105TH CONGRESS, 1st Session | SENATE | EXEC. REPT. 105–1

FLANK DOCUMENT AGREEMENT TO THE CFE TREATY

MAY 9, 1997.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany Treaty Doc. #105–5]

The Committee on Foreign Relations to which was referred the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990, adopted at Vienna on May 31, 1996 ("The Flank Document")—the Flank Document is Annex A of the Final Document of the First CFE Review Conference, having considered the same, reports favorably thereon with 14 conditions and recommends that the Senate give its advice and consent to ratification thereof subject to the 14 conditions as set forth in this report and the accompanying resolution of ratification.

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I. OBJECT AND PURPOSE

The Treaty on Conventional Armed Forces in Europe (CFE) marked a watershed in European history, securing through a legally-binding document a conventional military balance between the North Atlantic Treaty Organization and Soviet-dominated War-

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saw Pact. However, as the committee noted in its report on the CFE Treaty, Executive Report 102–22, the immediate effect of the CFE Treaty was far less than some had originally anticipated. First, many aspects of the agreement were rapidly overtaken by the fall of the Berlin Wall and German reunification, the revolutions that swept through the Soviet satellite countries and corresponding withdrawal of Soviet troops from Central and Eastern Europe, and ultimately the disintegration of the Soviet Union.

A second factor diminishing the immediate import of the CFE Treaty was the withdrawal by the Soviet Union, prior to the Treaty's signature, of tens of thousands of tanks, artillery pieces, and armored combat vehicles from the treaty's area of application. At that time the committee noted that one of the reasons for this withdrawal was an effort to avoid the destruction requirements of the treaty. The Soviet Union pulled roughly 75,000 pieces of military equipment to storage depots east of the Ural Mountains (the Soviets eventually admitted to moving 57,300 treaty-limited items). For this reason, the CFE Treaty did not accomplish the elimination, as the Bush Administration had predicted, of 100,000 pieces of military hardware. Rather, Soviet/Russian eliminations ultimately totaled roughly one-quarter of that amount.

While the CFE Treaty undeniably was intended to address the massive Soviet military menace to Western Europe, the committee believes it important not to focus narrowly on how events and actions overtook or undermined some of the treaty's intended effects. Such a narrow focus obscures the importance of the treaty for the post-Cold War world.

The CFE Treaty remains a valuable contributor to conventional military stability in Europe and, most importantly, the volatile Caucasus region. Indeed, the most valuable aspects of the CFE Treaty to the United States are no longer provisions establishing numerical limitations on Western, Central, and Eastern Europe, but rather those provisions which cap the Russian military presence in the flank region—particulary in the areas adjacent to Lithuania, Estonia, and Latvia (in the north) and Ukraine, Moldova, Georgia, and Azerbaijan (in the south)—and those which provide nearly all of Europe a window on the disposition of forces within the other States Parties to the treaty. It is for this reason, and due to Russia's record of efforts to undermine and intimidate these countries over the last five years, that any proposed modifications to the CFE Treaty, and the flank provisions in particular, deserve careful attention.

The Flank Document to the CFE Treaty, agreed to in Vienna on May 31, 1996, by the 30 States Parties to the treaty, is a legally binding agreement designed to accommodate primarily Russian concerns with regard to the Treaty's flank limits. The Document is to be considered an Annex to the Final Document of the CFE Review Conference, which has yet to be finalized and will contain additional amendments to the CFE Treaty designed to bring the treaty into conformity with the changed circumstances of the post-Cold War era.

The Flank Document contains three basic provisions: (1) The removal of territory from the original flank region to reduce its size, thus permitting the concentration in a smaller area of the military

equipment permitted; (2) additional constraints on equipment in the areas removed from the flank region; and (3) additional inspections, information exchanges and notifications.

With regard to removal of territory from the original flank zone, the Flank Document will exempt from the requirements of subparagraph 1(A) of Article V over one-third of the Russian territory in the North Caucasus Military District (including the Volgograd and Astrakhan oblasts, part of the Rostov oblast, and part of Krasnodar kray, including the Kushchevskaya repair facility), the entire Pskov oblast adjacent to Latvia and Estonia and Ukraine's Odessa oblast. The effect of this map realignment is that the flank limits on Russian and, to a lesser extent, Ukrainian tanks, artillery, and armored combat vehicles in the flank zone will be applied to a smaller geographic area. The areas removed from the flank zone as a result of the realignment will still be subject to other Treaty equipment limits.

The Document also establishes constraints on Russian forces in the original flank zone (and on Russian armored combat vehicles in each area no longer in the flank zone), to be effective on May 31, 1999. Until that time, the Document requires Russian holdings in the original flank zone not to exceed the levels of Treaty-limited equipment declared by Russia in its January 1, 1996, information exchange. There are also constraints on Ukrainian holdings in the portion of the original flank zone on Ukrainian territory removed from the flank area.

In addition to the Document, an Understanding On Details Of The Flank Agreement Of May 31, 1996 In Order To Facilitate Its Implementation was developed between the United States and the Russian Federation. This Understanding consists of three operative paragraphs and clarifies certain geographic and other details. The U.S. and Russian Delegations to the Joint Consultative Group in Vienna exchanged letters confirming a consistent interpretation of the relevant provisions as set out in the Understanding. These letters, as well as the Understanding, are deemed by the Committee to be significant and thus are treated by the resolution of ratification as legally-binding documents of the same force and effect as the treaty and the CFE Flank Document.

II. Article by Article Analysis

Section I

Section I of the Document consists of three paragraphs. The first paragraph provides that each State Party shall, taking into account the map realignment and consequent reduction of the flank zone, and considering the flexibility noted in Section IV, subparagraphs 2 and 3 of the Document in regard to temporary deployments and reallocations, comply fully with the numerical limitations set forth in the Treaty, including the flank zone ceilings thereof, no later than May 31, 1999.

Article V of the Treaty sets forth provisions related to the "flank zone." The current flank zone region consists of Bulgaria, Greece, Iceland, Norway, Romania, that part of Turkey within the overall area of application (as that term is defined in the CFE Treaty), Russia's Leningrad and North Caucasus Military Districts,

Ukraine's Odessa Military District, Moldova, Georgia, Armenia, and Azerbaijan. Subparagraph 1(A) of Article V of the Treaty requires each State Party to limit and as necessary reduce its battle tanks, armored combat vehicles, and pieces of artillery within that flank area so that 40 months after entry into force of the Treaty and thereafter, for the group of States Parties to which it belongs, it shall not exceed the Treaty's limits for the flank zone.

Confirmation that the equipment is the same as that covered by the Treaty and the associated agreement among the States Parties reflected in their Statements of June 14, 1991 at the Extraordinary Conference in Vienna is provided by paragraph (A) of the Understanding. The Understanding makes clear that the battle tanks, armored combat vehicles and pieces of artillery located with Naval Infantry units and Coastal Defense forces are to count towards the numerical limits in the Document.

It should be noted that the Treaty only spells out flank limits for each of the two groups of States Parties, and then directs, in Article VII, that each group of States Parties agree upon the national allocations within the group's limits, and that each State Party make formal notification enumerating its own agreed limits, and any agreed changes thereto. Among the States Parties of the Eastern Group, the group limits were divided up at Budapest prior to Treaty signature and then notified as required. At that time the group limits were divided among the five East European States Parties and the former Soviet Union. In spring of 1992, the CFE successor states to the former Soviet Union met at Tashkent and divided the former Soviet Union's allocations and Treaty rights and obligations among themselves in the Agreement on the Principles and Procedures for Implementing the Treaty on Conventional Armed Forces in Europe, May 15, 1992 (hereinafter referred to as "the Tashkent Agreement"). The equipment allocations in the Tashkent Agreement were subsequently reflected in the formal notifications of limits (both overall and in all Treaty zones, including the flank zone) made by the Russian Federation, Ukraine and the other successor states to the former Soviet Union in accordance with Article VII, paragraphs 3 and 5 of the Treaty.

The "clarification" referred to in paragraph 1 of Section I refers to the realignment of the flank zone, as described in Section III of the Document. Paragraph 1 makes clear that all States Parties must comply with all the limits in the Treaty, including the limits applicable to the flank region, by May 31, 1999. In addition, and as noted earlier, paragraph 1 references the provisions of paragraphs 2 and 3 of Section IV of the Document, in which the States Parties recognize Russia's right to utilize, to the fullest extent possible under the terms of the Treaty, the temporary deployment provisions of the Treaty, and reallocation of the current quotas for battle tanks, armored combat vehicles and pieces of artillery established in the Tashkent Agreement, as Russia comes into compliance with flank limits.

The first paragraph of Section I must be read in conjunction with the second paragraph of Section I of the Document. The second paragraph of Section I provides that paragraph 1 of this Section shall be understood as not giving any State Party that was in compliance with the numerical limitations set forth in the Treaty, as

of January 1, 1996, including the flank limits, the right to exceed any of the numerical limitations as set forth in the Treaty. Therefore, a State Party that is already in compliance with the limits of the Treaty must remain in compliance with the Treaty limits.

The underlying rationale for paragraph 1 of Section I of the Document was the desire expressed by many of the States Parties that Russia set forth, clearly and early on, its commitment to abide by the Treaty's numerical limits regarding its flank zone not later than May 31, 1999 (May 31, 1999 is the date Russia must be in compliance with numerical limits set forth for the original flank zone in Section II, paragraph 1 of the Document). The States Parties recognized that immediate compliance by Russia with the flank limits, even in the realigned flank, was not attainable. Russia's commitment to bring itself into compliance with the Treaty's flank limits in the realigned flank, by May 31, 1999, was important in response to the flexibility shown to Russia by the other States Parties in finding a solution to the Russian flank problem as reflected in the Document. By requiring compliance with the Treaty's flank limits by May 31, 1999, the States Parties have accepted the prospect of Russia's non-compliance with the flank limits in the realigned flank zone until that time. As a means to avoid singling out one State Party, it was also decided that all States Parties would make the commitment set forth in paragraph 1. Paragraph 2 of Section I was added to clarify that no State Party is relieved of its obligations under the Treaty, and those in compliance must remain so. In addition, the States Parties required that Russia commit itself not to exceed its current holdings of Treaty-limited equipment (current as of January 1, 1996) in the original flank zone in the period between the conclusion of the Document and May 31, 1999, at which time, and thereafter, it will have to comply with numerical limits set forth in paragraph 1, Section II of the Document.

The third paragraph of Section I sets forth the States Parties' commitment to the implementation of the Document. More specifically, paragraph 3 provides that pursuant to the Decision of the Joint Consultative Group of November 17, 1995, the States Parties shall cooperate to the maximum extent possible to ensure the full implementation of the provisions of the Document. The Joint Consultative Group, established by the Treaty, consists of representatives from all 30 States Parties and is responsible for promoting the objectives and implementation of the Treaty. On November 17, 1995, the date on which the limits of the Treaty took effect, in an effort to address issues of non-compliance by certain States Parties, the States Parties in the Joint Consultative Group produced the following statement:

> The Representatives to the CFE Joint Consultative Group reaffirm the crucial role of the Treaty on Conventional Armed Forces in Europe in maintaining and fostering stability and confidence. They reconfirm the commitments of their Governments to the goals and objectives of the Treaty and associated commitments and obligations, and to achieve full compliance with its provisions. They agree that its continued integrity and future effectiveness must be ensured as part of their common goal to develop new security structures in Europe.

Paragraph 3 of Section I of the Document relates the above reaffirmation made by the Joint Consultative Group to the implementation of the provisions of the Document.

Section II

Section II of the Document sets forth the additional numerical limits placed on the Russian Federation in the original flank zone and in the portion removed from the original flank zone, and on the Ukrainian portion of the original flank zone on its territory removed from the flank area. It also sets forth the time frames in which these limits shall apply.

It should be noted that the Document makes repeated reference to the area described in Article V, subparagraph 1(A), of the Treaty, "as understood by the Union of Soviet Socialist Republics at the time the Treaty was signed." This reference is to the map depicting the territory of the former Soviet Union within the CFE area of application, including the flank zone referred to in Article V, subparagraph 1(A) of the Treaty, that was provided by the former Soviet Union at Treaty signature. Section III, paragraph 1 of the Document sets forth the realignment of the map as it was understood by the former Soviet Union at the time the Treaty was signed. All references in the Document to the flank zone as understood by the former Soviet Union at the time the Treaty was signed are referred to as the "original" flank area.

Paragraph 1 of Section II provides that on May 31, 1999, and thereafter, the Russian Federation must not have, in the original flank zone, more than: (A) 1,800 battle tanks; (B) 3,700 armored combat vehicles, of which no more than 552 shall be located within the Astrakhan oblast; no more than 552 shall be located within the Volgograd oblast; no more than 310 shall be located within the eastern part of the Rostov and Pskov oblast described in Section III, paragraph 1, of the Document; and no more than 600 shall be located within the Pskov oblast; and (C) 2,400 pieces of artillery.

Russian holdings in armored combat vehicles in the removed flank areas cannot exceed those levels for Astrakhan, Volgograd, Rostov and Pskov oblasts, as provided in subparagraph 1(B) of Section II of the Document. In addition, when the numerical limits in paragraph 1 of this Section are in effect, in the area remaining in the flank zone, the Russian Federation will be limited, consistent with the Tashkent Agreement and based on the August 1995 notifications of the Russian Federation of its maximum levels, to 1300 tanks, of which no more than 700 may be in active units; 1380 armored combat vehicles, of which no more than 580 may be in active units; and 1680 pieces of artillery, of which no more than 1280 may be in active units. These numbers do not take account of any temporary deployments or any possible quota reallocations within Russia's group of States Parties. To the extent Russia utilizes its flank zone deployment levels, the numerical limits in paragraph 1 of this Section act as a further cap on the Treaty-limited equipment Russia may have within that part of the original flank zone that is outside the realigned flank zone. It should be noted that all Treaty-limited equipment not in designated permanent storage sites count as equipment in active units.

Paragraph 2 of Section II provides that upon provisional application of the Document (i.e., as of May 31, 1996 through December 15, 1996), within the Odessa oblast, Ukraine must limit its battle tanks, armored combat vehicles, and pieces of artillery so that the aggregate numbers do not exceed: (A) 400 battle tanks, (B) 400 armored combat vehicles; and (C) 350 pieces of artillery.

These constraints will continue to apply to Ukraine after the entry into force of the Document.

Paragraph 3 of Section II provides that upon provisional application of the Document (i.e., as of May 31, 1996 through December 15, 1996) and from entry into force of the Document until May 31, 1999, the Russian Federation must limit its battle tanks, armored combat vehicles, and pieces of artillery within the original flank area to not more than: (A) 1,897 battle tanks; (B) 4,397 armored combat vehicles; and (C) 2,422 pieces of artillery.

Paragraph 3 of this Section is provisionally applied. As such, these constraints take effect immediately as of May 31, 1996 through December 15, 1996. After entry into force of the Document, these constraints will continue to apply to Russia until May 31, 1999. After May 31, 1999 the limitations applicable to the Russian Federation are those set forth in paragraph 1 of this Section.

The numerical constraints in paragraph 3 of this Section reflect the reported holdings of Russia in the original flank zone as of January 1, 1996. Paragraph 3 thus makes clear that Russia, during the period prior to May 31, 1999, cannot increase its Treaty-limited equipment holdings in the original flank zone above its declared January 1, 1996, holdings.

Section III

Section III of the Document describes the realignment, i.e., the reduction in size, of the flank zone, which shall become effective upon entry into force of the Document. The realignment described in Section III alters the area of the flank as that area was depicted in the map provided by the former Soviet Union at Treaty signature, and makes the flank zone smaller.

Paragraph 1 of Section III describes the areas on the territory of the Russian Federation that will be removed from the original flank zone and will be included in a neighboring subzone of the Treaty. Specifically, for the purposes of the Document and the Treaty, paragraph 1 provides that the Pskov oblast, the Volgograd oblast, the Astrakhan oblast, that part of the Rostov oblast east of the line extending from Kushchevskaya to Volgodonsk to the Volgograd oblast border, including Volgodonsk, and Kushchevskaya and a narrow corridor in Krasnodar kray leading to Kushchevskaya, as constituted on January 1, 1996, of the Russian Federation shall be deemed to be located in the zone described in Article IV, paragraph 2 of the Treaty rather than subparagraph 1(A), Article V of the Treaty (the flank zone). Therefore, the effect of the realignment of these areas with respect to Russia is that Treaty-limited equipment located in these areas would no longer be subject to the limitations set forth in Article V, subparagraph 1(A) of the Treaty; rather, such equipment located in these realigned areas will be subject to Article IV, paragraph 2 of the Treaty.

Similarly, paragraph 2 of Section III provides that for the purposes of the Document and the Treaty, the territory of the Odessa oblast, as constituted on January 1, 1996, of Ukraine shall be deemed to be located in the zone described in Article IV, paragraph 3, of the Treaty rather than described in subparagraph 1(A), Article V of the Treaty. Therefore, the effect of the realignment of the Odessa oblast with respect to Ukraine is that Treaty-limited equipment located in the Odessa oblast would no longer be subject to the limitations set forth in Article V, subparagraph 1(A) of the Treaty; rather, such equipment will be covered by paragraph 3, Article IV of the Treaty.

The Understanding describes what is meant by the phrase "Kushchevskaya and a narrow corridor in Krasnodar kray" as that phrase is used in paragraph 1 of Section III and subparagraph 3(A) of Section V of the Document. Paragraph (B) of the Understanding describes the phrase "Kushchevskaya and a narrow corridor in Krasnodar kray" as an area consisting of a 2.5 kilometer radius circle centered on the repair facility at Kushchevskaya "together with a five kilometer wide corridor connecting this area with the Rostov oblast along a straight line extending from Kushchevskaya to Volgodonsk."

Section IV

All of Section IV of the Document is provisionally applied. Therefore, all of the provisions in Section IV apply as of May 31, 1996 through December 15, 1996.

Paragraph 1 of Section IV provides that between May 31, 1996 and May 31, 1999, the States Parties will examine the Treaty provisions on designated permanent storage sites so as to allow all battle tanks, armored combat vehicles, and pieces of artillery in designated permanent storage sites, including those subject to regional numerical limitations, to be located with active units.

It should be noted that conventional armaments and equipment limited by the Treaty that are located in designated permanent storage sites are currently deemed not subject to limitations on conventional armaments and equipment limited by the Treaty in active units. They are covered by overall limitations on equipment limited by the Treaty and, in some geographical areas, by separate limitations on equipment in designated permanent storage sites.

During the negotiation of the Document, the Russian Federation made clear its concern regarding the designated permanent storage sites provisions of the Treaty. The United States and many other States Parties in turn made clear to the Russian Federation that any agreement that would allow equipment assigned to designated permanent storage sites to be co-located permanently with active units would require the agreement of all States Parties. A State Party cannot unilaterally effect such a measure.

Paragraph 2 of Section IV recognizes that the Russian Federation has the right to use to the maximum extent possible the temporary deployment of battle tanks, armored combat vehicles, and pieces of artillery both within and outside its territory. Such temporary deployments on the territory of other States Parties must be achieved by means of free negotiations with the States Parties

involved, with the full respect for their sovereignty, and within the Group's temporary deployment allocations.

Article V, subparagraph 1(b) of the Treaty provides for the temporary deployment of conventional armaments and equipment limited by the Treaty within the flank zone. It provides that notwithstanding the numerical limitations set forth in subparagraph 1(A) of Article V of the Treaty, a State Party may temporarily deploy on its own territory in the flank area or on the territory belonging to the members of the same group of States Parties within the flank area, additional Treaty-limited equipment in active units so long as the aggregate equipment levels for such deployment are not exceeded. This additional equipment for each group of States Parties cannot exceed 459 tanks, 723 armored combat vehicles, and 420 pieces of artillery, of which no more than one third in any category may be located on the territory of any one State Party.

Paragraph 3 of Section IV of the Document provides that the Russian Federation shall have the right to use, to the maximum extent possible, in accordance with existing agreements, reallocations of the current distribution of the maximum levels for battle tanks, armored combat vehicles, and artillery established by the Tashkent Agreement. Such reallocations shall be achieved through agreements voluntarily reached by the States Parties concerned. This is reflected in the text of this paragraph in which it is provided that such use of reallocations can only be achieved by means of free negotiations and with full respect for the sovereignty of the States Parties involved.

The Section IV provisions do not confer a right on Russia to unilaterally utilize the maximum number of temporary deployments or to unilaterally change its, or others', quotas. Consequently, the failure of Russia to negotiate a right to temporary deploy equipment on the territory of a neighboring state, or to negotiate a reallocation of quotas established by the Tashkent Agreement, would not affect its obligation to comply with the Treaty's numerical limitations.

Paragraph 4 of Section IV of the Document provides that the Russian Federation must count against the numerical limitations established in the Treaty and paragraph 1 of Section II of the Document any of the 456 armored combat vehicles listed as "to be removed" in its information exchange of January 1, 1996 that are not so removed by May 31, 1999. The Russian Federation has in the past declared, in its data exchanges, armored combat vehicles in the flank region as "to be removed" but it has not counted such armored combat vehicles against either its aggregate or flank limits. Paragraph 4 makes clear that if such armored combat vehicles are not removed by May 31, 1999, they will count against the limits set forth in paragraph 1, Section II of the Document when those limits take effect. However, the armored combat vehicles that are listed as "to be removed" do count against the no-increase limits of paragraph 3 of Section II. It should be noted that there is no "to be removed" category in the Treaty, and that these armored combat vehicles count against any and all relevant Treaty limits as do any tanks and pieces of artillery so listed by the Russian Federation.

On this issue, the Understanding makes clear exactly what equipment is encompassed in the phrase "to be removed." Specifi-

cally, paragraph (C) of the Understanding provides that the armored combat vehicles referenced in paragraph 4 of Section IV of the Document are the 456 armored combat vehicles at seven units listed in the footnote on page 70 of Chart V of the annual information exchange provided by the Russian Federation as of January 1, 1996 with the words "is being removed beyond the borders of the area of application."

Section V

All of Section V of the Document is provisionally applied. Therefore, all of the provisions in section V apply as of May 31, 1996 through December 15, 1996.

Section V of the Document provides for additional information to be provided by and inspections accepted by the Russian Federation and Ukraine. These are in addition to the Russian and Ukrainian commitments to provide information and accept inspections already provided for in the Treaty.

Paragraph 1 of Section V provides that in addition to the annual information exchange provided pursuant to Section VII, subparagraph 1(C) of the Protocol on Notification and Exchange of Information to the Treaty ("the Protocol on Information Exchange"), the Russian Federation shall provide information equal to that reported in the annual information exchange on the original flank area upon provisional application of the Document and every six months after each annual information exchange. In the case of Kushchevskaya, the Russian Federation is required to provide such additional information every three months after each annual information exchange.

Section VII of the Protocol on Information Exchange sets forth the timetable in accordance with which each State Party must provide Treaty-specified information to all other States Parties. In accordance with paragraph 1(C) of that Section, such information must be provided as follows:

> on the 15th day of December of the year in which the Treaty comes into force (unless entry into force occurs within 60 days of the 15th day of December), and on the 15th day of December of every year thereafter, with the information effective as of the first day of January of the following year.

Paragraph 1 of Section V of the Document makes clear that, in addition to providing the information at the time specified in accordance with Section VII of the Protocol on Information Exchange, the Russian Federation must also provide similar information regarding the original flank area upon provisional application of the Document, and every six months after the information exchange required under paragraph 1(C) of Section VII of the Protocol on Information Exchange. Russia must, therefore, provide such information twice annually.

With respect to Kushchevskaya, paragraph 1 of Section V of the Document requires that such information is to be provided every three months after the annual information exchange required by paragraph 1(C) of Section VII of the Protocol on Information Exchange. Russia must, therefore, provide such information on this

area on a quarterly basis. The frequency of the information exchange on Kushchevskaya reflects the desire of some States Parties to have more information regarding the equipment at Kushchevskaya repair facility that will not be subject to an additional sub-limit.

Paragraph 2 of Section V of the Document provides that upon provisional application of the Document, Ukraine shall provide "F21" notifications for its holdings within the Odessa oblast on the basis of changes of five, rather than ten, percent or more of its holdings. Section VIII of the Protocol on Information Exchange provides for information to be exchanged among States Parties on changes in organizational structures or force levels. Paragraph 1(B) of that Section requires that each State Party shall notify all other States Parties of:

> any change of 10 percent or more in any one of the categories of conventional armaments and equipment limited by the Treaty assigned to any of its combat, combat support or combat service support formations and units down to the brigade/regiment, wing/air regiment, independent or separately located battalion/squadron or equivalent level. * * * Such notification shall be given no later than five days after such change occurs, indicating actual holdings after notified change.

The reference to "F21" in paragraph 2 of Section V of the Document is to the designation of the format in which this information is to be exchanged among the States Parties. All Treaty specified information that is exchanged among States Parties pursuant to the Treaty is reported and exchanged in accordance with agreed, specified formats. Paragraph 2 requires that Ukraine provide information specified in paragraph 1(B) of Section VII of the Protocol on Information Exchange, as noted above, at a five percent, rather than ten percent, change in the level of assigned holdings. This requirement will provide more information and transparency to States Parties on the organizational structure and force levels of conventional armaments and equipment limited by the Treaty that is located within the Odessa oblast—one of the areas removed from the original flank zone by Section III of the Document. This obligation was of particular importance to certain Ukraine's neighbors.

Paragraph 3 of Section V of the Document sets forth the commitment of the Russian Federation to accept inspections additional to those it is obligated to receive according to the Treaty. Paragraph 3 consists of two parts.

Paragraph 3 provides that, subject to paragraphs 5 and 6 of Section V, the Russian Federation shall, commencing immediately, accept each year, in addition to its passive declared site inspection quota established pursuant to Section II, subparagraph 10(D), of the Protocol on Inspection of the Treaty, as many as 10 supplementary declared site inspections, conducted in accordance with the Protocol on Inspection, at objects of verification described in subparagraphs (A) and (B) of this paragraph. This makes clear that the Russian Federation must accept, each year, up to 10 inspections in addition to those they are required to accept pursuant to the Treaty. The number of these additional inspections the Russian

Federation is actually obligated to accept in any given year is subject to qualifications set forth in paragraph 5 of this Section. Such inspections are also subject to the provisions of paragraph 6 of this Section that govern cost and sequencing of these additional inspections.

Subparagraph 3(A) of Section V specifies the locations (objects of verification) at which the additional inspections can occur. These objects of verification are in areas removed from the original flank zone, specifically, at objects of verification located within the Pskov oblast; the Volgograd oblast; the Astrakhan oblast; that part of the Rostov oblast east of the line extending from Kushchevskaya to Volgodonsk to the Volgograd oblast border, including Volgodonsk; and Kushchevskaya and a narrow corridor in Krasnodar kray leading to Kushchevskaya. The inspections provided for in this paragraph are designed to provide confirmation of provided information in these areas, and constitute an important part of the flank agreement.

Subparagraph 3(B) of Section V of the Document describes other areas at which the above mentioned additional inspections may be carried out. This subparagraph provides that such inspections can occur at objects of verification containing conventional armaments and equipment limited by the Treaty designated by the Russian Federation in its annual information exchange of January 1, 1996 as "to be removed" until such time as a declared site inspection confirms that such equipment has in fact been removed. It should be highlighted that confirmation that all such equipment has been removed will be based on the results of a declared site inspection. Subparagraph 3(B) relates to paragraph 4 of Section IV of the Document. As noted in that paragraph, if the equipment "to be removed" is not removed prior to May 31, 1999, any equipment that has not yet been removed by that date shall count towards the numerical limits established in Section II, paragraph 1 of the Document, as well as remain subject to additional inspections.

Paragraph 4 of Section V of the Document sets forth the requirement that Ukraine accept inspections in addition to those established in the Treaty. Subject to paragraphs 5 and 6 of Section V, Ukraine must, upon provisional application of the Document, accept each year, in addition to its passive declared site inspection quota established pursuant to Section II, subparagraph 10(D), of the Protocol on Inspection, at least one supplementary declared site inspection, at objects of verification located within the Odessa oblast.

Paragraph 5 of Section V of the Document sets a limit on the additional inspections the Russian Federation and Ukraine are obligated to accept in any given year pursuant to paragraphs 3 and 4 of this Section. Paragraph 5 provides that the number of supplementary declared site inspections conducted at objects of verification, pursuant to paragraphs 3 and 4, shall not exceed the number of declared site passive quota inspections established in accordance with Section II, subparagraph 10(D) of the Protocol on Inspection, conducted at those objects of verification in the course of the same year. This paragraph limits the additional inspections in a given year to, at most, a number equal to the number of declared site passive quota inspections that are conducted that same year at ob-

jects of verification in accordance with Section II, subparagraph 10(D) of the Protocol on Inspection.

Paragraph 6 of Section V of the Document provides that all supplementary declared site inspections conducted pursuant to paragraphs 3 or 4 shall be carried out at the cost of the inspecting State Party, consistent with prevailing commercial rates and, at the discretion of the inspecting State Party, shall be conducted either as a sequential inspection or as a separate inspection.

Section VI

Paragraph 1 of Section VI provides that the Document shall enter into force upon receipt by the Depositary of notification of confirmation of approval by all States Parties. Paragraph 1 recognizes that the domestic requirements of each State Party to accept the legally binding Document, and thus to confirm its approval of the Document may vary. Each State Party, whenever it has completed whatever domestic requirements it must for the Document to enter into force for it, will notify the Depositary of its approval of the Document. The second sentence of paragraph 1 of Section VI provides that specified sections of the Document, namely Section II, paragraphs 2 and 3, Section IV, and Section V of the Document, shall be provisionally applied as of May 31, 1996, through December 15, 1996. If the Document does not enter into force by December 15, 1996, it shall be reviewed by the States Parties.

The portions of the Document that are provisionally applied concern: the constraints on battle tanks, armored combat vehicles and pieces of artillery held by Ukraine within the Odessa oblast (Section II, paragraph 2); the no-increase provision until May 31, 1999, on battle tanks, armored combat vehicles and pieces of artillery held by the Russian Federation within the original flank region (Section II, paragraph 3); the examination of the Treaty provisions on designated permanent storage sites, as well as the rights of the Russian Federation with regard to utilization of provisions on temporary deployments and reallocation (Section IV); and the requirement that the Russian Federation and Ukraine provide additional information and accept additional inspections (Section V). These portions are provisionally applied primarily to immediately enhance transparency and reduce the possibility of adverse changes in the current situation in the flank area. Provisional application makes these additional obligations of these States Parties legally effective—that is, it requires these States Parties to comply with the provisions so applied—even though the Document as a whole has not yet entered into force. Such provisional application also enables the United States and its Allies to take full advantage of the benefits offered by such provisional application.

III. Background and Treaty Implications

The CFE Treaty was signed in November 1990, and entered into force two years later. The product of almost two decades of negotiations between 22 nations of NATO and the Warsaw Pact, the CFE Treaty placed alliance-wide, regional (zonal), and national ceilings on specific major items of military equipment (battle tanks, artillery, armored combat vehicles, attack helicopters, and combat aircraft). The ceilings applied equally to two "groups of States Parties"

within the treaty's area of application, a region designated from the "Atlantic-to-the-Urals" (ATTU). The purpose of the treaty is to promote stability in Europe not only by reducing armaments, but also by reducing the possibility of surprise attack by preventing large regional concentrations of forces.

The CFE Treaty also provides for (1) very detailed data exchanges on equipment, force structure, and training maneuvers; (2) specific procedures for the destruction or redistribution of excess equipment, and (3) verification of compliance through on-site inspections. Its implementation has resulted in an unprecedented reduction of conventional arms in Europe, with over 53,000 treaty-limited items of equipment (TLE) removed or destroyed, and is considered by most observers to have achieved most of its initial objectives. The CFE Treaty States Parties now face the challenge of sustaining the treaty's achievements while acknowledging a significantly altered geo-political reality.

The CFE Treaty did not anticipate the dissolution of the Soviet Union and the Warsaw Pact, let alone the expansion of NATO membership to include countries in Central and Eastern Europe. Consequently, recent years have been occupied with efforts to adapt the treaty to the new security environment of its members. The first of these was the so-called "Tashkent Agreement", signed in May 1992, which allocated responsibility for the Soviet Union's TLEs among its successor states—Azerbaijan, Armenia, Belarus, Kazakhstan, Moldova, Russia, Ukraine, and Georgia. It also established equipment ceilings for each nation and the implied responsibility for the destruction/transfer of equipment necessary to meet these national ceilings. The total equipment level under the Tashkent Agreement does not exceed that assigned the former Soviet Union under the CFE Treaty.

The CFE Review Conference and the Flank Document

In addition to the ATTU-wide national ceilings, the CFE Treaty established a system of four "zones" with separate sub-ceilings. The three central zones are nested and overlapping. The fourth zone is the flank zone. The flank zone includes Russia's Leningrad Military District in the north, and more importantly, Russia's North Caucasus Military District in the south. Thus the CFE flank zone limited the amount of equipment Russia was permitted to deploy in certain areas of its own territory. The outbreak of armed ethnic conflicts in and around the Caucasus, most notably in Chechnya, led to Russian claims for the need to deploy equipment in excess of treaty limits in that zone.

Under the CFE Treaty all equipment reductions necessary to comply with overall, national, and zonal ceilings were to have been completed by November 17, 1995, forty months after the treaty entered into force. As this deadline approached, it became clear to the parties that Russia would not meet those requirements, particularly in the so-called "flank zones".

Russia made this claim in the context of broader assertions that some CFE provisions reflected Cold War assumptions and did not fairly address its new national security concerns. It questioned the appropriateness of being limited in the stationing of its military forces within its own borders. It pointed out that no other CFE na-

tion (with the exception of a small portion of Ukraine) is under such restrictions, and suggested this was an unacceptable infringement on its national sovereignty. Russia also maintained that its military activities in the Caucasus, and hence the need for additional stationed forces in the flank zone, responded to a legitimate national security concern. Accompanying these assertions were also claims that national economic hardship was making restationing unaffordable in some cases, a claim which Ukraine also made.

Though not all states parties viewed the Russian position sympathetically (Norway and Turkey, which border the Russian flank zone voiced significant reservations), a consensus was reached in November 1995 to examine ways to alleviate the Russian complaints. This effort, conducted within the CFE Treaty's Joint Consultative Group (JCG), resulted in the Flank Agreement. This agreement was signed by all states parties at the CFE Treaty Review Conference on May 31, 1996, and on August 1, 1996 was submitted to Congress for legislation authorizing U.S. confirmation of approval. The Review Conference also stipulated that the agreement would be provisionally in force until December 15, 1996 while states parties completed their formal approval procedures. At the December 1996 OSCE summit in Lisbon, the deadline was extended on a one-time basis until May 15, 1997.

In its essentials, the Flank Agreement removes several Russian (and one Ukrainian) administrative districts from the old flank zone, thus permitting current flank equipment ceilings to apply to a smaller area. In addition, Russia now has until May 1999 to reduce its forces to meet the new limit.

	Tanks	Artillery	Armored Combat Vehicles
Original Flank Limit	1,800	2,400	3,700
Permitted to 1999	1,897	2,422	4,397
New Flank Limit	1,300	1,680	1,380

To provide some counterbalance to these adjustments, reporting requirements were enhanced, inspection rights in the zone increased, and district ceilings were placed on armored combat vehicles to prevent their concentration.

The Review Conference also noted that the Tashkent signatories (the ATTU former states of the Soviet Union) were about 2,800 TLEs short of their reduction requirements, and that five successor states were in excess of their national limits or flank zone limits. The relatively small amount of equipment involved and the treaty members "being aware of the difficulties which have delayed the completion of reductions", the Review Conference accepted renewed commitments to comply with treaty limits.

Process of negotiating the CFE Flank Document

The committee is alarmed by the process through which the CFE Flank Document was negotiated. In particular, contradictory public statements by Executive Branch officials, misrepresentations by other parties of the views of the United States government that were left uncorrected, and the failure by the Clinton Administration to build and maintain consensus among the NATO allies led to a confused and sloppy negotiating process.

Through the forty-month period for implementation of CFE obligations, the Russian Federation maintained a course of action that satisfactorily met its obligations on the requirement to reduce overall holdings of Treaty-Limited Equipment as required by the CFE Treaty. However, as early as 1994, the Russian government began to signal its unwillingness to comply similarly with the specific limitations on TLE holdings in the flank zones. The reasons cited by the Russian government for its unwillingness to meet the limits in the flank zones included the changed geopolitical landscape and strategic balance of post-Cold War Europe, and ongoing instability in the North Caucasus region of Russia (particularly Chechnya) and the South Caucasus States of Georgia and Azerbaijan.

In the view of the committee, and in the view of the Administration at that time, Russia's justification for revisions in equipment limits in the flank zones were without serious merit. Furthermore, the Clinton Administration insisted that if Russia sought relief, the temporary deployment authorities allowed in the CFE Treaty would be more than sufficient to meet any legitimate needs, such as the deployment of additional tanks, attack helicopters, armored personnel vehicles and artillery to use along with bomber aircraft already being employed against the towns and cities of the lightly armed Chechen separatists in Russia's North Caucasus region. Otherwise, the United States and its NATO allies insisted, even if permanent revisions were to be made in the Russian obligations, such revisions would only occur at the May 15, 1996, Review Conference, and only after Russia had met its obligations under the CFE Treaty's November 17, 1995, deadline.

The geostrategic changes which have occurred in Europe since the end of the Cold War have indeed diminished the territory and combined forces under the control of the Russian Federation—the principal successor to the Union of Soviet Socialists Republic. At the same time, Russia remains by far the largest military power among the states of the former Warsaw Pact, and the external threat which confronts Russia is minimal. Outside of the Russian Federation, the largest holding of military equipment on the continent of Europe is not under the control of a single state. It is the combined forces of NATO. In the view of the committee, and the Administration, NATO does not pose a threat to Russia.

In an answer to a question for the record from a Foreign Relations Committee hearing on April 18, 1997, Undersecretary of State-designate Thomas R. Pickering accurately described NATO-Russian relations: "In 1991, NATO revised its strategic concept in recognition that the end of the East-West confrontation has eliminated the threat of massive military confrontation in Europe * * * NATO is now focused on new threats that are common to all of Europe, including Russia, such as the proliferation of weapons of mass destruction, regional instability, and conflicts stemming from lingering ethnic, and religious and territorial tensions."

The instability in the North and South Caucasus which has caused concern for Moscow is little justification for allowing increased levels of CFE-controlled Russian military equipment in the CFE flank zone. In fact, much of the instability in the region is a result of either heavy handed and belligerent domestic policies by Russia—in the case of the tragic war in Chechnya—or active efforts

by the Russian government to destabilize and even overthrow the governments of sovereign states in Georgia and Azerbaijan. Leading figures in coups against both governments have found refuge in Moscow. Russian assistance to separatist movements in the regions of Abkhazia and Nagorno-Karabakh has been undertaken with the specific intention of placing pressure on the governments of Georgia and Azerbaijan, respectively. Recent reports regarding massive arms shipments from Russia to Armenia only further demonstrate the intentionally destabilizing role played by Russia in the region of the South Caucasus.

In the face of the Russian government's stated intent to not meet the CFE flank limits, the United States Government, joined by several NATO allies, insisted that Russia meet all obligations under the CFE Treaty by the November 17, 1995, deadline required under the terms of the Treaty. On April 18, 1995, the State Department spokeswoman stated that "we and our NATO allies have advised Russia against taking unilateral steps which would avoid meeting CFE's equipment limits." On May 6, 1995, the Director of the Arms Control and Disarmament Agency (ACDA), John Holum, further stated that "(t)he Flank Agreements are integral to the treaty." Director Holum at that time indicated that Russia must meet its obligations before any consideration would be given to renegotiation of Russian obligations.

On May 10, 1995, at the conclusion of a summit meeting between President Clinton and Russian President Boris Yeltsin in Moscow, President Yeltsin announced a reversal in the United States' position which to date had conditioned renegotiation of Russian obligations under the CFE Treaty upon initial Russian compliance. While anonymous Administration spokesmen insisted in a later press briefing that the United States had not changed its position, President Clinton did not contradict President Yeltsin's announcement. In an on-the-record speech at the Atlantic Council on July 13, 1995, Director Holum stated that in regard to the CFE "* * * we do have a commitment on the table in the sense that we are talking to the Russians about trying to solve the specific problem of the flanks question by the 1996 review conference. But our ability to do that in a constructive way is going to be dependent on their being in compliance with the treaty limits by November." In fact, within days a U.S.-led effort was begun to renegotiate Russian flank limit obligations before the November 17, 1995, deadline.

On September 19, 1995, Director Holum announced a NATO proposal to renegotiate Russian obligations under the CFE Treaty. According to Director Holum "The Russians have been very clear they have concerns about sub-limits on what can be placed in the Caucasus. The NATO allies have agreed to a proposal that would seek to solve Russian concerns about flank limits." On September 22, 1995, NATO formally tabled a proposal which would renegotiate Russian obligations under the CFE Treaty flank zones. According to press reports, NATO officials admitted that none of Russia's neighbors had been consulted about the proposal. In any event, the proposal was rejected by the Russian government as insufficient.

The September 22, 1995, NATO proposal would have exempted five military districts from the Russian territory that had been des-

ignated as the flank zone under the CFE Treaty, thus permitting current flank equipment ceilings to apply to a smaller area. Under the NATO proposal, Russia would not have been entitled to any less equipment in the flank zone, but would have had the ability to concentrate it on a smaller area.

On October 23, 1995, Presidents Clinton and Yeltsin met in another summit meeting at the Hyde Park home of President Franklin Roosevelt. In a post-summit press conference, President Yeltsin claimed that the United States had again expressed a willingness to meet Russian concerns over the CFE Treaty flank zones. President Yeltsin stated "Bill neglected to say we also came to terms on the flank limits that have been placed. And I want to say a big, big thank you to Bill for supporting us on this score." The implication of President Yeltsin's statement was that the United States was willing to move beyond the NATO proposal (which had already been rejected by the Russia) in order to meet Russian demands for additional concessions. Again, President Clinton did not contradict President Yeltsin. Again, Administration officials denied any agreement for concessions had been reached with the Russian government. Again, within days, a new proposal of concessions was offered to Russia—this time by the United States alone.

The newest proposal, known as the Perry-Grachev understanding, was announced on October 28, 1995 at a Williamsburg, Virginia press conference by Secretary of Defense William Perry and Russian Minister of Defense Pavel Grachev. The proposal exempted a new set of seven military districts from the Russian territory that had been designated as the flank zone under the CFE Treaty. As under the NATO proposal, Russia would not have been entitled to any less equipment in the flank zone, but would have had the ability to concentrate it on a smaller area.

The Perry-Grachev understanding drew an immediate and alarmed reaction from NATO allies Turkey and Norway, as well as Ukraine, the Baltic States, Georgia and Azerbaijan. Under the Perry-Grachev agreement the specific, exempted military districts would have allowed the Russian military to deploy increased amounts of treaty-controlled equipment directly to the borders of each of those countries. As a serious rift appeared among the members of NATO, U.S. support for the Perry-Grachev agreement was withdrawn and the effort to find a solution to Russia's refusal to meet its CFE Treaty obligation by the November 15, 1995, deadline foundered.

Despite the willingness of NATO to propose relief for Russia's CFE obligations before the November 17, 1995, deadline, Russian government officials continued to threaten not to meet their CFE obligations and even warned that Russia might withdraw from the treaty if their concerns went unmet. On Wednesday, November 15, 1995, two days before the deadline by which all thirty parties to the CFE Treaty were required to be in compliance, Russian Minister of Defense Pavel Grachev stated on behalf of the Russian government that "We are not prepared to respect the current treaty on conventional arms reductions in Europe."

It was not until the May 1996 Review Conference that an agreement was finally reached between all thirty parties to the CFE Treaty to proceed with renegotiated obligations for Russia—and

Ukraine—in the flank zones. As a final measure to achieve consensus among the parties to the agreement, the United States Government provided the Russian government with a confidential side statement. Undersecretary of State Lynn Davis, appearing before the Senate Foreign Relations Committee on April 29, 1997, partially characterized the text of that statement in her testimony. According to Undersecretary Davis: "the statement says that we are prepared, the United States is prepared, to facilitate or act as an intermediary for a successful outcome in discussions that could take place under the Flank Agreement and the CFE Treaty between Russia and the other Newly Independent States * * *" With the assurances provided by this statement—only a portion of which was characterized by Undersecretary Davis' public testimony, the Russian government agreed to sign the revised flank agreement.

The Flank Document was signed on May 31, 1996. The parties to the treaty agreed to seek by December 15, 1996, either governmental approval or ratification as the case may be according to each party's national or constitutional procedures. Notwithstanding the fact that the revisions contained in the agreement constituted a substantive change in the CFE Treaty, Assistant Secretary of State for Legislative Affairs Barbara Larkin transmitted the agreement to the Speaker of the House and the Majority Leader of the Senate on August 1, 1996 and requested bicameral Congressional approval.

As the December 15, 1997 deadline for implementation of the agreement approached, it became clear that most parties would not complete the approval process. On December 3, 1996 a further agreement was reached among the parties to the CFE Treaty at a heads of state summit of the members of the Organization of Security and Cooperation in Europe. The parties agreed to extend the deadline (and provisional implementation) of the Flank Document until May 15, 1997. On April 7, 1997, President Clinton transmitted the Flank Document to the Senate for advice and consent, over ten months after the agreement was signed and slightly more than one month before it was required to be approved.

IV. Committee Action

The CFE Flank Document was adopted on May 31, 1996 in Vienna. The Flank Document, along with one Understanding, an exchange of letters signed by U.S. and Russian representatives, and a document extending provisional application of the Flank Document was submitted to the Senate on April 7, 1997 and referred on the same day to the Committee on Foreign Relations.

The committee held a public hearing on the Flank Document and related matters on April 29, 1997, with both Administration and private-sector witnesses.

April 29, 1997 (open session)

The Honorable Lynn E. Davis, Undersecretary of State for Arms Control and International Security Affairs;

The Honorable Walter B. Slocombe, Undersecretary of Defense for Policy;

Lieutenant General Richard B. Myers, Assistant to the Chairman of the Joint Chiefs of Staff;

Dr. Sherman Garnett, Senior Associate at the Carnegie Endowment for International Peace;

Mr. Paul Goble, Director of the Communication Department, Radio Free Europe/Radio Liberty Newsline.

At a markup on May 8, 1997, the committee considered a resolution of ratification including 14 conditions. The resolution was agreed to by the committee by a roll-call vote of 17–0. Those members voting in the affirmative were Helms, Biden, Lugar, Dodd, Coverdell, Kerry, Hagel, Robb, Smith, Feingold, Thomas, Feinstein, Grams, Wellstone, Ashcroft, Frist, and Brownback.

The conditions and the rationale for approving them are as follows:

Condition 1: Policy of the United States

Condition (1) simply restates United States policy that no Russian troops should be deployed on another country's territory without the freely-given consent of that country. Unfortunately, Russia continues to station troops in several sovereign countries of the former Soviet Union—in several cases against the express wishes of the host country.

Condition 2: Violations of state sovereignty

Condition (2) states the view of the Senate that Russian troops are deployed abroad against the will of some countries (namely, Moldova). It further states the Secretary of State should undertake priority discussions to secure the removal of Russian troops from any country that wishes them withdrawn. Further, it requires the Administration to issue a joint statement with the other fifteen members of the NATO alliance reaffirming the principles that this treaty modification does not give any country: (1) The right to station forces abroad against the will of the recipient country; or (2) the right to demand reallocation of military equipment quotas under the CFE Treaty and the Tashkent Agreement. This joint statement was issued, in fact, on May 8, 1997, in Vienna.

Condition 3: Facilitation of negotiations

Condition (3) ensures that the United States will not be party to any efforts by Russia to intimidate or otherwise extract CFE Treaty concessions from its smaller neighbors. Indeed, this condition, along with much of the rest of the resolution, is specifically designed to require the United States to safeguard the sovereign rights of other countries (such as Ukraine, Moldova, Azerbaijan, and Georgia) in their dealings with the Russian Federation. The committee became alarmed, over the course of its consideration of the CFE Flank Document, with several aspects of the United States negotiating record. This condition will ensure that the United States will adhere to the highest principles in the conduct of negotiations undertaken pursuant to the treaty, the CFE Flank Document, and any side statements that have already been issued or which may be issued in the future.

Condition 4: Noncompliance

Condition (4) clarifies what the Senate expects of the President with respect to acts of noncompliance of sufficient gravity to threat-

en the national security interests of the United States. This provision directs the President to seek inspections of the noncompliant party, to pursue multilateral sanctions if necessary, and, in the event that noncompliance persists, to consult with the Senate for the purpose of obtaining a resolution of support for continued U.S. adherence to the Treaty. This provision is virtually identical to the condition on noncompliance included in the resolution of ratification of the Chemical Weapons Convention.

Condition 5: Monitoring and verification of compliance

Condition (5) requires the President to certify compliance with the treaty annually and to submit four reports on various compliance issues associated with the CFE Treaty. This condition, while designed to address the CFE Treaty, mirrors closely the monitoring provision included in the Chemical Weapons Convention's resolution of ratification.

The report required under subparagraph D of Condition (5) deserves special attention. As the committee noted in Executive Report 102–22, between January 1990 and the signature of the CFE Treaty on November 19, 1990, the Soviet Union relocated more than 75,000 pieces of major military equipment from the treaty's area of application to storage sites east of the Urals. By their own admission, the Soviets removed 57,300 items (16,400 tanks, 15,900 armored combat vehicles, and 25,000 pieces of artillery). In testimony before the committee on July 17, 1991, then-Acting Director of Central Intelligence Richard Kerr compared the movements of equipment and materiel under the Soviet withdrawal to the "Oklahoma land rush."

The United States initiated, during the summer of 1990, a series of diplomatic efforts to secure Soviet assurances regarding the use and disposition of the equipment and armaments withdrawn. Finally, on June 14, 1991, the Soviet Union promised in a politically-binding statement to the CFE Joint Consultative Group to destroy 14,500 pieces of equipment located east of the Urals between 1991 and 1995; not to use withdrawn equipment to create a strategic reserve or operational groupings; to provide information on the equipment; not to keep it in unit sets; and to use it as attrition reserves and spares.

Despite these assurances, the committee is concerned that Russia may not have accomplished meaningful eliminations of this equipment. Moreover, some armaments originally withdrawn by the Soviet Union may have been reintroduced clandestinely into the area of application as part of a Russian effort to destablize neighboring countries. Accordingly, Condition (5) requires the Administration to report to the committee on the status of this equipment and armaments.

Similarly, the reports required under subparagraphs E and F of Condition (5) are linked to questions regarding the status of excess Soviet materiel circulating within the Caucasus region in the hands of subnational and secessionist movement. In particular, recent allegations have surfaced that Russia may have poured more than $1 billion worth of Russian arms into Armenia from 1993 to 1996. The Chairman of the Russian State Duma Defense Committee, General Lev Rokhlin, as reported in *Nezavisimaya Gazeta* on

April 3, 1997, has alleged that Russia has transferred to Armenia 84 T–72 tanks, 50 BMP–2 armored combat vehicles, 36 122 mm howitzers, and 18 152 D–1 howitzers. While the provision of such military assistance is troubling by its very nature, the committee is concerned with two particular aspects of this collaboration: (1) the extent to which the equipment transferred to Armenia was withdrawn from stockpiles located east of the Urals; and (2) the extent to which Armenia allowed transfers of such equipment to the secessionist movement in Azerbaijan for the purpose of further destabilizing President Aliyev's government. Armenia may thus have violated the CFE Treaty and/or United States law.

The committee notes that Armenia has made counter-allegations, although there have been no revelations in this regard on the order of those by General Rokhlin. If the President wishes to include in his report information on other arms transfers in the region, the committee will have no objection.

Condition 6: Application and effectiveness of Senate advice and consent

Condition (6) requires the President to agree that the United States, in any effort to secure ratification or accession to the Flank Document by another country, will vigorously reject any effort by another State Party to have it make any promises inconsistent with the principles established by conditions (1), (2), or (3) or agree to substantively modify the Flank Agreement or the Treaty itself during the course of future negotiations. It further requires any future modifications or amendments to the Flank Document that are of a substantive nature to be submitted to the Senate for its advice and consent, and also stipulates that two documents submitted by the President to the Senate in the course of its consideration of the CFE Flank Document are treated as having the same force and effect as the Flank Document itself.

Condition 7: Modifications of the CFE Flank Zone

Condition (7) provides that changes to the flank region which would alter the boundaries represented on the map submitted by the President during Senate consideration of the CFE Flank Document be treated as substantive modifications requiring Senate advice and consent unless they are of a minor administrative or technical nature. This provision is necessary since the Administration initially insisted that the CFE Flank Document need not be submitted for advice and consent since it did not alter the CFE Treaty, but rather only changed the original map submitted by the Administration.

Condition 8: Treaty interpretation

Condition (8) reaffirms condition (1) in the resolution of ratification of the INF Treaty, which was approved by the Senate in 1988. That condition, popularly known as the "Biden-Byrd" condition, sets forth important principles of treaty interpretation. The condition has been reaffirmed by the Senate during consideration of every major arms control treaty since 1988, including the original CFE Treaty, the Open Skies Treaty, the START I and START II Treaties, and the Chemical Weapons Convention. These principles

apply regardless of whether the Senate chooses to say so during consideration of any particular treaty.

The text of the Biden-Byrd condition is as follows:

> (A) the United States shall interpret a treaty in accordance with the common understanding of the Treaty shared by the President and the Senate at the time the Senate gave its advice and consent to ratification; (B) Such common understanding is based on: (i) first, the text of the Treaty and the provisions of this resolution of ratification; and (ii) second, the authoritative representations which were provided by the President and his representatives to the Senate and its Committees, in seeking Senate consent to the ratification, insofar as such representations were directed to the meaning and legal effect of the text of the Treaty; (C) the United States shall not agree to or adopt an interpretation different from that common understanding except pursuant to Senate advice and consent to a subsequent treaty or protocol, or the enactment of a statute; and (D) if, subsequent to ratification of the Treaty, a question arises as to the interpretation of a provision of the Treaty on which no common understanding was reached in accordance with paragraph (2), that provision shall be interpreted in accordance with applicable United States law.

The Committee fully explained the background to, and rationale for, the original condition in its report on the INF Treaty. *See* S. Exec. Rept. No. 15, 100th Cong., 2d Sess., at 87–108 (1988) (hereafter *INF Treaty Report*). In brief, the condition was designed to set forth elemental principles of treaty interpretation under our constitutional system. Specifically, the condition provides that the interpretation of a treaty by the Executive, following ratification, will be governed by the "shared understanding" of the Executive and the Senate, as reflected in the Executive's formal representations to the Senate at the time the Senate gives its advice and consent. Although the Executive and the Senate are co-equal partners in the treaty-making process under our constitutional system, it is the Executive which implements and interprets treaties. The Biden-Byrd condition ensures that the Executive will do so within the boundaries of its original presentation to the Senate.

Condition (8) also provides guidance on construction of the Biden-Byrd condition. Specifically, it states that "nothing in [the Biden-Byrd] condition * * * shall be construed as authorizing the President to obtain legislative approval for modifications or amendments to treaties through majority approval of both Houses."

The Biden-Byrd condition addresses the issue of how a treaty shall be *interpreted* once it enters into force, and how new interpretations—outside the realm of the original shared understanding—shall be adopted. As the Committee stated in its report on the INF Treaty:

> The Committee notes that paragraph (C) of the Condition is essentially a corollary of the principles in paragraphs (A) and (B). The import of the [first two paragraphs] is that the Executive must interpret a treaty in accord with the original Executive-Senate "shared understanding" of

> the treaty * * * the Executive may not, acting alone, adopt an interpretation outside the bounds of that "shared understanding." Paragraph (C) simply spells out the circumstances under which the Executive would receive a mandate to adopt an interpretation outside such bounds.

INF Treaty Report, at 99. It should be noted the Biden-Byrd condition says nothing about amendments or modifications to treaties. It cannot be used, therefore, as justification for submitting amendments or modifications to both Houses for approval.

The terms "modifications" or "amendments," as used in the provision, are essentially equivalent, insofar as they both apply to changes to the text, or changes to substantive obligations, of an existing treaty. The different terms are used, in international law, to distinguish between two variations of changes to multilateral agreements. One variation, an *amendment,* involves changes designed to apply to all parties to a multilateral treaty (although all parties to the existing treaty may not ultimately concur in the amendment). The other variation, a *modification,* is an arrangement between two or more parties to a multilateral treaty that affects only the relations among themselves, and does not affect the other parties to that multilateral agreement.

Condition 9: Senate prerogatives on multilateralization of the ABM Treaty

Condition (9) protects the Senate's constitutional prerogatives by requiring the President to agree that any agreement to multilateralize the 1972 Anti-Ballistic Missile Treaty would be submitted to the Senate for advice and consent since any such agreement would, by definition, substantively alter the rights and obligations of the United States and others under the ABM Treaty.

This condition builds upon a clear and unambiguous legislative history. The Fiscal Year 1995 Defense Authorization Act requires that any agreement that "substantively modifies" the ABM Treaty must be submitted to the Senate for advice and consent to ratification. The conference report accompanying the fiscal year 1997 Defense Authorization Act states that any agreement to add signatories to the ABM Treaty would constitute a substantive change to the treaty requiring Senate advice and consent.

The majority of the committee views multilateralization of the ABM Treaty as a substantive modification requiring Senate advice and consent for a variety of reasons. (This was the one condition with which questions were raised.) The committee noted with interest a June 6, 1996 study by the American Law Division of the Library of Congress. While the study concludes that "an apportionment of the rights and obligations of the USSR under the ABM Treaty to its successor states would not, in itself, seem to require Senate participation," it does not contemplate just how those rights and obligations are to be apportioned. Indeed, the study does not seem even to take into account the actual Memorandum of Understanding relating to ABM Treaty successorship.

Accordingly, the sentence preceding the June 6, 1996, study's conclusion is highly relevant, stating that "a multilateralization agreement could include matters that would alter the substance of the ABM Treaty and require Senate advice and consent." Thorough

analysis of how the addition of new States Parties to the ABM Treaty would alter its functioning reveals a number of problems which must be addressed by the Senate.

First, new Parties to the ABM Treaty cannot be added without specially-negotiated, limited rights, but there is no way to do this within the existing provisions of the treaty. Yet such is necessary if the United States does not want to entitle each new successor to an ABM-system and ABM test-ranges. Thus the multilateralization agreement must add or alter provisions in the current treaty to ensure that ABM capabilities on the territory of the Soviet Union are not multiplied.

Second, multilateralization inevitably will change the amount of territory covered by the ABM Treaty. In so doing, it will also change the geographic scope and coverage of the ABM Treaty. Since several fundamental limitations in the treaty (such as location of ABM radars) are defined in terms of "national territory," any change to this definition changes the basic limitation in the treaty. For example, Russia continues to operate large-phased array radars which used to be "on the periphery" of the Soviet Union (as required by Article VI(b)) but which are now in Ukraine, Belarus, Latvia, and Kazakstan. A new agreement would conflict with AMB periphery requirements if Russia (or another country) were suddenly able to build a new string of radars along its borders. But if Russia is forbidden to do this, then the agreement must necessarily "grandfather" Russia's continued owning and operating of radars in other countries. By providing Russia extraterritorial treaty-rights and a military presence in another country, this agreement would most certainly constitute a significant change to the treaty (and a major legal/political issue for countries which want Russian troops withdrawn from their territories).

Further, if a country of the former Soviet Union opts not join the multilateralization agreement, the committee is concerned to know whether they would be free (in the future) to develop ABM systems. If so, this too significantly alters the geographic coverage of the treaty.

Third, multilateralization of the ABM Treaty cannot be done without permanently, and significantly, altering United States rights under the treaty. New Parties doubtless will be given an official say at the Standing Consultative Commission (SCC), which interprets and administers the ABM Treaty. Under the bilateral ABM Treaty, the United States may take actions as approved through bilateral agreements. Yet with multilateralization, the United States presumably will no longer have this ability. Expanding the bilateral consensus arrangement into a multilateral consensus process means that, in the future, one country (such as Belarus) could effectively block U.S. actions or demand U.S. concessions even if Russia and the others agreed with the United States. A second alternative would be to alter the SCC to operate by means of a majority vote. Yet, if this occurs the United States could find itself overruled on matters where currently it cannot be.

The history of succession agreements to the various treaties concluded between the United States and the Soviet Union further supports the case for Senate consideration of any ABM successorship document. The United States has engaged in a case-

by-case review of treaty successorship issues. In the one case of the INF Treaty, where the treaty carried a negative obligation—namely to not possess any intermediate-range nuclear missiles—the treaty could be multilateralized without Senate advice and consent. No treaty terms were altered and the United States incurred no modification or new treaty rights or obligations. Thus advice and consent was not necessary.

Multilateralization of the START Treaty under the Lisbon Protocol, on the other hand, required Senate advice and consent. In this case, multilateralization had clear implications for the treaty's text and object and purpose. The Lisbon Protocol determined the extent to which countries other than Russia would be allowed to possess strategic nuclear weapons. Similarly, ratification of the Lisbon Protocol also effectively determined successorship questions to the Treaty on Non-Proliferation of Nuclear Weapons (NPT). Under the protocol, Belarus, Kazakhstan, and Ukraine agreed to a legally-binding commitment to join the NPT as non-nuclear weapons states.

Finally, the Senate specifically considered the question of multilateralization of the treaty on Conventional Armed Forces in Europe (CFE) under Condition (5) of the resolution of ratification for the CFE Treaty.

Moreover, the ABM Treaty specifically provides that any amendment to the treaty be considered under Senate advice and consent procedures. Article 14 of the Treaty states that "agreed amendments shall enter into force in accordance with the procedures governing the entry into force of this Treaty." In other words, An amendment is to be adopted through the ratification process.

Under Article II, section 2, clause 2 of the Constitution, the Senate holds a co-equal treaty making power. John Jay made one of the most cogent arguments in this respect, noting that "of course, treaties could be amended, but let us not forget that treaties are made not by only one of the contracting parties, but by both, and consequently that as the consent of both was essential to their formation at first, so must it ever afterwards be to alter * * * them."

Condition 10: Accession to the CFE Treaty

Condition (10) urges the President to support Lithuania, Estonia, Latvia, and Slovenia should they wish to join the CFE Treaty as States Parties.

Condition 11: Temporary deployments

Condition (11) addresses a major ambiguity in the CFE Treaty. While the CFE Treaty allows for "temporary deployments" of military forces in the flank region, it does not define the term "temporary." Accordingly, Russia has felt free to use this provision to justify the permanent stationing of forces outside of its own territory. This condition requires the President to serve notice to all States Parties that the United States will reject efforts to use the temporary deployments provision to justify such stationing, that the United States considers the term "temporary" to refer to a deployment not longer than several months, and that—in the future—the United States will work to secure agreement that coun-

tries must give a detailed advance notice of a deployment—including its intended duration—before it occurs.

Condition 12: Military acts of intimidation

Condition (12) states United States policy to treat with the utmost seriousness any effort by one CFE member to intimidate another using equipment limited by the treaty.

Condition 13: Supplementary inspections

Condition (13) clarifies a drafting ambiguity in the CFE Flank Document and makes clear that, in using its right to conduct supplementary inspections under the CFE Flank Document, the United States is not limited to visiting only those objects of verification previously inspected during the same calendar year.

Condition 14: Designated permanent storage sites

The committee is concerned with paragraph 1 of Section IV of the CFE Flank Document. Understanding that this provision was inserted to accommodate the Russian Federation's request to eliminate the storage requirement for designated permanent storage sites (DPSS), the committee requires under condition (14) a report on the impact of such proposals that the United States might accept, including the extent to which more treaty-limited equipment will be introduced into the active Russian inventory under such proposals, how Russia would use the equipment, and the contribution that such a treaty modification would make to the national security of the United States.

V. RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

1 **SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO**
2 **CONDITIONS.**

3 The Senate advises and consents to the ratification
4 of the CFE Flank Document (as defined in section 3 of
5 this resolution), subject to the conditions in section 2.

6 **SEC. 2. CONDITIONS.**

7 The Senate's advice and consent to the ratification
8 of the CFE Flank Document is subject to the following
9 14 conditions, which shall be binding upon the President:

10 (1) POLICY OF THE UNITED STATES.—Nothing
11 in the CFE Flank Document shall be construed as
12 altering the policy of the United States to achieve
13 the immediate and complete withdrawal of any
14 armed forces and military equipment under the con-
15 trol of the Russian Federation that are deployed on
16 the territories of the independent states of the
17 former Soviet Union (as defined in section 3 of the
18 FREEDOM Support Act) without the full and com-
19 plete agreement of those states.

1 (2) VIOLATIONS OF STATE SOVEREIGNTY.—

2 (A) FINDING.—The Senate finds that
3 armed forces and military equipment under the
4 control of the Russian Federation are currently
5 deployed on the territories of States Parties
6 without the full and complete agreement of
7 those States Parties.

8 (B) INITIATION OF DISCUSSIONS.—The
9 Secretary of State should, as a priority matter,
10 initiate discussions with the relevant States
11 Parties with the objective of securing the imme-
12 diate withdrawal of all armed forces and mili-
13 tary equipment under the control of the Rus-
14 sian Federation deployed on the territory of any
15 State Party without the full and complete
16 agreement of that State Party.

17 (C) STATEMENT OF POLICY.—Prior to the
18 deposit of the United States instrument of rati-
19 fication, the President shall certify to the Sen-
20 ate that the United States and the governments
21 of Belgium, Canada, Denmark, France, Ger-
22 many, Greece, Iceland, Italy, Luxembourg, the
23 Netherlands, Norway, Portugal, Spain, Turkey,
24 and the United Kingdom have issued a joint
25 statement affirming that—

1 (i) the CFE Flank Document does not give
2 any State Party the right to station (under Ar-
3 ticle IV, paragraph 5 of the Treaty) or tempo-
4 rarily deploy (under Article V, paragraphs 1
5 (B) and (C) of the Treaty) conventional arma-
6 ments and equipment limited by the Treaty on
7 the territory of other States Parties to the
8 Treaty without the freely expressed consent of
9 the receiving State Party;
10 (ii) the CFE Flank Document does not
11 alter or abridge the right of any State Party
12 under the Treaty to utilize fully its declared
13 maximum levels for conventional armaments
14 and equipment limited by the Treaty notified
15 pursuant to Article VII of the Treaty; and
16 (iii) the CFE Flank Document does not
17 alter in any way the requirement for the freely
18 expressed consent of all States Parties con-
19 cerned in the exercise of any reallocations envi-
20 sioned under Article IV, paragraph 3 of the
21 CFE Flank Document.
22 (3) FACILITATION OF NEGOTIATIONS.—
23 (A) UNITED STATES ACTION.—
24 (i) IN GENERAL.—The United States,
25 in entering into any negotiation described

1 in clause (ii) involving the government of
2 Moldova, Ukraine, Azerbaijan, or Georgia,
3 including the support of United States
4 intermediaries in the negotiation, will limit
5 its diplomatic activities to—
6 (I) achieving the equal and unre-
7 served application by all States Par-
8 ties of the principles of the Helsinki
9 Final Act, including, in particular, the
10 principle that "States will respect
11 each other's sovereign equality and in-
12 dividuality as well as all the rights in-
13 herent in and encompassed by its sov-
14 ereignty, including in particular, the
15 right of every State to juridical equal-
16 ity, to territorial integrity, and to
17 freedom and political independence.";
18 (II) ensuring that Moldova,
19 Ukraine, Azerbaijan, and Georgia re-
20 tain the right under the Treaty to re-
21 ject, or accept conditionally, any re-
22 quest by another State Party to tem-
23 porarily deploy conventional arma-
24 ments and equipment limited by the
25 Treaty on its territory; and

1 (III) ensuring the right of
2 Moldova, Ukraine, Azerbaijan, and
3 Georgia to reject, or to accept condi-
4 tionally, any request by another State
5 Party to reallocate the current quotas
6 of Moldova, Ukraine, Azerbaijan, and
7 Georgia, as the case may be, applica-
8 ble to conventional armaments and
9 equipment limited by the Treaty and
10 as established under the Tashkent
11 Agreement.
12 (ii) NEGOTIATIONS COVERED.—A ne-
13 gotiation described in this clause is any ne-
14 gotiation conducted pursuant to paragraph
15 (2) or (3) of Section IV of the CFE Flank
16 Document or pursuant to any side state-
17 ment or agreement related to the CFE
18 Flank Document concluded between the
19 United States and the Russian Federation.
20 (B) OTHER AGREEMENTS.—Nothing in the
21 CFE Flank Document shall be construed as
22 providing additional rights to any State Party
23 to temporarily deploy forces or to reallocate
24 quotas for conventional armaments and equip-
25 ment limited by the Treaty beyond the rights

1 accorded to all States Parties under the original
2 Treaty and as established under the Tashkent
3 Agreement.
4 (4) NONCOMPLIANCE.—
5 (A) IN GENERAL.—If the President deter-
6 mines that persuasive information exists that a
7 State Party is in violation of the Treaty or the
8 CFE Flank Document in a manner which
9 threatens the national security interests of the
10 United States, then the President shall—
11 (i) consult with the Senate and
12 promptly submit to the Senate a report de-
13 tailing the effect of such actions;
14 (ii) seek on an urgent basis an inspec-
15 tion of the relevant State Party in accord-
16 ance with the provisions of the Treaty or
17 the CFE Flank Document with the objec-
18 tive of demonstrating to the international
19 community the act of noncompliance;
20 (iii) seek, or encourage, on an urgent
21 basis, a meeting at the highest diplomatic
22 level with the relevant State Party with the
23 objective of bringing the noncompliant
24 State Party into compliance;

1 (iv) implement prohibitions and sanc-
2 tions against the relevant State Party as
3 required by law;
4 (v) if noncompliance has been deter-
5 mined, seek on an urgent basis the multi-
6 lateral imposition of sanctions against the
7 noncompliant State Party for the purposes
8 of bringing the noncompliant State Party
9 into compliance; and
10 (vi) in the event that noncompliance
11 persists for a period longer than one year
12 after the date of the determination made
13 pursuant to subparagraph (A), promptly
14 consult with the Senate for the purposes of
15 obtaining a resolution of support for con-
16 tinued adherence to the Treaty, notwith-
17 standing the changed circumstances affect-
18 ing the object and purpose of the Treaty.
19 (B) AUTHORITY OF DIRECTOR OF
20 CENTRAL INTELLIGENCE.—Nothing in this sec-
21 tion may be construed to impair or otherwise
22 affect the authority of the Director of Central
23 Intelligence to protect intelligence sources and
24 methods from unauthorized disclosure pursuant

1 to section 103(c)(5) of the National Security
2 Act of 1947 (50 U.S.C. 403–3(c)(5)).
3 (C) PRESIDENTIAL DETERMINATIONS.—If
4 the President determines that an action other-
5 wise required under subparagraph (A) would
6 impair or otherwise affect the authority of the
7 Director of Central Intelligence to protect intel-
8 ligence sources and methods from unauthorized
9 disclosure, the President shall report that deter-
10 mination, together with a detailed written ex-
11 planation of the basis for that determination, to
12 the chairmen of the Select Committee on Intel-
13 ligence of the Senate and the Permanent Select
14 Committee on Intelligence of the House of Rep-
15 resentatives not later than 15 days after mak-
16 ing such determination.
17 (5) MONITORING AND VERIFICATION OF COM-
18 PLIANCE.—
19 (A) DECLARATION.—The Senate declares
20 that—
21 (i) the Treaty is in the interests of the
22 United States only if all parties to the
23 Treaty are in strict compliance with the
24 terms of the Treaty as submitted to the
25 Senate for its advice and consent to ratifi-

1 cation, such compliance being measured by
2 performance and not by efforts, intentions,
3 or commitments to comply; and
4 (ii) the Senate expects all parties to
5 the Treaty, including the Russian Federa-
6 tion, to be in strict compliance with their
7 obligations under the terms of the Treaty,
8 as submitted to the Senate for its advice
9 and consent to ratification.
10 (B) BRIEFINGS ON COMPLIANCE.—Given
11 its concern about ongoing violations of the
12 Treaty by the Russian Federation and other
13 States Parties, the Senate expects the executive
14 branch of Government to offer briefings not less
15 than four times a year to the Committee on
16 Foreign Relations of the Senate and the Speak-
17 er of the House of Representatives on compli-
18 ance issues related to the Treaty. Each such
19 briefing shall include a description of all United
20 States efforts in bilateral and multilateral diplo-
21 matic channels and forums to resolve compli-
22 ance issues relating to the Treaty, including a
23 complete description of—
24 (i) any compliance issues the United
25 States plans to raise at meetings of the

1 Joint Consultative Group under the Trea-
2 ty;
3 (ii) any compliance issues raised at
4 meetings of the Joint Consultative Group
5 under the Treaty; and
6 (iii) any determination by the Presi-
7 dent that a State Party is in noncompli-
8 ance with or is otherwise acting in a man-
9 ner inconsistent with the object or purpose
10 of the Treaty, within 30 days of such a de-
11 termination.
12 (C) ANNUAL REPORTS ON COMPLIANCE.—
13 Beginning January 1, 1998, and annually
14 thereafter, the President shall submit to the
15 Committee on Foreign Relations of the Senate
16 and the Speaker of the House of Representa-
17 tives a full and complete classified and unclassi-
18 fied report setting forth—
19 (i) a certification of those States Par-
20 ties that are determined to be in compli-
21 ance with the Treaty, on a country-by-
22 country basis;
23 (ii) for those countries not certified
24 pursuant to clause (i), an identification
25 and assessment of all compliance issues

1 arising with regard to the adherence of the
2 country to its obligations under the Treaty;
3 (iii) for those countries not certified
4 pursuant to clause (i), the steps the United
5 States has taken, either unilaterally or in
6 conjunction with another State Party—
7 (I) to initiate inspections of the
8 noncompliant State Party with the ob-
9 jective of demonstrating to the inter-
10 national community the act of non-
11 compliance;
12 (II) to call attention publicly to
13 the activity in question; and
14 (III) to seek on an urgent basis
15 a meeting at the highest diplomatic
16 level with the noncompliant State
17 Party with the objective of bringing
18 the noncompliant State Party into
19 compliance;
20 (iv) a determination of the military
21 significance of and broader security risks
22 arising from any compliance issue identi-
23 fied pursuant to clause (ii); and
24 (v) a detailed assessment of the re-
25 sponses of the noncompliant State Party in

1 question to actions undertaken by the
2 United States described in clause (iii).
3 (D) ANNUAL REPORT ON WITHDRAWAL OF
4 RUSSIAN ARMED FORCES AND MILITARY EQUIP-
5 MENT.—Beginning January 1, 1998, and annu-
6 ally thereafter, the Secretary of State shall sub-
7 mit a report to the Committee on Foreign Rela-
8 tions of the Senate and to the Speaker of the
9 House of Representatives on the results of dis-
10 cussions undertaken pursuant to subparagraph
11 (B) of paragraph (2), plans for future such dis-
12 cussions, and measures agreed to secure the im-
13 mediate withdrawal of all armed forces and
14 military equipment in question.
15 (E) ANNUAL REPORT ON UNCONTROLLED
16 TREATY-LIMITED EQUIPMENT.—Beginning Jan-
17 uary 1, 1998, and annually thereafter, the Di-
18 rector of Central Intelligence shall submit to
19 the Committees on Foreign Relations, Armed
20 Services, and the Select Committee on Intel-
21 ligence of the Senate and to the Speaker of the
22 House of Representatives a full and complete
23 classified and unclassified report regarding—
24 (i) the status of uncontrolled conven-
25 tional armaments and equipment limited

1 by the Treaty, on a region-by-region basis
2 within the Treaty's area of application;
3 (ii) the status of uncontrolled conven-
4 tional armaments and equipment subject
5 to the Treaty, on a region-by-region basis
6 within the Treaty's area of application;
7 and
8 (iii) any information made available to
9 the United States Government concerning
10 the transfer of conventional armaments
11 and equipment subject to the Treaty with-
12 in the Treaty's area of application made by
13 any country to any subnational group, in-
14 cluding any secessionist movement or any
15 terrorist or paramilitary organization.
16 (F) COMPLIANCE REPORT ON ARMENIA.—
17 Not later than August 1, 1997, the President
18 shall submit to the Committee on Foreign Rela-
19 tions of the Senate and the Speaker of the
20 House of Representatives a full and complete
21 classified and unclassified report regarding—
22 (i) whether Armenia was in compli-
23 ance with the Treaty in allowing the trans-
24 fer of conventional armaments and equip-
25 ment limited by the Treaty through Arme-

1 nian territory to the secessionist movement
2 in Azerbaijan; and
3 (ii) if Armenia is found not to have
4 been in compliance under clause (i), what
5 actions, if any, the President has taken to
6 implement sanctions as required by chap-
7 ter 11 of part I of the Foreign Assistance
8 Act of 1961 (22 U.S.C. 2295 et seq.; relat-
9 ing to assistance to the independent states
10 of the former Soviet Union) or other provi-
11 sions of law.
12 (G) REPORT ON DESTRUCTION OF EQUIP-
13 MENT EAST OF THE URALS.—Not later than
14 January 1, 1998, the President shall submit to
15 the Committee on Foreign Relations of the Sen-
16 ate and the Speaker of the House of Represent-
17 atives a full and complete classified and unclas-
18 sified report regarding—
19 (i) whether the Russian Federation is
20 fully implementing on schedule all agree-
21 ments requiring the destruction of conven-
22 tional armaments and equipment subject
23 to the Treaty but for the withdrawal of
24 such armaments and equipment by the So-
25 viet Union from the Treaty's area of appli-

1 cation prior to the Soviet Union's deposit
2 of its instrument of ratification of the
3 Treaty; and
4 (ii) whether any of the armaments
5 and equipment described under clause (i)
6 have been redeployed, reintroduced, or
7 transferred into the Treaty's area of appli-
8 cation and, if so, the location of such ar-
9 maments and equipment.
10 (H) DEFINITIONS.—
11 (i) UNCONTROLLED CONVENTIONAL
12 ARMAMENTS AND EQUIPMENT LIMITED BY
13 THE TREATY.—The term "uncontrolled
14 conventional armaments and equipment
15 limited by the Treaty" means all conven-
16 tional armaments and equipment limited
17 by the Treaty not under the control of a
18 State Party that would be subject to the
19 numerical limitations set forth in the Trea-
20 ty if such armaments and equipment were
21 directly under the control of a State Party.
22 (ii) UNCONTROLLED CONVENTIONAL
23 ARMAMENTS AND EQUIPMENT SUBJECT TO
24 THE TREATY.—The term "uncontrolled
25 conventional armaments and equipment

1 subject to the Treaty" means all conven-
2 tional armaments and equipment described
3 in Article II(1)(Q) of the Treaty not under
4 the control of a State Party that would be
5 subject to information exchange in accord-
6 ance with the Protocol on Information Ex-
7 change if such armaments and equipment
8 were directly under the control of a State
9 Party.
10 (6) APPLICATION AND EFFECTIVENESS OF SEN-
11 ATE ADVICE AND CONSENT.—
12 (A) IN GENERAL.—The advice and consent
13 of the Senate in this resolution shall apply only
14 to the CFE Flank Document and the docu-
15 ments described in subparagraph (D).
16 (B) PRESIDENTIAL CERTIFICATION.—Prior
17 to the deposit of the United States instrument
18 of ratification, the President shall certify to the
19 Senate that, in the course of diplomatic nego-
20 tiations to secure accession to, or ratification of,
21 the CFE Flank Document by any other State
22 Party, the United States will vigorously reject
23 any effort by a State Party to—
24 (i) modify, amend, or alter a United
25 States right or obligation under the Treaty

1 or the CFE Flank Document, unless such
2 modification, amendment, or alteration is
3 solely an extension of the period of provi-
4 sional application of the CFE Flank Docu-
5 ment or a change of a minor administra-
6 tive or technical nature;
7 (ii) secure the adoption of a new Unit-
8 ed States obligation under, or in relation
9 to, the Treaty or the CFE Flank Docu-
10 ment, unless such obligation is solely of a
11 minor administrative or technical nature;
12 or
13 (iii) secure the provision of assur-
14 ances, or endorsement of a course of action
15 or a diplomatic position, inconsistent with
16 the principles and policies established
17 under conditions (1), (2), and (3) of this
18 resolution.
19 (C) SUBSTANTIVE MODIFICATIONS.—Any
20 subsequent agreement to modify, amend, or
21 alter the CFE Flank Document shall require
22 the complete resubmission of the CFE Flank
23 Document, together with any modification,
24 amendment, or alteration made thereto, to the
25 Senate for advice and consent to ratification, if

1 such modification, amendment, or alteration is
2 not solely of a minor administrative or technical
3 nature.
4 (D) STATUS OF OTHER DOCUMENTS.—
5 (i) IN GENERAL.—The following docu-
6 ments are of the same force and effect as
7 the provisions of the CFE Flank Docu-
8 ment:
9 (I) Understanding on Details of
10 the CFE Flank Document of 31 May
11 1996 in Order to Facilitate its Imple-
12 mentation.
13 (II) Exchange of letters between
14 the United States Chief Delegate to
15 the CFE Joint Consultative Group
16 and the Head of Delegation of the
17 Russian Federation to the Joint Con-
18 sultative Group, dated July 25, 1996.
19 (ii) STATUS OF INCONSISTENT AC-
20 TIONS.—The United States shall regard all
21 actions inconsistent with obligations under
22 those documents as equivalent under inter-
23 national law to actions inconsistent with
24 the CFE Flank Document or the Treaty,
25 or both, as the case may be.

1 (7) MODIFICATIONS OF THE CFE FLANK
2 ZONE.—Prior to the deposit of the United States in-
3 strument of ratification, the President shall certify
4 to Congress that any subsequent agreement to mod-
5 ify, revise, amend, or alter the boundaries of the
6 CFE flank zone, as delineated by the map entitled
7 "Revised CFE Flank Zone" submitted by the Presi-
8 dent to the Senate on April 3, 1997, shall require
9 the submission of such agreement to the Senate for
10 its advice and consent to ratification, if such
11 changes are not solely of a minor administrative or
12 technical nature.
13 (8) TREATY INTERPRETATION.—
14 (A) PRINCIPLES OF TREATY INTERPRETA-
15 TION.—The Senate affirms the applicability to
16 all treaties of the constitutionally based prin-
17 ciples of treaty interpretation set forth in condi-
18 tion (1) in the resolution of ratification of the
19 INF Treaty, approved by the Senate on May
20 27, 1988.
21 (B) CONSTRUCTION OF SENATE RESOLU-
22 TION OF RATIFICATION.—Nothing in condition
23 (1) of the resolution of ratification of the INF
24 Treaty, approved by the Senate on May 27,
25 1988, shall be construed as authorizing the

President to obtain legislative approval for modifications or amendments to treaties through majority approval of both Houses.

(C) DEFINITION.—As used in this paragraph, the term "INF Treaty" refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, done at Washington on December 8, 1987.

(9) SENATE PREROGATIVES ON MULTILATERALIZATION OF THE ABM TREATY.—

(A) FINDINGS.—The Senate makes the following findings:

(i) Section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) states that "the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered pursuant to the treaty

1 making power of the President under the
2 Constitution".
3 (ii) The conference report accompany-
4 ing the National Defense Authorization
5 Act for Fiscal Year 1997 (Public Law
6 104–201) states "...the accord on ABM
7 Treaty succession, tentatively agreed to by
8 the administration, would constitute a sub-
9 stantive change to the ABM Treaty, which
10 may only be entered into pursuant to the
11 treaty making power of the President
12 under the Constitution".
13 (B) CERTIFICATION REQUIRED.—Prior to
14 the deposit of the United States instrument of
15 ratification, the President shall certify to the
16 Senate that he will submit for Senate advice
17 and consent to ratification any international
18 agreement—
19 (i) that would add one or more coun-
20 tries as States Parties to the ABM Treaty,
21 or otherwise convert the ABM Treaty from
22 a bilateral treaty to a multilateral treaty;
23 or
24 (ii) that would change the geographic
25 scope or coverage of the ABM Treaty, or

1 otherwise modify the meaning of the term
2 "national territory" as used in Article VI
3 and Article IX of the ABM Treaty.
4 (C) ABM TREATY DEFINED.—For the pur-
5 poses of this resolution, the term "ABM Trea-
6 ty" means the Treaty Between the United
7 States of America and the Union of Soviet So-
8 cialist Republics on the Limitation of Anti-Bal-
9 listic Missile Systems, signed in Moscow on
10 May 26, 1972, with related protocol, signed in
11 Moscow on July 3, 1974.
12 (10) ACCESSION TO THE CFE TREATY.—The
13 Senate urges the President to support a request to
14 become a State Party to the Treaty by—
15 (A) any state within the territory of the
16 Treaty's area of application as of the date of
17 signature of the Treaty, including Lithuania,
18 Estonia, and Latvia; and
19 (B) the Republic of Slovenia.
20 (11) TEMPORARY DEPLOYMENTS.—Prior to the
21 deposit of the United States instrument of ratifica-
22 tion, the President shall certify to the Senate that
23 the United States has informed all other States Par-
24 ties to the Treaty that the United States—

1 (A) will continue to interpret the term
2 "temporary deployment", as used in the Treaty,
3 to mean a deployment of severely limited dura-
4 tion measured in days or weeks or, at most,
5 several months, but not years;
6 (B) will pursue measures designed to en-
7 sure that any State Party seeking to utilize the
8 temporary deployments provision of the Treaty
9 will be required to furnish the Joint Consult-
10 ative Group established by the Treaty with a
11 statement of the purpose and intended duration
12 of the deployment, together with a description
13 of the object of verification and the location of
14 origin and destination of the relevant conven-
15 tional armaments and equipment limited by the
16 Treaty; and
17 (C) will vigorously reject any effort by a
18 State Party to use the right of temporary de-
19 ployment under the Treaty—
20 (i) to justify military deployments on
21 a permanent basis; or
22 (ii) to justify military deployments
23 without the full and complete agreement of
24 the State Party upon whose territory the

1 armed forces or military equipment of an-
2 other State Party are to be deployed.
3 (12) MILITARY ACTS OF INTIMIDATION.—It is
4 the policy of the United States to treat with the ut-
5 most seriousness all acts of intimidation carried out
6 against any State Party by any other State Party
7 using any conventional armament or equipment lim-
8 ited by the Treaty.
9 (13) SUPPLEMENTARY INSPECTIONS.—The
10 Senate understands that additional supplementary
11 declared site inspections may be conducted in the
12 Russian Federation in accordance with Section V of
13 the CFE Flank Document at any object of verifica-
14 tion under paragraph 3(A) or paragraph 3(B) of
15 Section V of the CFE Flank Document, without re-
16 gard to whether a declared site passive quota inspec-
17 tion pursuant to paragraph 10(D) of Section II of
18 the Protocol on Inspection has been specifically con-
19 ducted at such object of verification in the course of
20 the same year.
21 (14) DESIGNATED PERMANENT STORAGE
22 SITES.—
23 (A) FINDING.—The Senate finds that re-
24 moval of the constraints of the Treaty on des-
25 ignated permanent storage sites pursuant to

1 paragraph 1 of Section IV of the CFE Flank
2 Document could introduce into active military
3 units within the Treaty's area of application as
4 many as 7,000 additional battle tanks, 3,400
5 armored combat vehicles, and 6,000 pieces of
6 artillery, which would constitute a significant
7 change in the conventional capabilities of States
8 Parties within the Treaty's area of application.
9 (B) SPECIFIC REPORT.—Prior to the
10 agreement or acceptance by the United States
11 of any proposal to alter the constraints of the
12 Treaty on designated permanent storage sites,
13 but not later than January 1, 1998, the Presi-
14 dent shall submit to the Committee on Foreign
15 Relations of the Senate and the Speaker of the
16 House of Representatives a full and complete
17 classified and unclassified report setting forth—
18 (i) a detailed explanation of how addi-
19 tional Treaty-limited equipment will be al-
20 located among States Parties;
21 (ii) a detailed assessment of the loca-
22 tion and uses to which the Russian Fed-
23 eration will put additional Treaty-limited
24 equipment; and

1 (iii) a detailed and comprehensive jus-
2 tification of the means by which introduc-
3 tion of additional battle tanks, armored
4 combat vehicles, and pieces of artillery into
5 the Treaty's area of application furthers
6 United States national security interests.

7 **SEC. 3. DEFINITIONS.**

8 As used in this resolution:

9 (1) AREA OF APPLICATION.—The term "area of
10 application" has the same meaning as set forth in
11 subparagraph (B) of paragraph 1 of Article II of the
12 Treaty.

13 (2) CFE FLANK DOCUMENT.—The term "CFE
14 Flank Document" means the Document Agreed
15 Among the States Parties to the Treaty on Conven-
16 tional Armed Forces in Europe (CFE) of November
17 19, 1990, adopted at Vienna on May 31, 1996
18 (Treaty Doc. 105–5).

19 (3) CONVENTIONAL ARMAMENTS AND EQUIP-
20 MENT LIMITED BY THE TREATY; TREATY-LIMITED
21 EQUIPMENT.—The terms "conventional armaments
22 and equipment limited by the Treaty" and "Treaty-
23 limited equipment" have the meaning set forth in
24 subparagraph (J) of paragraph 1 of Article II of the
25 Treaty.

1 (4) FLANK REGION.—The term "flank region"
2 means that portion of the Treaty's area of applica-
3 tion defined as the flank zone by the map depicting
4 the territory of the former Soviet Union within the
5 Treaty's area of application that was provided by the
6 former Soviet Union upon the date of signature of
7 the Treaty.
8 (5) FULL AND COMPLETE AGREEMENT.—The
9 term "full and complete agreement" means agree-
10 ment achieved through free negotiations between the
11 respective States Parties with full respect for the
12 sovereignty of the State Party upon whose territory
13 the armed forces or military equipment under the
14 control of another State Party is deployed.
15 (6) FREE NEGOTIATIONS.—The term "free ne-
16 gotiations" means negotiations with a party that are
17 free from coercion or intimidation.
18 (7) HELSINKI FINAL ACT.—The term "Hel-
19 sinki Final Act" refers to the Final Act of the Hel-
20 sinki Conference on Security and Cooperation in Eu-
21 rope of August 1, 1975.
22 (8) PROTOCOL ON INFORMATION EXCHANGE.—
23 The term "Protocol on Information Exchange"
24 means the Protocol on Notification and Exchange of
25 Information of the CFE Treaty, together with the

1 Annex on the Format for the Exchange of Informa-
2 tion of the CFE Treaty.
3 (9) STATE PARTY.—Except as otherwise ex-
4 pressly provided, the term "State Party" means any
5 nation that is a party to the Treaty.
6 (10) TASHKENT AGREEMENT.—The term
7 "Tashkent Agreement" means the agreement be-
8 tween Armenia, Azerbaijan, Belarus, Georgia,
9 Kazakhstan, Moldova, Russia, and Ukraine estab-
10 lishing themselves as successor states to the Soviet
11 Union under the CFE Treaty, concluded at
12 Tashkent on May 15, 1992.
13 (11) TREATY.—The term "Treaty" means the
14 Treaty on Conventional Armed Forces in Europe,
15 done at Paris on November 19, 1990.
16 (12) UNITED STATES INSTRUMENT OF RATIFI-
17 CATION.—The term "United States instrument of
18 ratification" means the instrument of ratification of
19 the United States of the CFE Flank Document.

VI. ADDITIONAL VIEWS OF SENATOR BIDEN

I strongly support prompt Senate action to advise and consent to ratification of the CFE Flank Document, which, as an amendment to the original CFE Treaty, is an essential building block in a new European security structure adapted to the post-Cold War environment. Prompt action is necessary because the Flank Document must, by its terms, enter into force by May 15, 1997. Otherwise, the Document is subject to further review by the States Parties. As yet, not all States Parties to the CFE Treaty have ratified the Flank Document, and many states are believed to be awaiting ratification by the United States. The Clinton Administration has therefore urged the Senate to act quickly. The Committee has acted on a bipartisan basis to meet this objective. The Flank Document was submitted to the Senate on April 7, 1997; the Committee reported it just over a month later, on May 8. I am grateful to the Chairman for the dispatch with which he has brought forward the Flank Document for consideration by the Committee and, ultimately, by the full Senate.

The 17–0 vote in the Committee to report the Flank Document to the Senate demonstrates the strong bipartisan support that this amendment to the CFE Treaty enjoys. But that strong vote should not be interpreted as support for the resolution of ratification in its entirety. I must emphasize, as I did during the Committee markup, my objection to one condition in the resolution: Condition (9), which addresses the question of "multilateralization" of the 1972 Anti-Ballistic Missile (ABM) Treaty. ("Multilateralization" is the term of art for converting the treaty from a bilateral pact to a multilateral treaty.) Consequently, during Senate consideration of the Flank Document, I will oppose this condition as it now stands.

Condition (9) would prevent the President from depositing the instrument of ratification on the Flank Document until he certifies that he will submit to the Senate, for its advice and consent, any agreement to multilateralize the ABM treaty. Specifically, such an agreement must be submitted to the Senate if it: (1) "would add one or more countries as States Parties to the ABM Treaty or otherwise convert the ABM Treaty from a bilateral treaty to a multilateral treaty;" or (2) would "change the geographic scope or coverage of the ABM Treaty, or otherwise modify the meaning of the term 'national territory' as used in Article VI and Article IX of the ABM Treaty."

Quite obviously, the condition has no connection to the issue before us in this treaty: that is, limitations on conventional forces in Europe. Of course, there is no germaneness requirement under the Senate rules. But in undertaking the solemn duty to advise and consent to treaties—a power assigned only to the Senate in our constitutional system—the Senate should, as a matter of practice, exercise some self-restraint; as a general rule, conditions on resolu-

tions of ratification ought to bear some rational relationship to the treaty at issue. One strains to find such a relationship here.

More important than relevance, there is no legal requirement that the Senate advise and consent to the ABM succession agreement. I yield to no one in my determination to protect the Senate's powers and prerogatives under the Treaty Clause of the Constitution. For instance, I agreed with the Chairman—and stated my views forcefully to the Executive—that the treaty now before us, the CFE Flank Document, unquestionably required Senate advice and consent, because it effects a substantive change to the underlying CFE Treaty. So, too, does the so-called "ABM Demarcation agreement," which will be submitted to the Senate once it is signed. But the succession agreement on the ABM Treaty effects no such substantive change. Rather, the succession agreement achieves a single objective: of codifying the status of the states, under the Treaty, which succeeded to the rights and obligations of the former Soviet Union, while ensuring that it remains consistent with the original object and purpose of the Treaty. Determining whether new states which emerge from a dissolved state inherit the obligations of the predecessor state is a function of the Executive. Any claim in this instance that a Senate "prerogative" is at issue is much overstated, for there is no prerogative to exercise here.

As stated in the President's November 25, 1996, report to Congress, submitted in accordance with Section 406 of the FY 1997 Department of State and Related Agencies Appropriations Act, the

> resolution of succession questions has long been regarded as a function of the Executive Branch, and many executive agreements have been concluded that recognized the succession of new States to the treaty rights and obligations of their predecessor. Such agreements have not been treated as treaty amendments or new treaties requiring Senate advice and consent, but rather as the implementation of existing treaties, which is recognized as [an] exclusively Presidential function under the Constitution.

This principle has been applied, it bears emphasis, by both the Bush and Clinton Administrations in the case of the dissolution of the Soviet Union and Yugoslavia.

At its heart, Condition (9) is not about Senate prerogative, but about whether or not the ABM Treaty should continue to remain in force. That is a subject of legitimate debate (although I should add that I strongly support the retention of the Treaty). But that debate can readily be conducted at another time, on other legislation; engaging in that debate now unnecessarily risks slowing ratification of this important treaty.

VII. ADDITIONAL VIEWS OF SENATOR JOHN F. KERRY

The political change in Europe has been more sweeping and profound in the past 7 or 8 years than at any time in the preceding 40. It is entirely understandable that the Conventional Forces in Europe Treaty must be adapted to take those changes into account. I strongly supported the effort to do so, and I strongly support the basic treaty alterations that were negotiated.

The treaty has been a notable success. It has resulted in reductions of over 50,000 items of heavy military equipment, verified by an intrusive verification regime that has included nearly 3,000 on-site inspections conducted to date under treaty auspices. It has worked and worked well. It is not a prospective treaty about which we must guess or predict. It is a here-and-now, real-world treaty that has resulted in tangible reduction in armaments and consequently in real reduction in the threat of conflict. It is a treaty that we would do well to preserve and protect.

This flank agreement is in NATO's security interest, and, specifically, it is in the security interests of the United States. Without the adjustments it provides, it is likely Russia and possibly Ukraine would feel so impeded in their ability to meet their own national security requirements that they either would leave the treaty altogether or fail to comply with some of its provisions. The implications of neither of these outcomes would be acceptable, and would weaken or destroy the protections and added security offered by the CFE.

The judgment that the flank agreement is in our national interest is not just a judgment of our diplomatic community. It is fully endorsed by our armed forces leadership. On April 29 of this year, Brigadier General Gary Rubus testified that, "In the judgment of the Joint Chiefs of Staff, the Flank Agreement is militarily sound. It preserves the CFE treaty and its contribution to U.S. and Allied military security. The additional flexibility permitted Russia in the flank zone does not allow a destabilizing new concentration of forces on the flanks of Norway, Turkey and other states in that area. Moreover, the agreement includes significant new safeguards, including greater transparency and new constraints on flank deployment."

The committee, clearly, agrees with this judgment, as evidenced in an overwhelming vote for the resolution of ratification. I want to compliment those who struggled to overcome the barriers that were placed in the way of bringing this matter to a vote in the committee and taking it from there to the Senate.

But I must say I am mystified and troubled by how easy it seems for some in the majority to take a treaty that self-evidently is in our national interest and transform the process of advice and consent into an obstacle course. And, once again, it is only an imme-

diately looming deadline that has resulted in the needed action. It shouldn't be that way, and it does not have to be that way.

As I look at the conditions contained in the resolution of ratification, I find several of them—primarily those which the Senate appropriately and routinely attaches to treaties—beneficial and desirable. I find several others to reflect a degree of fear and anxiety on the part of some members the basis for which I cannot ascertain—but which, all things told, appear unlikely to do fundamental damage to what should be our objective here: to keep the CFE Treaty in operation in order to continue to derive its benefits to security in Europe and a reduction in the risk of conflict there.

Then I see condition No. 9. This condition, of course, pertains to the ABM Treaty—a treaty that is not currently before either the committee or the Senate. I am unable to discern a reasonable or defensible rationale to link the issue of multilateralization of the ABM Treaty to action on the CFE flank agreement. Indeed, in my judgment, there is no reasonable or defensible rationale to link these wholly separate issues.

Let's be clear about what's going on here. Proposed condition No. 9 is hostage-taking, pure and simple. Some members of the majority, who have a fundamental aversion to arms control agreements and want the United States arrogantly to go it alone in the unavoidably interdependent world of the last decade of the 20th century, insist that unless the President concedes to their position on the unrelated issue of ABM multilateralization, they will refuse to let the United States ratify the CFE flank agreement.

I readily agree that the issues surrounding the ABM Treaty are both vital and very controversial—both the substantive considerations and the considerations of the proper roles, prerogatives, and responsibilities of the Executive and Legislative Branches in addressing under the terms of the Constitution proposed adjustments or changes to that treaty. I believe this Committee should devote considerable time and energy to thoroughly exploring and acting on those issues, and I am very hopeful that, indeed, our Committee will spend considerable time and energy to do so at an appropriate time.

But I want to register the strongest possible dissent from this tactic of hostage-taking. These issues are separate and ought to be treated separately. This flank agreement matters to our national security, and it is irresponsible to jeopardize its ratification because of disagreements with respect to another treaty. Treaties are fundamentally different than bills on which this Congress acts on a daily basis. We ought to approach our advice and consent responsibility—a solemn Constitutional duty—with more dignity and seriousness than this, and not turn resolutions of treaty ratification into "Christmas trees" by tacking on nongermane amendments.

Further, purporting to resolve the complex and very important ABM issues by attaching a condition to a wholly unrelated treaty—and without this committee having carefully and thoroughly examined the issues involved through hearings and other means—is reckless and ill-advised.

I understand politics, and I understand the power of the majority, perhaps the most significant feature of which is its considerable control over determining whether and when the Senate will

address important issues. Consequently, since I believe it is of great importance that this flank agreement be considered and acted on by the full Senate, and that the Senate do so prior to May 15 which is less than one week away, I did not seek to delete this condition when the committee acted on the resolution of ratification. But I expect to have more to say about this issue when the resolution is considered on the Senate floor, and I know I will not be alone.

Finally, I am concerned that one of the conditions in the resolution appears to single out Armenia for attention as a possible violator of the Treaty. Part of condition (5) requires a report from the President to the Congress concerning whether Armenia violated the Treaty "in allowing the transfer of conventional armaments and equipment limited by the Treaty through Armenian territory to the secessionist movement in Azerbaijan." While there have been allegations of such arms transfers through Armenia in the long-running conflict between Armenia and Azerbaijan, there also have been allegations of arms transfers to Azerbaijan. I do not think it is desirable for the Senate to focus only on one of the two nations and its fulfillment of its Treaty obligations and not on the other.

For the reasons I cited previously, I chose not to take action in committee that might have jeopardized movement of the flank agreement to the Senate floor. But I am hopeful that it will be possible to alter the conditions before final Senate action so both Armenia and Azerbaijan are addressed more equitably.

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