

mammography machines, and they have been found to be free of any kind of cancer. They will be very happy about that. Since we have no data on how effective this device is for screening, they may find later, maybe too late, that they have some kind of a tumor. They may find out that this machine didn't do what it was represented to do because it had not been tested in terms of effectiveness. That should not be the case.

That is true with regard to the surgical lasers that haven't been tested for safety and effectiveness in cutting cancerous prostate tissue. It has been demonstrated that the lasers are safe and effective in cutting general tissue. But, the manufacturer changes the design and puts another laser in that also cuts tissue. But the purpose of that new laser is to cut through tissue in the prostate area, whether it is a cancerous tissue or noncancerous tissue. The laser has not been approved for that purpose. We do not have safety information to know that it is effective in dealing with this particular kind of operation. The manufacturer doesn't have to provide it. All they have to do is say it is a laser that cuts tissue and they get approved. The FDA can be fully aware that they are going to promote it for prostate cutting, but they will not be able to ask the manufacturer to provide safety information for that use.

The same is true with contact lenses that get approved through this loophole channel—saying that the lenses are substantially equivalent to equipment that has already been approved. But those lens manufacturers are intend to promote these new lenses for long-term use rather than short-term use like the ones that have been approved. The FDA can know about the advertising—and can even tell from the change in materials used to make the new lenses that they are designed for long-term use. But they cannot evaluate the new lenses for safety and long-term use. We can see the dangers that could result—maybe even blindness.

Mr. President, we shouldn't be taking a risk with the health of the American people in this way. It is fundamentally wrong. The only reason to do so is to give a competitive advantage to unethical medical manufacturing companies. Those are the ones that will use this loophole. And when they do, they will gain a competitive advantage over the ethical manufacturers that take the time and spend the money to conduct the safety and effectiveness studies to show that their devices are safe. They will be at a financial and competitive disadvantage because less ethical companies will use this loophole for approval.

That is why each and every one of these consumer groups are opposed to this provision—why we have recommended five different alternatives to address this issue over the past weeks. The medical device industry has turned those down because they say

they have the votes. They can roll over the public health concerns of the American people. That has happened in the past. But I hope it will not happen next Tuesday. This issue is too important. It is important for our wives, our daughters, our sons, our fathers, our grandparents—to be sure that when they have to use medical devices, those devices are going to be safe and effective. We have the ability to ensure safety in so many new ways—ways that were unimaginable years ago.

But with this provision, we are effectively tying the hands of the FDA. If there is an appropriate title for the provision, it is the false-claims provision of the medical device and pharmacy legislation, S. 830. And it is the wrong way to go.

We look forward to debating this issue next week. I am hopeful that we can address it in a way that will provide the real protection the American people deserve.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### BANNING ANTIPERSONNEL LANDMINES

Mr. LEAHY. Mr. President, earlier this week, the President of the United States announced that the United States would not sign the landmine treaty that was just negotiated in Oslo. This treaty is the culmination of a process begun a year ago in Ottawa, Canada, by the Foreign Minister of Canada, Lloyd Axworthy, who invited nations around the world to sign a treaty that would be a comprehensive ban on the use and the export and the manufacture and stockpiling of antipersonnel landmines.

Antipersonnel landmines are these weapons that destroy the lives—either by maiming or killing—of 26,000 people a year. There are approximately 100 million landmines in the ground of the 65 nations—or more—around the world. And more are being put down every day. As one person from one of the nations most severely impacted by landmines told me once, they clear the landmines in their country “an arm and a leg at a time.”

Thanks to the leadership of Canada, and Minister Axworthy, this effort gained support around the world. Close to 100 nations joined together in Oslo to put the final pieces together on a comprehensive landmine treaty that would be signed in Ottawa in December.

The United States had basically boycotted this process, preferring a much slower and less effective one in Geneva following a very traditional route, the

one that showed absolutely no movement. To the administration's credit, they finally did join the process, although at the 11th hour. Unfortunately, when they went to Oslo, they went to Oslo saying that the United States would need some major changes in the treaty to accept it, that they would have to have the treaty rewritten to accommodate the United States, and that these positions were not negotiable.

I applauded the United States for going to Oslo, but I was disappointed in the steps they took once they were there. I went to Oslo for a few days and met with many of the delegates, including the chairman of the conference. Then it became clear to me—I also spoke to the American delegation—that the United States had come with basically a take-it-or-leave-it attitude and that other countries were not going to agree.

The President said that we had obligations in Korea that were unique to the United States. We do have special obligations in Korea. But that was not an insurmountable issue. In fact, those who went there had said almost a year before, if the United States made an effort, they would help accommodate our security interests in Korea, but the United States ignored the entire process.

Finally, hours, literally hours before the conference was to end, the United States became engaged and said, well, we need some changes. If you will give them to us, we can sign. The first change is to have a treaty that would not take effect for 9 years, plus the 10 years as provided for in the treaty to remove existing minefields. That is 19 years from this December. We would actually be in the year 2017 before the mines would be removed. The United States asked for a 19-year period even though countries far less powerful than us were willing to act much quicker. The United States was saying that even though we are the most powerful nation on Earth, we want the ability to be able to use our antipersonnel landmines all over the world for another 9 years, and the antipersonnel mines we use near antitank mines, forever. And, lastly, of course, accommodate us on Korea. It became a bridge too far for the other nations. They said we were asking too much. They were, after all, the nations being hurt by landmines and they would go forward with the treaty with or without the United States, and that is where we now stand.

After that, the President of the United States announced a number of steps that he is willing to take unilaterally, and I commend him for these steps because he has said that he also wants to see, as we all do, this scourge of landmines to end.

Interestingly enough, many of the steps that he talks about are in legislation pending before the Senate—legislation sponsored by both the distinguished occupant of the chair right

now and myself. So I ask this: If, indeed, the main problem the administration has is our obligations, treaty obligations, defense and national security obligations in the Korean Peninsula, especially the defense of South Korea from a country that has proven its belligerence before, North Korea, a country that has an unstable political system today, faces drought, famine, and flooding—it is amazing it could have all those going on at once. It faces the consequences of its own secrecy and belligerence. If that is our main concern, they should look at the legislation we have before the Senate, similar legislation before the House of Representatives, the Leahy-Hagel bill in the Senate, the Evans-Quinn bill in the House.

I urge the administration, disappointing as it is that it has not joined the Ottawa process, disappointing as it is that it has lost this golden opportunity, to work with the Congress, the Congress which has driven the debate in this country on banning landmines—not the executive branch—the administration should now come and work with the Congress and continue forward, because, after all, the ultimate goal is to end the scourge of landmines. There is only one way to do that, and that is for the United States to join in the Ottawa Treaty. If not in December, then in the future. We need to get there, one way or another. There is no other treaty, and without the United States, we will never see the worldwide ban we all seek.

We are coming to the close of the bloodiest century in history. It is a century where we have seen the world torn by wars, great and small, but wars that more and more saw their greatest toll in innocent civilian populations. Whether in Rwanda, in Angola, in Bosnia, in Mozambique, in Central America, or anywhere else, it is usually the noncombatants who suffer the most. And more and more those noncombatants suffer from the scourge of landmines.

Peace agreements are signed at some time, and someday armies march away and someday the guns grow silent, but in more and more of these countries, after that happens, landmines stay in the ground and continue killing and continue maiming long after all hostilities have otherwise ceased. Sometimes long after people can remember what they were fighting about, a child walking to school is blown apart, a farmer going with his or her animals into a field is blown apart, a mother, following a child down a road, is blown apart; and nobody knows who put the landmine there. They may not even remember what the war was about. But they know—that person knows—that their life is changed forever.

We have used, now, for several years, the Leahy war victims fund. We spend \$5 million of our taxpayers' money each year for artificial limbs, for men, women, and children who have been injured by landmines.

My wife, who is a registered nurse, has gone with me to some of the clinics where we use the fund. We have seen people our age get their first wheelchairs, even though they lost their legs in wars long gone by. We have seen children who have lost half their body from a landmine. We have seen a child who went to pick up what she thought was a shiny metal toy on the side of the road and lost her face and her arm.

Mr. President, people talk about one type of landmine versus another type of landmine. They talk about the technical capabilities of one army or another. But what is often forgotten is the face of the victims. Some of those victims may no longer even have a face. When she was alive, I told the Princess of Wales that the greatest difference she made in the battle against landmines was to focus the world's attention on the faces of the victims. Because when she visited a hospital for landmine victims, the whole world visited that hospital with her. Those victims are still there. Just because the TV camera turns off, the victims don't disappear. They are still there. Their lives are still ruined. And in the time that I have been speaking, there have been two more victims of landmines. By the time we go home tonight, there will be a dozen more victims of landmines—26,000 this year alone.

I commend the effort begun by Canada, and Foreign Minister Axworthy. I commend those nations that came together in Oslo to sign the treaty. Not in my lifetime has there been an arms control issue that so many nations have moved so quickly on, to sign a treaty so comprehensive. Never before have so many nations responded so urgently, and so effectively, to a humanitarian problem such as this.

I regret very much that the United States was not among those who agreed to sign the treaty. Not because we are causing the problem. Other nations never even went to Oslo. Russia, China, Pakistan, India, others, who are part of the problem, they weren't even there. And that should be noted. But the United States is the most powerful nation history has ever known. The United States could be a moral beacon. Instead, the United States said: Notwithstanding our power, we want to keep our landmines, but you less powerful nations, you should give up yours.

We should join them. We should be willing to set an example. Not to pretend that we are giving up our landmines when in fact what we are doing is calling them by another name. Let us use the steps that we can, through congressional action, which will be taken, I am sure, because there is an ever-increasing number of Members in both parties who want to see stronger U.S. leadership.

Let us take that step here as a nation. But then let's give guidance to the rest of the world. Let's not have Russia, China, and others stay out of the process because the United States is staying out. Let us be whole-

heartedly a part of this process and put pressure on other nations to join us, until the day arrives when we do with landmines what we have done with chemical weapons, and make their use a war crime.

Throughout this process, the U.S. position has been driven primarily by the Pentagon; not by the State Department, not by the White House. I think back to the 1920's, to the First Geneva Convention, when Gen. Blackjack Pershing, no theoretical dilettante he, said we should give up poison gas. But the Pentagon said no, not so fast, because there are some instances when it could be very helpful in protecting our troops. Fortunately, our civilian leaders understood that the humanitarian disaster that could result from using poison gas outweighed whatever military utility could be got from using it. And so over time, poison gas was stigmatized so that anyone who used it risked being branded a pariah. And it was virtually never used, even though in the Korean war, or in Vietnam, there were any number of instances when it might have been militarily advantageous.

Today we have a similar situation, where many of our best known, most decorated generals say let's give up landmines. Again, we hear the Pentagon saying, as General Pershing heard, "No, there are instances when landmines can help us." Of course there are. There are instances when any nation would want to use landmines. But earlier this week, 89 nations made the moral decision to put the lives of innocent people first.

The balance of power throughout the world would still be the same as it is today. The only thing that would change is there would not be the thousands of innocent civilian casualties every single year.

Again, my prayer for the next century is that armies of humanity remove and disarm landmines, and no armies, no armies, put any new landmines down. What greater gift could we give to those in the next century, than a world without landmines?

#### PARTISAN ATTACKS ON THE INDEPENDENCE AND INTEGRITY OF THE JUDICIAL BRANCH

Mr. LEAHY. Mr. President, I think it is regrettable that this week the Senate has failed to consider and confirm judges necessary to fill vacancies that are leading to a crisis in the Federal courts. Instead, this is going to be remembered as the week that the Republican leadership in the House and the Republican leadership in the Senate talked openly about seeking to intimidate—their word—to intimidate the Federal judiciary.

I regret that any Senator or any Member of the House of either party would speak of a desire to intimidate the Federal judiciary. One of the greatest hallmarks of the United States of