

and now the Senate is poised to act on his nomination.

Mr. President, I told President Clinton that he could rest assured that Bill Sessions would serve with great distinction, and that the President could look at him as an appointment of which he could be proud.

I know that Vermonters will join me in welcoming Bill Sessions' confirmation as a federal district judge. I know Vermonters look forward to him serving on the bench.

I must say to Bill Sessions and his family that it is a singular honor to be able to recommend him. It is an honor to join in his confirmation. This nomination is an honor he has earned, and it is an honor that he and his family should all share. It is an honor that Vermont will be able to share.

Mr. President, 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. LEVIN. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

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

#### NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. LEVIN. Mr. President, I send to the desk an amendment on behalf of Senators NUNN, WARNER, myself, and Senator COHEN, and ask unanimous consent that it be printed in the RECORD.

(The text of amendment No. 2425 is printed in today's RECORD under "Amendments Submitted.")

Mr. LEVIN. I yield the floor.

Mr. NUNN. Mr. President, at the request of the Majority and Minority Leaders, Senators COHEN, LEVIN, WARNER, and I have been meeting intensively for the past several days to address issues raised by the proposed Missile Defense Act of 1995, as set forth in S. 1026, the pending national defense authorization bill. The goal of our effort was to develop an amendment establishing a missile defense policy that could be supported by a broad bipartisan group of Senators. Today, we have filed a bipartisan substitute amendment reflecting our best efforts to meet that objective.

I want to begin by expressing my thanks to my three colleagues for the diligence, tolerance, and goodwill each of them showed throughout the long and, at times, difficult negotiations that have led to the agreement embodied in the substitute amendment. I believe the amendment is a significant improvement to the version in the bill, and I support its adoption.

The bill as reported set forth a proposed policy for future national missile defenses. It also proposed a demarcation between theater and anti-ballistic missile defenses. In my judgment, how-

ever, and that of many other Senators, the proposal addressed these vital issues in a manner that unnecessarily presented major difficulties in terms of arms control and constitutional considerations.

Mr. President, I support the development of national missile defense. I have supported a missile defense system against limited, accidental, or unauthorized attacks since the early 1980's when I called for a development of ALPs—an accidental launch protection system. I will support the deployment of a system to defend against limited, accidental, or unauthorized missile attacks, assuming that the system meets the deployment decision criteria set forth in this amendment—it must be affordable and operationally effective; an appropriate response to the threat, and we must weigh carefully any ABM Treaty considerations that could affect a deployment decision.

The revised version of the Missile Defense Act of 1995, as set forth in the bipartisan substitute amendment, addresses these issues in a manner that serves three important functions:

First, it clarifies the intent of the United States with respect to decisions about future missile defenses;

Second, it defuses a potential constitutional contest between the Executive and Legislative branches; and

Third, it makes clear to the international community our policy toward the ABM Treaty.

Let me try to highlight these accomplishments by comparing what was in the bill as reported and what the bipartisan substitute amendment would provide, if adopted. Section 233 of the bill as reported would set forth a policy to "deploy" a multi-site national missile defense system. The same section of the bill as reported also stated that the system, "will be augmented. . .to provide a layered defense against larger and more sophisticated [missile] attacks." This phrasing confused the stated objective—to have an effective defense against accidental, unauthorized, or limited attacks—with the concept of a thicker missile defense system to defend against larger attacks. It is important to keep the system focused on the appropriate objective—defending against limited, accidental, or unauthorized attacks.

The substitute version of section 233 in the bipartisan amendment makes the following changes:

The policy is no longer stated as a binding commitment to deploy a national missile defense system. That is a decision that will be made in the future. Instead, the national missile defense policy in section 233(2) of the bipartisan substitute amendment is to "develop for deployment".

The substitute adds several important qualifiers, such as:

The system must be "affordable and operationally effective". This requirement appears in section 233(2) and is re-emphasized throughout the amendment.

The system is limited to addressing only "accidental, unauthorized, or limited attacks". That qualification, which is set forth in section 233(2), is repeated throughout the amendment.

There is no commitment to deploy an augmented system. It depends on the threat.

Under section 233(2) of the substitute, any development of an "augmented" system will also be confined to augmenting a defense capability to address "limited, unauthorized, or accidental" missile attacks.

One of the most important qualifications under the substitute is the requirement in section 233(3) for "congressional review, prior to a decision to deploy the system developed for deployment . . . of: (a) the affordability and operational effectiveness of such a system; (b) the threat to be countered by such a system, and (c) ABM Treaty considerations with respect to such a system." These vital issues will all be considered before we take any step in the future to authorize and appropriate funds for the deployment of a national missile defense system.

Section 235(e)(2) of the bipartisan substitute amendment specially requires the Secretary of Defense to provide an assessment as to whether deployment is affordable and operationally effective"; and

Perhaps the most important qualification, both in terms of arms control and the separation of powers is section 233(8), which requires the Secretary of Defense to carry out the policies, programs, and requirements of the entire Missile Defense Act "through processes specified within, or consistent with, the ABM Treaty, which anticipates the need and provides the means for amendment to the Treaty."

The revised version also contains language taken from the Cohen amendment which was approved by a 69-26 vote last week, and which is largely incorporated into the substitute amendment in sections 233(2) and 237. Collectively, the Cohen provisions encourage the President to undertake negotiations with the Russian Federation to provide modifications or amendments to allow us to deploy a multisite national missile defense in compliance with the Treaty, and, if the negotiations are not successful, they call for consultations with the Congress to review our options, including our legal right to withdraw.

Section 235(a) of the bill as reported required achievement of an initial operational capability (IOC) for a multisite national missile defense system in 2003. The substitute provision in the bipartisan amendment calls for development on a timetable that would make it, "capable of attaining" such an IOC, if there is a decision to deploy such a system.

Finally, Mr. President, let me address the theater missile demarcation provisions briefly. Section 238 of the bill as reported would have established

in permanent law a specific demarcation between theater and strategic missile defenses, and would have prohibited the President from negotiations or other actions concerning the clarification or interpretation of the ABM Treaty and the line between theater and strategic missile defenses. The bipartisan substitute amendment strikes all of section 238, and provides a limited funding restriction in section 238(c), with the following provisions:

The funding restriction that applies only for fiscal year 1996;

This substitute restriction applies only to the implementation of an agreement with the successor states to the Soviet Union, should one be reached, concerning:

A demarcation between theater and strategic defenses for the purposes of the ABM Treaty; and

Additional restrictions on theater missile defense systems going beyond those in the demarcation.

In addition, to being limited to one year, the substitute funding limitation in section 238(c) has three exceptions. The limitation does not apply:

“To the extent provided” in a subsequent Act;

To “implement that portion of any such agreement that implements” the specific terms of the demarcation set forth in the amendment; and

To “implement an agreement that is entered into pursuant to the Treaty-making power of the President under the Constitution.”

Mr. President, there are many other changes for the better in the bipartisan substitute amendment. I ask unanimous consent that a line-in-line-out version of the amendment, comparing the amendment to the bill as reported, be printed in the RECORD. I believe the bipartisan substitute amendment provides a useful statement of Congressional policy and intent, presented in a framework that makes clear that we seek a negotiated set of changes with the Russian Federation to allow for more effective defenses against limited missile attacks than either side is permitted today. I believe the bipartisan substitute amendment is not, and should not be seen by Russia as a threat by the United States either to abandon the ABM Treaty or to reinterpret the Treaty unilaterally to our advantage. Both we and Russia face a threat of ballistic missile attacks; the threats may differ somewhat, but the need for defenses should be clear to both sides. What we have to do is to arrange for both sides to be able to deploy more effective defenses than exist today, against accidental, unauthorized and limited strikes, while maintaining overall strategic stability.

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

BIPARTISAN AMENDMENT CONCERNING THE  
MISSILE DEFENSE ACT OF 1995

Text from S. 1026, the National Defense Authorization Act for Fiscal Year 1996, Subtitle C of Title II (the Missile Defense Act of

1995) with additions in italic and deletions bracketed.

On page 49, strike out line 15 and all that follows through line 9 on page 69 and insert the following in lieu thereof:

**Subtitle C—Missile Defense**

**SEC. 231. SHORT TITLE.**

This subtitle may be cited as the “Missile Defense Act of 1995”.

**SEC. 232. FINDINGS.**

Congress makes the following findings:

(1) The threat that is posed to the national security of the United States by the proliferation of ballistic and cruise missiles is significant and growing, both quantitatively and qualitatively.

(2) The deployment of *effective* Theater Missile Defense systems *can* [will] deny potential adversaries the option of escalating a conflict by threatening or attacking United States forces, coalition partners of the United States, or allies of the United States with ballistic missiles armed with weapons of mass destruction to offset the operational and technical advantages of the United States and its coalition partners and allies.

(3) The intelligence community of the United States has *estimated* [confirmed] that (A) the missile proliferation trend is toward longer range and more sophisticated ballistic missiles, (B) North Korea may deploy an intercontinental ballistic missile capable of reaching Alaska or beyond within 5 years, and (C) although a new indigenously developed ballistic missile threat to the continental United States is not forecast within the next 10 years *there is a danger that* [there are ways for] determined countries *will* [to] acquire intercontinental ballistic missiles in the near future and with little warning by means other than indigenous development.

(4) The deployment by the United States and its allies of effective defenses against ballistic missiles of all ranges, as well as against cruise missiles, *can* [will] reduce the incentives for countries to acquire such missiles or to augment existing missile capabilities.

(5) The Cold War distinction between strategic ballistic missiles and nonstrategic ballistic missiles and, therefore, the ABM Treaty’s distinction between strategic defense and nonstrategic defense, *has changed because of technological advancements and should be reviewed.* [is technologically and geostrategically outdated.]

(6) The concept of mutual assured destruction, which was *one of the major philosophical rationales* [rationale] for the ABM Treaty [and continued reliance on an offense only form of deterrence, is adversarial and bipolar in nature and is not], *is now questionable as a* [suitable] basis for stability in a multipolar world [and one] in which the United States and the states of the former Soviet Union are seeking to normalize relations and eliminate Cold War attitudes and arrangements.

(7) [By undermining the credibility of, and incentives to pursue, destabilizing first strike strategies, theater] Theater and national missile defenses can contribute to the maintenance of [strategic] stability as missile threats proliferate and as the United States and the former Soviet Union significantly reduce the number of strategic nuclear forces in their respective inventories.

(8) Although technology control regimes and other forms of international arms control can contribute to nonproliferation, such measures *alone* are inadequate for dealing with missile proliferation, and should not be viewed as alternatives to missile defenses and other active and passive defenses.

(9) Due to limitations in the ABM Treaty which preclude deployment of more than 100 ground-based ABM interceptors at a single

site, the United States is currently prohibited from deploying a national missile defense system capable of defending the continental United States, Alaska, and Hawaii against even the most limited ballistic missile attacks.

**SEC. 233. MISSILE DEFENSE POLICY.**

It is the policy of the United States to—

(1) deploy as soon as possible [highly] *affordable and operationally effective* theater missile defenses capable of countering existing and emerging theater ballistic missiles;

(2)(A) *develop for deployment* [deploy] a multiple-site national missile defense system that: [(A)] (i) is [highly] *affordable and operationally effective* against limited, accidental, and unauthorized ballistic missile attacks on the territory of the United States;[,] and [(B)] (ii) *can* [will] be augmented over time *as the threat changes* to provide a layered defense against *limited, accidental, or unauthorized* [larger and more sophisticated] ballistic missile threats;

(B) *initiate negotiations with the Russian Federation as necessary to provide for the national missile defense systems specified in section 235; and*

(C) *consider, if those negotiations fail, the option of withdrawing from the ABM Treaty in accordance with the provisions of Article XV of the Treaty, subject to consultations between the President and the Senate;*

(3) *ensure congressional review, prior to a decision to deploy the system developed for deployment under paragraph (2), of: (A) the affordability and operational effectiveness of such a system; (B) the threat to be countered by such a system; and (C) ABM Treaty considerations with respect to such a system.*

(4) [(3)] improve existing cruise missile defenses and deploy as soon as practical defenses that are [highly] *affordable and operationally effective* against advanced cruise missiles;

(5) [(4)] pursue a focused research and development program to provide follow-on ballistic missile defense options;

(6) [(5)] employ streamlined acquisition procedures to lower the cost and accelerate the pace of developing and deploying theater missile defenses, cruise missile defenses, and national missile defenses; [and]

(7) [(6)] seek a cooperative transition to a regime that does not feature mutual assured destruction and an offense-only form of deterrence as the basis for strategic stability; and [.]

(8) *carry out the policies, programs, and requirements of subtitle C of title II of this Act through processes specified within, or consistent with, the ABM Treaty, which anticipates the need and provides the means for amendment to the Treaty.*

**SEC. 234. THEATER MISSILE DEFENSE ARCHITECTURE.**

(a) ESTABLISHMENT OF CORE PROGRAM.—To implement the policy established in section 233, the Secretary of Defense shall establish a top priority core theater missile defense program consisting of the following systems:

(1) The Patriot PAC-3 system, *with* [which shall have] a first unit equipped (FUE) in fiscal year 1998.

(2) The Navy Lower Tier (Area) system, *with* [which shall have] a user operational evaluation system (UOES) capability in fiscal year 1997 and an initial operational capability (IOC) in fiscal year 1999.

(3) The Theater High-Altitude Area Defense (THAAD) system, *with* [which shall have] a user operational evaluation system (UOES) capability in fiscal year 1997 and an initial operational capability (IOC) no later than fiscal year 2002.

(4) The Navy Upper Tier (Theater Wide) system, *with* [which shall have] a user operational evaluation system (UOES) capability

in fiscal year 1999 and an initial operational capability (IOC) in fiscal year 2001.

(b) **INTEROPERABILITY AND SUPPORT OF CORE SYSTEMS.**—To maximize effectiveness and flexibility, the Secretary of Defense shall ensure that core theater missile defense systems are interoperable and fully capable of exploiting external sensor and battle management support from systems such as the Navy's Cooperative Engagement Capability (CEC), the Army's Battlefield Integration Center (BIC), air and space-based sensors including, in particular, the Space and Missile Tracking System (SMTS).

(c) **TERMINATION OF PROGRAMS.**—The Secretary of Defense shall terminate the [following programs:

[(1) The Corps Surface to Air Missile system (Corps SAM).

[(2) The] Boost Phase Interceptor (BPI) program.

(d) **FOLLOW-ON SYSTEMS.**—(1) The Secretary of Defense shall develop an affordable development plan for follow-on theater missile defense systems which leverages existing systems, technologies, and programs, and focuses investments to satisfy military requirements not met by the core program.

(2) Before adding new theater missile defense systems to the core program from among the follow-on activities, the Secretary of Defense shall submit to the congressional defense committees a report describing—

(A) the requirements for the program and the specific threats to be countered;

(B) how the new program will relate to, support, and leverage off existing core programs;

(C) the planned acquisition strategy; and

(D) a preliminary estimate of total program cost and budgetary impact.

(e) **REPORT.**—(1) Not later than the date on which the President submits the budget for fiscal year 1997 under section 1105 of title 31, United States Code [than 60 days after the date of the enactment of this Act], the Secretary of Defense shall submit to the congressional defense committees a report detailing the Secretary's plans for implementing the guidance specified in this section.

(2) For each deployment date for each system described in subsection (a), the report required by paragraph (1) of this subsection shall include the funding required for research, development, testing, evaluation, and deployment for each fiscal year beginning with fiscal year 1997 through the end of the fiscal year in which deployment is projected under subsection (a).

#### SEC. 235. NATIONAL MISSILE DEFENSE SYSTEM ARCHITECTURE.

(a) **IN GENERAL.**—To implement the policy established in section 233, the Secretary of Defense shall develop an affordable and operationally effective national missile defense system to counter a limited, accidental, or unauthorized ballistic missile attack, and which is capable of attaining [which will attain] initial operational capability (IOC) by the end of 2003. Such system [The national missile defense system to be developed for deployment] shall include the following:

(1) Ground-based interceptors capable of being deployed at multiple sites, the locations and numbers of which are to be determined so as to optimize the defensive coverage of the continental United States, Alaska, and Hawaii against limited, accidental, or unauthorized ballistic missile attacks.

(2) Fixed ground-based radars and space-based sensors, including the Space and Missile Tracking system, the mix, siting and numbers of which are to be determined so as to optimize sensor support and minimize total system cost.

(3) Battle management, command, control, and communications (BM/C3).

(b) **INTERIM OPERATIONAL CAPABILITY.**—To provide a hedge against the emergence of near-term ballistic missile threats against the United States and to support the development and deployment of the objective system specified in subsection (a), the Secretary of Defense shall develop an interim national missile defense [capability] plan that would give the United States the ability to field a limited operational capability by the end of 1999 if required by the threat. [I, consistent with the technical requirements and schedule of such objective system to be operational by the end of 1999.] In developing this plan [capability] the Secretary shall make use of—

(1) developmental, or user operational evaluation system (UOES) interceptors, radars, and battle management, command, control, and communications (BM/C3), to the extent that such use directly supports, and does not significantly increase the cost of, the objective system specified in subsection (a);

(2) one or more of the sites that will be used as deployment locations for the objective system specified in subsection (a);

(3) upgraded early warning radars; and

(4) space-based sensors.

(c) **USE OF STREAMLINED ACQUISITION PROCEDURES.**—The Secretary of Defense shall prescribe and use streamlined acquisition procedures to—

(1) reduce the cost and increase the efficiency of developing the national missile defense system specified in subsection (a); and

(2) ensure that any [the] interim national missile defense capabilities developed pursuant to subsection (b) are operationally effective and on a path to fulfill the technical requirements and schedule of the objective system.

(d) **ADDITIONAL COST SAVING MEASURES.**—In addition to the procedures prescribed pursuant to subsection (c), the Secretary of Defense shall employ cost saving measures that do not decrease the operational effectiveness of the systems specified in subsections (a) and (b), and which do not pose unacceptable technical risk. The cost saving measures should include the following:

(1) The use of existing facilities and infrastructure.

(2) The use, where appropriate, of existing or upgraded systems and technologies, except that Minuteman boosters may not be used as part of a National Missile Defense architecture.

(3) Development of systems and components that do not rely on a large and permanent infrastructure and are easily transported, emplaced, and moved.

(e) **REPORT ON PLAN FOR DEPLOYMENT.**—Not later than the date on which the President submits the budget for fiscal year 1997 under section 1105 of title 31, United States Code [60 days after the date of the enactment of this Act], the Secretary of Defense shall submit to the congressional defense committees a report containing the following matters:

(1) The Secretary's plan for carrying out this section.

(2) For each deployment date in subsections (a) and (b), the report shall include the funding required for research, development, testing, evaluation, and deployment for each fiscal year beginning with fiscal year 1997 through the end of the fiscal year in which deployment is projected under subsection (a) or (b). The report shall also describe the specific threat to be countered and provide the Secretary's assessment as to whether deployment is affordable and operationally effective.

(3) [(2)] An analysis of options for supplementing or modifying the national missile defense architecture specified in subsection (a) before attaining initial operational capability, or evolving such architecture in a building block manner after attaining initial operational capability, to improve

the cost-effectiveness or the operational effectiveness of such system by adding one or a combination of the following:

(A) Additional ground-based interceptors at existing or new sites.

(B) Sea-based missile defense systems.

(C) Space-based kinetic energy interceptors.

(D) Space-based directed energy systems.

#### SEC. 236. CRUISE MISSILE DEFENSE INITIATIVE.

(a) **IN GENERAL.**—The Secretary of Defense shall undertake an initiative to coordinate and strengthen the cruise missile defense programs, projects, and activities of the military departments, the Advanced Research Projects Agency and the Ballistic Missile Defense Organization to ensure that the United States develops and deploys [highly effective] affordable and operationally effective defenses against existing and future cruise missile threats.

(b) **ACTIONS OF THE SECRETARY OF DEFENSE.**—In carrying out subsection (a), the Secretary of Defense shall ensure that—

(1) to the extent practicable, the ballistic missile defense and cruise missile defense efforts of the Department of Defense are coordinated and mutually reinforcing;

(2) existing air defense systems are adequately upgraded to provide an affordable and operationally effective defense [defend] against existing and near-term cruise missile threats; and

(3) the Department of Defense undertakes a high priority and well coordinated technology development program to support the future deployment of systems that are [highly] affordable and operationally effective against advanced cruise missiles, including cruise missiles with low observable features.

(c) **IMPLEMENTATION PLAN.**—Not later than the date on which the President submits the budget for fiscal year 1997 under section 1105 of title 31, United States Code [60 days after the date of the enactment of this Act], the Secretary of Defense shall submit to the congressional defense committees a detailed plan, in unclassified and classified forms, as necessary, for carrying out this section. The plan shall include an assessment of—

(1) the systems that currently have cruise missile defense capabilities, and existing programs to improve these capabilities;

(2) the technologies that could be deployed in the near- to mid-term to provide significant advances over existing cruise missile defense capabilities, and the investments that would be required to ready the technologies for deployment;

(3) the cost and operational tradeoffs, if any, between upgrading existing air and missile defense systems and accelerating follow-on systems with significantly improved capabilities against advanced cruise missiles; and

(4) the organizational and management changes that would strengthen and further coordinate the cruise missile defense efforts of the Department of Defense, including the disadvantages, if any, of implementing such changes.

#### SEC. 237. POLICY REGARDING THE ABM TREATY.

(a) Congress makes the following findings:

(1) Article XIII of the ABM Treaty envisions "possible changes in the strategic situation which have a bearing on the provisions of this treaty".

(2) Articles XIII and XIV of the ABM Treaty establish means for the Parties to amend the Treaty, and the Parties have employed these means to amend the Treaty.

(3) Article XV of the ABM Treaty establishes the means for a party to withdraw from the Treaty, upon 6 months notice, "if it decides that extraordinary events related to the subject matter of this treaty have jeopardized its supreme interests."

(4) The policies, programs, and requirements of subtitle C of title II of this Act can be accomplished through processes specified within, or

consistent with, the ABM Treaty, which anticipates the need and provides the means for amendment to the Treaty.

(b) **[(a)] SENSE OF CONGRESS.**—In light of the findings and policies provided in this subtitle, it is the sense of Congress that—

(1) *Given the fundamental responsibility of the Government of the United States to protect the security of the United States, the increasingly serious threat posed to the United States by the proliferation of weapons of mass destruction and ballistic missile technology, and the effect this threat could have on the options of the United States to act in a time of crisis—*

*(A) it is in the vital national security interest of the United States to defend itself from the threat of a limited, accidental, or unauthorized ballistic missile attack, whatever its source; and*

*(B) the deployment of a national missile defense system, in accord with section 233, to protect the territory of the United States against a limited, accidental, or unauthorized missile attack can strengthen strategic stability and deterrence; and*

*(2)(A) the Senate should [(A)] undertake a comprehensive review of the continuing value and validity of the ABM Treaty with the intent of providing additional policy guidance on the future of the ABM Treaty during the second session of the 104th Congress; and*

*(B) upon completion of the review, the Committee on Foreign Relations, in consultation with the Committee on Armed Services and other appropriate committees, should report its findings to the Senate.*

**[(B)]** consider establishing a select committee to carry out the review and to recommend such additional policy guidance on future application of the ABM Treaty as the select committee considers appropriate; and

**[(2)]** the President should cease all efforts to modify, clarify, or otherwise alter United States obligations under the ABM Treaty pending the outcome of the review.

**[(b) ABM TREATY NEGOTIATING RECORD.]**—(1) To support the comprehensive review specified in subsection (a), the Secretary of Defense, in consultation with other appropriate officials of the executive branch, shall provide the Senate with a complete, declassified version of the ABM Treaty negotiating record, including—

**[(A)]** within 30 days after the date of the enactment of this Act, an index of the documents comprising the negotiating record; and

**[(B)]** within 60 days after the date of the enactment of this Act, the documents comprising the negotiating record in unclassified form.

**[(2)]** If the Secretary considers it necessary to do so, the Secretary may submit the documents referred to in paragraph (1)(B) in classified form when due under that paragraph. If the Secretary does so, however, the Secretary shall submit the documents in unclassified form within 90 days after the date of the enactment of this Act.

**[(c) WAIVER.]**—The Secretary of Defense, after consultation with any select committee established in accordance with subsection (a)(1)(B) or, if no select committee, the Committee on Armed Services of the Senate, may waive the declassification requirement under subsection (b) on a document by document basis.]

**SEC. 238. PROHIBITION ON FUNDS TO IMPLEMENT AN INTERNATIONAL AGREEMENT CONCERNING THEATER MISSILE DEFENSE SYSTEMS.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) *Section 234 of the National Defense Authorization Act for Fiscal Year 1994 provides that the ABM Treaty does not apply to or limit research, development, testing, or deployment of missile defense systems, system upgrades, or sys-*

*tem components that are designed to counter modern theater ballistic missiles, regardless of the capabilities of such missiles, unless those systems, system upgrades, or system components are tested against or have demonstrated capabilities to counter modern strategic ballistic missiles.*

(2) *Section 232 of the National Defense Authorization Act for Fiscal Year 1995 provides that the United States shall not be bound by any international agreement that would substantially modify the ABM Treaty unless the agreement is entered into pursuant to the treaty making power of the President under the Constitution.*

(3) *the demarcation standard described in subsection (b)(1) is based upon current technology.*

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) *unless a missile defense system, system upgrade, or system component, including one that exploits data from space-based or other external sensors, is flight tested against a ballistic missile target that exceeds a range of 3,500 kilometers or a velocity of 5 kilometers per second, such missile defense system, system upgrade, or system component has not been tested in an ABM mode nor deemed to have been given capabilities to counter strategic ballistic missiles, and*

(2) *any international agreement that would limit the research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles in a manner that would be more restrictive than the criteria in paragraph (1) should be entered into only pursuant to the treaty making powers of the President under the Constitution.*

(c) **PROHIBITION ON FUNDING.**—Funds appropriated or otherwise made available to the Department of Defense for fiscal year 1996 may not be obligated or expended to implement an agreement with any of the independent states of the former Soviet Union entered into after January 1, 1995 that would establish a demarcation between theater missile defense systems and anti-ballistic missile systems for purposes of the ABM Treaty or that would restrict the performance, operation, or deployment of United States theater missile defense systems except: (1) to the extent provided in an act enacted subsequent to this Act; (2) to implement that portion of any such agreement that implements the criteria in subsection (b)(1); or (3) to implement such an agreement that is entered into pursuant to the treaty making power of the President under the Constitution.

**ISEC. 238. STANDARD FOR ASSESSING COMPLIANCE WITH THE ABM TREATY.**

**[(a) POLICY CONCERNING SYSTEMS SUBJECT TO ABM TREATY.]**—Unless and until a missile defense or air defense system, system upgrade, or system component, including one that exploits data from space based or other external sensors (such as the Space and Missile Tracking System, which can be deployed as an ABM adjunct, or the Navy's Cooperative Engagement Capability), is flight tested in an ABM qualifying flight test (as defined in subsection (c)), such system, system upgrade, or system component—

**[(1)]** has not, for purposes of the ABM Treaty, been tested in an ABM mode nor been given capabilities to counter strategic ballistic missiles; and

**[(2)]** therefore is not subject to any application, limitation, or obligation under the ABM Treaty.

**[(b) PROHIBITIONS.]**—(1) Appropriated funds may not be obligated or expended by any official of the Federal Government for the purpose of—

**[(A)]** prescribing, enforcing, or implementing any Executive order, regulation, or policy that would apply the ABM Treaty (or any limitation or obligation under such Treaty) to research, development, testing, or deployment of a missile defense or air de-

fense system, system upgrade, or system component, including one that exploits data from space based or other external sensors; or

**[(B)]** taking any other action to provide for the ABM Treaty (or any limitation or obligation under such treaty) to be applied to research, development, testing, or deployment of a missile defense or air defense system, system upgrade, or system component, including one that exploits data from space based or other external sensors.

**[(2)]** This subsection shall cease to apply with respect to a missile defense or air defense system, system upgrade, or system component, including one that exploits data from space based or other external sensors, when that system, system upgrade, or system component has been flight tested in an ABM qualifying flight test.

**[(c) ABM QUALIFYING FLIGHT TEST DEFINED.]**—For purposes of this section, an ABM qualifying flight test is a flight test against a ballistic missile which, in that flight test, exceeds (1) a range of 3,500 kilometers, or (2) a velocity of 5 kilometers per second.

**[(d) ACTIONS OF THE SECRETARY OF DEFENSE.]**—Not later than 60 days after the date of the enactment of this Act, and each year thereafter in the annual report of the Ballistic Missile Defense Organization, the Secretary of Defense shall certify to Congress that no United States missile defense or air defense system, system upgrade, or system component is being limited, modified, or otherwise constrained pursuant to the ABM Treaty in a manner that is inconsistent with this section.

**[(e) CONGRESSIONAL REVIEW OF RANGE AND VELOCITY PARAMETERS.]**—Congress finds that the range and velocity parameters set forth in subsection (c) are based on a distinction between strategic and nonstrategic ballistic missiles that is technically and geostrategically outdated, and, therefore, should be subject to review and change as part of the Senate's comprehensive review under section 237.]

**SEC. 239. BALLISTIC MISSILE DEFENSE PROGRAM ELEMENTS.**

(a) **ELEMENTS SPECIFIED.**—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 1996 (as submitted in the budget of the President under section 1105(a) of title 31, United States Code), the amount requested for activities of the Ballistic Missile Defense Organization shall be set forth in accordance with the following program elements:

- (1) The Patriot system.
- (2) The Navy Lower Tier (Area) system.
- (3) The Theater High-Altitude Area Defense (THAAD) system.
- (4) The Navy Upper Tier (Theater Wide) system.
- (5) Other Theater Missile Defense Activities.
- (6) National Missile Defense.
- (7) Follow-On and Support Technologies.

(b) **TREATMENT OF NON-CORE TMD IN OTHER THEATER MISSILE DEFENSE ACTIVITIES ELEMENT.**—Funding for theater missile defense programs, projects, and activities, other than core theater missile defense programs, shall be covered in the "Other Theater Missile Defense Activities" program element.

(c) **TREATMENT OF CORE THEATER MISSILE DEFENSE PROGRAMS.**—Funding for core theater missile defense programs specified in section 234, shall be covered in individual, dedicated program elements and shall be available only for activities covered by those program elements.

(d) **BM/C3I PROGRAMS.**—Funding for programs, projects, and activities involving battle management, command, control, communications, and intelligence (BM/C3I) shall be covered in the "Other Theater Missile Defense Activities" program element or the

"National Missile Defense" program element, as determined on the basis of the primary objectives involved.

(e) MANAGEMENT AND SUPPORT.—Each program element shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

#### SEC. 240. ABM TREATY DEFINED.

For purposes of this subtitle, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

#### SEC. 241. REPEAL OF MISSILE DEFENSE PROVISIONS.

The following provisions of law are repealed:

(1) The Missile Defense Act of 1991 (part C of title II of Public Law 102-190; 10 U.S.C. 2431 note).

(2) Section 237 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160).

(3) Section 242 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160).

(4) Section 222 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 613; 10 U.S.C. 2431 note).

(5) Section 225 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 614).

(6) Section 226 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180; 101 Stat. 1057; 10 U.S.C. 2431 note).

(7) Section 8123 of the Department of Defense Appropriations Act, 1989 (Public Law 100-463; 102 Stat. 2270-40).

(8) Section 8133 of the Department of Defense Appropriations Act, 1992 (Public Law 102-172; 105 Stat. 1211).

(9) Section 234 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1595; 10 U.S.C. 2431 note).

(10) Section 235 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2701; 10 U.S.C. 221 note).

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

Mr. WARNER. This amendment, of course, is the first one recited in the agreement just reached less than an hour ago by the U.S. Senate regarding the procedures by which the Senate will address the authorization bill for 1996. This particular amendment entitled "bipartisan amendment," is the result of negotiation by myself; the distinguished Senator from Maine, Mr. COHEN; the ranking member of the Armed Services Committee, Mr. NUNN; and the distinguished Senator from Michigan, Mr. LEVIN.

We should note that we have served together some 17 years on this committee. And the four of us from time to time have often been tasked to work through difficult issues, particularly issues relating to international matters. It happened many times under the chairmanship of Senators Stennis and Tower and Senator Goldwater and, indeed, going as far back as Senator Jackson.

Mr. COHEN and Mr. NUNN initiated many of the discussions which led up

to this particular negotiation. And during the course of their discussions there was a decision of the majority leader, together with the chairman of the Armed Services Committee, Mr. THURMOND, and indeed the Democratic leader, Senator DASCHLE, that the four of us should try to resolve what appeared to be at that time a very difficult gap. And indeed, at that time, it was questionable whether that gap could be bridged. That has now been done.

By way of background, I simply want to say, Mr. President, this is an issue which has concerned this Senator for many, many years. I was in the Department of Defense at the time the ABM agreement was negotiated, and by virtue of my office as Secretary of the Navy at that time and my responsibility as the principal negotiator of the Incidents at Sea Agreement, I was in Moscow in May 1972 with President Nixon, Dr. Kissinger, and others at the time the ABM agreement was signed between the United States and the Soviet Union.

I simply note that footnote of history to underline my personal knowledge that the ABM Treaty was never, never, never envisioned by the drafters or the signatories to apply to theater missile systems. It has long been my goal, together with many others here in the Senate, to make certain that the ABM Treaty is not reinterpreted or amended or in any other way revised so as to put a limitation on the ability of the scientific expertise of this country to devise systems to deter and then, if deterrence fails, defend against theater missile ballistic systems.

What better evidence for the necessity of these defensive systems than what we saw in the gulf war where we, the United States, took the single largest number of casualties at any time during that conflict, from a single theater ballistic missile, a Scud missile sent by Saddam Hussein and his armed forces onto a barracks housing many U.S. military personnel.

This amendment goes a long way, perhaps not as far as this Senator and other Senators might have desired, but nonetheless it goes a long way toward making it clear that the Administration, as it addresses changes, modifications or clarifications to the ABM Treaty, will do so in a manner consistent with our Constitution, namely, to come to the Senate of the United States under the advice-and-consent clause, to make certain that such amendments as may be adopted in the future—particularly ones clarifying the demarcation between what is a theater missile defense system and what is an antiballistic missile system; together with others relating to range, velocity, the number of deployment sites and the like relating to theater defense systems—are all submitted to the Senate so that the Senate is a full partner to any decisions by this Nation with respect to future systems for theater missile defense. That was the main thrust here.

In other areas of this amendment we address the clear intention of the United States to deploy both a national system as well as a theater system. That is consistent with the overwhelming desire of the American people that we move forward in this area. Many people in America, the vast majority according to polls, think we already have in place systems that will protect this great country of ours from an accidental attack, an unintentional attack, or a limited attack. But, unfortunately, that is not the case. And, likewise, with the theater missile defense systems, we should have in place more modernized, more effective systems than the current Patriot.

I believe that the bipartisan amendment on missile defense is a significant step forward. As with all such negotiated amendments, neither side ended up with everything it wanted. But the result of this effort by Senators is a Missile Defense Act of 1995, a substitute to the original one in the bill, which sets a clear path to the deployment—and I stress the word deployment—of effective missile defenses, both theater and national, to protect the territory, citizens and forward-deployed forces of the United States.

This revised Missile Defense Act of 1995 establishes a policy of developing for deployment a multiple-site national missile defense system capable of defending the United States; and prohibits any final effort by the Administration to impose limitations, without the consent of the Senate, on the development and deployment of U.S. theater missile defense systems by virtue of new interpretations of the ABM Treaty of 1972. This Treaty was never intended to apply to theater systems of deterrence and defense.

The principal focus of my remarks today is on the changes made to Section 238 of the Missile Defense Act of 1995—the so-called Warner amendment which was incorporated by the Armed Services Committee into the bill. As it originally appeared, Section 238 used the Senate's power of the purse to impose a broad and absolute prohibition on the administration's ability to take any action which would impose ABM Treaty restrictions on the development and deployment of theater missile defense systems. These systems are urgently needed to protect the lives of the men and women of the Armed Forces, United States and allied, who are forward deployed into hostile situations.

The bipartisan amendment achieves our goal—namely, to prohibit the administration from implementing any agreement with Russia which would impose limitations, including performance, operational or deployment limitations, on theater missile defense systems, unless the Senate exercises, pursuant to a Presidential submission of such agreement, its constitutional right of advise and consent.

Mr. President, as I said last week during the Senate's original debate on the Missile Defense Act of 1995, I have long believed that we must accelerate the development and deployment of operationally effective theater missile defense systems for our troops—defenses that are not improperly constrained by the ABM Treaty. Likewise we must, in the interest of the American people, make a clear statement of our national determination to proceed to a national defense system to protect against the threats enunciated in this bipartisan amendment.

The threat that theater missiles pose to our forces is clear—30 nations have such systems, and more are acquiring the same capability. The gulf war should have caused all Americans to unite behind this missile defense effort. What can be more terrifying than the thought of U.S. citizens—both at home and deployed overseas—defenseless against the type of weapons of terror used by Saddam Hussein? And yet, here we are 5 years after that conflict, and our troops are still not adequately protected from ballistic missile attacks, and there are those who still resist efforts to move forward in this area.

Mr. President, it became evident to me, earlier this year, that our crucial effort to develop and deploy the most capable theater missile defense systems was in danger of being unacceptably hampered by the administration's desire to achieve a demarcation agreement with the Russians. They were actively negotiating toward that goal. Several of the negotiating positions either proposed or accepted by the administration would have severely limited the technological development of U.S. theater missile defense systems, and would have resulted in an international agreement imposing major new limitations on the United States. Consequently, I have taken actions in 1994 and now in 1995 to prohibit such actions by the administration.

Mr. President, previously I have tried other avenues to have the Senate's voice heard on the issue of ABM/TMD demarcation. My preferred option—and the one which I tried last year—was simply to require the President to present to the Senate for advice and consent any demarcation agreement which would substantively modify the ABM Treaty. The Congress adopted my views and made them part of the fiscal year 1995 Defense Authorization Act.

However, despite that legal requirement, the administration has made it abundantly clear that it does not intend to submit any such demarcation agreement, pursuant to the Constitution, to the Senate for advice and consent. Although the administration was negotiating an agreement that would, in effect, make the ABM Treaty a TMD Treaty, administration officials believed that there was no need for the Senate to exercise its constitutional right to provide advice and consent to that agreement.

It was clear that a new approach was needed. Therefore, I focused on the

Congress' power of the purse to ensure that the views of the Senate were considered in the demarcation negotiations.

The bipartisan missile defense amendment preserves this approach. Section 238 prohibits the expenditure of funds for fiscal year 1996 to implement an agreement that would establish a demarcation between theater missile defense systems and ABM systems or that would restrict the performance, operation or deployment of U.S. theater missile defense systems, unless that agreement is entered into pursuant to the treaty making powers of the President, or to the extent provided in an Act subsequently enacted by the Congress. In other words, for the coming fiscal year the prohibition stands unless the Senate takes an affirmative act to change or remove that prohibition.

In addition, this provision establishes as a sense-of-the-Congress the generally accepted demarcation standard between TMD and ABM systems. Section 238(b)(1) states that "unless a missile defense system, system upgrade, or system component, including one that exploits data from space-based or other external sensors, is flight tested against a ballistic missile target that exceeds a range of 3,500 kilometers or a velocity of 5 kilometers per second, such missile defense system, system upgrade, or system component has not been tested in an ABM mode nor deemed to have been given capabilities to counter strategic ballistic missiles." This was the standard used by the Clinton administration at the beginning of the demarcation negotiations in November 1993. The administration would be well-advised to return to that standard.

Mr. President, I would have preferred a prohibition that would have remained in effect for more than one fiscal year. I would have preferred a demarcation standard adopted in a binding form, rather than as a sense-of-the-Congress. But I believe that the essence of my original amendment was preserved in this compromise package.

This legislation represents a significant step forward in the effort to provide the men and women of the Armed Forces with the most effective theater missile defense systems that our great nation is capable of producing. I urge my colleagues to support the amendment.

Finally Mr. President, I wish to acknowledge my special appreciation and respect for Senator COHEN's very valuable contribution to the negotiations leading up to the bipartisan amendment. We have worked together for 17 years on the Armed Services Committee, and I value his advise and counsel.

I also I wish to commend a number of Members of the Senate, of the Armed Services Committee. Senator SMITH was very active, and Senator KYL, who is not a member of the committee, was very active in all of these negotiations.

And I think we have reached a result which is in the best interest of the Senate.

And finally, this agreement would not have been possible without the outstanding work of a number of dedicated staff members. In particular, Eric Thoemmes of the majority staff of the Senate Armed Services Committee was instrumental to the successful conclusion of these negotiations. In my 17 years on the Armed Services Committee, I have not seen a finer job done by a Professional Staff Member. I thank him for all he has done for the Nation's defense. In addition, I would like to acknowledge the outstanding contributions of Bill Hoehn, Andy Effron and Rick DeBobs of the minority staff of the Armed Services Committee, Richard Fieldhouse of Senator LEVIN's staff, and Judy Ansley and Les Brownlee of my staff. A lot of hard work by both Senators and staff resulted in a package of which we can all be proud.

I thank again my distinguished colleague from Michigan for his valuable contribution to this effort.

I yield the floor.

Mr. LEVIN addressed the Chair.

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

Mr. LEVIN. I know my good friend from Virginia must leave, but on his way out, I do want him to hear my own feelings about his contribution to this institution and to this Nation, and more specifically to this agreement.

A number of us worked day after day after day, and Senator WARNER is really extraordinary in his commitment to resolving difficult issues in fair ways. I just want to tell him, again, what a pleasure it is to work with the Senator from Virginia.

Mr. WARNER. Mr. President, I thank my distinguished colleague.

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

Mr. LEVIN. Mr. President, when we debated the national missile defense and the antiballistic missile language in the defense authorization bill, a number of us felt that the bill was severely flawed in a number of ways.

First, we argued that the provisions in the bill would seriously damage our relationship with Russia by stating that we will deploy a national missile defense system. Such a statement of commitment to deploy would violate our treaty with the Russians, which says that neither party will deploy a multiple site system.

Our good friend from Virginia is, of course, right. The Antiballistic Missile Treaty did not cover theater missiles or short-range missiles. The missiles which are covered by this treaty are the longer-range missiles. But we have a treaty, and that treaty has been an important part of a stable relationship



when we had a cold war, and the preservation of our word now is particularly important when we are attempting to have a normal relationship with Russia.

The language in the underlying bill which said that it was our decision to deploy a system which would violate a treaty with Russia was the most troublesome of the language in this bill.

Those of us who opposed that language and sought to strike it urged on the Senate that this was a reckless course of action which could jeopardize the nuclear weapons reductions now taking place in the START I Treaty, and would also jeopardize the ratification of the START II Treaty. Those treaties are going to eliminate thousands of Russian nuclear warheads. Those treaties are going to reduce the number of Russia's warheads to 3,000, instead of the 8,000 warheads that they otherwise would have. That is a huge benefit for the security of the United States.

A decision to undermine the agreement and threaten the reductions which it has made possible is very serious business, indeed. That is what the Secretary of Defense told us, that is what the Secretary of State told us, that is what the Chairman of the Joint Chiefs of Staff, General Shalikashvili, told us.

They expressed grave doubts about the bill's language which would threaten our relationship with Russia. Those of us who strongly opposed the bill's provisions, relative to the ABM Treaty and national missile defense, also pointed out that the language unilaterally declared in law what the dividing line is between a long-range missile, which is covered by the Antiballistic Missile Treaty, and a short-range missile, or theater missile, which is not covered by the treaty.

Senator WARNER is exactly right, theater missiles are not covered by the ABM Treaty; only the long-range or strategic missiles are covered by that treaty. But what is the precise dividing line between the two? There is great bipartisan support in this body for having defenses against theater missiles. That is allowed by the treaty, and it is a real threat. But what is the dividing line between the two? That is the subject of negotiations, because it is part of a treaty that was negotiated.

But under the bill language, there was a unilateral declaration as to what the dividing line was, and there was a prohibition on the President negotiating any other dividing line. It is threatening enough to a negotiating partner to unilaterally declare something which is the subject of discussions and negotiations. It is particularly unsettling when the party that is representing us, the President, is not even allowed to negotiate anything other than what we declare unilaterally to be the dividing line. And the language in the bill, for which this language would substitute, actually prohibits the President or the President's

representatives from sitting down and talking about what the dividing line should be. There was a funding prohibition which does not allow any funds to be spent even to negotiate, to talk, to discuss anything other than the dividing line, which we unilaterally declared in the Senate.

That is extremely unsettling to the negotiator on the other side of the table, and it makes it impossible to even discuss the subject because the language in this bill prevents anyone on our side to even talk to the other side about it.

Our amendment removes some of these very troublesome provisions. As the body well knows, we spent a long time debating this issue. My amendment, which would have struck some of the language which I have just described, lost by 2 votes. Subsequent to that, Senator COHEN, the Senator from Maine who has been a major contributor of just knowledge and background in this area, offered a sense-of-the-Senate resolution which was adopted by the Senate but which also raised some issues then about the underlying language. And then the President, or at least his advisors, indicated that the President would veto this bill based on a number of problems that they saw. But a major problem that they pointed out as a cause for the recommendation to veto the bill was the language relative to national missile defense.

So, at that point, what the majority leader, the Democratic leader, the chairman of the committee and the ranking member of the committee did was appoint Senators WARNER and COHEN on the Republican side, and Senator NUNN and myself on the Democratic side to see if we could negotiate a substitute version.

We have done that. We are going to be presenting it to the Senate for its consideration immediately following the recess, and I believe that our substitute cures a number of the defects in the underlying language.

First, the substitute amendment is explicit that there is no decision in this bill to deploy the national system. For instance, section 233(3) says that it is the policy of the United States "to ensure congressional review prior to a decision to deploy the system developed for deployment under paragraph (2)."

I repeat this language because it is, to me, some of the most critical language in our substitute: That it is the policy of the United States "to ensure congressional review prior to a decision to deploy the system developed for deployment under paragraph (2) of"—this is congressional review of—"the affordability and operational effectiveness of such a system; (B) the threat to be countered by such a system; and (C) ABM Treaty considerations with respect to such a system."

So the substitute is explicit on issues of affordability, military effectiveness, the impact on the ABM Treaty, and an assessment of the threat that must be

made before any deployment decision is made.

Our substitute amendment allows the President to negotiate the demarcation between long-range and short-range missiles. Funds are restricted in this substitute for 1 year to implement an agreement which sets a different demarcation line, which our sense-of-the-Senate language feels is the right demarcation line. But the President is permitted to negotiate and, as provided for by our language, is told that if there is a different line provided for by those negotiations, then the President must come back to us for the funding to implement a different demarcation line.

Now, our substitute does some other important things. It recognizes the ABM Treaty in a number of places and in a number of ways. While the bill that we seek to amend with this substitute provided for the deployment of a multisite system—no ifs, ands, or buts, the ABM Treaty be damned—our substitute amendment provides that the development of a system for deployment can take place. The development of a system takes place, but with plenty of ifs, ands, and buts—before any decision to deploy is made.

I previously made reference to the fact that our substitute recognizes the ABM Treaty in a number of places and in a number of ways. Let me just briefly mention one of them. In section 233, subsection 8, our substitute states that it is the policy of the United States to carry out the policy's programs and requirements of subtitle C of title II of the act—and these next words are important for my point—"through processes specified within or consistent with the ABM Treaty, which anticipates the need and provides the means for amendment to the treaty."

Finally, Mr. President, let me say this. Even current law provides for the development for a deployment of a multisite system. But the current law attached conditions before any such deployment occurs. That is current law. Our substitute also provides that it is the policy to develop for the deployment of such a system. But it also attaches conditions to any deployment.

So the substitute amendment, Mr. President, does not commit the United States to deploying an ABM system, multisite or otherwise. It calls for development of such a system, which is already what we are doing, and explicitly requires Congress to review the program "prior to a decision" to deploy such a system. It also says that the system shall be "capable of being deployed" at multiple sites but not that it must be deployed at multiple sites.

This substitute amendment limits the scope very clearly of any national missile defense system, so that it is intended for use only to defend against limited, accidental and unauthorized missile attacks. That is very different from the what the star wars system was intended to be.

This substitute amendment is the product of bipartisan negotiation. It is a significant improvement, in many respects—and I have only enumerated some—over the original version. It was discussed and debated by the four of us at great length over a period of a week. I particularly thank Senators NUNN, COHEN, WARNER, and all of our staffs who spent not only day after day, but night after night negotiating this bipartisan substitute. I hope it finds favor with the entire Senate when we present it as an amendment to the defense authorization bill upon our return.

Mr. President, I ask unanimous consent that two documents that I prepared, the first called "Missile Defense Act Provisions: Old Versus New," and the second, entitled "Missile Defense Act of 1995: Substitute Amendment," be printed in the RECORD at this point.

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

#### MISSILE DEFENSE ACT PROVISIONS: OLD V. NEW

Here are two critical questions concerning the Missile Defense Act, and a comparison between the original bill and the new substitute amendment.

(1) Does the Act commit the U.S. to deploy a national missile defense (NMD) system?

Answer: The original bill (S. 1026) does commit the U.S. to deploy a multiple site national missile defense system by the end of 2003, and an interim system by 1999.

The substitute amendment does not commit the U.S. to deploy a national missile defense system. It explicitly requires a congressional review of the program "prior to a decision to deploy" an NMD system. (It makes it the policy of the U.S. to "develop" an NMD system for deployment.)

Before Congress makes any decision to deploy a national missile defense system, it must first review four issues: the affordability and operational effectiveness of the system, the threat to be countered by the system, and ABM Treaty considerations.

(2) Does the Act require the U.S. to violate the ABM Treaty?

Answer: The original bill does require the U.S. to violate the ABM Treaty by requiring the U.S. to deploy a multi-site NMD system by 2003, perhaps as early as 1999. And it declares it the policy of the U.S. to deploy a multiple-site NMD system.

The substitute amendment does not require the U.S. to violate the ABM Treaty. It states that U.S. policy is to carry out the provisions of the Missile Defense Act according to or consistent with the ABM Treaty.

#### MISSILE DEFENSE ACT OF 1995: SUBSTITUTE AMENDMENT

Side-by-side comparison of the Missile Defense Act in S. 1026 and the substitute amendment of August 10, 1995.

##### SEC. 233. POLICY

The bill asserted that the policy of the U.S. was:

—to "deploy a multiple site" national missile defense system that "will be" augmented to provide a larger defense in the future.

The substitute amendment has as the policy:

—to develop for deployment a national missile defense system that can be augmented.

—to negotiate with Russia to provide for such a system, based on the ABM Treaty.

—to consider, if those negotiations fail, the option of withdrawing from the ABM Treaty.

—the purpose of the system is to defend only against limited, accidental and unauthorized missile attacks a new provision in the substitute amendment states the policy that:

—Congress shall review the affordability, the operational effectiveness and the threat to be countered by the national missile defense system, and ABM Treaty considerations, prior to deciding whether to deploy the system.

The last new policy provision:

—to carry out the policies, programs and requirements of the Missile Defense Act through processes specified in or consistent with the ABM Treaty.

##### SEC. 234. THEATER MISSILE ARCHITECTURE

The Bill requires the Pentagon to meet certain dates for the specified programs.

The substitute amendment:

—relaxes the requirement to meet those dates,

—requires a report for each program/date explaining the cost and technical risk of meeting those dates,

—and requires a report on the specific threats to be countered by each TMD system.

##### SEC. 235. NATIONAL MISSILE DEFENSE ARCHITECTURE

The Bill requires the Pentagon to develop a national missile defense system which will be operational first in 2003. It requires the system to include ground-based interceptors "deployed at multiple sites".

The substitute amendment requires the Pentagon to develop a national missile defense system that is capable of being first operational by the end of 2003. It states that the system shall include ground-based interceptors capable of being deployed at multiple sites.

Interim capability:

The bill required the Pentagon to develop an interim capability to be operational by 1999.

The substitute amendment requires the Pentagon to develop a plan instead of a capability, and that it would give the U.S. the ability to have such an interim capability in place by 1999 if required by the threat.

The substitute amendment also requires a report that would include information on the cost of the program, the specific threat to be countered, and the Defense Secretary's assessment of whether deployment is affordable and operationally effective.

##### SEC. 237. POLICY REGARDING THE ABM TREATY

The Bill has sense of Congress language that:

—the Senate should conduct a review of the ABM Treaty,

—the Senate should consider establishing a Select Committee to conduct the review, and

—the President should cease all efforts to "modify, clarify, or otherwise alter" our obligations under the ABM Treaty.

The Bill requires the Secretary of Defense to provide a declassified record of the ABM Treaty negotiations. The substitute amendment adds findings related to the ABM Treaty, including that the policies, programs and requirements of the Missile Defense Act can be accomplished in accordance or consistent with the ABM Treaty.

The substitute amendment:

—strikes the proposal to establish a Select Committee

—strikes the proposal that the President cease all efforts to modify or clarify our obligations under the ABM Treaty

—strikes the entire provision calling for a declassified treaty negotiating record

—states that the Foreign Relations and Armed Services committees should conduct the review of the Treaty.

##### SEC. 238. PROHIBITION ON FUNDS TO IMPLEMENT A TMD DEMARCATION AGREEMENT

The Bill:

—states the policy that "unless and until" a missile defense system is tested against a target missile with a range greater than 3,500 km or a velocity greater than 5 km per second, it has not been tested "in an ABM mode" nor "been given capabilities to counter strategic ballistic missiles" (both of which are prohibited by the ABM Treaty), and therefore is not subject to ABM Treaty application or restrictions.

—prohibits any appropriated funds from being obligated or expended by any official of the federal government to apply the ABM Treaty to TMD systems, or for "taking any other action" to have the ABM Treaty apply to TMD systems. (This would prevent any discussion or negotiation by federal officials with the Russians to consider any other demarcation than the one specified in the bill.)

The substitute amendment strikes Sec. 238 and replaces it with:

—two findings that restate items from previous Acts

—sense of the Congress language defining the TMD demarcation (3,500 km/5kps), and stating that unless a TMD system is tested above the demarcation threshold, the system has not been tested in an ABM mode, nor deemed to have been given capabilities to counter strategic ballistic missiles".

—sense of Congress language saying that any agreement with Russia that would be more restrictive than the demarcation provided should require ratification.

—Binding prohibition on funding: FY 96 DOD funds cannot be used to implement a demarcation agreement unless: provided in a subsequent act (majority vote), or if the agreement goes through the ratification process.

Mr. COHEN. Mr. President, in June, when the Armed Services Committee marked up the Defense authorization bill, the committee voted to put the United States on the path to deployment of a highly effective system to defend the American people against limited missile attacks.

Because we want to and must defend all Americans, not just those in a particular region of the country, we called for a multiple-site defense. And, because we can expect the threat to evolve to become ever more sophisticated, we called for a defensive system that would also evolve and a research and development program to provide options for the future. Since the national missile defense program approved by the committee goes beyond that being pursued by the administration, we added \$300 million above the \$371 million requested.

We also called for deployment of highly effective systems to defend our forward deployed forces and key allies and, to ensure this result, reorganized the administration's theater missile defense effort. A related matter involved negotiations being conducted with Moscow to define the line distinguishing TMD from ABM systems. Over the last year and a half, the Clinton administration has drifted toward accepting Russian proposals to limit TMD systems in unacceptable ways—in effect, to subject TMD systems to the ABM Treaty, which was never intended to cover theater defenses. The committee addressed this troubling situation



with two steps. First, we voted to write into law the Clinton administration's initial negotiating position on what constitutes an ABM system. And second, we adopted bill language to prevent the administration from implementing any agreement that would have the effect of applying ABM Treaty restrictions to TMD systems.

Last week, when the defense authorization act came to the floor, the committee's judgment was challenged. One amendment was offered to delete the additional \$300 million provided for national missile defense. And another amendment was offered to eliminate the policy to deploy a multiple-site national defense system, eliminate the statutory demarcation between TMD and ABM systems, and eliminate the ban on applying the ABM Treaty to TMD systems.

As was the case during the committee's mark-up, these efforts failed in relatively close votes.

Mr. President, I have been on the Armed Services Committee since 1979 and have spent most of that time in the majority. It has not been our practice for the majority to use its position to impose its views on the minority. Instead, we have usually sought to develop as broad a consensus as possible on important issues of national security.

In this spirit, Members of the majority also offered amendments on the floor to move beyond close, partisan votes toward a broader consensus.

Senator KYL offered an amendment expressing the sense of the Senate that all Americans should be protected from accidental, intentional, or limited ballistic missile attack. His amendment setting forth this basic principle, which was the basis for the Armed Services Committee's action, was approved overwhelmingly, 94-5.

And to address the concerns of some Senators that the committee was advocating abrogation of the ABM Treaty, I offered an amendment affirming that the multiple-site defense we endorsed can be deployed in accordance with mechanisms provided for in the ABM Treaty—such as negotiating an amendment—and urging the President to negotiate with Moscow to obtain the necessary treaty amendment. My amendment was also approved by a very large margin, 69 to 26.

I highlight that vote margin because the bipartisan amendment we have negotiated would change even the language of the Cohen amendment, which was adopted overwhelmingly by the full Senate. I think this a clear indication of how far the majority has been willing to go in accommodating the minority in order to build a broader consensus.

#### THE BIPARTISAN AMENDMENT

The result of the negotiations that have occurred is the bipartisan amendment, which is being cosponsored by the four senators designated by the two leaders to resolve this issue. In order to reach agreement on this amendment,

both sides made concessions, although it should be noted that many of the agreed upon changes are less concessions than clarifications of the Armed Services Committee's intent.

Senators interested in this matter can read the bipartisan amendment and compare it to current text of the bill. Our negotiations involved debate over almost every single word in subtitle C. For reasons of time, I will merely try to summarize the most important issues.

#### MISSILE DEFENSE POLICY

In section 233, which addresses missile defense policy, we have made a number of changes to clarify the intent of the committee's language.

The bipartisan text states that "it is the policy of the United States to develop for deployment a multiple-site national missile defense system." The difference with the original text is that it substitutes the words "develop for deployment" for the word "deploy." While I do not believe there was anything inappropriate with the committee's language, this change is consistent with the fact that what we are funding in this bill is research and development on national missile defense, not procurement. There will be a number of authorization and appropriations bills to be acted upon before we begin to fund the actual deployment of the system. I would note that the words "develop for deployment" were in the committee-approved bill, in the NMD architecture section, and so this clarification is consistent with the committee's intent.

Moreover, I would emphasize that the policy section clearly states—as did the committee bill—that the system we are pursuing is a multiple-site system. As the findings make clear, a multiple-site system is essential if we are to defend all of the U.S. and not just part of the country. This is also made clear in the NMD architecture section, which states that the system must be optimized to defend all 50 States against limited, accidental or unauthorized ballistic missile attacks.

This is further bolstered by the new language inserted by the compromise at various places that the system must be "affordable and operationally effective." An NMD system confined to a single ground-based site would not be operationally effective, as noted in the ninth finding.

The bipartisan text also states in the policy section that the NMD system will be one that "can be augmented over time as the threat changes to provide a layered defense against limited, accidental, or unauthorized ballistic missile threats." This passage was of great importance to many Members on this side who are concerned about the ability of the system to remain effective in the face of an evolving threat.

The committee-approved language stated that the NMD system "will be augmented over time to provide a layered defense." There were strong feelings on our side about the words "will

be augmented." In the end, we agreed to change this to "can be augmented." Again, while the committee's language had much to commend it, funding for deployment of other defensive layers will not be appropriated for several years.

The other changes to this passage, such as the inclusion of the words "limited, accidental, or unauthorized" clarify the ballistic missile threat for which a layered defense would be required, reflect the intent of the committee's bill.

At the suggestion of the other side, a new paragraph was added to the policy calling for congressional review, prior to a decision to deploy the NMD system. This is fully consistent with the committee's intent and the realities of the congressional budget process. Funds to begin deployment of the NMD system are not in the bill before the Senate. Thus, when such funds are requested, that request will pass through the regular process of committee hearings and mark-ups, floor consideration, and conference action.

Another change to the policy section was the inclusion of several portions of the amendment that I offered and that was approved by the Senate last week. This states that it is U.S. policy to "carry out the policies, programs and requirements of (the Missile Defense Act of 1995) through processes specified within, or consistent with the ABM Treaty, which anticipates the need and provides the means for amendment to the Treaty."

It also states that it is U.S. policy to initiate negotiations with the Russian Federation as necessary to provide for the NMD systems specified in the NMD architecture section. At the urging of Congress in the Missile Defense Act of 1991, President Bush initiated such negotiations with Moscow. It is my understanding that tentative agreement was reached to provide for the deployment of ground-based multiple-site NMD systems. But the Clinton administration discontinued those negotiations. Under this legislation, it would be U.S. policy to once again engage Moscow in negotiations to amend the ABM Treaty or otherwise allow for multiple-site NMD systems.

The policy section then states that "it is the policy of the U.S. to . . . consider, if those negotiations fail, the option of withdrawing from the ABM Treaty in accordance with the provisions of Article XV of the Treaty, subject to consultations between the President and the Senate."

I would note that both amendment to the Treaty, as provided for in Articles XIII and XIV, and withdrawal from the Treaty, as provided for in Article XV, are "processes specified within the ABM Treaty."

Contrary to the concerns of some, the Armed Services Committee never advocated abrogation of the Treaty and the bill reported out by the committee neither required nor supported abrogation. The debate that took place during

the committee mark-up made it clear that there was absolutely no intent to abrogate.

These provisions regarding the ABM Treaty and negotiations with Moscow taken from the Cohen amendment and incorporated into the bipartisan amendment reaffirm what was always the intent of the committee.

Mr. President, I want to emphasize that these provisions and the other language in the section 233 clearly state that these policies are "the policy of the United States." Not the policy of the Senate or the policy of the Congress. I say this because I have heard that an administration official has said that, once this bill becomes law, the administration will declare that these statements of U.S. policy are not its policy but merely the sense of the Congress.

The bill makes a clear distinction between statements of U.S. policy and expressions of the sense of Congress. We have spent a great deal of effort negotiating exactly what statements will fall into the policy section and which will be in the form of sense of the Congress. In fact, these negotiations began with Senator NUNN urging that the COHEN amendment be strengthened from being the sense of the Congress to a statement of U.S. policy.

Mr. President, I would merely note the obvious fact that once the bill becomes U.S. law, then the bill's statements of policy are U.S. policy.

#### NMD ARCHITECTURE

The bipartisan amendment also provides changes and clarifications regarding the architecture of the national missile defense system.

The committee's bill stated that the NMD system "will attain initial operational capability by the end of 2003." The bipartisan amendment states that the NMD system will be "capable of attaining initial operational capability by the end of 2003." This is a useful clarification because while Congress can mandate many things, we cannot dictate with certainty that engineers will accomplish specific tasks within a specific period of time.

In subsection (b) of section 235, our side did make a significant concession. The committee's bill directed the Secretary of Defense "to develop an interim NMD capability \* \* \* to be operational by the end of 1999." In order to achieve agreement with the other side, we have modified this to require the Secretary "to develop an interim NMD plan that would give the U.S. the ability to field a limited operational capability by the end of 1999 if required by the threat." In both versions, the interim capability would have to not interfere with deployment of the full up NMD system by 2003.

Mr. President, I would also note that the bipartisan amendment retains the portion of section 235 that calls for a report by the Secretary of Defense analyzing "options for supplementing or modifying the NMD system \* \* \* by adding one or a combination of \* \* \*

sea-based missile defense systems, space-based kinetic energy interceptors, or space-based directed energy systems." As I discussed earlier, such options for layered defenses are of considerable interest to many Members.

To summarize, Mr. President, the bipartisan amendment both clarifies and changes the committee bill's provisions on national missile defense. It keeps us on the path toward a ground-based, multiple-site NMD system with options for layered defenses as the threat changes. But it recognizes that requests for NMD procurement funds will not be made for several years.

#### TMD DEMARCATION

The other issue that required much discussion was what is commonly referred to as the theater missile defense demarcation question. Senator WARNER will discuss this at greater length, but I would like to summarize the resolution that was achieved in section 238, which was completely rewritten with the assistance of many Senators.

The section has findings noting that the ABM Treaty "does not apply to or limit" theater missile defense systems. The findings also note that "the U.S. shall not be bound by any international agreement that would substantially modify the ABM Treaty unless the agreement is entered into pursuant to the treaty making powers of the President under the Constitution." What this means is that any agreement that would have the effect of applying limits on TMD systems under the ABM Treaty must be approved as a treaty by the Senate.

Section 238 then states the sense of Congress that a defensive system has been tested in an ABM mode, and therefore is subject to the ABM Treaty, only if it has been tested against a ballistic missile target that has a range in excess of 3,500 kilometers or a velocity in excess of 5 kilometers per second. This threshold is the one defined by the administration and proposed in its talks with Moscow on this subject.

Finally, section 238 has a binding provision that prohibits implementation during fiscal year 1996 of an agreement with the countries of the former Soviet Union that would restrict theater missile defenses. This prohibition would not apply to the portion of an agreement that implements the 3500 kilometer or 5 kilometer per second criteria nor to an agreement that is approved as a treaty by the Senate.

But it would apply to all portions of an agreement that sought to impose any restrictions other than the 3500 kilometer or 5 kilometer per second criteria. Various other potential restrictions have been discussed, such as limits on the number of TMD systems or system components, geographical restrictions on where TMD systems can be deployed, restrictions on the velocity of TMD interceptor missiles, and restrictions on the volume of TMD interceptors missiles. Under section 238 of the bipartisan amendment, during fiscal year 1996, the administration is

barred from implementing any of these potential restrictions or any other restrictions on the performance, operation, or deployment of TMD systems, system components, or system upgrades.

At the same time, Mr. President, there are no constraints on the ability of the President to engage in negotiations on the demarcation issue, which I know was an issue of concern to some. What section 238 controls is the implementation of any restrictions on TMD systems.

Mr. President, I want to acknowledge the efforts of the many Senators who contributed to the drafting of this amendment. Every member of the Armed Services Committee played a role, as did the two leaders, and key Senators off the committee. Senator KYL played a very constructive role, offering language that formed the basis for the resolution on section 238 and providing useful suggestions on the NMD portions of the bill. The chairman of the Armed Services Committee is to be especially commended for providing strong guidance to the negotiators and the committee, as a whole, and facilitating the talks along the way.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CHAFEE. Mr. President, as I understand, we are in morning business, and I am permitted to speak for 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. Mr. President I ask unanimous consent that I might proceed for 20 minutes.

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

Mr. CHAFEE. I thank the Chair.

#### REFORMING THE MEDICAID PROGRAM

Mr. CHAFEE. Mr. President, when the Congress returns from the August recess we are going to begin work in earnest on a very difficult part of the balanced budget effort which we are all dedicated to achieving, certainly on this side of the aisle.

Mr. President, I enthusiastically support our efforts to achieve the balanced budget by the year 2002. It is absolutely essential that we get Federal spending under control.

The 1996 budget resolution, the orders that came down from the Budget Committee to the Finance Committee, said that the Finance Committee must reduce spending within its programs by \$530 billion over the next 7 years.

That is not a cut from existing levels, it is a reduction from where the