

This conflict in the east of Ukraine is designed by Russia to destabilize democratic Ukraine and to drain its resources.

While in Kiev, our delegation met with senior government officials, including Prime Minister Yatsenyuk and President Petro Poroshenko. We were briefed on Russia's efforts on many fronts to destabilize the country. We were also briefed on Ukraine's efforts to boost its economy and to root out corruption in the country's government and institutions.

The European Union and the United States are standing by Ukraine, and this solidarity is making a difference. It appears to have moderated Russia's ambitions, at least for now. The countries of Western Europe and the United States have demanded that Russia fully implement the Minsk II agreement to contain the conflict, and we heard some encouraging signs. Elections in the breakaway provinces—elections that might have led to succession—have been delayed. Russia is redeploying light armor away from the region. But, of course, this is not adequate.

Sanctions on Russia must remain in place until President Putin and the rebels he backs fulfill all of their obligations under the Minsk II agreement. I left Ukraine with a strong sense that despite living under an ever-present threat from Russia, this is a nation that continues to stand strong and move forward. It was an honor to personally reaffirm to Ukraine's leadership and citizens that the United States is an ally and partner and that we strongly support the government's agenda of reform and modernization.

Our European allies are confronting an array of challenges unprecedented since the end of the Second World War: not only the refugee crisis but also rising threats from Russia, economies that continue to be held back by debt and austerity, and a resurgence of nationalistic and nativist political parties. However, our delegation witnessed firsthand a creative and resourceful Europe that is capable of meeting these challenges. Europe needs and deserves American support and partnership, beginning with a more robust U.S. response to the refugee crisis, which is the greatest humanitarian challenge of our time. I hope we in this Chamber and in Congress will rise in response to that challenge to do our part.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

CYBERSECURITY INFORMATION SHARING ACT

Mr. FRANKEN. Mr. President, I rise today to talk about the Intelligence

Committee bill we are currently debating, the Cybersecurity Information Sharing Act of 2015, or CISA.

This Chamber sees its fair share of disagreements, so it is worth noting when there is something we can all agree on, and I think we can all agree on the need for congressional action on cyber security. We face ever-increasing cyber attacks from sophisticated individuals, organized crime syndicates, and foreign regimes. These attacks pose a real threat to our economy and to our national security. It is clear that we must respond to these new threats because the cost of complacency is too high, but it is critical, in deciding how we protect our information networks, that we also continue to protect the fundamental privacy rights and civil liberties of Americans. In short, there is a pressing need for meaningful, effective cyber security legislation that balances privacy and security. Unfortunately, as it now stands, the Cybersecurity Information Sharing Act falls short.

Since this legislation was first introduced, I and a number of my colleagues on both sides of the aisle have raised serious concerns about the problems the bill presents for Americans' privacy and for the effective operation of our Nation's cyber defense. My colleagues and I are not alone. Serious concerns have been raised by technologists and security experts, civil society organizations from across the political spectrum, and major tech companies, such as Apple, Dropbox, Twitter, Yelp, salesforce.com, and Mozilla. Neither the Business Software Alliance nor the Computer & Communications Industry Association supports CISA as written.

In a letter I received from the Department of Homeland Security this summer, the agency—which has a leading role in cyber security for the Federal Government—expressed concern about specific aspects of CISA. DHS explained that under the bill's approach, “the complexity—for both government and businesses—and inefficiency of any information sharing program will markedly increase.” The letter explained that CISA would do away with important privacy protections and could make it harder, not easier, to develop “a single, comprehensive picture of the range of cyber threats faced daily.”

Senator BURR and Senator FEINSTEIN, the bill managers, have worked very hard over the last months to improve various aspects of the bill, and their substitute amendment offers a significantly improved version of CISA. I really appreciate their efforts, but it is clear to me and others that the improvements did not go far enough. Major concerns raised in the letter from DHS and voiced by security experts, privacy advocates, and tech companies still have not been resolved. Let me briefly describe three of them.

First, the bill gives companies a free pass to engage in network monitoring

and information sharing activities, as well as the operation of defensive measures, in response to anything they deem a “cyber security threat,” no matter how improbable it is that it constitutes a risk of any kind.

The term “cyber security threat” is really the linchpin of this bill. Companies can monitor systems, share cyber threat indicators with one another or with the government, and deploy defensive measures to protect against any cyber security threats. So the definition of “cyber security threat” is pretty important, and the bill defines “cyber security threat” to include any action that “may result in an unauthorized effort to adversely impact” cyber security. Under this definition, companies can take action even if it is unreasonable to think that security might be compromised.

This raises serious concerns about the scope of all of the authorities granted by the bill and the privacy implications of those authorities. Security experts and advocates have warned that in this context, establishing the broadest possible definition of “cyber security threat” actually threatens to undermine security by increasing the amount of unreliable information shared with the government.

I have written an amendment, which is cosponsored by Senators LEAHY, WYDEN, and DURBIN, which would set the bar a bit higher, requiring that a threat be at least “reasonably likely” to result in an effort to adversely impact security. This standard gives companies plenty of flexibility. They don't need to be certain that an incident or event is an attack before they share information, but they should have at least determined that it is a plausible threat.

The definition of a cyber security threat isn't the only problematic provision of the bill. This brings me to the second concern that I would like to highlight. The bill provides a blanket authorization that allows companies to share information “notwithstanding any other provision of law.” As DHS explained this past summer, that statutory language “sweeps away important privacy protections.” Indeed, it means that CISA would override all existing privacy laws, from the Electronic Communications Privacy Act, ECPA, to HIPAA, a law that protects sensitive health information.

Moreover, this blanket authorization applies to sharing done with any Federal agency. Companies are free to directly share with whomever they may choose, including law enforcement and military intelligence agencies. This means that, unbeknownst to their customers, companies may share information that contains customers' personal information with NSA, FBI, and others. From a security perspective, it also means we are setting up a diffuse system. I want to emphasize this. This is setting up a diffuse system that, as DHS's letter acknowledged, is likely to be complex and inefficient, where it is

actually harder for our cyber security experts to connect the dots and keep us safe.

These are all reasons why privacy experts, independent security experts, and the Department of Homeland Security have all warned that CISA's blanket authorization is a problem.

Earlier this year, the House avoided this problem when they passed the National Cybersecurity Protection Advancement Act by a vote of 355 to 63. That information sharing bill only authorizes sharing with the government through a single civilian hub at the Department of Homeland Security—a move toward efficient streamlining of information that is also good for privacy. But understand that this is the House of Representatives, 355 to 63, saying: Let's make this easier for the government to have all the information in one place.

Finally, CISA fails to adequately assure the removal of irrelevant personal information. This, of course, is a major concern. The bill allows personal information to be shared even when there is a high likelihood that the information is not related to a cyber security threat. Combined with the bill's overly broad definition of "cyber security threat," this basically ensures that private entities will share extraneous information from Americans' personal communications. If companies are going to receive the broad liability protection this bill provides, they should be expected to do better than this.

Senator WYDEN has offered an amendment, which I am proud to be the cosponsor of, which would require companies to be more diligent and to remove "to the extent feasible" any personal information that isn't necessary to identify a cyber security threat. The "extent feasible" is a crucial improvement, but it is hardly novel; in fact, it is basically the same standard that is in place today when information is shared between private companies and the Department of Homeland Security. There is no justification for lowering that standard in CISA, especially because the bill also provides companies with significant liability protection.

Mr. President, the amendments I have talked about today, as well as a number of other pending amendments, would make CISA a better deal, one that is significantly more protective of Americans' privacy and more likely to advance cyber security. I want to encourage my colleagues to support these amendments. Without them, I fear that, however well intentioned, CISA would do a disservice to the American people.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

TRANSPORTATION FUNDING

Mr. CARPER. Mr. President, I would just note that the Presiding Officer and I are on the same schedule, because I come here a couple of times a week, but you are here more often than not when I am speaking. I am sorry. This is cruel and unusual punishment, I suspect, for you. But I welcome the opportunity. Thank you for showing up. Otherwise, I would not have a chance to share these thoughts today with the folks that are in the Chamber and anybody else who might have tuned in.

Earlier this year, the Senate actually took up legislation that was reported out of the Environment and Public Works Committee, which was a 6-year Transportation authorization bill. A lot of people who don't work here don't realize that for us to spend money—taxpayer money—in most cases we have to authorize a program at certain funding levels. Then we have to come back and do a second step, and that is to actually appropriate the money to spend that has been authorized.

Usually, if we are authorized to spend \$100 in a program, we cannot come in and just appropriate a lot more money than that. We have to do it within the levels set by the authorization bill.

Well, we took up on the floor of the Senate the Environment and Public Works Committee's 6-year Transportation bill, coauthored by Senator INHOFE and Senator BOXER, Republican and Democrat, and reported out of the committee unanimously. Most people think we fight about everything. Well, we don't. Environment and Public Works Committee Senators BOXER and INHOFE have been very good at working together on these authorization bills.

Now, the authorization bill does not contain the funding, but it says: These are our transportation policies, and this is the level that we think is appropriate. But it does not actually fund a dollar to go to those programs.

Well, over in the House of Representatives today, they got in the act. As I understand it, the House transportation committee has reported out—I think on a voice vote—their own 6-year authorization bill. This is good. It has not passed the House yet, but at least it is out of committee, with apparently a fair amount of broad support, which is good.

This is the Senate-passed bill called the DRIVE Act, reported out by the committee a couple of months ago and passed the Senate here more recently. As you know, we have names for our bills, such as the names for cars. But the DRIVE Act, the Senate-passed bill, the Surface Transportation Reauthorization and Reform Act, has a number—3763. It is a 6-year authorization for transportation programs.

Do these bills have any good ideas in them? Well, they really do. As it turns out, there is a fair amount of common ground that these two pieces of legislation share, the Senate-passed bill and the bill out of the House committee.

One of them is that there is a new focus on making freight transportation

more reliable, more affordable, and more efficient. When you look at an outfit called McKinsey & Company, a big international consulting firm, they have an entity, an appendage of McKinsey, that is called the Global Institute. A year or so ago, they opined that a fully funded, robustly funded transportation program in the United States would provide 1.8 million new jobs in this country—1.8 million new jobs in this country—and that it would grow GDP, gross domestic product, by 1.5 percent per year—not just one time, but per year. Those are pretty amazing numbers, actually, for me.

Well, one of the things that actually drives the increase in employment and the growth in GDP is a more efficient freight transportation system and one that actually focuses—as in this legislation—on freight, and not just moving our cars, trucks, and vans but actually figuring out how we move freight from place to place in a more efficient way.

The second area where there seems to be some agreement is that both pieces of legislation prioritize—especially the Senate version—bridge safety and large facilities of national importance. Think big bridges; think big tunnels. We have a bunch of bridges in this country—I forget what the percentage is—that are substandard, not safe—maybe one out of every nine. So take your choice for the bridges you are going over. Think about that. One in nine is deemed to be essentially unsafe.

Both of those bills say: Well, that ought to be a priority and we would like to authorize higher spending for that. These bills focus on clean air funding and toward some of the most dangerous sources of emissions—diesel emissions. A lot of it comes from road-building—road and highway—and bridgebuilding equipment that is diesel powered and puts out harmful emissions.

Actually, our bill in the Senate does some good things to reduce those emissions while we go about building these transportation projects. One of the things that I especially like about our bill is that it says that eventually we ought to have an approach to funding roads, highways, and bridges.

Maybe it should be something that reflects vehicle miles traveled. We don't have that kind of magical system now. In Oregon, they have been trying to do it for 10 years. They call it RUC, a road user charge. They have maybe 5,000 families that are actually using this. But it is a long way from 5,000 families in Oregon to having a national system that we can use to come up with money to pay for roads, highways, bridges, and transit.

But our Senate-passed bill establishes research to develop alternative user fees to replace, maybe eventually, the gas and diesel tax somewhere down the line—not next year, probably not this decade, but somewhere down the line. I think that should be a growing part of the source of revenues to pay for transportation.