USA Today, November 13:

The number of roadside bombs found in Iraq declined dramatically in August and September.

Here is the New York Times, November 8:

American forces have routed Al Qaeda in Mesopotamia, the Iraqi militant network, from every neighborhood of Baghdad, a top American general said today, allowing American troops involved in the ''surge'' to depart as planned.

Here is a quote from the Washington Post of November 8:

The drop in violence caused by the U.S. troop increase In Iraq has prompted refugees to begin returning to their homes, American and Iraqi officials said Wednesday.

This is from the Associated Press, November 8:

Dramatic progress seen in Baghdad neighborhood.

And back to USA Today, from November 7:

With security improving In Iraq, commanders are now considering how to reduce the U.S. presence without losing hard-fought security gains.

So we are seeing progress in our task in Iraq. But the business we set aside here in the Senate on other important issues is left alone.

Every day our gas prices rise because we have not made meaningful efforts to improve our Nation's energy independence. Every day we grow closer to the looming entitlement spending crisis. Every day we draw closer to the expiration of the tax cuts that did so much to buoy our economy in the face of 9/11 and the Internet bubble crash of earlier this decade and even now help us ride through the oil and housing shocks to our economy. Every day we see greater lawlessness on our borders and confront a greater illegal immigration problem because we have not passed significant border security funding.

The Senate is sometimes referred to as the world's greatest deliberative body. But that compliment is not supposed to summarize the sole responsibility of this institution. We are not just here to deliberate and ruminate and ponder; we are also supposed to act. Meaningless vote after vote on ultimately pointless proposals is good politics, perhaps, but not good government. It is not suitable for the Senate to spend weeks and weeks ignoring the people's business so that we can score political points and mouth the key shibboleths on the war on terror or by appeasing special interest groups.

SCHIP expired on September 30. It is imperative that Congress reauthorize the current program to ensure children of lower income families still receive health coverage. Yet we make due with a short-term reauthorization so that political points can be scored at the expense of sound policy and practical government.

The farm bill expired on September 30, and we are here trying to squeeze in the work required to reauthorize it in the weeks before Thanksgiving, when we still have all but two appropriations bills to pass.

It is obviously too late to fix things this session. I know we will be here to the point where we are shopping for holiday presents at the Senate Gift Shop rather than back home. But I hope the American people are taking notice of what little we have accomplished this year and demand better next year. We must stop mining the Nation's problems for partisan sound bites and try to find solutions.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. BARRASSO. Thank you, Mr. President.

(The remarks of Mr. BARRASSO pertaining to the introduction of S. 2334 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BARRASSO. Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. VITTER. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. VITTER. Thank you very much, Mr. President.

LAW OF THE SEA TREATY

Mr. VITTER. Mr. President, I wish to address the Senate and, indeed, our fellow citizens around America today about a very important matter before the Senate, the Law of the Sea Treaty. We have been studying this treaty in great detail in the Foreign Relations Committee, and it is a matter that could eventually come before the entire Senate.

I started this process, looked at the treaty, began to read it with a completely open mind. But as I got into the details of it—the significant details that would govern our laws, our activity—if we were to become a full participant in the treaty, many concerns began to mount in my mind. So I wish to come before the full Senate and before the American people to outline some of those concerns in great detail.

To begin with, let me say there are many good, productive, positive provisions of the Law of the Sea Treaty. I strongly support the same provisions the U.S. Navy supports and that personnel and admirals from the Navy have testified in favor of. That is really not the issue. The issue is the treaty as a whole and all of the provisions taken together and whether we should pass the treaty as a whole because we have no choice but to consider the whole, not simply one provision or the other.

This treaty has been around for many years—in fact, decades. It was negotiated decades ago. President Reagan, during his administration—very correctly, I think—rejected the treaty as it stood then. Because of that bold rejection, negotiators went back to the bargaining table and changed some significant aspects of the treaty. Now, those were improvements, but they don't in any way affect the main concerns I have about the Law of the Sea Treaty, and that is the fundamental baseline threat that the United States would be ceding our autonomy, our control over our own future to other international organizations that often don't have our best interests in mind.

So that is my fundamental concern. The renegotiation doesn't change that in any way. The testimony of the Navy doesn't even touch on that because it is about other provisions of the treaty. But my main concern with the Law of the Sea Treaty is the United States cedes autonomy to binding international tribunals—gives up American prerogatives, U.S. power, to binding international tribunals which, in the current international context, I do not think would often have our best interests in mind.

So why do I say that? Well, it is very important to look at the specific provisions of the treaty. We have been debating and discussing this in the Foreign Relations Committee. We have had numerous so-called expert witnesses. I am constantly shocked about how many participants in this discussion, quite frankly, including many expert witnesses, clearly haven't read all of the significant and important provisions of the treaty.

One of the most important provisions of the treaty has to do with these arbitral tribunals, these courts, if you will, that would have binding authority over all treaty participants, including the United States if the United States were to become a full treaty participant. So in other words, when disputes arise under the treaty, how do you resolve the dispute? You go to court. That court, if you will, that special tribunal, has binding authority over the parties to the dispute.

There are different sorts of these tribunals. One sort is called a special arbitral tribunal. Under that, under Annex VIII, the United States, again, cedes binding authority to these special tribunals in disputes about fisheries, the marine environment, marine scientific research, and navigation.

What is wrong with that? Well, I think what is wrong with it—or at least the threat it poses to the United States becomes clear when you look at the nature of this tribunal. It is a five-person body and simple majority rules. Now, who appoints the people? Well, both parties to a dispute pick two panelists. So if we were brought into court, if you will, by another country, that other country opposing our views, opposing our interests, would pick two panelists, and we would pick two panelists. What about the fifth panelist?

That is obviously important because it could well be the tie-breaking vote.

Under the treaty, the parties are supposed to try to agree on that fifth panelist. But if the parties can't agree—and, of course, that is a distinct possibility—the party taking us into court, the other country, could then flatout refuse to agree with any of our suggestions and choices no matter how reasonable.

Then what happens? Well, then the U.N. Secretary General picks the fifth panelist. He picks the tie-breaking vote.

I will be very honest with my colleagues; I don't feel comfortable with that. In the current international context, when we have been opposed so often at the U.N., when countries gang up on us, quite frankly, so often in forums such as the U.N., I don't feel comfortable with the Secretary General of the U.N. picking the tie breaker and essentially determining our fate.

There are other types of tribunals under the Law of the Sea Treaty. The next type is simply called a general arbitral tribunal. It is under Annex VII of the treaty. Again, the fundamental issue and the fundamental problem in my mind is, under that annex, under the provisions of the treaty, if the United States were to become a full partner in the treaty, the United States would cede, again, binding authority to these other sorts of tribunals regarding all other disputes.

So, in other words, the first type of arbitral tribunal would cover the four issue areas that I mentioned a few minutes ago. This general tribunal would cover all other disputes.

Now, how is this tribunal made up? Very similar, in fact, to the others. Again, a five-person body, simple majority rules. Both parties to the dispute, in this case, pick one panelist. So if we were hauled into international court, if you will, by another country, that other country would pick one panelist, and we would pick one panelist. Again, similar to the other tribunal. Then both parties together would try to agree on the other three panelists. Obviously, those three would compose a majority of the five. But if the parties can't agree—and, once again, if our opposing country, the country that has hauled us into court, doesn't want to agree to any of our ideas, any of our suggestions no matter how reasonable, it can just stand firm and not agree. In that case, those three members of the tribunal—a majority of the tribunal—would be chosen by the Law of the Sea lead bureaucrat, the head of the Law of the Sea under the treaty, an international bureaucrat similar in background and attitudes in many instances to the Secretary General of the U.N. Again, it is the same fundamental problem in my mind in that we are ceding our autonomy, we are ceding binding decisions that can be very significant in terms of our fate, our interests, our values, to this international court dominated by, controlled by, potentially, international bureaucrats.

Why is this a threat? What sort of disputes could arise that could go to these binding courts, or binding tribunals, panels? Well, one area that is clearly covered by the treaty is pollution. One would think that could be reasonable and necessary and natural with regard to pollution in the open ocean—this is a Law of the Sea Treaty, after all—but it also applies to pollution from land-based sources, and that comes as a great surprise to most people when they find that out. But that is why it is useful to read the treaty because when you read the treaty you actually find out some of these things.

Article 213 of the treaty is entitled—very frankly, very simply, very directly—''Enforcement With Respect to Pollution From Land-Based Sources.''

That article says:

States shall enforce their laws and regulations in accordance with Article 207—

That is fair enough. We pass our laws; we should enforce them—

and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards, to prevent, reduce, and control pollution of the marine environment from land-based sources.

Well, wait a minute. I thought Congress and other political bodies in the United States determine our domestic laws, including about pollution from land-based sources. This is a distinct departure from that. This is a mandate in an international treaty saying: We shall adopt other laws to enforce international notions, international standards about pollution.

Another applicable article is Article 207, and under 207(1) it, again, says:

States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account internationally agreed upon rules, standards and recommended practices and procedures.

Once again, my reaction when I read that is, wait a minute. I thought Congress was in charge of environmental policy in the United States. I thought State legislatures, where appropriate, were in charge of that policy—bodies elected by the people. Isn't that what democracy is about? Well, this is a distinct departure. This is internationalizing many of those issues with mandates in the Law of the Sea Treaty that go beyond what we may think is the best law in these areas, and that we conform to certain international decisions.

Again, the title of the article couldn't be clearer: ''Enforcement With Respect to Pollution From Land-Based Sources.'' Again, this is just one example of an issue area where the United States could well be ceding autonomy, ceding authority to other folks outside our borders who don't necessarily have our values, our notions, our best interests in mind.

What sort of situation could arise from this? Well, I think the situation that would undoubtedly arise is an outbreak of international lawyering and litigation—trying to move decisions that are presently before elected political bodies in the United States to the international arena. Many folks who have studied this phenomenon call it ''lawfare.'' Again, not ''warfare'' but using international law to oppose us and battle our interests and move those decisions from the domestic political environment to an international tribunal, an international stage that very often doesn't have our best interests in mind. Again, U.S. autonomy gives way to international litigation.

This isn't a wild conjecture on my part. This isn't something I am imagining or seeing in the future. This is something that many international lawyers and activists are actively licking their lips over and looking forward to. In fact, there was a Law Review article published several months ago that was very straightforward about this phenomenon that would occur if we become a party to the treaty. The author of this Law Review article said very clearly:

Climate change litigation—

One example of environmental issues, environmental litigation—

in national and international fora is emerging as an alternative means by which to hold States and private actors accountable for climate change damages. The United Nations convention on the Law of the Sea is a promising instrument through which such action might be taken, given its broad definition of pollution to the marine environment and the dispute resolution mechanisms contained within its provisions.

That is exactly what I am talking about. That policy, that issue now is subject to our determination, and Congress is subject to the activity of other elected bodies in the United States, but under the Law of the Sea Treaty, it would be moved to an international forum, to international litigation, to lawfare, in many cases, against the values and interests of the United States.

We have great disagreement and debate in this body about significant issues such as climate change. That is legitimate in a democracy; we should have those debates, and we should hash out those differences, and we should make the best determinations and policies we can on behalf of the American people. But that is something very different from pushing those issues and those decisions outside of the United States to international courts, to international tribunals over which we essentially have no control.

There are other issue areas that could be the subject of this sort of international litigation, other countries hauling us into court to oppose our values and interests.

Another topic where this could happen—and this gives me grave concern—has to do with military activities. I actively asked many of the expert witnesses in our hearings before the Senate Foreign Relations Committee about it. What would prevent another country from hauling us into international court—that court, that tribunal having binding authority over

us, if we become a part of the treaty—to try to stop, prevent, hamstring us with regard to military activity?

The response was immediate: There is a clear exception in the Law of the Sea Treaty that excepts military activities. That is true. Article 298 excludes ''military activities'' from the Law of the Sea Treaty's binding dispute resolution.

The experts didn't have a good answer to my next question. It was logical. The next question is: OK, who determines what is a military activity and what is not a military activity? If there is an exclusion regarding military activities, then this term is pretty darn important. Who defines this term? Who applies this term on a case-by-case basis?

When I asked that to the experts before the committee, there was a fair amount of silence. And then, after some consultation with the lawyers behind the experts, the answer came: Well, we believe we define what is a military activity—we, the United States.

The next logical question: Where does the treaty say that? Where is that spelled out in the treaty? It is not. The treaty is completely silent on the issue. So the treaty excludes military activities, but it doesn't say what is military activity and what is not a military activity. The treaty doesn't determine who determines what is and is not a military activity.

Here in the United States, when two parties go to court, there is often a dispute in the beginning of the lawsuit about whether that particular court has jurisdiction. Guess who decides whether that court has jurisdiction. That court decides if it has jurisdiction. If the same thing were to occur in the Law of the Sea Treaty, who decides that? The international court, the tribunal, would decide, and it would decide that crucial threshold issue against our opinion, against our interests; and there we are again before a binding international tribunal, which could have grave effects on what we consider our military activities.

Another final area of concern I will highlight that could come up as a subject of this sort of international litigation is intelligence activities. Post-9/11, perhaps nothing is more important to our security, to the defense of our values and our way of life, than our necessary intelligence activities.

That gave rise to an obvious question I asked the experts before the committee: Would intelligence activities be covered by the Law of the Sea Treaty? And could these international tribunals, with binding authority on us, have that binding authority over our intelligence activities?

Once again, I would have thought this was a simple and obvious question, but it caused a long period of silence from the witnesses who were there to testify in favor of the treaty. Finally, after long periods of silence and much consultation with the lawyers behind them, the answer was: Well, we believe our intelligence activities fall under the military exemption. So we believe intelligence activities would not go to court, would not go to this international court with binding authority, because we believe it falls under the military exemption.

Again, an obvious followup question: Great. Where in the treaty does it say that? Long silence. Long pause. Consultation with the lawyers behind the experts. Well, the treaty doesn't say that. Does the treaty say anything about intelligence? The treaty doesn't mention intelligence—whether it is covered under the military exemption.

I have to tell you, that again gave me great pause and concern, because I immediately thought of this place—the Senate, the House, Capitol Hill—where intelligence is considered an entirely separate subject matter from military. When we are up here debating matters and sending matters to committees, there is an Intelligence Committee that handles intelligence. There is a completely separate Armed Services Committee that handles military matters. Intelligence isn't subsumed under military. Intelligence issues don't go to the Armed Services Committee. It is a completely separate category. So why should it necessarily be different in the Law of the Sea Treaty? I think an argument could be made—a very logical, forceful argument—that intelligence activities aren't excluded under the treaty.

Intelligence activities are different from military activities, just as they are considered different up here on Capitol Hill. Guess what. Intelligence activities could make the subject of this international law against us—before countries calling us into international court, before the international tribunals that would have binding authority on us—very disconcerting, particularly in a post-9/11 world, where our intelligence activities are so absolutely crucial to our national defense and our activities necessary to preserve our values and way of life.

Again, there are many significant issues that arise under the Law of the Sea Treaty debate. Hopefully, we will have a full opportunity to discuss these issues I brought up today, and more. But these issues I have discussed today are the heart of my concern with the treaty, and the heart of that concern is simply that the United States would be ceding our autonomy, our control over our own future and destiny to international bureaucrats, to international courts, who very often would not have our best interests in mind and would not share our perspectives or our values.

That is something very serious to consider when you are talking about environmental policy, which has always been the subject of debate in elected bodies within the United States; when you are talking about military activities, which are so important, particularly in a post-9/11 world; and when you are talking about intelligence activities, similarly crucial to our security, and defense of our way of life in a post-9/11 world.

I hope the Senate takes a very long, very hard look at this treaty. I hope every individual Senator will do something quite unusual, which is read the treaty, open the book, look at the details, think for yourself. Once I began that process several months ago, the concerns over this treaty—particularly with regard to U.S. autonomy—began to mount and multiply in my own mind. Every Senator has an obligation to pick up the treaty itself, read it personally, and think through these concerns, because the results, if things proceed as I have outlined, could be disastrous.

With that, I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CASEY). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Democrats control the time until the hour of 12:30.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

PRESIDENTIAL VETO

Mr. President, last week, Congress took bold action on behalf of American families by sending an appropriations bill to the President that has important new investments in the everyday needs and hopes and dreams of the American people. It is a bill that funds our investments in education, health care, and in American jobs. These are not optional investments. They are not just nice little programs that can be funded 1 year and cast aside the next. These investments are about hope and opportunity for our children. They are about the dignity of middle-class and working families all across America. They are about our national strength. Unfortunately, it appears once again that the everyday concerns of the American people have fallen on deaf ears in the White House. This morning, the President vetoed this pro-family, pro-child, pro-worker legislation.

In fact, the White House says this bill is irresponsible and reckless. I ask: What is irresponsible and reckless about making sure our children receive the best education in the world? What is irresponsible and reckless about finding a cure for cancer so families no longer see that disease claim their mothers and fathers, brothers and sisters before their time? What is irresponsible and reckless about giving our workers the training and the skills they need to get good jobs and support