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

future date to include states beyond three or four central European nations. It must ensure that whatever revised CFE limitations it negotiates will permit NATO, should it so decide, to extend security guarantees to these countries that will be credible and on which NATO can make good, even under the provisions of a revised CFE Treaty.

In sum, the CFE Flank Agreement, if ratified, provides the first building block to a revised CFE Treaty. NATO's proposals for an adapted CFE Treaty are based on the assumption that the flank agreement will be ratified. That being the case, it is appropriate that the Senate, in consenting to the CFE Flank Document, not only judge it on its own terms but also in terms of the contribution it can make to a revised CFE Treaty.

Mr. KYL. Mr. President, Article II of the Constitution gave the President and the Senate equal treaty making powers, stating that the President ''shall have the power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.'' Substantive changes to treaties also require the advice and consent of the Senate. John Jay made one of the most persuasive arguments about this point, noting that, ''of course, treaties could be amended, but let us not forget that treaties are made not by only 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 to alter . . . them.''

Condition 9 of the resolution of ratification for the CFE Flank Agreement protects the Senate's constitutional role by requiring that any agreement to multilateralize the 1972 ABM Treaty be submitted to the Senate for advice and consent, since any such agreement would substantively alter the rights and obligations of the United States and others under the treaty. This condition is not the first expression of the Senate's view on this issue, and would merely be the latest addition to a clear legislative history.

Section 232 of the Defense Authorization Act for fiscal year 1995 clearly states that any agreement that substantively modifies the ABM treaty must be submitted to the Senate for advice and consent.

The conference report accompanying the fiscal year 1997 Defense Authorization Act built on the language in the 1995 Authorization Act 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.''

The conversion of the ABM Treaty from a bilateral to a multilateral agreement represents a substantive modification of the treaty. First of all, multilateralization changes the agreement by altering the definition of territory, which is at the heart of the treaty. Article I of the 1972 ABM Treaty states, ''Each Party undertakes not to deploy ABM systems for a defense of the territory of its country.''

Under the terms of the memorandum of understanding on Succession to the ABM Treaty, territory would now be defined as the ''combined national territories of the U.S.S.R. Successor States that have become Parties to the Treaty.'' The term periphery would also be changed to mean the combined periphery of all the former Soviet states party to the treaty. Thus, instead of the treaty applying to the territory of a single nation, in the case of the former Soviet Union, it would apply to a number of nations.

Multilateralization would also be a substantive change since it would create a system of unequal rights under the treaty, wherein the New Independent States of the former Soviet Union would be treated as second class citizens. The ABM Treaty that the Senate agreed to 25 years ago created identical rights and obligations for each party. Under the memorandum of Uunderstanding on succession, however, only two of the potential parties to the treaty—the United States and Russia—would be permitted to field an ABM system. Other nations, while responsible for regulating ABM activities on their territory, would not be allowed to deploy such a system. For example, Ukraine could locate new early warning radars on the periphery of its territory, oriented outward, but would not be permitted to protect its capital with an ABM system.

The multilateralization of the ABM Treaty also undermines U.S. efforts to promote the independence of the former Soviet republics. The memorandum of understanding on succession states that the term capital of the U.S.S.R. will continue to mean the city of Moscow. This designation, in addition to granting the New Independent States inferior rights under the treaty, and defining territory and periphery as the combined total of the former Soviet states sends the wrong message. It tells the New Independent States that they remain linked to Russia, without equal rights.

Finally, multilateralization represents a substantive change to the agreement since it would diminish U.S. rights and influence under the treaty. New parties will surely be given a seat at the Standing Consultative Commission [SCC], which interprets, amends, and administers the ABM treaty. Under the 1972 ABM Treaty, the United States could take actions through bilateral agreements with the Soviet Union. By expanding the number of nations in the treaty, it will now be necessary to reach multilateral consensus to interpret or amend the treaty. One country, such as Belarus, could effectively block United States actions or demand concessions, even if Russia and the other parties to the treaty agreed with the United States. Negotiating changes or common interpretations of treaty obligations with Russia is a difficult task. Adding up to 11 new parties to the treaty will make this process much more difficult.

In addition to the reasons I have cited as to why multilateralization would substantively modify the ABM Treaty, and the legislative history compelling the administration to submit the agreement to the Senate for advice and consent, the way the Senate has considered succession agreements for the various arms control treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of any ABM successorship document.

Since the breakup of the Soviet Union, the only arms control treaty which was not re-submitted to the Senate for advice and consent due to changes in countries covered, was the INF Treaty. This treaty carried a negative obligation, namely not to possess intermediate-range nuclear missiles. Since no treaty terms were altered and U.S. rights and obligations remained unchanged, advice and consent was not necessary.

The resolution of ratification for the START I Treaty was accompanied by a separate protocol multilateralizing the treaty, which was submitted to the Senate for advice and consent.

This same protocol determined successorship questions for the Nuclear Nonproliferation Treaty [NPT].

Finally, the Senate specifically considered the question of multilateralization of the Conventional Armed Forces in Europe [CFE] treaty under condition #5 of its resolution of ratification.

As I have discussed today, the addition of parties to the ABM Treaty clearly represents a substantive modification of the treaty. The Defense Authorization Acts passed by the Senate in 1995 and 1997, and the history of how this body has considered succession agreements to previous arms control accords with the Soviet Union strongly support the submission of any ABM multilateralization agreement to the Senate. Voting to require the administration to submit the ABM multilateralization agreement for advice and consent, simply protects the Senate's constitutional role in treaty making. Reasonable people may differ over the merits of the ABM Treaty or the addition of one or more countries to the agreement, but I believe all my colleagues can agree that before this new treaty is implemented, the Senate needs to fulfill its constitutional duty by considering whether to give its advice and consent to this new agreement.

Mr. SHELBY. Mr. President, I rise in support of condition 9 of the resolution of ratification of the CFE Flank Agreement.

Condition 9 simply confirms the Senate's role in treatymaking, as established in the U.S. Constitution and reaffirmed in existing law.

Specifically, condition 9 restates the requirement, enacted as section 232 of

the National Defense Authorization Act for fiscal year 1995, Public Law 103–337, that:

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

Thus, this body is already on record supporting the preservation of the Senate's constitutional prerogatives in this area.

In other words, the President may not unilaterally negotiate substantive changes to the ABM Treaty without the advice and consent of the Senate.

Frankly, I am surprised some of my colleagues, who in the past have been strong supporters of this body's constitutional prerogatives with respect to treaties in general, and the ABM Treaty in particular, are arguing to strike condition 9.

Not only do the Constitution and U.S. law require Senate advice and consent, but submission to the Senate is also consistent with recent practice on the multilateralization of arms agreements with the Soviet Union to include successor states.

Both the multilateralization of START I and the multilateralization of the CFE Treaty were considered by the Senate when it acted on the Lisbon protocol and the CFE Treaty itself.

Mr. President, some of my colleagues argue that the multilateralization of the ABM Treaty is not a substantive change.

Consider the following:

The proposed changes would alter the basic rights and obligations of the parties—the central issue in any contract or treaty.

Second, the proposed changes would modify the geographic scope and coverage of the Treaty, and would do so by taking the extraordinary step of defining Russia's national territory to include the combined territory of other independent states of the former Soviet Union.

Third, the role and function of the Standing Consultative Commission [SCC], in particular the ability of the United States to negotiate amendments to the treaty to protect our national interests, would be dramatically changed by the accession of new parties to the treaty with effective veto power over treaty amendments.

Lastly, some of my colleagues have cited a Congressional Research Service legal analysis that seems to suggest that the Senate has no role in the process.

In response, I would like to point out that:

The CRS analysis concludes that an apportionment of the rights and obligations of the U.S.S.R. under the ABM Treaty to its successor states would not, in itself, seem to require Senate participation.

The CRS analysis goes on to say, however, ''arguably, a multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent.''

The administration's proposal clearly falls into the latter category.

It does much more than merely apportion the rights and obligations of the U.S.S.R.

It apportions some rights to some successor parties—but denies them to others, in effect creating two classes of parties. This asymmetry and lack of reciprocity represents a clear departure from both the legal and strategic assumptions embodied in the initial treaty.

It specifically permits Russia to establish ABM facilities on the territory of other independent states. This is not an apportionment; this creates a new right under the treaty.

The administration proposal admits to the treaty states which neither have nor intend to have offensive or defensive strategic weapons, while giving them virtual veto rights over the strategic posture of other parties.

This brings me to the most important point: The administration's proposal affects the rights of the United States to provide for our own defense as we see fit.

It was to protect those rights that the Senate was given its advice and consent role in the first place. The Senate must not abdicate its role, now.

I urge my colleagues to support this provision.

Mr. DODD. Mr. President, today I rise to recognize the past success of the CFE Treaty and to stress that, in order to continue that success, this body must now offer its advice and consent for the CFE Treaty's Flank Document.

Since the CFE Treaty entered into force in 1992 it has made Europe a safer place; not just because it has resulted in the removal or destruction of over 53,000 items of major military equipment; not just because it has enabled international inspectors to undertake nearly 3,000 on-site international inspections; but, above all, because it has fostered a sense of trust between NATO and Russia.

Now, as we move to build on that sense of trust and deal with Russia as a new democratic state rather than an old arch-enemy, it is only fair and proper that we address Russia's concerns with respect to some of the arcane provisions of this treaty. The CFE Treaty, as written, establishes zones on an old cold war map, a map drawn before the breakup of the former Soviet Union. The pending revised Flank Document updates alters some of the provisions of this treaty to reflect the fact that we're now dealing with a new map.

Clearly the Flank Document does not address all the issues that we must face in adapting the CFE Treaty to the new situation in Europe, but it is a fine first step.

The conditions in the resolution of ratification are, for the most part, thoughtful and necessary. I also support the amendment, offered by Senators KERRY and SARBANES, clarifying condition 5 as it relates to Armenia.

Without this amendment, section F of condition No. 5 would have required the President to submit a special report to Congress regarding whether or not Armenia has been in compliance with the CFE Treaty, and, if not, what actions the President has taken to implement sanctions.

Why should we single out Armenia? Without the amendment, the language assumed that Armenia and only Armenia violated the CFE Treaty and should suffer sanctions.

This amendment was added in the interest of fairness and simply asks the President to examine compliance of all States Parties located in the Caucasus region rather than singling out Armenia for special treatment.

While the amendment ameliorates one problem with the resolution of ratification, I have another misgiving about another condition that was adopted by the Committee on Foreign Relations during consideration of the treaty last week. Condition No. 9 would require the President to certify that he will submit to the Senate, for its advice and consent, the agreement to multilateralize the 1971 Anti-Ballistic Missile Treaty.

I am of the same mind as my distinguished colleague, Senator BIDEN, on this issue. While the Senate does not prohibit itself from attaching unrelated conditions to resolutions of ratification, the Senate should exercise some self-restraint in such important matters. The Founding Fathers clearly distinguished the question of treaty ratification by requiring a supermajority in such cases. This is not every day legislation we're dealing with here. We're debating whether or not to ratify a treaty, and this attached, unrelated condition really has no place in today's debate.

In short, condition No. 9 links ratification of the Flank Document with the unrelated, but controversial 1972 Anti-Ballistic Missile Treaty debate. There are merits to both sides of that issue and that debate will surely have its time. This is the wrong way to move that debate forward.

Let us be certain of one thing: The Senate, with condition 9, interferes with what has long been a function of the executive branch. In the breakups of the U.S.S.R., Yugoslavia, Czechoslovakia, and Ethiopia, when the new States took on the treaty rights and obligations of their predecessors, no request for Senate advice and consent was sought. I ask my colleagues: Why are we treating the ABM Treaty differently?

In spite of my objection to condition 9, this treaty and its resolution of ratification are too important to be bogged down today over a debate on the ABM Treaty. I believe that the appropriate course of action is to ratify the pending Flank Document this is a reasonable initial adjustment to the CFE

Treaty. In doing so, we will also show Russia that we are willing to work with Russian officials in facing legitimate concerns, and, most importantly, we will maintain the viability of this valuable 30-nation agreement.

Mr. HELMS. Mr. President, I yield the remainder of my time to the distinguished Senator from Oregon [Mr. SMITH].

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, I rise in appreciation for the leadership of the chairman, the Senator from North Carolina, on this issue and as member of his committee I rise in support of the ratification of the CFE Flank Agreement.

The CFE Treaty has been remarkably successful in reducing the cold war arsenals of conventional weapons in Europe. To date well over 50,000 tanks, artillery pieces and aircraft have been destroyed or removed from Europe. This treaty serves as an important mechanism to continue balanced force reductions in Europe, to build confidence among European States, and to provide assurances that NATO expansion will in no way threaten Russia.

In addition to the Europe-wide national ceilings on specific categories of military equipment, the CFE Treaty established a system of four zones inside the map of Europe with separate subceilings. The three central zones are nested and overlapping, the fourth zone is the flank zone. The flank zones include Russia's northern and southern military districts that, during the cold war, were areas of heightened tension with NATO. NATO has corresponding limits on its Northern and Southern Flanks.

The CFE flank zones limit the amount of equipment a country is permitted to deploy in certain areas of its own territory. The outbreak of armed ethnic conflicts in and around the Caucasus in 1993 and 1994, most notably the large scale offensive launched by the Russian Government in Chechnya, led to Russian claims for the need to deploy equipment in excess of treaty limits in that zone.

Under the CFE Treaty, mechanisms exist that would allow parties the flexibility to make temporary adjustments in the size or location of their military equipment holdings with proper notification. However, in 1994 the Government of Russia signaled its intention to violate the treaty if such restrictions were not permanently relaxed.

In early 1995, Clinton administration officials adamantly insisted that Russia must meet its obligations under the CFE Treaty on schedule. By May of that same year, those rigid statements demanding compliance soon collapsed into a frenzied effort to renegotiate the treaty on terms that would be acceptable to Russia.

Aside from the embarrassing spectacle of Western concessions in the face of Russian arms control violations, the NATO alliance was further undermined by a United States-Russian side deal that failed to gain the support of our allies. A key element of the final compromise on this treaty is a confidential side statement which U.S. negotiators provided to the Russian delegation in order to win their approval of the Flank Document. An interim United States-Russian proposal—known as the Perry-Grachev understanding—led to yet another embarrassing retreat, this time from our own NATO allies. Finally, after 11th hour negotiations, the agreement before us today was accepted by all 30 parties to the CFE Treaty.

In order to understand the process through which this treaty was approved, I strongly recommend that any interested Senator review that short document, which is available in the Office of Senate Security on the fourth floor of the Capitol. After reading that document, the purpose of the numerous restrictions contained in the resolution of ratification—particularly paragraphs 3 and 6—should be abundantly clear.

The committee resolution reverses the affects of this side agreement by prohibiting United States participation in any negotiations which would allow Russia to violate the sovereignty of its neighbors. As further assurance, the resolution requires the President to certify, prior to deposit of the instrument of ratification, that he will vigorously reject any other side agreements sought by the Russians or any other country.

I believe that the proper approach for the United States would have been to insist on Russian compliance 18 months ago. However, the 30 parties to the treaty were willing to reach a compromise consisting of the document before the Senate today. In all likelihood, if this treaty is rejected, it will be renegotiated on less favorable terms. With that in mind, and because of the 14 conditions included in the committee's resolution of ratification, I am willing to recommend support for this treaty.

The treaty is an acceptable first step in resolving the difficult challenge of adapting a cold war era treaty to post-cold-war realities. It is one part in a series of efforts underway to redesign the security architecture of Europe, and as such it is an important step toward the larger goal of NATO enlargement.

The CFE Treaty and the Vienna-based organization that oversees its implementation are important pieces of the geopolitical landscape of Europe and the former Soviet Union. With the end of the cold war, decisions made in the context of the CFE Treaty affect U.S. security on the margins. But for countries such as the Baltic States, Ukraine, Georgia, and Azerbaijan, such decisions can affect the very sovereignty of these newly independent countries.

Russia—still the largest military power in Europe—has used its armed forces in recent years in both Georgia and Azerbaijan. Russia uses its military presence in Ukraine and Moldova to influence the sovereign governments of those states. Russian Government officials have made open threats of military invasion against the Baltics. Finally, less than a year ago, a bloody war in Chechnya was brought to an end. That war was characterized by wide scale Russian atrocities, the intentional targeting of civilians, and casualties possibly in excess of 100,000 people—mostly innocent men, women, and children. It is against this back drop that the countries on Russia's periphery watch any revisions to the security guarantees contained in the CFE Treaty.

Mr. President, I understand my time is up.

On this basis, this treaty has been negotiated. Again, with the leadership of the chairman, I urge support from the Senate and thank you for this time.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I want to pay my respects to the distinguished Senator from Oregon [Mr. SMITH]. He is the chairman of the Europe subcommittee, and he has devoted an enormous amount of time and effort to bringing this treaty forward. So he thanks me, but I thank him. I am glad he is in the Senate. I am glad he is a member of the Foreign Relations Committee.

I have been asked to advise Senators that the coming vote, after the able Senator from West Virginia, Senator BYRD, completes his presentation, the ensuing vote will be the last vote of the day.

I yield the floor and yield back such time as I may have.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, how much time remains before the vote?

The PRESIDING OFFICER. There is 3½ minutes for Senator BIDEN. You have 30 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I want to commend the managers of the agreement for the expeditious manner in which they have moved this agreement through the committee and to the floor in time for the deadline of May 15 in order that it not be subject to further action by the review conference in Vienna. As I understand it, the agreement was not submitted to the Senate by the Secretary of State until April 3, 1997. So I commend the committee. But I also wish to express my concern over the rushed manner in which the Senate has been forced to deal with this important treaty. All of us in this Chamber know that treaties are not considered by the House of Representatives, but they still have the effect and status of being the law of the land of our Nation. They have as much or even more importance, in some respects, and certainly as far as the Senate is concerned, than any bill that is passed by both Houses and has been subjected to the scrutiny of a conference committee.

In the case of treaties, the Senate considers them and, assuming that the President exchanges the instruments of ratification, they become the law of the land according to article 6 of the United States Constitution. Therefore, the Senate has a special responsibility, in the case of treaties, to exercise due caution and great care in dealing with treaties, since there is no review or check by the other body. Additionally, the Senate provides the only forum for the debate of the provisions of treaties, and for informing the American people about their content. Because of those realities, I am very concerned about the increasing tendency in this body, as has been evidenced by the Chemical Weapons Treaty that we recently passed, and now by this treaty, to enter into time agreements that inadequately protect the rights of all Senators to debate and amend treaties, but which also fail to defend the rights of the American people to know what is in the treaties. I think it is a bad trend. I think it should be curtailed, because it does not allow Members to thoroughly study and debate these complicate and important matters.

This committee report bears the date of May 9, 1997, when it was ordered to be printed. That was last Friday. As I understand it, it was made available to my staff on Monday of this week, and, so, I have had between Monday and now to consider the contents of the committee report. The committee report is where we naturally turn to understand the content of the treaty or content of the bill or resolution, as it were. Also, the courts turn to the phraseology of a committee report to better understand the intent of the legislature when it passes on a bill or resolution, or approves the resolution of ratification of a treaty. So it is important that Members have an adequate opportunity to study a committee report.

It is important that they have adequate opportunity to study the hearings. It is likewise important that they have an adequate opportunity to fully debate a treaty. Let me say, again, that according to article 6 of the United States Constitution—the Constitution, this Constitution—and the laws that are made in pursuance of this Constitution and the treaties that are made under the authority of the United States shall be the supreme law of the land—the supreme law of the land.

Now, that is a very heavy burden to place upon the U.S. Senate, as it is given the sole responsibility with respect to the Congress. As far as the Congress is concerned, the Senate has the sole responsibility, a very heavy responsibility, to study treaties, to conduct hearings thereon, to mark up the treaties, to approve of conditions or reservations, amendments, whatever, to those treaties. There is no other body that scrutinizes the treaty. The Senate of the United States—and that is one of the reasons why the Senate is the unique body that it is—unique body, the premier upper body in the world today, more so than the House of Lords in our mother country. And so it places upon us as Senators a responsibility that is very, very heavy, and we have a duty to know what is in a treaty before we vote on it. We get these requests, and here we are backed up against a date of the 15th.

We had the same problem, in a way, I think, with respect to the chemical weapons treaty. We are handed a unanimous consent request, and it is a bit intimidating for one Senator to be faced with the prospect that he will be holding up the business of the Senate if he holds up the unanimous consent request. But that is our responsibility; that is our duty.

So, I am increasingly concerned by the trend, as I have said, that we are finding ourselves being subjected to. It did not just begin yesterday or the day before, and I am not attempting to place any blame for that. I am simply calling attention to the fact that we have the responsibility as Senators under the Constitution, to which we swear an oath to uphold to support and defend, we have a duty to know what is in this treaty.

I am not on the committee, but I am a Senator, and I have as heavy a duty as does the Senator from North Carolina or the Senator from Delaware. That is the way I see it. I have as heavy a duty to know what I am voting on, because this is the law of the land. It is not an ordinary bill or resolution which can be vetoed by the President and which, if signed into law by the President, can be repealed next week or the following week or the next month. It is not that easy to negate the effects of a treaty if we find we made a mistake.

Well, so much for that. Here we are debating the treaty. We have one, two, three, four Senators on the floor debating an important treaty, and we are confined within a 2½-hour time limit, I believe. Four Senators. The law of the land. We should be debating the treaty without a time limit, at least in the beginning.

I have been majority leader of the Senate twice during the years when President Carter was President. I did not serve under Mr. Carter, I served with him. Senators don't serve under Presidents, we serve with Presidents. But I was majority leader during those 4 years. I was majority leader in the 100th Congress. I was minority leader in all of the Congresses in between 1981 and 1986.

We had some important treaties: INF Treaty, we had the Panama Canal Treaties, and we did not bring treaties like this to the floor and ask they be debated, no amendments thereon, and in a time limitation of 2 hours. And there was a request to cut that to 1 hour. We did not do that.

When I came here, we debated treaties, and we took our time. At some point, it is all right to try to get a time limitation after things have been aired; it is all right to try to bring it to closure. But I am somewhat disturbed and concerned by this trend that we find ourselves being subjected to.

As to the substance of the treaty, I want to note that condition No. 8 dealing with treaty interpretation provides sound guidance on the meaning of ''condition,'' which was authored by the distinguished Senator from Delaware, Mr. BIDEN, now the ranking Democrat on the Foreign Relations Committee, myself and former Senator Sam Nunn, the former chairman of the Senate Armed Services Committee, and agreed to on the Treaty on Intermediate Nuclear Forces in Europe of 1988. That is the INF Treaty.

In that instance, I was under great pressure from my friends on the Republican side of the aisle and great pressure from my friends on the Democratic side of the aisle to bring up the treaty. As majority leader, I thought it was my duty to wait until we had resolved some critical problems that were estimated to be critical problems by the Armed Services Committee and the Intelligence Committee before I brought it up. We spent considerable time on the treaty.

Condition (8) states that ''nothing in [the so-called Biden-Byrd] condition shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through a majority approval of both Houses.''

Why was it necessary—I would like to ask this question of either the manager or the ranking manager of the resolution—why was it necessary for us to include condition (8), which certainly is a condition that I strongly support? Why was it necessary for us to include condition (8)?

(Ms. COLLINS assumed the chair.)

Mr. BIDEN. Madam President, would the Senator like me to respond?

Mr. BYRD. Yes, I yield, Madam President.

Mr. BIDEN. The Senator makes a valid observation. The truth is, it was not necessary, but I would like to give the explanation why it was included, and the majority can speak even more clearly to it.

The concern on the part of the majority was that the Clinton administration would use the Biden-Byrd language to justify sending a modification of a treaty for a two-House approval by majority vote rather than to the Senate for a supermajority vote when, in fact, it was a modification that constituted an amendment to the treaty.

You never intended it for that purpose; I never intended it for that purpose. The concern was, I think it is fair to say on the part of the majority, that the Clinton administration might have attempted to read it to allow them to avoid submission to the Senate for a supermajority vote under the Constitution and just go to each House for a majority vote.

Mr. BYRD. Does the manager wish to add anything?

Mr. HELMS. No, except to say Senator BIDEN has said it correctly.

Mr. BYRD. I am pleased that we have not done that. In other words, as I understand the distinguished ranking manager, the administration originally wanted the approval of disagreements through normal legislative action by both bodies of the Congress which would, of course, require only majority approval in both bodies. Was that the concern?

Mr. BIDEN. Yes, it is. If I may say, Madam President, to the distinguished leader, that in a November 25, 1996, memorandum for Alan J. Kreczko, Special Assistant to the President and Legal Adviser to the National Security Council, from Christopher Schroeder, Acting Assistant Attorney General, there is this phrase on page 14 of that memorandum. It says:

Because the Senate took the view that such ''common understandings'' of a treaty had the same binding effect as express provisions of the treaty for the purposes of U.S. law, the Biden condition logically supports the proposition that the President may be authorized to accept changes in treaty obligations either by further Senate advice and consent or by statutory enactment.

The next paragraph:

In light of these judicial and historical precedents, we conclude the Congress may authorize the President, through an executive agreement, substantially to modify the United States' international obligations under an arms control (or other political-military) treaty.

So the purpose, again, was to make it clear what you and I, as we understood at the time that condition was added—I might add, I get credit for it being called the Biden-Byrd condition, of which I am very proud, but the truth of the matter is, after having suggested such a condition early in the ratification process, I spent the next 7 months in the hospital during the remainder of the whole ratification process, and it was the distinguished leader, the Senator from West Virginia—it really should be the Byrd-Biden condition. Nonetheless, that is the reason. You and I never thought a majority vote in both Houses as a simple piece of legislation would be sufficient to approve an amendment to a treaty, and that was the concern expressed by the majority that it be memorialized, if you will, in condition (8).

Mr. BYRD. I thank the very able ranking manager, and I compliment him again and compliment the manager. I am glad that condition has been made clear.

Secondly, I would like to ask the managers of the agreement their reasoning behind their view of the collective impact of conditions (1), (2) and (3). Let me preface what I have just said by reading excerpts from these conditions.

CONDITION 1: POLICY OF THE UNITED STATES

I read from the committee report, page 20:

Condition (1) simply restates United States policy that no Russian troops should be deployed on another country's territory without the freely-given consent of that country. Unfortunately, Russia continues to station troops in several sovereign countries of the former Soviet Union—in several cases against the express wishes of the host country.

CONDITION 2: VIOLATIONS OF STATE SOVEREIGNTY

Condition (2) states the view of the Senate that Russian troops are deployed abroad against the will of some countries (namely, Moldova). It further states the Secretary of State should undertake priority discussions to secure the removal of Russian troops from any country that wishes them withdrawn. Further, it requires the Administration to issue a joint statement with the other fifteen members of the NATO alliance reaffirming the principles that this treaty modification does not give any country: (1) The right to station forces abroad against the will of the recipient country; or (2) the right to demand reallocation of military equipment quotas under the CFE Treaty and the Tashkant Agreement. This joint statement was issued, in fact, on May 8, 1997 in Vienna.

CONDITION 3: FACILITATION OF NEGOTIATIONS

Now, I am particularly interested in this condition.

Condition (3) ensures that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors.

Let me interpolate right there for the moment with a rhetorical question.

Why should we have to have a condition to ensure that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors? It would seem to me that would be a given.

Let me continue, and then I will yield to the distinguished ranking member.

Indeed, this condition, along with much of the rest of the resolution, is specifically designed to require the United States to safeguard the sovereign rights of other countries (such as Ukraine, Moldova, Azerbaijan, and Georgia) in their dealings with the Russian Federation.

Listen to this:

The committee became alarmed, over the course of its consideration of the CFE Flank Document, with several aspects of the United States negotiating record. This condition [condition No. 3] will ensure that the United States will adhere to the highest principles in the conduct of negotiations undertaken pursuant to the treaty, the CFE Flank Document, and any side statements that have already been issued or which may be issued in the future.

Now, there are several questions that jump out at anyone who reads that paragraph.

It makes reference to ''side statements.'' It uses the word ''alarmed.'' There is a condition there that ensures that the United States will not be a party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from a smaller neighbor.

Why do we have to have a condition to that effect? Is there some confusion about what the right position is that the United States should take? Is it not a given that the United States would not be a party to any efforts by Russia to intimidate concessions from its smaller neighbors?

I yield to the distinguished Senator.

Mr. BIDEN. Let me say, this all came about—and they are, obviously, as usual, very good, incisive and insightful questions.

I think it is unnecessary because I think it is a given. But let me explain, in fairness, why we got to this point and why I thought it was—speaking only for myself—a clarification, although in some sense I thought it was a demeaning clarification. Let me explain.

During the negotiations on the flank agreement, there was concern about what became referred to as a ''side agreement.'' That was, there was an issue that came up during the negotiations where a diplomatic note was passed, which is classified—I am not able to give you, but I can tell you from the committee testimony what it said—a note that was passed to the Russian representative dealing with the issue of the stationing of Russian troops on the soil of the countries you named.

The Under Secretary of State, Lynn Davis, who appeared before the committee on April 29, was asked to explain. He went on to explain why a statement was made to the Russians. The statement made was that we would—this is the quote, in part—''the United States is prepared to facilitate or act as an intermediary for a successful outcome in discussions that could take place under the flank agreement and the CFE Treaty between Russia and other Newly Independent States.''

The worry expressed by my friends in the Republican Party was that this reflected a possible inclination to try to mollify Russia and put American pressure on Moldova or Georgia or other states to accept Russian deployment of Russian forces on their soil.

The concern was that the assertion made by the U.S. negotiators was a way of saying, do not worry, we are going to help you to get Russian troops placed in those regions.

Lynn Davis, the Under Secretary said, no, that was never the intention of that ''side agreement,'' as it became referred to.

I will quote what he said at the hearing to my friend from West Virginia. He said:

We see this particular statement of our intentions as part of the reassurance that we can make so that those countries will feel that this is an agreement that continues to be in their security interests. This statement of our intentions makes clear that the commitment is predicated on an understanding that any agreements between Russia and the Newly Independent States must be done on a voluntary basis with due respect for the sovereignty of the countries involved, and our role here is indeed to reinforce that and ensure that it is carried out.

This was the concern that was expressed by my friends on the Republican side, that the United States intention to level the playing field between Russia and other Newly Independent States had not been seen that way by all concerned.