

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 impor-

tant, 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

their families? If anything is irresponsible and reckless, it is the President's choices.

The President insists on continuing to spend billions of dollars on a failed policy in Iraq, but he refuses to deliver the relief America's families need. This morning, the President signed a Defense appropriations bill that includes a 10-percent increase in funding compared to last year, but he vetoed a bill that includes an increase of half that amount that would fund cancer research, investment in our schools, job training, and protection for our workers.

Let's take a closer look at what the President has vetoed.

The bill provides long overdue funding for education. Year after year, the White House and the Republican leadership in Congress have failed to make the needed new investments for better teachers and stronger schools. In fact, under Republican control, commitment to the education of our children has continued to go down.

This chart shows in 2002, the year No Child Left Behind was passed, there was funding at \$7.7 billion. We wanted reform and resources. We got it that time once it was passed. This chart shows the gradual diminution of support for funding under Republican Congresses and a Republican Senate. Now we see the beginning of the Democratic resolution and now the Democratic conference report and an increase. The President's request, \$1.5 billion less; the Democratic conference report, \$3.2 billion. And we the find the legislation vetoed.

This bill finally reverses that course of reductions over recent years under this administration. So it delivers the largest increase in title I funding since we passed No Child Left Behind. Again, we had the increase at the time of passage of the act and then a decline in resources, and now we see in 2008 there is an increase in the title I program for the neediest children in America. That was vetoed this morning.

This bill delivers the largest increase in funding for education. That is funding that goes to the children who have fallen the furthest behind and need the most help. It pays for teachers, improved curriculum, tutors, and a whole array of actions that can help students do well in school.

It provides \$4.5 billion in additional funding in education compared to the President's budget. How can the President of the United States say he will leave no child behind when he has vetoed the very bill that will enable us to do that?

We are working in Congress to renew the No Child Left Behind reforms and to make them work better, but we cannot do it with a "tin cup" education budget. This President seems to think we can improve our schools on the cheap. The President says \$4.5 billion more to students is too much. Yet he is proposing 35 times that much for the war in Iraq. He wants us to say yes to

\$158 billion for Iraq, while he says no to \$4.5 billion for American school children.

In Iraq, anything goes. The sky's the limit. Billions and billions and billions of dollars for Iraq. But here in America, right at home, a modest investment in our school children gets a veto.

This bill includes \$1 billion for high-quality programs that help children after school; afterschool programs which are so important for children. Afterschool programs assist children with their homework, give them extra tutorial work, and give support when their parents are at work.

These funds will help 1.4 million needy children who need a place to go after the school day ends. These are programs that help hard-working parents, improve student lives, and keep communities safe by decreasing drug use and violence.

We can help these school children after school for the cost of 2½ days in Iraq. But the President says no.

The bill includes \$3 billion to improve the quality of our teachers. Those funds will be used to hire 30,000 more teachers to reduce class sizes. How many days of hearings have we had that demonstrate smaller class sizes and well-trained teachers are absolutely essential? How many times do we have to learn that lesson? We understand that lesson. We have tried to, with bipartisan support, get these funds into this legislation to improve the support for our teachers.

These funds, as I mentioned, hire 30,000 more teachers. They will be used for mentoring 100,000 beginning teachers and professional development for an additional 200,000 teachers who will go into underserved communities across this country. We can do all of that for the cost of a single week in Iraq. But the President says no.

This bill includes \$500 million to help our struggling schools turn around. Improving our schools means supporting them. We can provide support for our neediest schools for about the cost of a day in Iraq. We can take those schools that are falling further behind for a range of reasons—they may need restructuring, they may need additional assistance or targeted assistance, but whatever they need, they need to have this kind of assistance. But the President says no.

The bill includes \$7 billion to provide high-quality early education through Head Start. This week, the Congress will pass a Head Start bill that will strengthen the program to make Head Start even better. Those funds will be used to ensure that nearly 1 million children are ready to learn when they enter kindergarten. These funds build a basic foundation for learning that will help these low-income and minority children for the rest of their lives. We can fund this program for the cost of a little more than 2 weeks in Iraq.

We are going to have a conference report, virtually a unanimous conference

report where we have worked out the differences, that we will pass in the Senate at the end of this week. The House is taking it up on Thursday. We will pass it the end of this week or the early part of next week. It includes so many of the recommendations of early education. We need high-quality individuals working in Head Start and working on the curriculum. We need to coordinate the various services for our children in the early years, to smooth out the transition process from early education programs to kindergarten.

We are beginning to get that seamless web of services that we all understand are critical. We are providing assistance in education and supports for children at the earliest ages. This continues on to kindergarten through 12th grade so children are ready for college and work. That is what we are desirous of, a continuum. Read that magnificent book of Jack Shonkoff, who is now at Harvard, formerly with the Heller School at Brandeis, "From Neurons to Neighborhoods." It brings together the three great studies that were done by the Institute of Medicine about the developing of a child's brain, the synapsis, the cognitive and social abilities to deal with their social conditions, the development of knowledge, a sense of inquiry and curiosity that develops and settles in a child's brain.

One cannot read that book and not understand that some of the best investments we make in education is in early education. We have taken so many of the lessons of that extraordinary document and have worked them through, Democrats and Republicans alike, in our conference. We will make real progress, but we need to invest the resources to do that. But when we came to do it and even as we work in Congress to improve the vital program, for the equivalent of 2 weeks in Iraq, the President said no.

This same misguided rationale applies to other investments in the bill as well. The President's veto means squandered opportunities for progress on the major health challenges the American people face. I recently spoke to a gathering of leading cancer researchers who are making extraordinary progress against this deadly disease. They have helped cancer become, in many cases, a treatable illness instead of a death sentence. Every day, they are fighting to help Americans with cancer live longer and longer and healthier lives.

We have seen for the first time, in recent years, where the total number of cancer cases are going down. In the previous 20 years, we saw some modification of those numbers going up. When evaluated against the change in the age of our population and other indicators, it showed we were making some progress that was encouraging. But the most important and significant has been in recent years, where we see the total number of cases are going down.

You cannot tell me that is not the result of the extraordinary investment

that was made in the Congress in recent years in doubling the NIH budget, with all of the progress we have made in mapping the human genome, sequencing the genes, various extraordinary breakthroughs that have come about. There are so many well-qualified, peer-reviewed projects that are on the desk at the NIH that will not be funded. These could offer hope for families in this country who have been touched by the devastation of cancer.

We provided in this legislation nearly \$5 billion to fund more than 6,800 research grants to help win this fight. The President's veto tells Americans battling cancer that their fight for life is not a priority for the Nation. He tells patients they must wait a little longer, dream a little less, and hope a little more faintly for the breakthroughs that this research can bring.

On and on down the line, the President vetoed urgently needed research in heart disease, diabetes, asthma, infectious disease, mental health, and many other areas. The President would rather squander billions in Iraq than invest in the research that could bring progress against these diseases and relief for millions of our fellow citizens.

But the damage does not stop with the impact of this veto on the cures of the future. Patients today will feel the bite of the President's veto.

Community Health Centers make quality health care possible for millions of Americans who cannot afford health insurance. A veto of the \$2 billion for community health centers included in this bill means that 15 million low-income people will be denied their opportunity for health care. This, at a time when we are seeing the total number of uninsured increasing. The only reason it has not increased more is because of the CHIP program. If we didn't have the CHIP program, the 47 million with no coverage would have been increased a good deal more. But if we look at the total number of Americans who are without health insurance over the course of the years, it is 75 million Americans out of a population of 300 million who sometime during the course of the year who lack adequate coverage, including 45 million who have no health care coverage at all. Those numbers are going up.

Where do individuals go? They go to their neighborhood health centers. We have had remarkable bipartisan support in the expansion of these programs, but when we tried to put in the resources, some \$2 billion for these centers included in this bill, it was vetoed. The Centers for Disease Control are on call to protect us 24 hours a day, 7 days a week. When there is an outbreak or disaster, CDC is there.

In my own community, in Massachusetts, over the weekend our water supply was closed down because E. coli had penetrated the water system. And here, with all of the various health challenges we have going on there is obviously a role for the FDA, but there is also a role for the Centers for Disease

Control, which is extremely well led at the present time. They provide such importance when we are considering the pandemic dangers for this country, let alone the pandemic dangers as a result of terrorism with biologics and chemicals. It will be the Centers for Disease Control that we are going to call on; our first responders. But, no, the President's veto means our Nation's health readiness will be weakened and our progress against disease will be halted.

Training of new doctors and nurses, assistance to hospitals in rural and underserved communities, improving health information technology, immunizations programs, and on and on. The President has the same response to each of them: veto, veto, veto.

The President's veto will also be devastating to America's workers. With globalization and layoffs and corporations cutting benefits, Americans are worried about their jobs. The least we can do is make sure they are safe on the job and treated with dignity.

This bill provides the funds needed to enforce the labor laws that keep our workers safe and give them a level playing field. This bill has a very modest increase for OSHA, the Occupational Health and Safety Administration. Since the implementation of this law, the number of deaths has been cut by more than half in America. This is from \$490 million to \$501 million. This is the very minor increase in MSHA, the Mine Safety Health Administration, from \$313 million to \$340 million. Have we forgotten what happened in the Sago mines in West Virginia or out in Utah, where scores of individuals lost their lives? And here we have the agency that is challenged with new legislation that reflected a bipartisan effort here in this body, Republicans and Democrats coming together making the recommendations, and making these recommendations as well, in order that we would have safety in the workforce. Yet that is vetoed.

Just last week, three workers were killed in an explosion in a powerplant in Salem, Massachusetts. Terrible incidents like this are all too common. Every year, more than 5,700 workers are killed, with more than 4,000 injured or made ill on the job. Workers everywhere—at powerplants, coal mines, hospitals, and construction sites—rely on our Federal agencies to protect them and make sure they can return home to their families each night.

But the President's veto takes bad employers off the hook and puts American workers at risk. We won't have the needed funds this bill provides to inspect workplaces and enforce our safety laws. Millions of workers' safety and very lives will be at risk.

The veto of this bill is also devastating to veterans. We just observed Veterans Day. Each year, nearly 320,000 brave servicemembers return to civilian life, many coming from Iraq and Afghanistan. Sadly, our hearing in the Labor Committee last week showed they faced daunting challenges.

Tens of thousands of Reserve and National Guard members have lost their benefits, and even their jobs because they served their country. That is why this bill provides \$228 million to help our veterans find jobs, receive training—and protect their right to return to their former jobs. This is guaranteed in the law but not adequately fulfilled at this present time. The President's veto takes away this modest welcome mat and slams the door in our veterans' faces.

All Americans are certainly familiar with what happened at Walter Reed, but there are so many other aspects that we are continuing to support. Senator MURKOWSKI, Senator MURRAY, and many of our colleagues on the appropriate committees are making extraordinary efforts to help address these issues for our service men and women. But we must all recognize that one out of four of the homeless today is a veteran. One out of four of the homeless is a veteran. And if veterans return to the United States without a job, with lost backpay, or lost health insurance, there is a rapid spiral right down into destitution and poverty and homelessness and, in some instances, suicide and other horrific behavior.

What about other American workers who want to upgrade their skills to compete and win in the global economy? This bill says we should not cast workers and their dreams aside. It rejects the President's cut and includes \$2.9 billion for job training. But the President's veto, again, leaves these hard-working Americans out in the cold.

In my State of Massachusetts, there are 92,640 jobs that needed workers at the end of last year, and there are 178,000 people who didn't have jobs and were on the unemployment lists. It should be pretty understandable that if we can get those people trained and place them into productive employment, they are going to be productive, useful, and valuable workers in our communities. Their hopes and dreams for their families will be enhanced. And, through taxes, they will increase additional tax revenues for the future. That kind of investment is necessary. But what happens, Mr. President? We see those programs have been effectively vetoed.

This appropriations bill is about the strength and the well-being of American families. By vetoing the bill, the President is turning his back on the priorities of America's families—their hopes, their dreams, and their opportunities. But we will not give up on providing the solutions that are so desperately needed. We will continue to work with our colleagues in the Senate and the House and chart a new course and fight for the real needs of all Americans.

This battle is not over. It has only just begun.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, am I allotted a certain amount of time in morning business?

The PRESIDING OFFICER. The Senator is to be recognized for up to 30 minutes.

#### TORTURE

Mr. DORGAN. Mr. President, I shall not take all that time, but I wanted to talk about a couple of things this morning. Before I do that, I want to express my appreciation for the comments of my colleague from Massachusetts, Senator KENNEDY, about what our priorities seem to be and what they should be with respect to fiscal policy and appropriations bills as well as the larger priorities of our country.

Let me now talk briefly about the vote that occurred last week on the confirmation of Attorney General Mukasey. I wish to talk about it because I think a very important issue that needs to be discussed—and we have not really discussed it much on the floor of the Senate—is the issue of torture.

I don't think the issue of torture, for this country, is negotiable. And, I don't think it is a very difficult question.

But, before I talk about the issue of torture specifically, let me just describe what I think represents the great strength of this country, and the great strength of this country does not include a willingness or an allowance to torture anybody anywhere.

We were engaged in a long, difficult Cold War for decades. That struggle against the Soviet Union and totalitarianism lasted a long time. But it wasn't, in the end, bombs and bullets that won that war; it was American values that won that war. It was the idea of our country, and the idea of our country is rooted in the Constitution. People are free. They believe what they want. They are able to say what they want. The Government has to respect the rights of everyone.

That is the embroidery and the framework of our Government and our Constitution. America is an idea, with a written Constitution and a Bill of Rights, that protects people, and stands for liberty, human rights, and human dignity.

In fact, those values of this country were so strong that even during the Cold War those values shined a light of hope into the darkest cells in the Soviet Union, in the gulag prisons, in the outermost reaches of Siberia. We know that because people who were in those dark cells came out from behind the Iron Curtain and told us of the ray of hope they saw from this country.

Millions of political prisoners were held, often in solitary confinement in the Soviet Union, simply for thinking and speaking freely. Many were there for years, swept off the streets in the Soviet Union, never to be heard from again.

Often, they weren't charged. When they were, they were convicted after show trials because they had no rights.

But some survived, and they talked about how important the idea and the values were that embodied this country called the United States. America gave them hope. The idea of America reached to the farthest and darkest places on this planet. It always has, and it has offered hope.

Now, it is true that this country is not perfect. We all understand that. But it is also true that what we stand for is very important in terms of the message we send around the world. It is important for our self-respect, and it is important for what we believe America to be.

It is troubling to me that polls that are done around the world show that so many in the world now are very concerned about our country, with views that are very negative about the United States, and these views are held by historic foes but also historic friends. That is something which should concern all of us. We have to hold ourselves to a higher standard. We always have, and we should hold ourselves to a higher standard.

The issue of torture was an issue that arose because of the questions asked a candidate, a nominee, for Attorney General. There are some who believe under certain circumstances, apparently, torture is all right or appropriate or sanctioned. I am not one of them, and I would think most Americans would not believe that.

George Washington led the Continental Army in the War for Independence. After a large number of his troops were captured, he and his troops saw Hessian mercenaries, fighting for the British, slaughter unarmed prisoners from the Continental Army. They saw that, and yet George Washington refused to treat Hessian prisoners the same way. He insisted we were different and we would treat people the way we should be treated.

That is America's birthright. It has always been the case. And that is why the discussion about torture is so very important. It is why the discussions about treatment of detainees, about enemy combatants, about habeas corpus, and about the power of the executive branch in this country are important as well.

The Attorney General's post is very important. I met with the nominee and I liked him. I talked to him about his commendable experience in Government as a Federal Judge. But his inability to answer the basic questions about waterboarding and torture were very troubling to me. I don't understand that inability, and I don't think, from my standpoint, that issue is negotiable. Torture is not what America is about.

Some say or some imply that being against torture is somehow being soft on terrorists. That is as despicable as it is wrong. Being against torture is being for an America that is better than its enemies. Being against torture is being for an America that continues to be a beacon of hope around the

world for doing the right thing, and it is being for an America that stands for the rule of law and human dignity and human rights.

So I wanted to make the point, after the debate we had last week, that this is not an irrelevant issue. It is an issue that defines our country. It is an issue about who we are, the value system of this great country of ours.

#### FISCAL POLICY

Mr. DORGAN. Mr. President, let me describe a couple of things that represent front-page news these days. Regrettably, I believe, these things threaten the potential future prosperity of our country and require an urgent response on the part of the President and the Congress.

The economy and fiscal policy of this administration—and the lack of regulatory interest on the part of this administration—has led us to an abyss that is very troublesome. We see the dollar dropping in value to other currencies. We see a dramatic trade deficit of \$2 billion a day, that we are buying from other countries more than we are selling to other countries. We see a fiscal policy budget deficit that the President says is coming down. The only way he can say the deficit is significantly coming down is that he is taking all of the surplus Social Security revenues that are supposed to go into the Social Security trust fund and using every dollar of that surplus as an offset against other revenue and other spending in order to show a much lower deficit. We are far off track in trade policy and fiscal policy, and now we have in front of us a proposal for \$196 billion in emergency spending—none of it paid for. That will bring us very close to three-quarters of a trillion dollars that the President has requested on an emergency basis—none of it paid for. That is not conservatism. We have a responsibility to begin paying for these costs. We send soldiers to war and the President says to the American people: You go shopping and do your part for the American economy.

That should not happen. What should happen is when we send soldiers to go to war and ask them to wear the uniform of their country and go in harm's way, we should, as a responsible Congress and President, pay for the costs as we go.

I don't understand it. The President is down there at the White House saying \$22 billion additional for the kinds of things that invest in our country—he says I am opposed to that. He said I will veto 10 of your bills, if necessary. He said, I am opposed to that \$22 billion of your bills, half of which is invested in health care. Then he says, by the way, I want \$196 billion on the other side, none of it paid for, for my priorities, and he says: But that is for the troops.

I am sorry, it is not just for the troops. A substantial portion of that is for the contractors. There is dramatic