

Handler, a fellow in my office, be given floor privileges for the duration of Senate consideration of Executive Calendar No. 1, the Resolution of Ratification accompanying the Moscow Treaty.

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

UNANIMOUS CONSENT  
AGREEMENT—S. 3

Mr. FRIST. Mr. President, I ask unanimous consent that at 5 o'clock on Monday, March 10, the Senate begin consideration of Calendar No. 19, S. 3, regarding the procedure commonly known as partial-birth abortion.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, let me just say I appreciate the leader working with us on the time on this bill. I know it has been inconvenient but we appreciate it very much.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations to today's Executive Calendar: Calendar Nos. 40, 41, 42, 44, 45, and 47; I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations were considered and confirmed, as follows:

DEPARTMENT OF JUSTICE

Jeremy H. G. Ibrahim, of Pennsylvania, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 2005.

Edward F. Reilly, of Kansas, to be a Commissioner of the United States Parole Commission for a term of six years.

Cranston J. Mitchell, of Missouri, to be a Commissioner of the United States Parole Commission for a term of six years.

THE JUDICIARY

Timothy C. Stanceu, of Virginia, to be a Judge of the United States Court of International Trade.

DEPARTMENT OF JUSTICE

Peter Joseph Elliott, of Ohio, to be United States Marshal for the Northern District of Ohio for the term of four years.

DEPARTMENT OF HOMELAND SECURITY

Janet Hale, of Virginia, to be Under Secretary for Management, Department of Homeland Security.

SENATE CONFIRMATION OF ADDITIONAL PRESIDENTIAL EXECUTIVE AND JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, today we have proceeded with the President's

nominations to the U.S. Parole Commission, among others. These individuals were the selections of the White House without consultation with the Democratic leader or with me or other Democratic Senators interested in these matters. We have proceeded on the President's nominees expeditiously and in good faith trusting that the White House will follow through expeditiously to nominate those members to the U.S. Parole Commission that the Democratic leader is recommending to fill the seats allocated to Democrats on what should be a bipartisan commission.

This President has too often in the past proceeded unilaterally on what have traditionally been bipartisan boards and commissions. Last year the White House caused significant problems for all nominations when it failed to follow through in a timely way on a commitment made to Senator MCCAIN. That led to objections and cloture votes being required on a series of the President's judicial nominations and unnecessary delays with respect to both judicial and executive nominations because of objections from the Republican side.

With respect to all nominations, I urge the President to begin to work with us. Just as this White House has failed to work with Senate Democrats on judicial nominees, it has often failed to work with us on nominations to bipartisan boards and commissions. We would appreciate this White House beginning to work with us rather than dictate to us.

Just this week Thomas E. Mann, a distinguished scholar and senior fellow in governance studies at The Brookings Institution, wrote a column about the deteriorating relations between the White House and the Congress with respect to the nomination and confirmation process. While I do not agree with all of his observations, I note that he correctly observed that after the President's campaign as a uniter not a divider, we did expect more cooperation. And after the attack of September 11, when Democrats sought to close ranks and forego partisanship, we were disappointed by the continuing partisanship of the White House. Mr. Mann wrote: "After the 2000 election and then again after Sept. 11, 2001, Democrats expected something akin to a government of national unity. Instead, they encountered a president who seemed determined to wage institutional, ideological and partisan war."

Mr. Mann concluded by suggesting: "The only way to break this cycle of escalation is for Bush to take preemptive action by submitting a more balanced ticket of judicial nominees and engaging in genuine negotiations and compromise with both parties in Congress." I agree, that would be a useful development. I add that it would be long overdue.

Today, on the day the Senate has moved off the Estrada nomination because of the lack of cooperation by the

administration, the Senate is with the consent of every Democratic Senators agreeing to the confirmation of another judicial nominee, the 104th for this President, and several executive branch nominees.

I ask consent to print Thomas E. Mann's column in the RECORD.

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

[From the RollCall, Mar. 5, 2003]

GUEST OBSERVER

(by Thomas E. Mann)

ESTRADA CAUGHT IN "POISONOUS WAR" BASED ON IDEOLOGY

The extended Senate debate on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit has generated pitched battles between party activists around the country and increasingly shrill commentary from pundits. Some claim we are on the verge of a constitutional coup that effectively nullifies a president's power over judicial appointments. Others respond that we are witnessing a legitimate effort by the Senate minority to prevent the packing of the federal judiciary with right-wing jurists.

How unprecedented is the tactic embraced by Senate Democrats? What accounts for the partisan struggle now playing out on the Senate floor? Is there any way out?

Filibusters have been a prominent feature of the Senate since the early 19th century. While the constitutional framers built no supermajority requirements for the passage of legislation or the confirmation of appointees, the early Senate, unlike the House, did away with its motion on the previous question that would have allowed a majority to cut off debate and proceed with a vote. As a consequence, for virtually all of their chamber's history Senators have been able to postpone or prevent floor action by talking at length.

Under pressure from President Woodrow Wilson, the Senate adopted a cloture provision in its rules that allowed a supermajority to cut off debate. For much of the 20th century the filibuster was mostly reserved for issues of great national moment. In the past several decades, the Senate has seen the routinization of the filibuster, to the point where it is commonly accepted by both parties that with limited exceptions, 60 votes are needed to pass controversial matters. Some exceptions are built into the rules. The budget process provides for limited debate on budget resolutions and reconciliation bills, thereby empowering a majority of Senators. Other exceptions flow from informal understandings or norms. One of those norms is that the minority party does not use extended debate to kill judicial nominations favored by a majority of Senators.

During periods of divided party government, the Senate majority can frustrate the president's ability to fill judicial vacancies simply by refusing to schedule committee hearings or votes on nominees. Between 1995 and 2000, roughly a third of President Bill Clinton's circuit court appointees were killed in this manner by the Republican majority, holding open judgeships that President Bush now seeks to fill. The Democrats responded in kind to a number of President Bush's nominees during their brief time in the majority.

The crunch comes when one party controls both the White House and Senate. Minority Members can try to delay action on judicial nominees with holds and procedural moves in committee. But their doomsday weapon is

the filibuster. The norms of the Senate mitigate against firing that weapon as part of an explicit party strategy. Nonetheless, groups of Senators have engaged in extended floor debate to try to defeat judicial nominations. More than a dozen cloture motions were filed to end filibusters on judicial nominations between 1980 and 2000. But only one judicial nominee was successfully blocked by a filibuster. In 1968 Republicans and Southern Democrats used a filibuster to defeat President Lyndon Johnson's effort to elevate Justice Abe Fortas to chief justice.

So the Senate Democrats' resort to a filibuster on the Estrada nomination is not unprecedented but it is highly unusual and extreme by Senate conventions. It is the latest escalation in what has been an intensifying "War of the Roses" between the parties in Washington. Earlier episodes included divisive battles over the Supreme Court nominations of Robert Bork and Clarence Thomas; the winter 1995-96 budget fights that led to government shutdowns; and the long-running independent counsel investigations of Clinton, leading to his impeachment by the Republican House.

That war is partly a consequence of razor-thin majorities in the Congress, the increasing ideological polarization between the parties, and the extension of the permanent campaign to the Congress. It has intensified as a result of the circumstances and leadership style of George W. Bush's presidency.

Bush was elected in 2000 in the closest and arguably most controversial presidential election in U.S. history. He lost the popular vote but won a bare majority of the electoral vote but won a bare majority of the electoral vote thanks to flawed ballot designs in two Florida counties and to an audacious 5-4 Supreme Court decision to halt a statewide recount.

Yet he has governed with great ambition and confidence, asserting presidential prerogatives and advancing a bold conservative agenda through policy proposals and nominations. He has played hardball with Democrats, in D.C. and on the 2002 campaign trail, while providing regular sustenance to his conservative base. After the 2000 election and then again after Sept. 11, 2001, Democrats expected something akin to a government of national unity. Instead, they encountered a president who seemed determined to wage institutional, ideological and partisan war. They have decided to reciprocate. The atmosphere is poisonous. Miguel Estrada is now a part of that war.

The only way to break this cycle of escalation is for Bush to take pre-emptive action by submitting a more balanced ticket of judicial nominees and engaging in genuine negotiation and compromise with both parties in Congress. That seems most unlikely.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

#### CONDEMNING THE SELECTION OF LIBYA TO CHAIR THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 13, which is at the desk. This is a resolution introduced by Senators LAUTENBERG and SMITH.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 13) condemning the selection of Libya to chair the United Nations Commission on Human Rights, and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the Lautenberg amendment at the desk be agreed to, the motion to reconsider be laid on the table; further, that the concurrent resolution, as amended, be agreed to and the motion to reconsider be laid upon the table; that the preamble be agreed to, and the motion to reconsider be laid on the table, with no intervening action or debate.

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

The amendment (No. 257) was agreed to, as follows:

On page 8, strike line 21 and insert: "(10) objects"

The concurrent resolution (S. Con. Res. 13), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution with its preamble, reads as follows:

#### S. CON. RES. 13

Whereas on January 20, 2003, Libya, a gross violator of human rights and State sponsor of terrorism, was elected to chair the United Nations Commission on Human Rights (the "Commission"), a body charged with the responsibility of promoting universal respect for human rights and fundamental freedoms for all;

Whereas according to the rotation system that governs the selection of the Executive Board of the Commission, 2003 was designated as the year for the Africa Group to chair the Commission, and the Africa Group selected Libya as its candidate;

Whereas South Africa's Democratic Alliance spokeswoman, Dene Smuts, was quoted by the British Broadcasting Corporation as saying that the Government of South Africa's decision to support the election of Libya was an insult to human rights and that African countries "should have supported a candidate of whom all Africans could be proud";

Whereas Amnesty International has repeatedly documented that the human rights situation in Libya continues to seriously deteriorate, with systematic occurrences of gross human rights violations, including the extrajudicial execution of government opponents and the routine torture, and occasional resulting death, of political detainees during interrogation;

Whereas Human Rights Watch recently declared that "[o]ver the past three decades, Libya's human rights record has been appalling" and that "Libya has been a closed country for United Nations and nongovernmental human rights investigators";

Whereas Human Rights Watch further asserted that "Libya's election poses a real test for the Commission," observing that "[r]epressive governments must not be allowed to hijack the United Nations human rights system";

Whereas the Lawyers Committee for Human Rights urged that "the Government of Libya should not be entrusted by the United Nations to lead its international effort to promote human rights around the world";

Whereas Freedom House declared that "[a] country [such as Libya] with such a gross record of human rights abuses should not direct the proceedings of the United Nation's

main human rights monitoring body" because it would "undermine the United Nation's moral authority and send a strong and clear message to fellow rights violators that they are in the clear";

Whereas on November 13, 2001, a German court convicted a Libyan national for the 1986 bombing of the La Belle disco club in Berlin which killed two United States servicemen, and the court further declared that there was clear evidence of responsibility of the Government of Libya for the bombing;

Whereas Libya was responsible for the December 21, 1988, explosion of Pan American World Airways Flight 103 ("Pan Am Flight 103") en route from London to New York City that crashed in Lockerbie, Scotland, killing 259 passengers and crew and 11 other people on the ground;

Whereas a French court convicted 6 Libyan government officials in absentia for the bombing of UTA Flight 772 over Niger in 1989;

Whereas, in response to Libya's complicity in international terrorism, United Nations Security Council Resolution 748 of March 31, 1992, imposed an arms and air embargo on Libya and established a United Nations Security Council sanctions committee to address measures against Libya;

Whereas United Nations Security Council Resolution 883 of November 11, 1993, tightened sanctions on Libya, including the freezing of Libyan funds and financial resources in other countries, and banned the provision to Libya of equipment for oil refining and transportation;

Whereas United Nations Security Council Resolution 1192 of August 27, 1998, reaffirmed that the measures set forth in previous resolutions remain in effect and binding on all Member States, and further expressed the intention of the United Nations to consider additional measures if the individuals charged in connection with the bombings of Pan Am Flight 103 and UTA Flight 772 had not promptly arrived or appeared for trial on those charges in accordance with paragraph (8) of that Resolution;

Whereas in January 2001, a three-judge Scottish court sitting in the Netherlands found Libyan Abdel Basset al-Megrahi guilty of the bombing of Pan Am Flight 103, sentenced him to life imprisonment, and said the court accepted evidence that he was a member of Libya's Jamahariya Security Organization, and in March 2002, a five-judge Scottish appeals court sitting in the Netherlands upheld the conviction;

Whereas United Nations Security Council Resolutions 731, 748, 883, and 1192 demanded that the Government of Libya provide appropriate compensation to the families of the victims, accept responsibility for the actions of Libyan officials in the bombing of Pan Am Flight 103, provide a full accounting of its involvement in that terrorist act, and cease all support for terrorism;

Whereas Libya remains on the Department of State's list of state-sponsors of terrorism;

Whereas the United States found the selection of Libya to chair the Commission to be an affront to international human rights efforts and, in particular, to victims of Libya's repression and Libyan-sponsored terrorism, and therefore broke with precedent and called for a recorded vote among Commission members on Libya's chairmanship;

Whereas Canada and one other country joined the United States in voting against Libya, with 17 countries abstaining from the recorded vote among Commission members on Libya's chairmanship of the Commission;

Whereas the common position of the members of the European Union was to abstain from the recorded vote on the selection of Libya as chair of the Commission;