Y-12 Plant, Oak Ridge, Tennessee, $7,000,000; for a total authorization of $10,000,000.

(11) For project 78-18-a, high level waste storage and waste management facilities, Richland, Washington, $9,000,000; for a total authorization of $27,000,000.

(12) For project 78-18-e, environmental, safety and security improvements to waste management and materials processing facilities, Richland, Washington; $24,500,000; for a total authorization of $40,000,000.

TITLE II—DEFENSE PROGRAMS WITH POTENTIAL CIVILIAN APPLICATION

OPERATING EXPENSES

SEC. 201. Funds are hereby authorized to be appropriated to the Department of Energy (hereinafter in this Act referred to as the "Department") for fiscal year 1979 for operating expenses incurred in carrying out national security programs, including scientific research and development in support of the armed services, strategic and critical materials necessary for the common defense, and military applications of nuclear energy, as follows:

(1) For Inertial Confinement Fusion, $91,800,000.

(2) For Naval Reactor Development, $265,600,000.

(3) For Nuclear Materials Security and Safeguards, $40,089,000.

PLANT AND CAPITAL EQUIPMENT

SEC. 202. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979, for plant and capital equipment, including planning, construction, acquisition, or modification of facilities (including land acquisition), and for acquisition and fabrication of capital equipment not related to construction, necessary for national security programs, as follows:

(1) For project 79-6, general plant projects—for naval reactor development, $3,000,000.

(2) For capital equipment not related to construction—

(A) for laser fusion, $8,200,000;

(B) for naval reactor development, $22,000,000;

(C) for nuclear materials security and safeguards, $3,000,000.

ADDITIONAL AUTHORIZATIONS FOR PREVIOUSLY AUTHORIZED PROJECTS

SEC. 203. Funds are hereby authorized to be appropriated to the Department for fiscal year 1979 for projects previously authorized by law, as follows:

(1) For project 77-13-g, safeguards and security upgrading, production facilities, multiple sites, $3,800,000; for a total authorization of $20,200,000.

(2) For project 78-4-a, high energy laser facility (NOVA), Lawrence Livermore Laboratory, Livermore, California, $187,000,000; for a total authorization of $195,000,000.

TITLE III—GENERAL PROVISIONS REPROGRAMING

SEC. 301. Except as otherwise provided in this Act—

(1) no amount appropriated pursuant to this Act may be used for any program in excess of (A) 120 per centum of the amount authorized for that program by this Act, or (B) $5,000,000 more than the amount authorized for that program by this Act, whichever is the lesser, and

(2) no amount appropriated pursuant to this Act may be used for any program which has not been presented to, or requested of, the Congress, unless a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Secretary of Energy containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or unless each such committee, before the expiration of such period, has transmitted to the Secretary written notice waiving the remainder of such thirty-day notice period.

PROJECT COST VARIATION PROVISIONS

SEC. 302. The Department is authorized to start construction of any construction project for which funds are authorized to be appropriated by this Act only if the currently estimated cost of that project does not exceed by more than 25 per centum the estimated cost set forth for the project. Further, the total cost of any project undertaken shall not exceed the estimated cost set forth for that project by more than 25 per centum unless and until additional appropriations are authorized. This section shall not apply to any project with an estimated cost of less than $5,000,000.

LIMITS ON GENERAL PLANT PROJECTS

SEC. 303. The Secretary of Energy is authorized to start a project set forth under section 102(4) of this Act only if—

(1) the then maximum currently estimated cost of the project does not exceed $750,000 and the then maximum currently estimated cost of any building included in the project does not exceed $300,000 (except that the building cost limitation may be exceeded if the Secretary determines that it is necessary to do so in the interest of efficiency and economy); and

(2) the then maximum currently estimated total cost of all projects undertaken under such section does not exceed the total amount authorized by such section for such projects by more than 25 per centum.

AVAILABILITY OF FUNDS

SEC. 304. Subject to the provisions of appropriations Acts, amounts appropriated pur-

suant to sections 101 and 102 of this Act for policy and management activities, for general plant projects, and for plant engineering and design are available for use, when necessary, in connection with all national security programs of the Department.

AUTHORIZATION TO PERFORM CONSTRUCTION DESIGN SERVICES

SEC. 305. In addition to construction design services performed with funds authorized under section 102(5) for plant engineering and design, the Secretary of Energy is authorized to perform construction design services for any national security construction project of the Department (in amounts not in excess of the amounts specified in such section) whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Secretary of Energy, and (2) the Secretary determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

ADJUSTMENTS FOR PAY INCREASES

SEC. 306. Appropriations authorized by this Act for salary, pay, retirement, or other benefits for Federal employees may be increased by such amounts as may be necessary for increases in such benefits authorized by law.●

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that one of the bills introduced by Senator JACKSON, S. 2693, to authorize appropriations for the Department of Energy for national security programs for fiscal year 1979, and for other purposes, be referred jointly to the Committee on Armed Services and the Committee on Energy and Natural Resources.

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

ADDITIONAL COSPONSORS

S. 1116

At the request of Mr. MCGOVERN, the Senator from Maine (Mr. HATHAWAY) was added as a cosponsor of S. 1116, a bill to amend title XVIII of the Social Security Act to include nutritional counseling.

S. 1820

At the request of Mr. ROBERT C. BYRD, the Senator from Iowa (Mr. CULVER) and the Senator from California (Mr. CRANSTON) were added as cosponsors of S. 1820, the Natural Diversity Act.

S. 1880

At the request of Mr. HELMS, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 1880, a bill to provide procedures for calling constitutional conventions for proposing amendments to the Constitution.

S. 2162

At the request of Mr. WALLOP, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2162, the Jackson Hole Scenic Area bill.

S. 2164

At the request of Mr. ZORINSKY, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 2164, a bill to amend title 23 of the United States Code, relating to highways, to authorize a program to separate rail and highway crossings in certain energy impacted cases.

S. 2306

At the request of Mr. WILLIAMS, the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Rhode Island (Mr. PELL) were added as co-sponsors of S. 2306, a bill to establish a national system of reserves for the protection of outstanding ecological, scenic, historic, cultural, and recreational landscapes, and for other purposes.

S. 2360

At the request of Mr. MOYNIHAN, the Senator from Michigan (Mr. GRIFFIN), the Senator from Maine (Mr. MUSKIE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of S. 2360, a bill to authorize an appropriation to reimburse certain expenditures for social services provided by the States prior to October 1, 1975, under titles I, IV, VI, X, XIV, and XVI of the Social Security Act.

S. 2493

At the request of Mr. CANNON, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of S. 2493, the Air Transportation Regulatory Reform Act of 1977.

S. 2534

At the request of Mr. SCHWEIKER, the Senator from New Jersey (Mr. CASE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Minnesota (Mrs. HUMPHREY), and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 2534, the Health Maintenance Organization Act Amendments of 1978.

S. 2630

At the request of Mrs. HUMPHREY, the Senator from Kentucky (Mr. HUDDLESTON) and the Senator from Oregon (Mr. MARK O. HATFIELD) were added as cosponsors of S. 2630, a bill to extend and modify the special supplement food program for women, infants, and children.

S. 2645

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 2645, a bill to establish an art bank.

S. 2648

At the request of Mr. MCGOVERN, the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of S. 2648, the Hubert Humphrey commemorative stamp bill.

S. 2682

At the request of Mr. MCGOVERN, the Senator from South Dakota (Mr. ABOUREZK) was added as a cosponsor of S. 2682, a bill to authorize the Gregory County pumped-storage facility.

AMENDMENT NO. 1702

At the request of Mr. PERCY, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of amendment No. 1702, intended to be proposed to H.R. 7200, a bill to amend the Social Security Act.

SENATE RESOLUTION 412—SUBMISSION OF A RESOLUTION RELATING TO TRANSMITTAL OF LEGISLATION PROPOSED TO IMPLEMENT THE PANAMA CANAL TREATY

Mr. THURMOND submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 412

Resolved, That it is the sense of the Senate that the President should transmit to the Senate, before the final vote by the Senate on the resolution of ratification to the Panama Canal Treaty, such legislation as he may propose to implement the Treaty.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

AMENDMENTS SUBMITTED FOR PRINTING

PANAMA CANAL TREATIES, EX. N, 95–1

AMENDMENT NO. 66

(Ordered to be printed and to lie on the table.)

Mr. SCHMITT submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT NO. 67

(Ordered to be printed and to lie on the table.)

Mr. THURMOND submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT NO. 68

(Ordered to be printed and to lie on the table.)

Mr. WALLOP submitted an amendment intended to be proposed by him to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Ex. N, 95–1.

AMENDMENT NO. 69

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT TO ARTICLE I OF THE PANAMA CANAL TREATY

● Mr. DOLE. Mr. President, I send to the desk an amendment to article I of the Panama Canal Treaty. It is essentially a restatement of my earlier amendment No. 11 to article IV of the same treaty.

This amendment, like my amendment No. 11, seeks to insure that no foreign troops, defense sites, or military installations—other than those of the United States—will be maintained in Panama between the date of treaty ratification and the year 2000. Of course, Panama would be able to maintain her own troops, sites, and installations as well.

Panama has given us the same assurance under article V of the Neutrality Treaty, for the period after 1999. I think it is important to have the assurance for the preceding period as well.

Mr. President, I emphasize that this is a restatement of an amendment I proposed almost 2 months ago, on January 19, to article IV.

I ask unanimous consent that the text of my amendment be printed in the RECORD at this point.

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

AMENDMENT No. 69

At the end of article I, add the following: "5. For the duration of this Treaty and consistent with the provisions of article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.".●

ADDITIONAL COSPONSORS—EX. N, 95–1

AMENDMENT NO. 12

At the request of Mr. DOLE, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of amendment No. 12 intended to be proposed to the Treaty on Neutrality and Permanent Operation of the Panama Canal.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

● Mr. CHURCH. Mr. President, for the information of the Senate and the general public, the Senate Energy and Natural Resources Subcommittee on Energy Research and Development has scheduled three hearings to examine the fiscal year 1979 Department of Energy authorization request. Department of Energy witnesses will present testimony on the following dates in room 3110 of the Dirksen Senate Office Building:

March 13, 10 a.m.: Solar and Geothermal Energy.

March 20, 10 a.m.: Magnetic Fusion, Inertial Fusion, and Basic Research.

March 21, 10 a.m.: Environment.

Anyone wishing additional information with regard to the hearings should contact the subcommittee staff director, Willis Smith, at (202) 224–4431.●

ADDITIONAL STATEMENTS

TUITION TAX RELIEF

● Mr. HAYAKAWA. Mr. President, it has been my pleasure to be associated with Senator ROBERT PACKWOOD of Oregon and Senator DANIEL PATRICK MOYNIHAN of New York as a cosponsor of S. 2142, the Tuition Tax Relief Act. Both of those gentlemen, as is well known, can speak for themselves: And so, my own words of praise for their important legislative initiative would be superfluous. But our distinguished colleague from New York, in an article in the Washington Post on Sunday, March 5, expounded upon the rationale behind his legislation and presented a case for it that was at once moving and logically convincing. In order that all of our colleagues and the public may profit from Mr. MOYNIHAN's incisive words of wisdom, I ask unanimous consent that his article be printed in the RECORD.

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

WHY PRIVATE SCHOOLS MERIT PUBLIC AID

(By DANIEL PATRICK MOYNIHAN)

In his message to Congress on elementary and secondary education last Tuesday, President Carter observed that "private schools—particularly parochial schools—are an important part of our diverse educational system."

He thereupon unveiled the second half of a $12.9 billion education program—the college portion having been announced days earlier—put together in large part for the purpose of blocking a congressional initiative that would provide aid to persons attending those private and parochial schools. That the administration's alternative does nothing of the sort, despite the president's appreciation of the value of these institutions, suggests the general difficulty contemporary liberalism has with the concepts of "public" and "private" in many spheres of social policy.

The public schools, as we know them, date from the mid-19th century. They did not come into the field *de novo*. Prior to the public schools, privately operated, local (hence "parochial") schools existed in great number. The public schools were a competing idea, and gradually supplanted the others, such that hardly more than 10 percent of elementary and secondary school children go to nonpublic schools today.

This has not been a matter of educational quality, still less of efficiency. In the main, the nonpublic schools are just as good and, in the main, startlingly cheaper. It has been a matter of ideology; of legitimacy. It was not enough to say that public schools provide the basic educational resource of the republic. (They have done; they do; they should continue to do.) It became necessary to stigmatize the other schools as "foreign," or "elitist," or threatening. The new schools became clothed with a public purpose that increasingly was denied the older schools.

This is the process the economist Joseph Schumpeter described a generation ago as the conquest of the private sector by the public sector. It was his gloomy judgment that the process was inherent in liberalism itself, even though it would end by destroying liberal society.

Nowhere is the process more advanced in the United States than in education. The pressure toward state monopoly is fearsome. Observe the Carter administration. The ideological assumptions are deeply implanted. Observe the news columns of The Washington Post, in which supporters of our tuition tax credit bill are called "conservatives" and supporters of the president's education aid bill are called "liberals."

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THE PUBLIC SCHOOLS CAMPAIGN

Until about 1840, primary and secondary education in the United States was the responsibility of private organizations, most religious but some nonsectarian. In many if not most jurisdictions they received some public funds, but their control remained private.

This was not always apparent. In New York City, for example, the Free School Society that had been chartered in 1805 changed its name in 1826 to the New York Public School Society, but it remained under private control until it was, in effect, disestablished in 1842 and its governance altered to include an elected board of education. But the phrase "public school" that endures to this day—as in PS 104—may be traced to educational institutions run by a private charitable—and Protestant—organization.

The educational history of the mid-19th century was dominated by a purposeful and, in the main, successful campaign by the partisans of government-sponsored schools to require attendance at their institutions and to discourage persons from attending other institutions.

Closely associated with the rise of public education was a decline of private education. The effort began to ban public support for nongovernmental schools. Private schools somehow posed a problem for public school advocates, even those as well-intentioned and deservingly well-regarded as Horace Mann, who wrote in 1849 that "the private school system was rapidly absorbing the funds, patronizing the talent and withdrawing the sympathy which belonged to the public schools."

But the problem of private schools was inevitably tangled with another familiar concern of mid-19th-century Americans: the flood of immigrant foreigners, especially Catholics, and their insistence on bringing their faith with them and on sending their children to schools operated by their churches.

INVOKING THE CONSTITUTION

Thereupon the Constitution was invoked for a purpose which, as political scientist Walter Berns of the University of Toronto has shown in his brilliant treatise, "The First Amendment and the Future of American Democracy," the founding fathers never intended: in support of the claim that any public funding of church-related schools was a violation of the First Amendment.

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The Constitution was not amended, despite 11 separate proposals introduced in the Congress between 1870 and 1883. But the campaign against parochial schools continued unabated, reaching its apogee in Oregon in 1922 when the state legislature passed a law requiring every child in the state to

be sent to public school. It is worth recalling, as Sen. Bob Packwood of Oregon did in the course of recent hearings before the Senate Finance Committee, that at that time a majority of the Oregon legislature were members of the Ku Klux Klan. And it is worth recalling also the arguments made on behalf of this legislation when the Supreme Court was asked to rule on its constitutionality.

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"At present, the vast majority of the private schools in the country are conducted by members of some particular religious belief. They may be followed, however, by those organized and controlled by believers in certain economic doctrines entirely destructive of the fundamentals of our government. Can it be contended that there is no way in which a state can prevent the entire education of a considerable portion of its future citizens being controlled and conducted by *bolshevists, syndicalists* and *communists?* [emphasis added]."

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Had that been the end of it, recent educational history would have been different; a mildly plural school system would have ensured. The public schools would have continued to receive far the greatest amount of public funds. Which they deserve; they are far the most important schools. But the other schools would have had some share, which state legislatures have never ceased to try to provide for them. The trouble came when the Constitution was invoked to forbid any such assistance.

This occurred in the 1947 Supreme Court decision *Everson* v. *Board of Education*, involving a New Jersey statute authorizing school districts to reimburse parents for bus fares paid by children traveling to and from private schools. The court held that neither Congress nor the state legislature may "pass laws which aid one religion, aid all religions, or prefer one religion over another." Nor may any tax "in any amount, large or small . . . be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

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President Carter then stated that the Congress must choose between tax credits, which he opposes, and a program of increased direct aid to students that has much to be said for it but which is confined to colleges and universities.

Califano's memo to the president had noted that "we still have a problem with assistance to private elementary and secondary schools. None of the tax credit or student assistance proposals presently on the table addresses that issue—except for Packwood/Moynihan. We will be working in the next week or so to determine if a proposal on that issue is necessary as a matter of politics, feasible as a matter of cost, and constitutional as a matter of law."

With respect to the question whether aid to private schools was "necesary as a matter of politics," Califano put the wrong question to the president. The essential question is whether it is permissible as a matter of ideology. In the event, the administration gave its answer last Tuesday. No aid was provided. Our proposal to do so was severely chastised, notwithstanding the president's own commitment of Oct. 19, 1976, to "finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools."

As former commissioner of education Harold Howe reminded us just last week, "The passage of the Elementary and Secondary Education Act [ESEA] in 1965 was possible because the act embraced the diversity of public and private schools . . ." Howe knows whereof he speaks. I took part in the negotiations with the National Catholic Welfare Conference and drafted the plank in the 1964 Democratic Party platform calling for aid to *all* schools. This broke the deadlock which had previously kept President Kennedy's education program from approval by the Congress.

In return for their acceptance of the "student benefit" doctrine, however, private schools were supposed to receive aid. The government did not keep this half of the agreement. The categorical aid provided under ESEA has, more often than not, been denied to private school pupils.

If the administration's new proposals correct this injustice, there will be cause for some satisfaction. But it is simply misleading, if not actually deceptive, to state as Califano has that the reason for this is "to ensure that private school children receive the funds that are their due." The Elementary and Secondary Education Act, even as amended by the president's proposals, provides not a nickel to the students, to their parents, or to the private schools themselves.

FIVE KEY ARGUMENTS

The opponents of tax credits for elementary and secondary school students make five principal assertions: that tax credits would cause more federal funds per pupil to go to private than to public school students; that they would assist persons who do not "need" them; that they would foster racial segregation; and that the measure itself would violate the separation clause of the First Amendment.

I have already addressed myself to the last of these, and would simply add a point suggested by economist E. G. West of Canada's Carleton University: The First Amendment also contains a "free exercise clause" that is very likely violated by a system that in taxing everyone but aiding only those who patronize public school "prohibits in degree the ability of those parents who normally patronize a parochial school."

As to the proposition that our proposal would undermine support for the public schools, it is remarkable that those making the argument seemingly fail to understand its depressing implication: Have public schools so little going for them that absent a near-monopoly, or at least a marketplace skewed sharply in their favor, they would lose students and resources? I think far more of the public schools than that, and am certain that for the vast majority of the population they will continue to provide the most attractive educational option. Competition strengthens them. That competition is disappearing.

The assertion that more federal funds would go to private than public school students is interesting on two counts. It is suggested, by Califano among others, that our proposal could cause the ratio to become 4 to 1. As Rep. Barber B. Conable Jr. of New York pointed out last week, when federal tax expenditures that benefit public schools—notably the billions of dollars associated with the deduction for state and local taxes—are counted, and when the costs of present and proposed programs are tabulated more accurately than HEW seems to have done, we would find a ratio of about 6 to 5 (a little over $300 for each private school student to $251 per student in public schools.)

It is already well-established in our college student aid programs that someone attending a private university should receive a larger federal subsidy than he would receive in a state college, because his attendance costs are substantially higher. Is it unreasonable to extend that principle to grammar schools? But even if it is, one must assume from the argument that a ratio of 4 to 1 is excessive that some lesser ratio would not be excessive. The sponsors of tax credits are most willing to negotiate the ratio if it is clear the opponents do not object to the principle.

As to "need," 82 per cent of all private elementary and secondary school students live in families earning less than $30,000 a year. I would not object to putting some income ceiling on the proposed tax credits, though it is interesting to note that at the college level the administration is prepared to subsidize students from families earning as much as $45,000, a ceiling that would shelter about 92 per cent of all private school students.

It is irresponsible to argue that tax credits would foster racially segregated education. Our bill is carefully drafted to exclude schools that might seek to discriminate on racial lines by requiring the Internal Revenue Service to police their compliance with civil rights statutes as part of allowing them to obtain and keep tax-exempt status. I have already advised the NAACP that if this provision is not adequate I will welcome an amendment to make it so.

PUBLIC FIRST, PRIVATE NEXT

In sum: The public schools come first. The great majority of students attend public schools. The first claim and by far the largest claim on public resources is theirs. But these claims have in fact been attended to first. The president's recent proposals merely elaborate and expand aid programs that are already part of national policy and are in no way in jeopardy.

But the nonpublic schools have claims also, and these, reasonably, should come next. It is not in the public interest that the life should be squeezed out of them, but this is what is now happening. They lost a million students—one-sixth of their enrollments—between 1965 and 1975. In the past two decades, the national government has begun to take education seriously. This is evidenced by the billions of dollars now devoted to that purpose and by the landmark legislation that the Congress has passed.

Equality of educational opportunity has been the purpose of this legislation and the programs that resulted have made great strides in achieving that objective. But thus far we have succeeded in providing equality only to those who enroll in government schools. We have failed the parents who prefer to send their children to the schools that are descended from the older, private school systems. We are rapidly en route to a complete conquest of the private sector of American education by the public sector. There will be those who will welcome that development. It seems a pity, however, that their number includes the major education policymakers of the executive branch of the national government.●

REMARKS OF FORMER SENATOR HUMPHREY ON ISRAEL

● Mr. RIEGLE. Mr. President, in 1976, our late beloved colleague Hubert Humphrey made an eloquent statement concerning the state of Israel. His remarks were recently reprinted in The Jewish News of Southfield, Mich. For the interest of my colleagues and other readers of the RECORD, I request unanimous consent that his remarks, as they were delivered to the Policy Conference of the American Israel Public Affairs Committee in Washington, D.C. on May 3, 1976, be printed in the RECORD.

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

STATEMENT BY THE LATE SENATOR HUBERT HUMPHREY

It is indeed difficult to discuss these issues without recalling my last visit to Israel's capital, the historic city of Jerusalem, just a short time ago. I stood on the Judean foothills, and I had with me my son who is a state senator from Minnesota. I wanted him to know the experiences that his father has had. I believe in bringing up the sons at least with some of the opportunity to share in the experiences of the fathers. I wanted that son of mine, who is a state senator, to be another spokesman for justice and for freedom and for Israel. And let me tell you, he got the message.

When we stood there on the Judean foothills before the panorama of the City of David, I could see the Parliament, the Knesset, the Dome of the Rock, Mount Zion, and the Old City. What a sense that he should know this; what a proud ritual, if you have any feeling at all.

I walked through the Jaffa Gate down the ancient cobblestones, and I made my way to the Wailing Wall. Standing before the holiest shrine of the people of Israel and Jews around the world, I was told that the people of Israel come to the wall to lament over the destruction of the Second Temple, to shed spiritual tears for those who had given their lives in defense of Israel and the Jewish people.

For centuries, tears, salt have marked Jewish existence. Jews have shed tears for the ancient exile, the Czar's pogroms; they have wept for the victims of Nazi terrorism, the heroes of Warsaw, and the sons and the fathers who died in defense of a united Jerusalem and a free, independent Israel in 1948, 1956, 1967, and once again in 1973.

Just think of the tattering destruction, of war, of sacrifice and of suffering. Think literally of the rivers of tears that have come from these incredible experiences. Too many tears have been shed throughout the centuries; too many young men have given their lives in defense of Israel's freedom and the right of Jews to be free wherever they live. It is time, I say, to end the tears, to end Israel's pain, to restore her confidence and to help to bring her peace—the peace for which she has fought for 28 years, the peace her prophets spoke of and her sons and daughters have prayed for.

As Israel's national anthem, Hatikva, proclaims: "Once again, the land of Israel must be filled with hope," and with that hope, she will prosper. When this comes to pass, people will rejoice for the miracle of Israel whose people will make the desert bloom in security and peace.

That's my testament to you tonight; that's the way I believe, and those are the thoughts that will govern my actions in the Congress. Those are the thoughts that will govern my votes, and will indeed inspire whatever legislation I can put my hand to.

And I say to you now, don't you waste a single day or a moment while you are here. You contact every member of Congress, and tell them that all that you ask is that America show its dedication to democracy, that we show our dedication to those who are willing to die for freedom.

What I love about Israel so much is that she reveals in her existence what I think are the best objectives of American foreign policy: a people and a country who are insisting for their right to be free and independent; a people and a country who are willing to use their resources to enrich the lives of their own people; a people and a country who are willing to play a responsible role in world affairs. If every country that we've helped would do as much, then tonight the world would be a happier and a safer place in which to live.●

DISTURBING TRENDS IN U.S. NAVAL CAPABILITIES

● Mr. THURMOND. Mr. President, the Thursday, March 2, 1978, issue of Shipyard Weekly included an article entitled, "Disturbing Trends in United States/U.S.S.R. Naval Capabilities."

This weekly, published by the Shipbuilders Council of America, highlighted important testimony by Gen. George S. Brown, Chairman of the Joint Chiefs relative to Soviet/United States naval capabilities.

This represents an excellent summary of the overall Navy picture and clearly illuminates the accelerated Soviet effort to control the sealanes of the world.

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

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

"DISTURBING TRENDS" IN U.S./U.S.S.R NAVAL CAPABILITIES

Overlooked in recent defense posture presentations on Capitol Hill by civilian and military officials has been this statement on "present combat capabilities of Soviet naval forces" by Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff:

"The present combat capabilities of Soviet naval forces can substantially influence Western naval operations in many key areas, and could dominate the initial stages of certain types of conflicts. Soviet surface ships, however, are considered particularly vulnerable to concerted Western air or submarine attack.

"The Soviet Navy enjoys numerical advantage over U.S. naval forces in principal surface combatants (4:3) and especially in general purpose submarines (3:1). Moreover, Soviet surface naval units are generally more heavily armed than their U.S. counterparts. The United States has ASW (antisubmarine warfare) capabilities superior to the Soviet Union's, reflected in the SSN 668 *Los Angeles* class which is the finest ASW platform in existence today; Sound Surveillance System (SOSUS); and land-based P-3 aircraft.

"The US Navy enjoys a clear superiority in power projection capabilities, particularly as represented by aircraft carriers and US Marine amphibious forces. The United States possesses an advantage in mobility of naval forces typified by the nuclear powered task groups and high performance underway replenishment capabilities. The development of the HARPOON and TOMAHAWK medium and long-range antiship missiles, and the AEGIS air defense weapon system will improve the US Navy surface warfare capabilities provided the shipbuilding program continues to provide modern platforms, such as the guided missile destroyer (DDG-47) and the nuclear guided missile cruiser (CGN-42) . . .

"The US Navy's greatest problem is too few surface combatants to perform all its missions simultaneously. The Soviet Union is, and has been, actively engaged in a major surface fleet modernization program. At present, US fleet modernization programs are being curtailed. Shipbuilding programs initiated a few years ago have been substantially reduced. These are disturbing trends considering the long lead times necessary to bring ship programs from early stages of development and design to full combat capability.

"While the US Navy's capability to project and sustain sea-based power and the quality of its attack submarine force are superior to the Soviet Union's, current US capability to control the essential sea lanes, versus the Soviet Navy's capability to deny the use of these lanes, is more difficult to assess. In the event of a major conflict, by concentrating its effort and exploiting allied capability, the US could prevail in most situations, but both US and allied shipping would probably suffer serious losses in the early stages."●

SENATOR MOYNIHAN ON TUITION TAX AID FOR PRIVATE SCHOOLS

● Mr. RIBICOFF. Mr. President, as you know the Finance Committee has ap-

proved legislation to provide a tax credit to parents who pay tuition for their children to attend tuition-charging elementary and secondary schools or colleges. An article by Senator MOYNIHAN concerning the background of this bill appeared in the Washington Post Outlook section on Sunday, March 5. I would like to share this column with my colleagues 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:

WHY PRIVATE SCHOOLS MERIT PUBLIC AID—THE CONSTITUTIONAL CASE FOR TUITION TAX CREDITS

(By DANIEL PATRICK MOYNIHAN)

In his message to Congress on elementary and secondary education last Tuesday, President Carter observed that "private schools—particularly parochial schools—are an important part of our diverse educational system."

He thereupon unveiled the second half of a $12.9 billion education program—the college portion having been announced days earlier—put together in large part for the purpose of blocking a congressional initiative that would provide aid to persons attending those private and parochial schools. That the administration's alternative does nothing of the sort, despite the president's appreciation of the value of these institutions, suggests the general difficulty contemporary liberalism has with the concepts of "public" and "private" in many spheres of social policy.

The public schools, as we know them, date from the mid-19th century. They did not come into the field *de novo*. Prior to the public schools, privately operated, local (hence "parochial") schools existed in great number. The public schools were a competing idea, and gradually supplanted the others, such that hardly more than 10 per cent of elementary and secondary school children go to nonpublic schools today.

This has not been a matter of educational quality, still less of efficiency. In the main, the nonpublic schools are just as good and, in the main, startlingly cheaper. It has been a matter of ideology; of legitimacy. It was not enough to say that public schools provide the basic educational resource of the republic. (They have done; they do; they should continue to do.) It became necessary to stigmatize the other schools as "foreign," or "elitist," or threatening. The new schools became clothed with a public purpose that increasingly was denied the older schools.

This is the process the economist Joseph Schumpeter described a generation ago as the conquest of the private sector by the public sector. It was his gloomy judgment that the process was inherent in liberalism itself, even though it would end by destroying liberal society.

Nowhere is the process more advanced in the United States than in education. The pressure toward state monopoly is fearsome. Observe the Carter administration. The ideological assumptions are deeply implanted. Observe the news columns of The Washington Post, in which supporters of our tuition tax credit bill are called "conservatives" and supporters of the president's education aid bill are called "liberals."

John Stuart Mill thought otherwise. "A general state education," he wrote in the essay "On Liberty," "is a mere contrivance for molding people to be exactly like one another: and as the mold in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation; in proportion as it is efficient and successful, it establishes a despotism over the mind leading by natural tendency to one over the body."

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As summarized in the Supreme Court record of *Pierce v. Society of Sisters*, attorneys for the state argued that:

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laws which aid one religion, aid all religions, or prefer one religion over another." Nor may any tax "in any amount, large or small . . . be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

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Secretary of Health, Education and Welfare Joseph Califano has stated that this "proposal, in short, stands the American tradition of public education on its head." In a memo to the president early last month, he urged action "to counter congressional proposals for tuition tax credits" and warned, "We must move quickly if we are to seize the initiative on this very hot issue."

President Carter then stated that the Congress must choose between tax credits, which he opposes, and a program of increased direct aid to students that has much to be said for it but which is confined to colleges and universities.

Califano's memo to the president had noted that "we still have a problem with assistance to private elementary and secondary schools. None of the tax credit or student assistance proposals presently on the table addresses that issue—except for Packwood/Moynihan. We will be working in the next week or so to determine if a proposal on that issue is necessary as a matter of politics, feasible as a matter of cost, and constitutional as a matter of law."

With respect to the question whether aid to private schools was "necessary as a matter of politics," Califano put the wrong question to the president. The essential question is whether it is permissible as a matter of ideology. In the event, the administration gave its answer last Tuesday. No aid was provided. Our proposal to do so was severely chastised, notwithstanding the president's own commitment of Oct. 19, 1976, to "finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools."

As former commissioner of education Harold Howe reminded us just last week. "The passage of the Elementary and Secondary Education Act [ESEA] in 1965 was possible because the act embraced the diversity of public and private schools . . ." Howe knows whereof he speaks. I took part in the negotiations with the National Catholic Welfare Conference and drafted the plank in the 1964 Democratic Party platform calling for aid to *all* schools. This broke the deadlock which had previously kept President Kennedy's education program from approval by the Congress.

In return for their acceptance of the "student benefit" doctrine, however, private schools were supposed to receive aid. The government did not keep this half of the agreement. The categorical aid provided under ESEA has more often than not been denied to private school pupils.

If the administration's new proposals correct this injustice, there will be cause for some satisfaction. But it is simply misleading, if not actually deceptive, to state as Califano has that the reason for this is "to ensure that private school children receive the funds that are their due." The Elementary and Secondary Education Act, even as amended by the president's proposals, provides not a nickel to the students, to their parents, or to the private schools themselves.

FIVE KEY ARGUMENTS

The opponents of tax credits for elementary and secondary school students make five principal assertions: that tax credits would undermine support for public education; that they would cause more federal funds per pupil to go to private than to public school students; that they would assist persons who do not "need" them; that they would foster racial segregation; and that the measure itself would violate the separation clause of the First Amendment.

I have already addressed myself to the last of these, and would simply add a point suggested by economist E. G. West of Canada's Carleton University: The First Amendment also contains a "free exercise clause" that is very likely violated by a system that in taxing everyone but aiding only those who patronize public school "prohibits in degree the ability of those parents who normally patronize a parochial school."

As to the proposition that our proposal would undermine support for the public schools, it is remarkable that those making the argument seemingly fail to understand its depressing implication: Have public schools so little going for them that absent a near-monopoly, or at least a marketplace skewed sharply in their favor, they would lose students and resources? I think far more of the public schools than that, and am certain that for the vast majority of the population they will continue to provide the most attractive educational option. Competition strengthens them. That competition is disappearing.

The assertion that more federal funds would go to private than public school students is interesting on two counts. It is suggested, by Califano among others, that our proposal could cause the ratio to become 4 to 1. As Rep. Barber B. Conable Jr. of New York pointed out last week, when federal tax expenditures that benefit public schools—notably the billions of dollars associated with the deduction for state and local taxes—are counted, and when the costs of present and proposed programs are tabulated more accurately than HEW seems to have done, we would find a ratio of about 6 to 5 (a little over $300 for each private school student to $251 per student in public schools.)

It is already well-established in our college student aid programs that someone attending a private university *should* receive a larger federal subsidy than he would receive in a state college, because his attendance costs are substantially higher. Is it unreasonable to extend that principle to grammar schools? But even if it is, one must assume from the argument that a ratio of 4 to 1 is excessive that some lesser ratio would not be excessive. The sponsors of tax credits are most willing to negotiate the ratio if it is clear the opponents do not object to the principle.

As to "need," 82 per cent of all private elementary and secondary school students live in families earning less than $30,000 a year. I would not object to putting some income ceiling on the proposed tax credits, though it is interesting to note that at the college level the administration is prepared to subsidize students from families earning as much as $45,000, a ceiling that would shelter about 92 per cent of all private school students.

It is irresponsible to argue that tax credits would foster racially segregated education. Our bill is carefully drafted to exclude schools that might seek to discriminate on racial lines by requiring the Internal Revenue Service to police their compliance with civil rights statutes as part of allowing them to obtain and keep tax-exempt status. I have already advised the NAACP that if this provision is not adequate I will welcome an amendment to make it so.

PUBLIC FIRST, PRIVATE NEXT

In sum: The public schools come first. The great majority of students attend public schools. The first claim and by far the largest claim on public resources is theirs. But these claims have in fact been attended to first. The president's recent proposals merely elaborate and expand aid programs that are already part of national policy and are in no way in jeopardy.

But the nonpublic schools have claims also, and these, reasonably, should come next. It is not in the public interest that the life should be squeezed out of them, but this is what is now happening. They lost a million students—one-sixth of their enrollments—between 1965 and 1975. In the past two decades, the national government has begun to take education seriously. This is evidenced by the billions of dollars now devoted to that purpose and by the landmark legislation that the Congress has passed.

Equality of educational opportunity has been the purpose of this legislation and the programs that resulted have made great strides in achieving that objective. But thus far we have succeeded in providing equality only to those who enroll in government schools. We have failed the parents who prefer to send their children to the schools that are descended from the older, private school systems. We are rapidly en route to a complete conquest of the private sector of American education by the public sector. There will be those who will welcome that development. It seems a pity, however, that their number includes the major education policymakers of the executive branch of the national government.●

A WHITE PAPER ON HUMAN RIGHTS IN GERMANY

● Mr. CURTIS. Mr. President, all individuals of good will are concerned about the denial of human rights, and they are encouraged when genuine efforts are made to protect human rights. There are many countries that are giving attention to human rights now that gave no such attention before, and there are many individuals who have just recently become interested in human rights. I think it is important that we know what is going on in this field around the world.

The political party in Germany which has the most members in the German Bundestag has prepared a white paper entitled. "White Paper on the Human Rights Situation in Germany and of the Germans in Eastern Europe." While this was produced by a political party, it is

my understanding that it has been widely received in Germany as a fair and accurate statement, and that the present head of the German Government has expressed his approval of this document.

Mr. President, I ask unanimous consent that portions from this white paper be printed in the RECORD.

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

WHITE PAPER

FOREWORD

One of the main objectives of the Member States of the Atlantic Alliance and of the neutral countries of Europe at the Conference on Security and Co-operation in Europe (CSCE) was to make respect for and the exercise of human rights a yardstick by which to measure the will for detente of all participating States. This applied in particular to the free movement of people, information and ideas across the borders of nations and systems. All signatories of the CSCE Final Act solemnly recognised that yardstick in Helsinki on 1 August 1975.

Since 4 October 1977, the representatives of the 35 signatories have been meeting in Belgrade for a first review of the Final Act of Helsinki. All participating States had committed themselves to it. Now in Belgrade it is for the first time a question a meeting that commitment without qualification.

The experience of Helsinki has shown that continuing violations of human rights greatly detract from the mutual trust of States and peoples; they hamper co-operation between the signatories and threaten the process of genuine detente in Europe.

Taking steps to prevent violations of human rights is not a prerogative of Governments. Individuals and nations themselves must be the very first to concern themselves with such violations wherever they occur.

The world must be made more conscious of the fact that human rights, self-determination and the freedom of nations are indivisible. Particularly those people and nations who enjoy human rights and hence freedom must not turn a deaf ear on the cries for help from the oppressed.

Germany is the only country in Europe divided between East and West. The most inhumane border on earth divides the people of one nation, separates thousands of families. People are still having to die or suffer serious injury simply because they exercise the human right of free movement in their own country. Some 17 million Germans in the GDR and East Berlin are denied elementary human rights.

The Federal Republic of Germany is required by its constitution and the dictate of human solidarity, and entitled by virtue of international law, to step forward in Belgrade as the advocate of the Germans.

The 35 signatories can only accomplish their mission in Belgrade on the basis of comprehensive and accurate knowledge of all important facts relating to the human rights situation in Europe and of the problems that have arisen since Helsinki.

The White Paper on the human rights situation in Germany and of the Germans in Eastern Europe drawn up by the CDU/CSU Group in the German Bundestag is intended to serve this purpose.

It deals with fundamental aspects of protection of human rights in the national and the international framework. The human rights situation of German nationals and ethnic Germans is surveyed in documentary form in country-related reports. The documentation is restricted to violations of human rights that are reviewable irrespective of ideologies and political systems. Violations of these rights detract from man's personal dignity.

This White Paper is the result of the efforts of eminent experts on the legal and political situation who deserve our special thanks.

Dr. HELMUT KOHL,
Chairman of the CDU/CSU Group in the German Bundestag, Chairman of the Christian Democratic Union of Germany.

INTRODUCTION

The Joint Bundestag Group of the Christian Democratic Union and the Christian Social Union (CDU/CSU) feels it has a duty to publish the present documentation on the human rights situation in Germany and of the Germans in Eastern Europe on the following grounds:

1. The meeting of representatives appointed by the Foreign Ministers of the 35 signatories of the CSCE Final Act of Helsinki has been in progress in Belgrade since 4 October 1977. According to the provisions of the Final Act, the purpose of this meeting is to permit "a thorough exchange of views both on the implementation of the provisions of the Final Act and of the tasks defined by the Conference, as well as, in the context of the questions dealt with by the latter, on the deepening of their mutual relations, the improvement of security and the development of co-operation in Europe, and the development of the process of detente in the future."

This documentation is a contribution to the survey of one aspect of the general scope of the CSCE review meeting which is of special concern to the people of the Federal Republic of Germany. It deals with violations of the human rights of Germans within the meaning of the Basic Law (constitution) and persons of German ethnic origin.

We side in human solidarity with all people, no matter what part of the world they live in and irrespective of the political system they live under, whose human rights have been violated. We share that solidarity in particular with those people of other nations who, together with the Germans living in their community, are struggling to defend and exercise their human rights in the territories covered by this documentation.

This restriction to violations of human rights in respect of Germans stems from the duty incumbent upon the Federal Republic of Germany to afford protection to all Germans within the meaning of the Basic Law, the constitution, in which that duty has been anchored (with regard to this definition, cf. p. 23). It also ensues from a sense of moral solidarity with persons of German origin who, although they are citizens of other countries, turn to the Federal Republic of German seeking protection for their human rights and help in preserving their ethnic identity.

But above all, the object of this documentation is to assist all people in distress who have no adequate means of protecting their rights and therefore need, and ask for, the help of the international public.

2. In presenting this documentation, the CDU/CSU Parliamentary Group is fulfilling its obligation under the Basic Law for the Federal Republic of Germany, Article 1 of which reads:

"1. The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.

2. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

3. The following basic rights shall bind the legislature, the executive and the judiciary as directly enforceable law."

By virtue of the fundamental rights incorporated in it, the Basic Law guarantees the freedom of the individual in relation to the State, his legal and social claims on the State, and the participation of all citizens in the democratic process of forming and implementing State policy.

True, the order of society established on the foundations of the Basic Law, though it is the most liberal Germany has ever known, still has its deficiencies and requires constant improvement. Be that as it may, it does not permit of any systematic violation of human and civil rights by government legislation and administrative measures. A comprehensive system of legal protection at national level enables every citizen of the Federal Republic of Germany, and every alien living in Germany, effectively to defend his human and civil rights in German courts.

The Federal Republic of Germany has, moreover, acceded to the existing international instruments for the protection of human rights:

On 5 December 1953 it ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe) and subjected itself to the procedures provided therein, according to which any person may appeal to the European Commission of Human Rights if he feels that any of his rights as guaranteed by the Convention have been violated. The Federal Republic of Germany has also recognised the competence of the European Court of Human Rights in accordance with articles 46 and 48 of the European Convention on Human Rights.

With regard to the protection of the human and civil rights guaranteed by the European Convention on Human Rights and the Basic Law for the Federal Republic of Germany, it has likewise placed itself under the jurisdiction of the European Court of Justice of the European Community (EC).

Even before it acceded to the United Nations as a full member on 18 September 1973, the Federal Republic of Germany, having been a member of all UN specialised agencies since the early fifties, had supported the principle of respect for human rights as embodied in United Nations Charter and has signed and ratified all the major treaties and special conventions drawn up for this purpose.

It is a party to the Statute of the International Court of Justice and recognises its jurisdiction with regard to disputes over the interpretation, application or implementation of conventions with human rights elements (e.g. Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948—UNTS Vol. 78, p. 277).

And through its Foreign Minister, the Federal Republic of Germany introduced an initiative at the United Nations General Assembly on 26 September 1976 for the setting up of an independent, impartial international body to guarantee worldwide protection of human rights and endorsed that initiative in the same forum on 29 September 1977.

Having conducted its affairs on this basis for decades, the Federal Republic of Germany has proved that it takes seriously what article 25 of its Constitution says about international law:

"The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory."

3. The CDU/CSU Parliamentary Group sees the publication of this documentation as a dictate of its own aims and principles.

The two parties, together with the other democratic forces, established in the Federal Republic of Germany after the collapse of the national socialist regime a free, democratic and social State based on the rule of law, the chief objective of which is to pro-

tect the dignity of the individual, his moral values as a person, and his right to develop his personality freely in a society of free citizens with equal rights. This ideal is also the prime justification for its existence.

Their identification with the precepts of human rights is formed by the Christian image of man, by the liberal ideas of European philosophy and jurisprudence, by the concepts of natural law, and by the liberal and social achievements resulting from European and American constitutional evolution. They uphold the inalienable rights of the individual which exist independently of and transcend the State. They therefore reject any ideology which denies the individual respect for the moral value of his person, in the belief that it is entitled to invoke values of a higher order, whether of race or class, and lay claim to the individual totally, purely as a means of attaining those higher goals.

HUMAN RIGHTS AND DÉTENTE

The documentation derives not solely from the CSCE Final Act and the safe foundation of applicable international law. It ensues also from the indissoluble political link between the protection of human rights within individual States and peaceful relations between the States and their peoples.

In Principle VII, para 5, of the CSCE Final Act, the signatories explicitly acknowledged this connection. They recognised "the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States".

It follows, therefore, that international support for people, irrespective of their nationality, whose human rights have been curtailed or violated is also imperative on political grounds, on grounds of development of normal and friendly relations among States and peoples, and on grounds of safeguarding peace.

Only by eliminating encroachments upon human rights and by permitting the realisation of human rights within individual States is it possible to establish the consensus between governing and governed which makes them contented and stable partners in the community of nations and States and to create the atmosphere of trust between States and peoples which is an elementary prerequisite for international security, co-operation and peace.

In a public statement in Cologne on 17 March 1977, the Polish philosopher Leszek Kolakowski explained this connection as follows:

"No doubt we know that the recent wave of activity by the opposition groups in Eastern Europe has made many people in the West afraid that this activity could produce an explosive situation in one or several countries and eventually destabilize the entire order of relations in Europe. But so long as the people are conscious of the fact that they have been deprived of democratic institutions and of the guarantee of civil rights, that they have been forced into a system in which the exercise of power is not tied to any responsibility, the probability of such explosions can never be ruled out. It is not the existence of the opposition that is the source of tension and destabilisation. On the contrary, the less the government is considered legitimate and trustworthy, the less is it capable of controlling spontaneous outbursts resulting from various coincidental and unforeseeable circumstances."

If detente is to be "both a continuing and an increasingly viable and comprehensive process, universal in scope" (as it says in the Preamble, 2nd paragraph, to CSCE Final Act), it is furthermore necessary to eliminate those tensions between States and peoples that ensue from the violation and denial of internationally recognised rights of individuals, peoples and ethnic groups.

If this process of detente is to lead to ever closer co-operation in Europe across national borders and the divisions between systems, the working and exploring people themselves, and the nations, must meet freely and directly. And this applies above all if the aim is a level of co-operation higher than the present one of sluggish compensation transactions or channelled or controlled scientific and cultural exchanges.

If the trust between peoples and States that is essential for security and peace is to materialise, the policies which States pursue must be opened up by a free flow of information and ideas to allow individuals and nations to judge for themselves, freely and without manipulation.

The CDU/CSU Group in the German Bundestag has always called for the free movement of people, information and ideas throughout Europe as being essential to its aim of improving relations between States and peoples in divided Europe, of gradually overcoming the division of Europe and of its own people and country, and of co-operation and security in Europe, precisely on account of its key functions for the realisation of human rights for all Europeans.

That is the sense in which it presents this documentation.

THE HUMAN RIGHTS SITUATION OF THE GERMANS IN THE GERMAN DEMOCRATIC REPUBLIC (GDR) AND EAST BERLIN

I. THE INHUMAN BORDER THROUGH GERMANY AND BERLIN

Germany and the German people are divided by a border which the GDR Government has built up on its side with minefields and various other inhuman fortifications. The wall in Berlin and the barriers set up by the GDR along its border with the Federal Republic of Germany have become a symbol of the forceful division of a country and the division of a nation, a symbol of a policy irreconcilable with human rights.

In contravention of Principle VII of the CSCE Final Act and Article 12 (2) of the International Covenant on Civil and Political Rights, the Government of the GDR denies its inhabitants the right to leave the territory of the GDR freely. In order to ensure that they cannot do so, the GDR Government has built a system of fortifications along the border with the Federal Republic of Germany and along the sectoral border in Berlin. A whole series of other measures have been introduced inside the GDR, likewise to prevent free movement.

Since the signing of the CSCE Final Act, those barriers and devices and the various other measures have not been removed; on the contrary, they have been increased and made more efficient. All these installations, ranging from mines and self-triggering firing devices, as well as the use of fully automatic weapons against people trying to escape, have claimed further victims and wounded others along the border. By keeping the people locked up within the State borders, the GDR Government is depriving them of an essential part of the basis on which to exercise their right to run their lives as they themselves see fit. This denial of free movement is a particularly grave encroachment upon their rights since its purpose is to separate the people of one nation and thus causes millionfold suffering.

1. The border through Germany and Berlin.—The 1,393 km long border between the Federal Republic of Germany and the GDR, as well as the sectoral border in Berlin, more or less correspond to the border of the Soviet-occupied zone of Germany to the West laid down in the London Protocol of 12 September 1944. The demarcation line from Lubeck to Hof was first closed to traffic in both directions on 30 June 1946 by the Control Council for Germany at the request of the Soviet occupying power. Not until the Control Council issued Directive No. 63 on 29 October 1946 was traffic between the Soviet and the Western zones of occupation again possible, although subject to controls and with the introduction of the inter-zonal pass.

At first, the demarcation line was patrolled only by the Soviet army on the Eastern side, then by units of the "Garrisoned People's Police" as well as from July 1948. Anyone who crossed the border illegally was usually detained for several days or weeks. It was not until two and a half years after the establishment of the German Democratic Republic that the situation along the demarcation line changed drastically. On 26 May 1952 the Council of Ministers of the GDR issued an "ordinance on measures to be taken along the demarcation line". In that ordinance the Ministry for State Security was instructed to take steps to cut off the zonal border area completely. Since then the border right through the middle of Germany has been developed in various ways into an ever more perfect system of fortifications to prevent the free movement of the people in Germany.

2. The border fortifications today

2.1. Restricted Area and Protective Strip.—Along the whole of the border there is a Restricted Area which in parts is up to 5 km deep. People living in this area have a special entry to that effect in their identity cards. Special Police regulations apply in the Restricted Area. For instance, meetings, etc. and private celebrations must end at 10 p.m. The part of the Restricted Area adjacent to the border is the Protective Strip. In parts it is up to 500 m wide and even people who live in the Restricted Area may only enter it with special permission.

2.2. The actual installations and devices are as follows: (see also the sketch on p. 28 and the Pictorial Documentation [p. 99 seq.])

2.21. Metal trellis fence.—As from the early seventies, the barbed-wire entanglements along the entire border were gradually replaced by fences made of prefabricated metal trellis sections fixed to concrete posts. There are two types. One is 2.40 m high and mounted in two rows with contact mines in between. The more recent type is 3.20 m high which is erected as a single fence and has "SM 70" automatic shooting devices attached to it. Both types of fence, depending on the terrain, are 30—70 m from the actual border line.

2.22. The vehicle ditch.—In the open terrain immediately in front of the metal trellis fence seen from the GDR side a ditch about 1 m deep and 2 m wide has been dug to stop vehicles trying to crash through the border. The side of the ditch facing the Federal Republic of Germany is lined with concrete slabs which ordinary vehicles cannot cross.

2.23. The tracking strip.—Immediately in front of the metal trellis fence or, where one exists, in front of the vehicle ditch, there is a strip of land about 6 m wide from which all growth is removed. This strip shows up all tracks clearly and is checked every day by a special border control unit.

2.24. The relief road.—In front of the tracking strip there is a road consisting of two rows of concrete slabs. Its purpose is to ensure the fast movement of border alarm groups and can be used by 16t lorries.

2.25. The Protective Strip fence.—The Protective Strip is marked off from the Restricted Area by a metal trellis fence only half the normal height but with electric contacts on top. If they are touched an optical signal is immediately flashed to the nearest command post of the guard company on duty. A siren may also be sounded. This enables the alarm groups to take ac-

tion from two sides to stop the person trying to escape.

2.26. The observation towers.—All along the border observation towers made of prefabricated concrete parts, steel or wood have been erected at irregular intervals. Usually they are in sight of one another. Some of them have bunkers as bases for the alarm groups. Others have command posts and the guards have rifles with telescopic sights.

2.27. The long-leash dog patrols.—At points along the border that cannot so easily be kept under observation, dogs trained to attack humans are used for patrolling purposes. They are attached to a 200 m-long wire leash about 3 m high. This enables them to attack any escaper within their range. Nearly 1000 dogs are used in this way.

2.3. The "SM 70" automatic shooting and warning device.—The "SM 70" automatic shooting devices are attached to every fourth concrete post of the metal trellis fence at different heights on the side facing the GDR. The "SM 70" consists of the firing apparatus with the cone-shaped shooting funnel, the ignition and reporting mechanism, and the fixture. They fire in a direction parallel to the fence. They are triggered if the wire is cut or moved about 2 cm. The trigger wire leads from one device to the fixture of the next at the same height. The funnel is filled with about 100 a trinitrotoluol (TNT). On top of this charge are about 110 sharp-edged pieces of steel roughly 4 mm long and weighing 0.5 g. each. Up to a distance of 25 m they tear wounds in the victim similar to those caused by dum-dum bullets. And as the funnel, made of aluminium, is also shattered when the device goes off there is an added splinter effect.

The affect of the "SM 70" is exactly described by Dr. Werner Stoll of Wustrow, district of Luchow-Dannenberg, in the Medical Report of 30 July 1976 on the death of the refugee Hans-Friedrich Franck of Meißen, GDR, which reads:

"Hans-Friedrich Franck, who was injured by an automatic shooting device on the metal trellis fence along the GDR border with the Federal Republic of Germany, could not be kept alive in spite of the most intensive efforts by the doctors and all others helping to save his life. The irregularly shaped, jagged metal splinters, which have the same effect as a dum-dum bullet, if not worse, had shredded Franck's vascular structure below the groin to such an extent that suture was extremely difficult and slowed up the operation considerably." (See also the Pictoral Documentation, p. 99 seq.).

2.4 The orders to shoot.—The GDR maintains 28 regiments along the intra-German border, including the border around West Berlin. Each border regiment usually has three battalions of four companies each. The frontier brigade "Coast" patrols the North Sea coast. It consists of three groups of boats totalling 18 patrol vessels of the "Kondor" class.

The section of the Elbe between Schnackenburg and Lauenburg is guarded by frontier companies and the river itself by 24 patrol and long-range boats. Altogether the GDR border force comprises about 47,000 men. The use of fire-arms along the border is governed by Regulation "DV 30/10". The orders prescribed by this regulation are given orally only. Border guards are under orders to shoot to kill anyone in the immediate vicinity of the border fence or wall. They may only challenge or fire a warning shot if there are at least 50 yards between the metal trellis fence and the person trying to escape. If a person shot in this way is lying within the range of the border security installation he must be left there until the alarm group has been called.

2.5 Total length of the fortifications.—The intra-German border—not counting the sea area in the Lubeck Bight—has fortifications of the kinds described above along its total length of 1,393 km. They can be broken down as follows:

[As of 15 July 1977]

Metal trellis fence (km)	1,083
Protective Strip fence (km)	788
Minefields (km)	491
SM 70 devices (km)	248
Concrete walls/sight screens (km)	8
Anti-vehicle ditches (km)	739
Observation towers including treetop observation posts	584

Since the signing of the CSCE Final Act, the metal trellis fence has been lengthened by 93 km, the Protective Strip fence by 171 km, and the SM 70 firing devices have been installed along an additional length of 60 km.

2.6. The border around West Berlin.—The border around West Berlin—including the sectoral border in Berlin—measures in all 165.7 km. Since 1961, its main element has been the Wall, which divides East and West Berlin over a distance of 46 km. In their present form, these border installations were for the most part put up between 1964 and 1970, viz., 55.2 km of metal fencing, 104 km of wall slabs topped with piping, 150 km of concrete wall, 123 km of fencing with electric signals (6–10 volts), 124 km of asphalt relief road. Situated along the wall are 251 observation towers, 144 bunkers with firing slits, 260 dog runs.

3. Victims of the border fortifications.—Since 13 August 1961, members of the GDR border guard have fired at people trying to escape on 1,509 occasions. Seventy people trying to escape and others helping them have been killed along the wall. Sixty-six of them were shot. Ninety-one people have been seriously wounded. Over the past 16 years, 3,002 people have been arrested trying to escape over the Wall.

From 1949 to 1 August 1977, to the extent known to the Federal Republic of Germany, 182 people have been killed by mines, shot by guards or firing devices, or killed by other means along the entire intra-German border, including the border around West Berlin. Four of this number have been killed since the signing of the CSCE Final Act.

4. Penalties for attempting to exercise the right of free movement.—The border fortifications also have as their equivalent the criminal law of the GDR, which imposes penalties on persons "guilty" of "unlawfully crossing the border" (section 213, GDR Penal Code). Under these provisions "anyone who obtains by devious means or for himself or another person a permit to enter or leave the German Democratic Republic or who leaves the territory of the GDR without government authorisation or fails to to return to that territory" can expect a prison sentence of up to two years. Both preparation for and the actual attempt to escape are punishable. "In serious cases the offender may be sentenced to a term of imprisonment from one to five years" (Section 213 [2], GDR Penal Code). An example of a serious case is when a man and his wife together (i.e a "group") intend to escape or the exit papers of another person are used or a "border security installation" is damaged.

Anyone who assists persons trying to leave the GDR without authorisation may be liable to prosecution for "anti-State trading in humans" (section 105, GDR Penal Code), almost a charge of slave trading, in spite of the fact that the inhabitant of the GDR concerned freely accepts such help. In April 1977—just as preparations were being made for the CSCE follow-up meeting—the GDR introduced stiffer penalties, so that now "particularly serious cases" may carry a life sentence.

For a good number of years there have been at least 2,500 people in custody in the GDR for attempting to "flee the Republic". Then there are a similar number of political prisoners who have been prosecuted for exercising the right of free speech and attempting to leave the country (see below II, 1.2; III, 1, 1.2).

The GDR uses some of these prisoners as a means of obtaining foreign exchange. For between 40,000 and 80,000 DM (German Marks) per person some are released after serving part of their sentence, usually to go to the Federal Republic of Germany.

From 1962 to 1976 inclusive, at least 720 million DM of budgetary funds of the Federal Republic of Germany alone was paid over in this way. On top of this there are the special material concessions made to the GDR for this purpose within the scope of intra-German trade. But in spite of all these "purchases", the "reservoir" of prisoners shows no signs of drying up. It is kept full by making it a crime for people to escape from one part of Germany to the other, and even to make a lawful application for permission to leave the GDR or to voice critical opinions.

II. OTHER SERIOUS VIOLATIONS OF HUMAN RIGHTS AND DISREGARD FOR THE AIMS OF THE CSCE FINAL ACT

The GDR disregards the aims and the declarations of intent of Basket III of the Final Act with regard to "co-operation in humanitarian and other fields".

The underlying purpose of Basket III of the Final Act is to increase contacts between the people with a view to consolidating peace and understanding. The object is to bring families together and facilitate marriages between citizens of different States. It aims to improve travel, primarily on family grounds but also for business reasons and tourism. And Basket III says that no one should be placed at a disadvantage for submitting the appropriate application to the authorities of his country.

The law and practice of the GDR run contrary to this aim of the Final Act.

1. Separation of families and refusal to allow families to reunite.—

Part 7(b) of Basket III of the Final Act reads: "The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character—such as requests submitted by persons who are ill or old. They will deal with applications in this field as expeditiously as possible. They will lower where necessary the fees charged in connection with these applications to ensure that they are at a moderate level. Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level. . . . Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.

The participating States confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family."

1.1. Since the signing of the Final Act there has been an increasing flow of complaints from GDR citizens and their relatives in the Federal Republic of Germany about the way applications for family reunion have been handled.

There is a close connection between applications for the reuniting of families and for permission to be able to visit relatives. Often a citizen of the GDR or a family will at first only submit an application for one visit to relatives in the Federal Republic. The application leads to reprisals (described later on) by the GDR authorities or personnel departments of "people's enterprises". The lasting disadvantages which result prompt the GDR

citizens to apply for settlement in the Federal Republic of Germany because they see no further possibility of a secure livelihood in the GDR.

1.2. In order to prevent the reuniting of families, the GDR authorities resort to the following means:

They have introduced a narrower definition of "family". It is usually equated with "family household", in other words only the husband, wife and legitimate children under 18 living with their parents are regarded as members of the family.

Parents, in-laws, grandparents, adult brothers and sisters, half brothers and sisters or relatives of the third or fourth degree, are not recognised as members of the family.

In fact, exit visas are sometimes granted only to certain members of a family (e.g. only to the parents and children under age), which causes even more separation.

Time and again reports are received to the effect that the GDR authorities inform applicants that the United Nations Human Rights Conventions and the International Covenants on Human Rights, as well as the GDR's contractual commitments to respect human rights, as embodied in article 2 of the Basic Treaty between the GDR and the Federal Republic of Germany and in the Final Act of Helsinki, are not directly binding.

And there are growing numbers of reports that the GDR authorities treat applications for exit visas as a criminal offence and dismiss the applicants from their jobs; they are not given work by other "people's enterprises" or public administrations; they are then accused of being "shirkers" and, in accordance with the provisions of the GDR's Labour Law, of "asocial behaviour", and sentenced to terms of imprisonment. The process of constraint and making criminal offences out of applications also takes the following form: GDR inhabitants who apply for exit visas are immediately declared to be "persons in possession of secret information" and therefore forbidden to have "contacts with the West"; in many cases it is assumed that they have ignored this ban by maintaining relations with members of their families in the West; this automatically entails criminal proceedings. Constraint by the GDR authorities is particularly common as regards families with children who apply for exit visas. The authorities threaten to deprive them of their parental rights and to have their children transferred to state homes because they have not brought them up to hate the West and hence their Western relatives. If they thereupon withdraw their applications they are promised leniency.

Even people who have not applied for exit visas but do not discriminate against those who have or send them to Coventry can also expect reprisals.

The GDR authorities are also in breach of human rights in that they infringe the privacy of applicants' mail and monitor all their communications with others.

But contempt for the spirit and letter of the Final Act is manifest in particular in the fact that renewed applications for permission to reunite with members of the family lead to a ban on contacts with relatives in the West altogether, i.e. no travel in either direction.

The number of pending applications for permission to join family members in the Federal Republic of Germany is estimated at 30,000. The fact that only 4,914 persons in this category were allowed to transfer to the Federal Republic of Germany in 1976 shows how far this deeply human problem still is from solution.

1.21. Particularly serious are those cases where one member of a family succeeds in escaping to the Federal Republic of Germany. His relatives are first advised to induce that person to return. If this fails pressure is put on the husband or wife to break off relations with the spouse in the Federal Republic of Germany and in particular to cease all correspondence. Then after a certain period the man or wife, who is not permitted to leave the country, is urged to seek divorce. If this person is in the public service, has an important job, or is otherwise a "possessor of secret information" (within the broad definition applied by the GDR) he is required to sever all contacts with relatives in the Federal Republic of Germany. He must undertake to discontinue all written or oral communications, and is not even permitted to meet his parents if they visit the GDR. The disadvantages both at work and otherwise for anyone breaking this ban are so grave that a young man who recently had a clandestine meeting with his parents who had travelled to the GDR from South Germany has said he will not see them again because the risks to himself and his family are too great. The mere fact that parents or a man or wife who have remained in the GDR apply for permission to transfer to the Federal Republic of Germany is enough to bring them personal and economic disadvantages and to expose them to chicanery and discrimination which may go so far as social degradation.

Let us take the case of Gustav Otte, M.D., and his wife Margit Otte, M.D., of Dresden. In December 1975 they applied for exit visas so that they could join Gustav Otte's brother in the Federal Republic of Germany. By June 1977 they had submitted 15 applications and all had been rejected. In August 1976, Frau Otte was dismissed from her post as a factory doctor and her husband was dismissed from his part-time job within the public health system without reason. Soon afterwards, after putting up with trumped-up accusations and increasing chicanery, he had to leave his job as ward physician in the St. Joseph-Stift Hospital in Dresden. In order to provide for his family he was obliged as from June this year to work as a cemetery attendant. On 18 August both he and his wife were arrested, presumably for having in this desperate situation written to the Minister for Intra-German Relations of the Federal Republic of Germany with an appeal for help. That letter is a deeply moving human document:

Dr. med. GUSTAV OTTE,
Dresden, June 10, 1977.

Herr EGON FRANKE,
Federal Minister for Intra-German Relations, Bonn-Bad Godesberg

MR. MINISTER, we turn to you full of confidence and hope. Since December 1975 we have made 15 applications to be allowed to give up our GDR citizenship and to move to my brother, Fritz Otte, in the Federal Republic of Germany. In addition we, my mother Frau Erna Otte and my mother-in-law Frau Hilde Zschüttig, have each sent a petition to Erich Honecker, Chairman of the Council of State. Our mothers' petitions have to this day not been confirmed. On 17 November 1976 our ninth application was rejected. Since then we have received no other official refusals. The authorities react with silence.

My wife, Dr. Margit Otte, a general practitioner, I, Dr. Gustav Otte, gynecologist and obstetrician, and our ten-year-old son Jens, wish to go to live with my brother Fritz Otte, 5060 Bergisch-Gladbach, Hauptstr. 153.

We find ourselves in an insuperable ideological conflict with the GDR. The serious and petty acts of chicanery we have been exposed to for many years have been propagated by the authorities as something entirely legal since we made our application, and they are continued openly and without restraint and are becoming increasingly unbearable. For months we had been constantly shadowed by members of the State Security Service. The fact that I come from a middle class family and have three brothers and sisters in the Federal Republic of Germany has always been held against me. Under these circumstances it has been impossible for me to rise in my profession, for instance. In August 1976 my wife was dismissed from her post as senior factory doctor within the works health service on libellous charges. At the same time I was relieved of my part-time post in the public health service, without any reason being given. The ever-increasing mental strain and the attacks on my family have induced me to give up my post as ward-physician in the St. Joseph-Stift Hospital, Dresden, as an expression of my uncompromising opposition to the regime and of my solidarity with my wife. Only three weeks after leaving this post I was summoned to the Internal Affairs Department and warned that if my wife and I maintained our attitude we would be liable to prosecution under section 249 of the GDR Penal Code. We protested strongly against being put on a par with criminals, society drop-outs, prostitutes and persons who constitute a threat to the security of the GDR, in this preposterous manner.

On 19 and 27 April 1977 we were separately questioned for hours on end by the police and interrogating judges of the State Security Service. And for the past six months they have gone so far as to make life hard for our boy at school. In order to avoid the injustice of the authorities here I have since 1 June 1977 been working as a cemetery worker in the Alter Ahnenfriedhof, Dresden.

Mr. Minister, we hope that this brief description of our problem will help you appreciate our situation. We request you to use all means at your disposal to help us out of this unbearable and hopeless situation. We urgently request you to include our problem when human rights are discussed within the framework of German-German negotiations and to raise the matter at the Belgrade follow-up meeting. It is absolutely impossible for us to continue to live in the GDR. We want to be able to exercise our profession again in peace.

Nearly all of our documents have been sent to your Ministry by my brother. Your in-depth and realistic survey of German-German negotiations in the debate on Intra-German relations in the Bundestag before Whitsun gives us strength, courage and confidence.

Nineteen months under the strain of living behind the wall and years of incessant conflict with the GDR are now beginning to leave their mark. Please help us so that we as a family will not perish in this unequal struggle with the authorities here.

Yours sincerely, Gustav Otte.

1.3. Persons engaged to be married kept apart—Paragraph 1(c) of Basket III of the Final Act reads:

"The participating States will examine favourably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State."

Whether it is a question of engaged couples or the reuniting of families, the attitude of the GDR authorities is the same.

Judging by reports from people who have been affected, the GDR authorities are if anything even quicker to arrest single persons, and with more ruthlessness than in the case of married people.

The reprisals are much the same as the ones described above: no legal basis; offhanded treatment of applicants, the tedious, involved processing of applications; applicants are moved to another place of work and degraded; they are dismissed on fictitious charges; fiancé(e)s from the West are refused entry visas, as are other relatives or friends; isolation and discrimination in the local community, etc.; ultimately arrest and sentencing for asocial behaviour or "incitement against the State".

In many cases the fiancé(e) in the West is recommended to come to marry in the

GDR. They are told that they will have similar professional opportunities as in the West. In practice, however, these promises are not kept and there are three serious restrictions which deter engaged persons from moving to the GDR to marry.

Firstly, former citizens of the Federal Republic of Germany who transfer to the GDR are allocated to low-grade jobs on the grounds that this is in keeping with the GDR's internal security provisions; secondly, those with a university training are not allowed to take scientific or social literature, even fiction, with them to the GDR because such works are denounced as "inflammatory imperialistic literature"; thirdly, those coming from the West are treated in the same way as inhabitants of the GDR, which means that people of non-pensionable age are not allowed to travel to the West; but if they marry someone in the West they hope to be able to travel to the East.

In view of these main restrictions (but there are others resulting from the internal system of the GDR) of human rights and freedoms, young people in the West engaged to be married to someone in the GDR refuse to move there to get married.

The fact that the GDR authorities refuse to allow any inhabitant of the Federal Republic of Germany who is engaged to an inhabitant of the GDR to enter the GDR as a visitor is a particularly blatant obstacle to human contacts and a violation of the provision of Basket III, 1(c), of the Final Act. Numerous West Germans and West Berliners have been turned back at the border for this reason, even though they have been in possession of an entry visa. Nor are the citizens of the GDR affected allowed to travel to socialist States, which means that they cannot meet their fiancé(e) anywhere in the world.

1.4. Inhuman deprivation of parental rights, compulsory adoptions.—The GDR's policy of destroying family ties between Germans is particularly obvious from the way the children of persons who have left the GDR "illegally" are treated. In flagrant disregard of the natural right of parents to care for their children themselves and to decide where they should stay, the children are kept in the GDR and put in homes or given to other people to be looked after. Frequently, parents are even refused information as to the whereabouts of the child. After a time the parents are asked to agree to their child being adopted by a family they do not even know. If they refuse their approval is replaced by a court decision. The ground given for the adoption is either that it is for the child's well-being, that the child is better off with a socialist upbringing, or that the parents have allegedly not looked after the child and been indifferent to it. The court deliberately ignores the fact that because the child has been kept in the GDR the parents have had no chance to care for it.

Neither the Final Act of Helsinki nor the human rights conventions have deterred the GDR authorities from holding back the children of parents who want and are in a position to look after them and apply for permission for them to leave the GDR, from having them brought up by strangers and ultimately allowing them to be adopted.

What happened to the Grübel family typifies the situation of many others:

This tragic case was brought before the United Nations Commission of Human Rights in Geneva by the representative of the International Commission of Jurists (see UN press communiqué, Geneva HR/477, of 12 August 1977).

In August 1973, the married couple Otto and Bärbel Grübel of East Berlin attempted to flee with their children Ota (age four) and Jannet (age three) across the border between Czechoslovakia and Austria. Whilst trying to climb over the barbed-wire entanglements they were arrested by Czechoslovak border guards.

A GDR court sentenced the Grübels to two years 10 months imprisonment for attempting to escape. In mid-1975, after having served nearly two years of their sentence, they were bought free by the Federal Republic and allowed to cross the border.

Whilst the parents were in prison the two children were put on the adoption list without the approval of the parents and in spite of the fact that the grandparents could have looked after them until the parents were released. The GDR authorities considered this decision final. The Grübels now find themselves in the inhuman situation of being out of prison but having to live without their children.

The reason given by the GDR authorities and courts is that the parents tried to deprive both children of a secure social existence and to expose them to an uncertain future. This has to be seen against the ideological background of section 42 of the GDR Family Code, according to which parents must bring up their children "to have a socialist attitude, to learn and to work, to observe the rules of the socialist society, and to identify with socialistic patriotism and internationalism."

In his comments on the Grübel case, the chairman of the Youth Aid Committee of the Council of the Central Urban District of East Berlin left no doubt that the compulsory adoption was a political reprisal. Another fictitious reason given was that before trying to cross the border the parents had given both children sedatives, though they are not harmful to health.

Frau Gisela Mauritz had much the same experience:

Sentenced in the autumn of 1974 to 4½ years imprisonment for "attempting to flee the republic," Frau Mauritz was stripped of her right to bring up her then five-year-old son Alexander, who in 1976 was compulsorily adopted by a couple unknown to her. In June of this year Frau Mauritz was to have been released prematurely to be deported to the Federal Republic of Germany, but she refused to leave the GDR without her child and was thereupon put back in prison.

The Federal Minister for Intra-German Relations, the German Bundestag, and the parties in the Bundestag, have received thousands of reports—mostly by the people concerned—which verify the above examples of families being torn apart.

2. Citizens of the GDR are prevented from visiting relatives in the Federal Republic of Germany or other Western countries—

2.1. Paragraph 1(a) of Basket III of the CSCE Final Act reads:

"In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.

Applications . . . will be dealt with without distinction as to the country of origin or destination . . . The issue of such documents and visas will be effected within reasonable time limits; cases of urgent necessity—such as serious illness or death—will be given priority treatment . . .

They confirm that the presentation of an application concerning contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family."

2.2. Inhabitants of the GDR have sent thousands of reports to the effect that this declaration of intent, which their leaders, by signing the Final Act, have adopted, has not been put into practice. The reports show that the procedures for dealing with applications for exit permits have not been simplified. As before the CSCE, the situation is one of arbitrary action.

Only GDR inhabitants who have reached the statutory retirement age, that is, women from the age of 60 and men from the age of 65, as well as invalids, may visit relatives in nonsocialist countries once or several times a year for a total of 30 days (to countries outside Europe, for up to three months). Pensioners have been permitted to leave the country since 1 November 1964.

2.3. With regard to other inhabitants of the GDR, that is, the great majority, formal rules have been published according to which travel to non-socialist countries may be allowed on urgent family grounds, which means for births, marriages, silver and golden wedding anniversaries, sixtieth, sixty-fifth, seventieth wedding anniversaries, serious illnesses and deaths. Entitled to apply are grandparents, parents, children and brothers and sisters (according to the GDR decree governing the travel of GDR citizens, dated 17 October 1972, as amended on 14 June 1973—Law Gazette I, p. 269).

But these regulations only say that permission "may" be granted; they do not concede any right to travel; it is entirely at the discretion of the authorities. Apparently, local GDR authorities are bound by restrictive instructions that have not been published. This explains the fact that every year only about 40,000 GDR citizens are allowed to travel to the Federal Republic of Germany on urgent family grounds, although there are very many such occasions within the meaning of the GDR decree because the Germans living in the Federal Republic of Germany, the GDR and Berlin together make up about 77 million people.

To prevent travel to non-socialist countries, the GDR again resorts to the method of declaring large sections of the working population to be "carriers of secret information" who may therefore not maintain contacts with people in the West. These include not only servicemen, police and teachers, but many other members of the party and state apparatus and "people's factories", and from the world of science and culture. Banned contacts with the West include, apart from travel to non-socialist countries, visits from such countries as well as contacts by telephone or correspondence with persons in "capitalist countries". The "illegal" maintenance of such contacts results in disadvantages both in the community and at work, for instance allocation to a lower grade and hence lower paid job.

Under GDR law, the authorities do not have to state any reasons for refusing applications for travel visas, so that the person concerned can do nothing about it.

Inhabitants of the GDR deplore in particular the fact that the final Section of paragraph 1(a) of Basket III of the CSCE Final Act has not been put into practice. With the exception of pensioners, people of working age who submit applications for exit visas must usually expect not only long periods of interrogation but also disadvantages at work and in the local community (downgrading, transfer to another place of work, eviction, refusal of holiday accommodations, etc.).

In almost every exceptional case where an exit visa is granted on urgent grounds (serious illness or death) only one person is allowed to travel. GDR citizens accuse the authorities of keeping either the husband or wife and children back as hostages. Single adults of working age are practically never granted a visa, even on the most urgent grounds.

Inhabitants of the GDR also report that permission to travel for family celebrations (birthdays, baptisms, weddings and jubilees) are almost never granted to persons under retirement age—not even to either husband or wife.

In general people complain mostly about the arbitrary and impolite treatment of the GDR authorities. Applications are handled very restrictively and the applicants themselves subjected to extensive interrogation to induce them to withdraw their applications. There are reports of close co-operation between the authorities and the "people's factories" and constant references to pressures and intimidations which completely reverse the purpose of Basket III of the CSCE Final Act.

In view of the large numbers from the Federal Republic of Germany—including West Berlin—who visit relatives in the East (1976: over seven million), the people of the GDR feel themselves degraded because in their case hardly anyone under retirement age is allowed to visit the Federal Republic of Germany. The intensity of the frustrated desire to visit the Federal Republic is indicated by the fact that for many years about a million pensioners have been visiting the Federal Republic every year. They are only permitted to travel when they have reached the age at which the GDR Government no longer regards them as vital to the State.

In the Federal Republic of Germany, too, there is mounting criticism of the fact that it is becoming increasingly difficult to visit relatives in East Germany. The main complaint is that the GDR authorities reject applications for entry visas if a member of the family to be visited has applied for a visa to travel to a Western country.

And finally there are many reports from people in the Federal Republic who have been asked by relatives in the GDR not to visit them because the outcome (particularly for young people) could be discrimination at work and in other respects.

The attitude of the GDR authorities runs contrary to the postulate of the CSFE Final Act, which is that efforts will be made to intensify and improve family contacts.

2.4. Financial obstacles to travel.—The financial obstacles put up by the GDR Government also militate against the Final Act, which calls for easier travel arrangements. Whereas GDR pensioners who have been given permission to travel to the Federal Republic are allowed to bring only 15 DM with them p. a., which means that their stay in the West must be paid for entirely by their relatives (with grants from public funds from the Federal Republic of Germany), Germans from the federal territory travelling to the GDR are charged 15 DM for the visa as well as a road toll for cars, depending on the length of the journey. In addition, each visitor must exchange 13 DM per day, the only exceptions being people of pensionable age, invalids, persons fully incapacitated and on full pension, and children under 16. Thus visits by or to relatives as between the two German States are considerable financial burdens.

3. Refusal to grant permission for contacts between people who are not relatives—Paragraphs 1(d)—(h) of Basket III of the Final Act of Helsinki speak of improving and simplifying the procedures for "travel for personal or professional reasons", tourism, meetings among young people, sports and other contacts.

This is another intention which the GDR has failed to carry out in relation to the Federal Republic of Germany.

According to para 1 (h), participating States are supposed to develop contacts among governmental institutions and non-governmental organisations and associations.

On account of the negative attitude of the GDR Government, such communication between the two German States is very rare. That meetings between sports associations, youth groups and other clubs, etc., as well as meetings at communal level, help to foster peace is obvious; all attempts by the Federal Republic of Germany to establish such contacts with the appropriate institutions in the GDR have up to now—apart from a few cases where the GDR leadership has had a specific political interest—proved abortive.

4. Discrimination against and prosecution of people who, trusting in and invoking Basket III of the Final Act of Helsinki, apply for permission to settle in or travel to the Federal Republic of Germany.—The GDR has omitted to establish unequivocal and generally applicable rules of law which set out the rights of its citizens. As in the days prior to the CSCE, ambiguous regulations hold out only a vague possibility of permission being granted; some of them have not even been published.

It is irreconcilable with the aims of the CSCE Final Act for the GDR to announce in its constitution and laws, and by publishing the CSCE Final Act, that its citizens "may" apply for a visa to leave the country or settle in the Federal Republic of Germany—only then to punish people who enquire about the administrative channels they have to go through in order to avail themselves of the possibility, or if they submit applications. And it is also intolerable for citizens who, having submitted applications in conformity with the law, are not even told why their applications have been rejected. As a result of the attitude of the GDR leadership, countless inhabitants of the GDR—the number is put at 200,000—are now in personal difficulty or see their very livelihood threatened; they address urgent appeals to the signatories of the CSCE Final Act not to allow them to suffer for having believed in this document—and hence in the word given by the representatives of Europe and North America.

The petition from Riesa has become widely known.—On 10 July 1976, 33 inhabitants of the town of Riesa (district of Dresden) sent an open petition to the representatives of the CSCE participating States, to the Commission of Human Rights of the United Nations, and to Secretary General Erich Honecker, requesting support for their applications for permission to settle in the Federal Republic of Germany.

This petition was joined shortly afterwards by another 46 people from other towns. The first signatory, Dr. Karl-Heinz Nitschke, was arrested on 31 August 1976. He had been persecuted for a good number of years because of his intention of settling in the Federal Republic and punished several times. The homes of all other persons who signed the petition were searched and they were interrogated and exhorted to withdraw their signatures. In September 1976, Oskar Porsche, a turner, his wife Ute, and Joachim Mut, M. Sc. Ing., all from Karl-Marx-Stadt (Chemnitz), as well as Wolfram Wenzel from Riesa and two other signatories, were arrested.

Months later, in June 1977, another person who signed the petition, Gernot Zimmermann, was also arrested.

They have been given severe penalties:

In June 1977 Ute Porsche was given 5 years, her husband three years 8 months, and Joachim Mut two years 8 months imprisonment. Wolfram Wenzel was given six years' hard labour for "incitement against the State".

Dr. Nitschke, after spending nearly one year in prison (4 months in a dark cell), was released and allowed to go to the Federal Republic of Germany; the others are still held as political prisoners in the GDR.

III.—FREE SPEECH AND FREEDOM OF INFORMATION, AS WELL AS FREEDOM OF CONSCIENCE AND RELIGION, ARE STILL NOT RESPECTED IN THE GDR

1. No freedom of thought.

1.1. Contrary to the intentions of principle VII of the Final Act and of Article 19 (2) of the International Covenant on Civil and Political Rights, the people in the GDR are denied the right to express their views freely. As in the past, the dissemination of views unwelcome to the party and the leadership of the GDR carries the threat of prosecution and "social disadvantages". The persons concerned are prosecuted in particular under section 106 of the GDR Penal Code ("incitement against the State"). Any publicly or privately expressed criticism of the social situation, even criticism within the system, can easily be placed in this category. In recent times more and more persons have been prosecuted under this provision for standing up for human and civil rights, or for saying they were applying for permission to leave the GDR because the situation there was not to their liking. They can be sentenced to as much as 10 years' imprisonment. Since the signing of the Final Act, the provisions have been made more severe by the introduction of the second Penal Law Amendment Act of 7 April 1977. According to section 220 of the GDR Penal Code, for instance, anyone who "disparages" measures taken by government agencies or social organisations in public are prosecuted. People who criticise even subsidiary organs of the party and the State can also expect to be charged.

By applying these arbitrary provisions of criminal law, which can be given practically any interpretation, the right of free speech can be reduced to nil.

In fact the mere threat of such punishment creates an atmosphere of fear and lack of freedom. Even writers and artists who are generally in line with official ideology but have criticised certain aspects of the GDR regime have been isolated by the police, arrested, or forced to move from their local community against their will.

Professor Robert Havemann, for instance, the internationally known scholar, has been under strict house arrest in East Berlin since November 1976 on the strength of a court order for protesting to SED Secretary General Honecker against the decision to strip artists and writers of their citizenship, and for expressing critical views in the West German press about conditions in the GDR. Western journalists, and even the Swedish Foreign Minister, have been refused permission to speak to Havemann, who had incurred the displeasure of the GDR authorities as early as 1968 when he protested against the intervention in Czechoslovakia.

The East Berlin economist Rudolf Bahro, although a convinced Marxist and member of the SED, was arrested in August 1977 for criticising the GDR system.

Dr. Hellmuth Nitsche, professor of German, was arrested with his wife in April 1977 for writing to President Carter about violations of human rights in the GDR. He had already lost his chair at the East Berlin Humboldt University in 1974 for voicing criticism and been downgraded to the post of technical school teacher. In September 1977 he was allowed to go to the Federal Republic. In his letter to President Carter in March 1977 he wrote:

"The number of persons who have applied to be relieved of GDR citizenship, invoking the constitution, the United Nations Charter, the Declaration of Human Rights, and not least the Final Act of Helsinki, is estimated at over 200,000. The Government of the GDR cannot cope with this flood of applications. It therefore reacts with dismissals without notice, shameless defamation, interrogation, and other reprisals. Only a tiny few of the applications have been approved. The great majority of applicants have been deprived of their livelihood and attempts are made to 'starve' them, in other words to force them to work as labourers for the communist regime by continually rejecting their applications without reason, or simply not dealing with them any more . . .

". . . The GDR's policy of walling itself off from the Federal Republic of Germany has been taken to the extreme. The communist rulers consider it a political crime for some-

one even to speak of the unity of the German nation. Anyone in the GDR who has the courage to express his own opinion (as 'guaranteed' in the constitution), anyone who invokes human rights or the Helsinki Final Act, is dismissed without notice. Applications to be relieved of GDR citizenship are refused without any reason being given or they are simply no longer processed; they disappear in the bureaucratic apparatus of this State. In fact even people who merely apply to be reunited with their families are forcibly deprived of their livelihood, irrespective of whether they are scholars, artists, or taxi drivers. Slander, outlawing and 'starring' of applicants, these are the methods used by the GDR Government for the past six months and more to stifle the demand by its people for the exercise of human right. . ."

The Frankfurter Allegemeine Zeitung published in its 30 August 1977 edition a list—still incomplete—of writers and artists who have voluntarily left the GDR or have been deported; it includes for 1975 to 1977 alone:

Reinhardt, Andreas, stage designer.
Biermann, Wolf, writer.
Brasch, Thomas, writer.
Faust, Siegmar, writer.
Hagen, Nina, actress.
Jentzsch, Bernd, writer.
Renft, Klaus, musician.
Schleef, Einar, director, Berliner Ensemble.
Thalbach, Katharina, actress.
Cohrs, Eberhard, comedian.
Dresen, Adolf, director.
Graf, Dagmar, actress.
Hagen, Eva-Maria, actress.
Krug, Manfred, actor, singer.
Kunze, Reiner, lyric poet.
Medek, Tilo, composer.
Fuchs, Jürgen, writer.
Kunert, Christian, musician.
Pannach, Gerulf, writer of political songs.
Nitschke, Karl-Heinz, doctor.
Nitsche, Hellmuth, professor of German.
Kirsch, Sarah, writer.

1.2 Sentences passed on the basis of these penal provisions keep the number of political prisoners in the GDR at a consistently high level. There are at least 4000–5000 prison inmates and others held in custody pending trial, including the 2,500 or so imprisoned for attempting to flee or helping others to do so. Countless dissidents who express their views orally or in writing suffer professional or "social" discrimination. Of late there has been an increasing number of cases of people who support human rights and invoke the CSCE Final Act, the United Nation human rights conventions reaffirmed therein, and the provisions of the GDR constitution relating to basic rights, being prosecuted.

According to reports from many persons having been released from prison, prison treatment in the GDR, even after the signing of the CSCE Final Act, falls short of even the minimum guarantees endorsed in the Final Act and in particular Articles 7 and 10 of the International Covenant on Civil and Political Rights. Many cases have become known in which prisoners have been treated in a manner which grossly conflicts with the requirement of Article 10, i.e. that "all persons deprived of their freedom shall be treated with humanity and with respect for the inherent dignity of the human person." This applies in particular to strict solitary confinement, usually in the cellar with no more than a plank bed and a blanket. In the daytime there is nothing to sit on; the heating in winter is inadequate. The daily ration consists merely of 200 g bread and a jug of malt coffee or tea, with warm soup without meat only every third day.

Former inmates of Cottbus hard labour prison, for instance, have described the completely overcrowded conditions as follows:

Cottbus prison, which was built for 600, was completely overcrowded in 1975/76. In each cell four beds were placed on top of one another to accommodate about 1,200 inmates. Eighty per cent of them are political prisoners and the last Church service held in the prison was in 1973. Since then there has been no ministerial work in the prison; the prisoners have been refused a Bible.

Former prisoners of Brandenburg prison tell a similar story. There, too, the cells have three times as many occupants as originally intended. The inmates have to work three shifts round the clock. Their rest period is deliberately disturbed by number calls.

In the second half of 1976 alone, 91 cases of maltreatment in GDR prisons were reported to the Central Office of the Regional Judicial Authorities of the Federal Republic of Germany in Salzgitter, which keeps a record of such cases.

On 5 May 1977, in view of the approaching CSCE review meeting, the GDR introduced a new law on the prison regime. Whether the GDR will actually change its treatment of the prisoners, which is known to be both severe and inhumane, remains to be seen.

2. No freedom of information.

2.1. Contrary to Principle VII of the Final Act and the human rights conventions reaffirmed therein, the GDR Government restricts the right to free information. Its laws and their practical application are in contravention of Article 19(2) of the International Covenant on Civil and Political Rights, according to which everyone is free "to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice".

The GDR makes the statutory restriction permissible under paragraph 3 of this article the rule and thus reduces to nil the essence of the right to free information:

The purchase of Western literature is as good as forbidden since the GDR has placed an "import ban" on

—newspapers and other periodicals not contained in the postal newspapers list of tho GDR;

—calendars, almanacs, yearbooks and lists of addresses;

—records, insofar as they are not classical works or genuine modern works; magnetic tapes and other sound carriers;

—literature and other printed matter "the content of which is inimical to the preservation of peace or the import of which is in any other way inconsistent with the interests of the socialist State and its citizens".

The postal newspaper list of the GDR does not contain any non-communist newspapers. The last part of the above enumeration, which is taken from the GDR information bulletin "Information on Customs and Foreign Exchange Regulations of the GDR" of November 1976, is used more or less as a general ban.

2.2. Contrary to the declaration of intent in Basket III of the Final Act on "improvement of working conditions for journalists" and of the exchange of letters of 8 November 1972 "on working possibilities for journalists" (in connection with the initialling of the Basic Treaty between the two German States), the GDR Government has even gone so far as to expel the West German journalists Mettke (1975) and Loewe (1976). In spite of complaints by the persons concerned and the Government of the Federal Republic of Germany, it has not given any reasons for their expulsion as required under part 2(c) of Basket III of the Final Act. Again, the personal contacts between journalists and their sources of information envisaged in the same provision are severely restricted, if not prohibited altogether, as in the case of contacts with even communist writers like Professor Havemann, though they are critics of the regime.

3. Discrimination on account of the Christian faith.—Principle VII of the CSCE Final Act reads in its paragraph 1: "The participating States will respect human rights and fundamental freedoms, including freedom of thought, religion or belief, for all without distinction as to race, sex, language or religion." Article 18 of the International Covenant on Civil and Political Rights, which was reaffirmed in the Final Act, guarantees the right to freedom of thought, conscience and religion, including religious worship, and the freedom of parents to ensure the religious and moral education of their children in conformity with their own convictions. Other articles prohibit discrimination on religious grounds (Articles 2, 24, 26). The actual situation in the GDR contrasts sharply with these guarantees of religious freedom. True, on the surface religious services and other rites appear to be subject to few restrictions, but on the outside, this being a strictly internal Church matter, government and party organs are very carefully and persistently striving to assert their atheist ideology absolutely. The struggle against Christianity is conducted in "an atmosphere of quiet determination", in the words of a Protestant regional bishop. From the cradle to the vocational school, children are exposed to an intensive atheist influence which is complemented by pressure on their parents. Teachers are committed to the educational principles of the official State ideology, which embrace active atheist, anti-religious propaganda.

Moreover, children are made to fear possible discrimination when they later start work. They are told that they are spoiling their future chances by professing Christianity and attending religious lessons, receiving Communion, or being confirmed. Moreover, Christian instruction, which is in any case only possible outside school hours, is made increasingly difficult because of the heavy physical strain on the children, who have to take part in "working groups" and other activities organised by the school or the party, precisely with the aim of excluding Church influence. In townships where all-day schools have already been introduced, regular Christian instruction is hardly possible. Parents who are considered prone to influence are put under pressure by teachers, on the instructions of the local party secretaries not to allow their children to attend religious lessons or preparatory instruction for Confirmation; otherwise, they are told, their children would face serious disadvantages later. Parents are urged not to have their children baptised but to prepare them for their "dedication to a socialist way of life". Party and government departments work closely together in the fight against Christianity. The slogan drilled into members of the SED's children's organisations, the "Young Pioneers" and the "Thälmann Pioneers", is: "a pioneer does not attend Christian lessons".

At district level there is a "Youth Dedication Committee" which co-ordinates agitation against Christianity. Many cases are known of parents who have their children taught the Christian faith being called in by the works or group leader and having to undertake not to allow their children to be confirmed, on penalty of discrimination at work. They are told that the "dedication of the young" is the expression of a political attitude and that it alone conforms to the new type of "socialist personality". For some time now, assessments of school leavers (after the 10th year) have been supplemented by an internal remark: "took part in the youth dedication", or "took part in only the youth dedication". If they are confirmed they have little chance of obtaining one of the highly coveted apprenticeships. The children of Protestant pastors are in the worst position.

Further training is increasingly being made dependent on the person concerned leaving the Church; in the case of married persons, the next step is to insist that the

whole family leave. And in some trades applicants must sever their ties with the Church before they can be appointed. The "decree on canditure, selection and admission to direct studies at universities and institutions of higher education", dated 14 July 1971, states as a prerequisite for admission "active participation in the development of the socialist society and a willingness to play an active part in the defence of socialism." Young persons with religious ties are not considered to have the ideological awareness necessary for this. Pressure on children is furthermore intensified by exposing them to ridicule.

One example: Maths lesson, decimals; question by the teacher: "At the . . . school in Greifswald only three out of thirty pupils receive preparatory instruction for Confirmation. What percentage is that? Now stand up all those here at . . . who are still receiving instruction for Confirmation!" The infamous manner in which this is done is illustrated by the following example: A girl pupil in the tenth class at a school in Altenburg had to read out to the class a curriculum vitae which she had written in applying for a job with a State institution, after it had been scrutinized by the teacher: "I was confirmed", she wrote, "but I now realise that this was a serious mistake".

The advantage to be gained by early withdrawal from the Church lies in better occupational opportunities and preferential treatment in the allocation of flats for young married couples. And by giving money and other gifts to those who dedicate themselves to the socialist way of life, the SED tries to make these socialist ceremonies popular.

Anti-Church activities are conducted with differing degrees of intensity. In the spring of 1976, the heads of the SED associations in districts that still have a relatively high proportion of Christians were reprimanded by the party central committee. Since then the fight against the Christian Church in those districts has been noticeably stepped up.

In August 1976, the Protestant Pastor Oskar Brüsewitz committed suicide by self-immolation in the market place of his home town of Zeitz and thus drew world public attention to the desperate situation and lonely martyrdom of many young Christians in the GDR in particular. On a placard he had written the words: "the Churches accuse communism of suppressing the young".

IV.—BRINGING UP YOUNG PEOPLE TO HATE

In contrast to the Principles of the Final Act, which express the political will to improve relations between States, to foster the solidarity of peoples, and to overcome mistrust, the political leaders in the GDR have not desisted from their policy of educating young people to hate the "imperialist enemy". In GDR schools, during pre-military training, and in the political youth organisations, with the support of literature and statements by political leaders, young people are taught to hate the alleged "class enemy". Without regard for the demands embodied in the Final Act, the Chairman of the GDR Council of State, Erich Honecker, speaking at the 9th SED Congress on 18 May 1976, confirmed "irreconcilable hatred of the enemies of the people" as being the political guideline for the education of young people. The Chairman of the Council of State has thereby followed up his previous constant advocacy of teaching hatred, which he derives from the "irreconcilability of socialism and imperialism". The GDR's Minister of Defense, General Heinz Hoffmann, also disregarded the Principles of the Final Act when, at a ceremony to mark the 20th anniversary of the National People's Army on 28 February 1976 in East Berlin, he stressed that the result of this government policy was that the party (the SED) had taught millions of citizens "to hate the enemy".

This was part of a sequence of guidelines for training, countless speeches, and routine orders to units of the National People's Army. Thus, for instance, addressing cadets about to leave the GDR military academy immediately before the initialling (8 November 1972) of the Treaty on the Basis of Relations between the Federal Republic of Germany and the German Democratic Republic, he underlined the need to teach young people "to hate imperialism and its rotting social system". To do so, he said, it was not sufficient "simply to reject and hate imperialism as a system; that hatred must be directed in particular against all those who stand ready to attack us under the command of imperialist generals and officers".

In teaching young people to hate in this way the GDR's leaders leave no doubt as to the object of their hatred. Since the social system is the State's substructure, the alleged "imperialist enemy"—though a more moderate tone appears expedient—are those States with a different social system, in other words the democratic States of the West who signed the Final Act. It is incompatible with the aim of fostering international friendship and solidarity as embodied in the Final Act to fill the hearts of young people with hatred of the people and the leaders of other States. Avowals of peace and security in the Final Act become mere lip service if the intransigent struggle remains part of the ideological concept.

The GDR has no serious intention of giving effect to the Final Act of Helsinki

The fortifications put up by the GDR running right through the middle of Germany and the use of the armed forces and military equipment against the civilians trying to cross them are utterly incompatible with the principles of humanity and the aims of the CSCE Final Act. These inhuman fortifications and the instructions given to border guards to shoot to kill make nonsense of the notions of "security" and "co-operation" and block the path to the goals inherent in the name of the Helsinki Conference.

Only if the use of military weapons against civilians in the form of mines and shooting devices were discontinued and the "orders to shoot" cancelled could one take it as a sign that the GDR seriously intends to pursue these aims. The GDR Government would only give proof of such intention to meet the requirements of Principle VII of the Final Act and allow the exercise of the individual rights embodied in Article 12 of the International Covenant on Civil and Political Rights if its authorities were to take specific steps to grant free movement pursuant to Article 12 (2) of the Covenant instead of making the exception contained in Article 12 (3) the rule. The granting of permission to travel to the West only to people in retirement and the issue of exit visas in but a few cases conflict with the dictates of international law.

CONCLUSIONS AND RECOMMENDATIONS

In the Final Act of the CSCE all signatory States have explicitly undertaken to respect and allow the exercise of the human rights and fundamental freedoms of their citizens as an essential factor in the development of friendly relations among them. This obligation has made their domestic conduct a yardstick for their good intentions as regards friendly relations. Now, therefore the realisation of human rights deserves the same status as respect for national sovereignty or the obligation not to resort to force, including the inviolability of frontiers.

The Belgrade review meeting will therefore be the first test of this solemn pledge. As experience since Helsinki has shown, violations of human rights considerably weaken mutual trust. They thus hamper co-operation between the signatory States and jeopardize the process of real detente in Europe.

1. The conduct of the Government of the GDR is open to criticism in this respect on the following grounds:

1.1. The fortification along the border of the GDR with the Western part of Germany, especially the orders given to guards to shoot to kill anyone trying to escape, the automatic shooting devices and minefields, constitute an attack on the life, physical integrity, and freedom of people who want to exercise their right of free movement. The line dividing Germany is the most inhumane border on earth.

Since 13 August 1961, members of the "GDR Border Force" have fired at people trying to escape in 1509 known cases. 70 refugees and others trying to help them have died along the wall through Berlin; 66 of them were shot, 91 badly wounded, and 3,002 arrested trying to escape over the wall.

From 1949 to 1 August 1977, a total of 182 people lost their lives on the intra-German border including the sectoral borders in Berlin and the outer boundary of West Berlin, through stepping on mines, being shot by guards or shooting devices, and by other means. Four of them have been killed since the signing of the CSCE Final Act.

The CDU/CSU Parliamentary Group calls upon the Federal Government and appeals to the participating States of the CSCE to induce the GDR Government to remove the fortifications and other obstructions which are a threat to human life and inimical to human rights.

1.2. The Government of the GDR, through its legislation, internal administrative instructions and other arbitrary administrative practices, has reduced the right of free movement practically to nil. It prosecutes people who insist on exercising their right to free movement. It uses people thus incriminated and other political prisoners as a means of obtaining foreign exchange and dealing in human beings. It punishes others by an inhumane decision to deprive them of their parental rights (that is, by enforcing the adoption of their children against their will), and by refusing to allow persons engaged to be married to enter or leave the country.

The CDU/SCU Parliamentary Group calls for all laws and administrative regulations of the GDR relating to free movement to be made available for scrutiny, and for procedures on a legal basis for the processing of applications for exit visas which may be subject to complaint. It calls for a stop to the inhumane practice of compulsory adoption and the separation of persons engaged to be married.

It calls for the release of about 2,500 people who are serving prison sentences for having tried to escape or to help others do so.

It calls upon the Government of the GDR to abandon its practice of systematic constraint using political prisoners, a practice by which it not only grossly violates its international obligations but also places itself outside the scope of Europe's moral standards.

1.3. The Government of the GDR has restricted the category of persons allowed to visit relatives to GDR pensioners, and hampers visitor travel from the West by arbitrary measures, chicanery, and intimidation.

The CDU/CSU Parliamentary Group calls for the elimination of obstacles that still stand in the way of contacts between the people of one nation, even after Helsinki.

1.4. The Government of the GDR suppresses free speech, freedom of conscience, and freedom of religion. Many people have been subjected to discrimination in various ways, even to the extent of being forced to reside in a certain place, or even criminal prosecution for expressing critical views or religious activity. Between two and three thousand political prisoners are receiving inhumane treatment.

The CDU/CSU Parliamentary Group calls for complete freedom of religion and free speech for all inhabitants of the GDR as well as the release of persons detained and sentenced for exercising those rights, especially the persons specifically referred to in this

documentation. It calls for more humane prison conditions in the GDR. Like the Federal Republic of Germany, the GDR must be prepared to accept an international inspection of its prison regime.

1.5. The Government of the GDR time and again rejects proposals for the promotion of intra-German contacts among young people, in the fields of sport and culture, education and science, and among communal associations and the Churches, whose aim is to give effect to the spirit and letter of the Final Act of Helsinki and of the Intra-German Basic Treaty.

The GDU/CSU Parliamentary Group calls for a broader framework and the appropriate facilities for contacts between the people.

1.6. The Government of the GRD, through official representatives and statements, exhorts the people to bring up the young to hate the democratic institutions of the Federal Republic of Germany and its allies. By constantly fostering hatred against people it is opposing the dictate of tolerance which is conducive to peace. It steps beyond the limits of legitimate political and ideological conflict in a manner inimical to peace and human rights.

The CDU/CSU Parliamentary Group calls for a halt to the propaganda of hatred and defamation and a return to objective discussion.

2. Since the signing of the CSCE Final Act, the situation of the following more than three and a half million persons of German nationality or ethnic origin has not improved, in some cases it has deteriorated:

approx. 1.2 million German nationals in the territories East of Oder and Neisse;

approx. 200,000 persons of German origin in Poland;

approx. two million persons of German origin in the Soviet Union (including the remainder of those German nationals who were taken from their homeland after the war);

85,000–130,000 German nationals (Sudeten Germans) in Czechoslovakia;

approx. 360,000 persons of German origin in Romania.

2.1. The individual human rights of these Germans have been violated. They are subject to discrimination or even prosecuted, mostly on account of their German origin or their religious beliefs.

The CDU/CSU Parliamentary Group calls upon the Federal Government to meet their obligation under the constitution and afford diplomatic protection to Germans entitled to such protection under German law.

It further calls upon the Federal Government to afford assistance to those Germans who are not German nationals but seek the help of the Federal Republic of Germany pursuant to the international agreements for the protection of human rights, the importance of which is emphasized in the Final Act of Helsinki.

2.2. The rights of these Germans as national groups are also being violated.

The Polish Government officially denies the existence of a German ethnic group.

The nationality laws of the Soviet Union, Czechoslovakia, and Romania formally acknowledge the rights of national groups, but in practice those rights are for the most part denied to ethnic Germans living there, the degree differing from country to country. The national identity of these ethnic groups is being increasingly threatened. As a result, a growing number of Germans see emigration to the Federal Republic of Germany as their only means of escape. But government reaction in Poland, the Soviet Union, Czechoslovakia and Romania is to take years to process or reject applications for exit permits, and in many cases applicants have to contend with reprisals or prosecution. Further impediments to people wishing to leave are the disproportionately high costs, restrictions on the transfer of property and on the disposal of property left behind.

The CDU/CSU Parliamentary Group calls upon the Federal Government to raise at the Belgrade follow-up meeting the question of the situation of the German ethnic groups under the jurisdiction of the above-mentioned States. It should in particular insist that the cases set out in detail in this report on the situation of Germans in the Soviet Union who have been prosecuted and sentenced on account of their religious convictions or for trying to emigrate be reviewed by an independent commission composed of representatives of CSCE participating States or of the International Red Cross.

2.3. Individual discrimination on national or religious grounds and the denial of rights to national groups lead, as this report proves, to a vicious circle:

Persons thus discriminated against become foreigners in their own homeland. Faced with the choice of losing their national identity or leaving their homeland, more and more of them are opting for settlement in the Federal Republic of Germany.

As the governments of the countries concerned try to halt this growing pressure for resettlement by denying the people concerned the right to free movement and by other violations of their rights, human suffering and sources of political conflict in those countries are increasing.

Injustice to individuals and whole national groups is, as has been proved in recent years, a strain on relations between States and peoples, and that at a time when the application of the Final Act of Helsinki is supposed to bring less, not more, tension.

The CDU/CSU Parliamentary Group therefore recommends participating States of the CSCE follow-up meeting, with a view to settling the problems of national minorities in conformity with the dictates of human rights, to discuss concrete measures for the protection of such minorities, which meet the requirements of the CSCE Final Act and develop it further.

In particular it proposes the following:

(a) A pledge by CSCE participating States to recognise national minorities and groups and to elaborate provisions securing the protection of minorities and guaranteeing their right to develop on a par with others, both as a group and as individuals.

(b) The elaboration of recommendations for the conclusion of option treaties between the countries concerned. Under such treaties, the members of national minorities should be free to opt for emigration to another country and its nationality. One might take as examples of such option treaties those concluded after 1945 between the Soviet Union and Poland, the Soviet Union and Czechoslovakia, the Soviet Union and Yugoslavia, Poland and Czechoslovakia, and, more recently, the Italo-Yugoslav treaty of 10 November 1975. These treaties leave it up to the persons directly concerned to decide.

(c) Recommendations to all CSCE participating States to endeavor to make it easier for people wishing to leave the country and settle somewhere else to do so.

These recommendations should include:

The disclosure of all laws and regulations relating to freedom of movement and emigration and to fees and costs, as well as the introduction—if none exists or it is inadequate—of a due procedure established by law for the handling of applications for exit visas and allowing complaints; also a reduction of the prohibitively high fees and costs and the lifting of the confiscatory restrictions on the transfer of property and the free disposal of property left behind upon leaving the country.

(d) To extend the mandate of the group of experts appointed in Helsinki to enlarge upon the Swiss draft convention on a European system for the peaceful settlement of disputes.

Participating States should discuss in this connection the inclusion of violations of human rights in the jurisdiction of the arbitral tribunal or the investigatory, mediation and settlement commission proposed in the draft; but also the possibilities for individuals to lodge complaints along the lines of the European Human Rights Convention of the Council of Europe.

The creation of an effective and comprehensive system for the protection of human rights both within the national and the international framework is the logical consequence of the solemn pledge of Helsinki to respect and give effect to human rights. The extent to which the signatory States of the CSCE Final Act pursue this aim will show how serious they are about the whole matter.●

A FACTSHEET ON THE PANAMA CANAL TREATIES

● Mr. CHURCH. Mr. President, much inaccurate information on the pending Panama Canal treaties has been distributed over the past several months.

I am delighted, therefore, that a factual little pamphlet has been issued by the Committee of Americans for the Canal Treaties. This pamphlet poses the most commonly asked questions about the treaties, and answers them in a consise and accurate manner. It's an excellent piece of work, and I ask unanimous consent that it be printed in the RECORD.

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

THE PANAMA CANAL TREATIES

The Panama Canal Treaties signed by President Carter on September 7, 1977 are the culmination of more than 13 years' work by four American Presidents—Lyndon Johnson, Richard Nixon, Gerald Ford and Jimmy Carter. They were developed with the valuable counsel of former Presidents Truman and Eisenhower. The Joint Chiefs of Staff also wholeheartedly support the treaties because they promote the national interest—and specifically, the national security interest—of the United States. They are endorsed by a broad base of American business and labor leaders who see them as instrumental to our country's economic interests. All of these people believe the new treaties are the best means of guaranteeing the security and defense of the Panama Canal.

The basic treaty governs the operation and defense of the Canal through December 21, 1999. The second treaty guarantees the neutrality of the Canal forever. In accordance with the Constitution, both treaties must now be ratified by the U.S. Senate.

It has been firmly established that the new treaties go beyond partisan politics. Republicans, as well as Democrats, military as well as the business community, see them as essential.

Yet, the agreed-upon treaties have caused a great deal of controversy. Why?

Simply because everyone doesn't have all the facts.

Q. Why do we need a new treaty? What's wrong with the treaty we now have with Panama?

A. Panama has never been satisfied with the 1903 treaty since its representatives were not included in the negotiation of the treaty. Our first Panama Canal treaty was negotiated with Colombia because Panama at that time was part of Colombia. This treaty was rejected by the Colombian Senate. A few weeks later, in November, 1903, a revolt occurred in Panama. Colombian troops were prevented by the U.S. from putting down the rebellion, and

within three days our government recognized the new nation of Panama. Two weeks later a new treaty was signed. It was signed not by Panamanian representatives, but by an official of the French canal company which had sold us the rights to build the canal and who was a French citizen. It was signed while the Panamanian negotiating team was en route to Washington. The Panamanians were disturbed by this action, but nevertheless eventually approved the treaty. They believed that they needed our protection from Colombian rule.

The provisions of the treaty have become obsolete and actually harmful to the interests of the United States. They have created resentment and hostility on the part of Panama and every other Latin American country. The treaty gave the United States jurisdiction over the 550-square-mile Canal Zone that runs through the heart of Panama. We have established a Canal Zone Government and a Panama Canal Company which run all the public and consumer enterprises—from courts and schools to laundromats and movie theaters. Yet, 40 percent of the residents and over 70 percent of the work force of the Zone are Panamanian.

The Panamanians naturally see this as a vestige of the Colonial Era. Like any other modern day nation, Panama expects to be sovereign over all its territory.

The new treaties replace an outmoded relationship built on 19th Century attitudes. They replace decades of resentment with a new relationship—one arrived at through open discussion, fair bargaining and careful negotiation.

Q. But we bought the Canal Zone and built the Canal. We own it, so why should we give it away?

A. It is true that we built the Canal. It is not true that we own it. The 1903 treaty gave us certain rights and authority "as if sovereign" over the Canal Zone, but did not make the Zone part of the United States. Our own Supreme Court has described the Zone as "admittedly territory over which we do not have sovereignty."

It is important to recognize the difference between the rights acquired in Panama and the territory acquired in the purchase of Louisiana and Alaska. The United States was explicitly granted full sovereignty over the territories of Louisiana and Alaska. Those lands were ceded to the U.S. in a purchase agreement. The 1903 treaty with Panama was not a purchase; it was a continuing agreement whereby Panama retained sovereignty and received an annual payment for allowing the U.S. to exercise certain rights in the Canal Zone.

Q. What's to prevent the Panamanians from closing the Canal to United States shipping interests or nationalizing the Canal and kicking out the United States?

A. The basic treaty gives the United States the right to operate the Canal, plus primary responsibility for its defense, until the year 2000. This means that the United States can act militarily should the operation of the Canal be threatened, and we will retain military bases and troops in the Canal Zone until the end of the century.

The second treaty prescribes nondiscriminatory operation forever, and permits the United States to maintain that neutrality even after the end of the century when the Canal comes under Panamanian operation. The United States can take any action it deems necessary to defend the Canal's neutrality. We are free to act against any aggression or threat directed against the Canal or the peaceful transit of vessels through it.

Moreover, our naval ships and auxiliaries will have the right to expeditious passage at all times and can go to the head of the line of other vessels in time of need or emergency.

The new treaties will make Panama a partner in the management of the Canal and eventually will turn over to Panama full management responsibility. They reduce significantly the chance of nationalization. Our new treaty rights would be no less binding than our existing rights. Panama has not attempted to abrogate the 1903 treaty—a treaty which it never negotiated and always rented—and there is no reason to assume that it would act differently once the new treaties are in effect.

Q. Won't the new treaties hurt us economically?

A. For defensive and commercial reasons, the U.S. must have ready access to and passage through the Panama Canal. That is guaranteed by the new treaties.

But we also need some assurance that use of the Canal will remain economically feasible and that toll rates will remain reasonable. These new treaties give us the best possible guarantee.

Ships transiting the Canal in 1914 paid $1.20 per Panama Canal Ton. Today they pay $1.29 per PCT. That's low, and even under the current treaty, the fee will have to be raised slightly just to cover the cost of operating the Canal. Under the new treaties, a U.S. government agency will have authority to set the toll rates until the year 2000. After 2000, Panama will set the rates, but Panama will have a strong incentive to keep them low because its economy will be heavily dependent upon the Canal's success. Panama already has an overwhelming economic stake in the security and maximum international use of the Canal—13 percent of its GNP depends on Canal traffic. Under the new treaties, the Panamanian government will also derive a much larger income from the actual toll revenues. But this money will come strictly from Canal operations, not from the U.S. taxpayer.

In economic terms, America's dependence on the Canal has been steadily declining. Today only seven percent of our waterborne trade goes through the Canal. This is due to advances in other modes of transportation, as well as the fact that the Canal is not large enough for our new, larger cargo ships.

We eventually may want to replace the present Canal with a new sea-level canal to accommodate these larger ships. Extensive studies completed in 1970 show that the best route for such a canal would be Panama. Clearly, retaining the sea-level option requires that we enjoy a relationship of cooperation and mutual respect with Panama.

Q. Don't the Panamanians stand to gain more than we do by the new treaties?

A. The financial package in the new treaties calls for Panama to receive 30 cents per Panama Canal Ton from tolls, plus another $10 million a year from Canal revenues—and as much as another $10 million a year, if revenues warrant. None of this is U.S. tax dollars.

In addition, the United States will do its best to set up a $295 million program of loans, loan guarantees and credits for Panama. There are no grants. All of these loans will require repayment and will be subject to all relevant U.S. legal requirements and program criteria. The majority of these loans and credits actually will promote U.S. trade and investment in Panama.

But what the United States stands to gain most is respect and good relations throughout the hemisphere. These cannot be measured monetarily.

Indeed, our original investment was never intended to be a profit-making venture. It was designed to secure an open, efficient and neutral canal. The new treaties reinforce our pledge to work for a more equal partnership between the U.S. and our Latin American neighbors, assuring that the Canal will remain open and secure.

Q. Isn't Panamma ruled by a dictatorship friendly to Castro and unfriendly to the United States?

A. The Panamanian governmment, though authoritarian, operates according to certain constitutional norms and is sensitive to public opinion. Under the Panamanian Constitution of 1972, General Torrijos holds extraordinary powers for a six-year term which expires in 1978. Common basic rights and freedoms are guaranteed in the Constitution. When its overall record on human rights recently was challenged, Panama was quick to invite the Inter-American Human Rights Commission to send a team to investigate human rights conditions in Panama.

Panama's relations with Cuba and other communist countries are not close. Panama does not maintain diplomatic relations with the Soviet Union or China. General Torrijos is a nationalist who has made it clear that he wants Panama to develop in accordance with its own needs and traditions.

On the other hand, Panama has very close political and economic ties with the United States, and these ties would be even closer under the new treaties.

Since Panamanians of all political persuasions feel that the old treaty is one-sided, the danger of communist or other unfriendly influence in Panama would be far greater if we insisted on maintaining the status quo.

Q. Aren't the Panamanians incapable of operating the Canal?

A. Panama will not have responsibility for the Canal's operation until the year 2000. Until that time, we will possess all necessary rights and powers to operate the Canal. We will act through a United States government agency which will replace the existing Panama Canal Company. During that period, Panamanians will be trained to administer the Canal. Seventy-three percent of the Canal work force is Panamanian now; and by the end of the century, there will be well-qualified Panamanians to fill all the positions required for operation of the Canal.

Q. Isn't it necessary for the U.S. to maintain control over the Canal in order to protect it from attack?

A. No. The two new treaties will give the Panama Canal the strongest defense it has ever had. They make the efficient and neutral operation of the Canal a joint commitment with the broad support of the international community.

On the other hand, if we should not ratify the treaties, we would be playing Russian roulette with the Canal's security. The threat of sabotage is real.

Surrounded by hostility in Panama and all of Latin America, we would need an estimated minimum 100,000 troops to put down a determined guerrilla effort. Even then, we could not protect the waterway's lock mechanism, dams and power plants from some kind of sabotage.

Q. Won't our stature in the world suffer from the surrender of our rights in Panama?

A. In actuality, the reverse is true. The new treaties prove that we are willing to work with the new and small countries of the Caribbean on the basis of mutual respect and cooperation. Thus, they will increase our influence and prestige throughout the world.

Rejection of the treaties would poison our relations with Latin America, leaving us to face the unanimous hostility of all the countries south of us in our own hemisphere.

In addition, our adversaries would exploit non-ratification as "imperialistic"—the United States bullying the small and weak nations of the world.

Q. Since we're bigger and stronger than Panama, what could possibly happen if we don't ratify the new treaties?

A. Certainly we are bigger and stronger than Panama. But if the United States Senate fails to ratify these treaties by the required two-thirds majority, our relations with Panama would be seriously impaired. Our standing in Latin America would be damaged. The security of the Canal itself might be placed

in jeopardy. And we may never again have the opportunity to safeguard our real interests in the Canal on terms as favorable as those in the new treaties.

All of these things would happen. But in the final analysis, we must also acknowledge that the days of one-way bargaining and big-power domination are over. If we are to lead the free world, we cannot do it solely by size, or wealth, or superior power. We must do it by commanding the admiration and respect of other nations and peoples. This we can only do by treating them with the same respect and dignity we ourselves expect of others.●

RESOLUTION ON ISSUANCE OF COMMEMORATIVE STAMP

● Mr. THURMOND. Mr. President, on February 22, 1978, the South Carolina General Assembly passed a concurrent resolution memorializing the Congress of the United States to have the Postmaster General issue a commemorative stamp on June 18, 1981, depicting and reflecting upon the 200th anniversary of the Revolutionary War siege of Star Fort at Ninety Six, South Carolina.

On behalf of the junior Senator from South Carolina, Mr. HOLLINGS, and myself, I ask unanimous consent that this resolution be printed in the RECORD.

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

CALENDAR No. S. 770

A concurrent resolution to memorialize the Congress of the United States to Have the Postmaster General Issue a Commemorative Stamp on June 18, 1981, Depicting and Reflecting Upon the Two Hundredth Anniversary of the Revolutionary War Siege of Star Fort at Ninety Six, South Carolina

Whereas, the history of the Revolutionary War is an important and indivisible part of our American heritage; and

Whereas, the destiny of the young United States during the Revolution balanced at times on events that took place at Star Fort and Old Ninety Six in South Carolina, events which revolved around the British siege on Star Fort which took place on June 18, 1781; and

Whereas, the Ninety Six Chamber of Commerce, Ninety Six, South Carolina has offered to donate prints or copies of the oil painting "The Assault of Star Fort at the Siege of Ninety Six" by the distinguished artist Robert Windsor Wilson. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the General Assembly of the State of South Carolina hereby memorializes the Congress of the United States and the Postmaster General to have issued on June 18, 1981, a postage stamp commemorating the two hundredth anniversary of the siege on Star Fort utilizing the painting "The Assault of Star Fort at the Siege of Ninety Six" by Robert Windsor Wilson.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, the presiding officers of each House of the Congress of the United States, the Postmaster General and the United States Senators and Congressmen from the State of South Carolina.●

A TRIBUTE TO ALLEN R. FOLEY

● Mr. McINTYRE. Mr. President, in February a distinguished American educator and humorist, Allen Richard Foley, died in Hanover, N.H. Professor Foley was a professor of American history at Dartmouth College for over 40 years. Having been a student of Professor Foley during my undergraduate years at Dartmouth, I was moved by a stirring tribute written about him by his close friend, Clayton M. Wallace. Mr. Wallace is himself a distinguished American who had a major role in the decision to build the Moscow to Washington "Hot Line" and is the editor emeritus of the news magazine of the American Council on Alcohol Problems.

Mr. President, I ask unanimous consent that Mr. Wallace's tribute to the late Prof. Allen Foley be printed in the RECORD.

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

A TRIBUTE TO ALLEN R. FOLEY

Former American History professor at Dartmouth College, Allen Richard Foley, died suddenly in February in Hanover, N.H., at the age of 78. Always popular in his history courses, especially the one on "Cowboys and Indians," he was widely sought after as an after dinner speaker, specializing in Vermont humor.

Born in Framingham, Mass., he came to Dartmouth in 1916 and graduated in 1920.

Although more studious than many at Dartmouth, he shared in numerous college activities and was on the board of the Dartmouth Christian Association. His dry, whimsical response to life endeared him to all who knew him. He and I roomed together our Junior year. We made many D.C.A. Sunday afternoon trips to Pompanoosuc, Vermont, to teach in a rural Sunday School, and to enjoy, afterwards, Mrs. Magoon's hot doughnuts with dishes of pure Vermont maple syrup. This may have been the inoculation of his love for Vermont.

After graduating from Dartmouth, Al took a one-year trip around the world. Then after some advance studies, he served as principal of Farmington (N.H.) High School for a brief period.

Love of Dartmouth eventually brought him back to Hanover where he spent the rest of his teaching career as professor of American History. Thousands of Dartmouth students enjoyed his brilliant and witty courses. One who greatly appreciated them and profited by them was Tom McIntyre, now the senior United States Senator from New Hampshire.

Al Foley never married, living alone across the river in Norwich, Vermont. Dartmouth was his great love and he travelled widely to bring the Dartmouth spirit to alumni all over the United States. He was noted as an after-dinner speaker, and his store of anecdotes delighted tens of thousands. He published the Class of 1920 Newsletter which always ended with a touch of Vermont humor.

After some 40 years of teaching at Dartmouth, Al Foley retired to an active career as a member for five terms in the Vermont legislature. He was also president of the Vermont Historical Society and active in town affairs in Norwich. But he spent much of his time collecting and delighting audiences with stories of Vermont humor. He accepted hundreds of invitations to speak in Vermont and New Hampshire. Always he found new stories as he went along, and it was suspected that some good New Hampshire tales ended up in the Vermont category.

Al Foley published two books of Vermont humor: "What the Old Timer Sez," and "The Old Timer Talks Back." These delightful books have sold in the many thousands of copies and are still going strong. He supplemented these with two records of Vermont humor in which his voice even takes on an authentic Vermont twang.

One of his favorite stories was about the city guy who stopped on a Vermont roadside to watch a Vermont farmer clearing his field of stones. The city guy asked the farmer where the stones all came from. The farmer, after a long pause, said: "The glacier brung 'em." "Where has the glacier gone?" the city guy asked, and the farmer replied: "Gone back for more stones, probly."

Now that Al Foley has gone on to his next enjoyable existence, it is a good bet that he is busy gathering up more delightful Vermont tales with which to regale all new arrivals.

Al Foley was a beloved teacher, a delightful humorist, a great guy, who left this world better and happier for his being here.●

INTERNATIONAL ECONOMICS

● Mr. GOLDWATER. Mr. President, on February 8, the Senator from New York (Mr. JAVITS) delivered a lengthy and learned speech in this Chamber entitled "The Danger on the International Economic Front." In it he cataloged the problems facing the United States and indeed the entire world starting with the weakness of the American dollar, the huge U.S. trade deficits, the deficit in our current accounts, and extending to such problems as the accumulation of debt in developing countries, international unemployment, and the handling of huge sums of money by the OPEC countries.

Mr. President, I agree with the Senator from New York in his contention that we face a dangerous situation in almost every area of international economics, but I believe he has omitted one major cause of the trouble and I disagree with his prescription for remedying the situation. It seems to me that the Senator from New York has rejected the idea that much of our present trouble has resulted from bad governmental policies, many of which would be far better handled if left to private voluntary arrangement. As a result of this omission, the Senator argues for still greater measures of Government intervention in his recommendations for meeting the problems.

With respect to OPEC oil, it strikes me that the cartel owes much of its continuance and strength to mistaken policies of the U.S. Government. We must acknowledge the diplomatic policies which encouraged the formation of OPEC in the first place, and we must acknowledge our energy policies, or lack thereof, which have increased the monopoly power of OPEC. For example, our present entitlements program involves a $3 a barrel subsidy to imported oil—hardly a program designed to undermine the OPEC cartel. And with respect to financial assets which OPEC has accumulated, we must acknowledge that these have been handled very well by the private banking system and do not raise the kinds of serious problems which Senator JAVITS envisions.

As I read the Senator's speech, I find a constant complaint that national planning has failed and I agree with that; but this being the case, why does the Senator from New York believe that international planning would correct the situation? Indeed, if our national planning has failed, international planning is likely to fail on a much broader scale and with much more disastrous results.

In the field of foreign aid, the Senator points out that our former and present

programs have not been highly productive. Yet he concludes from that that what we need is more foreign aid.

Mr. President, while the Senator from New York treats the high costs of foreign oil as if it were perhaps the only major factor in causing our balance-of-payments difficulties, he fails to recognize that Germany and Japan are far more dependent on oil imports than we are, yet neither of them has had balance-of-payments problems or weakening currency.

In another area, the Senator from New York agrees with the recent policies of the Federal Reserve and the Treasury to intervene in foreign exchange markets to peg the U.S. dollar, despite the overwhelming evidence of the failure of such policies in the past. The noted and prize-winning economist, Milton Friedman, has referred to this intervention as a form of gambling on a large scale with your money and mine. He refers to the Government's action as "official speculation" which is more likely to be wrong than right.

All in all, Mr. President, I feel the Senator from New York has done us a service in calling attention to the very serious nature of the problems confronting us on the international economic front. But I must question his proposed cures. I am afraid the heavy emphasis on Government intervention and meddling would be more likely to exacerbate the disease than ease it.●

A WORD FOR THE CONGRESS

● Mr. HOLLINGS. Mr. President, rare is the case when Congress can effectively defend itself against the budgetary slings and arrows hurled its way, rarer still when an individual off the Hill will take the time to do so.

But such is the case with our good friend Bob Dunphy, who authored a piece entitled "A Word for the Congress" which appeared in the Washington Star on February 21.

It may be arguable that Bob presents an unbiased view, since he served for 27 years on the Hill, retiring as Sergeant at Arms of the Senate in 1972. However, biased or not, his perspective of what is really involved in the funding of congressional operations is true to the facts and refreshing to see on the record.

I have argued against the "billion dollar Congress" label many times, as I am sure my colleagues have on occasion. I will be helped in the future by Bob Dunphy's article, and since other Members of the Senate may be faced with a similar debate I ask unanimous consent that Bob's commentary be printed in the RECORD.

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

A WORD FOR THE CONGRESS

(By Robert G. Dunphy)

"Billion Dollar Congress." "Congressional Staff Explosion." "Hill Committee Staffs Bloated." You've seen these and similar headlines in recent months. Seems it's a favorite subject with Washington reporters these days. Even President Ford, a product of the House of Representatives, got into the act during the last campaign, lashing out at the "Billion Dollar Congress."

Actually, it's easy to take on Congress since no one voice can defend its 535 members. Attack the president and he or one of his agents is on center stage with a rebuttal before the next edition goes to print. With the Congress it's the George Allen approach—defense, defense, defense. Occasionally an individual member will talk back; however, in the main, congressmen take it lying down.

Why?

The Billion Dollar Congress, as with most campaign catch phrases is something less than a whole truth. Sure, if we lump in the Government Printing Office (which prints for the entire government), the Office of the Comptroller General (which is primarily a watchdog over the Executive Branch) and the Library of Congress, which serves many in addition to Congress (local library cataloging systems, copyrights, etc.) we may get in the neighborhood of a billion dollars.

In a $450 billion-plus budget should Congress, a coequal branch of government, allocate an amount for its responsibilities which represents less than one quarter of 1 percent of the total budget? I think it is not only reasonable but essential.

A couple of examples illustrate the scope of the problem. The Senate Appropriations Committee has a staff of 70, of whom 40 are professional personnel. In comparison, the Office of Management and Budget fills a substantial part of the Executive Office Building. That's just the beginning. Every department, agency, board, commission, court system and bureaucratic organization imaginable has a budget shop dedicated to obtaining from Congress the maximum funding for its mission.

At some point the Senate Appropriations Committee along with its sister committee in the House—with equally anemic staffing—must pass on these requests and set fiscal priorities for all manner of programs and activities. This is a responsibility beyond my comprehension. To attempt this task with a staff of 40 professionals is to provide a lick and a promise, when complete scrutiny is essential.

How about the Armed Services Committees? In the Senate they have a staff of 29, of whom 16 are professionals. This group is charged with overseeing the armed forces of the United States. At any given moment there are more people on coffee breaks in one corridor of the Pentagon!

If we run through the committee list, we can see all manner of similar situations.

We haven't even touched on the offices of Senators and members of the House. It is not unusual for senators from large states to receive 1,000 letters in one day. Most of these communications represent a "case," i.e., investigate a missing Social Security check, help with a GI loan—you name it. Congressmen don't invent these problems; they come from constituents and it takes hands and minds to process them.

Maybe it's a mistake to have a senator or member of the House involved in such matters but as long as people find their government slow or unresponsive they are going to turn to those who ask for their vote. It would be nice if congressmen didn't have to bother; they could spend a lot more time on the larger problems of state. But if they didn't, can we be sure that someone else would?

As one who observed the system closely for almost three decades, I just wish our senators and representatives would quit acting as if their staff requests were somehow unworthy, while those of the executive branch were at least necessary, if not critical.

It's about time the needs of Congress were put in perspective and it's about time they stopped denigrating the institution by backing up every time their staff comes under fire. No one can defend the isolated abuses which have occurred, nor would we try. However, the largely overworked staffs of the Senate and House deserve our gratitude and support. And when the need for additional help can be demonstrated, the Congress ought to quit being so apologetic.●

TAX CREDIT TUITION

● Mr. HAYAKAWA. Mr. President, as a cosponsor of S.2142, the Packwood-Moynihan tuition tax relief bill, I was interested to learn about the work of the several hundred schools, in California and throughout the West, which comprise the Western Association of Christian Schools. In these private schools, which do not discriminate against minorities and are not reserved for the children of affluent families, average student scores on widely used standardized tests are consistently above the national averages. For example, first graders are 9 months above the national average. Eighth graders are 13 months above the national average.

The academic success of these youngsters is telling us something. It is demonstrating what we should have known all along: that children can learn, indeed, they can excel, despite handicaps and deprivation. Far more important than family income is family interest. More important than socioeconomic environment is a system of personal and community values stressing achievement, responsibility, and hard work.

For the information of my colleagues, and in tribute to the work of all the pupils in the schools of the Western Association, I ask unanimous consent that the association's recent testimony before the Senate Finance Committee in support of S. 2142 be printed in the RECORD as follows:

WESTERN ASSOCIATION OF CHRISTIAN SCHOOLS AND VALLEY CHRISTIAN SCHOOLS PREPARED STATEMENT FOR THE CONGRESSIONAL RECORD

Knowing that I would be appearing at this hearing today, the members of the Executive Board of the Western Association of Christian Schools authorized me to make the following statement on behalf of the Association:

"The Western Association of Christian Schools, headquartered in Whittier, California, operates in the states west of the Mississippi River. It is composed of 767 member schools and colleges with a combined student population of 93,682. The Association has formally approved S-2142 and is supporting its adoption. At a regional meeting of over 500 member school administrators held at Asilomar, California, last Thursday through Saturday (February 9-11) there was virtually unanimous enthusiastic support for passage of this tax credit bill."

EARL R. SCHAMEHORN,
Parliamentarian, Western Association of Christian Schools.

VALLEY CHRISTIAN SCHOOLS OF SANTA CLARA COUNTY

Gentlemen, I'm here today to speak to the issue of consumer advocacy and a return to capitalism in the educational marketplace. Be assured that there is widespread support in the Protestant Christian community for the concept embodied in S. 2142. The concept of a tax credit whereby the school is not involved in any direct grant or subsidy from

the federal government is one which we can wholeheartedly support without reservation. I have in my possession hundreds of letters from parents in our school systems, which I will deliver this afternoon to Senator Hayakawa.

Recently at our Western Association of Christian Schools Administrators' Conference, when the bill was presented and all the ramifications discussed, there was no doubt in anyone's mind that this is the best bill that has ever come along for alternative education below the college level. The administrators present unanimously endorsed the bill and the concept of tax credit rather than any kind of a grant program. Our legal counselors are of the opinion that this tax credit approach does not violate this country's historic support for the legitimate separation of church and state.

The approach suggested in some quarters to equalize and reduce the educational tuition by offering a grant, an extended grant, or loan program in place of a tax credit program is something which we find absolutely abhorrent. An educational grant program can only mean an enlarged middle bureaucracy, a horrendous amount of paperwork and bureaucratic red tape for students, parents, and schools, as well as set the stage for a massive take-over by Washington bureaucrats of the educational programs and philosophies in local schools across America. In solving the problem, a grant program is assuredly the wrong way to go.

We want to commend you gentlemen for aggressively attempting to put the brakes on the rapidly escalating cost of education for middle class and working class people through introducing a competitive educational marketplace embodied in S. 2142. We want to commend you further for recognizing the obvious inequities of requiring a large number of American families to pay twice for their child's education . . . once in taxes for a local government run education program and once for a non-government academic program which better meets the needs and abilities of the student. All scholastic evidence now indicates, on the long-term, that the present funding system of public schools is not attaining the academic standards needed for a sound progressive and successful America in the coming decade. Frankly, the present system is monopolistic, unresponsive and lethargic.

There is wide-spread feeling among parents of all faiths and all walks of life for the need of more freedom of choice so that the consumer might pick the educational package and program that best meets the needs of the student. We have found, gentlemen, in our school systems that there are thousands of parents who are frustrated in the public school system because they cannot afford to "break out" into a non-government or alternative school, be it religious oriented like ours or non-religious. Simply put, the consumers want a choice if it will give them a better product. Do you gentlemen really believe that quality education or anything of quality can come when you have a system where the consumer cannot take his dollar and purchase the product he desires? We have a great country and it was built on Capitalism.

As the middle and working class are able to afford freedom of choice in education, it will require the government funded school systems to evaluate the quality of education across this country. We cannot be very proud of the situation we find ourselves in today. The Packwood/Moynihan Bill will give schools like ours, be they religious schools or not, the ability to grow stronger and to even improve further on the quality of what we do. The tax credit concept will lend impetus to a new age of accountability. It will put pressure on the public schools for raising their standards of ethics, morals, and academics of the lives of our young people entrusted to them. Teachers will think twice before they go on strike against helpless children who can't fight back. The extremist element which has been using the public schools as a far-out testing lab for educational social fadism and wasting millons and millons of dollars of hard-earned taxpayers' money will have to face consumerism first. You gentlemen, in effect, are giving back to parents the leverage they need to insure that such even basic skills as reading, writing, and arithmetic are taught with great care. Is there any reason why, when looking at the test scores attached which speak loudly to the average American, that we can risk continuing going on as we have in the past? I close with this thought. It's no surprise that there are more public school administrators and teachers' children in private schools like ours than any other single profession. The Capitalistic concepts embodied in the Packwood/Moynihan Tax Credit Tuition Relief Bill are not only good for the private schools, but they are good for the public schools too. We commend your foresight and we urge you to support S. 2142.

THOMAS G. PATERSON, Jr.,
Business Administrator for the Board of Directors, Valley Christian Schools.●

AMERICA'S FIRST NATIVE MAGICIAN

● Mr. McINTYRE. Mr. President, during our Bicentennial, we saluted America's first discoverers, first patriots, and first explorers. And I think, Mr. President, it is appropriate to recognize those who pioneered in more novel activities.

Richard Potter is recognized today as America's first native magician. Potter was born in Boston, Mass., in 1783 to Sir Charles Franklin, a former British tax collector and to Dinah, one of Franklin's slaves. After a stint as cabin boy at sea for Captain Skinner, a Boston seaman, Mr. Potter joined the British circus and began traveling throughout the Northeast.

At the age of 28, Potter first appeared on his own at the Columbian Museum in Boston. His show was entitled "Upward of One-hundred Curious But Mysterious Experiments With Eggs, Cards, Money, and the Like."

Besides being a well-practiced conjurer, Mr. Potter was a skilled ventriloquist and dancer. For close to 25 years he traveled and performed at public engagements from as far North as Quebec to as far South as Mobile, Ala. His best tricks included what he called "The Wonderful Sheet of Paper," known today as "Trouble Wit." He astounded his audiences by frying pancakes in a borrowed hat, breaking an egg to reveal a prechosen card inside and by walking through walls of fire.

In 1808 Potter married Sally Harris, a Penobscot Indian who sang in his show. Soon afterwards they bought about 200 acres of land in New Hampshire. He built a house on the land and returned there after every show season. Potter furnished his house elegantly, and they entertained scores of friends and distinguished guests at dinner parties. At the dinner table the distinguished magician habitually took the opportunity to perform one of his favorite tricks—throwing his voice to a roast suckling pig.

As late as 1833, Potter was still avidly practicing his magic in New England. He died in New Hampshire on September 20, 1835, at the age of 52. In 1871 the first Post Office was built in the community which Richard Potter helped found, and in his honor, the Postmaster began postmarking the mail "Potter Place."

The New Hampshire Historical Society placed a marker on the Potters' gravesite in 1968, officially declaring it a historical site. Potter Place can be seen from Route 4 on the Concord to Connecticut Highway 11.●

THE SOVIET ICBM THREAT

● Mr. THURMOND. Mr. President, an important study relative to the dangers posed to the United States by the build-up of Soviet intercontinental ballistic missiles has been released by the House Armed Services Committee.

This study reveals that by the early 1980's the United States will have lost the principal capability which modern nuclear weapons are supposed to provide—a credible ability to deter a first-strike nuclear attack.

A leader in the study effort, Congressman SAMUEL S. STRATTON, Democrat of New York, concluded that the U.S. missile force will remain vulnerable even with improved accuracy and yield unless a silo hardening program or some alternative basing scheme is undertaken.

Mr. President, I ask unanimous consent that an article about this study entitled, "Soviets to Have Jump on ICBM's in 1980–81" which appeared in the Officer magazine be printed in the RECORD.

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

SOVIETS TO HAVE JUMP ON ICBMS IN 1980–81

Cong. Samuel S. Stratton (D-N.Y.), senior member of the House Armed Services Committee made public a study which provided proof that the Soviet Union will soon have the capability of destroying the bulk of the U.S. land-based ICBMs.

This conclusion is based, for the first time, on an unclassified source which shows that by 1980 or 1981 the United States will have lost the principal capability which modern nuclear weapons are supposed to provide a nation, namely, a credible ability to deter a first-strike nuclear attack against it.

The study, prepared by members of the House Armed Services Committee, demonstrates that the Soviet Union "has used the very liberal (to them) SALT I provisions to achieve a position of numerical parity and a position of superiority with respect to throw weight and warhead yield." Congressman Stratton termed this nuclear imbalance "a serious sobering truth . . . to which the American people and the Congress must promptly address themselves."

The study also concluded that current SALT II negotiations are "meaningless" without any "current consideration of weapon yields and accuracy, as well as throw weight;" and if linked with other recent Soviet proposals for banning missile flight testing and nuclear warhead testing could only "freeze the United States into a position of strategic inferiority—a condition which can only grow worse if an agreement is observed by the United States, but not the Soviet Union.

Specifically the study demonstrates that by 1980 or 1981, 12 to 60 percent of Soviet land-based re-entry vehicles (RVs) could kill at least 75 percent (or 790) U.S. ICBM silos and still have thousands of other Soviet RVs available for other U.S. targets.

By contrast the study shows that through 1980 4285 U.S. RVs (100 percent of our land and sea based ballistic missiled on alert) could destroy only 15 percent (209) out of 1300 Soviet ICBM silos.

Congressman Stratton said the study demonstrates the fallacy of the "minimum deterrent" theory, which holds that if a country has a certain number of nuclear weapons then "superiority" is meaningless and numbers added beyond a certain point represent no increased deterrent. The Soviet Union would not necessarily be deterred from launching such a devastating first strike, he said simply because our submarine missile force would remain intact after such a first strike.

Because the Soviets would still have thousands of warheads available. Congressman Stratton went on to say, "a decision to launch American Submarine Launched Ballistic Missiles (SLBM) would as a practical matter, amount to a decision to wipe out our own principal cities. Once the full consequences are understood those SLBMs would most certainly not be launched at all."

The U.S. missile force remains vulnerable, even with improved accuracy and yield, "unless a silo hardening program or some alternate basing scheme, such as a mobile missiles are pursued at great cost.

Congressman Stratton said that this is a sobering and disturbing study which should be read and understood by every American.

The full study is printed in the 23 January 1978 Congressional Record, pages 434 through 440.●

WATERWAY USER CHARGES: WHY CHARGES MUST RELATE TO EXPENDITURES

● Mr. DOMENICI. Mr. President, when discussing the issue of waterway user charges, I have sought to argue that future waterway expenditures must, logically, be linked to any system of charges. Only when such a linkage exists will the barge industry begin to show an interest in analyzing the true need for new projects.

The General Accounting Office recently issued a most interesting report called "Opportunity for Large Savings by Altering some Inland Waterway Operations." While the report touches issues beyond the scope of my proposal—the report covers drawbridge costs, for example—its conclusions are instructive. The GAO report found that some waterways facilities were being manned 24 hours a day, even when there was virtually no traffic on the waterway. The report states:

> The cost to maintain unobstructed navigation at all times is enormous, and considerable savings could be realized with little impact on navigation if such services were reduced or eliminated.

In analyzing the Dismal Swamp Canal, an alternate route on the Atlantic Intracoastal Waterway used occasionally to haul empty barges and by recreational boats, the Corps of Engineers found it was spending an average of $575,000 during each of the last 3 years to keep the canal open, or an average of $185 for each vessel that used it.

It is logical to assume that there will be any acceptance among commercial waterway users of such cost savings unless those savings can be linked to the industry's own costs? I think not.

I ask unanimous consent that the summary of this GAO report be printed in the RECORD.

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

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

There are many drawbridges and locks on the Nation's navigable waterways which are being operated needlessly 24 hours a day, 7 days a week. The U.S. Coast Guard regulates operations of drawbridges along navigable waterways, and the Army Corps of Engineers operates and maintains some inland waterway routes and owns and operates some bridges and locks. In many instances the cost to maintain unobstructed navigation at all times is enormous, and considerable savings could be realized with little impact on navigation if such services were reduced or eliminated.

A century or so ago, waterways were the Nation's primary transportation system. Precedents were set then that unobstructed use of waterways was a paramount objective for commercial and military use. In the ensuing decades, although land transportation was developed and bridges and other structures were built, the precedents remained that drawbridges and locks should open on signal from any water vessel.

This explains, in part, why the Coast Guard is required by legislation and case law to provide for the reasonable needs of navigation. In some cases the Coast Guard reduced drawbridge operating hours when low vessel usage or other factors indicated it was in the public interest. However, there are other opportunities where operating hours may be reduced with little impact on navigation. For example, the Edison Bridge in Florida averaged only 0.2 recreational craft and no commercial craft between 10 p.m. and 6 a.m. during 1976.

Consideration should be given to costs incurred and benefits obtained, as well as the other criteria, in deciding whether the public interest is being served by operating drawbridges and locks 24 hours a day, 7 days a week, on waterways having periods of low vessel usage.

If consideration were given to these factors in establishing operating procedures for drawbridges and locks, reduced operations would be allowed where there is limited waterway usage and millions of dollars annually would be saved the taxpayers and others.

The number and location of drawbridges did not permit GAO analysis to be in sufficient depth to project nationwide savings on bridge operating costs resulting from reduced waterways operations. Because of the varying operating circumstances of bridges and the lack of readily available statistical information, exacting projections would require a bridge-by-bridge analysis.

However, reducing drawbridge operations where traffic patterns justify could save millions of dollars to Federal, State, local, and private bridge owners. GAO analysis—in Florida, Georgia, North Carolina, South Carolina, and Virginia—showed that 62 percent of the selected bridges were manned 24 hours a day and that 45 percent had less than one boat during an 8-hour period. Using this data, GAO estimates that savings of about $4 million are possible in the Atlantic coast States.

Although the potential national savings cannot be estimated, some of the other 997 bridges may have periods of low vessel usage where savings are possible. The concept of allowing these bridges to reduce hours during these low usage periods should be applicable.

In the case of the Dismal Swamp Canal, an alternate route along the Atlantic Intracoastal Waterway, its costs and other disadvantages of maintenance as a through waterway outweigh its benefits. There are few significant negative impacts that would result from its closure. No commercial tonnage is transported on the canal, although some companies use it periodically for transporting empty barges. The Corps of Engineers' annual operation and maintenance expenses to keep the canal open averaged $575,000 for the last 3 years, an average of $185 for each boat that used it. Because of reductions in operations, the current annual cost is about $435,000.

The Corps and North Carolina may need to spend $28.6 million to construct two high-level bridges across the 50-foot-wide canal. Closure to through navigation would permit the construction of low-level, fixed-span bridges at a total cost of only $1.2 million.

RECOMMENDATIONS

The Secretary of the Army should direct the Corps of Engineers to (1) analyze vessel usage of its bridges and locks, (2) consult with users as to their ability to adjust to new operating hours, (3) consider various alternatives for reducing hours and costs, and (4) request Coast Guard approval for adjusting operations where the savings from reducing such operations are more than the benefits of operations continually.

He should also direct the Corps of Engineers to (1) determine whether States or local communities would asume the costs to maintain the Dismal Swamp Canal for through navigation, (2) hold meetings to obtain public views regarding the closure of the canal, and (3) determine the environmental impacts of such closure. Unless the results of these determinations clearly justify a different action, the Secretary should direct the Corps to develop a legislative proposal to close the Dismal Swamp Canal to through navigation.

The Secretary of Transportation should require the Coast Guard to develop and disseminate to drawbridge owners, by publication in the Federal Register or other suitable means, criteria for evaluating requests for reducing bridge operating hours during periods of low vessel usage. These criteria should give recognition to (1) the amount of waterway traffic for expected periods of closure, (2) the ability of vessel operators to adapt to changed operations, and (3) the cost beneficial aspects of keeping bridges operating continually.

AGENCY COMMENTS

The Army agreed that reducing costs by lessening hours of operation of locks and bridges was desirable and said that Corps districts were taking steps to reduce hours of operation during low-demand periods. It agreed also that reducing costs by closing lightly used waterways was desirable.

The Department of Transportation said that there might be some bridges operating 24 hours a day when there was insufficient navigation to economically justify the labor costs and that there might be owners who were not aware that regulations might be promulgated to reduce operations. The Department did not agree that the actions recommended above are necessary because the Coast Guard does not believe the determination of reasonable needs of navigation is amenable to quantitative criteria.

GAO's position remains unchanged—namely that reducing hours at drawbridges because of low usage by ships can save taxpayers and others large amounts of money while meeting essential navigation needs. The recommended criteria should be considered in establishing operating rules, and each

drawbridge owner should be aware of the criteria.●

CONGREGATE HOUSING ACT 1978

● Mr. CRANSTON. Mr. President, in 1971 the White House Conference on Aging recommended that "a national policy on housing for the elderly worthy of this Nation must enjoy a high priority and must embrace not only shelter but needed services of quality that extend the span of independent living in comfort and dignity, in and outside of institutions, as a right wherever they live or choose to live." Today I cosponsor the Congregate Housing Act of 1978, introduced by my colleague, Senator WILLIAMS, as a small step in an attempt to bring about a reassessment and improvement of the Federal response to the needs of the elderly and the handicapped in public housing and to trigger the development of congregate housing.

In 1970 and again in 1977 the Congress enacted legislation authorizing "congregate" units and facilities in federally assisted public housing. Congregate housing—assisted independent living—is a residential environment which incorporates shelter with services such as a full meal program, housekeeping assistance, personal care aid and transportation. This program was meant to accommodate older people as well as handicapped and displaced persons who need some services to sustain independent living but not enough to warrant institutional supervision and care. Very little congregate housing has been built since 1970 because of the housing moratorium in the Nixon administration and the lack of long term funding commitments for the service components.

This bill would authorize HUD to enter into 3 to 5 year contracts with local public housing agencies (LHA's) to provide funds for social services that these agencies furnish, either directly or through arrangements with local service providers, to their elderly and nonelderly handicapped residents who need a congregate living environment. This funding will only be provided when the LHA cannot obtain the necessary service through other means.

This is not a comprehensive measure intended to address the full range of the problem of elderly and handicapped. This bill is intended to fill the gap in that law of 1970 that set up the congregate housing system by providing a guaranteed service component, and giving access to this service to the elderly and handicapped presently living in public housing.

The report of the Senate Special Committee on Aging, published November 1975 indicated that there was an increasing number of elderly persons or persons with physical impairments living in public housing. Statistics indicate that 40 percent of the heads of households in such projects are 62 and over, and that they have lived in such units for many years. Every day, elderly and handicapped people are being removed from their public housing units because their frailties no longer permit them to live totally independent and no services are available to maintain them in their present housing. Most of these persons are put in nursing homes or other institutions at an enormous cost to the American taxpayer.

Most do not need around the clock care. By adding a few services at much less cost than medicare to the public, we could prevent the premature evictions of elderly and handicapped persons from public housing and improve their living environment.

Evan White of KGO–TV in San Francisco aired a 2-hour documentary on housing problems of the elderly on February 4 and 5 in California. The program charged that $15 million is wasted every day in American nursery homes on people who would be better cared for and at less expense at home. And 200,000 persons wrote in after seeing the plight of the elderly on this program supporting use of congregate housing to meet the growing needs of the elderly in our country.

I recognize that residents of other federally supported housing such as privately developed section 8 projects, section 202 projects and the elderly in their private homes have a need for these services, and I pledge my support to continue working on the broader aspects of mandating a nationwide social services delivery system for the elderly and handicapped.

I ask unanimous consent that the following three articles regarding Evan White's work on the elderly problems be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Progress TV Preview, Jan. 22, 1978]

INNER-CITY ELDERLY'S SHOCKING PLIGHT SHOWN

It wasn't quite the way television reporter Evan White thought it would be. When he and cameraman Al Topping disappeared into the jaws of San Francisco's Tenderloin for a month. White expected to find danger and despair. He did discover both.

But White also found an amazing toughness of spirit among the old folks forced to live there. It's a spirit that makes it possible for them to survive in the city's toughest neighborhood. He was fascinated by the wit, humor, ingenuity and dogged optimism that are standard survival techniques of many of the elderly in the inner city.

The assignment began as a series of special reports for Channel 7 "News Scene." As White unearthed more and more intriguing elderly people—and shocking stories of what they face in American society—the assignment expanded to 18 months.

Eventually, the story led him overseas to find how Europeans have created solutions to the problems facing the elderly. By then it was apparent to KGO–TV that the project had quite possibly become the most ambitious investigative report ever undertaken by a San Francisco television station.

The program, "Old Age: Do Not Go Gentle," will be broadcast in two parts this weekend (Jan. 28 and 29). Part I is scheduled for 7 p.m. Saturday, followed by Part II Sunday evening at 7 on Channel 7, Jan. 28–29.

To get as close as possible to his subject, reporter White moved into a fleabag Tenderloin hotel. Dressed in old clothes and letting his beard and hair grow, he lived on the equivalent of a Social Security income.

There, he found elderly people who had spent their lives working and raising children only to be condemned to poverty in their old age by a social system that makes no adequate provisions for the aged.

According to White, "Over half the nation's elderly live in our cities, most in areas like this. They're trapped here because their income after retirement doesn't allow them to live anywhere else. And in the inner city, they're scared, lonely, victimized and abandoned."

Among those the program visits are a woman who had not been out of her hotel room for seven years, an elderly man who had been beaten up six times by muggers who were after his Social Security check, and a delightful eccentric who had lived in a cave under a sidewalk for four years to keep from being sent to an old folks home.

In contrast, the documentary reveals how Europeans have been successful in providing for the aged. White and a Channel 7 film crew traveled to England, Denmark, West Germany and the Netherlands. They investigated the reasons 123 other nations have been able to put together programs for the elderly which the United States has never been able to get off the ground.

"In health care alone, older Americans are among the underprivileged of the world," reports White. "We're the only industrialized nation without a national program to provide health services for the aged. And elderly Europeans take for granted other services which the American aged can only dream of."

The program charges that more than $15 million is wasted every day in American nursing homes on people who would be better cared for—and at less expense—at home. And it reveals how existing government programs squander even more while failing to give the help to the elderly which they were created to provide.

The program title, "The Aged: Do Not Go Gentle," is taken from a poem written by Dylan Thomas for his dying father:

Do not go gentle into that good night.

Old age should burn and rave at close of day; Rage, rage against the dying of the light.

"I believe the elderly should fight for their right to dignity," White says. "They should not go gentle. Nor should any of us allow the aged to be quietly filed away, out of sight and out of mind. Their plight is desperate and shocking. This program documents that fact and suggests what we can do about it. If it helps bring about some changes, we will have fulfilled our purpose."

To start making the kind of changes proposed by "Old Age: Do Not Go Gentle," White himself drafted a legislative bill designed to bring social and medical services to the American elderly. Congressman Phillip Burton has pledged to take the proposal to the U.S. Congress.

[From the San Francisco Examiner, Jan. 27, 1978]

OLD AND ANGRY

(By Bill Mandel)

Television has often been long on finding problems and short on solutions. Exciting films of teen-age prostitutes, battered wives, colorful derelicts and incendiary auto accidents parade across our screens accompanied by the mournful clucking of announcers, but solutions are rarely, if ever, offered.

"Old Age: Do Not Go Gentle," a two-part report by KGO's Evan White that will air tomorrow and Sunday at 7 p.m. on Channel 7, is that rarity on TV: A documentary that brings home a problem with the force of a pile-driver and then uses the influence of TV to suggest a sensible and realistic solution.

Be warned, "Do Not Go Gentle" is very, very powerful viewing. The old people White uses to illustrate the shameful dereliction of the old in this country will make you feel

ashamed, guilty, alarmed, perhaps even repulsed. Although Al Topping's film work is beautiful, this report is not a "good time" by any stretch of the "imagination," but the ugly truths revealed on the program give way at the end to some relief—there is a solution.

Tomorrow night's hour is devoted to an examination of various methods our society uses to warehouse the old. Based on White's continuing reports from the Tenderloin of San Francisco, we see the worst cases of neglect and abandonment in those pathetic hotels lining Eddy Street. We visit old people who are confined to their homes by fear and poverty and we meet angry old men and women who are stuck in nursing homes against their wills.

As part of this special, White spent some time in Europe investigating how West Germany, The Netherlands and England treat their older citizens. These advanced welfare states evidently treat the old in a humane, integrated manner that takes personal feelings of worth into account. Of course, White has chosen the worst cases in this country and the best overseas to make his point, but even allowing for that standard journalistic distortion the differences between the U.S. and Europe are embarrassing to America. The prime distinction seems to be that Europeans think of their old people as people, not rotting hulks that are a little unsightly and very unsettling.

In Europe, many of the old people White visits seem to have personalities untwisted by bitterness and need. By contrast, many of the Americans we meet on the program are so bitter, resentful and stomped on they have no energy left to be themselves—they're just two-legged sacks of complaints.

When we hear tales of what these old Americans did in their youths we get a little scared. Is this going to happen to us?

Finally, White offers up his solution and it's the best kind of idea—simple, workable and cheaper than what's being done now. He suggests that Congress demand services provided by the Department of Health, Education and Welfare be part of every housing project built by the Department of Housing and Urban Development.

By expert calculation, the warehouse philosophy in vogue these days is costing American taxpayers about $15 million a day more than a humane policy that would keep people in their homes, nearer their families and the rest of society.

By fostering cooperation between the house-builders at HUD and the service people at HEW. White's proposed legislation would put some soul into America's policy toward the old. Being old today is a nightmare existence of rising costs, small income, loneliness, frustration and no one to complain to but a computer.

At the end of "Do Not Go Gentle" White urges viewers to mail him coupons of support printed in TV Guides, the Examiner and other newspapers. Hopefully thousands of voices agreeing with White will help his excellent suggestion become law.

[From the San Francisco Examiner, Feb. 14, 1978]

60,000 YEAS

When KGO-TV (Channel 7) decided to air Evan White's two-part series on aging, "Do Not Go Gentle," on two consecutive weekend nights Feb. 4 and 5, there were those around Channel 7—White included—who wondered if anyone would watch the program.

To begin with, the subject of how the elderly are treated and mistreated in this country is what TV people call a "downer," and downers are instant ratings death. On Saturday night, levels of TV viewing are very low, and in the 7 p.m. time slot "Do Not Go Gentle" had to compete with "Lawrence Welk," a big favorite among older viewers. On Sunday night the second part of "Do Not Go Gentle" was up against "60 Minutes," one of TV's biggest hit shows.

"We know the shows are good," said White two days before the first program aired. "I just hope we aren't embarrassed by a tiny reaction. Or none at all."

At the end of Sunday night's final half-hour, KGO asked viewers to fill in coupons printed in TV Guide, the Examiner and other publications supporting White's proposed legislation aimed at offering better services to old people.

As of noon yesterday, KGO had received 46,000 pieces of mail containing an estimated 60,000 pro-White coupons filled out and signed. Not only that, but hundreds of viewers had called and written asking for bundles of coupons to be taken around, petition-style, for the signatures of friends, family and other concerned citizens.

I ran into Evan White in the supermarket the other day, and he's obviously had close to a religious experience from the public avalanche of support for his concern and suggested legislative solution to the problem. We all talk about, the vast power of television, but when 46,000 pieces of mail are stacked up in front of you, the power is nakedly obvious.

[From the Santa Cruz Sentinel, Jan. 15, 1978]

SOCIETY "DE-PEOPLES" ELDERLY AT AGE 65

American society often "de-peoples" its elderly when they pass the age of 65.

This idea was expressed by C. Renwick Breck, member of the Futures Planning Council of the Episcopal Diocese of California and chairman of the council's Alternatives for the Aging and Handicapped.

Breck, a specialist in the field of senior's housing, recently served as researcher for a two-part television documentary on the plight of the elderly, which will be shown on January 28 and 29, from 7–8 p.m. on San Francisco station KGO–TV, Channel 7. Narrated by KGO newsman Evan White, the documentary is entitled "Old Age: Do Not Go Gentle."

In its first hour the program will explore many of the problems—the poverty, victimization, abandonment and loneliness—faced by large numbers of seniors in America. An entire mythology has evolved to justify the society's lack of concern for this group—and the program contrasts this attitude with current projects in Europe, which are geared to maintaining older persons' vitality and viability in society.

In the program's second episode, White charges that many institutions and agencies designed to assist the aged have failed to meet their needs. Asserting that more than $15 million a day is misspent on nursing care in America, the program once again turns to European models as examples of solutions that could work here.

"There are a lot of fronts to be waged in the war on aging," asserts researcher Breck. Out of the 33 million Americans over the age of 60, he claims that as many as one-third of them are "very, very poor."

In 1975, he goes on, more than 900,000 of these persons were in nursing homes, with half of them receiving treatment characterized as "substandard." Citing figures from a report by the Senate subcommittee on aging, Breck goes on to claim that 85 percent of these nursing home residents "shouldn't be there."

They are placed into homes because of "sociogenic problems" he contends, also noting that nursing homes have established a powerful lobby in Washington.

Nursing homes experienced a 2,000 percent growth between 1960 and 1970, he goes on, with 40 percent (or $5.1 billion) of the country's Medicare budget being used to support these facilities.

In seeking alternatives to nursing homes, Breck puts forward the idea of "congregate housing," again based on projects currently operating in several European locations. Combining aspects of shelter, nutrition and health care, such projects offer comprehensive services while maintaining their residents' sense of vitality and self-worth.

With $2 billion authorized by Congress for HUD programs in fiscal 1977, Breck anticipates continuing his efforts to make public entities consider new and innovative approaches to the aging question. The process is agonizingly slow, he admits, estimating that 85 percent of the time spent getting any project off the ground is devoted to "bureaucracy, red tape and computers." But still Breck's "war" will go on.

"We're trying to break a lot of myths apart," he concludes, again referring to the upcoming television special.

"We don't want HUD, HEW or the local commissions to have any out." ●

AMERICAN PARENTS COMMITTEE'S LEGISLATIVE GOALS

● Mrs. HUMPHREY. Mr. President, the American Parents Committee has brought to my attention its legislative goals.

These goals cover a wide spectrum of interests, including social security and welfare benefits, health care, education, safety, day care, sound nutrition, and the prevention of delinquency.

While there are many individual opinions in this body on many of these issues, the agenda of this organization can help each of us to focus on the special and specific interests of children.

Recently, I was privileged to introduce two bills that emphasized the needs of children. I proposed to extend and modify the WIC program to improve the nutrition of women, infants, and children. And I called for creation of a regional system of screening of newborn infants for metabolic disorders.

These bills reflect my conviction that children are our greatest national resource. More important, they are our most compelling immediate responsibility, and our most revealing commitment to the future.

I am pleased to publicize the particular goals and concerns of an organization which speaks in their behalf. I ask unanimous consent that the American Parents Committee's 1978 legislative goals be printed in the RECORD.

There being no objection, the legislative goals were ordered to be printed in the RECORD, as follows:

THE AMERICAN PARENTS COMMITTEE'S 1978 FEDERAL LEGISLATIVE GOALS ON BEHALF OF CHILDREN

By way of introduction: This is the 31st year during which the American Parents Committee has lobbied for Federal legislation for children. In 1947 when the APC was founded, there were few social welfare agencies that took an active interest in Federal legislation for children and fewer still that tried to influence Congress concerning it. The APC is particularly proud of its legislative achievements for children which it won without any appreciable organizational collaboration. Now fortunately there are many national, State and local organizations that are concerned with Federal legislation for children. The APC invites the cooperation of other organizations and groups in attaining any or all of its Federal legislative goals for children.

During 1978, Congress may complete action in two areas which seriously affect children: child welfare services and welfare reform. The American Parents Committee will work with legislators to assure that significant changes in these programs provide maximum support to the needs of children.

These 1978 goals were approved at the January 18, 1978 meeting of the APC's Board of Directors:

(The order in which these legislative goals are listed has no significance.)

(1) Child Welfare Services: Improvements in the foster care and adoption systems and increased appropriations for these and other child welfare services were APC's major concern in 1977. We will continue to work with H.R. 7200 or any other proposal to assure that legislation offering reforms in the delivery of child welfare services includes adequate protection for children to help them remain in their own homes including Homemaker Services, no discrimination in services because of economic status, the adoption of case review systems, Federal support for adoption information exchange programs, guarantees of the confidentiality of records, Federally funded adoption subsidies to be vested in children in foster care or receiving SSI, including Medicaid benefits for preexisting conditions, training for child welfare workers, adoptive parents, and post placement counseling. We also support legislation to permit voluntary placement of children in foster care with Aid to Families with Dependent Children (AFDC) funds with the consent of parents or guardian, if adequate safeguards are in place. We do not believe that a ceiling should be placed on foster care maintenance funds. It is also critical that Title IV–B be fully funded as an entitlement program with a maintenance of effort clause. This is needed so States can finance improvements in their own child welfare systems and increase services to families on the basis of their need for services. Special emphasis should be placed on services to strengthen the homes of vulnerable children, to return children placed in foster care to their own homes whenever possible and when this is impossible free them for adoption.

(2) Social Services Amendments—Title XX: The APC will work for increased appropriations for social services. We believe that the ceiling on Title XX should be increased by a higher authorization so that adequate services can be delivered to communities. We will also endorse other legislative changes to improve or expand availability of services including those necessary to improve outreach as recommended by the Hecht Institute Special Report on Title XX.

(3) Welfare Reform: H.R. 9030, the Administration's Welfare Reform Bill, proposed to extend uniform Federal nationwide benefits to intact and other needy families and individuals and to simplify the current welfare system. However, a number of its provisions actually pose a serious threat to family stability. APC will work with other groups to assure that an income assistance plan provides the supports necessary to help families reach independence including adequate current income and an accounting period that allows assistance to families as quickly as possible when current income diminishes. We will continue to support our traditional goal—that single parents be exempt from any "work requirement" if any child under 18 is handicapped, developmentally disabled, or in need of special parental supervision and requires either continual or specialized care. Single parents should also have the right to refuse work or training if day care facilities are not in compliance with Federal Interagency Day Care requirements. The plan must allow parents to deduct the full costs of day care under an Earned Income Disregard. The APC prefers a direct services approach to day care because we believe it assures higher quality care. The APC strongly believes that reform must include the eligibility of all otherwise eligible pregnant women from the date of conception of their first pregnancy.

(4) National Health Program: The APC is committed to the enactment of a comprehensive national health program. It endorses an approach to a national health program which features universal coverage, Federal administration, strong cost control mechanisms and improved ways of delivering health services, including appropriate mental health services. The APC believes that any legislation must include services to pregnant women, infants, and children as well as the full range of contraceptive and family planning services. A plan must also emphasize preventive care. APC will strive to ensure that appropriate services, including appropriate and adequate coverage for mental health services, offered by qualified nonmedical providers, are provided under any plan. We believe a plan should include reimbursement to a wide range of providers (recognizing the necessity of reimbursing multi-disciplinary systems) from a third party system whether it is a quasi-federal accreditation body or a variety of accrediting sources in addition to the Joint Committee on the Accreditation of Hospitals. Not only must there be a focus on enacting a national health program, but the APC will also continue to work for adequate children's health programs such as Title V projects.

(5) Children's health programs: APC's major emphasis in this area will center on encouraging both Houses to mark-up and pass CHAP (Child Health Assessment Program) legislation which strengthens and broadens the Administration's bill to expand the EPSDT program. We are also committed to the extension of the Title V Maternal and Child Health program. Only 2 States are currently offering all mandated services and nationwide 83 projects exist where 253 are required. APC believes that the improvement and expansion of child health programs must be an immediate priority. Children's health needs cannot be put off while Congress takes months, if not years, to debate the issue of national health insurance.

(6) Teenage pregnancy: Teenage pregnancy is rapidly becoming a major public health and welfare issue, and indicates the need for appropriate sex education and adequate support services for young persons. Teenage pregnant mothers are in high risk situations. The number of teenagers giving birth is continually rising. Teenage pregnancy often produces low-birth-weight babies whose chances for healthy, productive lives are lessened by inadequate pre- and post-natal care. The bleak future of their young mothers further decreases the infant's chances for normal development. The APC is committed to working with HEW on developing a Teenage Pregnancy Initiative that focuses equally on service before and after conception.

(7) Family planning: The right of families to plan for and space the number of children they desire has long been a fundamental goal of the APC. We have urged in the past, and will continue to support, increased appropriations in this field. APC will support the development of a range of safe and effective means of family planning and contraceptive methods including the use of Federal funds for abortion, and the comprehensive availability of all methods to enable families (including minors) to achieve their family size goals.

(8) Food and nutrition programs: In 1978 the WIC (Women, Infants and Children) and Child Care Feeding Programs are due to expire. The APC will strive for reauthorization of WIC as an entitlement program so that the most nutritionally vulnerable sector of the population may have full access to the program's benefits. We will work for administrative changes in both programs that will encourage broader sponsor participation. In addition, improvements in other nutrition programs such as school, breakfast and residential feeding will be sought. The APC will support the inclusion of a maintenance of effort provision to cover the residential feeding program.

(9) Public Education: With shrinking financial resources at the State and local levels and increasing taxpayer resistance, the APC believes, with the National Education Association and other education organizations, that the Federal government must help to provide adequate funding for public schools. The Elementary and Secondary Education Act should be renewed and additional appropriations provided, especially for Title I. The APC continues to support existing categorical aid programs, such as compensatory education, innovative services, vocational education, higher education, assistance to the handicapped and gifted, bilingual and Indian education. It also urges that the appropriate committees hold oversight hearings on the administration of these categorical aid programs and on the enforcement of antidiscrimination requirements in Federally assisted programs under Title VI of the Civil Rights Act of 1964. Full funding should be sought for PL 94–142. The Education for All Handicapped Children Act.

(10) Supplemental Security Income (SSI) for Children: We will continue to work for improvements and increased entitlements in this program. Additional outreach activities are needed to assure that families of eligible disabled children in their own homes are advised of their rights to SSI and helped to apply for benefits.

(11) Handicapped Children: The APC will encourage support for institutions contributing research emphasizing prevention and early treatment of handicapping conditions. We will work for an extension of the Developmental Disabilities Act which maintains the integrity of the present program. APC will also support the extension of the Vocational Rehabilitation Act. We will work to target increased appropriations for the National Institutes of Health to encourage programs for handicapped children.

(12) Youth Camp Safety: The APC believes that high standards must be in place in camps as children are away from home for considerable periods of time, often in potentially hazardous situations. We will support legislation such as S. 258, introduced by Senator Ribicoff, which establishes Federal standards and Federal enforcement of standards for summer and youth camps.

(13) Unemployment Insurance: Several States now provide an additional children's allowance for unemployed workers with children. The APC feels that this is an important concept to support as it recognizes the extra financial burden that families must bear. We will encourage Congress to mandate all States to adopt similar provisions.

(14) Child Labor: The APC has long advocated protective child labor legislation. Attempts have been made in the past, and will likely occur again, to exempt some areas from the provisions prohibiting children under 12 from working in the fields. We shall oppose all such moves. Strict enforcement by the Department of Labor is necessary.

(15) Day care and child development: APC shall continue to work vigorously on behalf of legislation that will provide universally available, high quality day care development programs to all who request them. Such programs should: (1) meet high quality Federal standards, which shall be enforced, (2) make services available to all who need and request them, (3) avoid such approaches as vouchers or other systems that would enable funds to go to private, for profit groups, (4) be operated as a public

utility, (5) utilize existing facilities and personnel on a full-time, year round basis, (6) provide education for parenting and homemaker services, (7) include parental involvement, and (8) be provided the necessary funds to accomplish these purposes.

(16) Juvenile Justice and Delinquency Prevention: We will work to ensure the integrity of the Juvenile Justice Act and to increase its appropriations. APC will also strive to see that States and local governments are held accountable for the implementation of the law with regard to prevention, diversion from the traditional juvenile justice system, and alternatives to inappropriate institutional care and that appropriate regulations are forthcoming from L.E.A.A. APC would support transferring the Juvenile Justice Program from LEAA to HEW in a governmental reorganization scheme.

(17) Family Violence: A number of bills have been introduced which offer measures to curb the incidence of family violence. The APC will work for passage of broad based legislation focusing on the entire family that places responsibility for implementation within the Department of HEW.

(18) Runaway youth: The APC will seek additional funds for runaway youth projects and an expansion in the program's structure within HEW. We will strive to make more services available for abandoned and troubled teenagers.

(19) United Nation's Children's Fund (UNICEF): The APC supports an increase in the U.S. contribution to UNICEF, especially in view of the activities involving the 1979 International Year of the Child.●

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

● Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Joan F. Kessler, of Wisconsin, to be U.S. attorney for the eastern district of Wisconsin for the term of 4 years, vice William J. Mulligan.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Wednesday, March 15, 1978, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.●

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask that morning business be closed, if there be no further business.

The PRESIDING OFFICER. There being no further morning business, morning business is closed.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 12 o'clock noon tomorrow. After the prayer, the distinguished Senator from Missouri (Mr. DANFORTH) will be recognized for not to exceed 15 minutes, after which the Senate will resume its consideration of the Neutrality Treaty. Mr. SCHMITT will be recognized at that point for not to exceed 30 minutes, and after his statement the Senate will go into recess, under the order previously entered, awaiting the call of the Chair. During that brief recess, a photograph will be taken of the Senate Chamber with Senators at their desk.

Following the taking of the photograph the Chair will call the Senate into session, at which time I will be recognized to call up the leadership amendment to article IV. Upon the conclusion of my statement the distinguished minority leader will be recognized to make whatever statement he desires to make. At the conclusion of his statement, the distinguished Senator from Alabama (Mr. ALLEN) will be recognized to raise a point of order against the leadership amendment, and upon the conclusion of his remarks I am to be recognized under the previous order.

I would anticipate there will be rollcall votes tomorrow. I would anticipate at least one rollcall vote on the point of order, and hopefully there will be rollcall votes, if there be amendments to article IV or to the leadership amendment to article IV, and, probably with some degree of optimism which I am not sure can be justified at this point, I would then hope that the Senate will dispose of amendments to article IV tomorrow.

RECESS

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move in accordance with the order previously entered that the Senate, in executive session, stand in recess until the hour of 12 o'clock noon tomorrow.

The motion was agreed to; and at 6:31 p.m., the Senate, in executive session, recessed until Thursday, March 9, 1978, at 12 noon.

NOMINATION

Executive nomination received by the Senate, March 8, 1978;

U.S. TAX COURT

Herbert L. Chabot, of Maryland, to be a judge of the U.S. Tax Court for a term of 15 years after he takes office, vice Bruce M. Forrester, retired.

HOUSE OF REPRESENTATIVES—*Wednesday, March 8, 1978*

The House met at 3 o'clock p.m.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Let the wicked forsake his way, and the unrighteous man his thoughts: let him return unto the Lord, that He may have mercy upon him; and to our God, for He will abundantly pardon.—Isaiah 55: 7.

O God, our Father, the light of all that is true, the love of all that is good, and the life of all that is beautiful, in the midst of the swiftly moving scenes of Earth we lift our hearts unto Thee praying that Thou wilt lead us this day giving us grace to walk in Thy wholesome ways. Through the gates of Lenten prayer we come seeking forgiveness for our sins, guidance for the future, confidence in our endeavors for good, courage to do what we believe to be right, and peace in our hearts as we labor. Renew our spirits that on our part there may be more thinking than talking, more worshipping as we work, more praying than playing, and more love as we labor together.

Make this a great day, our Father, because Thou art with us and we are with Thee. Amen.

CALL OF THE HOUSE

Mr. MARTIN. Mr. Speaker, under rule I, clause 1 of the rules of the House, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. BOLLING. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 114]

Anderson, Ill.	Cederberg	Garcia
Andrews, N.C.	Clay	Gibbons
Archer	Cochran	Goldwater
Armstrong	Danielson	Harsha
Beard, Tenn.	Dent	Holland
Bellenson	Diggs	Horton
Buchanan	Eckhardt	Jenrette
Burke, Calif.	Fary	Leach
Burton, Phillip	Fish	Leggett
McDonald	Roncalio	Steed
Mahon	Rousselot	Teague
Mann	Ruppe	Thornton
Mathis	Santini	Tucker
Myers, Gary	Satterfield	Wiggins
Neal	Scheuer	Wilson, Bob
Obey	Seiberling	Wylie
Ottinger	Sisk	Young, Alaska
Pepper	Slack	Young, Tex.
Rangel	Spellman	

The SPEAKER. On this rollcall 378 Members have recorded their presence by electronic device, a quorum.

Without objection, further proceedings under the call will be dispensed with.

Mr. BAUMAN. Mr. Speaker, I object to dispensing with further proceedings under the call.

The SPEAKER. The question is, Will the House dispense with further proceedings under the call?

The question was taken; and on a division (demanded by Mr. BAUMAN) there were—ayes 143, noes 58.

Mr. BAUMAN. Mr. Speaker, I did not hear the Chair's call on the numbers.

The SPEAKER. There were 143 in the affirmative and 58 in the negative.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum