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