had certain responsibilities, and one of those responsibilities is things about which we are speaking, things we cannot do for ourselves. Only governments can do roads, highways, bridges, dams, sewers, water systems. So we go right back to the basic book of the free enterprise system, and that is what we are talking about.

Mr. SARBANES. That is right.

## ENERGY, OPEC, AND ANTITRUST LAW

Mr. SPECTER. Mr. President, I have sought recognition to discuss briefly this afternoon, in the absence of any activity on the pending legislation, and in the absence of any other Senator seeking recognition, to discuss a subject which was talked about at the energy town meeting which Vice President CHENEY had in Pittsburgh on Monday of this week, July 16.

At that time, I had an opportunity to address very briefly a number of energy issues. I talked about the possibility of action under the U.S. antitrust laws against OPEC which could have the effect of bringing down the price of petroleum and, in turn, the high prices of gasoline which American consumers are paying at the present time.

I have had a number of comments about people's interest in that presentation. I only had a little more then 3 minutes to discuss this OPEC issue and some others. I thought it would be worthwhile to comment on this subject in this Senate Chamber today so that others might be aware of the possibility of a lawsuit against OPEC under the antitrust laws.

I had written to President Clinton on April 11 of the year 2000 and had written a similar letter to President George Bush on April 25 of this year, 2001, outlining the subject matter as to the potential for a lawsuit against OPEC. The essential considerations involved whether there is sovereign immunity from a lawsuit where an act of state is involved, and the decisions in the field make a delineation between what is commercial activity contrasted with governmental activity. Commercial activity, such as the sale of oil, is not something which is covered by the act of state doctrine, and therefore is not an activity which enjoys sovereign immunity.

There have also been some limitations on matters involving international law, as to whether there is a consensus in international law that price fixing by cartels violates international norms. In recent years, there has been a growing consensus that such cartels do violate international norms, so that now there is a basis for a lawsuit under U.S. antitrust laws against OPEC and, beyond OPEC, against the countries which comprise OPEC.

After writing these letters to President Clinton and President Bush, I found that there had, in fact, been litigation instituted on this precise subject in the U.S. District Court for the Northern District of Alabama, Southern Division, in a case captioned ''Prewitt Enterprises, Inc. v. Organization of the Petroleum Exporting Countries.'' In that case, neither OPEC nor any of the other countries involved contested the case, and a default judgment was entered by the Federal court, which made some findings of fact right in line with the issues which had been raised in my letters to both Presidents Clinton and Bush.

The court found that OPEC had conspired to implement extensive production cuts, that they had established quotas in order to achieve a specific price range of $22 to $28 a barrel, and that the cost to U.S. consumers on a daily basis was in the range of $80 to $120 million for petroleum products. That is worth repeating. The cost to U.S. consumers was $80 to $120 million daily.

The court further found that OPEC was not a foreign state. The court also found that the member states of OPEC, although not parties to the action, were coconspirators with OPEC, and that the agreement entered into by the member states of OPEC was a commercial activity, and the states, therefore, did not have sovereign immunity for their actions.

The court further found that the act of state doctrine did not apply to the member states and that OPEC's actions were illegal ''per se'' under the Sherman and Clayton Acts.

The court then issued an injunction, which is legalese for saying OPEC could no longer act in concert to control the volume of the production and export of crude oil.

The court found that the class of plaintiffs was not entitled to monetary damages because they were what is called ''indirect purchasers.'' That is a legal concept which is rather involved which I need not discuss at this time. But the outline was established, and the findings of fact and conclusions of law were established by the Federal court that indeed there was a cartel, there was a conspiracy in restraint of trade, U.S. laws were violated, U.S. consumers were being prejudiced, and an injunction was issued.

Then, a unique thing occurred. After the court entered its default judgment and injunction, OPEC entered a special appearance in the case, and asked the court to dismiss the case. Three nations, who were not parties to the case—Saudi Arabia, Kuwait, and Mexico—then sought leave of the court to file ''amicus'' briefs in support of OPEC's motion to dismiss, which means, in effect, that they wanted to assist OPEC in defending the matter. I think it is highly significant that those nations, which are characteristically and customarily oblivious and indifferent and seek to simply ignore U.S. judicial action, had a change of heart and decided to come in.

They must have concluded that an injunction by Federal court was something to be concerned about. I think, in fact, it is something to be concerned about.

In an era where we are struggling with an extraordinarily difficult time of high energy costs, with real concerns laid on the floor of the Senate about where additional drilling ought to be undertaken, about the problems with fossil fuels, about our activities to try to find clean coal technology to comply with the Clean Air Act, at a time when we are looking for renewable energy sources such as air and wind and hydroelectric power, there is a long finger to point at the OPEC nations which are conspiring to drive up prices in violation not only of U.S. law but in violation of international law.

This is a subject which ought to be known to people generally. It ought to be the subject of debate, and it ought to be, in my opinion, beyond a class action brought into the Federal court by private plaintiffs, which is something that the Government of the United States of America ought to consider doing as has been set forth in the letters which I sent to President Clinton last year and to President Bush this year.

It is especially telling when we have Kuwait gouging American consumers, after the United States went to war in the Persian Gulf to save Kuwait. It is equally if not more telling that Saudi Arabia engages in these conspiratorial tactics at a time when we have over 5,000 American men and women in the desert outside of Riyadh. I have visited there. It is not even a nice place to visit, let alone a nice place to live, in a country where Christians can't have Christmas trees in the windows and Jewish soldiers don't wear the Star of David for fear of being the victims of religious persecution; and Mexico, a party to these practices, notwithstanding our efforts to be helpful to the Government of Mexico.

But fair is fair. Conspiracies ought not to be engaged in. Price fixing ought not to be engaged in. If there is a way within our laws to remedy this, and I believe there is, that is something which ought to be considered.

I am not unmindful of the tender diplomatic concerns where every time an issue is raised, we worry about what one of the foreign governments is going to do, what Saudi Arabia is going to do—that we should handle them with ''silk gloves'' only. But when American consumers are being gouged up to $100 million a day on petroleum products, this is something we ought to consider and, in my judgment, we ought to act on.

We have seen beyond the issue of antitrust enforcement a new era of international law, with the War Crimes Tribunal at The Hague prosecuting war criminals from Yugoslavia, and now former President Milosevic is in custody. We also have the War Crimes Tribunal at Rwanda. A new era has dawned where we are finding that the international rule of law is coming into common parlance. That long arm of

the law, I do believe, extends to OPEC, and there could be some very unique remedies for U.S. consumers.

I ask unanimous consent to print my letter to President Bush, dated April 25, 2001, in the RECORD.

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

U.S. SENATE,
*Washington, DC, April 25, 2001.*

President GEORGE WALKER BUSH.
*The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: In light of the energy crisis and the high prices of OPEC oil, we know you will share our view that we must explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations.''

(1) A suit in Federal district court under U.S. antitrust law.

A strong case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration has the power to sue OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a consumer of petroleum products and must now pay higher prices for these products. In Reiter v. Sonotone Corp, 442 U.S. 330 (1979), the Supreme Court held that the consumers of certain hearing aides who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in 'property' within the meaning of [the Clayton Act].''

One issue that would be raised by such a suit is whether the Foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, only one Federal court, the District Court for the Central District of California, has reviewed this issue. In International Association of Machinists v. OPEC, 477 F. Supp. 553 (1979), the Court held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrongly decided and that other district courts, including the D.C. District, can and should revisit the issue.

This decision in Int. Assoc. of Machinists turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District Court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

The 9th Circuit affirmed the District Court's ruling in Int. Assoc. of Machinists in 1981 (649 F.2d 1354), but on the basis of an entirely different legal principle. The 9th Circuit held that the Court could not hear this case because of the ''act of state'' doctrine, which holds that a U.S. court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.

The 9th Circuit itself acknowledged in its Int. Assoc. of Machinists opinion that ''The [act of state] doctrine does not suggest a rigid rule of application,'' but rather application of the rule will depend on the circumstances of each case. The Court also noted that, ''A further consideration is the availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.'' The Court then quotes from the Supreme Court's opinion in Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964): ''It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.''

Since the 9th circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990'a have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations.''

In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. The exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on changes of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

While these emerging norms of international behavior have tended to focus on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1988, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine member nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

On October 9, 1998, eleven Western Hemisphere countries held the first ''antitrust Summit of the Americas'' in Panama City, Panama. At the close of the summit, all eleven participants issued a joint communique in which they express their intention ''to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation.'' The communique further expresses the intention of these countries to ''cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws.''

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. We hope you will seriously consider judicial action to put an end to such behavior.

We hope that you will seriously consider judicial action to put an end to such behavior.

ARLEN SPECTER.
CHARLES SCHUMER.
HERB KOHL.
STROM THURMOND.
MIKE DEWINE.

Mr. SPECTER. I will not include my letter to President Clinton, dated April 11, 2000, because the two letters are largely the same.

I further ask unanimous consent that the first caption page of the case entitled ''Prewitt Enterprises v. Organization of Petroleum Exporting Countries'' be printed in the RECORD so that

those who study the CONGRESSIONAL RECORD may have a point of reference to get the entire case and do any research which anybody might care to do.

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

[In the United States District Court for the Northern District of Alabama, Southern Division, Civil Action Number CV–00–W–0865–S]

PREWITT ENTERPRISES, INC., ON ITS OWN BEHALF AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS, *vs.* ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES, DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This antitrust class action is now before the Court on the Application and Memorandum of Law in Support of Application for Default Judgment and Appropriate Declaratory and Injunctive Relief by plaintiff Prewitt Enterprises, Inc., on its own behalf and on behalf of the Class.

On January 9, 2001, the Court entered a Show Cause Order directing defendant Organization of the Petroleum Exporting Countries, to appear before the Court on March 8, 2001, and show cause, if any it has, why plaintiff's Application should not be granted and why judgment by default against it should not be entered. Defendant OPEC was served with the said Show Cause Order and the Application by means of Federal Express international delivery at its offices in Vienna, Austria, to the attention of the Office of the Secretary General. The proof . . .

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## RULES GOVERNING PROCEDURES FOR THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HOLLINGS. Mr. President, the Senate Committee on Commerce, Science, and Transportation has adopted modified rules governing its procedures for the 107th Congress. Pursuant to Rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator MCCAIN, I ask unanimous consent that a copy of the Committee rules be printed in the RECORD.

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

RULES OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

I. MEETINGS OF THE COMMITTEE

1. The regular meeting dates of the Committee shall be the first and third Tuesdays of each month. Additional meetings may be called by the Chairman as he may deem necessary or pursuant to the provisions of paragraph 3 of rule XXVI of the Standing Rules of the Senate.

2. Meetings of the Committee, or any Subcommittee, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee, or any Subcommittee, on the same subject for a period of no more than 14 calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in subparagraphs (A) through (F) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee, or any Subcommittee, when it is determined that the matter to be discussed or the testimony to be taken at such meeting or meetings—

(A) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(D) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(E) will disclose information relating to the trade secrets of, or financial or commercial information pertaining specifically to, a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(F) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

3. Each witness who is to appear before the Committee or any Subcommittee shall file with the Committee, at least 24 hours in advance of the hearing, a written statement of his testimony in as many copies as the Chairman of the Committee or Subcommittee prescribes.

4. Field hearings of the full Committee, and any Subcommittee thereof, shall be scheduled only when authorized by the Chairman and ranking minority member of the full Committee.

II. QUORUMS

1. Thirteen members shall constitute a quorum for official action of the Committee when reporting a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

2. Eight members shall constitute a quorum for the transaction of all business as may be considered by the Committee, except for the reporting of a bill, resolution, or nomination. Proxies shall not be counted in making a quorum.

3. For the purpose of taking sworn testimony a quorum of the Committee and each Subcommittee thereof, now or hereafter appointed, shall consist of one Senator.

III. PROXIES

When a record vote is taken in the Committee on any bill, resolution, amendment, or any other question, a majority of the members being present, a member who is unable to attend the meeting may submit his or her vote by proxy, in writing or by telephone, or through personal instructions.

IV. BROADCASTING OF HEARINGS

Public hearings of the full Committee, or any Subcommittee thereof, shall be televised or broadcast only when authorized by the Chairman and the ranking minority member of the full Committee.

V. SUBCOMMITTEES

1. Any member of the Committee may sit with any Subcommittee during its hearings or any other meeting but shall not have the authority to vote on any matter before the Subcommittee unless he or she is a Member of such Subcommittee.

2. Subcommittees shall be considered de novo whenever there is a change in the chairmanship, and seniority on the particular Subcommittee shall not necessarily apply.

VI. CONSIDERATION OF BILLS AND RESOLUTIONS

It shall not be in order during a meeting of the Committee to move to proceed to the consideration of any bill or resolution unless the bill or resolution has been filed with the Clerk of the Committee not less than 48 hours in advance of the Committee meeting, in as many copies as the Chairman of the Committee prescribes. This rule may be waived with the concurrence of the Chairman and the ranking minority member of the full Committee.

## REPORT ON ACTIVITIES OF U.S. DELEGATION TO THE PARLIAMENTARY ASSEMBLY OF THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Mr. CAMPBELL. Mr. President, I am pleased to report to my colleagues in the United States Senate on the work of the bicameral congressional delegation which I chaired that participated in the Tenth Annual Session of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe, OSCE PA, hosted by the French Parliament, the National Assembly and the Senate, in Paris, July 6–10, 2001. Other participants from the United States Senate were Senator HUTCHISON of Texas and Senator VOINOVICH of Ohio. We were joined by 12 Members of the House of Representatives: cochairman SMITH of New Jersey, Mr. HOYER, Mr. CARDIN, Ms. SLAUGHTER, Mr. MCNULTY, Mr. HASTINGS of Florida, Mr. KING, Mr. BRYANT, Mr. WAMP, Mr. PITTS, Mr. HOEFFEL and Mr. TANCREDO.

En route to Paris, the delegation stopped in Caen, France and traveled to Normandy for a briefing by General Joseph W. Ralston, Commander in Chief of the U.S. European Command and Supreme Allied Commander Europe, on security developments in Europe, including developments in Macedonia, Kosovo, and Bosnia-Herzegovina as well as cooperation with the International Criminal Tribunal for the former Yugoslavia.

At the Normandy American Cemetery, members of the delegation participated in ceremonies honoring those Americans killed in D–Day operations. Maintained by the American Battle Monuments Commission, the cemetery is the final resting place for 9,386 American servicemen and women and honors the memory of the 1,557 missing. The delegation also visited the Pointe du Hoc Monument honoring elements of the 2d Ranger Battalion.

In Paris, the combined U.S. delegation of 15, the largest representation by any country in the Assembly was welcomed by others as a demonstration of the continued commitment of the United States, and the U.S. Congress,