[Rollcall Vote No. 107 Leg.]

YEAS—42

| | | |
|---|---|---|
| Akaka | Ford | Lieberman |
| Baucus | Glenn | Mikulski |
| Biden | Graham | Moseley-Braun |
| Bingaman | Harkin | Moynihan |
| Boxer | Heflin | Murray |
| Breaux | Inouye | Nunn |
| Bryan | Johnston | Pell |
| Bumpers | Kennedy | Pryor |
| Byrd | Kerrey | Reid |
| Daschle | Kerry | Robb |
| Dodd | Kohl | Rockefeller |
| Exon | Lautenberg | Sarbanes |
| Feingold | Leahy | Simon |
| Feinstein | Levin | Wellstone |

NAYS—57

| | | |
|---|---|---|
| Abraham | Faircloth | Mack |
| Ashcroft | Frist | McCain |
| Bennett | Gorton | McConnell |
| Bond | Gramm | Murkowski |
| Brown | Grams | Nickles |
| Burns | Grassley | Packwood |
| Campbell | Gregg | Pressler |
| Chafee | Hatch | Roth |
| Coats | Hatfield | Santorum |
| Cochran | Helms | Shelby |
| Cohen | Hollings | Simpson |
| Conrad | Hutchison | Smith |
| Coverdell | Inhofe | Snowe |
| Craig | Jeffords | Specter |
| D'Amato | Kassebaum | Stevens |
| DeWine | Kempthorne | Thomas |
| Dole | Kyl | Thompson |
| Domenici | Lott | Thurmond |
| Dorgan | Lugar | Warner |

NOT VOTING—1

Bradley

So, the ruling of the Chair was rejected as the judgment of the Senate.

Mrs. HUTCHISON. I ask unanimous consent that the yeas and nays be vitiated on the Hutchison amendment and that Senators GORTON and DOMENICI be added as original cosponsors.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 336) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## UNANIMOUS-CONSENT AGREEMENT

Mr. HATFIELD. Mr. President, I ask unanimous consent to substitute the word ''item'' for the word ''time'' in amendment No. 329 agreed to on Wednesday, March 8. It corrects a typographical error. This has been cleared on both sides.

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

Mr. HATFIELD. Mr. President, I would like to indicate that in the next sequence of amendments, we will have the Leahy-Jeffords amendment, which will take perhaps a minute, and that will then be followed by a Roth-Glenn amendment which, again, will not call for a rollcall, according to the authors of the bill.

We are now down to about two amendments left. We understand agreements have been worked out on the Republican side and we have about the same number—three amendments—on the Democratic side. I understand that those have been worked out.

So we should be at a point where we will be wrapping up the long list of amendments and moving toward final passage. I just want to indicate that any Member who has an amendment to be handled in any form here on the floor, please contact us. We have about five or six that have been cleared on both sides. At an appropriate moment, we will use as a wrap-up those agreed to.

Mr. INOUYE. Mr. President, will the chairman yield?

Mr. HATFIELD. Yes.

Mr. INOUYE. Are we now prepared to have a time certain for final passage?

Mr. HATFIELD. I am unable to say that, based upon the fact that on two amendments 20 minutes to half an hour has been requested for discussion—the Brown amendment and the SPECTER amendment. I am sure they will not require a great length of time. But I hope that perhaps in the next hour we will be able to reach final passage. I would be hesitant to set a time certain.

Mr. INOUYE. I yield the floor.

AMENDMENT NO. 337

(Purpose: To authorize the Secretary of Transportation to issue a Certificate of documentation for the vessel *L.R. Beattie*)

Mr. LEAHY. Mr. President, I send an amendment to the desk on behalf of myself and Senator JEFFORDS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. JEFFORDS, proposes an amendment numbered 337.

Mr. LEAHY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new title:

TITLE —MISCELLANEOUS

SEC. 01.—Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel L. R. BEATTIE, United States official number 904161.

Mr. LEAHY. Mr. President, I strongly support the amendment introduced today with my friend from Vermont, Senator JEFFORDS. This amendment would authorize the Secretary of Transportation to issue a certificate of documentation to grant coasting rights to the vessel *L.R. Beattie.* This certificate is commonly known as a Jones Act waiver.

The *L.R. Beattie*, a 500 passenger, triple deck cruise boat, was originally built and flagged in the United States. The ship was later brought by a Canadian company, although it was never flagged in Canada. It has since been sold to a U.S. company and was bought last year by Lake Champlain Shorelines Cruises of Burlington, VT.

Lake Champlain Shorelines Cruises bought the *L.R. Beattie* to operate tours on Lake Champlain and plans to rename it the *Spirit of Ethan Allen II.* This boat will be the showcase of a flourishing cruise industry on Lake Champlain. This boat will support over 30 Vermonters working on these cruises. But before this boat may begin carrying passengers on Lake Champlain, Congress must pass a Jones Act waiver for the *L.R. Beattie* because of its brief history under Canadian ownership.

A Jones Act waiver is a routine and noncontroversial bill. It does not cost U.S. taxpayers a penny. It simply authorizes the Secretary of Transportation to issue a certificate of documentation to allow a vessel to operate on U.S. waters.

But a Jones Act waiver for the *L.R. Beattie* has languished in Congress for more than a year. The Oceans Act of 1994, H.R. 4852, which reauthorized Coast Guard operations, contained a Jones Act waiver for the *L.R. Beattie.* The House of Representatives easily passed this bill. Unfortunately, it died in the Senate at the end of last year's session.

This year, Senator JEFFORDS and I introduced legislation, S. 172, to allow the *L.R. Beattie* to receive a Jones Act waiver. The Senate Commerce Committee will soon consider this bill with other Jones Act waivers. The time table for final passage of these Jones Act waivers, however, may be too late for Lake Champlain Shoreline Cruises because of the fast-approaching cruise season. Without this simple, noncontroversial Jones Act waiver, this small business in Vermont could go out of business, throwing over 30 Vermonters out of work.

Senator JEFFORDS and I have authored this amendment to respond to the special circumstances surrounding a Jones Act waiver for the *L.R. Beattie.*

I want to thank Senator HOLLINGS, the ranking member of the Senate Commerce Committee, and Senator PRESSLER, the chairman of the Senate Commerce Committee, for their invaluable cooperation on this amendment.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. I join my senior Senator in this amendment, which will help make Vermont summers on Lake Champlain a little bit better.

Mr. President, I wish to thank the managers of this legislation for accepting this important amendment. I would especially like to thank the chairman of the Commerce Committee, Senator PRESSLER, and the ranking member, Senator HOLLINGS, for their assistance with this measure.

Mr. President, included in the Merchant Marine Act of 1920, Jones Act waivers allow for vessels transporting

cargo within U.S. waters which are not U.S. built, owned, and manned be given the right to do so. With the passage of this amendment, the *Spirit of Ethan Ellan II*, which was built in the United States and operated under Canadian ownership for a short time, will be able to resume operations as a United States vessel on Lake Champlain in time for the summer tourist season. The *Spirit of Ethan Allen II* will provide an invaluable service to Vermonters and tourists who come to appreciate Vermont's beautiful setting. I can think of no better way to view this beautiful and historic lake.

This vessel will be the only one of its kind in Vermont, offering scenic cruises, wedding and prom receptions, and dinner parties. In addition, the *Spirit of Ethan Allen II* will be active in charity fundraisers and a program called Education on the Lake, informing young people of the geological and historical character of the Lake Champlain area.

In addition, the *Spirit of Ethan Allen II* will host events for visiting conferences and conventions in the Burlington area, enhancing the experience of those who stay in the area's hotels and inns. Lake Champlain Shoreline Cruises will employ over 25 people to operate the vessel, making a significant contribution to the continuing development of the Burlington waterfront area.

I am pleased that this legislation will ensure that the *Spirit of Ethan Allen II* begins operating in time for the summer tourist season.

I yield the floor.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 337) was agreed to.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

AMENDMENT NO. 338

(Purpose: To state the sense of the Senate that indefinite and unconditional extension of the Nuclear Non-Proliferation Treaty is essential for furthering the security interests of the United States and all the countries of the world)

Mr. ROTH. Mr. President, I send an amendment to the desk. and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Delaware [Mr. ROTH], for himself, Mr. GLENN, Mr. HELMS, Mr. LEVIN, Mr. MCCAIN, and Mr. NUNN, proposes an amendment numbered 338.

Mr. ROTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate point, insert the following:

The Senate finds that the Treaty on the Non-Proliferation of Nuclear Weapons, herein after referred to as the NPT, is the cornerstone of the global nuclear non-proliferation regime;

That, with more than 170 parties, the NPT enjoys the widest adherence of any arms control agreement in history:

That the NPT sets the fundamental legal and political framework for prohibiting all forms of nuclear nonproliferation;

That the NPT provides the fundamental legal and political foundation for the efforts through which the nuclear arms race as brought to an end and the world's nuclear arsenals are being reduced as quickly, safely and securely as possible;

That the NPT spells out only three extension options: indefinite extension, extension for a fixed period, or extension for fixed periods;

That any temporary or conditional extension of the NPT would require a dangerously slow and unpredictable process of re-ratification that would cripple the NPT;

That it is the policy of the President of the United States to seek indefinite and unconditional extension of the NPT.

Now, therefore, it is the sense of the Senate that:

(1) indefinite and unconditional extension of the NPT would strengthen the global nuclear non-proliferation regime;

(2) indefinite and unconditional extension of the NPT is in the interest of the United States because it would enhance international peace and security;

(3) the President of the United States has the full support of the Senate in seeking the indefinite and unconditional extension of the NPT.

(4) all parties to the NPT should vote to extend the NPT unconditionally and indefinitely; and

(5) parties opposing indefinite and unconditional extension of the NPT are acting against their own interest, the interest of the United States and the interest of all the peoples of the world by placing the nuclear non-proliferation regime and global security at risk.

Mr. ROTH. Mr. President, I rise today to propose an amendment on behalf of myself and Senators GLENN, HELMS, LEVIN, MCCAIN, and NUNN, which calls for the indefinite and unconditional extension of the Nuclear Non-Proliferation Treaty.

In only 4 weeks, the parties to the NPT will gather in New York to decide the future of this critical agreement. This resolution sends an unequivocal message to all the countries of the world that this body regards making the NPT permanent as absolutely essential. It also sends a clear signal to any country opposing indefinite and unconditional extension of the treaty that that nation is acting against not only against its own interest, but also against the interest of the United States and indeed of the people of the entire world, because their position places the nuclear non-proliferation regime and global security at risk.

March 5 marked the 25th anniversary of the entry into force of the NPT. That treaty is universally regarded as the the single most important component of the international effort to prevent the spread of nuclear weapons. Indeed, it is the very foundation upon which the entire global nuclear nonproliferation regime was constructed.

When the five declared nuclear weapons states ratified the NPT, they pledged to end the nuclear arms race, to undertake measures toward nuclear disarmament and not in any way to assist nonnuclear weapon states in gaining nuclear weapons.

For their part, the nonnuclear parties to the treaty pledged not to acquire nuclear weapons and to accept a system of safeguards to verify their compliance. Thus, in joining the NPT, these countries transformed the acquisition of nuclear weapons from an act of national pride to a violation of international law.

Those who negotiated the NPT never expected that the treaty alone would end the global nuclear proliferation threat. Yet, I think even they could be surprised by its successes toward that end. Today, there remain only 5 declared nuclear weapons states—not the 20 or 30, many experts had once projected. There are also only three so-called ''threshold'' states.

The NPT has provided the overarching structure to end the nuclear arms race. With the ratification of START I, and the ongoing work of my able and distinguished colleagues in the Foreign Relations Committee on START II, the race now is to bring down the number of nuclear weapons as quickly, safely and securely as possible.

Another indicator of treaty's success has been the steady increase of its membership. Today, with more than 170 parties, the NPT has the widest adherence of any arms control agreement in history. When backed by strong nonproliferation policies and verification measures including international safeguards, the NPT curbs inclinations countries may have in believing they need the bomb for safety. Thus, it advances the security of all the world's nations.

Unfortunately, the NPT was established with a limited life-span. The treaty provides that 25 years after its entrance into force, a conference of the parties will be convened to decide whether the NPT will remain in force indefinitely, for one fixed period of time or for a series of fixed periods. The treaty further provides that the decision on extension will be made by majority of parties to the treaty. The result will be legally binding for all parties, whatever vote they cast.

I believe it is beyond question that indefinite extension is essential. The NPT must be made permanent if we are to contain the terrible threat posed to all nations by the proliferation of nuclear weapons.

Anything short of indefinite extension would deal a major blow to the global nuclear nonproliferation regime because at the end of any specified extension period, the treaty could be undermined. The global norm prohibiting the further acquisition of nuclear weapons would thus be destroyed.

We must never allow such an outcome that would jeopardize the entire nuclear nonproliferation regime—so

painstakingly crafted over the past quarter century.

In the aftermath of the cold war, the decisions we make today about global security will dramatically affect the lives of generations to come. No decision is more important than the one the world faces next month on the future of the NPT.

Despite the critical need for making the NPT permanent, a number of countries are actively opposing indefinite extension. Most troubling to me are the strongly negative positions taken by Mexico and Egypt—two nations which have received so much support from the United States over the years.

Some of the countries opposing the U.S. position say that indefinite and unconditional extension of the NPT should be made contingent on the ratification of a comprehensive test ban treaty or an agreement to cap the amount of material available for nuclear explosives. Others seek universal membership in the NPT or a timetable for complete nuclear disarmament.

By holding the NPT's future hostage to such goals, these countries undermine the likelihood of the treaty's indefinite extension. What they do not seem to realize, ironically, is that in doing so they also jeopardize the very framework critical to the achievement of their own goals.

Indefinite extension of the NPT does not preclude adjustments to the nuclear nonproliferation regime. In fact, it would make permanent the climate of trust conducive to more restrictive controls over weapons-grade nuclear materials and related technologies and activities.

Given the narrow focus of the NPT conference next month, the only question treaty parties should ask is whether the world is a safer place with the treaty in force. I believe that the answer to that question is unambiguously ''yes''. Indefinite and unconditional extension is thus the only choice that makes sense.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I ask unanimous consent to include my name as a cosponsor of the amendment offered by my colleague and friend from Delaware, the chairman of the Governmental Affairs Committee, Senator ROTH, expressing the sense of the Senate on the future of the Treaty on the Non-Proliferation of Nuclear Weapons, better known as NPT, which entered into force on March 5, 1970.

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

Mr. GLENN. Mr. President, next month, representatives of the 173 members of the NPT will gather in New York to determine how long the treaty shall remain in force.

I support this amendment because I believe that the NPT, despite some shortcomings—and it has been far from perfect—still continues to advance U.S. national security interests and a peaceful world order.

Accordingly, I urge all my colleagues to join in a sense of the Senate in favor of an indefinite and unconditional extension of the NPT. The NPT has come under attack over the years for not having fully halted the global spread of nuclear weapons, particularly in the case of certain NPT parties, with Iraq, Iran, and North Korea being the most celebrated examples.

Some critics say the NPT gives too much emphasis on promoting peaceful uses of nuclear technology and not enough on its safeguards system. This argument has been directed specifically at the enforcement of the primary goal of safeguards; namely, the timely detection—timely detection—of the diversion of a significant quantity of special nuclear material for nuclear explosive uses. Simply put, the more countries come to engage in large-scale commercial uses of bomb-usable materials, the more likely it will be that some such materials will wind up in the hands of black marketeers or terrorists or nations bent on proliferation and getting their own nuclear weapons capability.

Other criticisms, particularly coming from certain developing countries, have alleged that the NPT focuses too much on preventing the global spread of nuclear weapons and not enough on promoting nuclear disarmament. Anti-NPT propagandists have condemned the treaty's alleged system of atomic apartheid and its hidden purpose of, as they say, disarming the unarmed.

Other critics have found fault with the treaty's easy exit clause, permitting a State to leave the treaty on 90 days' notice. The treaty does not define certain key terms like nuclear explosive device and manufacture. Nor does it prohibit exports of sensitive nuclear weapons-related technology.

Mr. President, I ask unanimous consent to insert in the RECORD at the end of my remarks an analysis prepared by Dr. Leonard Weiss, the staff director for the minority of the Committee on Governmental Affairs, which describes and assesses these and several additional criticisms of the NPT.

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

(See exhibit 1.)

Mr. GLENN. Mr. President, why should the United States press for an indefinite extension of such an imperfect treaty?

Rather than rebut all of the allegations made by the treaty's critics, or recount all of the many arguments used on behalf of the treaty by its proponents, I would like to summarize briefly my own views on why the NPT should be extended indefinitely.

First, to the ends. The world community needs a formal legal instrument to give form and substance to the international effort to reduce and eliminate nuclear weapons. Given its near-universal support in the world community, the NPT helps to delegitimize the further proliferation—and, ultimately, the possession—of nuclear weapons. It contributes to a global nonproliferation ethic that is invaluable to international security. Any short-term extension or extensions would only weaken the incentives of the nuclear-weapon states to expedite their nuclear disarmament activities. Such short-term extension options amount, in my opinion, to NPT confidence-reduction measures.

Now, as to the means. The NPT was never intended as a silver bullet, as something magic. Nobody expects the NPT to act as a panacea to the global nuclear weapons proliferation threat. The NPT works best when it is supported by complementary national policies of its parties. For example, the United States, the United Kingdom, France, Russia, and China have undertaken binding legal obligations that they will not in any way assist the proliferation of nuclear weapons. Each of these nuclear-weapon states must promulgate domestic laws and regulations to ensure this commitment is being upheld. At a time when each of these countries—including most particularly our own country—is experiencing great pressure to relax export controls under the false flag of economic competitiveness, now is not the time to abandon or weaken an obligation that serves to preserve responsible national systems of sanctions and export controls. Without the NPT, the world nuclear market would become a free-for-all—the new motto of the so-called post-cold war world order would soon become, ''Sell what you can while you can. At the same time prepare for the worst.''

As to fairness, the NPT involves reciprocal duties on the parts of the nuclear-weapon states and the non-nuclear-weapon states. The former have no choice. They must not assist other countries to get the bomb, they must negotiate in good faith to curb the nuclear arms race, pursue nuclear disarmament, and work toward a treaty on general and complete disarmament. The latter also have no choice: they must not acquire the bomb, they must agree to safeguards over the full scope of their activities involving nuclear material, and also pursue global disarmament objectives. Though these are very different types of obligations, it is not correct to condemn the treaty as simply discriminatory. I doubt that this treaty would have 173 parties, 173 nations all signed up, if those nations truly believed that this treaty was discriminatory. If the treaty—backed by strong national nonproliferation policies—helps to prevent the spread of nuclear weapons, all nations stand to gain the freedom from fear of regional or global nuclear wars.

Now what are our next steps? The NPT is not a quick fix. It must be supplemented by strong national leadership and international cooperation. Here are just a few suggestions of some

specific initiatives that are needed to complement the NPT regime.

No. 1. Increased efforts by all countries to integrate fundamental NPT obligations into domestic laws and regulations of all states party to the treaty. I have proposed legislation in our own country here and sent a bill, S. 102, that seeks to bring U.S. controls over exports of nuclear dual-use goods into line with U.S. obligations under the NPT and nuclear supplier guidelines. Now, I urge my colleagues to support this effort and to examine very closely the various pending proposals to reauthorize the Export Administration Act to ensure that these bills will advance rather than undercut our international nonproliferation commitments.

For those who may think my use of the term ''undercut'' is a bit harsh, I would encourage them to read a report prepared last year by the General Accounting Office at my request. The report is entitled ''Export Licensing Procedures for Dual-Use Items Need to be Strengthened.''

No. 2. Pursuit of an international moratorium, preferably a ban, on the commercial sale, production, or use of separated plutonium or highly enriched uranium. In other words, bomb-rich material. A partial ban on the production of such materials for weapons or outside of safeguards is—assuming for now that it would not amount to a license to produce such materials under safeguards—a useful first step but is by no means a substitute for this more important goal. We cannot for long sustain an international arrangement that smiles upon large-scale commercial uses of such materials in certain privileged states while frowning upon such activities elsewhere. In other words, we need consistency of our policy.

No. 3. Reaffirmation by the nuclear weapon states of their intention to live up to their obligation under article 6 of the NPT. In particular, we need rapid progress both on START II and on further reciprocal and verifiable cuts of strategic nuclear arsenals around the world, including those of France, the United Kingdom, and China. The nuclear-weapon states must devote less effort to attacking the basic goal of nuclear disarmament and more effort to exploring the means by which this objective can be achieved.

No. 4. Negotiation at the earliest possible date of a verifiable—underline verifiable—permanent comprehensive ban on the testing of nuclear explosive devices, with emphasis on those words ''verifiable,'' ''permanent,'' ''comprehensive,'' and ''ban.''

No. 5. Increased transparency both of the size and disposition of existing nuclear arsenals around the world, along with the size and disposition of existing stockpiles of weapons-usable nuclear material, including so-called civilian material. The ability of the United States to monitor the ultimate disposition of its own nuclear materials in international commerce is badly in need of improvement, as the GAO recently concluded in its report ''U.S. International Materials Tracking Capabilities are Limited.'' That report was prepared at my request, also. The longer such shortcomings are permitted to exist, the sooner the NPT will find itself in the position of the emperor with no clothes.

No. 6. Strengthen both the capabilities and finances of safeguards implemented under the NPT. The Nuclear Proliferation Prevention Act, enacted last year as title 8 of the foreign Relations Authorization Act for fiscal years 1994 and 1995, Public Law 103–236, contains a sense of the Congress urging 24 specific improvements in these safeguards. As the author of those provisions, I intend to monitor closely U.S. efforts to advance these much-needed reforms in the months ahead.

No. 7. Reaffirmation of the prevention, not management, of proliferation as the foremost goal of U.S. nonproliferation policy.

I see a great deal of attention being directed to implementing military responses to proliferation. The more I see of these efforts, however, the more convinced I become that the best defense against such weapons is to redouble our efforts to prevent their proliferation in the first place. One single attack using a biological or nuclear weapon could destroy virtually any city anywhere, regardless of the best of defenses. Stopping proliferation is somewhat analogous to fighting cancer: A few ounces of prevention will yield many kilograms of cure.

Mr. President, in conclusion, even if these and other proposals were to be implemented today and even if the NPT is finally extended indefinitely, we will still have to live with a global nuclear weapons proliferation threat. I would prefer to address this threat, however, having a permanent NPT and these supplementary measures in my diplomatic tool kit rather than not having them.

Accordingly, I hope that all my colleagues will join me in supporting the amendment of my distinguished colleague from Delaware on behalf of an indefinite extension of the NPT. Let us just get on with the business of nonproliferation.

Mr. President, one additional remark. If we did not have the NPT, I think we would have to invent it. This is a group of 173 nations that gradually, over a series of 5 years, since back in the early 1970's, has come together to say that they forswear the development of nuclear weapons in return for our cooperation in the peaceful uses of nuclear energy. We have supported that. We have been actively pursuing that.

I do not believe that we need any more of these 5-year period reviews. I would like to see this extended indefinitely, and that is what the U.S. policy is trying to do as the 173 nations meet at the U.N. in New York next month, and I hope that they pass this as an indefinite extension of the NPT to show we are truly serious about this matter.

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

EXHIBIT 1

THE NUCLEAR NON-PROLIFERATION TREATY: STRENGTHS AND GAPS

(By Leonard Weiss)

I. INTRODUCTION

The evolution of a strong nonproliferation ethic in the world is, ultimately, the best stable long-term tool to prevent the spread of nuclear weapons. Such an ethic can stimulate, and is, in turn, stimulated by the creation of international institutions incorporating the notion of nonproliferation at their core. The Nuclear Non-Proliferation Treaty[1] (NPT), despite the confused philosophy of its provenance, has become such an institution and has demonstrated its value especially during the past few years. It remains, however, a flawed institution that requires considerable tending to, including constant efforts to obtain a consensus of its parties concerning evolving interpretations of its provisions in order to maintain its effectiveness as a nonproliferation tool, if not its survival altogether.

It should not come as a surprise that the Treaty is an imperfect nonproliferation instrument. It was created in response to nonproliferation concerns arising from burgeoning nuclear trade accelerated by a misguided atoms-for-peace policy, trade promoted aggressively by nuclear policymakers, technocrats, and diplomats whose visions of nuclear technology-generated prosperity obscured the very real national and international security problems being created. Those problems, when they emerged, seem to have been viewed as much in terms of the threat to future nuclear commerce as they were in terms of the threat of life. Accordingly, the Treaty was designed to endorse and encourage the spread of nuclear technology for peaceful purposes at the time it was to constrain, indeed prevent, the development and manufacture of nuclear weapons.

The incompatibility of these aims became apparent after the Treaty went into effect in 1970 as some nuclear suppliers, particularly Germany and France (one an NPT party and the other pledged at the time to act as an NPT party) prepared to export technology and equipment for production of fissionable material, albeit under safeguards administered by the International Atomic Energy Agency (IAEA), to countries that either were not NPT parties and were embarked on secret military programs to develop nuclear weapons (Pakistan and Brazil) or were NPT parties whose nonproliferation credentials were suspect at the time (South Korea).

What followed over the next few years, and is continuing today, was the development of other institutions outside NPT designed to patch the omissions, ambiguities, ill-conceived constraints and other flaws in the Treaty. Thus, we now have nuclear supplier agreements, bilateral agreements, national and multinational export controls, national technical means of surveillance and international intelligence links, and positive and negative security assurances to assist us in keeping genie in the bottle. These tools, along with the NPT and the associated IAEA safeguards system, are referred to, collectively, as the nuclear nonproliferation regime, a regime that is still evolving in the direction of greater effectiveness, but is not yet at the point where any of the nuclear weapon states would be prepared to put their nuclear arsenals aside with confidence.

Footnotes at end of article.

Why is this so, and why has it been necessary to create all these auxiliary tools to combat proliferation? What have we learned over the past 25 years that, had we known it in the 1960s, would have enabled us to construct a better NPT and a better safeguards system? And, in the end, does it matter, i.e., would a stronger NPT enable us to rely for our security on this institution?

## II. A REVIEW OF THE MAJOR ELEMENTS OF THE TREATY

### *A. Articles I and II*

Article I mandates that each nuclear-weapon-State Party to the Treaty may not transfer to any recipient nuclear weapons explosive devices or control over such weapons or explosive devices directly or indirectly; and may not in any way assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or to obtain control over such weapons or explosive devices. Article II prohibits non-nuclear-weapon-States from receiving those things which weapon-States are prohibited in Article I from giving, and are specifically prohibited from manufacturing or otherwise acquiring nuclear explosive devices.

The first problem with Articles I and II is that it is unclear what constitutes ''assistance'', ''encouragement'', or ''inducement'' to a non-nuclear-weapon-State; the second problem is that it is unclear what constitutes ''manufacture'' of a device; the third problem is that it is unclear what constitutes a nuclear device because there is no consensus on the definition of a nuclear explosion; and the fourth problem is that there is no prohibition on a non-weapon-State assisting another non-nuclear-weapon-State to acquire nuclear weapons.

George Bunn and Roland Timerbaev, who were among the negotiators of the text of the NPT, have written on the question of what constitutes ''manufacture''[2], and quote the testimony of the Chief of the American delegation, William C. Foster, before the Senate Foreign Relations Committee. Foster said that ''the construction of an experimental or prototype nuclear explosive device would not be covered by the term 'manufacture' as would be the production of components which could only have relevance to a nuclear explosive device''. He also made reference to ''activities'' by a non-weapon-State that would ''tend'' to put the Party in noncompliance of Article II if the purpose of those activities was the acquisition of a nuclear explosive device.[3]

In order to allay concerns about how one would determine the purpose of certain fuel cycle activities that could be peaceful or weapons-related, Foster added that: ''Neither Uranium enrichment nor the stockpiling of fissionable material in connection with a peaceful program would violate Article II so long as those activities were safeguarded.'' The reference to safeguards in his statement is immaterial, because if a program is, indeed, peaceful, then there is no violation of Article II even if the activity is unsafeguarded. (In that case, the Party would be in noncompliance with Article III, but that is another matter). This points up a problem that runs throughout the NPT—lack of definitive interpretation. Bunn/Timmerbaev write that the Foster criteria for manufacture have generally been accepted as authoritative interpretations by historians of the NPT negotiations, but whether all current Parties to the NPT would agree with those interpretations is unclear. It is important to note that until the Iraq situation arose, there was no indication that many of the Parties to the NPT viewed the International Atomic Energy Agency as an appropriate verification instrument to ensure that non-nuclear weaponization activities weren't being carried out. Indeed, there were debates in the past as to whether IAEA inspectors were obligated to report any untoward activities they observed (e.g., noting the presence of bomb components such as machined hemispherical metal shells somewhere on the premises) that were unrelated to the negotiated safeguards agreement.

However, the Iraq situation and the South African decision to abandon its nuclear weapons program has allowed the IAEA to put its toe in the water on non-nuclear weaponization activities. In the case of Iraq, the agency has been provided information by the U.N. Special Commission (UNSCOM) regarding the Iraqi program and in the case of South Africa, the IAEA was invited to examine with full transparency the scope, nature, and facilities of the weapon program after dismantlement. This included some non-nuclear weapon components. This coupled with the acceptance by the NPT members of the IAEA's ability to do ''special inspections'' in the wake of the Gulf War is a start toward significant reform.

By contrast, one may also note that the U.S./North Korea Framework Agreement makes no mention of any non nuclear weaponization activities or the disposition of any weapon components that North Korea may have manufactured, and the IAEA considers North Korea not in compliance with its safeguards obligations because of its failure to allow inspection of two nuclear waste sites. Ostensibly, if North Korea were to allow these inspections and the result were to show that all the plutonium in North Korea can be accounted for, North Korea would then be considered by the IAEA an NPT Party in good standing since there are not other allegations officially pending regarding its NPT commitments.

Since the existence of a North Korean nuclear weapons program in an assumption shared by most observers of the scene, it is hard to believe that some weapon components have not been manufactured by North Korea. However, it appears that the IAEA will ignore this possible violation of the NPT, at least for the time being, until it can account for all the nuclear material in North Korea.

Another issue concerning manufacture is that of R & D, particularly design information. Japan, in 1975, submitted a paper to the Geneva Disarmament Conference arguing that the NPT does not explicitly prohibit weapons-oriented R & D short of actual production of nuclear explosive devices.[4] In rebuttal, much has been made of a statement made by the drafters during the NPT negotiations that receipt by a non-weapon-State of ''information on design'' of nuclear explosives is barred by virtue of the probibition on assistance in the ''manufacture'' of such explosives[5]; however, it is unclear whether this can be extended to prohibit a non-weapon-State from doing its own design without external assistance.

It is a stretch to argue that the Foster criteria barred such activity based on an assumption that the only purpose of design is to acquire a nuclear explosive device. Some years ago, Los Alamos asked some recently hired young physicists with no weapons background to design a weapon based on the open literature to see if it could be done and thereby to gauge the possible extent of proliferation by this route. The purpose of the activity was not to manufacture nuclear weapons. The Treaty's vague language on ''manufacture'', unless appropriately interpreted, would appear to allow anyone to design weapons using the Los Alamos experiment and rationale without violating the Treaty.

Once again, however, even if the Treaty were to be air tight on this issue, verification of compliance would be virtually impossible.

It is evident the Foster criteria do not settle the question of what constitutes ''manufacturing''. The criteria also don't settle some other important questions that arise from consideration of the safeguards regime. Such consideration will also reflect on the question of what constitutes direct or indirect assistance or encouragement to manufacture or otherwise acquire nuclear weapons which are discussed in a later section.

### *B. Article III*

Article III has four parts. Article III.1 begins by requiring Non-weapon-State Parties to accept safeguards, ''as set forth in an agreement to be negotiated and concluded'' with the IAEA in accordance with the IAEA's statute and safeguards system, ''for the exclusive purpose of verification of the Parties' NPT obligations with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons''.

The remainder of Article III.1 states that safeguards procedures shall be followed with respect to all source or special fissionable material in all peaceful nuclear activities within the territory of the State, under its jurisdiction, or carried out under its control anywhere.

Note that while there is nothing in this language explicitly referring to the effectiveness of safeguards, effectiveness is to be inferred from the context. That is because the Treaty cannot be an effective non-proliferation instrument if it allows equipment, material, and technology that could be used for nuclear explosive purposes to be transferred with ineffective safeguards attached. Unfortunately, this point was not explicitly addressed by the drafters, and the question of the relationship of trade to effectiveness of safeguards (as opposed to the mere attachment of safeguards) has accordingly become a contentious issue.

In their deconstruction of the language of Article III.1, Bunn/Timerbaev argued that Article III.1 authorizes the IAEA to verify that non-nuclear components for nuclear weapons are not being manufactured.[6] It would not be a difficult case to make if the Article did not contain so much emphasis in connecting safeguards to nuclear materials rather than equipment (either nuclear or non-nuclear). As a result, Bunn and Timerbaev lean part of their argument on an interpretation of the phrase stating the purpose of safeguards as ''verification of the fulfillment of (the State's) obligations assumed under this Treaty with a view to preventing diversion of nuclear energy * * *'' Bunn and Timerbaev connect the clause ''with a view to preventing diversion * * *'' to the State's obligations under the Treaty not to manufacture weapons, but an equally if not more plausible interpretation is that the antecedent of this clause is safeguards, and that the clause has been added to provide focus as to how safeguards relate in a practical way to the State's NPT obligations. (Indeed, under the Bunn/Timerbaev interpretation, Article III.1 would put States under an NPT obligation to establish effective physical security over nuclear materials. That it does not was recognized and remedied by the voluntary (!) Physical Security Convention developed by the IAEA and adopted by many (NPT and non-NPT) countries with nuclear programs).

This is not to say that a case can't be made for safeguards applying to non-nuclear weaponization activities, and Bunn/Timerbaev have made the best case possible. It is just that the emphasis in Article III on material safeguards along with the history

of safeguard negotiations and agreements provide no confidence that a majority of members of the IAEA that are State Parties to the NPT share this broad view of safeguards. Taking the broadest view of the stated purpose of safeguards as ''verification of the fulfillment of a (Non-weapon-State's) obligations'' under the NPT could arguably subject to inspection the agreements and arrangements by which non-weapon-States allow weapon-States to place nuclear weapons on their territory (Inspections of the agreements could ensure that there were no protocols under which transfer of authority or control over the weapons could take place). Whether the weapon-States would agree to have the IAEA inspectors examine these arrangements is, one suspects, more than problematical.

*Article III.2*

This Article provides that suppliers Party to the Treaty shall not provide nuclear materials or equipment for processing, use or production of such materials to a non-weapon-State unless safeguards are attached. Over a period of years, it became apparent that a more detailed and finer screen for nuclear transfers than this had to be devised in order to ensure uniformity of compliance by suppliers. The result was the so-called ''Zangger'' list of nuclear items to which safeguards must be attached, and, more recently, a list of dual-use items requiring safeguards as well. In addition, the Nuclear Suppliers Group (NSG) has identified nuclear export items requiring consideration of ''restraint'' and ''consultation'' before the item is sent.[7]

*Article III.3*

This Article is designed to ensure that safeguards arrangements will not intrude on the ability of non-weapon-States to obtain assistance for or otherwise develop their nuclear energy activities. It references Article IV which has been the basis for many complaints over the years regarding the policies of the suppliers, particularly the U.S. Article III.3 reflects the mindset of the nuclear establishments and the non-weapon-States at the time of the drafting of the Treaty, which was that the Treaty was also to be an instrument for facilitating international nuclear commerce. This mindset resulted in a safeguards system that was designed more for its nonintrusiveness than for its effectiveness. This is still a problem despite the improvements in the wake of the Gulf War.

*Article III.4*

Provides for a timetable by which States Party to the Treaty must enter into appropriate safeguards arrangements. This timetable has not been met many times in the past, but the most egregious example was that of North Korea, which took six years to enter into a safeguards agreement with the IAEA. No sanction was imposed on North Korea or other violators of this provision.

The Safeguards System of the IAEA

The IAEA was established in 1957 in the wake of the U.S. Atoms-for-Peace initiative and began operating an inspection program in the early 60's designed to detect diversions of significant quantities of nuclear material. The NPT expanded the scope of the agency's work significantly, and in response, the IAEA developed a model safeguards agreement for NPT Parties contained in the document INFCIRC/153.

In this document, the IAEA states that the goal of safeguards is the prevention of proliferation by ''the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other explosive devices or for purposes unknown, and the deterrence of such diversion by the risk of detection''.

This was adopted in 1970 at a meeting of the so-called Committee of the Whole which deliberated for 11 months before the text of INFCIRC/153 was approved. Mr. Rudolph Rometsch was the head of the IAEA's Department of Safeguards at the time, and he was recently quoted in an interview saying that the 1970 Committee meeting led to ''a sort of dogma for field work—if not to a taboo. It was a question whether inspection should be designed also to detect undeclared facilities. The conclusion was clear at the time: looking for clandestine activities was out of the question and the inspection system was designed accordingly''[8].

Thus, inspectors paid attention only to activities or structures within defined strategic points, and were discouraged from asking questions about anything else lest they become persona-non-grata with the State (which had the right to refuse an inspector) and perhaps ultimately at IAEA headquarters.

INFCIRC/153, in addition to laying out the obligation on the part of the State to have safeguards apply to all its peaceful nuclear activities (so-called ''full scope safeguards''), also stresses the importance of protecting industrial and commercial secrets, not interfering in peaceful nuclear activities, and not hampering economic and technological development in the safeguarded state. This is in keeping with the Agency's dual role. Its charter makes it a promoter of nuclear energy at the same time it is to verify that no diversions have taken place.

As a result, much negotiation follows the signing of the main Safeguards Agreement between the IAEA and the State to be inspected. The main agreement is followed (ostensibly within 90 days) by Subsidiary Arrangements that specify what the Agency and the State have to do in order for safeguards to be applied. Nuclear installations must be listed, and requirements for reporting to the Agency are specified in negotiated detail. These subsidiary arrangements are not published.

The most specific safeguards documents are the facility attachments to the Subsidiary Arrangements. These state exactly what will be done at each facility containing nuclear material, and lay out the ''Material Balance Areas'' the Agency will establish for accounting purposes. The flow of nuclear material across these areas must be reported to the Agency. The facility attachments also specify the points at which measurements can be taken or samples withdrawn, the installation of cameras, the access to be afforded to inspectors, the records to be kept, and the anticipated frequency of inspections. These negotiated arrangements are also not published.[9]

Some years ago, the Agency developed internally a set of technical objectives that provide a guideline for determining the level of inspection and reporting that would ensure that, at least for declared facilities in an NPT State, the goal of timely detection by any diversion of a significant quantity of nuclear materials would be met. Concern by inspected States about intrusiveness has resulted in negotiated safeguards agreements that do not come close to meeting these technical objectives, and therefore cannot be said to be producing effective safeguards by any objective criterion. Inspected States have also leaned on the Agency to not even exercise its full rights under the Agreements. In some cases, the Agency itself refrains from exercising its full rights in order to conserve resources.

This is a basic problem in that the IAEA's safeguards agreements do not provide for the agency to inspect any location—declared or undeclared—at any time (outside of regularly scheduled routine inspections) without some evidence that the site should be subject to inspection. Nor do the agreements provide for IAEA inspectors to verify use of any material formally exempted from safeguards. Thus, when inspectors doing a routine inspection in Iraq before the war were asked about buildings adjacent to an Iraqi reactor, they were told it was used for nonnuclear research. Since they were undeclared sites and IAEA had no evidence of suspect activity, the agency had no basis to inspect the building, which, as it turned out, contained a radiochemical laboratory used for research on plutonium separation.

Furthermore, the safeguards agreements ensure that there is no such thing as a surprise inspection, even though, in principle, IAEA has the right to make ''unannounced'' or short-notice inspections. Routine inspections must provide the state with at least 24 hours notice, and IAEA must advise the State periodically of its general program of announced and unannounced inspections, specifying the general period when inspections are foreseen. Hence, States generally know when and where inspections will occur, and in any case, have control over the timing of admission of inspectors to the country and to the facility.

The Gulf War has produced a situation where the IAEA has successfully used its authority to conduct special inspections in Iraq backed up by U.N. authority, and has received voluntary offers from a number of states to allow such inspections of declared or undeclared facilities. One of those states was North Korea, which afterward withdrew its offer after the agency demanded to inspect two sites the North Koreans didn't want inspected. Those sites will be inspected at some time in the future (at least 5 years) under the U.S./North Korea framework agreement, which has the unfortunate effect of leaving the agency holding the bag despite its claims of access.

The IAEA has also not resolved the problem that it cannot verify the peaceful use of nuclear materials exempted by the agency from inspection. Such materials may involve (1) special fissionable material in gram quantities used for instrumentation; (2) nuclear material for production of alloys or ceramics in non-nuclear applications; (3) plutonium (Pu) of a certain isotope concentration (e.g., high in Pu–238); or (4) limited quantities ranging from 1kgm of Pu to 20 tons of depleted uranium. Iraq used an exemption for a spent fuel assembly to conduct research on separating plutonium without informing the agency. The agency had no authority to routinely verify what Iraq said it was doing with the spent fuel assembly.

It should be emphasized that the IAEA's problems are not only with the Iraqs of the world. It has problems with many states who are not suspected of weapons development. As Lawrence Scheinman has pointed out; ''Over the past twenty years, the Agency has experienced restraints on its right of access, on the intensity and frequency of inspection efforts, and even on the extent to which it could exercise its discretionary judgment in planning, scheduling, and conducting inspection''[10].

To this should be added that the Agency's technical objectives are themselves unrealistic because they are based on ''significant quantities'' of fissionable material that are at least twice as large as the amounts that a non-weapon-State might need to construct its first nuclear explosive device.

Why doesn't the IAEA lower the amount it considers a ''significant quantity''? Because inspections would then have to be more frequent and more intrusive, and the agency

currently has neither the financial nor the political support to make this move.

Raising the financial question exposes the agency's ''dirty little secret''. Because safeguards are supposed to be applied nondiscriminatively, much of the Agency's safeguards budget goes to safeguards in Germany, Japan, and Canada, while the largest current proliferation concerns are elsewhere. The agency, which has been on a zero-growth budget for the better part of a decade, attempts to address its budget problems by slacking off on some inspections of facilities it considers not of proliferation concern. But in so doing it converts its nondiscriminatory character to the status of myth and risks internal political turmoil. It cannot help this because the cost of safeguarding bulk-handling nuclear facilities such as enrichment, reprocessing, or fuel fabrication plants is enormous, requiring, in most cases, on-site location of inspectors and much better instrumentation and measurements. While the IAEA has only been required to safeguard small reprocessing plants thus far, the ability of the agency to safeguard effectively (leaving aside the expense) a commercial scale reprocessing plant, such as the one being built at Rokkasho in Japan, has been called into question by many people over the years. A very interesting analysis done by Marvin Miller[11] for the Nuclear Control Institute shows that, for a reprocessing plant with an 800 tonne/yr. capacity and an average plutonium content of 0.9%, with a (±1)% uncertainty in the input measurement of plutonium (and assuming this dominates the error in measuring MUF); and with a material balance calculation done once a year, the absolute value of the MUF variance (i.e., the error in measuring MUF) will be 72 kgm/yr. In that case, the minimum amount of diverted plutonium that could be distinguished form this measurement ''noise'' with detection and false alarm probabilities of 95% and 5% respectively is 246 kgm or more than 30 significant quantities.

No other conclusion is admissible than that ''timely detection'' of plutonium diversion from a reprocessing plant is an oxymoron. This problem was recognized during consideration of the Nuclear Non-Proliferation Act (NNPA) of 1978 where the concept of ''timely detection'' of a diversion was translated into the concept of ''timely warning'' of weapons development or construction. The intent of the authors was that, from a technical point of view, timely warning was unavailable in the case of plutonium diversion if it is assumed that the non-nuclear elements of the bomb have been constructed or assembled a priori. The NNPA provided that the President could still allow U.S.-origin spent fuel to be reprocessed in a foreign country if political factors make the risk of proliferation sufficiently low even though ''timely warning'' of weapons construction would not be available to the United States. Not wanting to admit that reprocessing, especially commercial scale reprocessing, was a dangerous, not effectively safeguardable, activity, Reagan Administration officials boldly and falsely interpreted the NNPA language as incorporating political factors into the definition of timely warning, thereby depriving the concept of any objective meaning. (See [12] for a full discussion of the history of the ''timely warning'' criterion in the NNPA).

In like manner, the IAEA insists that bulk-handling facilities can be effectively safeguarded, but Miller's analysis shows that this is not the case, and if the definition of a ''significant quantity'' of plutonium were to be changed (i.e., the amount lowered), the inability to do ''timely detection'' would become still worse.

The response to these practical problems from within the agency has been dismaying. Some have advocated lowering the technical objectives, i.e., moving the goalposts so that effectiveness of safeguards couldn't be so easily challenged.

To be sure, the agency has been chastened by its Iraq experience, and is currently crafting a new safeguard approach that aims to detect tiny amounts of fissile material through environmental monitoring techniques such as wall swabs and water samples. This will undoubtedly raise the cost of safeguards and it remains to be seen how well these proposals will be received by the members of the IAEA and the signatories of the NPT.

Back in 1981, when the Reagan Administration was formulating its non-proliferation policy, the Department of Defense, in an interagency memo, expressed concern about the IAEA's ''susceptibility to Third World * * * politics, its lack of an intelligence capability and the limits of its scope and jurisdiction''. While some of this complaint is being addressed in the wake of the Gulf War (the IAEA is considering how to use intelligence information brought to it by member States), the Pentagon's 1981 warning ''against undue reliance on the IAEA by those responsible for national security'' within the U.S. government has as much resonance today as in 1981 and will continue especially for as long as production of fissile materials continues.

*C. Article IV*

This article incorporates, in paragraph 2, one aspect of ''the NPT bargain'' in which non-weapon-States Party to the Treaty, in return for their adherence, ''have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful use of nuclear energy''. The same paragraph also calls on parties of the Treaty to cooperate in contributing ''to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world''.

In past years, the major complaints about the NPT by non-weapon-States have centered on this Article. these complaints range from a generic one that the technologically advanced States have not provided technical assistance or have not sufficiently shared their nuclear know-how with others, to specific complaints that the Nuclear Suppliers Group, and especially the United States, in seeking to control nuclear and dual-use exports or to exercise consent rights in nuclear agreements, are engaged in willful and systematic violation of Article IV.

There are a number of things to say about this. First, Article IV does not modify the requirements of Articles I and II not to assist or receive assistance respectively in the manufacture of nuclear explosive devices. Second, as indicated earlier, verification of NPT obligations under Article III ''with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons'', cannot be effectively carried out at this time for enrichment and reprocessing facilities under the safeguards system that is the instrument for the implementation of Article III.

Accordingly, the transfer of facilities, equipment, or technology to a non-weapon-State for the production of highly enriched uranium or plutonium should be interpreted as not in keeping with Article III's implicit qualification that effective safeguards must be applied to all peaceful nuclear activities. Otherwise, nuclear-weapon-States making such transfers could find themselves in violation of Article I, and the NPT would become an instrument for proliferation.

Indeed, it is apparent that some States—Iraq, Libya among them—signed the NPT because they saw Article IV as a possible route to obtaining nuclear weapons-related technology and equipment.

To date, there has been no formal resolution of the argument over Article IV, but one can interpret the Nuclear Suppliers Agreement to exercise restraint in nuclear trade involving export of reprocessing or enrichment technology as recognition that Article IV should not be interpreted as liberally as it appears to read. Unfortunately, the potential recipients of such trade do not accept this tightened interpretation, and were it not for the fact that the economics of the back end of the fuel cycle have become so egregious, the argument might well be as loud today as it was in 1977 when the Carter Administration began moving away from the earlier policy of relatively unrestricted nuclear trade.

It is ironic that the Carter Administration and the U.S. Congress were roundly denounced in 1978 for requiring, in the NNPA, that Full Scope Safeguards be a nuclear export criterion. With few exceptions, the nuclear suppliers refused to go along despite the inferral that their opposition meant they put export profits above support for the NPT. Eventually all came around and adopted the criterion themselves, but it took the Gulf War to do it.

Finally, it is unfortunate, if understandable, that Article IV is so fixated on nuclear technology cooperation. Assuming the need for tangible incentives to produce NPT signatories in the first place a much better NPT would have resulted if Article IV had made cooperation in every development (not just nuclear) the quid pro quo for an NPT signature. That way, the fight over Article IV might have been avoided, and it would have made the phrase ''with due consideration for the *needs* (emphasis added) of the developing'' world more trenchant.

*D. Article VI*

Article VI expresses the second part of the ''NPT bargain'' (Article IV expresses the first part). In this Article, ''each of the Parties to the Treaty (especially including the weapon-States)'' undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament under strict and effective international control''.

Let us begin by noting that, at least in quantitative terms, the nuclear arms race, as usually defined, that included the U.S., the Former Soviet Union, Great Britain, and France is over. None of these countries is increasing their stockpile of nuclear arms (that may also be true of China, but evidence is not forthcoming). If one defines the nuclear arms race as including weapons modernization, even if the numbers aren't going up, then the race may not yet be over. It is to this issue that a Comprehensive Test Ban Treaty (CTBT) is most relevant, not to mention the fact that a CTBT is referenced in the Preamble to the NPT. Without testing, radical new designs of nuclear weapons are problematical, although simulation codes are now very highly advanced. Therefore, the insistence by some non-weapon-State Parties of the NPT that a CTBT be a short-term goal of the NPT weapon states to fulfill part of their Article VI responsibilities is not unreasonable. A CTBT would have other non-proliferation benefits in that it would raise the political barriers to overt testing by nuclear states not Party to the NPT. Thus, the NPT is playing a useful role by providing a forum

and a rationale for those countries interested in having a CTBT to push the weapon-States, particularly the U.S., into a serious negotiation to formalize the current moratorium. Some members of the Treaty are taking the position that they will refuse to vote for indefinite extension unless and until further progress is made toward nuclear disarmament. Despite this threat, it is hard to escape the conclusion that if the Cold War hadn't ended, the prospect of a CTBT being completed in the near future, let alone substantial progress toward nuclear disarmament, would be poor despite the pressure on the weapon-States stemming from their desire for an indefinite extension of the NPT when the decision comes up at the 25-year Review Conference in April, 1995.

But the Cold War is over, and the U.S. now finds itself in the ironic position of possibly being outvoted on the extension issue by a group of countries who want progress in nuclear disarmament, perhaps don't mind at the same time discomfiting the weapon-States, and perhaps also enjoy the fact that many of them were asked by the U.S. to sign the NPT during the 80s despite their having no nuclear energy program or prospects whatsoever.

Could the NPT unravel over this issue? Hardly. There is no serious current prospect of any NPT Party leaving the Treaty or organizing a movement to terminate the Treaty. A majority vote to recess the Review Conference for one or more years while a CTBT is negotiated is possible. A limited extension of the Treaty is also a possibility, in accordance with the language of Article X (discussed in the next section). This limited extension (which could be for a very long time) could be divided into shorter periods with votes scheduled at the end of each such period to determine whether the Treaty should be extended into the succeeding period. It is conceivable that the start of each such period of extension could be made contingent on some requirement for a certain degree of disarmament by the weapon-States.[13]

The linkage of the extension vote to specific progress toward nuclear disarmament is believed by some to be a risky strategy. The latter is based on the threat of lowering political barriers to proliferation if the weapon-States don't take their obligations under Article VI more seriously, and there is no doubt that the weapon-States do not wish to see those barriers lowered. However, it can be argued that an indefinite extension provides confidence that allows the weapon-States to continue reducing their weapons stockpile, while a limited extension designed to push the weapons-States into faster progress could, if other political factors make accelerated progress impossible, have the perverse effect of putting a ceiling on progress precisely because of the fear that the Treaty might end and new nuclear powers might then emerge.

As of this writing (November, 1994), the U.S. does not have the votes to prevail on extending the Treaty indefinitely. It appears likely that, in the absence of some new factor in the debate, the Review Conference will either be recessed pending completion of CTBT negotiations or will vote for a long-term, but not indefinite, extension with periodic reviews of progress toward disarmament.

### *E. Article VIII*

This Article lays out the procedures for amending the Treaty. For a proposed amendment to be adopted, the text must first be submitted to the Depositary Governments (U.S., U.K., Russia) for circulation to all Parties to the Treaty. Then, if requested by at least one third of the Parties to the Treaty, a conference is convened to consider the amendment. Adoption occurs only if the amendment is approved by:

1. A majority of the Parties to the Treaty.
2. All nuclear weapon-States Party to the Treaty.
3. All Parties who, on the date of circulation of the proposed amendment, are members of the Board of Governors of the IAEA.

The amendment then goes into force for those Parties that have ratified it when a majority of the Parties to the Treaty have filed their instrument of ratification. Thus, approved amendments to the Treaty apply only to those Parties who wish to have them apply and have so indicated via ratification.

The remainder of this Article provides for the five-year Review Conferences that have taken place since 1970.

### *F. Article X*

This next-to-last Article of the NPT provides that after giving three months notice and an explanation, each Party has the ''right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of the Treaty, have jeopardized the supreme interests of its country''.

The Article also provides for the 25th year Review Conference to decide, by majority vote, whether the Treaty shall be extended indefinitely or for an additional fixed period or periods. As pointed out in a recent paper by Bunn, Van Doren, and Fischer[14], this language would allow for the NPT to be extended for an indefinite number of fixed periods unless a majority vote taken at the end of some fixed period were to terminate the Treaty.

It was the first paragraph of Article X that Saddam Hussein would have employed to leave the NPT after putting into place the infrastructure to build nuclear weapons. Since there is no presumption in the Article of sanctions for leaving the Treaty, the only real protection against the use of the treaty to gain technology, equipment, and materials that could be useful for weapons is to impose a set of multilateral (and unilateral) export controls on appropriate items with sanctions for violations of those controls. This, of course, files in the face of the philosophy of laissez-faire technology transfer embodied in Article IV, but is necessary if the nonproliferation regime is to be worthy of its name.

## III. CONCLUSIONS AND RECOMMENDATIONS

### *A. Strengthening the safeguards system*

We have already discussed the deficiencies of the system in conjunction with the discussion of Article III. To remedy those deficiencies would require the following (nonexhaustive) changes to the system:

1. The IAEA must require more transparency in the nuclear activities of its members. Among other things this should include a complete list of sensitive or dual-use items requiring export controls, and registry of trade in such items. This list should contain the union of those items brought to the table by IAEA members and not the intersection; and should cover all sensitive technologies, whether obsolete, current, or advanced.

2. The IAEA must have access to intelligence information obtained through national technical means concerning sites that may require inspection, and must have an unequivocal right to inspect such sites at short notice.

3. Safeguards should apply to nuclear plants and equipment as well as materials. INFCIRC/153 safeguards which apply to the entire fuel cycle of a non-weapon-State Party to the NPT, should be combined with the INFCIRC/66 safeguards, which address plants and equipment as well as material for non-NPT Parties. Any nuclear facility, whether it contains material or not should be subject to inspection on short notice.

4. Safeguards should also apply to uranium concentrates such as $U_3O_8$, not just to $UO_2$, and to nuclear wastes containing fissionable material.

5. A definition of effective safeguards should be adopted based on agreed measures of performance embodying appropriate technical objectives. That is the agency must be able to say that with a specified (high) degree of probability and a specified (low) false alarm rate, the diversion of a significant quantity of specified nuclear material will be detected withing a specified amount of time (depending on the material) which is well in advance of the time needed by the diverter to convert the material into a nuclear explosive device, assuming that all non-nuclear weapon-related activities have been carried out.

6. The amount of nuclear material in a ''significant quantity'' should be reduced by at least a factor of 2 in the case of both uranium and plutonium.

7. All States with safeguarded nuclear activities should be required to post a bond with the IAEA based on that State's GDP and the size and sensitivity of its nuclear program. Safeguards violations and other violations of IAEA regulations and NPT commitments, as well as a decision to leave the NPT should result in forfeiture of part or all of the bond.

8. Safeguards should be imposed on non-nuclear materials useful in manufacturing weapons such as Tritium, Lithium-6, and Beryllium.

9. Safeguards should be established over nuclear research and development activities and facilities.

10. The annual Safeguards Implementation Report of the Agency should be a public docment.

### *B. Interpreting the NPT to strengthen the regime*

The NPT, being a document negotiated among many people from different nations and with different political objectives and constraints, is inevitably a document of compromises, laced with imprecise language, nuanced meaning, and cognitively dissonant passages. Depending on how the Treaty is interpreted, it is either, as claimed, the core of the world's non-proliferation regime, or it is a tool for proliferants to hide their ambitions and legitimize their activities.

There are at least two main areas where the non-proliferation regime can be strengthened via an interpretation of the language of the NPT. The first involves the language of Article I requiring that each weapon-State NPT Party not in any way to assist a non-nuclear weapon-State to manufacture nuclear explosive devices.

As Eldon Greenberg[15] has pointed out, the negotiating history of the NPT does not permit one to conclude that simply because safeguards are applied to a nuclear transfer, then the transfer is legitimate. (Transfer of the components of an explosive device is prohibited even if safeguards are attached.) Moreover, the very real possibility that an NPT Party may be a proliferator in disguise makes it incumbent upon suppliers to make judgments about the ultimate use of exported technology and equipment. Such judgments could take into account the economic and technical need for the exported items.

Accordingly, it is at least arguable that the transfer of reprocessing equipment or technology to a non-weapon-State, because

such technology cannot be effectively safeguarded and exhibits no compelling economic need anywhere in the world, constitutes prohibited assistance under Article I.

Article I's language prohibiting indirect assistance by a weapon-State may also be interpreted as prohibiting nuclear assistance of any kind by weapon-States to non-weapon-States not party to the NPT, on the grounds that such assistance releases resources by those States that may be used in unsafeguarded nuclear programs—perhaps devoted in part to weapons development.

*C. Some flaws in the treaty that ought to be fixed*

1. The NPT does not forbid a non-weapon-State from possessing nuclear weapons. (It forbids the acquisition, but in theory a country which weapons could sign the NPT as a non-weapon-State and not give up weapons already made).

2. There is nothing in the Treaty that prohibits a non-weapon-State Party to the Treaty from assisting another non-weapon-State to manufacture or otherwise acquire the bomb.

3. The treaty should be clarified to ensure no challenge to the notion that safeguards includes the ability to search for non-nuclear activities relevant to bomb-making, including R&D. To ensure that this doesn't convert the IAEA into a university on weapons design, only inspectors from current or former weapon-States should be involved in this activity.

4. The Treaty does not require the IAEA to verify the obligation of a non-weapon-State not to receive assistance in the manufacture or acquisition of nuclear weapons.

5. The Treaty does not require the IAEA to verify that exports of nuclear hardware by NPT suppliers to non-weapon-States are carrying safeguards.

6. The Treaty does not define the point at which one can say that construction of a nuclear explosive device has begun. The Foster criterion relating ''manufacture'' to construction of a component having relevance only to a nuclear explosive device could constitute such a definition. In that case, activities involving machines capable of creating such components could become subject to special inspections.

7. The Treaty does not prohibit a non-weapon-State from using nuclear energy for military purposes but is unclear as to permitted ''military uses'' that are exempt from safeguards. In his recent book, David Fischer[16] posed questions as to whether a non-weapon-State could build a reactor, claim it is the prototype of a naval reactor and thereby exempt its fuel from safeguards. Likewise a State could withhold material from safeguards upon becoming an NPT Party by claiming (to itself—it has no obligation to inform the IAEA) that the material is for a permitted military purpose. Finally, the Treaty appears to allow a ''military'' enrichment plant whose output is only for naval reactors to be unsafeguarded, and the Treaty appears to allow unsafeguarded nuclear exports for permitted military use.

8. The Treaty's language in Article III.3 has been used to support arguments against making safeguards more intrusive. The Treaty should state as a principle that whenever a conflict occurs between effective safeguards application and compliance with Article IV, resolution in favor of effective safeguards shall govern.

9. The Treaty does not embargo transfers of sensitive equipment, materials or technology—but it should whenever effective safeguards do not apply.

10. The Treaty does not provide for sanctions for violators or for withdrawal from the Treaty.

11. The Treaty is difficult to amend, but worse than that, only those parties ratifying the amendment are subject to it.

12. The Treaty does not preclude possession and stockpiling of plutonium or highly enriched uranium by a non-weapon-State, regardless of economic or technical justification or the effectiveness of safeguards.

13. The Treaty does not preclude nuclear trade with States not Party to the NPT.

14. The Treaty's provision on withdrawal does not provide for any disposition of nuclear assets or payment for nuclear assistance received by the withdrawing State by virtue of its NPT membership.

*D. What should be our level of reliance on the NPT as a security measure?*

As stated at the outset, there is no question that the NPT has been a valuable institution. It has helped create a non-proliferation ethic that has raised the political barriers, at least in democratic States, to overt proliferation. It has played a useful role as an anchor or central element in all the discussions about security with the Newly Independent States and other States in Eastern Europe. It provided an outlet for U.S./Soviet cooperation during the days of the Cold War that made it more difficult for each side to demonize the other and thereby lowered the risk of war. It has provided an outlet for countries desiring to play a role on the world stage in disarmament to do so without becoming weapon-States themselves. It provided a way for South Africa to give up its weapons program with a minimum of lingering doubt and suspicion because of IAEA verification, and it provided a basis for dealing with the North Korean weapons program.

On the other hand, the NPT has also has been a convenient political cover for countries known to be interested in acquiring nuclear weapons, played no essential role in turning around the past South Korean and Taiwanese clandestine weapons programs, did not produce an appropriate response to Iraq's weapons program until after Saddam Hussein invaded Kuwait and was militarily defeated, and provides no restraint on the stockpiling of weapons materials by any State as long as they are under safeguards.

Since many of its adherents joined because of the promise of technical assistance and technology transfer, the Treaty does not incorporate any nuclear trade restrictions, leaving it to the suppliers alone to decide what should or should not be transferred.

And in the end, the ability to leave the Treaty with 90 days notice means that there is no essential barrier to a country, with the technological known-how to build weapons, and that sees nuclear weapons as its best option for enhancing its security, from proceeding to build them.

Even if the Treaty and the safeguards system had been originally constructed with the needed reforms discussed in this paper, its implementation would still ultimately depend on the resolve of the international community acting through the Board of Governors of the IAEA (which occasionally has a proliferator as Chair) and the UN Security Council.

Nonetheless, the warts exhibited by the Treaty and its still evolving safeguards system do not vitiate the political value of the nonproliferation norm that has been nurtured by the Treaty and the rest of the nonproliferation regime—the nuclear weapons free zones, the Tlatelolco and Rarotonga Treaties, the export control laws and agreements (both multilateral and unilateral), and other instruments.

In sum then, the Treaty cannot be a substitute for measures one might otherwise take in protecting one's security. And without reform it does not provide a good model for dealing with proliferation threats other than nuclear, such as chemical, biological, or missile, but it is an important adjunct whose absence would raise current anxiety levels about the spread of weapons of mass destruction.

FOOTNOTES

[1] Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

[2] George Bunn and Roland M. Timerbaev, ''Nuclear Verification Under the NPT'', PPNN Study Five, Mountbatten Centre for International Studies, University of Southampton, England, 1994.

[3] Remarks Submitted by William C. Foster, Hearings before the Senate Committee on Foreign Relations, July 10, 1968.

[4] Working Paper submitted to Geneva disarmament conference by Japan: Arms Control Implications of Peaceful Nuclear Explosions, CCD/454, July 7, 1975, ACDA Documents on Disarmament, 1975.

[5] Bunn and Timerbaev, Op. Cit.

[6] Bunn and Timerbaev, Op. Cit.

[7] Nuclear Export Guidelines adopted by 15 Governments, January 11, 1978, IAEA Doc. INFIRC/254, February, 1978.

[8] Interview with Rudolph Rometsch, IAEA Bulletin, Vol. 36, No. 3, p. 14, 1994.

[9] U.S. General Accounting Office Report GAO/NSIAD/RCED–93–284, ''Nuclear Nonproliferation and Safety: Challenges Facing the International Atomic Energy Agency'', September, 1993.

[10] Lawrence Scheinman, ''Assuring the Nuclear Non-Proliferation Safeguards System'', Atlantic Council, Washington, D.C., October, 1992.

[11] Marvin Miller, ''Are IAEA Safeguards on Plutonium Bulk-Handling Facilities Effective?'', Nuclear Control Institute, Washington, D.C., August 1990.

[12] Leonard Weiss, ''The Concept of Timely Warning in the Nuclear Nonproliferation Act of 1978'', Report (dated April 1, 1985), Congressional Record, pp. S2639 and S2646, March 21, 1988; also appendix to testimony delivered by Senator John Glenn to Senate Foreign Relations Committee, December 15, 1987; to appear in Nuclear Nonproliferation Factbook, prepared by Congressional Research Service of the Library of Congress for the Senate Committee on Governmental Affairs, 1995.

[13] Eldon Greenberg, ''Opportunities for Improvement of the NPT Regime'', Nuclear Control Institute, Washington, D.C., August, 1990.

[14] George Bunn, Charles Van Doren, and David Fischer, ''Options and Opportunities: The NPT Extension Conference of 1995'', PPNN Study No. 2, Mountbatten Centre for International Studies, University of Southampton, England, 1991.

[15] Eldon Greenberg, ''The NPT and Plutonium'', Nuclear Control Institute, Washington, D.C., May, 1993.

[16] David Fischer, ''Towards 1995: The Prospects for Ending the Proliferation of Nuclear Weapons,'' Dartmouth Publishing Co., Vermont, U.S.A., 1993.

Mr. NUNN. Mr. President, I am pleased to join my two distinguished colleagues, Senators ROTH and GLENN, and the other original cosponsors in urging the adoption of the sense-of-the Senate language on the unlimited and unconditional extension of the Nuclear Non-Proliferation Treaty at the upcoming renewal session beginning next month. The importance of the treaty to U.S. nonproliferation efforts can hardly be exaggerated. The Committee on Governmental Affairs held a hearing on Tuesday of this week, with a panel of distinguished witnesses, which served to highlight the strong bipartisan support for extension of the treaty. I urge my colleagues to support this important resolution of endorsement of the unlimited and unconditional extension of the NPT.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I say to the distinguished manager, we are ready for a voice vote on the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 338) was agreed to.

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

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 339

(Purpose: To state the sense of the Senate on South Korean trade barriers to United States beef and pork)

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, Mr. BYRD, Mr. MCCONNELL, Mr. LEAHY, Mr. GRASSLEY, Mr. KERREY, Mr. PRESSLER, Mr. BURNS, Mr. HARKIN, Mr. SANTORUM, Mr. SIMPSON, Mr. LUGAR, Mr. PRYOR, and Mr. CONRAD, proposes an amendment numbered 339.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 25, between lines 4 and 5, insert the following:

**SEC. 110. SENSE OF SENATE ON SOUTH KOREA TRADE BARRIERS TO UNITED STATES BEEF AND PORK.**

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

(1) The United States has approximately 37,000 military personnel stationed in South Korea and spent over $2,000,000,000 last year to preserve peace on the Korean peninsula.

(2) The United States Trade Representative has initiated a section 301 investigation against South Korea for its nontariff trade barriers on United States beef and pork.

(3) The barriers cited in the section 301 petition include government-mandated shelf-life requirements, lengthy inspection and customs procedures, and arbitrary testing requirements that effectively close the South Korean market to such beef and pork.

(4) United States trade and agriculture officials are in the process of negotiating with South Korea to open South Korea's market to United States beef and pork.

(5) The United States meat industry estimates that South Korea's nontariff trade barriers on United States beef and pork cost United States businesses more than $240,000,000 in lost revenue last year and could account for more than $1,000,000,000 in lost revenue to such business by 1999 if South Korea's trade practices on such beef and pork are left unchanged.

(6) The United States beef and pork industries are a vital part of the United States economy, with operations in each of the 50 States.

(7) Per capita consumption of beef and pork in South Korea is currently twice that of such consumption in Japan. Given that the Japanese are currently the leading importers of United States beef and pork, South Korea holds the potential of becoming an unparalleled market for United States beef and pork.

(b) It is the sense of the Senate that—

(1) the security relationship between the United States and South Korea is essential to the security of the United States, South Korea, the Asia-Pacific region and the rest of the world;

(2) the efforts of the United States Trade Representative to open South Korea's market to United States beef and pork deserve support and commendation; and

(3) The United States Trade Representative should continue to insist upon the removal of South Korea's nontariff barriers to United States beef and pork.

Mr. BAUCUS. Mr. President, this is a sense-of-the-Senate resolution urging the United States Government to remain firm in its effort to open the Korean market to American beef and pork exports. The United States has initiated a section 301 case on the issue, and this amendment will put the Senate on record in support of the USTR and our stockgrowers.

We have been a good friend to South Korea over the years. And South Korea has abundant evidence of our friendship.

Fifty-seven thousand Americans gave their lives in the Korean war. Today, nearly 40,000 American men and women are on the line of what is still one of the world's most dangerous regions. We are right to be there because our presence helps keep the peace in a critically important region.

We are also a critically important market for Korea. We Americans buy Korean cars, kim chee, semiconductors and more. In total $17 billion in imports from Korea in 1993, and more than that, almost $20 billion last year.

So we are good friends to Korea, but friendship works both ways. The least Korea can do is to be as open to our products as we are to theirs.

Beef is a perfect example. Today, American meat exports to Korea are blocked by a web of nontariff barriers.

Unscientific shelf-life requirements require chilled beef in Korea to be sold in very unrealistically short periods of time, combined with the Customs regulations that deliberately delay beef shipments at the ports, which creates a catch-22 situation, making it almost impossible to sell red meat in Korea.

If Korea would remove these barriers, the meat industry estimates that the return could be as much as $240 million this year alone and by the turn of the century, our meat exports would rise to $1 billion a year.

So the issue is simple: Ambassador Kantor is asking Korea to live by the standards that most trading nations already live by and that they have, as Koreans, accepted by their entry into the World Trade Organization.

Up to now, they have not done so. One barrier has been abolished simply to be replaced by others. We have been patient for years, and the time has now come to be firm.

We have, therefore, as Americans initiated a section 301 case on the issue, and history shows that when we have a good case—and we do—and we show that we are serious—and we are—section 301 cases get results.

This sense-of-the-Senate amendment will put us on record in support of that case and strengthen Ambassador Kantor and his negotiators in their effort. I hope our stockgrowers can count on the support of the Senate. I ask for support of this amendment.

Mr. BYRD. Mr. President, I am pleased to cosponsor this sense-of-the-Senate resolution on the question of Korean trade practices offered by the distinguished Senator from Montana [Mr. BAUCUS]. It encourages the United States Trade Representative to insist on South Korea's removal of unfair nontariff trade barriers to United States beef and pork products. The issue is, unfortunately, a familiar one in our trading relations with the Pacific—nontariff barriers to our trade, amounting to effective closure of their markets to our goods, regardless of tariff schedules, despite agreements to the contrary, flying in the face of our conception of free trade. The question of nontariff barriers, of closed market practices has bedeviled trade with Japan, and now is bedeviling our trading relations with Korea, as well as China.

The specific issue is the Korean market for United States chilled beef and pork products, a potentially lucrative market worth as much as $240 million in exports this year, and growing to the $1 billion annual range by the end of the century. The issue has festered since at least 1988 when American meat producers filed a petition concerning Korean discriminatory practices under section 301 of the 1974 Trade Act. American producers succeeded in getting proceedings in a GATT panel, and this resulted in three bilateral trade agreements, in 1989, 1990, and 1993. Then in 1994 the USTR did accept the section 301 petition brought by American meat and pork producers, alleging unjustifiable regulatory restrictions that effectively block their export products from the Korean market.

Now, Mr. President, what is the current result of nearly a decade of complaining, initiation of a 301 case, action under the GATT, extended negotiations, and the signing of several additional agreements? The director of the USTR's Asian division has informed my staff that as of today the total of United States imports into Korea of chilled pork is zero and red meat is minimal. The results are zero and minimal. This is America's fourth largest agricultural market, yet we cannot get meat into it, despite the signing of numerous agreements and constant negotiations. This dismal situation is not for lack of trying: USTR engaged the Koreans in consultation in mid-January, and resumed negotiations just this month. The negotiations just concluded have apparently failed to get

market access. What we are seeking is a specific timetable from the Koreans to eliminate what is obvious to both them and us as burdensome regulatory practices designed for the sole purpose of keeping United States meat products out of Korea.

It is time for the Koreans to settle this issue. We have asked for the Koreans to reform their current antiquated regulatory requirements, establish an interim system to go into effect immediately, letting United States products into their market, and to permanently revise their regulations according to a specific timetable. While the Koreans announced last September that they intend to reform their system, they have stalled on doing so. The Koreans, in the latest round of negotiations this month would not agree to the establishment of such an interim system that would allow trade to take place. The Trade Representative has recently announced that the United States is now prepared to take the case to the newly-formed World Trade Organization [WTO] for ''consultations'' on the scientific basis for Korean meat exclusions, opening up a second track of discussions and dispute settlement, if it comes to that. I strongly encourage this route, exposing the Korean practices widely in a multilateral forum, raising the visibility of the problem. It would serve as an excellent test case of the WTO dispute settlement procedures. What is the WTO for, I ask my colleagues, if not for this type of situation? Of course, at any time the Koreans can avoid that by providing us with an interim regime of market access.

Similar problems are being experienced with the Koreans in telecommunications equipment, with the Koreans refusing to certify an updated AT&T switch already operating in the Korean market in order for AT&T to compete in a new round of Korean procurement. Here again the discriminatory behavior is in violation of a United States-Korean bilateral agreement. The Koreans have had 2 years to investigate and certify the switch, but recently announced they would need another 70 weeks to test it. Seventy weeks. This is just plain delay, calculated to give a Korean-made switch more time to compete.

Similar situations have occurred in regard to other products, such as medical devices, bottled water, raisins, and candy. Let's take a recent example of chocolate. The Korean Minister of Health is refusing entry of five containers of Mars chocolate claiming insufficient label information, with new requirements never before announced. Several of the containers have been held since last December. The alleged missing information was not notified to either the United States or the World Trade Organization, and the resulting obstruction of trade is a violation of Korea's obligation under the WTO agreement to publish regulations affecting trade and administer them in a ''uniform, impartial and reasonable manner.'' We are getting nowhere fast with the Koreans on this matter either, which is resulting in substantial financial damage to an American company. Last week the Korean Government stiffed the United States Trade Representative's negotiators on the matter.

Korean behavior on United States trade is clearly reaching a level of concern which can affect our overall bilateral relationship. It is affecting, in my view, the strength, fairness, and durability of our relationship with South Korea. American national security, the health of our defense budget, and our ability to continue to honor our commitment to defend South Korea depends on our overall long-term economic health. Our economic health is dependent, to a significant degree, on good trading balances, and such balances have been consistently negative with North Asian countries, Japan, China, and to a lesser extent, Korea. Korea needs to understand that trade and mutual defense are a two-way street. First, on trade the United States is vital to Korean exports of automobiles, semiconductors, and other items, now approaching $20 billion in annual revenues to Korean manufacturers. Second, the Koreans expect us to come to their defense on a moment's notice, because we have made a commitment to do so. I expect the Koreans to be forthcoming, to lean over backward to accommodate our trade, to honor the agreements we have reached with them in the spirit with which they were intended—that is, to give United States products reciprocal access to the Korean market. In addition, obfuscation, stonewalling, and erecting baloney barriers to such access violates the spirit of our overall relationship, and by that I mean our overall security relationship. Economic health is fundamental to America national security, and fundamental to the continuation of a strong United States-Korean defense relationship.

I suggest that the officials with whom we have had such an excellent relationship with in the Korean defense establishment get in touch with the foot-draggers in the agencies stalling on United States trade and turn the lights on. The time is overdue for reciprocity on the part of Korea. I am going to watch closely for Korean agreement to set a specific timetable for allowing United States meat and pork into Korea, for allowing AT&T to compete in the 1995 Korean procurement cycle, for release of confectioneries from Korean ports to Korean store shelves, and in general for a change in attitude toward its most reliable defender. The United States is stationing nearly 40,000 of the 100,000 personnel we have deployed to the Pacific for the defense of Korea, we shed the blood of tens of thousands more against invasion from the north during the Korean war. Korea is considered one of the two so-called ''major regional conflicts'' around which we are basing the force structure and budget parameters of our defense budget. From what I am reading, the product with the best chance of gaining ready access to the Korean Peninsula is American troops, gladly accepted for the defense of Seoul. It is time for Korea to understand the critical importance of a healthy trading relationship, and it is time for Korea to treat the United States as an economic ally as well as a military ally.

I commend the Senator from Montana for bringing this matter to the Senate's attention. The Trade Representative is doing the best he can to cope with Korean behavior, and if he eventually needs the benefit of congressional pressure on nontrade matters, I am sure it will be available.

I also commend the Trade Representative on his recent success in regard to the progress he has made with the third of our north Asian trading partners, China. Late last month the USTR successfully negotiated an agreement with China to provide protection of intellectual property rights for United States companies and provide market access for such products. Just last week, he was able to conclude another agreement with the Chinese to gain Chinese compliance with a 1992 agreement for better access for nearly 3,000 different United States products over a period of several years. The Chinese did not fully comply with that accord, and now we have an agreement, apparently, to abide by the earlier agreement.

Mr. President, the Chinese also need to understand that it is not enough to sign agreements, but that they must be abided by in a spirit of cooperation, in an effort to make them work, and not dance around them. The Chinese want to be a member of the World Trade Organization, and so they threatened to forego implementing existing agreements until we agree to give them another carrot in terms of support for membership in this organization. But, Mr. President, the proof of the pudding is in the eating, on these agreements. They must be energetically implemented. I believe that it would be very useful if the Senate conducted frequent reviews of the record of our trading partners in implementing the agreements they have signed with us. Implementation is the key, for instance to the extensive agreements we signed with Beijing on intellectual property. And it is certainly key to the various bilateral agreements we have signed with the Koreans. Compliance with the provisions of the WTO should also be insisted upon for Korea, and China if she is admitted.

I hope that the Trade Representative will ensure that his Korean, as well as Chinese, counterparts are made aware of this Senate resolution and accompanying statements, and that they will understand the importance of these various trade matters to the Senate and the United States.

Mr. STEVENS. Mr. President, I want to state that I am informed that this

has been cleared by the Members on this side on the subcommittee involved. So I am prepared to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 339) was agreed to.

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

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as in morning business for just 5 minutes.

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

## MIKE MANSFIELD— EXTRAORDINARY MAN

Mr. BAUCUS. Mr. President, on March 16, 1903, Teddy Roosevelt was President. Civil War veterans still held annual reunions. The Wright brothers were testing their first aircraft, and baseball was preparing for the very first World Series that fall. And Mike Mansfield was born in Brooklyn, NY.

Today Mike turns 92. And I ask the Senate's indulgence while I pay tribute to this extraordinary man.

Mike's family moved to Great Falls, MT, when he was just 3 years old. When America joined the First World War in 1917, Mike—at the ripe old age of 14—fibbed about his age and enlisted in the Navy.

He is one of the very few Americans to serve in the Army, the Navy, and the Marines. My guess is that if America had had an Air Force back then, he would have made all four. And at the age of 92, he is still the youngest World War I veteran in America.

After leaving the military, Mike returned to his home in Montana—to Butte and then to Missoula. While working as a miner in Butte, he met and married Maureen Hayes.

Maureen, then a Butte schoolteacher, persuaded Mike to leave the mines and get on with his education. And not only Montana, but our whole country should be grateful to her for that.

Although Mike did not have a high school degree, he passed an entrance exam and was admitted to the University of Montana. And he never looked back. He obtained a bachelors and masters degree in international affairs and then became a professor of East Asian and Latin American history at the university.

Then, in 1942, Mike Mansfield was elected to the U.S. House of Representatives. In his very first term, he was recognized as one of America's leading experts on East Asia.

President Roosevelt personally selected him as a special envoy to China in 1944, and the report Mike filed on his return is still a model of depth, clarity, foresight, and sound advice on foreign policy.

After a decade in the House Mike was elected U.S. Senator. He served in the Senate for 24 years. For 17 of those years, longer than anyone in history, he served as the Senate majority leader. And while most people now think first of his national and international leadership, he was always a great Montana Senator.

As Mike Malone, the dean of Montana historians, puts it:

> Mansfield's protection of the state's interests in Washington was legendary. He became so much a part of the state's political landscape that the names Montana and Mansfield seemed nearly inseparable.

Norman Maclean recounts an example of this in his last book, ''Young Man and Fire'', when he talks about Congressman Mansfield in action after the Mann Gulch fire of August 1949:

> The act had been almost as swift as the thought. . . . By October 14, little more than two months later, Mike Mansfield had rushed through Congress his amendment to the Federal Employees' Compensation Act doubling the amount allowed to nondependent parents of children injured or killed while working for the Federal Government—from a pitiful two hundred to four hundred dollars. A rider attached to this amendment made it retroactive to include the Mann Gulch dead.
>
> In our State of Montana, we would vote for him for anything (in ascending order) from dogcatcher to President of the United States to queen of the Helena Rodeo.

What was true for 14 Mann Gulch families was true for the whole country. Mike Mansfield knew what was right and he knew how to get it done. Whether it was labor relations, the Vietnam war, environmental protection, extending the right to vote to young people, or any of the other great issues of the 1950's, 1960's, and 1970's, Mike Mansfield was there and he was right.

When Mike retired from the Senate—having served longer than anyone in history as majority leader—it was only to begin a new career. President Carter appointed Mike as Ambassador to Japan. And his performance was so exceptional that although Mike always has been and always will be a Montana Democrat, President Reagan asked him to stay on in Tokyo for another 8 years.

Today, at age 92, Mike is on his third career as an East Asian adviser for Goldman Sachs. Although admittedly, he is taking it easy. He has slowed down to a mere 5 days of work a week.

And of course, he is still the smartest, best-informed, wisest statesman Montana and America have. Like I told the people at the Governor's Conference on Aging at the Copper King in Butte last summer, when I really get stumped and I need the best advice there is, I go to Mike Mansfield.

Mr. President, Mike Mansfield has lived the American Dream.

From Teddy Roosevelt to Bill Clinton.

From the copper mines of Butte to private meetings with Presidents and kings.

Sailor, veteran, miner, professor, Congressman, Presidential envoy, Senator, majority leader, Ambassador Extraordinary and Plenipotentiary, banker, wise man.

But to Montanans, always just plain ''Mike.''

I hope you and all of our colleagues will join me in saying ''thank you,'' to Mike, and wishing this great and good man a happy birthday and many more to come.

## EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 340

(Purpose: To require monthly reports on United States support for Mexico during its debt crisis, and for other purposes)

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I rise to send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

> The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 340.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

> At the end of the bill, add the following new title:

**TITLE ___—MEXICAN DEBT DISCLOSURE ACT OF 1995**

**SEC. ___01. SHORT TITLE.**

This title may be cited as the ''Mexican Debt Disclosure Act of 1995''.

**SEC. ___02. FINDINGS.**

The Congress finds that—

(1) Mexico is an important neighbor and trading partner of the United States;

(2) on January 31, 1995, the President approved a program of assistance to Mexico, in the form of swap facilities and securities guarantees in the amount of $20,000,000,000, using the Exchange Stabilization Fund;

(3) the program of assistance involves the participation of the Federal Reserve System, the International Monetary Fund, the Bank of International Settlements, the World Bank, the Inter-American Development Bank, the Bank of Canada, and several Latin American countries;

(4) the involvement of the Exchange Stabilization Fund and the Federal Reserve System means that United States taxpayer funds will be used in the assistance effort to Mexico;

(5) assistance provided by the International Monetary Fund, the World Bank, and the Inter-American Development Bank may require additional United States contributions of taxpayer funds to those entities;

(6) the immediate use of taxpayer funds and the potential requirement for additional