Senators come down here to start the next—I see the Senator from North Carolina is here. I will move on. We will have to break off the debate for a short period of time. I hope we will have more time to debate later this evening, and then, pursuant to this unanimous consent that I will read, we will move tomorrow at 11 o'clock to reconsideration of this bill, bringing this bill back up for consideration, and debate the Boxer amendment.

Mr. President, I ask unanimous consent that the time between 11 a.m. and 2 p.m. on Thursday be equally divided for debate regarding the Feinstein amendment to H.R. 1122, that no amendment be in order to the Feinstein amendment, and, further, at the hour of 2 p.m., the Senate proceed to a vote on or in relation to the Feinstein amendment.

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

EXECUTIVE SESSION

FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

Mr. SANTORUM. Mr. President, in executive session I ask unanimous-consent the Senate now proceed to the consideration of Executive Calendar No. 2, the Treaty Doc. No. 105–5, the CFE Treaty.

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

The clerk will report.

The legislative clerk read as follows:

Treaty Document 105–5, Flank Document Agreement to the Conventional Armed Forces in Europe Treaty.

The PRESIDING OFFICER. The Chair recognizes the distinguished senior Senator from North Carolina.

Mr. HELMS. I thank the Chair very much. Mr. President, may I ask that the unanimous-consent be stated as to time on this resolution of ratification?

The PRESIDING OFFICER. There are 1½ hours equally divided between the chairman of the Foreign Relations Committee and the ranking member.

Mr. HELMS. Senator BYRD has some time, too?

The PRESIDING OFFICER. And an additional 30 minutes for Senator BYRD.

Mr. HELMS. Very well. I do thank the Chair.

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

The Senate Foreign Relations Committee this past Thursday reported a treaty to amend the Conventional Armed Forces in Europe Treaty. The vote was unanimous.

I have never hesitated to oppose, or seek to modify, treaties that ignore the best interests of the American people. As long as I am a Member of the U.S. Senate, I will be mindful of the advice and consent responsibilities conferred upon the Senate and the Senators by the U.S. Constitution. Therefore, I have never hesitated to oppose bad treaties and bad resolutions of ratification without hesitation. But when a treaty serves the Nation's interests, if it is verifiable, and if the resolution of ratification ensures the integrity of these two points for the life of the treaty, I unfailingly offer my support to it. That is why I support the treaty before us today.

In that connection, let the record show that the pending treaty was signed on May 31, 1996, and was not submitted by the President to the Senate for our advice and consent April 7, 1997. With the bewildering delay in the delivery of this treaty, the administration demanded action by May 15, 1997, which is tomorrow.

So, after wasting an entire year, the administration demanded that the Senate act on this treaty within 1 month's time. I believe it is obvious that the Foreign Relations Committee has been more than helpful in fulfilling its constitutional responsibilities to advise and consent.

The treaty before us today is a modification of the treaty approved by the Senate in 1991. Specifically, it will revise the obligations of Ukraine and Russia in what is known as the flank zone of the former Soviet Union. In recognition of the changes having occurred since the collapse of the Soviet Union, the 30 parties to the CFE Treaty have agreed to modify the obligations of Ukraine and Russia.

The 1991 CFE Treaty could not and did not anticipate the dissolution of the Soviet Union and the Warsaw Pact, let alone the expansion of NATO to include Central and Eastern Europe countries. Consequently, recent years have been occupied with efforts to adapt the treaty to the new security environment of its members.

Mr. President, in its essentials, the Flank Agreement removes several administrative districts from the old flank zone, thus permitting current flank equipment ceilings to apply to a smaller area. In addition, Russia now has until May 1999 to reduce its forces sufficient to meet the new limit.

To provide some counterbalance to these adjustments, reporting requirements were enhanced and inspection rights in the zone increased.

Mr. President, with the protections, interpretations, and monitoring requirements contained in the resolution of ratification, I recommend approval of this treaty because it sets reasonable limits and provides adequate guarantees to ensure implementation.

However, the simple act of approving this treaty does not diminish the need for further steps by the U.S. Government to strengthen the security of those countries located on Russia's borders. If this agreement is not implemented properly, Russia will retain its existing military means to intimidate its neighbors—a pattern of behavior with stark precedents.

As the Clinton administration is so fond of saying, this treaty is but a tool to implement the foreign policy of the United States. During the past 4 years, the Clinton administration has remained silent while Russia has encroached upon the territory and sovereignty of its neighbors. It was the lack of a foreign policy—not a lack of tools—that allowed this to happen.

I have confidence that the new Secretary of State will correct the course of our policies toward Russia, and I gladly support this treaty to aid the Honorable Madeleine Albright in that endeavor. The collapse of the Soviet Union was one of the finest moments of the 20th century. To allow even a partial restoration of the Soviet Union before the turn of the century would be a failure of an even greater magnitude.

Mr. President, a final and related issue in the resolution of ratification is one upholding the prerogatives of the Senate in matters related to the ABM Treaty. During the past few years, the executive branch has sought to erode the Senate's constitutional role of advice and consent regarding treaties. In fact, the executive branch originally refused to submit for advice and consent the treaty that is before the Senate today. Through protracted negotiations, the Senate successfully asserted its proper role to advise and consent to new, international treaty obligations. Likewise, on revisions to the ABM Treaty, it is only through a legally binding mandate that we can ensure the proper, constitutional role of the U.S. Senate. I hope, Mr. President, that we can proceed to do that without delay. Mr. President, I ask for the yeas and nays on the resolution of ratification.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I believe the Senator from Delaware wishes to speak.

Mr. BIDEN. Thank you, Mr. Chairman.

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

Mr. BIDEN. Mr. President, let me begin by acknowledging what the Senator and chairman of the committee said, and that is that this treaty has been around a long time, and all of a sudden it came popping up here. Some of us, like the Senator from North Carolina and the majority leader and others, myself included, have felt it is a Senate prerogative to determine whether or not this flank agreement should be agreed to. It is an amendment to the treaty. The administration for a long time concluded it was not a prerogative of the Senate, and it was not necessary to submit this treaty.

Some have asked, why are we acting so expeditiously on this treaty? Why is there this deadline? Two reasons: One, we waited a long time to agree we had the responsibility to accede to this or it could not occur, and, two, there is a real May 15 deadline by which all 30 nations must ratify this agreement. If, in fact, they do not, the agreement will have to be reviewed by all of them.

We are right now dealing with the enlargement of NATO, we are now dealing with the NATO-Russia Charter, and if it looks as though the United States is reneging on this flank agreement, it can just create a lot of confusion.

Having said that, had I been chairman of the committee rather than the ranking member and had it been a Republican President, I probably would have spent more time chastising the administration than the distinguished Senator from North Carolina. He just rolled up his sleeves and said, ''OK, this is a necessary and important treaty,'' and didn't spend a lot of time in recriminations about why it took so long to get here. I thank him for that, and I thank him for the way in which he moved this. I doubt there is any treaty or change in a treaty as significant as this that has moved as rapidly through the Foreign Relations Committee with as studied an approach as under the leadership of my colleague from North Carolina.

Mr. President, nearly 6 years ago, as chairman of the Subcommittee on European Affairs, I managed the ratification of the original CFE agreement for the then Democratic chairman of the committee. The treaty was, I believe then and I believe now, a monumental achievement, capping some two decades of negotiations between NATO and Warsaw Pact countries to establish a secure conventional military balance in Europe. I would argue, it was sort of the prelude to the undoing of our adversary at the time, the Soviet Union and the Warsaw Pact.

Mr. President, the treaty has succeeded as few other arms reduction measures have. Since 1992, it has fundamentally altered the military landscape from the Atlantic to the Urals, dramatically reducing the number of pieces of equipment that could be used to wage war.

In the last 5 years, the CFE Treaty has resulted in the removal or destruction of more than 53,000 pieces of heavy equipment, including tanks, artillery, armored combat vehicles, attack helicopters, and combat aircraft.

Since 1991, of course, the political face of Europe has changed dramatically. These developments had an impact on the relevance and potential durability of the CFE Treaty. Particularly effective were the so-called flank limits. To the average citizen out there, a flank limit is not much different than a flank steak or flank cut. The fact of the matter is, it has real significance; it is very important.

The flank limits were included to prevent military equipment that was removed from Central Europe from being concentrated elsewhere. We set limits on how much equipment could be set on that inter-German border, which we necessarily focused on for so many years. As that equipment was removed or destroyed, what we did not want to have happen is to have the Soviets take that equipment and move it into the flanks, moving it on the Turkish border or moving it up by Norway and having a predominance of force accumulated there.

After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the so-called flank limits, did not adequately reflect its security needs in the flank zone. We had placed limits on what type of equipment and how much could be placed in these flanks. Had I a map, I would reference it, but the fact of the matter is, we put limits on this. After the collapse of the Soviet Union, Russia began to argue that the treaty, particularly the flank limits, did not adequately reflect its security needs in the flank zone.

Put another way, all those folks in the Caucasus and Transcaucasus are now independent countries. When this was negotiated, they weren't part of the deal. They weren't part of the deal, and it was some Soviet general in Moscow deciding what could and could not be done in those countries.

Now the Russians come back and say, ''Hey, wait, this isn't the deal we signed on to.'' Russell Long—a great Senator who the Senator from North Carolina remembers well, but not nearly as well as the Senator from West Virginia sitting behind me—one of Russell Long's many expressions used to be, ''I ain't for no deal I ain't in on.'' All of a sudden, the Russians realized that they had signed on to a deal that, in a strong way, they were no longer in on, as it related to what was left of the Soviet Union.

Consequently, the NATO alliance agreed to negotiations on revising these flank limits, and the result was the agreement before us now known as the Flank Document that was signed by 30 states parties—a fancy term for saying 30 countries—to the treaty in Vienna on May 31, 1996. Reiterating the point made by my friend from North Carolina, this was signed a year ago, 1996. I believe that our negotiators, while meeting some Russian concerns, did an excellent job of protecting the interests of this country and the democracies on the northern and southern flanks of the former Soviet Union.

The CFE Flank Document removes some areas from what we call the old flank zone, but maintains constraints on equipment both in the new flank zone and in the old one. There are also limits on armored combat vehicles in each area that were removed from the old flank zone so as to prevent any tremendous concentration of equipment in any one place.

We all are concerned about Russian troop deployments outside its borders, Mr. President. We cannot allow Moscow to coerce its independent neighbors into accepting the presence of foreign forces on their soil or into giving up their own rights to military equipment, which would now be folded into this total limit.

But I believe the Flank Document and the resolution of ratification now before the Senate addresses these concerns and recognizes that sovereign countries must have the right to refuse Russian demands. Indeed, the chairman and I have found common ground on most of the issues in this resolution.

There are a total of, if I am not mistaken, 14 conditions, Mr. President. Two of these conditions of ratification, however, I think are extraneous and give me some concern. Of the 14, there are only two that I would flag for my colleagues, and I am not going to move to strike either one of them. I am not going to move to do anything about it. I just want to make the point of why I think they are unnecessary or counterproductive.

The first is condition 5, which includes a provision calling for a special report on possible noncompliance of the CFE Treaty by Armenia. I regret that this provision was included in the resolution at the insistence of the majority, but I am pleased that we have reached an agreement through the efforts of Senator JOHN KERRY and Senator SARBANES—and I am sure if they reached an agreement they must have run it by the distinguished Senator from West Virginia or it would not have been agreed to—to mitigate the one-sided nature of this original agreement.

More troubling, though, is condition 9. I will not speak more about condition 5 in the interest of time. Condition 9 also is insisted upon by the majority, and I note from a brief discussion, while working out yesterday out of the Senate environs with my distinguished friend from Virginia, that he feels very strongly about, and I happen to disagree with him on it.

Condition 9 requires the President to submit an agreement which will multilateralize the 1972 Anti-Ballistic Missile Treaty to the Senate for advice and consent. Put another way, there is a condition placed on here, very skillfully, I might add, by my friends who have concerns about the ABM Treaty that has nothing to do with this flank agreement. I was of the view it should not be included as part of a condition to this treaty. I did not have the votes. I must say to my friend from North Carolina, it is not merely because I hope I am a gentleman that I am not attempting to remove the condition, I do not have the votes to remove the condition, so I am not going to attempt to do something that I know will not prevail. But, I would like to point out, the condition is titled ''Senate Prerogatives.'' The title is interesting but, I think, inaccurate.

I take a back seat to no one when it comes to Senate prerogatives. As a matter of fact, it was the Byrd-Biden amendment attached to the INF Treaty. We have been jealous of the protection of our constitutional obligations and responsibilities. With all due respect, and it sounds self-serving, but I take a back seat to no one in the Senate in terms of protecting the constitutional obligations and responsibilities of the Senate. But in this case, I do not

think we have a prerogative to exercise, notwithstanding condition 9 is called ''Senate Prerogatives.''

The issue involves two powers: recognition of successor states and the power to interpret and implement treaties, both of which are executive functions.

Mr. President, it is undisputed that the President has the exclusive power, under the powers of article 2 of the Constitution, to recognize new states. I am not going to take a long time on this, so don't everybody worry I am in for a long constitutional discussion; I am only going to spend another 3 or 4 minutes, but I want to make the point for the RECORD. Under article 2, section 2 of the Constitution, the President and the Senate have a shared duty to ''make treaties.'' But once the treaty is made, it is the law of the land, and the President, under article 2, section 3, has the duty to take care that it is faithfully executed.

In exercising this duty, it is for the President to determine whether a treaty remains in force, a determination that, of necessity, must be made whenever a state dissolves.

So what are we talking about here? We had an ABM Treaty and CFE Treaty with the former Soviet Union. The Soviet Union dissolved. And the question remains, all those constituent countries that are now independent countries, is the President able to recognize Ukraine, for example, and, as a consequence, recognize the Ukrainians' assertion that they want to be part of the ABM Treaty? They were part of it when they were part of the whole Soviet Union, but as the constituent parts broke apart, the question was: As each individual country within that whole signs on to the continued commitment to ABM, does that require ratification by the United States Senate with each of them again? I would argue, and I will argue at a later date—I am sure we will hear more of this—that it does not require that. It is not a Senate prerogative.

In the case before us, the ABM Treaty, the President has the power to declare whether Russia and the other New Independent States inherit the treaty obligations of the former Soviet Union, provided those states indicate a desire to do so and provided that the succession agreement effects no substantive change in the terms of the treaty.

Both the Bush and Clinton administrations exercised this power following the breakup of the Soviet Union, Yugoslavia, Czechoslovakia, and Ethiopia as it relates to other issues, not as it relates to ABM. Moreover, it bears emphasis that the two arms control treaties, the CFE Treaty and the INF Treaty, were multilateralized by the executive action without the advice and consent of the Senate. By definition, we are all here, we are not asking for multilateralization of the flank agreement. It is somewhat curious that we say ABM requires the Senate to have a treaty vote on every successor nation, but on CFE, which we all like and we have no substantive disagreement on, we are not asking for that.

So the point I am making is that this condition has nothing to do with CFE and it is more about whether you like ABM or do not like ABM, not about who has what constitutional responsibility, I respectfully suggest.

I agree with my colleagues on the other side of the aisle and the other side of the issue in one respect, that this is the subject of legitimate debate. But the debate, which I am confident we can win on the merits, can readily be conducted at another time on a more germane subject than a treaty that it has nothing to do with. Nonetheless, the majority insisted upon this extraneous condition, and I think I can count votes.

I will never forget going to former Chairman Eastland as a young member of the Judiciary Committee asking for his support. He sat behind his desk, I say to the chairman of the committee, and said, ''Did you count?'' I didn't understand what he said.

I said, ''I beg your pardon, Mr. Chairman?''

He took that cigar out—I was asking to be chairman of the Subcommittee on Criminal Laws, because Senator McClellan had just passed away and, for years, it had been his job. It was a contest between me and another Senator.

I was looking at him, and he said, ''Did you count?'' I seriously did not understand what he was saying. ''I beg your pardon?'' I said. I tried to be humorous. I said, ''Mr. Chairman, I don't speak Southern very well.'' He smiled and looked at me, and he took the cigar out of his mouth, and said, ''Son, when you have counted, come back and talk to me.''

Well, I learned to count. The reason I am not contesting this now, as I said, I counted. I do not have the votes at this moment to remove condition 9 and still get this treaty up and out of here in time. So I will reserve that fight for another day.

Despite the inclusion of condition 9, I will strongly support the flank agreement because of its integral role in protecting American interests in maintaining security and stability in Europe. Indeed, the Flank Document we will be voting on is an important bridge to the broader revision of the CFE Treaty now under discussion as we talk about the enlargement of NATO. Those talks will allow us to achieve further reductions in military equipment in Europe and ensure that the confidence-building measures embodied in the CFE Treaty remain in place.

Mr. President, the CFE Treaty is just one component of the architecture of arrangements, including NATO, the Partnership for Peace, the Organization for Security and Cooperation in Europe, all of which are designed to ensure that in the post-cold war era, the European nations remain free and independent and are partners in a zone of security and prosperity.

But by maintaining the integrity of the CFE Treaty, we maintain the forum in which an enlarged NATO will make clear to Russia that our objective is stability in Europe, not military intimidation. Ratification of the flank agreement is a modest but important step toward the new European security system.

I urge my Senate colleagues to do two things—thank the chairman of the full committee for expediting this, and when we get very shortly to a vote on it, to vote their advice and consent to ratification.

I thank again the chairman of the full committee.

I reserve the remainder of my time.

Mr. HELMS. I thank the Senator from Delaware.

How much time do I have?

The PRESIDING OFFICER. The Senator has 41 minutes 42 seconds.

Mr. HELMS. I yield 8 minutes to the distinguished Senator from Virginia [Mr. WARNER].

Mr. WARNER. Mr. President, I thank my friend and colleague, the senior Senator from North Carolina. May I join others in urging that the Senate give its advice and consent to this very important treaty, a treaty brought forward by the leadership of the chairman and the distinguished ranking member at a critical time in the ever-increasing debates regarding Europe, whether it be NATO expansion or other issues.

I was prepared today to go toe to toe with my good friend, the ranking member of this committee, the Senator from Delaware, on the question of condition 9. I have spent a good portion of my career in the Senate on the question of the ABM Treaty. I think it was a very wise addition to this particular resolution of ratification, a provision, condition 9, that addresses the issue of the multilateralization of the ABM Treaty.

I go back to the Fiscal Year 1995 Defense Authorization Act, section 232. It was my privilege to introduce that provision as an amendment to that bill. That provision provided:

> The United States shall not be bound by any international agreement entered into by the President that would ''substantively'' modify the ABM Treaty unless this agreement is entered [into] pursuant to the treaty making power of the President under the Constitution.

That is section 232 of the Fiscal Year 1995 Defense Authorization Act. That is precisely, really a recitation, of what condition 9 requires—follow the law of the land. President Clinton signed section 232 into law, and yet, time and again, this President claims exemptions from the requirement to submit to the Senate agreements which clearly change the rights and obligations of the United States under the ABM Treaty.

For years, I have joined a number in this Chamber, primarily the Republicans, in insisting that the ''demarcation'' agreement, which the administration is currently completing in negotiations with the Russians, represents again another ''substantive'' change to the ABM Treaty that must be submitted to the Senate. I am pleased that the administration has at long last acknowledged that very fact and has agreed to bring that demarcation agreement before this body for the advice-and-consent responsibility entrusted to the Senate by the Constitution.

I, like the Senator from Delaware, was concerned about the use of the word ''prerogative'' in condition 9. I view the advice and consent role as an obligation of the U.S. Senate under the Constitution of the United States. It is an obligation that we must exercise in cases such as the demarcation and the multilateralization of the ABM Treaty.

I ask my colleagues to indulge me just for a minute. I go back to May 1972, a quarter of a century ago. As a much younger man, I was privileged to be a part of the delegation, headed by the President of the United States, that went to Moscow for the summit which culminated in the signing of SALT I, the ABM Treaty and other agreements. The particular matter for which I had primary responsibility was the Incidents at Sea Executive Agreement, which was also signed at that time.

I had been in the Pentagon as Secretary of the Navy during the course of the negotiation of the ABM Treaty. As such, I have spent a good deal of my career, beginning with the inception of that treaty to date, in trying to analyze it and defend it. I think it is a valuable part of our overall arms control relationship with the then-Soviet Union and today Russia. But there is a limit to which that treaty should be applied to other activities that this Nation must now undertake—activities that were not contemplated at the time the treaty was negotiated.

One of those activities—and I do not know of a more important one—is to protect the men and women of the Armed Forces when they are deployed abroad, and any number of civilians in their positions abroad, from the ever-growing threat of short-range ballistic missiles.

Hopefully, this year we will forge ahead and finally clarify—clarify—the misunderstandings about what the ABM Treaty was intended to do and what it was not intended to do on this issue. I have talked to so many of my colleagues who were in that delegation a quarter of a century ago who had a primary responsibility for the ABM Treaty. One after one they will tell you that they never envisioned at that time, from a technological standpoint, this new class of weapons, namely, the short-range ballistic missiles, and that that treaty was never intended to apply to those missiles.

As the Senator from Delaware said, there will be another day on which we can have that debate on the issue of that treaty's application to the current research and development now underway to develop and deploy those systems desperately needed in the Armed Forces of the United States to protect us from the short-range threat, an ever-growing threat, which is proliferating across the world.

The Foreign Relations Committee did precisely what it should have done: included in as condition 9 the protection of future debate on the ABM Treaty such that the U.S. Senate can make the decisions as to whether or not there are successions to the ABM Treaty by other nations.

The ABM Treaty was contemplated, negotiated, and signed as a bilateral treaty. It was approved by the Senate as a bilateral treaty. It strains credibility for the administration to now argue that the conversion of that treaty from a bilateral to a multilateral treaty is not a ''significant'' change to warrant Senate advice and consent.

At the time this treaty was negotiated, no one involved in the negotiations could ever have envisioned the dissolution of the Soviet Union in their lifetimes—much less within 20 years. Likewise, technical advances in the areas of both strategic offensive and defensive systems could not be adequately anticipated. That is why the treaty has provisions for amendment to adapt it to changing times circumstances, and technologies. I am personally of the view that this treaty should have been—and still needs to be—amended to allow the United States to protect its citizens, stationed abroad from short-range ballistic missile attacks which were not contemplated 25 years ago. But I also strongly believe that any amendment which alters U.S. rights and obligations—any substantive changes—must be submitted to the Senate for advice and consent.

We could argue for days about the international legal principles and requirements in this area. But one thing is clear—domestic law on this issue is unambiguous. Section 232 of the fiscal year 1995 Defense authorization bill, which I referred to earlier, clearly requires the President to submit for Senate advice and consent any international agreement which substantively modifies the ABM Treaty.

It is clear that multilateralization would constitute a substantive change to the ABM Treaty. For 25 years, this has been a bilateral treaty. If new parties are added, the geographic boundaries, which govern many aspects of the treaty, would be changed. Existing U.S. rights under the treaty to amend it by bilateral agreement would be lost. The draft memorandum of understanding on succession, the three new states parties will be given full voting rights in the Standing Consultative Commission [SCC], the body which supervises treaty implementation and negotiates amendments to the treaty. According to the guidelines of the SCC, changes to the ABM Treaty can only be made through a consensus of the parties. That means that any one of these three new states parties could block United States efforts to amend this treaty to allow for effective missile defenses to deal with current threats—even if the Russians agree to the changes.

The succession issue with the states of the former Soviet Union has been handled on a case-by-case basis. In the case of the CFE Treaty and the START I Treaty, the Senate specifically addressed the succession issue during consideration of the resolutions of ratification for those treaties. INF succession was handled without Senate involvement. It is clear that the matter of succession—far from being a legal absolute—is, at best, a murky legal issue.

The unique status of the ABM Treaty was highlighted in the 1994 legislation requiring Senate advice and consent of any international agreement that ''substantively'' modifies the ABM Treaty. This is not the case for the hundreds of other treaties we had in effect with the former Soviet Union.

Since the ABM Treaty reinterpretation debate of the late 1980's, the Democrats have insisted that any change to a treaty that differs from what was presented to the Senate at the time of ratification must be resubmitted to the Senate or the Congress for approval. Multilateralization of the ABM Treaty is not simply a reinterpretation of the treaty, it is a substantive change to the treaty text. By the Democrats own standards, such a change should clearly require Senate advice and consent.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I appreciate very much the comments by the distinguished ranking member of the Foreign Relations Committee. I must say for the record that I also enjoy the privilege of working with him. I think the committee has been more active in the last year or two than it has been for some time. But in any case, I am grateful to Senator BIDEN.

Mr. President, the history of the succession agreements to the various treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of ABM multilateralization. In only one case was advice and consent not required for multilateralization on an arms control treaty. Because the INF Treaty carried the so-called negative obligation of not possessing any intermediate-range nuclear missiles, that treaty could be multilateralized without altering any treaty terms or imposing any new treaty rights or obligations on the United States or new parties.

Multilateralization of the START I Treaty under the Lisbon Protocol, on the other hand, required Senate advice

and consent because this change had clear implications for the treaty's text and object and purpose. The Lisbon Protocol determined the extent to which countries other than Russia would be allowed to possess strategic nuclear weapons. Similarly, ratification of the Lisbon Protocol also effectively determined successorship questions to the Treaty on Non-Proliferation of Nuclear Weapons, NPT. Under that protocol, Belarus and other countries agreed to a legally binding commitment to join the NPT as nonnuclear weapons states. Thus when the Senate offered its advice and consent to the Lisbon Protocol, it approved successorship to both the INF and the START treaties.

Finally, the Senate specifically considered the question of multilateralization of the Treaty on Conventional Armed Forces in Europe under condition 5 of the resolution of ratification for the CFE Treaty.

Under article II, section 2, clause 2 of the Constitution, the Senate holds a co-equal treaty-making power. John Jay made one of the most cogent arguments in this respect, noting:

> Of course, treaties could be amended, but let us not forget that treaties are made not only by one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be in order to alter . . . them.

Now, my colleagues of the Senate may disagree on the wisdom of continuing the national strategy embodied in the ABM Treaty. Where I hope all of our colleagues could agree, however, is on the imperative of upholding the constitutional responsibilities of the Senate, as reposed in this body by the Founding Fathers.

Mr. Justice Frankfurter stated:

> The accretion of dangerous power does not come in a day. It does come, however, slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority.

I know the administration has demonstrated nothing if not disregard for the Senate's constitutional authority. The Senate's duty with regard to the issue of ABM multilateralization is, I believe, Mr. President, clear.

I yield the floor.

How much time does the distinguished Senator from Texas want?

Mrs. HUTCHISON. I do not know what the time limitations are. At least 10 minutes, in your range, or I could cut it back.

Mr. HELMS. If the Senator could do with 8 minutes, I think I could cover everybody, and the distinguished President pro tempore.

Mr. THURMOND. I need about 10 minutes. I can ask for extra time.

Mr. HELMS. Why don't you proceed.

Mrs. HUTCHISON. I will be happy to yield to the distinguished Senator.

Mr. HELMS. I say to Senator THURMOND, you have been yielded to by the distinguished Senator from Texas.

Mrs. HUTCHISON. Would you like to go next, Mr. Chairman?

Mr. THURMOND. Whatever suits you.

Mrs. HUTCHISON. After him, if I could have 8 to 10 minutes.

Mr. HELMS. Yes.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the CFE Flank Document resolution of ratification. My support of the CFE Flank Document is based largely upon the 14 conditions that the Foreign Relations Committee attached to the resolution of ratification. I am particularly pleased that the Foreign Relations Committee included condition 9, which deals with the Senate's prerogatives on multilateralization of the ABM Treaty. This has been an issue with which the Armed Services Committee has been deeply involved for many years.

I would strongly oppose any effort to dilute or eliminate condition 9 from the resolution of ratification. Condition 9 does not take a position, as such, on the ABM Treaty or treaty succession. It simply seeks to protect the Senate's prerogatives in case the treaty is substantively changed. I find it difficult to believe that any Member of this body would be opposed to this objective. In my view, it is a solemn and fundamental obligation of a Senator to consistently guard the rights and prerogatives of the Senate, regardless of which political party may occupy the White House at any given time.

Mr. President, although international law is ambiguous on the question of treaty succession, the U.S. Constitution and statutory law is clear. As section 232 of the National Defense Authorization Act for fiscal year 1995 states, ''the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty making power of the President under the Constitution.'' This provision originated as an amendment sponsored by Senator WARNER of Virginia and Senator Wallop of Wyoming, two of the Senate's foremost experts on the ABM Treaty.

Notwithstanding the administration's assertion that treaty succession is an executive branch responsibility, or any argument that one might derive from international law, the real issue is simple and clear. Only one overarching question needs to be answered: Does multilateralization of the ABM Treaty constitute a substantive change to the treaty? If so, the President has no choice, under the law and the Constitution, other than to submit such an agreement to the Senate for advice and consent.

Ironically, those who have asserted that the President does not need to submit the multilateralization agreement to the Senate for advice and consent have not even attempted to answer the one relevant question: Is it a substantive change or not? Instead they have chosen to base their views strictly on ambiguity-laden international law and a simple assertion of executive prerogative.

If one carefully analyzes the issues associated with ABM Treaty multilateralization, it is difficult to avoid the conclusion that the ABM Treaty will indeed be modified in several substantive ways. The conferees to the fiscal year 1997 Defense Authorization Act recognized this in stating that ''the accord on ABM Treaty succession, tentatively agreed to by the administration, would constitute a substantive change to the ABM Treaty, which may only be entered into pursuant to the treaty making power of the President under the Constitution.'' This conference language, which was supported overwhelmingly on a bipartisan basis, was the culmination of 2 years of effort by several key Senators on the Armed Services Committee: I have been joined in this fight by Senator LOTT of Mississippi, Senator WARNER of Virginia, Senator—now Secretary of Defense—Cohen of Maine, and Senator SMITH of New Hampshire, as well as other stalwart supporters of the Senate's prerogatives.

Why would multilateralization of the ABM Treaty constitute a substantive change? First, because the basic strategic rationale for the treaty would be altered. The ABM Treaty was intended to be part of an overarching arms control regime for regulating United States-Soviet competition in strategic offensive forces. But under a multilateral ABM Treaty, some members will have neither strategic offensive nor strategic defensive forces, and hence no direct stake in the treaty's subject matter. Overall, the United States faces strategic and political circumstances that are vastly different than those that existed in 1972 when the ABM Treaty was signed. The Senate must carefully consider how these bear on the issue of treaty succession.

Second, the ABM Treaty will change from a treaty between two equal parties to one in which different parties have different rights and obligations. Some states will be entitled to a deployed ABM system, others will not. The United States will also face four states rather than one at any future negotiation concerning the future of the treaty. This clearly diminishes the weight of the American vote in the Standing Consultative Commission and increases the complexity of seeking changes or clarifications to the treaty.

Third, the actual mechanics of the ABM Treaty will be altered by multilateralization since the treaty is largely defined in terms of ''national territory.'' Some items that are regulated by the treaty, including large phased array radars, are currently located outside the national territory of any of the states that plan to accede to the ABM Treaty. Also, those former Soviet States that opt not to stay in the treaty would be legally permitted to deploy an unlimited ABM system even though their national territory

was formerly covered by the treaty's definition of Soviet ''national territory.''

Mr. President, these are only a few of the ways in which a multilateral ABM Treaty would constitute a substantive change from the original treaty. The evidence is overwhelming. For the Senate to do anything other than to insist on its right to provide advice and consent to such an agreement would be an abandonment of its rights and obligations. I urge my colleagues to stand together on this important constitutional prerogative of the Senate. The executive branch must not be permitted to circumvent the Senate on a matter of such fundamental importance.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Texas is now recognized for 8 minutes.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the committee and, of course, the distinguished senior Senator from South Carolina.

Mr. President, there is no Senate responsibility I take more seriously than the obligation we have to advise and consent on treaties. We are discussing two treaties today that mark the past and the future of arms control. It is interesting to me that they have become linked in the manner before us today. I commend the distinguished chairman of the Foreign Relations Committee for his vision in this effort.

The Conventional Forces in Europe Treaty is a pillar of post-cold-war security in Europe. That treaty, over a decade in negotiation and finished by President Bush in 1990, solidified NATO's victory in the cold war by dramatically reducing the size of the conventional forces arrayed against each other.

That treaty also restricted the areas on the flanks of Europe where the Soviet Union or its successors could place troops and equipment. This particular provision was one of the most difficult to negotiate because it was one of the most meaningful. By restricting the size of forces on Europe's northern and southern flanks, we greatly reduced the likelihood that the Soviet Union or its successors could conduct an effective assault on western forces.

Because of the importance of this provision, it is with great reluctance that I support the changes to the agreement before us today, which will relax these flank restrictions.

It is true that over 50,000 pieces of equipment limited by the CFE Treaty have been destroyed or removed since the treaty went into effect. Nevertheless, with the changes in the agreement regarding the flanks of Europe, we will all have to be watchful that we not slide back too far from the high standard we set for ourselves and for Russia in the original treaty.

Mr. President, I will also say that we will have to reevaluate our actions when we learn the full details of the NATO-Russia agreement just announced today. For example, I am hopeful that we did not place unilateral restrictions on our own ability to deploy troops in the potentially expanded area of NATO responsibility in exchange for Russia support for NATO expansion. I light of the changes we are making to the CFE Treaty—permitting Russia to deploy forces in areas that have been off-limits until now—such a unilateral restriction on our own ability to move troops around Europe would be shortsighted indeed.

Even with these reservations, though, I am willing to support the treaty document before us today because of condition 9, which will require the President to submit to the Senate for ratification any substantive changes to the Anti-Ballistic Missile Treaty. My support for an effective, global ballistic missile defense system greatly outweighs the concerns I may have with changes to the CFE Treaty.

Mr. President, if the CFE Treaty is a forward looking treaty that reflects the new realities of post-cold-war Europe, the ABM Treaty is an outdated document that harkens back to an era that is thankfully behind us. The ABM Treaty was with the USSR. Now that the cold war is over it is restricting the inexorable march of technology, a technology that I am convinced will make ballistic missiles obsolete.

The Clinton administration wants to bring new countries into this outmoded agreement. If the United States was limited in its ability to deploy an effective missile defense when the treaty was with Russia alone, how much more restricted will we find ourselves when there are half-a-dozen or more new members in this treaty?

The document before us today does not prejudice the Senate's action regarding the ABM Treaty. It only says that if the President wishes to permit other countries to join this treaty, then the Senate must fulfill its constitutional role to advise and consent on such a change to the treaty. Colleagues will have the opportunity at that time to debate the merits of bringing new countries into the treaty or simply letting this treaty fade into the history it represents.

While I support the latter, we aren't deciding that matter today. Today, we're simply asserting our prerogative to advise and consent on treaties. No Member of this body should be comfortable that any administration would want to make major modifications to a treaty without Senate approval.

I urge my colleagues to support the resolution of ratification before us today and assert their rights as a Member of the U.S. Senate. I commend Senator HELMS once again with the wisdom and leadership, a staunch defender always, of senatorial prerogatives and U.S. national security.

I commend all of those who are going to stand for the rights of the Senate and therefore the people, to change any potential treaty that this country has committed itself to, because we will keep our treaty obligations and we must make sure that the people of our country are informed and support any changes in those treaties.

I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 12 minutes.

Mr. KERRY. Mr. President, before the Senate this afternoon is the task of taking the appropriate action, in fulfillment of the Senate's vital constitutional advice and consent responsibility and power, to adapt the Conventional Forces in Europe [CFE] Treaty to the constant change that affects our world—change which has been more sweeping and profound in Europe in the past 7 or 8 years than at any time in the preceding 40.

In 1990, after years of grueling negotiations to control the historically unprecedented conventional weaponry arrayed on opposite sides of the Iron Curtain in Central Europe, the CFE was signed. It entered into force in November of 1992. The long, difficult journey that led to the CFE treaty included one failed effort—the Mutual and Balanced Force Reduction Treaty episode—where negotiators eventually had to throw up their hands and acknowledge defeat in their efforts. But fortunately that failure was not permitted to become permanent. With U.S. leadership, efforts recommenced, and the CFE is the result.

The CFE treaty is the first in the post-World War II period to succeed in limiting and reducing conventional weaponry. While understandably strategic weapons treaty negotiations captured greater attention, since those negotiations addressed weapons of mass destruction each of which can annihilate great numbers of people and large cities, the CFE arguably addressed the greater threat to peace in Europe, because I believe it always was more likely that any conflict there would start as a conventional conflict. The CFE negotiating effort was successful in large part because it approached the issue of obtaining multilateral agreement to limitations of key offensive-capable weapons systems on an alliance-to-alliance basis—addressing on the one side the armaments possessed by not only the Soviet Union but all the Warsaw Pact nations taken together, and on the other side the armaments possessed by all the NATO nations taken together.

The CFE placed numerical limits on the numbers of five types of weapons systems critical to effective offensive operations which each alliance could possess in the Atlantic-to-the-Urals region of Europe where the Warsaw Pact confronted NATO: tanks; artillery pieces; armored combat vehicles; attack aircraft; and attack helicopters. It also contained sublimits based on

geographical regions—in realization of the fact that while a certain number of the covered items might not be a threat to peace or indicate diabolical intentions if spread evenly across the entire geography of each alliance, that same number if massed in a subregion could be threatening indeed and could indicate intentions to launch an attack or engage in other destabilizing behavior.

The treaty has been a notable success. It has resulted in reductions of over 50,000 items of heavy military equipment, verified by an intrusive verification regime that has included nearly 3,000 on-site inspections conducted to date under treaty auspices. It has worked and worked well. It is not a prospective treaty about which we all must guess or predict. It is a here-and-now, real-world treaty that has resulted in tangible reduction in armaments and consequently in real reduction in the threat of conflict. It is a treaty that we would do well to preserve and protect.

Its underlying premise remains valid. If buildups of a critical mass of the categories of treaty-limited equipment can be prevented, it will be very difficult for any nation to launch an attack against another with a significant prospect of success. And even if a nation seeks to flaunt the treaty's terms, and engage in a buildup of these weapons systems for the purpose either of conducting offensive military operations or engaging in a form of extortion, the treaty's verification procedures will reveal those efforts so that appropriate diplomatic and military responses can be made, and its terms give the other parties to the treaty the means to condemn violative activities and to enlist the community of nations in efforts to prevent escalation into conflict.

The implementation and ongoing administration of every treaty result in cases of different interpretations and various disagreements, and the CFE Treaty is no exception. But the mechanisms included in the treaty for resolving such conflicts or disagreements have worked reasonably well. And one can presume that the treaty would have continued to make a significant contribution to the security of Europe and, in turn, of the globe in a relatively smooth manner had the world remained as it was when the treaty was negotiated and entered into force. But, of course, the world has not stood still. The Soviet Union imploded. The Warsaw Pact disintegrated. Some of the very nations and armies that stared across the Iron Curtain at NATO's forces and their key United States components have become great friends of the United States and other NATO nations. Several of these appear to be on the verge of becoming a part of NATO itself. That, of course, is a matter of considerable controversy which should be and I trust will be debated separately and thoroughly. But our focus today is or should be on the CFE treaty.

In addition to the disappearance of the Soviet Union and the Warsaw Pact, and the realignment of some of the former pact nations with the North Atlantic Alliance, other components of the Eurasian security picture have changed dramatically. No longer is Russia's biggest concern the need to be ready for full-scale battle with NATO troops on the German and Benelux plains. Today ethnic conflict in some provinces and efforts of other provinces to obtain independence require much greater Russian attention. The ferment in the Middle East, and activities in Iran and Turkey south of the Russian Caucasus region also are of greater concern to Russia.

Not surprisingly the alterations in Russia's view of its own security picture resulted in alterations in what it believed to be the vital disposition of its security forces. Other nations of the former Soviet Union, including Ukraine, and of the now-defunct Warsaw Pact were faced with unanticipated anomalies resulting from the new maps of Eurasia. The changes occurred in and affected primarily one of four zones to which the CFE Treaty applies, the so-called flank region which consists of Norway, Iceland, Turkey, Greece, Romania, Bulgaria, Moldova, Georgia, Azerbaijan, Armenia, and parts of Ukraine and Russia.

To address the desires by Russia, Ukraine, and others to reallocate their forces, but to ensure that those reallocations protect the accomplishments and security provided by the CFE, the parties to the CFE Treaty negotiated the so-called flank agreement consisting of amendments to the original CFE treaty. The parties agreed to the flank agreement on May 31, 1996. It will enter into force if approved by all CFE Treaty party states by May 15, 1997.

The agreement does not change numerical limits for either of the two major sides of the post-World War II European alignment. Instead, it adjusts the boundaries of the flank, providing Russia and Ukraine more flexibility than they had before with respect to deployment of equipment limited by the treaty.

The flank agreement is in NATO's security interest, and, specifically, it is in the security interests of the United States. Without the adjustments it provides, it is likely Russia and possibly Ukraine would feel so impeded in their ability to meet their own national security requirements that they either would leave the treaty altogether or fail to comply with some of its provisions. The implications of neither of these outcomes would be acceptable, and would weaken or destroy the protections and added security offered by the CFE Treaty.

The judgment that the flank agreement is in our national interest is not just a judgment of our diplomatic community. It is fully endorsed by our Armed Forces leadership. On April 29 of this year, Brig. Gen. Gary Rubus testified:

In the judgment of the Joint Chiefs of Staff, the Flank Agreement is militarily sound. It preserves the CFE treaty and its contribution to U.S. and Allied military security. The additional flexibility permitted Russia in the flank zone does not allow a destabilizing new concentration of forces on the flanks of Norway, Turkey and other States in that area. Moreover, the agreement includes significant new safeguards, including greater transparency and new constraints on flank deployment:

The benefits of this agreement are apparent. The Foreign Relations Committee last week approved the resolution of ratification by a unanimous vote of 17–0. I am confident that a great majority of Senators approve of the flank agreement. But I am very troubled by how some in the majority seem determined to transform the constitutional treaty advice and consent process into an obstacle course.

The Foreign Relations Committee last week approved the resolution of ratification by unanimous vote. Mr. President, as the Foreign Relations Committee last week approved this by unanimous vote of 17 to 0, it doesn't mean that there were not some reservations. I just want to speak to them.

I am confident that the great majority of our colleagues will support the Flank Agreement. But I am troubled by the way in which some have transformed the constitutional treaty advise and consent process into something of an obstacle course that involves things that aren't directly in the treaty.

The conditions for ratification which the majority required before it would permit the Foreign Relations Committee and then the full Senate to perform the advice and consent role, fall into four rough categories. I find several of them—primarily those which the Senate appropriately and routinely attaches to treaties—beneficial and desirable. I find several others reflect a degree of fear and anxiety on the part of some Members, the basis for which I cannot ascertain—but which, all things told, appear unlikely to do fundamental damage to what should be our objective here: To keep the CFE Treaty in operation in order to continue to derive its benefits to security in Europe and a reduction in the risk of conflict there.

The third category, Mr. President, consists of a condition whose objective may have been desirable but which inadvertently or inadvisedly singles out one nation for implicit criticism when the kinds of actions it is implicitly criticized for taking may place it in the company of other nations in its region, and when it would be more appropriate to address these situations as a group so that all nations are held accountable to the same treaty standards. I speak of paragraph F of condition 5 which, in the form approved by the committee, singles out Armenia and requires a report directed solely at its activities and whether they comply with the terms of the treaty. I will address that matter separately, and will

offer an amendment to establish what I believe is an important balance and equity with respect to the entire Caucasus region.

Then, Mr. President, there is condition 9 which forms a special category all its own. I understand why a Senator who has not been deeply involved in the Senate's processing of the CFE Flank Agreement may be puzzled by the fact that condition 9 pertains to the ABM Treaty. In fact, I have been involved in the effort to move the Flank Agreement to Senate approval, and I cannot discern a reasonable or defensible rationale to link the issue of multilateralization of the ABM Treaty to action on the CFE Flank Agreement except for the reason of taking something that ought to happen that is important to our security and linking it to something that is not necessarily yet thoroughly considered by the Senate.

But even so, I do believe I understand what is going on here. Proposed condition 9 is hostage-taking, pure and simple. I think there are some who have a fundamental aversion to arms control agreements and want the United States to simply go it alone in the interdependent world of the last decade of the 20th century. Unfortunately they insist that unless the President concedes to their position on the unrelated issue of ABM multilateralization, they will refuse to let the United States ratify the CFE flank agreement.

I readily agree that the issues surrounding the ABM Treaty are both vital and very controversial. The Committee on Foreign Relations, with the contribution of the Committee on Armed Services, should devote considerable time and energy to thoroughly exploring those issues, and then the Senate as a whole should carefully determine how to proceed with respect to them.

But I want to register the strongest possible dissent from this tactic of hostage-taking. In my judgment these issues are separate and ought to be treated separately. Treaties are fundamentally different than bills on which this Congress acts on a daily basis. We ought to approach our advice and consent responsibility—a solemn constitutional duty—with more abstract side bar process. We should not load up resolutions of treaty ratification with essentially nongermane amendments.

Further, purporting to resolve the complex and very important ABM issues by attaching a condition to a wholly unrelated treaty—and without thoroughly airing and deliberating on those issues at the committee level via hearings and other means—is risky and ill-advised. Because I understand the power of the majority, perhaps the most significant feature of which is its considerable control over determining whether and when the Senate will address important issues, and because I believe it is of great importance that this flank agreement be considered and acted on by the full Senate, and that the Senate do so prior to the May 15 deadline which is imminent, I did not seek because of my aversion to condition 9 to derail the Foreign Relations Committee's action on the resolution of ratification last week, but I expressed my concerns which were published as additional views in the committee's report on the resolution.

Mr. President, as Senators, every one of us is sworn to uphold the Constitution. In my judgment that requires maintaining the separation of powers which plays so critical a part in maintaining the equilibrium of our unique form of government which has permitted it to survive and function successfully for over 200 years. Maintaining the separation requires a careful allegiance to preserving and protecting not only the constitutional obligations, responsibilities, and prerogatives of the legislative branch, and the Senate in particular, but also of the judicial and the executive branches.

We in this Chamber are most accustomed, understandably, to rising to the defense of the responsibilities, role, and prerogatives of our own branch and our own Chamber. I have joined many times in such efforts. Indeed, the very fact that the CFE Flank Agreement is being considered by the Senate is attributable to an effort to assert that the Senate properly should act on that agreement under the treaty clause of the Constitution because it substantively alters the original CFE Treaty.

Itis my view, and, I believe, the view of most Senators on both sides of the aisle who have carefully examined the issue, that the ABM Demarcation Agreement also makes a substantive change in a treaty to the ratification of which the Senate previously gave its advice and consent—thereby necessitating that U.S. ratification of the Demarcation Agreement can occur only if the Senate gives its advice and consent by means of the complete constitutional process.

But the ABM Succession Agreement is a different matter entirely. It effects no substantive change in the ABM Treaty or any other treaty. It does one and only one thing: It codifies the status with respect to the treaty of the states which succeeded to the rights and obligations of the former Soviet Union. It is a function of the executive branch, not the legislative branch, to determine if new nations which descend from a dissolved nation inherit the predecessor nation's obligations such as those under a treaty. This is not a matter of defending a Senate right or obligation or prerogative; the Senate has no right, obligation, or prerogative to defend with respect to determination of succession.

This principle has been illustrated on many occasions by its application. Recently, and of direct relevance, it has been applied in a number of circumstances with regard to the dissolution of the Soviet Union.

I believe I understand the objective here, Mr. President, and I do not believe it is the defense of a nonexistent constitutional principle or a nonexistent constitutional right or prerogative of the Senate. This is a wolf in sheep's clothing—a maneuver by opponents of the ABM Treaty to gain strategic advantage in their quest to demolish the ABM Treaty. The objective is to give them one additional shot at killing the Treaty.

I am prepared for the debate on the ABM Treaty. I look forward to thoroughly assessing whether this treaty continues to serve our Nation's security interests as I strongly believe it has well served those interests since its ratification. I look forward to examining in detail the probable reactions in Russia and elsewhere if we abandon the treaty.

But let me return to an earlier point that ABM opponents have shown they are willing to ignore. The Senate is not currently debating the ABM Treaty. The matter that is before us today is the Conventional Forces in Europe Treaty Flank Agreement. Condition 9 is an unwise, unnecessary, destructive digression from what we should be doing here today. It is yet another example of distressing political expediency too often illustrated in this Chamber in recent years. Fortunately, that expediency rarely has sunk to the level of sacrificing a vital constitutional principle—such as the separation of powers—for the sake of tactical gain. But, Mr. President, let there be no mistake: It is sinking to that level today in condition 9.

When we do such things, Mr. President, there is a price to be paid. Either we who serve here today will pay that price at a later time, or those who follow in our footsteps will pay that price. We disserve the Constitution we are sworn to uphold when we permit that to occur.

I must remark, Mr. President, on the peculiar and troubling silence of the administration on this issue. The administration, by position and motivation, is best situated to defend the constitutional prerogatives and responsibilities of the executive branch. And yet, for some unknown reason, perhaps a tactical calculus, or exhaustion, or distraction—for some reason—the administration never even joined this issue. I say to the administration: Despite the appearances given by your silence and inaction on this issue, this truly does matter in the long run. And this administration, and others to follow it, will regret this day. Much more is being ceded here than the authority to decide what nations properly hold the obligations of the ABM Treaty that previously were held by the Soviet Union.

Mr. President, I strongly support the ratification of the Flank Agreement. Before we vote on the resolution of ratification, I will offer the amendment I referenced earlier to address the Caucasus region, which I hope will be

approved. Then, despite the reservations about condition 9 I have enunciated, because of how important I believe the CFE Treaty is and will continue to be to European security and stability and therefore to world security and stability, I will vote to approve the resolution of ratification and urge all other Senators to do so.

QUESTIONS OF TREATY ADHERENCE IN THE CAUCASUS

Mr. President, the Conventional Forces in Europe Treaty was negotiated to limit the numbers and geographical distribution in Europe of five key types of offensive-capable weapons systems. The treaty contains sublimits for portions of the Atlantic-to-the-Urals region covered by the treaty that apply to the five types of treaty-limited equipment.

The treaty, when it was negotiated, was focused on the protracted cold war and the confrontation at the Iron Curtain that ran through Central Europe. Its design was to make it less likely that the cold war would turn hot, by making it more difficult to amass sufficient quantities of the weapons systems that would be needed for a successful attack of one side on the other, or, at the very least, to amass such weaponry without the other side being aware of the preparations for such an attack. The weapons limitations and the transparency are the treaty's keys.

But as the astonishing events of the late 1980's and early 1990's unfolded, the entire structure of Europe changed in such a fashion as to be virtually unrecognizable. For the most part, this was a very welcome change. For the first time in 40 years, there was no tense face-off of the world's greatest armies at the Warsaw Pact/NATO border.

But the disintegration of the Soviet Union, which was one of the most prominent of the changes in the region, removed the authority and control that had kept a lid on ethnic conflicts and territorial disputes in several regions of what had been the Soviet Union. Ancient tensions and hatreds soon began to bubble to the surface, and nowhere moreso than in the Caucasus region.

The Russian province of Chechnya sought to secede from Russia. Ethnic Armenians in the Nagorno-Karabakh region of Azerbaijan sought to gain independence so they could align with Armenia. Abkhaz separatists in Georgia have fought a long-running civil war with the central government.

Wars and revolutions are fought with weapons, of course. All parties to these conflicts have done all in their power to increase their firepower. Not surprisingly, these actions, when they involve treaty-limited equipment, have implications for the CFE Treaty even though contending with such situations was not the primary purpose for which the treaty was negotiated.

Responding to an allegation made publicly by a Russian Army general who now serves in the Duma, the majority included in the text of the resolution of ratification of the CFE flank agreement, as a part of condition 5 titled ''Monitoring and Verification of Compliance,'' paragraph F, which is a requirement that the President submit a report to the Congress regarding ''whether Armenia was in compliance with the treaty in allowing the transfer of conventional armaments and equipment limited by the treaty through Armenian territory to the secessionist movement in Azerbaijan.''

Mr. President, wherever there are credible allegations or concerns that the provisions of any arms control treaty have been violated, those allegations or concerns should be explored thoroughly and the truth determined. That, certainly, applies in this case. However, I believe this portion of condition 5 is too limited in its scope, and because of that limitation, leaves the impression that the Senate is not as concerned about the effects on the treaty of arms transfer and acquisition actions in other areas of the Caucasus region.

If we are to carefully examine alleged violations of treaty provisions in one specific location in this conflicted region, we should direct the same level of inquiry at all portions of the region. We know that arms buildups in other Caucasus locations have violated provisions of the CFE Treaty. Some of those violations, in fact, have been openly acknowledged.

It is my belief that the Senate should address this matter directly, and do so by expanding the scope of the report that will be required by paragraph F of condition 5. Together with Senator SARBANES, and with the support of several other Senators, I have prepared an amendment to do this. The amendment inserts a new subparagraph ii requiring that the President's report address ''whether other States Parties located in the Caucasus region are in compliance with the Treaty.'' The President also must indicate what actions have been taken to implement sanctions on any of these states found to be in violation.

I believe this change will make this provision of the resolution of ratification more useful. Because the report the Congress will receive will give a more complete picture of the level of compliance with or violation of the CFE Treaty in the Caucasus region, the United States can formulate a response that will be more complete and suitable.

AMENDMENT NO. 279

(Purpose: To require a compliance report on Armenia and other States Parties in the Caucasus region)

Mr. KERRY. Mr. President, the amendment that I send to the desk is an amendment that seeks very simply to create the equity and balance that I sought with respect to the question of Armenia.

I believe that we have an agreement on this language. It will simply reflect that we ought to hold all nations in the area to the same standard.

In my judgment, it is self explanatory. I believe it has been approved by both sides as a consequence of that.

Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, Mr. BIDEN, Mr. SARBANES, Mr. ABRAHAM, and Mrs. FEINSTEIN, proposes an amendment numbered 279.

Mr. KERRY. 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:

Strike subparagraph (F) of section 2(5) and insert the following:

(F) COMPLIANCE REPORT ON ARMENIA AND OTHER STATES PARTIES IN THE CAUCASUS REGION.—Not later than August 1, 1997, the President shall submit to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a full and complete classified and unclassified report regarding—

(i) whether Armenia was in compliance with the Treaty in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan;

(ii) whether other States Parties located in the Caucasus region are in compliance with the Treaty; and

(iii) if Armenia is found not to have been in compliance under clause (i) or, if any other State Party is found not to be in compliance under clause (ii), what actions the President has taken to implement sanctions as required by chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance to the independent states of the former Soviet Union) or other provisions of law.

Mr. KERRY. Mr. President, I believe we have an agreement on this particular amendment.

I thank the distinguished chairman of the Foreign Relations Committee for working, as he always does, in order to find a common ground in these matters.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 279) was agreed to.

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

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I yield 6 minutes to the distinguished Senator from New Hampshire, [Mr. SMITH].

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH of New Hampshire. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee.

Mr. President, I rise in strong support of the resolution of ratification reported by the Senate Foreign Relations

Committee. I want to specifically commend the distinguished chairman, Senator HELMS, for his outstanding leadership in moving this resolution promptly and responsibly.

I also want to commend the Foreign Relations Committee for including condition No. 9, which would require the administration to submit any agreement that would multilateralize the ABM Treaty to the Senate for advice and consent. This is an extremely important issue, Mr. President, and this provision ensures that the Senate retains its constitutional prerogatives to advise and consent on international treaties.

By way of background, there is an existing statutory requirement, with precedent, that any substantive change to an international treaty must be submitted to the Senate for advice and consent, as prescribed under the Constitution.

The Clinton administration has spent the better part of the past 4 years negotiating changes to the 1972 Anti-Ballistic Missile [ABM] Treaty. Foremost among these changes are a demarcation agreement that would restrict the performance of certain theater defense programs, and a multilateralization agreement that would expand the ABM Treaty to include the Republics of the former Soviet Union. It is this multilateralization agreement that condition No. 9 would address.

Mr. President, condition No. 9 has become necessary because the administration refuses to submit the multilateralization agreement to the Senate for advice and consent. They have rightly conceded that both a demarcation agreement and the CFE flank limits agreement are substantive changes requiring approval of the Senate, but they adamantly refuse to submit multilateralization for approval.

The administration asserts that the executive branch alone has the authority to recognize nations and determine the successor states on treaties whose participants no longer exist. They also argue that multilateralization is merely a clarification, not a substantive change to the ABM Treaty.

It is a very significant change that will fundamentally alter both the nature of the treaty and the obligations of its parties. It is most certainly a substantive change, and as such, it must be submitted to the Senate for advice and consent.

Mr. President, let me elaborate on exactly why a multilateralization agreement would represent a substantive change. The ABM Treaty was signed by the United States and the Soviet Union. It was premised on the policy of mutual assured destruction and it codified the bipolar strategic reality of the cold war. All negotiations on compliance and all discussions concerning amendments to the treaty were to be bilateral in nature, with any decisions being approved by each side. The negotiating ratio was 1 to 1, the United States versus the Soviet Union.

However, one of these two parties has now ceased to exist. There is no longer a Soviet Union. If the treaty is multilateralized, and thereby expanded to include multiple parties on the former Soviet side, it will dramatically change this negotiating ratio, both theoretically and practically.

Instead of the 1-to-1 ratio that the treaty was premised on, it will become at a minimum a 1-to-4 ratio, of the United States versus Russia, Khazakstan, Ukraine, and Belarus, and perhaps even a 1-to-15 ratio of the United States versus all 15 of the former Soviet Republics. We just don't know and the administration isn't saying.

Under a multilaterlization agreement, each of these former Soviet Republics would have an equal say in negotiations, even though they clearly would have unequal rights and unequal equipment holdings. For instance, only the United States and Russia would be permitted to field an ABM system, but other nations would be free to deploy ABM radars and other related components of a system. Further, while the ABM Treaty prohibits defense of the territory of a nation, the term territory is being redefined to mean the combined territories of all former Soviet Republics who choose to join the treaty.

What does this mean? It means that instead of the treaty applying to the territory of an individual nation, it applies to a number of nations, unevenly and in a manner that is very detrimental to the United States. For example, Russia could legally establish new early warning radars on the territory of other States, well beyond the periphery of Russia, while the United States is restricted to its own borders. Compounding this inequity, the territory and borders of the so-called former Soviet Union could change over time because the multilateralization agreement allows the admission of additional republics even after entry into force.

The bottom line, Mr. President, is multilateralization would by definition and practice create a fundamental asymmetry in the ABM Treaty. Rather than having two parties with equal offensive strategic forces and defensive capabilities, this agreement would create a tremendous imbalance. For us to negotiate any changes to the treaty, such as an agreement to permit multiple sites or to change the location, we would now need to convince all the participating Republics of the former Soviet Union rather than just one.

In essence, each of those countries would be able to veto our position at any time. And they would individually leverage the vote in the Standing Consultative Commission for more foreign aid, or trade recognition, or concessions on a variety of issues. Whenever we finally met any single Republic's demands, another could instantly leverage similar concessions. When would it end? Never. This scenario is very troubling. It is troubling there are people in the Senate who would be willing to accede to that kind of situation. At the very least, it will cause huge complications in our process for negotiating changes to the treaty.

There can be no question, an agreement to multilateralize the ABM Treaty is a substantive change to the ABM Treaty, plain and simple. It must be submitted for advice and consent. Condition 9 merely says that before the CFE Flank Limits Agreement can take effect, the President must certify that he will submit the ABM Treaty multilateralization agreement to the Senate for advice and consent.

Nothing in this condition will require any renegotiation of any provision of the CFE Flank Limits Agreement or, for that matter, require any renegotiation of any provision of the ABM Treaty multilateralization agreement. This condition will not affect any other country or any other treaty or the cause of strategic stability in any respect. That is a fact.

Contrary to the parochial appeals of the administration, it is not going to kill NATO expansion. It will not kill START II. And it will not kill the CFE Treaty. In fact, all the President has to do is send us a letter this afternoon certifying he will submit the agreement to the Senate for advice and consent and we will be done with it. Case closed.

I am pleased the Senate has seen fit, thanks to the tremendous leadership of Chairman HELMS, to adopt this very important condition. Senator HELMS, as he does so many times and often on the floor of the Senate and in private meetings on issues, stands sometimes alone. I am proud to be standing with him on this very important issue, and I think future generations will thank him for his leadership when we get to the point where this treaty does take effect. People will be thanking him for his leadership on the multilateralization issue.

I thank the Chair.

Mr. HELMS. I thank the Senator from New Hampshire. I assure him it is an honor to serve in the Senate with him.

Mr. President, I yield 5 minutes to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HAGEL. Mr. President, I am pleased to support this CFE Flank Treaty today. It is good for the security of the United States and the security of our NATO allies.

This treaty modifies the Conventional Forces in Europe Treaty. This treaty was reached in 1990 before the breakup of the Soviet Union and the Warsaw Pact. The modifications in CFE flank restrictions contained in this treaty are reasonable, and we all should support them.

Under Chairman HELMS' guidance, the Foreign Relations Committee added a number of important conditions to this treaty. These conditions

clarify parts of the treaty that could be construed as granting special rights to Russia to intimidate its neighbors, but most importantly are the clarifications that nothing in the CFE Flank Treaty grants to Russia any right to continue its current violations of the sovereignty of several neighboring states.

I am pleased that these clarifications were fully bipartisan conditions that received the support of our distinguished Foreign Relations ranking member, Senator BIDEN.

There is, however, one remaining condition that caused some controversy. This is condition 9, which requires the President to submit to the Senate for ratification another treaty modification, the ABM multilateralization treaty. This is not a question of support or opposition to the ABM Treaty. This is purely a matter of the prerogative of the Senate, of whether or not to adhere to the clear intent of the Constitution of this country.

During negotiations over the Chemical Weapons Convention, Senator HELMS and Majority Leader LOTT succeeded in convincing the President to submit to the Senate two out of three pending treaty modifications that the President had intended to implement as executive agreements. One of those treaty modifications, the CFE Flank Treaty now before us today, and another, the ABM Demarcation Treaty, is before the Foreign Relations Committee where it will receive serious consideration.

Only one treaty modification has yet to be submitted to the Senate, the ABM multilateralization treaty agreed to in Helsinki by Presidents Clinton and Yeltsin. It is right to require that treaty to be submitted as well.

Again, this issue is merely the constitutional obligation of each of us in this body to give our advice and consent on the ratification of treaties, not whether this treaty modification is good or bad.

I again congratulate Chairman HELMS, Senator BIDEN, and the distinguished majority leader. I am proud of the leadership they have shown on this treaty and on the constitutional prerogatives of the Senate.

Mr. President, I yield my time.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I have a little housekeeping function. I ask what I am about to do will not be charged to either side.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 1122

Mr. HELMS. As in legislative session, Mr. President, I ask unanimous consent that immediately following disposition of the Feinstein amendment to H.R. 1122 during Thursday's session of the Senate, Senator DASCHLE be recognized to offer an amendment and it be considered under the following time agreement: 2½ hours under the control of Senator DASCHLE or his designee, and 2½ hours under the control of Senator SANTORUM or his designee.

I further ask unanimous consent that following the conclusion or yielding back of time on the Daschle amendment, the Senate proceed to vote on or in relation to the Daschle amendment without further action or debate, with no amendments in order during the pendency of the Daschle amendment.

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

Mr. HELMS. I thank the Chair.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I yield 12 minutes to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank my friend from Delaware.

First, let me congratulate the Senators from North Carolina and Delaware, the chairman and ranking member of the Foreign Relations Committee, for working together so speedily and quickly to bring this treaty to the floor. It is a real feat. It is difficult to do this in this length of time. The kind of bipartisan cooperation that this takes really, I think, reflects great honor on this body.

There is one condition that I have some difficulty with that I want to address some remarks to this afternoon, and that is condition 9, which is now part of the resolution before the Senate.

Condition 9 requires the President to submit to the Senate for its advice and consent the memorandum of understanding concerning successor states to the ABM Treaty. In my view, this condition is probably unconstitutional but certainly unwise. As a general rule, a condition on a resolution of ratification is a stipulation which the President must accept before proceeding to ratification of a treaty. And if the President finds the condition unacceptable, he generally has but one choice, which is to refuse to ratify the treaty. There is, however, a generally recognized exception: If the condition is inconsistent with or invades the President's constitutional powers, in which case the condition would be ineffective and of no consequence. The restatement of foreign relations law puts the matter this way:

> The Senate has not made a practice of attaching conditions unrelated to the treaty before it. If the Senate were to do so and were to attach a condition invading the President's constitutional powers, for example, his power of appointment, the condition would be ineffective. The President would then have to decide whether he could assume that the Senate would have given its consent without the condition.

In this matter before us, condition 9 has no relation to the CFE flank agreement. The condition, therefore, on that ground is improper. It seeks to invade the President's constitutional powers to recognize states and to implement treaties, and thus is probably unconstitutional.

When the Senate deals with the important issue of advice and consent to a treaty, I think it should limit itself to the treaty before it. When we go beyond that, it seems to me we do not bring honor on this institution, when we try to force the hand of the President in areas beyond the immediate treaty that is being considered.

In a very ironic twist, condition 9 could imperil the continued viability of the treaty that we are ratifying because if the ABM Treaty, when it is multilateralized, needs to come back for ratification, the same principle would apply to other treaties, of which we have dozens. The same principle, if it applies to ABM, would apply to CFE, the treaty before us.

Is this treaty binding on those other states, those other successor states of the Soviet Union without coming back to the Senate? INF, START I, probably dozens of treaties with the former Soviet Union which have been multilateralized, which have been accepted by the successor states, which we now, I hope, consider binding on those States and on us, even though they have not been brought back to the Senate for ratification, if the logic of condition 9 is correct, it would undermine the viability, the efficacy of those other treaties that we had with the former Soviet Union. It would call into question treaties that I do not believe this body wants to call into question.

The reason that it does that is that condition 9 requires the President to submit to the Senate for its advice and consent his recognition of the Soviet Union successor states to the ABM Treaty. It does provide an opportunity for opponents of the ABM Treaty to try to defeat that memorandum of understanding as it relates to the successor states. But in doing so, it jeopardizes the continuing viability of the acceptance by those successor states of their obligations under the ABM Treaty and, in terms of the point I am making, their obligations under a number of other treaties which have been signed by the former Soviet Union.

This outcome could undermine the reductions of former Soviet nuclear weapons that our military has testified are so clearly in our national security interests. Opponents of having successor states other than Russia appear to worry about the potential difficulty of negotiating changes or amendments to the ABM Treaty in order to permit deployment of a national missile defense system in the future. Their notion appears to be that while it may be straightforward for us to negotiate required changes with Russia, it will somehow be more difficult to get the other three successor states to agree to any changes. And according to that view, rather than to give each of the other three states a potential veto over changes to the ABM Treaty, it would be better to prevent those successor states from ever joining the ABM Treaty as a party.

That is what this condition is all about, but it is misguided from a number of perspectives. First, the notion that Ukraine, Belarus, and Kazakstan would obstruct any changes to the ABM Treaty but that somehow Russia would be an easier negotiating partner flies in the face of experience. In the negotiations at the Standing Consultative Commission, it is Russia that has been the most challenging negotiating partner, while Ukraine, Kazakstan, and Belarus have been more amenable to American proposals.

Furthermore, as the administration has pointed out on many occasions, if the United States determines that there is the threat that requires us to deploy a national missile defense system that would conflict with the ABM Treaty, they would seek to negotiate changes with our treaty partners to permit such a deployment. We would seek to adapt the treaty to our security requirements. But if the Russians would not agree to our proposed changes, then the administration would consider whether to withdraw from the ABM Treaty, as is our right under the treaty's provisions relating to our supreme national interests. That is the prudent approach and the one that best serves our security.

Let me just give one other example of the implication of this condition. In 1995, the United States recognized Ukraine as a successor to the former Soviet Union for 35 nonarmed control treaties that we previously had with the U.S.S.R. We did this without a Senate vote. So now we presumably want the Ukraine to be bound by 35 treaties previously negotiated. But there is no Senate vote ratifying that treaty with Ukraine.

In a diplomatic note from the United States Embassy to the Government of Ukraine dated May 10, 1995, the United States listed the 35 agreements that have continued in force with Ukraine and they include such treaties as the incidents at sea agreement of 1972 with its protocol, which our good friend from Virginia, Senator WARNER, negotiated when he was Secretary of the Navy. They included the prevention of dangerous military activities agreement of 1989, which is designed to prevent an accident or mistake from erupting into hostilities. These are extremely important agreements and we should not put those agreements in limbo, or in doubt, by setting this precedent relative to the ABM Treaty.

I ask unanimous consent that the list of those 35 treaties that Ukraine is hopefully bound by, through that note—but which we have not ratified, vis-a-vis Ukraine—that that list and note be printed in the RECORD at this time.

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

EMBASSY OF THE UNITED STATES OF AMERICA—KIEV, MAY 10, 1996

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of Ukraine and has the honor to refer to discussions between technical experts of our two Governments concerning the succession of Ukraine to bilateral treaties between the United States of America and the former Union of Soviet Socialist Republics in light of the independence of Ukraine and the dissolution of the Union of Soviet Socialist Republics. In conducting their discussions, the experts took as a point of departure the continuity principle set forth in Article 34 of the Vienna Convention on Succession of States in respect of Treaties. In examining the texts they found that certain treaties to which the principle applied had since expired by their terms. Others had become obsolete and should not be continued in force between the two countries. Finally, after a treaty-by-treaty review, which included an examination of the practicability of the continuance of certain specific treaties, they recommended that our two Governments agree no longer to apply those treaties.

In light of the foregoing, the Embassy proposes that, subject to condition that follows, the United States of America and Ukraine confirm the continuance in force as between them of the treaties listed in the Annex to this Note.

Inasmuch as special mechanisms have been established to work out matters concerning succession to bilateral arms limitation and related agreements concluded between the United States and the former Union of Soviet Socialist Republics, those agreements were not examined by the technical experts. Accordingly, this Note does not deal with the status of those agreements and no conclusion as to their status can be drawn from their absence from the list appearing in the Annex.

With respect to those treaties listed in the Annex that require designations of new implementing agencies or officials by Ukraine, the United States understands that Ukraine will inform it of such designations within two months of the date of this Note.

If the foregoing is acceptable to the Government of Ukraine, this Note and the Ministry's Note of reply concurring therein shall constitute an agreement between our two Governments which shall enter into force on the date of receipt by the Embassy of the Ministry's Note in reply.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Ukraine the assurance of its highest consideration.

Enclosure: Annex.

ANNEX

Convention relating to the rights of neutrals at sea. Signed at Washington July 22, 1854; entered into force October 31, 1854.

Agreement regulating the position of corporations and other commercial associations. Signed at St. Petersburg June 25, 1904; entered into force June 25, 1904.

Arrangements relating to the establishment of diplomatic relations, nonintervention, freedom of conscience and religious liberty, legal protection, and claims. Exchanges of notes at Washington November 16, 1933; entered into force November 16, 1933.

Agreement relating to the procedure to be followed in the execution of letters rogatory. Exchange of notes at Moscow November 22, 1935; entered into force November 22, 1935.

Preliminary agreement relating to principles applying to mutual aid in the prosecution of the war against aggression, and exchange of notes. Signed at Washington June 11, 1942; entered into force June 11, 1942.

Agreement relating to prisoners of war and civilians liberated by forces operating under Soviet command and forces operating under United States of America command. Signed at Yalta February 11, 1945; entered into force February 11, 1945.

Consular convention. Signed at Moscow June 1, 1964; entered into force July 13, 1968.

Agreement on the reciprocal allocation for use free of charge of plots of land in Moscow and Washington with annexes and exchanges of notes. Signed at Moscow May 16, 1969; entered into force May 16, 1969.

Agreement on the prevention of incidents on and over the high seas. Signed at Moscow May 25, 1972; entered into force May 25, 1972.

Agreement regarding settlement of lend-lease, reciprocal aid and claims. Signed at Washington October 18, 1972; entered into force October 18, 1972.

Protocol to the agreement of May 25, 1972 on the prevention of incidents on and over the high seas. Signed at Washington May 22, 1973; entered into force May 22, 1973.

Convention on matters of taxation, with related letters. Signed at Washington June 20, 1973; entered into force January 29, 1976; effective January 1, 1976.

Agreement on cooperation in artificial heart research and development. signed at Moscow June 28, 1974; entered into force June 28, 1974.

Agreement relating to the reciprocal issuance of multiple entry and exit visas to American and Soviet correspondents. Exchange of notes at Moscow September 29, 1975; entered into force September 29, 1975.

Agreement concerning dates for use of land for, and construction of, embassy complexes in Moscow and Washington. Exchange of notes at Moscow March 20, 1977, entered into force March 30, 1977.

Agreement relating to privileges and immunities of all members of the Soviet and American embassies and their families, with agreed minute. Exchange of notes at Washington December 14, 1978; entered into force December 14, 1978; effective December 29, 1978.

Memorandum of understanding regarding marine cargo insurance. Signed at London April 5, 1979; entered into force April 5, 1979.

The Agreement supplementary to the 1966 Civil Air Transport Agreement, as amended by the Agreement of February 13, 1986. Signed at Washington November 4, 1966; entered into force November 4, 1966.

Agreement relating to immunity of family members of consular officers and employees form criminal jurisdiction. Exchange of notes at Washington October 31, 1986; entered into force October 31, 1986.

Agreement concerning the confidentiality of data on deep seabed areas, with related exchange of letters. Exchange of notes at Moscow December 5, 1986; entered into force December 5, 1986.

Agreement relating to the agreement of August 14, 1987 on the resolution of practical problems with respect to deep seabed mining areas. Exchange of notes at Moscow August 14, 1987; entered into force August 14, 1987.

Declaration on international guarantees (Afghanistan Settlement Agreement). Signed at Geneva April 14, 1988; entered into force May 15, 1988.

Agreement on cooperation in transportation science and technology, with annexes. Signed at Moscow May 31, 1988; entered into force May 31, 1988.

Memorandum of understanding on cooperation to combat illegal narcotics trafficking. Signed at Paris January 8, 1989; entered into force January 8, 1989.

Agreement on the prevention of dangerous military activities, with annexes and agreed statements. Signed at Moscow June 12, 1989; entered into force January 1, 1990.

Agreement on a mutual understanding on cooperation in the struggle against the illicit traffic in narcotics. Signed at Washington January 31, 1990; entered into force January 31, 1990.

Civil Air Transport Agreement, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement regarding settlement of lend-lease accounts. Exchange of letters at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on cooperation on ocean studies, with annexes. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on expansion of undergraduate exchanges. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Agreement on scientific and technical cooperation in the field of peaceful uses of atomic energy, with annex. Signed at Washington June 1, 1990; entered into force June 1, 1990.

Memorandum of cooperation in the fields of environmental restoration and waste management. Signed at Vienna September 18, 1990; entered into force September 18, 1990.

Memorandum of understanding on cooperation in the physical, chemical and engineering sciences. Signed at Moscow May 13, 1991; entered into force May 13, 1991.

Memorandum of understanding on cooperation in the mapping sciences, with annexes. Signed at Moscow May 14, 1991; entered into force May 14, 1991.

Memorandum of cooperation in the field of magnetic confinement fusion. Signed at Moscow July 5, 1991; entered into force July 5, 1991.

Memorandum of understanding on cooperation in natural and man-made emergency prevention and response. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Memorandum of understanding on cooperation in housing and economic development. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Agreement on emergency medical supplies and related assistance. Signed at Moscow July 30, 1991; entered into force July 30, 1991.

Mr. LEVIN. If the logic of condition 9 were extended to Ukraine, all those 35 treaties would be in limbo until we ratified the succession of the treaties. And this list of treaties is just one case of the 12 successor states to the former Soviet Union. Condition 9 could cast into doubt the effect of all of those treaties for all of those states.

I think the aim here, while it is aimed at ABM, does not hit ABM because our ABM Treaty is not touched by this condition. Our treaty relative to ABM, with Russia, is not affected by condition 9. Condition 9 does not refer to Russia. It is the other states that it refers to. So our ABM Treaty with Russia is not affected. It is all the other treaties which are undermined, with all the other successor states. It is the arms control treaties and the nonarms control treaties which are put in jeopardy, left in limbo by the logic of this condition. So, while the aim is at the ABM Treaty, it misses that and, instead, hits treaties that I believe this body wants to be binding on the successor states to the Soviet Union.

What about the treaty before us, the CFE Treaty? Does this have to be ratified with each of the successor states to the Soviet Union? If so, we are putting this very treaty in limbo. This very CFE Treaty which we are ratifying, by the logic of condition 9, is left in limbo as to the other successor states, because there is no ratification of this treaty relative to the other states.

Mr. President, I fail to understand the logic of the supporters of condition 9 that appears to say that Russia is a successor state to the former Soviet Union but the other states of the former Soviet Union can only become successor states if the Senate ratifies that action. If the Senate must ratify the succession of one state, then logically it should ratify the succession of all. Thus this condition would cast into doubt the continuing validity of Russia's obligations under the numerous treaties that the United States had entered into with the Soviet Union but which were not submitted to the Senate for ratification subsequent to the breakup of the Soviet Union.

And it could cast into similar doubt other treaties with other countries that have dissolved, such as former Czechoslovakia, or former Yugoslavia, where the Senate has not ratified the succession of states to those treaties.

We should also consider the impact of condition 9 on other arms control agreements which successor states to the former Soviet Union have joined. Since we are considering the resolution of ratification for the CFE Flank Agreement, let us start with the underlying CFE Treaty. It was ratified by the Senate in November 1991, prior to the accession of successor states based on the Oslo document in June of 1992. In other words, it was after the Senate voted for ratification of the CFE Treaty that the former successor states agreed on the arrangement for joining the CFE Treaty.

The precedent that condition 9 would set would, if followed in other cases, call into question whether those states are considered members of and bound by the CFE Treaty until the Senate votes on their succession to the treaty.

There is also the case of the intermediate-range nuclear forces, or INF, Treaty signed between the United States and USSR. When the Soviet Union dissolved into 12 successor states, 6 of those states had INF facilities on their soil while the other 6 did not. All twelve are successors to the INF Treaty, with six having obligations related to their INF facilities and the other six having the obligation not to have such facilities or INF missiles.

The logic of condition 9 would suggest that the successor states are not parties to, or bound by, the INF Treaty unless and until the Senate provides its advice and consent to their accession. I cannot imagine any Member of the Senate wanting to cast doubt on the obligation of these states to comply with the INF Treaty, but that is what condition 9 does when its logic extended to other treaties.

In a June 11, 1996, letter, then-Secretary of Defense William Perry explained the Defense Department's concerns with a proposed provision of law that was essentially the same as condition 9:

> . . . this section runs counter to the successful U.S. policy of involving within the framework of strategic stability all states which emerged from the former Soviet Union with nuclear weapons on their territory. Moreover, Russia, Belarus, Kazakstan, and Ukraine perceive a clear link between their participation in the START and INF Treaties and the ABM Treaty. Casting doubt on their ability to be equal partners in the ABM Treaty could poison our overall relationship with these states and needlessly jeopardize their compliance with their denuclearization obligations under START I.

The logic of condition 9, when extended to other treaties, could well lead the successor states to the former Soviet Union to reconsider whether they are bound by these treaties as well as the ABM Treaty. Such a move would be decidedly against our security interests.

I should point out, Mr. President, that the Congress itself urged the President to discuss ABM Treaty issues ''with Russia and other successor states of the former Soviet Union'' in the National Defense Authorization Act for Fiscal Year 1994. At that time there was no question that there were other successor states to the former Soviet Union with whom we would want to discuss possible changes to the ABM Treaty. Section 232(c) of that Act states:

> Congress urges the President to pursue immediate discussions with Russia and other successor states of the former Soviet Union, as appropriate, on the feasibility of, and mutual interest in, amendments to the ABM Treaty to permit—
>
> clarification of the distinctions for the purposes for the purposes of the ABM Treaty between theater missile defenses and anti-ballistic missile defenses . . .

I find it strange that the Senate, after urging the President to discuss the ABM Treaty with Russia and other successor states to the former Soviet Union on demarcation, now would call into question whether there are other successor states to the ABM Treaty without a Senate ratification.

If a treaty must be submitted to the Senate for ratification of successors to the former Soviet Union, or other countries, before it is binding, then hundreds of our treaty commitments are in doubt. All of this is because opponents of the ABM Treaty are trying to maim or kill this one treaty.

Additionally, we should consider the impact of accepting condition 9 on other parliaments in other nations that may take this signal as an invitation for them to reconsider their nation's treaty commitments. I find it ironic that on an act of treaty ratification the Senate is on the verge of creating a potential international treaty uncertainty.

There is no need for the Senate to drag in the ABM Treaty issue on the CFE Flank Agreement resolution of ratification. The Senate will have ample opportunity to debate the ABM Treaty when the administration submits the ABM demarcation agreement to the Senate, as they have committed to do. But this is neither the time nor the vehicle to try to decide this issue.

Furthermore, this issue of the memorandum of understanding on successor

states to the ABM Treaty is already connected to Senate consideration on the demarcation agreement. The text of the demarcation agreement states that the MOU on successor states will not go into effect until the Agreed Statement on Demarcation goes into effect. So in effect, the MOU cannot take effect until the Senate votes on the demarcation agreement. Consequently there is no need for this condition and it should not be included in this resolution of ratification.

Mr. President, thankfully, condition 9 is limited to the memorandum of understanding concerning successor states to the ABM Treaty. It is my fervent hope and expectation that the President will make clear in his signing statement for the CFE Flank Agreement that this extraordinary action is not a precedent. In that way he can limit the damage that could otherwise flow from this unwise condition.

Mr. President, I am pleased that condition 5(f) dealing with potential violations of the CFE Treaty in the Caucasus region has been modified. I would have much preferred that it not make any reference to any particular country.

More importantly, I am very concerned with the word ''secessionist'' in condition 5(f). The situation in this troubled area has a long and unfortunate history, and I am disturbed that this condition would seek to so characterize a conflict there.

Mr. COCHRAN. Mr. President, I am pleased the administration has decided not to contest condition 9 in the resolution of ratification now before the Senate. That condition makes the advice and consent of the Senate a condition precedent to the addition of parties to the Anti-Ballistic Missile Treaty.

Any agreement between the administration and the Government of Russia or other states that were part of the Soviet Union which purports to enlarge the ABM Treaty by adding new parties must be submitted to the United States Senate and a resolution of ratification approved by the Senate before it will have the force and effect of law.

There are important reasons why it is necessary for the Senate to insist on its constitutional role in treaty making in this resolution. The administration has announced its intent not to submit a memorandum of understanding on succession to the Senate for advice and consent to ratification, and it purports to transform the ABM Treaty from a bilateral agreement into a multilateral accord.

The addition of new parties to the ABM Treaty clearly would have serious national security implications for the United States. It would make it much more difficult and time consuming to negotiate other changes in the treaty that may be considered necessary in the future to protect our security interests.

Unless the Senate insists on fulfilling its advice and consent responsibilities with respect to the ABM Treaty, there may be a mistaken view taken by the administration that a demarcation amendment being negotiated now with Russia could likewise be the subject of an executive agreement without the benefit of Senate ratification.

I am concerned that by our inaction the Senate could be forfeiting its constitutional role in the making of treaties. It should be clear that no treaty or material change in a treaty can be entered into by our government without the consent of the Senate. That is what the Constitution says, and that is what condition 9 says, and that is what the Senate says today as it provides advice and consent to ratification of the amendments to the Conventional Armed Forces in Europe Treaty.

Mr. ABRAHAM. Mr. President, I rise today to express my support for both the resolution of ratification to the Conventional Forces in Europe Treaty flank agreement, and, more importantly, the manager's amendment to condition 5 regarding compliance with the treaty by member states in the Caucasus region. True, the manager's amendment does not change the original language to the extent that I would desire, but I do wish to thank Senator HELMS and the staff of the Foreign Relations Committee for being so open to my ideas and engaging in very full negotiations. I also wish to thank Senators MCCONNELL, KERRY, and SARBANES for providing such critical leadership on this issue.

Mr. President, it is indeed important that the United States respond forthrightly to violations of the CFE Treaty. And considering this deals with numerical limits on military equipment, the degree of alleged violations is also important. But in executing such diligence, I hope we do not assume too quickly that all alleged violations are, in fact, true. That is why I applaud the inclusion of the request for a report on alleged violations, to ensure that the United States does not blindly enter a treaty which others may disregard.

But in requesting such reports, we must also be mindful of the impact our actions may have upon the delicate fabric of ongoing negotiations to which the United States is party. Specifically, Mr. President, I refer to the OSCE negotiations, to which the United States is co-chairman, regarding the future status of the Nagorno-Karabakh region. To single out one nation for alleged violations, in this case Armenia, without taking into account the full geo-political environment under which that nation's government must operate, may subvert the very process we think has been violated. Better, in my opinion, to err by requesting too much information than not enough, and take into account the region as a whole, and all the players in the current dispute. To ensure we do not upend this ongoing process of peaceful resolution, we should minimize giving credence to unverified allegations and cast as wide a net as possible in requesting additional analysis.

Mr. President, Armenia has had a tough go of it in its short period of independence. It is landlocked, its ethnic population is geographically divided, and it has suffered egregiously in the past from the crimes of others who condemned them simply because of their heritage. Add on top of that a 70-year legacy of abuse and political game playing by the Soviet Union, and it is understandable that Armenia may find itself hard-pressed to execute the policies that we Americans would like to see in a perfect world. But it is not a perfect world, and sometimes we must understand the realities of a situation, and make the best of it.

Therefore, Mr. President, I appreciate the willingness of the Foreign Relations Committee chairman to work with me on making condition 5 more inclusive of all potential threats to U.S. interests and the treaty's viability. By taking a more evenhanded approach, hopefully no party to the current negotiations will feel slighted. And, Mr. President, they should not feel slighted at this point in the process. This condition is meant to address violations to the CFE Treaty, not express an opinion on the legitimacy of any party's negotiating position. Any other interpretation is, in my opinion, a misunderstanding of the condition's intent. Further, I do not believe that this will, or should, be interpreted in any manner that would impugn the ability of the United States to continue as co-chair to the OSCE negotiations. The United States has energetically taken on this mantle of leadership, and I reaffirm my support for this process.

Mr. President, both the viability of the CFE Treaty, and the continued good-faith negotiations regarding the future status of Nagorno-Karabakh are important United States interests. We can, and must, work toward the success of both. I thank the chairman of the Foreign Relations Committee for his leadership in these areas, and the assistance of Senators KERRY and SARBANES in bringing about this amendment which I have cosponsored.

Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise today to address Senate consideration of the CFE Flank Agreement.

The Conventional Forces in Europe Treaty [CFE] entered into in 1990 is an outstanding arms control achievement, requiring the destruction of over 50,000 items of heavy weaponry, including tanks, armored personnel carriers, artillery pieces, and attack helicopters. The CFE has helped to make the Europe of 1997 a far safer place than the Europe of even just a few years ago, and in doing so has served American national security interests well.

The implementation of CFE helps guarantee that a destabilizing concentration of military equipment—or a massed military attack in central Europe of the kind that has dominated strategic thinking in Europe through two World Wars and a cold war—will

now be next to impossible for any nation or group of nations to achieve.

But, as the flank agreement underscores, the treaty negotiated between NATO and the Warsaw Pact in 1990 is not adequate to the realities of the new European security environment.

To begin with, the Soviet Union and the Warsaw Pact no longer exist. There are now Soviet successor states in the Baltics and the Transcaucasus—the flank zones—with very different security and political concerns. Since the breakup of the Soviet Union, the Transcaucasus have been a region of almost singular instability. Russia and the Ukraine, likewise, have different security orientations than did the Soviet Union, as do the states of both central and western Europe. NATO is undergoing a searching debate about the possibility of enlargement. The Europe that the CFE must be relevant to in 1997 is radically different than the Europe of 1990.

Thus, in ways unanticipated by its original negotiators, the issues raised by the flank agreement touch on some of the most central and the most sensitive security issues of the new European security environment.

The history of the Transcaucasus since the breakup of the Soviet Union have served as a grim reminder of the deadly subtleties of rapidly changing regional geography. Civil war and ethnic strife has been the rule, not the exception, in Nagorno-Karabagh, Osettia, Abkhazia, Georgia, and, of course, Chechnya.

Stabilizing the military balance in the Transcaucasus and inculcating confidence and security building measures, as the CFE Treaty does, is critical for peace in the region.

Although not racked with the violence that has characterized the Transcaucasus, the security concerns of the Baltic States in the northern flank zone will prove to be central to future stability in Europe, and the limits placed on threatening conventional weapons by the CFE Treaty is a critical part of the security architecture of the Baltics.

Likewise, the flank agreement also touches upon the sensitive topic of Russian-Ukrainian ties, and the political and security relationship between the two, and it addresses the role of Turkey between Europe, the Middle East, and central Asia.

Last, the flank agreement has profound implications for Russian nationalist sentiment, and may well have an impact on the future of Russian domestic political development, and the dynamics of those domestic factors which may influence either a cooperative or confrontational Russian foreign policy.

In this sense, the flank agreement is also critical issue for the debate over NATO enlargement that is just now beginning to come to a simmer. In structuring the balance of forces between NATO and Russia, the CFE and the flank agreement—what it says as well as how it is implemented—will be at the heart of Russian perceptions and assessments regarding the potential of an enlarged NATO.

In short, the CFE will play a central role in determining the future course of peace and stability in Europe.

Notwithstanding the positive contributions of the CFE to U.S. national security interests—and it is a treaty which I will be voting for—I feel that I would be remiss in my duty as a Senator if I did not also point out some general concerns that I have with the flank agreement, as well as some specific concerns I have with the resolution of ratification for this treaty as it was voted out of the Foreign Relations Committee last week.

As I made clear in the Foreign Relations Committee hearing, I found the way in which the flank agreement was negotiated—opening up an already negotiated treaty for revision because of the reticence of one party to live up to its commitments—deeply troubling.

Although I would agree with those who argue that it is necessary to revisit international agreements when there has been a material change in circumstances—and few would argue that the breakup of the Soviet Union does not count on this score—treaties, by their very nature, are only worthwhile if they are binding the minute they are signed.

The post-cold-war world may very well be more turbulent and fluid than the world which we are used to, but I hope that the way in which the flank agreement was opened for renegotiation—with one party not in compliance with a treaty which they had signed—does not set a precedent which will call into question other treaties which, after the fact, a state may wish to change.

I think that it is important for the Senate to go on the record in support of the binding nature of the treaty obligations which we and other states enter into—obligations which should be opened for renegotiation in only the most extreme of cases—even as we give our support to this agreement.

Second, in changing the CFE flank equipment ceilings to meet Russian security concerns, we must be careful to make sure that we have not increased the insecurity felt by other states in or bordering the flank zone.

In its original conception, the CFE Treaty was intended to make Europe safe from the dangers of a big war between East and West. I think that there is general agreement that CFE has been and will continue to be effective in this respect.

But the CFE Treaty, as revised, must not become part of a European security architecture in which Europe is made safe for little wars, between the large and the small, or as a tool for intimidation used by the strong against the weak.

If such a situation were to result from the flank agreement revisions, Europe would be less stable and secure, not more.

Third, as several of my colleagues have already pointed out, the inclusion of condition 9 regarding Senate advice and consent for the multilateralization of the Anti-Ballistic Missile Treaty is, I think, unwarranted and unwise.

It is unwarranted because the Anti-Ballistic Missile Treaty is not connected in any way with the CFE. It is unwise because it calls into question whether the United States may attempt to reopen or substantively change a treaty because some now perceive that it is in our interests to do so.

There was an attempt to get this same language regarding the ABM inserted into last year's defense authorization bill. That effort failed. On its own, the Senate has already rejected this language. Now there is an attempt to resurrect this language and attach it to this treaty. The consideration of treaties is one of the highest responsibilities of the Senate, and I am disappointed that some of my colleagues have chosen to place petty politics above the interests of U.S. national security.

The ABM Treaty is the diplomatic foundation of our intercontinental ballistic missile reduction strategy. It was possible to negotiate and ratify the Strategic Arms Reduction Treaty, or START, and negotiate START II because of the strategic groundwork laid in the ABM Treaty. Abandoning or violating the ABM Treaty would threaten the strategic ballistic missile reductions under these two treaties, which, when implemented, would verifiably eliminate the intercontinental ballistic missiles carrying two-thirds of Russia's nuclear warheads.

I would have preferred to have had the opportunity to eliminate this condition from the final resolution of ratification, but, unfortunately, it does not appear that we will have this opportunity.

In addition to these general concerns, I also have one specific concern with the resolution of ratification for this treaty as it was voted out of committee last week, which I hope that we will have an opportunity to change.

I am concerned that condition 5 (F) of section 2 unfairly singles out Armenia for a report on compliance with the CFE Treaty. In so doing, this condition makes the treaty weaker, and less effective in guaranteeing U.S. security interests in Europe, not more.

Although some of my Armenian friends might not want me to say this, I do believe that there should be a report on Armenia's compliance with the treaty. There have been some troubling questions raised in the press and in our committee discussions regarding Armenian transshipments of arms from Russia, and whether Armenia is in violation of certain provisions of the CFE.

As I noted previously, this is a very sensitive part of the globe, and one in which even a relatively small amount of heavy weaponry can have tremendous impact on the balance of power. If

Armenia is in violation of the treaty, then appropriate measures should be taken.

However, it is precisely the volatile nature of this region that dictates that U.S. national security interests demand that we seek compliance reports on the other states in the region as well. There are questions regarding Azerbaijan's compliance with the CFE's Treaty Limited Equipment (TLE) limits, for example, and recent experience with civil war and ethnic strife in Georgia, Osettia, Chechnya, Abkhazia, and elsewhere in the region all suggest that a condition calling for region-wide compliance reports would be in order.

Indeed stigmatizing and isolating Armenia in this fashion may well prove to be counterproductive. If the CFE Treaty is perceived as a tool of one side or another in an already tense and volatile region, it will have the effect of destroying confidence, not building it, and will contribute to an atmosphere where the states of the region may seek to build their armed forces, not lessen them.

This would be a grave mistake, and that is why I believe that condition 5 (F) must be changed to call for compliance reports for the other countries in the Transcaucasus as well. I urge my colleagues to support the amendment offered to make just these changes when we vote on this issue.

Even with these reservations, however, I find that the treaty merits support. The CFE, with the revised flank agreement, provides an invaluable tool for stabilizing European security and lessening regional tension. I would urge all of my colleagues to join me in voting in favor of this treaty.

Mr. LUGAR. Mr. President, I voted in committee to support the CFE Flank Document and the accompanying resolution of ratification that was reported favorably by the Committee on Foreign Relations last week.

Let me review a few of the issues that commanded committee concern.

THE FLANK DOCUMENT AND RELATIONS BETWEEN RUSSIA AND FORMER SOVIET STATES

During committee consideration of the CFE Flank Document, members on both sides of the aisle voiced concern over United States willingness to serve as an intermediary in negotiations between Russia and other former Soviet states to secure permission for temporary Russian troop deployments on their soil or for revision of the Russian treaty-limited equipment quotas set in the 1992 Tashkent Agreement. Paragraphs 2 and 3 of section IV of the Flank Document restate Russia's right to seek such permission ''by means of free negotiations and with full respect for the sovereignty of the States Parties involved''. A United States note passed to the Russians, according to Undersecretary of State Lynn Davis, said that the United States was ''prepared to facilitate or act as an intermediary for a successful outcome in'' such negotiations. United States officials state that Washington's offer to serve as an intermediary between Russia and other Tashkent Agreement signatories was for the purpose of leveling the playing field between Russia and smaller countries.

Many of the conditions in the resolution of ratification seek to bind the executive branch to its asserted purpose.

THE FLANK DOCUMENT AND AN ADAPTED CFE TREATY

In short, I agree with a number of the cautions presented by various witnesses with regard to the impact of the flank agreement on both Russia and a number of the States of the former Soviet Union, as well as its implications for bordering Western States. Thus, I am supportive of most of the conditions in the Committee resolution.

But I also believe that, on balance, this flank agreement is a useful contribution to the larger effort to adapt the original CFE agreement to the changed circumstances we now confront in Europe. I believe that the Flank Agreement must be viewed in that context as well.

The original CFE agreement has been a useful instrument for winding down the military confrontation in Europe that was a principal feature of the cold war. The United States is now presented with an opportunity to adapt that treaty to the new security situation in Europe in a way that could, in my judgment, facilitate both NATO enlargement and improved NATO-Russian cooperation. Because the former Soviet Army, and indeed some elements of the current Russian Armed Forces, always disliked CFE and considered it inequitable, some have argued that amending or adapting it now would be a concession to Russia or a price the United States should not have to pay. In my view, it is in the interest of the United States, NATO, and, for that matter, Russia to update the CFE Treaty as the only way to ensure its continued viability and its stabilizing influence in the Europe of the next century.

In light of the dramatic developments that have occurred in Europe since the treaty was negotiated, the CFE Treaty should not be exempted from the kind of change that is occurring in so many other European political, economic and security institutions. Thus, it is wholly appropriate to eliminate the bloc-to-bloc character of the original treaty in favor of national equipment ceilings and to reduce the amount of military equipment that will be permitted throughout the treaty area.

In short, I tend to analyze the benefits and costs associated with the CFE Flank Agreement not only on their own merits, but also in terms of their contributions to overhauling the entire treaty; that is one of the contexts in which I believe we must review the CFE Flank Agreement.

I am supportive of the general direction of NATO's recent proposals for adapting the CFE Treaty. As a general matter, it would emphasize the need for reciprocity in the adjustments that are made and encourage transparency.

However, I would raise some concerns relating to three aspects of the NATO proposals for an adapted CFE regime and suggest that we need to bear them in mind as we consent to ratification of the CFE Flank Agreement.

First, NATO has proposed limits on the ground equipment that could be deployed in the center zone of Europe, defined as Belarus, the Czech Republic, Hungary, Poland, Slovakia, Ukraine—other than the Odessa region—and the Kaliningrad region of Russia. This could be viewed as singling out potential new members of NATO for special restrictions, thus saddling them de facto with second-class citizenship within NATO. It is one thing for NATO to make a unilateral statement, as it has recently done, that it has, at present, no intention or need to station permanently substantial combat forces on the territory of new member states. It is quite another for it to accept legal limitations on its ability to station equipment on the territory of these states as part of an adapted CFE Treaty. While NATO would not be precluded from stationing forces on the territory of these states, such deployment would be constrained by the individual national ceilings which apply to the equipment of both stationed and indigenous forces.

It is certainly useful to have such a limitation with respect to the Kaliningrad region of Russia. With that exception, however, all of Russian territory lies outside the central zone. While Russian forces, permitted by a pliant Belarus to be stationed on its territory, would presumably be subject to the national ceiling applicable to Belarus, such a deployment could be viewed by Poland, for example, as an attempt to intimidate it. This consideration needs to be taken into account by NATO negotiators as they elaborate the terms of the NATO proposal for adapting the CFE Treaty. It is possible that provisions covering cooperative military exercises and temporary deployments in emergency situations, as well as ensuring adequate headroom in the national ceilings of the Central European States, may resolve this concern.

Secondly, this special central zone could be viewed as isolating Ukraine. If Russia chose to build up forces in the old Moscow Military District abutting Ukraine, then Ukraine could find itself unable to respond because it is subject to the special provisions of the central zone. It may be that in the negotiation of the revisions in the CFE Treaty, some arrangement can be found to allay Ukrainian concerns by some special limitation on Russia with respect to all or a portion of the Moscow Military District.

Finally, in negotiating changes to the CFE Treaty, NATO negotiators must keep in mind the possibility of further enlargement of NATO at some