

H. CON. RES. 264

Whereas Congress is pleased to welcome the Prime Minister of India, Atal Bihari Vajpayee, on his visit to the United States;

Whereas the United States and India, the world's two largest democracies, are natural allies, based on their shared values and common interests in building a stable, peaceful, and prosperous world in the 21st century;

Whereas from the very day that the terrorist attacks in New York and Washington occurred, India has expressed its condolences for the terrible losses, its solidarity with the American people, and its pledge of full cooperation in the campaign against international terrorism;

Whereas India, which has been on the front lines in the fight against international terrorism for many years, directly shares America's grief over the terrorist attacks against the United States on September 11, 2001, with the number of missing Indian nationals and persons of Indian origin estimated at 250;

Whereas the United States and India are engaged as partners in a global coalition to combat the scourge of international terrorism, a partnership that began well before the tragic events of September 11, 2001;

Whereas cooperation between India and the United States extends beyond the current international campaign against terrorism, and has been steadily developing over recent years in such areas as preserving stability and growth in the global economy, protecting the environment, combating infectious diseases, and expanding trade, especially in emerging knowledge-based industries and high technology areas; and

Whereas more than 1,000,000 Americans of Indian heritage have contributed immeasurably to American society: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of Congress—

(1) to welcome the Prime Minister of India, Atal Bihari Vajpayee, to the United States;

(2) to express profound gratitude to the Government of India for its expressions of sympathy for the September 11, 2001, terrorist attacks and its demonstrated willingness to fully cooperate with the United States in the campaign against terrorism; and

(3) to pledge commitment to the continued expansion of friendship and cooperation between the United States and India.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LANTOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H. Con. Res. 264.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON H.R. 2500, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

Mr. ROHRABACHER. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. ROHRABACHER moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 2500, be instructed to insist on the language contained in section 626 of the House-passed bill and section 623 of the Senate amendment, prohibiting the use of funds in the bill by the Department of Justice or the Department of State to file a motion in any court opposing a civil action against any Japanese person or corporation for compensation or reparations in which the plaintiff alleges that, as an American prisoner of war during World War II, he or she was used as slave or forced labor.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from California (Mr. ROHRABACHER) and the gentleman from New York (Mr. SERRANO) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, this motion is highly unusual. It is highly unusual because the Parliamentarian's Office has not been able to find another instance in the history of this House in which a motion was offered to instruct conferees to keep something in a conference report that was approved by both the House and the Senate in identical form. In theory, such a motion should be completely unnecessary, because under the rules of both Houses, this House and the Senate, any provision that has been approved by each House in identical form is "non-conferenceable," which means it automatically goes to the conference and goes into the conference report as it passed both Houses. That is called democracy, where the majority of people in both Houses vote for something, and then it stays in the bill as the bill goes through the system.

□ 1415

Unfortunately, the lobbying of Japanese corporations and other very powerful interest groups in this city over this period of time has been unusually heavy. They have been spreading misinformation about the peace treaty with Japan, and it appears that our courageous World War II POWs will feel the brunt of this deception. The fact is that private companies did use American POWs during World War II as slave laborers.

In his recent decision, Judge William F. McDonald rejected all arguments by the State Department that such a court hearing, in terms of a hearing of our own POWs' requests for compensation from these Japanese companies that enslaved them, Judge McDonald decided that this would not violate the treaty which ended World War II, although what we have been hearing over and over and over again in this town is, my gosh, we cannot permit our greatest war heroes, the survivors of the Bataan Death March to sue the Japanese corporations that used them as slave labor in the war, because this would violate the treaty that ended the war.

Well, already we have a judge suggesting, a Federal judge suggesting that that argument does not hold water, and a reading of the treaty itself suggests that that does not hold water.

What do we have, then? We have a situation where this judge, a neutral party, an American judge, has decided that our POWs under the treaty have the right to file a claim in court.

In the past what has happened, and the reason this legislation is necessary, is our greatest American war heroes from World War II, the survivors of the Bataan Death March, not only were they left out on their own and betrayed by our country in a certain way, at least if not betrayed, let down, that we did not come to their rescue; then they served as prisoners of war and as slave labor; and then after the war, we betrayed them again, we let them down again in that they were told that the treaty prevented them from suing the corporations that had used them as slave labor.

Well, as I say, in the treaty there is a provision that says very clearly, any rights not granted to American citizens in this treaty that are granted to other citizens of other countries in other treaties, subsequent treaties, will automatically be the rights of the American people as well, and since that time, of course, Japan has signed many other treaties and other people have had the right to sue these Japanese corporations.

We are not talking about suing the Japanese Government, we are talking about suing Japanese corporations. It is the courts, not the executive branch, that will ultimately determine the meaning of what this treaty is all about. We already have a court decision.

The political question is what we need to decide, and that is what is happening today, and that is what happened in a decision in this body overwhelmingly and a decision in the Senate. Both in this House and the Senate, we decided that our American heroes of the Bataan Death March, their claims are more important than bending over backwards to try to recognize claims of big Japanese corporations that used our people as slave labor during the war. The courts have found that factual issues exist for the application of our people. That means that our POWs have a right to sue, they have an actual, factual claim, and the court has decided that the 1951 peace treaty with Japan does not, does not prevent the plaintiffs from filing action in the court.

Now, I would ask my colleagues to vote for this motion, and I would ask them to pay particular attention, and the American people to pay attention, to what is going on here. What has been voted on on the floor, some people are trying to take out behind closed doors in the conference. It is the first time in history we have a motion to recommit, to insist on language that has been passed in both Houses. I think it

is vitally important for us to pay attention to this, because I can see when these things happen why people lose faith in democracy.

Let me also note that the gentleman from California (Mr. Cox) has a bill just to provide \$20,000 as compensation from the United States Government to these American heroes. One would think that at the very least, the Cox bill would be implemented if they were going to try to take out the legislation that we passed in both Houses. But no. Again, our POWs are not being treated justly.

I would ask my colleagues to join me in supporting this motion to direct the conferees.

Mr. Speaker, I reserve the balance of my time.

Mr. SERRANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I certainly know of the passion with which the gentleman from California speaks. He is very much committed to this issue. I would love to correct him, just momentarily, on the fact that some things, when they leave the House Floor, somehow end up in conference a little different than when they left the House Floor, so this may not be the only time that this has been changed.

But we do understand how serious he and other Members are about this issue. There are some concerns, but as we go into conference later today, we know that his concerns will be seriously taken into consideration.

Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia (Mr. WOLF), my chairman.

(Mr. WOLF asked and was given permission to revise and extend his remarks, and include extraneous material.)

GENERAL LEAVE

Mr. WOLF. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this motion to instruct conferees on H.R. 2500 and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. WOLF. I thank the gentleman for yielding me time.

Mr. Speaker, first of all, on the Rohrabacher amendment, the whole concept behind it I support and agree with, and I think it is fair to say that most Members agree with it.

Secondly, if we are going to do this, we ought to be suing the Japanese Government as well as the corporations; and we do not sue the government and, therefore, it is flawed.

Thirdly, we have a legal opinion. When this came up, we asked the Congressional Research Service to give us a legal opinion of the Rohrabacher amendment. I would like to insert the entire opinion into the RECORD, but I will read one sentence. It says, "The Rohrabacher amendment is likely to

have more of a symbolic effect and not likely to have a substantive effect on the legal interpretations and posture of the peace treaty with Japan under U.S. law and international law."

It is a symbolic thing.

I think the gentleman is correct in what he said with regard to the Cox language. If we want to do something substantive rather than just a symbolic act, then we ought to pass the Cox language which is in the authorizing language.

Lastly, the conference report will carry language, if it is approved, that says the following: "The conference agreement does not include language proposed in both House and Senate bills regarding the civil actions against Japanese corporations for compensation in which the plaintiff alleges that as an American prisoner of war during World War II, he or she was used as slave or forced labor. The conferees understand that the administration opposes this language and is concerned that the inclusion of such language in the act would be detrimental to the ongoing effort to enlist multilateral support for the campaign against terrorism."

It ends by saying, "The conferees strongly agree that the extraordinary suffering and injury of our former prisoners of war deserve further recognition and acknowledge the need for such additional consideration."

We are at war. You shook your head no, that we are not at war? I said we are at war and you shook your head no.

We are at war. There were 27 families in my congressional district that died as a result of what took place at the Pentagon, and the Bush administration is trying to put together a multilateral, broad-based coalition effort. Right now, the Japanese Government has offered, with regard to military troops, to help them participate. And I would think sincerity ought to be questioned, and then take the language, and when the Cox language went in and the International Relations bill comes up, offer the language at that time. Offer it there and I will vote for it, but not with regard to an appropriations bill.

Lastly, this language says, "It is likely to have more of a symbolic effect and not likely to have a substantive effect on the legal interpretation and posture of the peace treaty with Japan under U.S. law and international law."

CONGRESSIONAL RESEARCH SERVICE,

Washington, DC, October 2, 2001.

To: Hon. Frank R. Wolf, Attention: Geoff Gleason.

From: Margaret Mikyung Lee, Legislative Attorney, American Law Division.

Subject: Analysis of H. Amdt. 188, the Rohrabacher amendment to the Commerce, Justice, State Appropriations Act, 2002, H.R. 2500.

This memorandum is in response to your request for an analysis of H. Amdt. 188, the Rohrabacher Amendment to the Commerce, Justice, State Appropriations Act, 2002, H.R. 2500, which would prohibit the use of funds

by the Departments of State and Justice to oppose a civil suit brought by a former American prisoner of war against a Japanese person or corporation for reparations or compensation for forced labor. This provision became §626 of H.R. 2500 as passed by the House of Representatives and §623 in the version of H.R. 2500 passed by the Senate. In light of the terrorist attacks of September 11, 2001, some opponents of this provision have criticized it as jeopardizing foreign policy objectives of the United States in seeking the support and solidarity of Japan and other nations in its antiterrorism efforts by calling into question the reliability of the United States in abiding by its international obligations. Although Japan may look askance at Congress' revisitation of this issue and in direct expression of support for the lawsuits, the Rohrabacher Amendment is likely to have more of a symbolic effect, and not likely to have a substantive effect on the legal interpretation and posture of the Peace Treaty with Japan under U.S. law and international law.

This provision apparently is a reaction to the submission of statements of interest by the Department of Justice on behalf of the United States in *In Re World War II Era Japanese Forced Labor Litigation*. The United States filed two statements of interest in that case. Although the plaintiffs filed suit in California state courts and only alleged claims under a California state statute, some cases were removed to the federal courts and then consolidated before the District Court for the Northern District of California. These cases resulted in three separate decisions dismissing three separate subclasses of the cases concerning the plaintiffs who were U.S. nationals, those who were Korean and Chinese nationals, and those who were Filipino nationals. This memorandum will discuss below the decisions concerning the U.S. nationals and Korean or Chinese nationals respectively. The first statement of interest stated that the cases were controlled by federal law and thus should be heard in federal court. The federal law was the international agreement embodying the peace settlement between Japan and the major Allied Powers, including the United States, which was intended to constitute the final disposition of claims between the Allied Powers and its nationals against Japan and its nationals arising from actions in the course of the prosecution of the war. The United States later filed a second statement of interest setting out in detail its position that it had lawfully espoused and settled the claims of U.S. nationals against Japan and its nationals arising out of the war; that this settlement had been carried out through the compensation system established by the War Claims Act of 1948, which disbursed compensation funded by the liquidation of Japanese assets confiscated by the Allied Powers pursuant to the peace treaty with Japan; and that the California state law claims were preempted by the 1951 Peace Treaty with Japan and the War Claims Act in accordance with the Supremacy Clause of the Constitution, which provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

When the District Court of the Northern District of California dismissed the cases with regard to the plaintiffs who were U.S. nationals or military veterans of the Allied Powers, it found that the Treaty by its terms constituted a comprehensive and exclusive settlement plan and that Article 14(b) of the

Treaty unambiguously waived any further claims. Even if the language of the Treaty were ambiguous, the court found that the context of the Treaty, the history of the negotiations, and the Senate debate over its ratification supported the view that Article 14(b) waived any further claims by U.S. nationals against Japanese nationals, and that U.S. nationals must look to the Congress for relief of claims not compensated by the Treaty. Furthermore, and most significantly for the Rohrabacher Amendment, the court found that the position of the United States, expressed by the Department of State and the statements of interest in the instant case, carried "significant weight." However, the court also noted that the "government's position also comports entirely with the court's own analysis of the treaty and its history." This indicates that even in the absence of a contemporary brief filed by the United States, the court would have reached the same conclusion.

The court also addressed and dismissed several other arguments proffered by the plaintiffs, including the contentions that the suits represent a private dispute between parties which arose from activities distinguishable from those in pursuit of the war effort, that the waiver of individual claims in the Peace Treaty was unconstitutional and invalid, and that subsequent peace agreements between Japan and other countries revived the plaintiffs' claims under Article 26 of the Peace Treaty. Article 26 of the Peace Treaty provides that "should Japan make a . . . war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty." With regard to that argument, the court held that Article 26 of the Peace Treaty only conferred rights on the states parties to the Treaty, and therefore only the United States, and not the plaintiffs, could seek to raise the issue of more favorable terms. Were the United States to espouse the interpretation of Article 26 sought by the plaintiffs in court, Japan would likely dispute an interpretation which would permit further claims by individual nationals; under Article 22 of the Peace Treaty any dispute concerning the interpretation and execution of the Treaty must be referred to the International Court of Justice.

The District Court for the Northern District of California also dismissed a case involving Korean and Chinese nationals finding, *inter alia*, that the California statute creating the cause of action is an unconstitutional infringement on the Federal Government's exclusive power over foreign affairs. The court had concluded that the Treaty could not be read as waiving claims of Korean and Chinese nationals brought under California statutes and the federal Alien Tort Claims Act since neither China nor Korea were signatories to the Treaty. It then concluded that the California statute creating a cause of action for World War II prisoners of war against Japanese nationals was unconstitutional. It further concluded that forced or slave labor was a violation of the customary international law of human rights and therefore a suit could be brought under the Alien Tort Claims Act, but for the fact that the applicable statute of limitations barred the suit. Finally, the California statute of limitations barred any claims under California statutes concerning false imprisonment, forced labor, assault and battery, etc.

With regard to the impact the Rohrabacher Amendment might have on the Treaty and U.S. relations with Japan, it appears that the only U.S. court to have ruled on the reparations issue and the interpretation of the

Peace Treaty with Japan would have dismissed the claims of U.S. prisoners of war concerning forced labor compensation even if the United States had not filed briefs opposing the claims. There apparently are appeals pending in this litigation which have not yet been decided, and there are apparently other similar lawsuits pending. It is uncertain whether the ultimate disposition in any of these cases might be a ruling in favor of the plaintiffs. However, the Japanese government may not necessarily view the silence of the United States in these other cases negatively since the United States is already on the historic and contemporary record as having the same position as that espoused by Japan, that further claims are waived by the Treaty. On the other hand, a diplomatic note transmitted from Japan to the United States on August 8, 2000, stated that "recent efforts to seek further compensation in United States courts for actions taken by Japanese nationals during World War II would be inconsistent with both the letter and the spirit of the Peace Treaty, and would necessarily be detrimental to bilateral relations between our two countries."

The Restatement (Third) of the Foreign Relations Law of the United States notes that an "international agreement is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose" and that the "President has authority to determine the interpretation of an international agreement to be asserted by the United States in its relations with other states. . . . Courts in the United States have final authority to interpret an international agreement for purposes of applying it as law in the United States, but will give great weight to an interpretation made by the Executive Branch." The Restatement further observes that the courts have given "great weight" to the interpretation of a treaty by the executive branch, giving more deference perhaps to an executive branch interpretation which is contemporaneous with the negotiation of the treaty than to one adopted by the executive branch in a case before the courts, in the interest of ensuring that the United States speaks with one voice in conducting its international relations. In the Japanese Forced Labor Litigation cases discussed above, the court found that the historical and contemporaneous interpretation of the Peace Treaty expressed the same view with regard to the waiver of further claims. The Restatement also notes that although the Senate's contemporaneous interpretation of a treaty to which it gives consent is binding, later interpretations by the Senate have no special authority. In light of the decisions from the only court to rule on the interpretation of the Treaty and the Restatement's description of the principles of foreign relations law for the United States, it seems likely that other courts would arrive at similar conclusions.

If you need further assistance, please contact us.

Mr. ROHRABACHER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, let us be very clear about what is going on here. The American POWs from World War II, the survivors of the Bataan Death March were used as slave labor during the war, and after the war, they were told that they did not even have a right to sue these Japanese corporations that had used them as slave labor.

Let us note that German corporations have paid reparations, even Japanese corporations in Japan have paid reparations, but our own people, our

greatest heroes, have been denied that right. Whether or not this is symbolic or not, I think that is a matter for the lawyers to determine.

But what we should do as legislators is bend over backwards to watch out for the interests of our great American heroes, the survivors of the Bataan Death March and not try to give the benefit to Japan or the Japanese corporations that use them as slave labor. A court will decide, and already we have an opinion, as I said, in one court that has decided that this is much more than symbolic.

Now, how about the argument that because we are now at war, we should not do right by the heroes of World War II? I do not think so. I do not think that is the way that we send a good message to those people serving this country. I think it is just the opposite.

The fact is, Japan needs to close the books on this incident, that these Japanese corporations do not want to admit that they used our people as slave labor and they tortured people and committed crimes. I am sorry. They did. And it is time, like the Germans did, to just recognize it and close the book.

That does not mean that we are not going to work with the Japanese anymore, and they may be angry. But it is time for us to stand up for our own people. If there is any message we need to send in a war, it is that our soldiers who fight and die for us or are taken prisoner, we are going to watch out for them and they are our number one priority afterwards.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. HONDA), who is actually the coauthor of this bill and has been my partner in this gallant effort.

Mr. HONDA. Mr. Speaker, I thank the distinguished gentleman from California for the time. I would like to associate myself with his words also.

Mr. Speaker, I rise today to voice my strong support for this motion to instruct. Before I address the reasons for my support, I would like to take a moment to thank the gentleman from California for his tireless advocacy on behalf of our men and women in our Armed Forces and our veterans.

We in Congress always talk about our strong support for the men and women who currently serve and have served in our armed services, and I have no doubt in my mind that this support is genuine. The support we show our soldiers, past and present, is especially timely in light of the Veterans Day celebration we would be celebrating this weekend. The efforts of my colleague from California go well beyond most people's efforts in this regard.

On the issue of justice for our prisoners of war during World War II, I am proud to be working with my good friend from California, and I thank him for his leadership on this important matter.

Mr. Speaker, the instructions we give today are straightforward and are

worth repeating. None of the funds made available in this act may be used by the Department of Justice or the Department of State to file a motion in this court opposing the civil action against any Japanese person or corporations for compensation or reparations in which the plaintiff alleges that as an American prisoner of war during World War II, he or she was used as slave or forced labor.

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On July 18, the House voted by an overwhelming 395 to 33 margin to include language in the bill that comports with these instructions, and on September 10, the other body included identical language in their version of the bill.

Clearly, it is the desire of both Houses of Congress to have this language included in the final conference report. No one can deny that our brave veterans who were prisoners of war in Japan and forced into slave labor deserve to have their day in court. They should not have to fight their own government to get a fair hearing.

Some of those who opposed that amendment are claiming that somehow the peace treaty with Japan will be abrogated should this amendment pass. Well, this is simply not the case. Article 26 of the treaty clearly states, and I quote, "Should Japan make a peace settlement or war claims settlement with any state granting the state greater advantages than those provided by the present treaty, then those same advantages shall be extended to the parties to the present treaty."

Since other countries such as Denmark, Sweden, and Spain subsequently signed peace treaties with Japan that did not attempt to preclude the rights of their citizens to sue, the rights of our own citizens to seek justice are actually preserved by the terms of the treaty.

Indeed, in cases involving Holocaust survivors, the State Department has maintained the U.S. Government does not even have the authority to conclude treaties that bar losses by U.S. citizens against foreign corporations.

Mr. Speaker, I include for the RECORD a very insightful piece from the New York Times outlining the diplomatic two-step that took place giving the impression that certain rights were waived when, in fact, they were not.

The material referred to is as follows:

[From the New York Times, Sept. 4, 2001]

RECOVERING JAPAN'S WARTIME PAST—AND OURS

(By Steven C. Clemons)

WASHINGTON.—Celebrations this Saturday of the 50th anniversary of the San Francisco Treaty of Peace, which established the postwar relationship between Japan and the world, will focus on Japan's emergence as a pacifist market economy under the tutelage of its conqueror and later ally, the United States. Little attention will be paid to questions of historical memory or of liability for Japan's behavior during the war. The 1951 treaty, largely through the efforts of Amer-

ica's principal negotiator, John Foster Dulles, sought to eliminate any possibility of war reparations. This undoubtedly cemented Japan's alliance with the United States and helped its economic rebirth. But Dulles's and Japan's strategy also fostered a deliberate forgetfulness whose consequences haunt us today.

Dulles had been a United States counsellor at the Paris Peace Conference in 1919, with special responsibility for reparations. He had opposed, without much success, the heavy penalties imposed by the Allies on Germany. These payments were widely seen as responsible for the later collapse of Germany's economy and, if obliquely, for the rise of Nazism. After World War II, Dulles feared that heavy reparations burdens would similarly cripple Japan, make it vulnerable to Communist domination and prevent it from rebuilding. It was crucial to Dulles that Japan not face claims arising from its wartime conduct. The San Francisco Treaty has been used to this day, by Japan and America, as a shield against any such claims.

Nonetheless, when he had to, Dulles allowed an exception, one that has remained largely hidden. The signatories to the San Francisco Treaty waived "all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the War." But recently declassified documents show that Dulles, in negotiating this clause, also negotiated a way out of it.

Dulles had persuaded most of the Allied powers to accept the treaty. One major nation that refused to sign was Korea, because of its enmity against Japan for colonizing the Korean Peninsula. India, China and the Soviet Union also declined to sign.

For a brief while it appeared that the Netherlands would do likewise. Only days before the treaty was to be signed, the Dutch government threatened to walk out of the convention because it feared that the treaty "expropriated the private claims of its individuals" to pursue war-related compensation from Japanese private interests. Tens of thousands of Dutch civilians in the East Indies had lost their property to Japanese companies, which had followed Japan's armies to the Indies. They wanted compensation, and they had political power in Holland.

European opinion mattered to Dulles, who feared that a Dutch exodus might lead the United Kingdom, Australia and New Zealand to drop out as well. On the day before and the morning of the signing ceremony, Dulles orchestrated a confidential exchange of letters between the minister of foreign affairs of the Netherlands, Dirk Stikker, and Prime Minister Shigeru Yoshida of Japan. Yoshida pledged that "the Government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be non-existent."

Article 26 of the Treaty states that, "should Japan make a peace settlement or war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty." This is why the letters had to be confidential: they preserved the rights of some Allied private citizens, in this case Dutch citizens, to pursue reparations.

Such an agreement, if publicized, could have opened the way for other claims—reparations was a huge and emotional issue after the war. These letters were not declassified until April 2000, by which time most potential claimants were probably dead.

In 1956, the Dutch did successfully pursue a claim against Japan on behalf of private citizens. Japan paid \$10 million as a way of "expressing sympathy and regret." Japan had been slow about making its deal with the Netherlands, and the United States had to remind the Japanese that, as a declassified State Department document puts it, the United States had "exerted considerable pressure on the Netherlands representatives with a view to their signing the Peace Treaty," and "one of the arrangements was assurance that the terms of the Yoshida-Stikker letters would be honored."

A year before the British noted two other instances in which governments had made deals with Japan for reparations: a settlement with Burma that provided reparations, services and investments amounting, over 10 years, to \$250 million; and an agreement with Switzerland that provided "compensation for maltreatment, personal injury and loss arising from acts illegal under the rules of war."

The British Foreign Ministry elected not to take any action on behalf of British nationals—and chose not to publicize the information. The United States concurred, with one official commenting, "Further pressure would be likely to cause the maximum of resentment for the minimum of advantage." Nonetheless, the Stikker-Yoshida letters and the Burmese and Swiss agreements could all be used to make Japan, under Article 26 of the San Francisco Treaty, offer similar terms to the treaty's 47 signatories.

The price Japan might have paid, in 1951 or later, as atonement for its crimes would, presumably, have been high. Perhaps Dulles's public policy was best. But it may also be that Japan, and even the United States, are paying a different sort of price for the amnesia and secrecy that both countries chose after the war. An American group of former prisoners of war, for example, has pledged to protest the conferences and commemorative galas. These veterans are pursuing financial relief for having been enslaved in wartime by Japanese corporations, notably Mitsui and Mitsubishi. The P.O.W.'s have already lost one case in California. The judge, Vaughn Walker, decided that because of the success of the San Francisco Peace Treaty and of Japan in becoming a strong ally and partner of the United States, the waiver of individual rights to pursue to private parties in Japan was justified. This has been the argument in the dozens of suits brought in Japan and a smaller number of cases in American courts. And the argument has so far prevailed.

Judge Walker did recognize that Japan's reparations deals with some countries might present the opportunity for the signatory nations of 1951 to bring their own claims, as provided for in Article 26 of the treaty. However, "the question of enforcing Article 26," he wrote, is "for the United States, not the plaintiffs, to decide."

The failure to support war claims is one of the reasons Japan is still struggling with other nations over its history. The Germans—at least, West Germans—have engaged in five decades of public debate about Hitler and the Holocaust. And Germany and other European countries have accepted the need, for their governments or their corporations, to pay reparations for crimes very similar to those committed by Japan and Japanese companies in the same period.

The Japanese, however, have not witnessed the court cases and public debates that would help shape a shared understanding of history among Japanese and their neighbors. Prime Minister Junichiro Koizumi's visit last month to the Yasukuni shrine—which honors the souls of Japan's war dead, including the souls of war criminals—and the relentless efforts of some Japanese textbook writers to minimize Japan's wartime aggression against Korea and China have further

aggravated regional tension over Japan's official history. Because Japan is so ill at ease with debate about its past, other nations understandably distrust a more powerful Japan.

What we know only today is that the State Department arranged a deal that arguably allows Americans and others to pursue personal claims against Japan or Japanese firms—but tried to keep the agreement quiet. The State Department even filed briefs in the California court against the former American prisoners of war. Of course, it was the State Department that once advanced the claims of Dutch citizens.

Japan clearly deserves criticism for its inability to debate its past openly. However, the United States, as evidenced by the emerging controversy about the terms of the San Francisco Treaty, has also played a role in Japan's historical amnesia. By withholding documents on American foreign policy, the United States has contributed to a failure of memory that will continue to have consequences for all of us.

Mr. Speaker, I think it is critical that we address historical injustices and not sweep them under the rug. Brave men such as Dr. Lester Tenney, Frank Bigelow, George Cobb, just to name a few, are part of this Nation's greatest generation and deserve their day in court without interference from our own government.

I am very sensitive to the fact that today more than ever the relationship between the U.S. and Japan is crucial in the international arena, and the U.S. and Japan have had and currently have strong friendships for these many decades. Nothing we do in this provision will undermine the friendship we now have with Japan. But we cannot have a true and honest relationship with Japan if we ignore the past.

On a cautionary note, I would emphasize that anyone who would use this effort on behalf of our POWs to further an agenda that fosters anti-Asian sentiments and racism or Japan-bashing, or otherwise fails to distinguish between Japan's war criminals and Americans of Japanese ancestry, or Japan's current population, for that matter, should be severely admonished.

Mr. Speaker, I urge all Members to support this important motion, and I yield back the balance of my time.

Mr. ROHRBACHER. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, for those reading the CONGRESSIONAL RECORD or those listening to this debate, let us understand exactly what is going on here.

Before the Second World War, America sent thousands of troops to the Philippines in order to defend that country and to deter war with Japan. During the war, of course, Japan attacked and occupied the Philippines and took tens of thousands of American troops into custody, and it was one of the most brutal incarcerations and treatment of prisoners in the history of humankind.

In fact, it resulted in what was called the Bataan Death March, where these men, these Americans who had fought and been in our uniform, they were just marched for days and days without water and food, and thousands of them

died along the way in the most brutal type of conditions.

The United States has let those men down. We have told them if they held out in the Bataan Peninsula, that we would come and rescue them. We could not do it during the war because the Japanese had attacked Pearl Harbor and we did not have the military strength to do it, so we let them down.

Then, after they were incarcerated, they were sent to work camps and slave labor camps and concentration camps in Japan and in Manchuria. They were worked like slaves where, again, many of them died under the worst possible conditions.

As the war ended and we put together a peace treaty with Japan, we let them down again. In the treaty, we put some provisions that sounded like we were waiving their rights to sue those Japanese corporations that had tortured them and used them as slave labor. But there was a provision in the treaty that said if Japan signs another treaty with another country that grants more rights to those citizens than our citizens have in the treaty we signed, those rights automatically become American citizens' rights, as well.

So the Japanese, guess what, have signed other treaties, and other people have been permitted to sue those Japanese corporations.

Are we going to let these American heroes down again out of consideration of some huge Japanese corporations who do not want to apologize or to give them some just compensation? I do not think so. This body voted overwhelmingly for that, on the side with our great heroes, overwhelmingly, and the Senate voted for it in a heated debate.

All we are saying today is we are demanding that our conferees not take out this provision behind closed doors. The gentleman from California (Mr. COX) has a measure that suggests that our government pay \$20,000 apiece. At the very least, if they are not going to give the right to sue, they should at least come up with the \$50 million needed to pay our people off by ourselves.

Mr. Speaker, the bottom line is, our American POWs deserve truth and justice. They deserve their day in court. They do not deserve just a stipend from us. We did let them down, but we were not the ones who tortured them and worked them as slave laborers. They deserve their day in court, they deserve an honest opinion, they deserve an apology from Japan, and yes, they deserve compensation from those Japanese companies that worked them as slave labor.

These are our greatest heroes. This is the message to send to our defenders: We will never let you down again; and those people who march off to defend this country, whether it is against them, the terrorists, or wherever it is, they will know that the American people will not let them down because they have not let us down.

Mr. Speaker, let me just suggest to the gentleman from California (Mr.

HONDA), he has worked so hard on this and I deeply admire him for this, because he could have taken some personal criticism from people who tried to make this into a racial issue.

This is not a racial issue. I lived in Japan as a young man myself, and we think nothing but good thoughts and goodwill toward the people of Japan. Most of the people in Japan, as we know, had nothing to do with this, but those Japanese corporations that did, they deserve to be held accountable.

The patriotism of the gentleman from California (Mr. HONDA) and his stepping forward and his courage at a time like this are deeply appreciated because it helps define the issue in the way it should be. I thank the gentleman very much.

Mr. SERRANO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the gentleman should pay close attention to what the gentleman from Virginia (Chairman WOLF) said. We are not debating, perhaps, the merits of this issue. What we are concerned about is, on an appropriations bill, at this time that our country finds itself in, trying to rally support throughout the world, to bring up issues that may only serve to create difficulties.

The gentleman from California (Mr. HONDA) brought up a subject that was on my mind and that, in all honesty, I did not want to bring up. I can tell the Members that, as a Hispanic American, we are living through a time now where a lot of people in this country are taking the opportunity to be nervous about anyone who does not look or act like a "typical American" because of what we are going through. So if one is from a group in this country that makes some folks nervous, people are paying too much attention to that and making people's lives a little uncomfortable.

I am also concerned, as he was mentioning it, that some folks would take the opportunity of this discussion to begin to point fingers and be nervous about other groups.

That is our concern. Our concern is not about the merits of the gentleman's presentation; that, we agree with and we understand that is a very serious concern.

Mr. Speaker, I yield back the balance of my time.

Mr. ROHRBACHER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, again, we need to take a look at what this is all about. The House and Senate voted overwhelmingly in the House, and yes, with a solid majority in the Senate, to make sure that the survivors of the Bataan Death March, our greatest American heroes, were able to sue those Japanese corporations that worked them as slave labor.

After the war, there was a provision put in the treaty which prevented them from suing these Japanese corporations until the situation changed, which it

did when Japan had agreements with other countries that permitted those countries and the citizens from those countries to sue.

So what we have now is a situation that even after the status of their case and their ability to sue had changed, our State Department became the biggest block to having these heroes from the Bataan Death March exercise their right, because our State Department would intercede in their court cases and undermine their right to sue in court.

What this bill does and why it is necessary to put it on this appropriations bill is, it prevents the State Department from using its resources or its people to interfere with the rights of those American POWs and interfere with their right to take their case to court.

That is why it was important for us to get it on this bill. This was the vehicle. It was written in a way that was ruled in order, so the provision was ruled in order by the Parliamentarian.

This gives us an opportunity to bring justice to these men. They are dying every day. Every day there is another survivor of the Bataan Death March who passes away. All of us have family members who were in World War II, and we are seeing them pass away, at great pain to us. We need to make sure that when they die, they know their country has done right by them.

That is what this is all about. Every day that we postpone this, another number of these men pass into eternity. Let us let them go knowing their country backed them up and appreciated what they did.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OTTER). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from California (Mr. ROHRBACHER).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROHRBACHER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

APPOINTMENT OF MEMBERS TO BRITISH-AMERICAN INTER- PARLIAMENTARY GROUP

The SPEAKER pro tempore. Without objection, pursuant to 22 United States Code 2761 and clause 10 of rule I, the Chair announces the Speaker's appointment of the following Members of the House to the British-American Interparliamentary Group in addition to Mr. PETRI of Wisconsin, chairman, and Mr. GALLEGLY of California, vice-chairman, appointed on May 1, 2001:

Mr. BEREUTER of Nebraska;
Mr. TAYLOR of North Carolina;
Mr. HORN of California;
Mr. GREEN of Wisconsin;
Mr. BROWN of South Carolina;
Mr. SPRATT of South Carolina;
Mr. PRICE of North Carolina;
Mr. POMEROY of North Dakota;
Mr. CLYBURN of South Carolina; and
Mr. ALLEN of Maine.
There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. COLLINS) is recognized for 5 minutes.

(Mr. COLLINS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

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MEDICAL EDUCATION FOR NA- TIONAL DEFENSE ACT IN THE 21ST CENTURY

The SPEAKER pro tempore (Mr. OTTER). Under a previous order of the House, the gentleman from Indiana (Mr. BUYER) is recognized for 5 minutes.

Mr. BUYER. Mr. Speaker, today, I have introduced the Medical Education for National Defense Act in the 21st Century, H.R. 3254. I would like to thank the gentleman from New Jersey (Mr. SMITH), the gentleman from Florida (Mr. BILIRAKIS), the gentleman from New York (Mr. MCHUGH), the gentleman from Arkansas (Mr. SNYDER), and the gentleman from Florida (Mr. STEARNS). These are Members of the House Committee on Veterans' Affairs,

Committee on Armed Services and Committee on Energy and Commerce, with whom we have coordinated on this bill.

This legislation would authorize funds to establish partnership between the Department of Veterans' Affairs, the VA, and the Department of Defense, we call DOD, to develop education and training programs on medical responses to the consequences of terrorist activities.

We are fighting a war on terror on two fronts, domestically and overseas. Unfortunately, as a Nation, we are not prepared for the new face of terror that we have been exposed to in the aftermath of the September 11 attacks. What has become all too clear is that our health care providers are not armed with the proper tools to diagnose and treat casualties in the face of nuclear, biological, and chemical weapons.

The events of September 11 have forced the American people to reexamine many facets as to how we live our lives. We have been forced as a Nation to become more aware of our surroundings and more vigilant in the defense of our freedoms.

Most recently, we have come under attack through our own mail systems by terrorists who have used its efficiency to spread the deadly disease of anthrax. The difficulty experienced by government officials and our health care community, in responding to this attack, use infectious diseases rarely seen by medical personnel that should serve as wake-up call for us all.

A Washington Post article on November 1, 2001 by Susan Okie is a perfect illustration of the urgency of our medical community's lack of preparedness to deal with biological, chemical, and nuclear attacks. Ms. Okie reports the accounts of two of the heroic physicians who treated victims of the anthrax attacks: Dr. Susan Matcha, a Washington, D.C. area physician, and Dr. Carlos Omenaca, of Miami, Florida.

Dr. Matcha was quoted as saying, "We're really in uncharted territory here. As much as we want to have literature to look at, we really have nothing to guide us." According to the article, Dr. Omenaca, who encountered a rare form of inhalation anthrax in the case of Ernesto Blanco, found the description of the symptom that Mr. Blaco displayed in a 1901 textbook.

Just think, a doctor in the United States of America, home of the best medical system of the world, this doctor had to use a medical textbook from the first half of the last century to acquire information that he sought on the diagnosis and prognosis of the anthrax. I find that not only unbelievable but unacceptable.

As disturbed as this makes me, we are not here to try to place blame on this predicament to any group or organization. The reason why so many of our medical personnel feel uncomfortable about their ability to respond to these situations is because very few of