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We might go through a long hassle. But the fact has been accomplished. The lawsuit has not been filed for the purpose of destroying that accomplishment. Even though I object to it very strongly, I think we would approve it when it came here, and that is the whole purpose.

Mr. GLENN. That is my understanding of the procedure that would have to be employed. I misinterpreted what was said earlier.

Mr. GOLDWATER. I thank my friend for calling my attention to it.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 o'clock tomorrow morning.

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

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 10 minutes, with statements therein limited to 2 minutes each.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 93-568, appoints Ms. Marian G. Gallagher, of Seattle, Wash., to the Advisory Committee to the White House Conference on Library and Information Services, in lieu of Mr. J. C. Redd, of Jackson, Miss.

MR. SCHLESINGER AS SECRETARY OF ENERGY

Mr. METZENBAUM. Mr. President, on February 5, 1978, I publicly called for the resignation of James Schlesinger as Secretary of Energy. A few days later, in a meeting at the White House, I repeated the request personally to the President. At the time, I said that Dr. Schlesinger had lost his credibility with the American people and was a distinct handicap to the President.

In nearly 13 months since then, much has happened on the energy scene, but nothing has happened to change my original opinion. In fact, virtually every action taken by the Secretary of Energy has only reinforced my feeling that nothing major will be accomplished in our energy situation until we have new leadership at DOE.

Dr. Schlesinger's latest effort to secure higher gasoline prices for the oil industry is just one more example of how the American consumer is being held hostage by the Department of Energy.

Nearly 3 months ago, Dr. Schlesinger began his campaign to effect decontrol of gasoline prices. At a hearing of the Senate Energy and Natural Resources Committee, the Department of Energy was given a clear message that the Con-

gress would not give its approval to such a request. With our soaring rate of inflation, it is patently obvious that it is the duty of every branch of the Government to do its utmost to lessen the burden on the consumer.

Somehow, however, that message has not gotten through to the Secretary of Energy. Or, possibly, the Secretary feels that his Department has a special immunity or dispensation that allows him to exercise his own prerogatives, even though they are in direct contradiction to the will of the Congress.

Knowing that there is no way that Congress will approve the decontrol of gasoline prices. The Secretary of Energy is now using the Iranian situation as a rationale to give administrative approval to higher gasoline prices by changing some of its regulations. By invoking a "tilt pricing concept," the Department of Energy expects to be able to allow the oil companies to get what they wanted anyway—higher prices.

In a March 5, 1979, article in the New York Times by Steven Rattner, the latest Schlesinger move is correctly labeled "surreptitious decontrol." In part, the article reads:

Although the Iranian crisis has at least temporarily ended plans to seek gasoline and crude oil decontrol, the energy officials are engaged in what one called surreptitious decontrol. That means arcane changes in regulations on gasoline to increase incentives for refiners and higher prices for various types of crude oil that will bring the price of a quickly increasing percentage of oil to world levels.

How the Secretary of Energy can justify increased incentives for an industry that keeps reporting astronomical record profits is beyond me.

Almost daily we can read in a magazine or newspaper a new criticism of Dr. Schlesinger. Last week, in a syndicated column appearing in the Washington Post, Marquis Childs had this to say about the Secretary:

In Congress he is considered arrogant, overbearing, bent on setting his own course regardless of what anyone else may think. The latest irritant is an interview in which he did a gloom-and-doom act predicting higher gasoline and fuel oil prices and long lines at the gas pumps as a result of the loss of Iranian oil. He failed, however, to come down hard for any course that might conserve gasoline and reduce the flow of imports.

His recent actions in our negotiations with our neighbors in Mexico have brought us embarrassing problems and could cause irreparable harm to our future plans for decreasing our dependency on Mideast oil.

Mr. President, the American people are well aware that we have serious energy problems and I believe they are willing to make the necessary sacrifices to help solve them. But they are confused and frustrated because of the constantly changing signals they are receiving from their Department of Energy. Until they are convinced they can rely on what they are hearing from Washington, it is going to be extremely difficult to motivate them to act.

I do not believe that motivation is going to come until there is new leadership at the Department of Energy. Once

more, for the good of the Nation, I urge Secretary Schlesinger to perform the highest in public service and submit his resignation to the President.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there morning business? If not, morning business is closed.

TAIWAN ENABLING ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, S. 245, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people of Taiwan on an unofficial basis, and for other purposes.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I hope that Senators will come to the Chamber with their amendments.

We started on the legislation on Monday. There was little time taken on Monday. I believe only Senator GLENN and Senator JAVITS made speeches that day, and those statements were not lengthy. There may have been other statements that I am not aware of. We certainly did not stay in long Monday. Senators had an opportunity to make statements on the measure. Those Senators who have amendments I hope will get to the Chamber and call them up so we can begin to move on this legislation. I hope we will complete action on the bill by tomorrow evening.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. GLENN. Mr. President, the bill we take up today, S. 245, the Taiwan enabling legislation, has been significantly modified by the Foreign Relations Committee to correct deficiencies in the original administration proposal. The revised bill clarifies many ambiguities regarding trade, legal, and economic issues, in addition to inserting a specific security clause designed to reassure the people on Taiwan and alert the PRC to our expectations concerning the future.

Many Members share my dissatisfac-

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tion with the President's presentation of a fait accompli to Congress, and of the failure to better provide for the security of Taiwan despite an April 1977 Presidential review memorandum (No. 24) which reportedly set a goal of obtaining a specific commitment from the PRC that there would be no use of force against Taiwan.

I want to emphasize that this is a committee-drafted measure, not the administration bill. Taiwan's future is not some vague abstraction; rather, it is the reality of 17 million people with the second highest standard of living in Asia. The committee, while agreeing upon importance of normalization with the PRC, nevertheless felt these legislative changes were necessary to chart a safer course for Taiwan.

The immediate issue before the committee and the Senate is how to maintain an informal relationship with Taiwan in the absence of formal diplomatic ties. I believe that S. 245 will allow us to retain close and cordial ties with Taiwan, to continue mutually beneficial trade and investment, and to insure the freedom of the people of Taiwan to choose their own destiny.

The instability and violence of Asia during our lifetime has been intertwined with China's inability to rule itself. Since World War II, the festering Chinese civil war and the "one China" claims of both Taiwan and Peking has bedeviled American foreign policy. With the President's announcement of December 15, 1978, the United States opted out of supporting the continuation of that civil war and recognized the People's Republic of China, the Government ruling the mainland of China.

The United States has struggled for four decades to develop and implement an East Asian policy that would protect American interests and contribute to people and stability in the western Pacific. This effort has been carried out at great cost in blood and treasure and with traumatic divisions among our people as to whether the right course was being followed.

The task will not be simple, it will not be easy, but the United States must develop a sound and mutually beneficial relationship with China. Its central geographic position, 1 billion people, untapped resources, and cultural heritage make China the key nation in East Asia. Hostility between China and the United States has led, in part, to two wars. Cooperation between our two nations, even if limited, could benefit us all.

Yet such cooperation can only begin if each nation understands and respects the interests and views of the other. American and Chinese interests and policies coincide in some respects and differ in others, and it is crucial that we can differentiate one from the other. For example, the Sino-Vietnamese border conflict illustrates differing policies. We must remember that those in power today in Peking are essentially the same group that "punished" India in 1962, and may have a greater inclination toward the use of coercion in foreign policy. Americans have tended either to idolize or to disdain the Chinese, and we

have frequently exaggerated or underestimated China's strength. No sound policy can be based upon such distorted perspectives.

Although this legislation deals only with Taiwan, it cannot be viewed in isolation. American policy toward Taiwan must be considered in the context of U.S. policy toward East Asia as a whole. This involves our relations with the People's Republic of China, the Soviet Union, Japan, the Republic of Korea, Australia and New Zealand, and members of the Association of Southeast Asian Nations (ASEAN)—Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Their judgment of our political will and our wisdom will be significantly influenced by our ability to forge a new relationship with the PRC while continuing to conduct mutually beneficial relations with Taiwan. Indeed, the final judgment by Asian leaders on whether we are disengaging from Asia will be directly tied to how we deal with China and Taiwan in the next few years.

The importance of East Asia can hardly be exaggerated. The United States has fought three wars in the past four decades in the Western Pacific region. Even today military conflicts continue to rage in Vietnam and Cambodia. Since 1972, American trade with East Asia surpasses our trade with Western Europe. The natural resources, a third of the world's population, and the future evolution of international trade suggest that a part of our destiny is in East Asia.

The key to a stable East lies in the search for a less hostile relationship between China and the United States. This quest began in the late 1960's, when China's growing fear of the Soviet Union led it to fear the USSR more than the United States. America's bitter experience in the Vietnam war, undertaken in large part to contain China, led the United States to conclude that it was overextended in Asia. A reappraisal of our China policy was thus essential.

BILATERAL RELATIONS

As a result of that reappraisal, the Shanghai Communique, signed during President Nixon's visit to China in 1972, pledged both nations to normalize their relationships. Progress during most of the past 7 years was slow and uneven, despite the commitment of the Nixon, Ford, and Carter administrations to this goal.

The PRC continued to insist that diplomatic relations could only be established after the United States withdrew recognition from the Republic of China, withdrew all U.S. troops from the island, and ended the Mutual Security Treaty. Indeed, in 1977 the PRC added a fourth demand—that no arms sales be made to Taiwan after normalization.

In mid-1978, however, the prospects began to improve. The PRC had begun to place top priority on economic development and its four modernizations—industry, agriculture, science and defense. This forced it to look to the West and Japan for capital goods, technology and financial support. In these circumstances, any military move against Tai-

wan would risk rupturing its relations with the United States and Japan—thus destroying its "four modernizations" and its hope to become strong enough to face its major adversary, the Soviet Union. Hence, the PRC began to demonstrate greater flexibility on Taiwan.

The PRC began to speak of "reunification," rather than "liberation" regarding Taiwan. Vice Premier Teng Hsiao-ping and other Chinese leaders said that after reunification Taiwan would be allowed to retain its higher living standards, its economic and social system, and even its armed forces. Declaratory policies can change, of course, but nonetheless, these are encouraging signs.

Events moved rapidly late in 1978, and on December 15, President Carter announced that the United States would recognize the PRC and withdraw recognition from the Republic of China on January 1, 1979. Unfortunately, during the negotiations the administration, from my perspective, and I believe that of many other Members, made no effort to obtain a PRC pledge not to use force against Taiwan. It apparently believed that no Chinese Government could pledge itself not to use force against what it claimed was one of its own provinces. Yet, the administration states that it has made clear to the PRC that U.S. recognition was based upon the expectation that the issue would be resolved peacefully. The United States also insisted that the Mutual Security Treaty not be abruptly abrogated, as the PRC had previously demanded, but by being terminated after 1 year's notice as fully provided for in the treaty itself.

Finally, the United States insisted that it would continue to sell selected defensive arms to Taiwan after normalization of relations with the PRC, although it would agree not to make any new sales during 1979. The PRC objected to such arms sales, but agreed to normalization despite the U.S. position. On the basis of these understandings, the United States agreed to the PRC's original three conditions.

CONGRESSIONAL CONSULTATION

Unfortunately, the administration acted with such speed and secrecy that the Congress was not consulted. Let there be no doubt: informing some of us 2 hours before the public announcement cannot be considered consultation. This failure was particularly serious since the Congress had specifically directed the President in the International Security Act of 1978 to consult with Congress before making any move which could affect the Mutual Security Treaty.

Regrettably, the administration's failure to consult Congress on important issues has become, I am afraid, too much of a pattern, one which harms both the administration and the country. Judging from the bill submitted by the administration regarding our new relationship with Taiwan, Congress could well have provided useful advice to the President on how to normalize relations with the PRC while providing for Taiwan's security and economic progress.

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TAIWAN-UNITED STATES RELATIONS

The Sino-American rapprochement in the early 1970's was a bitter disappointment for the Republic of China, which feared that it was being abandoned. Its fears increased when Japan shifted its diplomatic recognition from the Republic of China to the PRC in 1972. Nonetheless, Taiwan reacted with imagination and fortitude. It found ways to maintain the de facto status quo on an unofficial basis with Japan, and with other nations which had recognized the PRC. Taiwan's economy and foreign trade continued to expand rapidly—tripling, as a matter of fact. More native Taiwanese were brought into important government positions by the mainlanders who control the island, and the two groups have drawn closer together in the face of a common danger. The United States continued to provide arms to Taiwan, and its military capabilities remain sufficient to defend itself against any foreseen PRC threat.

Yet the December 1978 decision of the United States to shift diplomatic recognition from the Republic of China to the People's Republic of China created anger and anxiety on Taiwan. Taiwan had long feared and expected such moves, but their impact was made more severe by the failure of the Administration to consult a long-time ally—or even to inform it of the impending change until the last moment. Nonetheless, Taiwan has once again demonstrated its fortitude and its resilience. Economic activity continues at a fast pace, and despite their worries the people on Taiwan are adapting to their new situation.

American interests and our moral obligation demand that we assist Taiwan in adapting to these changed conditions. Our trade with Taiwan was \$7.2 billion in 1978, and is expected to reach \$9-10 billion in 1979. We should make sure that trade can continue to grow. We have more than \$500 million in direct private investments in Taiwan, \$3 billion in loans from U.S. private institutions, and almost \$2 billion from the Export-Import Bank. The island's continued access to both public and private American capital should therefore be assured. Taiwan is one of the few places in the world which has undergone rapid economic growth while reducing income disparities. Such a rare achievement should be encouraged by our policies.

Mr. JAVITS. Mr. President, will the Senator yield at that point?

Mr. GLENN. Yes.

Mr. JAVITS. I think what the Senator has said about trade is so important that it ought to be highlighted and juxtaposed with the expected trade with the People's Republic of China.

Let us remember that the much-applauded Japanese trade deal with the People's Republic is \$2 billion a year for 10 years. That is approximately two and a half times that which we do with Taiwan right now.

Mr. GLENN. I thank the Senator for his remarks.

With less than one-fiftieth the PRC population, Taiwan does seven times as

much trade with the U.S. as does the PRC. For the immediate future at least, Taiwan will remain a far more important economic partner.

Finally, there is substantial public support for the maintenance of close relations with Taiwan. Public opinion polls, both before and after President Carter's announcement confirm this fact. Thus, S. 245 provides a legal mechanism to insure the continuity of ties between the people of Taiwan and the people of the United States.

COMMITTEE ACTION

In considering this legislation, the committee heard a balanced and large number of witnesses. These included administration witnesses, such as the Secretary of Defense and the Deputy Secretary of State, a number of Members of the Senate, and public witnesses representing a wide variety of views. We also heard testimony in executive session dealing with Taiwan's security from the Chairman of the Joint Chiefs of Staff and other senior Defense Department officials. We also consulted many specialists in the fields of trade, banking and law. Their assistance was invaluable to us in dealing with the unique situation we faced.

When the administration recognized the People's Republic of China as the sole legal government of China, it also acknowledged the Chinese position that Taiwan is a part of China. However, the United States has not itself agreed to the PRC position, nor has the United States contested it. Neither the bill submitted by the administration nor the amended bill as approved by the committee takes a position on the extremely complex issue of Taiwan's status under international law. No such determination is necessary. For the bill treats Taiwan as a country for purposes of U.S. domestic law. It is based on the view that any benefits the United States decides to confer on Taiwan by statute can be conferred without regard to Taiwan's international legal identity. The committee consulted several eminent legal scholars, and they supported this view. Thus the bill sets forth the specific manner in which relations between the United States and Taiwan will be maintained.

The bill submitted by the administration provides for U.S. relations with the people on Taiwan to be conducted through the American Institute in Taiwan, a private organization which is funded by the U.S. Government and whose trustees are appointed by the Secretary of State. This is a unique approach for the United States, but one that has worked successfully for Japan since it normalized relations with the PRC.

The administration's bill, while sound in its basic structure and approach, was deficient in several important respects. The committee added a substantial number of amendments to remedy these shortcomings. I do not intend to describe in detail all the changes we made, for these are spelled out in the committee report, which I commend to all Sen-

ators and their staff. However, I do want to point out those changes that involve major policy issues.

One central difference between the bill submitted by the administration and the bill approved by the committee concerns the matter of specificity. Many matters in the administration's bill were dealt with implicitly or in very general terms—if they were dealt with at all. The administration apparently believed that the intent of the various sections of the bill was clear enough so that a combination of administrative regulations and court decisions would provide an adequate framework for continued relations with Taiwan. The committee regarded such an approach as risky at best. Trade and investment do not flourish in an unknown and unpredictable environment. Billions of dollars in trade and financial assets are involved, and the laws that govern commercial activity between the United States and Taiwan must be clear.

Likewise, legal issues must be recognized and dealt with to insure minimal disruption. The committee was convinced that a definition of the phrase "the people on Taiwan" which appears throughout the bill was required. One was added, and the meaning of the phrase as defined includes the governing authority as well as the people governed by it. The continued validity of treaties and other international agreements made while the United States still had diplomatic relations with the Republic of China was thus affirmed. Matters involving the legal standing of the people on Taiwan to sue and be sued in U.S. courts, and the protection of the property rights of organizations and persons in both countries were dealt with through other amendments.

The bill as amended authorizes the President, on a reciprocal basis, to extend extensive privileges and immunities to the appropriate members of the organization established by the people on Taiwan to conduct their relations with the United States. The premises and organization itself will be accorded the same privileges and immunities as are accorded to foreign missions, and the privileges and immunities accorded the employers will be complete for all actions taken in the performance of their duties, but will not be as absolute as those granted diplomats. Anything less would seriously limit the effectiveness of the instrumentality. Anything more would have involved treating it as if it were an official government organization.

TAIWAN'S SECURITY

Finally, the bill as submitted by the administration contained no reference to Taiwan security or to the need to provide defensive arms to the people on Taiwan. The committee was determined to correct this weakness, and Members carried out extensive discussions on this matter. Some form of a tangible security clause of an indefinite future was deemed mandatory. I would like to read you the section in the bill that the committee adopted:

(1) to maintain extensive, close, and friendly relations with the people on Taiwan;

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(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

(b) In order to achieve the objectives of this section—

(1) the United States will maintain its capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan;

(2) the United States will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character;

(3) the President is directed to inform the Congress promptly of any threat to the security of Taiwan and any danger to the interests of the United States arising therefrom; and

(4) the United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

I want to make several point about this section of the bill, and the problem it is designed to deal with. First, the provisions should be read as a unit in order to be aware of their full force. Second, there were members of the committee who would have liked somewhat different language, on one point or another, but the committee believed it was important to have as broad a consensus as possible on this central issue. The same is true regarding the Senate as a whole. I believe that both China and Taiwan will be more impressed with a statement that has extensive support, rather than one that is approved by a small majority.

Finally, we must keep in mind the actual military balance in the area today, which is likely to prevail some years hence. The military forces on Taiwan are well-equipped, well-trained, and strongly motivated. U.S. sales of defensive arms can assure that these capabilities remain intact. The PRC has no amphibious capacity, nor is it moving to develop one, and such developments would be detectable well before any invasion could be mounted. It has a major adversary on its northern frontier, and it has recently acquired a small but powerful enemy on its southern border. In these circumstances its ability and inclination to move militarily against Taiwan will be quite limited.

But in this section of the bill, we have also addressed external coercion directed against the island's economic or social system. Thus the United States will maintain its capacity to resist any boycotts or blockades directed against Taiwan.

In conclusion, the committee has expressed in strong terms the U.S. interest in the peaceful resolution of the Taiwan issue.

The committee believes that the provisions we have added to the bill will reassure Taiwan without undermining the new relationship between the United States and the People's Republic of China. Based upon this conviction, we

urge the Senate to approve this bill. Prompt passage will provide the continuity crucial in existing laws, treaties, and agreements.

Indeed, rapid passage is crucial for an additional reason—by passing a congressionally refined bill, we can symbolically manifest the American commitment to old friends and reassure our allies in East Asia.

Mr. JAVITS. Mr. President, on Monday, I laid out what I consider to be the background against which we legislate in terms of the security of the area and the relationship of that security to the security of the United States. Senator GLENN has, in my judgment, very accurately developed exactly what the committee did and why it did it. I shall not endeavor to retrace that ground, except to say that I have sought personally, based upon my own professional abilities, to examine with care all elements of this particular bill in order to see that it would do what we wish it to do; to wit, within the limitations allowed to us by diplomatic practice, to continue the same relations in every respect with Taiwan and the people of Taiwan as we had before, save only formal diplomatic recognition of Taiwan that we had up until the time that we terminated this recognition and terminated the mutual security agreement. This mutual security agreement, by the way, will run throughout this year, which none of us should forget.

I was especially concerned with the legal questions which related to the latter—that is, the termination of the mutual security agreement which we had with Taiwan. I know that that subject is being litigated. It is my professional judgment that this is a proper course and that, in the absence of any contrary action by the Congress, the President is the only authority which can actually terminate that agreement. However, it is far from an open and shut proposition.

In subsequent colloquy which I shall have with Senator GOLDWATER, I expect to make clear that there is absolutely nothing in this legislation which, in any way, prejudices, one way or another, the claim which is being made in our courts that the President does not have this authority. My opinion was solely directed to the fact that, in my judgment, the committee could and should proceed to report out favorably this piece of legislation—which is, of course, based upon the theory that the mutual security agreement will be terminated according to its terms as of the end of this year. That concept does not, in any way, change, affect, or invalidate any challenge to the President's authority.

Second, I have spent a good deal of time, as is pretty well known, trying to deal with the security situation on Taiwan. Whatever may be the great political and historic consequences of our actions in respect of the recognition of the People's Republic of China, like, I think, practically every other Member of this body, I have the deep conviction that we ought to do nothing in this matter which would expose the economic and social system new existing on Taiwan to being

eliminated by force, directly or indirectly, or otherwise suppressed or suffocated by the action of the People's Republic of China. I believe in the essentiality of this protection to the people on Taiwan—and now I use that term not only as it is used in the statute but in its literal sense—who have established the second highest standard of living on the continent of Asia. They are a shining example of what can be done economically in the Asian complex, notwithstanding the traditional poverty which has surrounded hundreds of millions of people in Asia, including the hundreds of millions in the People's Republic of China.

I believe that the provision which we have now agreed upon—and I emphasize that phrase, "agreed upon," because I intend to stand by it, notwithstanding that it may use in some respects some other words than those I originally drafted—must have enough balance to have a broad consensus and willing participants, including those who will carry this out among the executive branch of the United States. I do not believe that any change whatever has been made in the substance of this security provision by what has been changed between the amendment's original submission and the amendment as finally agreed upon.

The only real change, Mr. President, occurs at page 14, lines 7 to 10, in section 114(a) (3). The words in question are as follows:

consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States.

When I wrote my amendment, I had in mind the security interest of the United States as to that particular phrase. Mr. President, it was felt that that may be committing the United States in advance to a far broader reactive position than it should have in a very long-term commitment of this kind, considering my own War Powers Resolution and the normal stance we take respecting our "constitutional processes" provision in every U.S. mutual defense treaty, including the NATO treaty. We couple that with the fact that we state very clearly that we would consider such a breach of the condition on which we established diplomatic relations with the People's Republic. That is contained in this same section, paragraph 2 of section 114(a). We expected that any resolution will be only by peaceful means. We couple that with the commitment to supply arms to the people on Taiwan, and we couple it with the finding that a threat to the peace and security of the Western Pacific area will be involved.

I do not think there is any question about the fact that that actually represents a very serious threat to the security of the United States. We couple it with our commitment to maintain our capacity to resist any resort to force, et cetera, should it be tried against the people on Taiwan—not only force but coercion that would jeopardize the security or the social or economic system of the people on Taiwan; and that we will assist them to maintain a sufficient self-

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defense capability through the provision of arms.

It seems to me, Mr. President, that we have really locked this in as well as any nation can lock it in without assuming postures which would truly sound belligerent. Therefore, I concurred in what I really consider to be very modest changes. I hope that the Senate will sustain us in this effort to attain a broad consensus. At the same time, we say everything that we ought to on our determination to protect the security and the integrity of Taiwan from the use of force, direct or indirect, or the use of coercion, or what, in any other way, will suppress its economic and social system.

Finally, Mr. President, I believe this bill serves the high objectives which we have set for ourselves in respect of Taiwan, as well as the high objectives which we have set for ourselves in respect of the People's Republic of China.

It is a fact that the People's Republic invaded Vietnam, which we thoroughly disapprove of, notwithstanding the fact that only a brief time before, we had agreed to recognition.

So it is very important to restate what is recognition; recognition is to take a nation with all its warts as well as with all its virtue and to regularize and normalize our contacts.

Just think, Mr. President, if we withdrew our ambassadors from Moscow every time the Soviet Union did something we really did not like, or something which was inimical or harmful to the United States, those ambassadors would be yo-yos. They would be coming back and forth about every Wednesday.

So that cannot be our criteria. We can disapprove thoroughly of what the People's Republic of China may do. There may be a day when we will prefer to withdraw our ambassador and protest. That is our privilege, just as it is theirs. But that does not, in my opinion, change the necessity for a decision which regularizes our contacts and gives us the best means—I emphasize that, the best means—for maintaining a peaceful relation with the most populous nation on Earth and one which we all know is destined to be the third of the superpowers on this Earth.

So I believe that while it is an act which we protest and regret and could take whatever posture we wanted, we are not in any way inhibited from recognition. It should not be considered some argument why we should not have recognized the People's Republic.

On the contrary, the fact that the People's Republic felt free to take this overt and hostile action in that area of the world is exactly the reason why we should try to have as much opening into that society as we can, considering its secrecy, in order to know in advance what are the movements, governmental or social or political, which are going on in that country, which is one of the purposes of having an ambassador and an embassy there.

So, Mr. President, I believe that this is the right way to do what is right for our country. I hope the Senate will approve this bill as we have submitted it.

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. JAVITS. Of course.

Mr. GOLDWATER. Mr. President, if the senior Senator from New York (Mr. JAVITS) would give me his attention, I would like to raise with him a matter that he and I have discussed previously.

As the Senator, who is the ranking minority member of the committee, knows, I have filed a lawsuit, with 25 other Members of Congress, seeking to obtain a court determination of the legality of President Carter's attempted unilateral termination by notice of the Mutual Defense Treaty with the Republic of China.

It was my understanding that the committee did not address the merits of the legal question in the bill, which is now pending before us, but was willing to see what happened to the lawsuit before deciding whether or not to resolve it by legislation.

If that is what the committee intended, then that is fine with me. But I am disturbed at certain statements made in the committee report at pages 18 and 19, as they may relate to section 104 of the bill. The report seems to be of two minds on the issue.

First, at the top of page 18, it states that the answer "is unclear." This seems to support the willingness of the committee to allow the question of law to be answered in the courts.

But, then the report goes on to discuss the legal issue and states at page 19 that it appears the constitutional prerogatives of the Congress and the Senate have not been invaded.

Now, this second statement contradicts the first one, and may have a bearing on what interpretation is given to section 104 of the bill.

Section 104 provides that all treaties entered into between the United States and the government we formerly recognized officially as the Republic of China shall continue in force, "unless and until terminated in accordance with law."

On its face, the provision does not take any position as to whether President Carter's unilateral action in giving notice to the Republic of China is, or is not, in accordance with law. The section appears completely neutral on this issue.

But in view of the statement gratuitously inserted in the committee report at page 19, it is conceivable a wrong interpretation may be given to section 104 that does not appear in the text of the provision itself. Therefore, I seek to have some assurance from members of the committee that the provision does not mean something it does not say.

All I ask for is fairness: An opportunity to ask the court to say what the law is—under the Constitution and under the defense treaty. So long as the committee can assure me that nothing in the pending bill is to be construed as either approving or disapproving of the legality of President Carter's action regarding the defense treaty, I believe that will protect my right, and the rights of the many other Members of Congress who have joined me, to pursue this matter in the courts.

As the Senator from New York knows, he very graciously agreed to discuss this with me and make any clarifications he might be able to.

Mr. JAVITS. Mr. President, it is my judgment, and I sat through all the sessions of the committee, that the committee did not intend to approve or disapprove of the legality of President Carter's action.

The reason for the statements in the report which the Senator considers "inconsistent" is the fact that the committee had to consider not just whether this statute would affect the President's power; we could have passed on the President's power in it; we could have said that we confirm the President's power to terminate the agreement with the Republic of China on Taiwan.

We said no such thing. That was because, as I just answered, we did not intend to affect that. Therefore, we said at page 18:

Although the Committee thus recognizes that any firm conclusion is impossible, it inclines to the belief that the President has not, in giving notice of termination pursuant to the Treaty itself, exceeded his constitutional authority.

We had to say that for the second reason, which was our question, should we pass this at all; are we engaging in a vain act? If we believed that the President had no authority and could not give notice of termination of the treaty, then what are we doing confirming Woodcock as ambassador? What are we doing making Taiwan a new and unique entity instead of the government it was that we dealt with for 30 years?

We had no business doing anything.

So what we said in effect is, we do not want to effect any challenge to his power in the courts. That goes on.

The answer is unclear as to that. We will hear from the courts. They may take jurisdiction, they may not. They may pass on the question, they may not.

But we consider there is enough to the President's authority in this regard, so we ought to go ahead and confirm Woodcock and pass this law.

The courts have overridden us many times before and the court may say, "We are sorry, Mr. Congress, you thought you were doing something for which a condition precedent had been fulfilled; we are sorry to tell you it has not, and we will have to worry about that and do something about it."

So we were not in any way trying to foreclose the Senator's challenge, nor do the words of the statute foreclose him by changing in any way the constitutional authority of the President, whatever it may be.

But we give enough credence to the fact that we think what he is doing is probably OK, so that we should go ahead and pass this law and confirm Woodcock, and we are not going through some sham or charade.

That is the whole story.

Mr. GOLDWATER. I thank the Senator from New York very much for that clarification.

I now intend to vote for this, because I think it is a vast improvement.

As I mentioned to the Senator from Ohio this morning, if the court happens to take this under consideration and decides in my favor, I do not think it will have any bearing on the recognition of the People's Republic of China. We will

then be asked to do what I think we will do anyway.

○ Mr. BAKER. Mr. President, I agree with the distinguished Senator from Arizona in his belief that we should clear up any ambiguity that may result from either the committee report on S. 245 or section 104 of the act with regard to the President's unilateral termination of the Mutual Defense Treaty with Taiwan.

It is important, Mr. President, because the Senator has a lawsuit pending in Federal court which challenges the authority to terminate treaties without the consent of the Senate or the approval of the Congress.

It is the view of this Senator, as a member of the committee, that it was not the intent of the committee to pre-judge or prejudice the outcome of a lawsuit pending in Federal court.

More to the point, the question of whether the President was acting within his authority in the termination of the treaty was not before the committee, was not considered by the committee, and neither the report nor the act should be construed as a committee position on the question.○

○ Mr. HAYAKAWA. Mr. President, as a member of the Foreign Relations Committee who attended most of the markup sessions, I wish to clarify that in acting on the bill, the committee did not take any position on the legal question of whether the President may, without the advice and consent of the Senate or the approval of the Congress, terminate the Mutual Defense Treaty with the Republic of China.

It is my view that the committee did not take up that issue. Nothing in the committee report or the bill itself may be construed as approving or disapproving of President Carter's action.

Mr. President, I know the Senator from Arizona has filed a lawsuit in Federal court seeking to obtain a judicial decision on the legal question involving termination of the defense treaty. In fairness to my colleague, I believe his right to pursue the case should be protected.

Accordingly I will repeat that nothing in the report or the bill shall be construed as either ratifying or disapproving of President Carter's action in giving notice to the Republic of China that the treaty will expire, without joint action by the Senate or Congress.○

(The following colloquy occurred later in the proceedings and is printed at this point by unanimous consent.)

Mr. HELMS. Mr. President, I would like to go back to a colloquy earlier today between the distinguished senior Senator from New York (Mr. JAVITS) and the distinguished senior Senator from Arizona (Mr. GOLDWATER) with reference to the intent of the Committee on Foreign Relations with respect to the suit brought by Senator GOLDWATER and the Senator from North Carolina and others on the question, on the constitutional question, of the President's abrogation of treaties.

I confess that prior to this colloquy I was most surprised and concerned to read in the committee report on page 19

that the committee had concluded that the constitutional prerogatives of the Congress and the Senate had not been invaded by the unilateral action of President Carter in giving notice of the abrogation of the Mutual Defense Treaty with the Republic of China.

Now, I realize that this is an issue on which reasonable men can differ. As I said earlier, I am a complainant with the distinguished Senator from Arizona in a lawsuit to establish this precise point of law.

I recall further that this issue was raised in committee. But to the recollection of this Senator, I want the record to show that no conclusion was reached by the committee, no resolution was offered on the subject, and no vote was taken and, therefore, I was concerned to read on page 19, and I quote:

It appears to the Committee, therefore, that the constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain.

Mr. President, I note further that this statement, indeed, the whole committee report, was not circulated among committee members before printing. At least it was not circulated to this Senator.

In my opinion, the observations I have just quoted have no status as a report or a conclusion of the committee but constitute only staff observations. Other members of the committee have the right to endorse them if they choose to do so. But it appears to this Senator that it is inappropriate for the committee to invade with premature conclusions a field that is the subject of controversy before the courts by a substantial number of our colleagues.

As I understand the comments of the distinguished Senator from New York, this was the position he took in his statement to Senator GOLDWATER, and I ask him now if that is not essentially correct.

Mr. JAVITS. Mr. President, will the Senator repeat the position that he feels I took? I was listening to my assistant.

Mr. HELMS. Yes. As I understood the Senator's comment to Senator GOLDWATER, nothing done or said by the committee had any intent to affect one way or another the suit brought by Senator GOLDWATER and others.

Mr. JAVITS. That is what I said, and that is what I mean.

I also said the committee had another question, to which the Senator has also addressed himself, and that is, would it legislate in this field at all, and obviously if the committee challenged the right of the President to abrogate, then it would not have dealt with this legislation, and that was discussed, Senator. The transcript of the committee will show that because I remember speaking to it myself, I said, and I think I will refresh the Senator, it does not affect the suit, and it does not in any way modify what I said before. That stands.

But the other question is I, as a Senator and a lawyer, had to decide if I

wanted to legislate at all, because, if the President has no right to terminate this agreement, then why do we need this section that I had so much anguish over in writing to protect the people on Taiwan?

For myself, I concluded that I believed that under the circumstances he did have the right to terminate, and therefore that I was willing to legislate. That was discussed openly. I said that myself, as a matter of fact. I said I had trouble over the question of taking jurisdiction, because the courts have so often said they would not decide such matters. I am sure I said that.

I did not read the draft, but I am sure the minority staff director did, and knew my views, so I make no complaint about it. But I felt that adequate discussion within the committee, by me and others confirmed that they were willing to act on the legislation because they did not feel that there was a bar to terminating.

But in no way do I change or dilute my fundamental statement, to wit, that there is no effect on the Senator's litigation by what the committee did.

Mr. HELMS. Well, Mr. President, of course the Taiwan Enabling Act has nothing whatsoever to do with the mutual defense treaty and its abrogation by the President. And even if the President is right, the treaty continues in force for a year, as the distinguished Senator knows, whether or not this bill becomes law. The bill turns upon the rupture in diplomatic relations. The Institute is to take the place of the U.S. Embassy. So whether or not the Senate acts on this bill is irrelevant to the treaty issue.

I am sure my friend from New York is aware that other Senators have the same concern that I have just expressed. I have here a letter written to the distinguished chairman of the Foreign Relations Committee by the junior Senator from Florida (Mr. STONE). It is an eloquent and very interesting letter, expressing very clearly his concerns, which are identical to my own. The distinguished Senator has kindly consented to have me put his letter in the RECORD, which I will do at this time.

Mr. President, I ask unanimous consent that Senator STONE's letter be printed in the RECORD at this point.

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

WASHINGTON, D.C.
March 6, 1979.

HON. FRANK CHURCH,
Chairman, Senate Foreign Relations Committee, Dirksen Senate Office Building.

DEAR MR. CHAIRMAN: I am writing to express my deep concern and strong objections to certain language in the Foreign Relations Committee Report on S. 245. Beginning on page 17 and continuing for several pages thereafter, there is a discussion of "legal issues" relating to the termination of the Mutual Defense Treaty with the Republic of China and other legal issues regarding the Republic of China. On page 19, in connection with a discussion of the termination of the Mutual Defense Treaty, a paragraph is included which reads,

"It appears to the Committee, therefore, that the Constitutional prerogatives of the Congress and the Senate have not been in-

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vaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain."

I do not believe it was the intention of the Committee and certainly it was not authorized by the Committee, to take a position as to whether the President's manner of terminating the Mutual Defense Treaty invaded the prerogatives of the Congress or not. While there was discussion during the course of the Committee's hearings, I am not aware of an attempt by any member of the Committee urging the Committee to take a position such as described by this paragraph.

I am particularly concerned about the implications which this paragraph may have for future decisions in the foreign policy area by the Executive Branch. It expresses the notion that when Congress, for whatever reason, chooses not to exercise certain Constitutional powers, that Congress has endorsed a particular Constitutional theory. I strongly disagree with any such theory of Constitutional interpretation. Finally, I am concerned about the inclusion of this paragraph inasmuch as Committee members were not given any opportunity to review the report before it was filed. Where it is necessary for the Committee and Senate to move as quickly as possible on important legislation such as this, I believe it is particularly important that the Committee report language be as carefully developed as possible and limited as much as possible to an explanation of the bill which the Committee has agreed to report.

I would appreciate your consideration of appropriate steps to eliminate the paragraph to which I have referred, from the Committee report, or to have a statement by the managers of the bill which would correct the gross misimpression which I believe will result if this language is incorporated in the Committee Report.

Warm personal regards.

Most cordially,

RICHARD "DICK" STONE.

Mr. HELMS. Mr. President, on December 22, 1978, our distinguished colleague from Arizona, Senator GOLDWATER, filed a lawsuit in the U.S. District Court for the District of Columbia challenging the constitutional authority of President Carter to terminate this country's Mutual Defense Treaty with the Government of Taiwan. The suit asks the court to declare the President's unilateral action "unconstitutional and illegal," and "to set aside his purported notice to cancel the treaty as having no effect."

In an article published in the February 1979 issue of the American Bar Association Journal, Senator GOLDWATER perceptively defines the court role of the Senate in foreign policy. He outlines the arguments for his position that the power to terminate a treaty—such as the Mutual Defense Treaty with Taiwan—does not rest with the President alone, but rather is a power to be exercised jointly by the executive and legislative branches of Government. The article strongly supports the contention that the President's unprecedented claim of unchecked power ought not be upheld in light of historical and legal precedent.

Mr. President, allow me to quote two key paragraphs from the distinguished Senator's article:

In 1856 the Senate Foreign Relations Committee had unequivocally found that language similar to Article X referred to "the

will of the treaty-making power," which it defined as "the President and Senate" The Senate, together with the President and often with the House of Representatives, had participated in the termination of nearly 40 treaties by 1955, virtually all of which contained duration provisions similar to Article X of the R. O. C. defense treaty. From this, if any understanding could be attributed to the Senate when the treaty was ratified, it was that the term "party" meant the President and Senate jointly.

But the State Department would not only attribute a meaning to the R. O. C. defense treaty of which it never informed the Senate. It would put the same meaning on dozens of other major treaties that contain similar provisions. For example, the North Atlantic Treaty Alliance and our security pacts with South Korea, Japan, and the Philippines include articles allowing either "party" to withdraw after one year's notice. The Nuclear Test Ban Treaty, the Statute of the International Atomic Energy Agency, the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Universal Copyright Convention, and the Outer Space Treaty, among others, each provide by their own terms for termination after one year's or less notice to the other parties. The consequences of accepting the State Department's interpretation of these provisions is far reaching indeed.

I wish to commend the senior Senator from Arizona for his leadership in challenging the attempted usurpation of congressional power by the President. His article should be read by everyone who believes in the integrity of the constitutional doctrine of separation of powers.

Mr. President, I ask unanimous consent that the text of Senator GOLDWATER's article be printed in the RECORD at this point.

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

TREATY TERMINATION IS A SHARED POWER
(By BARRY M. GOLDWATER)

On December 15, 1978, while the Congress was out of session, President Carter announced that the United States would recognize the People's Republic of China as the sole legal government of China as of January 1, 1979. At the same time the president also made known, through informal briefings for the media his unilateral decision to terminate the defense treaty with the Republic of China, claiming authority to act under Article X of that treaty, which states "either party," not "either president," may cancel it after giving one year's notice. Without public announcement, the actual notice of termination of the defense treaty was sent by diplomatic note to the Republic of China on December 23, 1978, to be effective on and as of January 1, 1979.

The president's decisions were shrouded in secrecy and contrary to the purpose of Section 26 of the International Security Assistance Act of 1978, a law enacted by Congress just three months preceding his announcement, which specifically called for prior consultation with the legislative branch.

On December 22 I filed suit in the United States District Court for the District of Columbia, with 15 of my colleagues from both houses of Congress, challenging the validity of the president's attempted termination of the treaty without any supporting legislative authority. We asked the court to declare the president's action unconstitutional and illegal and to set aside his purported notice to cancel the treaty as having no effect.

It is the premise of our case that in acting alone to interpret the defense treaty and

to make a self-serving interpretation of the constitutional allotment of powers among the executive and legislative departments, President Carter has not only usurped powers conferred on the Congress, but has attempted to exercise a function the Supreme Court has said is clearly reserved to the judicial branch, the power "to say what the law is." *United States v. Nixon*, 418 U.S. 683 (1974).

The question is not whether any past precedents justify the president's assertion of independent power, although I believe the weight of historical evidence proves that treaties are normally terminated only with legislative approval. The true question is whether his action represents the original intent of the people who drafted the Constitution.

This is a legal and historical question, and the hard fact is that nothing in the records of the federal convention or in the explanations at the state conventions on ratifying the Constitution confirm in any way the president's sweeping claim of unchecked power. To the contrary, contemporary materials and the text of the Constitution show that the termination of a treaty, involving as it does the sacred honor of the country and serious policy interests, is a decision of such major importance that the framers required the joint participation of both political departments, the executive and legislative, in making that decision.

If left unchallenged, the president's unilateral action will set a dangerous precedent that would enable him or a future president to terminate any defense treaty at will. In fact, the precedent could be used for the presidential termination of any treaty to which the United States may now be a party or become a party in the future—for instance, with Israel. This unchecked concentration of power is totally inimical to our democratic, representative form of government.

However one may feel about the wisdom of independent presidential termination of the defense treaty as a step required to complete full normalization of relations with Peking, we each should remember the admonition of Chief Justice John Marshall: "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional." In filing suit, it was my purpose to defend the legislative function conferred by the Constitution, not to contest the rightness or wrongness of his policies, which can be debated in other forums.

The Constitution is silent as to how a treaty shall be terminated. It is also silent on how a statute or any other law shall be cancelled. Yet no one makes the argument that the president alone can repeal a statute. In fact, in *The Confiscation Cases*, 20 Wal. 92 (1874), the Supreme Court expressly said that "no power was ever vested in the president to repeal an act of Congress."

It is my belief that by placing treaties among "the supreme Law of the Land" in Article VI, clause 2, and by requiring an Article II, Section 3, that the president "shall take care that the Laws be faithfully executed," the framers meant, and expected without saying more, that the president would carry out a treaty in good faith. This is exactly the opposite of giving him an implied authority to cancel any treaty at will. It is also well known that the framers were concerned with restoring dependability to treaties made by the United States. They were anxious to gain the respect and confidence of foreign nations by keeping our treaty commitments.

For example, in the preface to his notes on debates in the Constitutional Convention, James Madison singles out the lack of obedience to treaties as one of the conditions the federal Constitution was intended to correct. Our unfaithfulness to treaties, Madison

wrote, is among "the defects, the deformities, the diseases and the ominous prospects for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding and appreciating the Constitutional Charter the remedy that was provided."

In a similar vein, James Wilson, who signed the Constitution and sat on the first Supreme Court, lectured his law students that a country "which violates the sacred faith of treaties, violates not only the voluntary, but also the natural and necessary law of nations. . . ." He added: "As the United States have surpassed others, even other commonwealths, in the excellence of their constitution and government; it is reasonably to be hoped, that they will surpass them, likewise in the stability of their laws, and in their fidelity to their engagements."

Would the framers who regarded violation of "the sacred faith of treaties" as "wicked," "dishonorable," and contrary to the best interests of the country in acquiring respect in the community of nations, have contradicted these purposes, by making it as easy under the new Constitution for a single officer of the government to repeal a treaty as it had been for individual states to nullify a treaty under the Articles of Confederation?

We should also remember the concern of the framers with sectional economic interests. Many of them hoped for advantageous commercial treaties that would open up trade for their sections with other nations. The framers also had extensive discussions about treaties of peace as being included within the treaty clause, in recognition of the fact that those treaties would be the normal method of terminating a war. Without any supporting textual evidence to show it, it is inconceivable that the framers assigned to one person power to denounce a commercial treaty that would be highly beneficial to the interests of a particular geographic region or a peace treaty that had formally concluded a war and whose faithful adherence would presumably avert the chance of resumption of hostilities, however slight that chance may be. As the language of the Constitution does not distinguish commercial and peace treaties from other treaties, such as a security pact, it is obvious that all treaties share the same protective ramor.

JOINT PARTICIPATION NEEDED FOR ANY
"GENUINELY CRITICAL DECISION"

In his landmark work on the subject in 5 *Seton Hall Law Review* 527 (1974), Prof. Arthur Bestor persuasively shows that the doctrine of separation of powers is "prescribed as explicitly for the conduct of foreign relations as for the handling of domestic matters" and explains: "The purpose and effect of any such arrangement is to require the joint participation—the co-operation and concurrence—of the several branches in the making and carrying out of any genuinely critical decision."

Justice Joseph Story, one of the foremost scholars to sit on the Supreme Court, confirms this statement. In his *Commentaries on the Constitution*, Story writes, in connection with the decision of the framers to allot the treaty authority jointly in the president and the Senate, "his joint possession of the power affords a greater security for its just exercise, than the separate possession of it by either" and that it "is too much to expect, that a free people would confide to a single magistrate, however respectable, the sole authority to act conclusively, as well as exclusively upon treaties."

Story adds, in words having equal relevance to making or unmaking a treaty: "The check, which acts upon the mind from the consideration, that what is done is but preliminary, and requires the assent of other independent minds to give it a legal conclusiveness, is a restraint which awakens caution, and compels to deliberation."

This is what the framers had in mind in establishing a system of checks and balances. They sought to protect the security of the people by making the president and the Senate checks on each other in the exercise of the full treaty power. By providing for the added deliberation and attention to the subject that would be required by vesting the full treaty power jointly with the president and at least one branch of the legislature, the security of the people would be far better protected than it would be if the power were conferred on a single officer. The security that follows caution and added deliberation would be lost if no check had been put on the unmaking of a treaty.

Why the framers would want to offer the people security in the making of treaties, but not in their termination, is unexplained by those who argue this difference exists. I believe there is no difference and that the checks and balances called for in the separation of powers is equally as applicable to the critical decision of casting aside our formal treaties with other nations as it is in making those treaties originally.

The early authorities, including some among the Founding Fathers, saw the repeal of a treaty in the same light as they saw the repeal of a statute. It would have been strange to hear anyone argue that the president, by his sole authority, could terminate whatever treaty he wished, whenever he wished. James Madison for one, believed that "the same authority, precisely," would be "exercised in annulling as in making a treaty." Thomas Jefferson, when he was Washington's first secretary of state, wrote a report in which he reasoned that the same authority who possessed the power of making treaties consequently had the power of declaring them dissolved. And, when he was vice president, Jefferson compiled the first manual of rules of the Senate, in which he wrote: "Treaties being declared equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded."

Further evidence that the framers linked the repeal of treaties to the repeal of statutes appears in John Jay's brief analogy in *The Federalist*, Number 64: "They who make laws may, without doubt, amend or repeal them, and it will not be disputed that they who make treaties may alter or cancel them. . . ."

Justice Iredell, who served on the first Supreme Court, shared the views of Madison and Jefferson as to the legislative role in terminating treaties. In an opinion accompanying *Ware v. Hylton*, 3 Dall. 199 (1796), he twice stated his belief that Congress alone has "authority under our government" of declaring a treaty terminated, even in circumstances where the other country has first violated it.

Another authority who believed the legislature must act before a treaty is terminated is James Buchanan. In writing about the anticipated cancellation of a commercial treaty with Denmark considered damaging to our exports, then Secretary of State Buchanan wrote that "an act must first pass Congress to enable the president to give the required notice. . . ." His official concession of the joint possession of power is especially noteworthy since that treaty contained a provision similar to the one in the R.O.C. defense treaty so heavily relied on by President Carter.

Each treaty authorizes termination after notice being given to the other party. However, Secretary Buchanan obviously believed the sovereign authority who could make the decision to give notice was not the president alone, but the president together with the authority of a law enacted by Congress.

When the United States finally cancelled

the treaty with Denmark, it was accomplished by a Senate resolution of March 3, 1855, passed unanimously, which advised and consented to authorizing President Pierce to give notice of its termination. The president had requested the authority, thereby giving some indication of his belief that the decision-making authority was jointly possessed by him and the legislature, or at least one branch of it, and was not vested in him alone.

The incident led to an authoritative report by the Senate Foreign Relations Committee in 1856. In response to public discussion over whether the Senate had acted properly in authorizing presidential action without the concurrence of the House of Representatives, the committee concluded that the Senate and president jointly possessed competence to terminate a treaty "without the aid or intervention of legislation" by the other house. Speaking precisely to the same issue presented by Article X of the R.O.C. defense treaty, the committee decided that "where the right to terminate a treaty at discretion is reserved in the treaty itself, such discretion resides in President and Senate."

The committee explained: "The whole power to bind the government by treaty is vested in the president and Senate, two thirds of the senators present concurring. The treaty in question was created by the will of the treaty making power, and it contained a reservation by which that will should be revoked or its exercise cease on a stipulated notice. It is thus the will of the treaty-making power which is the subject of revocation, and it follows that the revocation is incident to the will." Thus, the committee clearly took a position at odds with the novel theory asserted by President Carter today.

LODGE THOUGHT CONGRESS COULD DISAPPROVE
TAFT'S NOTICE

Henry Cabot Lodge, when he was chairman of the Senate Foreign Relations Committee in 1911, also believed the power of treaty termination was jointly possessed by the president and legislature. In response to a question in the Senate whether notice, given Russia by President Taft to terminate a commercial treaty because of Soviet violations, would be legal in the absence of congressional ratification, he replied, "Of course, Congress can disapprove his action; and then I take it, the notice fails. . . ." Senator Lodge added his opinion that the power to terminate that treaty by notice, as authorized in an article thereof, was vested in the Senate and president together "because in making such a treaty the Senate and the president represent the high contracting party."

Lodge was then acting as floor manager of legislation that did ratify the president's action, and his statements clearly express his interpretation of the term "contracting party," used in a treaty provision, as meaning the Senate and president jointly.

In 1917 Prof. Edward Corwin, recognized as one of the leading authorities on the Constitution in this or any other century and generally a defender of broad presidential power, wrote: "[A]ll in all, it appears that legislative precedent, which moreover is generally supported by the attitude of the executive, sanctions the proposition that the power of terminating the international compacts to which the United States is party belongs, as a prerogative of sovereignty, to Congress alone."

Another official admission of the necessity for legislative concurrence in the decision to provide notice in circumstances in which a treaty itself authorizes the giving of notice comes from an attorney general's opinion. In 1941 Francis Biddle, then acting attorney general, was asked to advise President Roosevelt whether, in view of the dislocation of oceanborne commerce because of war, the International Load Line Convention, which governed ocean tanker tonnage loads, had ceased to be binding. Biddle concluded the convention was inoperative because of the

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"well-established principle of international law, *rebus sic stantibus*, that a treaty ceases to be binding when the basic conditions upon which it was founded have essentially changed."

But he sharply qualified his opinion. While the president could decide whether the treaty was inoperative or suspended under this principle of international law, the president alone could not terminate the treaty if he acted under a treaty provision allowing withdrawal by giving due notice. Biddle wrote: "It is not proposed that the United States denounce the convention under Article 25 (47 Stat. 2256), nor that it be otherwise abrogated. Consequently, action by the Senate or by the Congress is not required."

Article 25 of that convention provided that it may be denounced by any "contracting government" by notification to the other parties and that the withdrawal should take effect 12 months after the date of notification is received. The article is similar to Article X of the R.O.C. defense treaty, which likewise allows denunciation by the United States after one year's notice. Thus, it is clear that Biddle believed legislative concurrence was needed in order to authorize presidential action pursuant to the terms of a treaty in circumstances identical to those asserted by President Carter as grounds for unilateral action. President Carter's decision to notify the Republic of China on his sole authority is directly in conflict with a 20th century opinion of the country's highest law enforcement officer.

History confirms the denial of an independent treaty termination power of the president, although there are minor exceptions explainable under principles of ordinary contract law. In fact, the first treaty terminations were done by act of Congress in 1798. These were the three treaties of alliance with France, which were cancelled by Congress after repeated French attacks on American shipping.

The second instance of termination by the United States was in 1846, 57 years after the Constitution was approved. President Polk asked Congress for authority to pull out of a treaty with Britain yielding joint rights to the Oregon Territory. A joint resolution was enacted giving him authority to provide notice of withdrawal, as was authorized in the treaty. This is the first known instance of termination by notice and is impressive historical evidence of what procedure is required to carry out a treaty provision similar to Article X of the R.O.C. defense treaty.

In all, I have identified 48 instances in which treaties have been terminated or suspended by the United States—40 with the clear authorization or ratification of an act of Congress, joint resolution, or Senate resolution. Four others were superseded by a later statute or treaty in conflict with the earlier treaty. The normal practice of treaty termination in the United States has been joint action by the president and Senate or Congress.

Only four treaties have been cancelled by the president entirely independent of any supporting legislative authority. The president may not have acted constitutionally even in these isolated cases, which are abnormal. In fact, Congress may not have been informed, and thus no challenge was made at the time. But if there is any difference in the two groups of cancelled treaties, a logical explanation may be found in contract law.

For in each of the situations of independent presidential action, the other party had first violated the treaty, it was impossible to perform the treaty, or there was a fundamental change of conditions essential to the operation of the treaty and originally assumed as the basis for it. In none of these incidents was the reason for terminating or withdrawing from a treaty the result of a breach or other action on our part incon-

sistent with the purposes of the treaty concerned.

In these circumstances, the incidents fall within the rules of early contract law by which a party is released from an agreement. All the first writers on the law of nations, such as Grotius and Vattel, whose works were consulted by the Founding Fathers, agreed that there is no difference in the rules of law applied to public treaties or private contracts.

The framers may well have silently assumed the president could determine a treaty ended if it should be violated by the other country, if performance became impossible, or if there was a fundamental change of conditions not of our own making. In their own experience, it was an implied condition of a contract or treaty that the obligations of the parties ended or were suspended on the happening of one of these events. Without conceding the legality of occasions when the president has acted unilaterally, these principles of contract law may explain independent presidential action in exceptional circumstances, none of which apply to the president's action regarding the R.O.C. defense treaty.

STATE DEPARTMENT'S MEMORANDUM BACKS CARTER'S ACTION

The State Department has released a memorandum by Herbert Hansell, its legal adviser, dated December 15, the same day as President Carter's public announcement, claiming the president could do what he did. That paper, actually a legal argument, contains highly selective quotations from authorities (none cited in this article appears in the memo) and sets forth a dubious list of alleged precedents for unilateral presidential action. Although the legal adviser lists 12 precedents for independent treaty termination, he admits on the face of the brief that two were never terminated (notice was withdrawn) and two more were instances in which the other nations first denounced the treaties, which seriously weakens the relevance of the precedents.

The State Department reaches so far to find an early precedent that it wrongly attributes the first example of presidential treaty termination to President Madison. This seeming rock of the State Department list is created from a passage in a letter from Secretary of State Monroe in response to the claim by the Netherlands in 1815 that an earlier commercial treaty had expired.

State claims Monroe's answer appears to accept the interpretation given the treaty by the Netherlands. Once Monroe was president, however, he repudiated that meaning of his letter. Monroe's secretary of state, John Quincy Adams, insisted that the earlier treaty had not been annulled. In *University v. Miller*, 14 N.C. 188 (1831), the Supreme Court of North Carolina accepted President Monroe's position and enforced the treaty as law.

The State Department also omits mentioning in its memo that the early commercial treaty had been concluded with a different state. During the Napoleonic wars the United Netherlands, with whom we had signed the treaty in 1782, was absorbed into the French empire, entirely disappearing as a separate nation. After the war it was reformed and joined with other areas. Samuel B. Crandall writes the state thus erected from the ashes of war "differed in name, territory, and form of government from the state which had entered into the treaty. . . ." In other words, if the treaty was annulled, it was because of the disappearance of one of the parties and not because of any broad power held by the president. This is the stuff of which the State Department memo is made.

Of the few alleged precedents that have any plausible basis (three or four at most),

all can be explained by invoking the principles of contract law discussed above. None of these exceptions has any application to the R.O.C. defense treaty.

Even as to this handful of precedents, there is no ground for asserting independent presidential power. There is no court decision upholding their legality, and the last precedent is no better than the first. As the Supreme Court said in *Powell v. McCormack*, 395 U.S. 486 (1969): "That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date."

It has been suggested that since the president alone has the power to remove executive officers appointed by and with the advice and consent of the Senate, he also has power to remove treaties. The two cases are completely dissimilar. The ability to remove officers clearly under his direction aids in the efficient performance of the president's duties. The removal of treaties violates the president's constitutional duty to see "that the laws be faithfully executed." It is obvious that the president's relation with subordinate officers cannot be equated to his relation with sovereign authorities of other nations. The courts also have sharply restricted the removal power to purely executive officers, holding the president cannot remove officers who exercise quasi-legislative or judicial functions in *Humphrey's Executor*, 295 U.S. 602 (1935). As the treaty power has long been found to partake more of the legislative than executive character, the analogy with the removal power does not hold up.

By admitting that the defense treaty "is technically still in effect" in 1979, until the notice period expires, the administration rejects any notion that the treaty lapsed upon derecognition of the R.O.C. By this and by asking Congress for legislation to permit the other "current agreements and treaties in effect with the government on Taiwan to remain in force," the administration admits that the authorities on Taiwan are a de facto government in control of the territory of Taiwan and that we can have dealings with them.

The only remaining question is whether, although the president normally cannot terminate a treaty without further legislative action, the Senate has consented to his action in the case of this treaty by having approved language in it that allows termination by notice. The answer is clear that no authority of this type can be inferred from the treaty or legislative history.

First, it should be noted that the provision does not authorize termination after notice by "the president" or "executive" of either country. The treaty uses the term "party." This obviously means the sovereign authority of the state giving notice. In determining who represents the sovereign authority, it is necessary to consult the constitutional processes of the state in order to find what power makes the decision to give notice and, after that decision has been made, what power shall actually transmit the notice. Under our Constitution, it is clear that whoever communicates notice, the power of making the initial decision belongs jointly to the president and Senate or Congress.

Although it is generally accepted that the president is "the sole organ of the nation in its external relations, and its sole representative with foreign nations" (229 U.S. 304, 319-20), this proves no more than that it is the president who shall act as the official representative of the nation in communicating with the foreign government. His capacity as a diplomatic organ in no way need imply a power of making the critical policy decision required before delivery of the notice.

There is absolutely nothing in the legislative reports and proceedings concerning the 1954 treaty that indicates the president can

act alone in giving notice. In fact, the language of the defense treaty differs in a significant way from the text of the related Formosa Resolution, which did specifically authorize the president to cancel it. Thus, similar language was not used in the treaty.

The Formosa Resolution and the defense treaty both came before the Senate at the same time. The treaty was first considered in committee concurrently with the resolution in January, 1955. The resolution was reported to the Senate on January 26 and signed into law on January 29. The treaty was reported on February 8 and approved by the Senate on February 8.

IF THE TREATY MEANT "PRESIDENT," WHY DID IT SAY "PARTY"?

The Senate had each measure before it for immediate comparison. In this setting, it is striking that the Formosa Resolution, by its own language, expires "when the president shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, and shall so report to the Congress." The treaty, on the other hand, provides for termination on one year's notice by "either party."

Why, if the treaty meant to authorize "the president" of either party to terminate it by giving notice, did it not say so? The Senate had before it language of the specific kind in the Formosa Resolution, which it could have substituted for Article X, if it meant to approve independent presidential action. When it advised and consented to a treaty containing an entirely different term, without any explanation in the papers sent to it by the executive branch or in its own hearings, report, or floor debate, indicating that the term meant something other than what it said ("party"), this is surely conclusive that it did not understand "party" to mean "president."

In 1856 the Senate Foreign Relations Committee had unequivocally found that language similar to Article X referred to "the will of the treaty-making power," which it defined as "the president and Senate." The Senate, together with the president and often with the House of Representatives, had participated in the termination of nearly 40 treaties by 1955, virtually all of which contained duration provisions similar to Article X of the R.O.C. defense treaty. From this, if any understanding could be attributed to the Senate when the treaty was ratified, it was that the term "party" meant the president and Senate jointly.

But the State Department would not only attribute a meaning to the R.O.C. defense treaty of which it never informed the Senate. It would put the same meaning on dozens of other major treaties that contain similar provisions. For example, the North Atlantic Treaty Alliance and our security pacts with South Korea, Japan, and the Philippines include articles allowing either "party" to withdraw after one year's notice. The Nuclear Test Ban Treaty, the Statute of the International Atomic Energy Agency, the Nuclear Nonproliferation Treaty, the Biological Weapons Convention, the Universal Copyright Convention, and the Outer Space Treaty, among others, each provide by their own terms for termination after one year's or less notice to the other parties. The consequences of accepting the State Department's interpretation of these provisions is far-reaching indeed.

No matter that the Senate was not clearly informed of what the language meant when it gave its advice and consent to ratifying these arguments. No matter that the executive may have had a different understanding than the Senate and kept silent about it.

When it suddenly suits the needs of expediency for its policy of the moment, the State Department unveils a doctrine it has

hidden from public discussion. After having exploited the use of executive agreements to the point where the president can make virtually any treaty he wants by calling it a mere executive agreement, now the State Department is ready to usurp the power of unmaking treaties as well.

Events in the year ahead may well determine whether the executive succeeds or fails in this historic power-grab.

Mr. HELMS. I ask unanimous consent also that this colloquy between the Senator from North Carolina and the Senator from New York appear in the RECORD immediately following the colloquy between the Senator from New York and the Senator from Arizona (Mr. GOLDWATER).

THE PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(Conclusion of later proceedings.)

Mr. GLENN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. GLENN. I concur completely with the recollection of Senator JAVITS as to the action taken by our committee, in this regard; because when this came up, we deliberately did not try to deal with the constitutionality of the President's authority to deal with treaty situations or whether the Senate should or should not have become involved in that issue.

We separated that question from his specifically mandated authority on how to go about negating this relationship with Taiwan—so far as the old treaty was concerned. He did adhere to the letter of how to do that. He did not abrogate the treaty; he went by the treaty provisions. We separated that issue from the constitutionality question that the distinguished Senator from Arizona has raised.

So my recollection coincides with that of the Senator from New York. We did not attempt to deal with the court suit at all.

Mr. GOLDWATER. I thank both Senators.

Mr. JAVITS. I yield the floor.

(Mr. BOREN assumed the chair.)

Mr. HARRY F. BYRD, JR., addressed the Chair.

THE PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. HARRY F. BYRD, JR. Mr. President, I commend the Foreign Relations Committee for the measure it has brought before the Senate.

In my judgment, this measure will go a long way toward reducing the clear threat to the security of Taiwan caused by the precipitate action of the President in announcing his intention to break our defense treaty with the Republic of China.

On balance, the pending legislation mitigates many of the major problems created by the President's action in breaking the Mutual Defense Treaty between the United States and the Republic of China.

I listened very carefully to the opening statement by the distinguished Senator from Ohio (Mr. GLENN). It impressed me as being an objective appraisal of the President's action. I listened carefully to the presentation and comments

of the able senior Senator from New York (Mr. JAVITS) in discussing the pending legislation. I commend both of them and the committee for what they have brought before the Senate.

It is a much better proposal than I had anticipated would be brought to the Senate. It mitigates some of the concerns that the Senator from Virginia had on the opening day of Congress, dealing with the issue of Taiwan and mainland China.

Frankly, I favor establishing full diplomatic relations with the People's Republic of China. It is one of the great nations of the world; it has a population larger than that of any other country.

It is important that our country and the People's Republic have contact, that there be a dialog between our countries. So I look with favor upon the establishment of diplomatic relations.

What I do not favor, however, is that in bringing this about, the President of the United States threw overboard a longtime friend and ally. The Senator from Ohio (Mr. GLENN), in his presentation, pointed out that the treaty of friendship between the United States and Taiwan was abrogated by the President without consultation with the other partner to that treaty, the Republic of China; that, in fact, the first the Republic of China knew about the proposal to terminate the treaty was when it learned such fact on television or over the radio. So that aspect of it has concerned me a great deal.

The second aspect of this action taken by the President late last year is much broader than the question of Taiwan.

It seems to me that it is important to establish for the future whether a President may unilaterally terminate a Mutual Defense Treaty with other nations.

Our country has many such treaties. Some of them are extremely important, in the view of the Senator from Virginia, to the welfare of the United States.

I believe that a President alone does not have the authority to terminate such treaties. In the research that my staff has been able to do, no case has been found in which a major treaty with another nation, of a defense nature, ever has been abrogated unilaterally by a President of the United States. There have been cases, of course, in which minor treaties have been set aside; there have been cases in which, with the outbreak of war, the treaty became, ipso facto, nonexistent. However, so far as I can determine, this is the first time that a treaty of this consequence has been set aside by unilateral action of the executive branch of Government.

It occurs to me, Mr. President, that before the debate on the pending legislation concludes, the Senate should express itself as to what the situation should be in the future in regard to other mutual defense treaties which our Nation has throughout the world.

I ran across an interesting and significant statement by the then Secretary of State in 1954. In 1954, Secretary of State John Foster Dulles responded as follows to an inquiry by Senator Jenner

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of Indiana. This was the statement of the Secretary of State:

In light of the fact that your letter specifically raised the question whether the Department of State, under the present administration, claims authority to modify treaties, I am glad to assure you that it is my view that the Executive may modify a treaty or a provision thereof only by the conclusion of another treaty entered into by and with the advice and consent of the Senate. This is also the view of my advisors who are fully aware of my position and fully share my views.

That is the end of the quotation from the statement of then Secretary of State John Foster Dulles, in 1954.

I am aware, of course, that there are many able and outstanding lawyers who take a different view from that expressed by the Secretary of State in 1954. I am aware that this is a gray area, so to speak, and that nothing really conclusive is set forth in the Constitution, that I can find, specifically denying to the President such a right.

On the other hand, it does seem reasonable to me that when the Senate of the United States must advise and consent in the approval of a treaty, the Senate should have some participation in the termination of such a treaty.

I have presented a Senate resolution, which is on the calendar, and incidentally this resolution was presented by me for myself and for Mr. THURMOND, Mr. WARNER, Mr. HELMS, Mr. HAYAKAWA, and Mr. GARN. That Senate resolution states this:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

Before the debate on the pending legislation concludes, I likely will present this as a proposed amendment to the legislation reported to the Senate by the Foreign Relations Committee.

As I indicated earlier, the question is much broader, as I see it, than just the question of Taiwan. The question is, What is going to happen in the future to the many other mutual defense agreements and treaties which we have with other nations?

In summary and in ending, Mr. President, I again commend the Foreign Relations Committee for the legislation it has brought before the Senate. I think this legislation will go a long way toward correcting and improving some of the problems created by the President's action.

I commend the committee and I commend the manager of the bill, Senator GLENN, for his excellent presentation.

I seek to consult with him as to whether he might consider favorably a little later the Senate resolution which I mentioned.

Mr. GLENN. Mr. President, will the Senator yield for a comment?

Mr. HARRY F. BYRD, JR. I yield.

Mr. GLENN. I just wish to clarify the way the committee used the word "abrogate" in the treaty, because I am not sure it was in the same sense as was used by the distinguished Senator from Virginia.

To "abrogate" would mean we walked off from the treaty completely—just walked off and left it, period. That was the way we used the word "abrogate." The treaty was terminated by the President in accordance with the provisions of the treaty itself. In other words, he followed the arrangements that had been devised within the treaty for termination of the treaty.

We used that as a difference to set it apart from the use of the word "abrogate."

I just wanted to spell out that clarification because I think the way the distinguished Senator used the word "abrogate" was not in the same sense in which we used it in the committee.

Mr. HARRY F. BYRD, JR. May I say to the Senator from Ohio that I intended to use it, or intended it to be construed, in the same sense that the Senator from Ohio construes that term.

Mr. GLENN. All right.

Mr. HARRY F. BYRD, JR. Under the treaty either country, or the way it is expressed, either party, either party to the treaty has the right to terminate the treaty by giving a 1-year's notice.

Mr. GLENN. That is correct.

Mr. HARRY F. BYRD, JR. The way I construe the word "party," I construe that to mean either Government.

Mr. GLENN. That is right.

Mr. HARRY F. BYRD, JR. When we speak of the U.S. Government, I construe that to mean the executive branch and the legislative branch acting together.

Mr. GLENN. We did not address that question of constitutionality. I think the courts are going to be called upon to decide that issue as has been indicated to Senator GOLDWATER a short time ago here in the Chamber.

I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I certainly thank the Senators who are floor managers of the bill, and also the Senator from Kansas (Mr. DOLE).

Mr. President, the purpose of my brief remarks, and I shall not detain the Senate over 4 minutes, is to endorse section 114 of S. 245 that affirms a continuing interest of the United States in the future security and well-being of Taiwan.

I was a cosponsor of a resolution on this matter. The compromise language before us today was approved by a unanimous vote of the Foreign Relations Committee. I hope the Senate will give its approval to this provision by a solid vote.

NORMALIZATION OF RELATIONS WITH CHINA

At the outset, I would like to state that I favor what is called normalization of relations with China, a country that possesses over one-fourth of the world population. Our diplomatic recognition is just that—we are officially recognizing them as a nation and are not forming any alliance with them. We are by no means approving any form of communism on their part, or any part of their system.

I believe the time has come when we need to establish some form of diplomat-

ic relations with them so that we could at least have ongoing communications between our two nations. This is extremely important since China has nuclear weapons and the capacity to deliver them on target.

Mr. President, I notice that emphasis is not given to that point as much as I think it should.

They also appear to be intent on modernizing their country, and that means expanded trade opportunities in future years where they will doubtless be purchasers of grain, soybeans, cotton, and other agricultural products and technological products from us.

Mr. President, this Taiwan provision pledges that any nonpeaceful efforts to reunite Taiwan with China would be viewed as a matter of grave concern to the United States. There is also a commitment to provide Taiwan with defensive weapons.

The United States has a moral obligation to the people of Taiwan and we must maintain our commercial, cultural, and other relations. Since the early 1950's, the United States has provided \$5.5 billion in military and economic aid for Taiwan. I think that this was money wisely spent. With our assistance, Taiwan used its industriousness and creativity to transform their country into a modern and flourishing economy. I think it is important that we continue military and economic aid, as we have done for the past several years, on a credit basis. This provision maintains that right.

I gave my firm support to the Mutual Defense Treaty with Taiwan 24 years ago. That treaty served a useful purpose then, but the time has come for the United States to review its overall policy in the Pacific. And I have thought this, since we got into the war in Vietnam. Under the terms of the treaty the United States has notified Taiwan of its intention to terminate that treaty, but we are certainly by no means breaking off relations or turning our backs on Taiwan.

This bill is not part of a weak or moderate policy in the Pacific area. To the contrary, it states a positive policy to the effect that we shall maintain a capacity to resist and resort to force, if necessary, in the area of Taiwan. I favor an extension of the scope of this policy in the Pacific area and seek allies for this purpose.

Today we are debating important legislation that reaffirms our commitment and friendship with Taiwan while allowing us to undertake a new relationship with China. While this is an important first step in formulating a post-Vietnam Pacific policy, the time has come for the United States to go forward with a new Pacific policy which I think should include an expanded role for Japan.

For the past 14 months, several members of the Armed Services Committee, at my suggestion, have been reviewing the future military policy of the Pacific region. The Pacific study group, consisting of Senators NUNN, HARRY BYRD, HART, and TOWER are still gathering facts from government and foreign leaders here and abroad. The late Senator Bartlett of Oklahoma was an active and valuable

member of this group. They have so far reached the following conclusions:

After their review of the Korean situation, they recommended that U.S. troop withdrawals from Korea be suspended.

Japan, an economic giant, now stands on the verge of making a willing contribution to East Asian security more commensurate with its economic stature. There are major real increases—recent and planned—in Japan's defense spending. There is a growing Japanese willingness to assume a larger share of the costs of stationing U.S. forces in Japan. I recommend that my colleagues in the Senate review the reports submitted to the Armed Services Committee by the Pacific study group.

There will be other reports that, I think, will also be important, to be filed soon.

So, Mr. President, I support this bill as a new start, in a way, of a new policy in the Pacific, and as a renewal of certain protection and aid to Taiwan.

Again I thank the leaders.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STENNIS. If I have time.

Mr. JAVITS. I just want to say to the Senator that I think this statesmanlike attitude toward this matter is so much a part of his support for the war powers resolution which made it possible. I wish to say that, again for history, I am deeply grateful to him and it shows the fact that Senator STENNIS understands the relationship between military power and diplomatic effort.

Mr. STENNIS. Well, I appreciate the Senator's remarks very much, and I commend him again for his valuable, highly valuable, contribution in the passage of that so-called War Powers Act.

Mr. JAVITS. I thank the Senator.

Mr. STENNIS. He was the kingpin.

The PRESIDING OFFICER. The Senator from Kansas.

TAIWAN ENABLING ACT

Mr. DOLE. Mr. President, I would like to compliment the members of the Committee on Foreign Relations on the fine product of their labor in considering the Taiwan Enabling Act, S. 245. This was a bill whose inauspicious conception followed the administration's untimely announcement of the normalization of relations with the People's Republic of China on December 15, 1978.

SENATE NOT CONSULTED

The legislation proposed by the President in the wake of that announcement was woefully inadequate in addressing the needs of the people of the Republic of China and the important strategic and economic requirements of the people of the United States. If the administration had consulted with Congress, as it was bound to do by the terms of the legislation cosponsored by Senator STONE and myself last summer and signed by President Carter on September 26, 1978, the period of uncertainty and tension we and the people on Taiwan have passed through over the last 3 months would never have occurred. Many Senators, including myself, felt constrained to challenge the administration's bill and

its apparent intent to obliterate any vestige of the valuable and trustworthy alliance the United States maintained with the Republic of China.

S. 245, WORTHY OF CONSIDERATION

The changes and modifications which we advocated for the Taiwan Enabling Act, after many hours of hearings and much labor by the members of the Committee on Foreign Relations, resulted in a complete rewrite of the bill, including the title, which immeasurably enhances the safeguards for security and continued excellent relations between America and Taiwan. My own particular concern was for the safety of Taiwan from attack or any aggressive reprisal from the People's Republic of China, and for the danger this would cause to U.S. affairs and strategic interests.

SENATE RESOLUTION 13

For that reason, I introduced Senate Resolution 13 to assure the Republic of China that the United States would not turn its back on a longtime ally. It was vital, I felt, to convey that assurance in a measure that specifically spelled out our Nation's commitment to aid the Republic of China in resisting aggression. Vaguely worded statements about general interests of the people concerned were not sufficient. We cannot rely on a leadership in mainland China that may prove to be unstable and transitory, nor on unofficial declarations about intentions that come only at politically opportune times. That is why the much more specific language of the Senate's version of S. 245 is so gratifying and necessary.

I especially would like to mention the effort of the distinguished Senator from Florida (Mr. STONE) to make certain that America's strategic needs and Taiwan's defense requirements were spelled out in this bill.

A NORMALIZATION THAT PROVIDES PEACE

None of the changes in this bill were made with an untoward motive of hindering the normalization process with the People's Republic of China. They were meant only to recognize the simple reality of U.S. concerns in the Asian-Pacific region and our desire for peace for an old and faithful ally. If the Taiwanese question is not resolved in favor of freedom and independence, then none of our allies, none of the people facing oppression in the world today, none of the nations who rely on the strength of America and the good faith of our commitments to dissuade stronger and more aggressive alliances—none of these can hope for freedom of choice in a secure and stable future.

Mr. President, I believe, as I have indicated, as the Senator from Kansas has indicated, at the outset that S. 245 represents an excellent attempt to come to grips with the concerns I have just mentioned.

I do have a series of eight amendments which, I hope, can either be accepted or adopted on rollcall votes which, I believe, will further clarify and specify our good intentions on the issues of security and justice for the people of Taiwan and for congressional oversight.

If these changes are adopted—and I am not suggesting that everyone must be adopted or that they cannot be further modified—it would seem to me that we should then go ahead and approve the legislation.

I think, just to summarize the amendment so that there might be some discussion, that I will offer one of the amendments before I yield the floor, that the first two amendments would remove the more obvious and unnecessary wording about the unofficiality of the relationship of Taiwan. They also follow the more direct language of the House version.

The third amendment would clarify the meaning of "threat." What is "a grave concern" used in the legislation? What is grave concern to the United States? It would include various economic and trade practices along the lines of the original resolution on security, which the Senator from Kansas introduced.

The fourth amendment would prevent Taiwan from being expelled from international organizations if the United States can do anything about it. That was also a provision in one of the original resolutions.

The fifth amendment would make specific that in accordance with the Security and Assistance Act arms requests from Taiwan must be reported to the Committee on Foreign Relations, and the status of those sales must be reported to the Committee on Foreign Relations and also to the Speaker of the House.

The sixth amendment is one that I understand I may be cosponsoring with other Senators, the Senator from South Carolina (Mr. HOLLINGS), the Senator from North Carolina (Mr. HELMS), and the Senator from Oklahoma (Mr. BOREN), and it strikes a section that specifically encourages the People's Republic of China to take Twin Oaks and the embassy property away from Taiwan. So the Senator from Kansas would be joining in efforts on that amendment.

The seventh amendment would follow the same reasoning of the first two amendments in changing the title.

Finally an amendment to provide Senate oversight on the selection of the American Institute's Director who is now chosen by the Secretary of State.

Mr. President, with reference to the reporting amendment, many of us in the Senate are concerned about continuing the sale of arms to Taiwan. We are convinced that without such sales it would be impossible for Taiwan to survive.

The President's action in putting a moratorium on arms sales this year, perhaps the most critical in our new relationship with Taiwan, requires a great deal of clarification.

The amendment that I plan to offer initially would clarify the intent of the International Security Assistance Act of 1978 with respect to Taiwan. It specifies that the President will not only report to the Committee on Foreign Relations all proposed arms sales to the Government of Taiwan but will report the status of all such requests for arms from the

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Taipei authorities. So we will know totally in the Senate and in the House just what the status is and not just the sale itself. In this way it will be clear to the Senate and to the American people just what the United States is prepared to do to help insure the security of Taiwan.

It seems to me this is an amendment that I think would have the approval of the administration as well as the managers of the bill, and I am prepared to offer that amendment at this time.

UP AMENDMENT NO. 26

(Purpose: To require the President to transmit to the Congress a report on certain arms sales proposed for or requested by the people on Taiwan)

Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 26.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 14, line 24, strike out "and".
At the bottom of page 14 insert the following:

"(4) the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate on or before November 15 of each year a report on the status of arms sales of major defense equipment of \$7,000,000 or more or of any other defense articles or defense services for \$25,000,000 or more, which are considered eligible for approval during the fiscal year beginning on October 1 of such year and which are proposed for or requested by the people on Taiwan; and

On page 15, line 1, strike out "(4)" and insert in lieu thereof "(5)".

Mr. DOLE. Mr. President, I do not see the manager of the bill on the floor, but it is my understanding that this amendment has been agreed upon. I also understand that there is no objection from the State Department, and it is my hope that the amendment might be accepted. If the Senator from California would prefer to wait—

Mr. CRANSTON. Mr. President, if the Senator will yield, I think we would be prepared to accept this amendment, provided we renumber it to go into a different part of the bill. The language where the Senator seeks to place it has been very laboriously worked over. The proposed language is perfectly acceptable, but we would just like it placed in a different place. If you will let the clerk renumber it in the bill, it will be acceptable.

Mr. DOLE. The Senator from Kansas has no objection to that. We could make it a new section.

Mr. CRANSTON. Yes.

Mr. DOLE. Mr. President, I would so amend the amendment.

The PRESIDING OFFICER. To place it at the end of the bill?

Mr. DOLE. Yes, as section 115.

Mr. CRANSTON. With that understanding, we are now prepared to accept it.

The PRESIDING OFFICER. This would be section 115?

Mr. DOLE. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment, as modified, was agreed to as follows:

On page 15, after line 4 insert a new section 115, as follows:

"The President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate on or before November 15 of each year a report on the status of arms sales of major defense equipment of \$7,000,000 or more or of any other defense articles or defense services for \$25,000,000 or more, which are considered eligible for approval during the fiscal year beginning on October 1 of such year and which are proposed for or requested by the people on Taiwan."

UP AMENDMENT NO. 27

(Purpose: To substitute "Taiwan" for "the people on Taiwan")

Mr. DOLE. I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) offers an unprinted amendment numbered 27:

On page 8, line 18, strike out "the people on".

On page 8, line 20, strike out "people on".

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, line 18, strike out "the people on".

On page 8, line 20, strike out "people on".

On page 9, line 6, strike out "the people on".

On page 9, line 11, strike out "the people on".

On page 9, line 20, strike out "the people on".

On page 9, line 22, strike out "the people on".

On page 10, line 12, strike out "the people on".

On page 10, line 17, strike out "the people on".

On page 11, line 13, strike out "the people on".

On page 11, line 20, strike out "the people on".

On page 11, line 25, strike out "the people on".

On page 12, line 10, strike out "the people on".

On page 12, line 14, strike out "the people on".

On page 12, line 16, strike out "the people on".

On page 12, line 19, strike out "the people on".

On page 13, line 17, strike out "the people on".

On page 14, line 2, strike out "the people on".

On page 14, line 11, strike out "the people on".

On page 14, line 17, strike out "the people on".

On page 14, line 18, strike out "the people on".

On page 19, line 6, strike out "people on".

On page 20, line 17, strike out "the people on".

On page 22, line 22, strike out "the people on".

Mr. DOLE. Mr. President, I would point out that all through S. 245, the language "the people on Taiwan" is used repeatedly. It seems to me that we could simplify that language by striking those words wherever they appear and have it read simply "Taiwan."

This would not affect the meaning or intent of the legislation in the sense that our relations with Taiwan would not, in practice, be any more or less official than they are proposed to be. It would bring the language in S. 245 into line with the terminology used in the house version of this legislation. This language has been accepted by the Department of State.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. DOLE. Yes.

Mr. CRANSTON. What is the basis of the Senator's statement that the language has been accepted by the Department of State? It is not my understanding that that is the case.

Mr. DOLE. I am not suggesting that this amendment has been accepted, but I think the language in the House bill has been accepted.

Mr. CRANSTON. I see. I thank the Senator.

Mr. DOLE. I cannot give the Senator assurance that that will be forthcoming, although I think that is the case.

The present language presents the pretense that we are not dealing with a legal entity or government on Taiwan, and is an unnecessary slight toward the authorities with whom we must work on Taiwan. Taipei has insisted that its relations with the United States have the qualities of officiality and are controlled by the Government of the Republic of China. Any other language is both clumsy and uncalled for.

It seems to me that this is an amendment that does not require a great deal of debate. Since I know other Senators are wanting to speak—both the Senator from North Carolina (Mr. MORGAN) and the Senator from Florida (Mr. STONE) have indicated a desire to speak—I am prepared to vote now, or to set the amendment aside temporarily and have the vote follow their remarks.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. STONE. Mr. President, I understand that the Senator from Kansas, who has an amendment pending, does not object if I make a few remarks at this point.

Mr. DOLE. Mr. President, I ask unanimous consent that the amendment be

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temporarily laid aside so that the distinguished Senator from Florida may proceed.

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

Mr. STONE. I thank the distinguished Senator.

SENATE JOINT RESOLUTION 44

Mr. President, the Orient has never been something well-understood by Occidental man, from the time Columbus stepped out of his ship and thought he was in the East. In evolving American foreign policy over the past 200 years, our country's leaders have been only slightly more certain of their steps.

When the bill now before us first reached the Senate, it went only halfway along the path that the overwhelming majority of the American people think we should follow. It effectively formalized relations with Peking and shifted the dealings of our country with the government in Taipei to an unofficial, nongovernmental relationship, but it left unclear exactly what that unofficial, nongovernmental relationship is and how it will work.

After the Republic of China on Taiwan has stood by the United States for 30 years, following our lead and supporting our foreign policy even when others claiming to be our friends did not, it was wrong for the United States, in a pell mell rush to offset the Soviet Union in Asia, to leave the Government and people of the Republic of China on Taiwan hanging onto their relationship with the United States by only a thin, vague thread of off-the-record assurances that no matter what the Department of State said in public, things would stay as they had always been.

We have seen in the last month or so that is not the case. Representatives of the Republic of China on Taiwan have been heavily pressured into agreeing with the Department of State's demands. They have been pushed into giving up some of their offices in this country through which they do business with us in excess of \$7 billion a year. They have found themselves this week unable to get even a piece of paper signed and notarized. No visas are being issued in Taiwan because the Department of State does not want to send an official U.S. Government check through the banks on Taiwan.

Mr. President, I ask unanimous consent to submit a joint resolution at this point.

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

The resolution will be received and appropriately referred.

Mr. STONE. Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

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

S.J. RES. 44

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the exchange of ambassadors or the establishment of embassies by the governments of the United States and the People's Republic of China, the President shall con-

tinue to carry out programs, transactions, and other activities with respect to the people on Taiwan to the same extent and in the same manner as provided in the memorandum of the President, dated December 30, 1978, relating to relations with the people on Taiwan, except that no program, transaction, or other activity with respect to the people on Taiwan may be carried out through the American Institute in Taiwan or any other instrumentality designated by the President, until the Congress enacts legislation specifically providing for such program, transaction, or activity to be carried out through such Institute or other instrumentality.

Sec. 2. For purposes of the resolution, the term "people on Taiwan" shall mean and include the governing authority on Taiwan, recognized by the United States prior to January 1, 1979 as the Republic of China, its agencies, instrumentalities, and political subdivisions, and the people governed by it in the islands of Taiwan and the Pescadores on December 31, 1978.

Sec. 3. This joint resolution takes effect on January 1, 1979.

Mr. STONE. Mr. President, I also ask unanimous consent to have printed in the RECORD a letter dated March 6, 1979, which I addressed to Senator FRANK CHURCH, chairman of the Foreign Relations Committee, and a telegram which I received from Frank P. Parker, president, American Chamber of Commerce in the Republic of China.

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

U.S. SENATE,

Washington, D.C., March 6, 1979.

HON. FRANK CHURCH,
Chairman, Senate Foreign Relations Committee,
Dirksen Senate Office Building

DEAR MR. CHAIRMAN: I am writing to express my deep concern and strong objections to certain language in the Foreign Relations Committee Report on S. 245. Beginning on page 17 and continuing for several pages thereafter, there is a discussion of "legal issues" relating to the termination of the Mutual Defense Treaty with the Republic of China and other legal issues regarding the Republic of China. On page 19, in connection with a discussion of the termination of the Mutual Defense Treaty, a paragraph is included which reads,

"It appears to the Committee, therefore, that the Constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain."

I do not believe it was the intention of the Committee and certainly it was not authorized by the Committee, to take a position as to whether the President's manner of terminating the Mutual Defense Treaty invaded the prerogatives of the Congress or not. While there was discussion during the course of the Committee's hearings, I am not aware of an attempt by any member of the Committee urging the Committee to take a position such as described by this paragraph.

I am particularly concerned about the implications which this paragraph may have for future decisions in the foreign policy area by the Executive Branch. It expresses the notion that when Congress, for whatever reason, chooses not to exercise certain Constitutional powers, that Congress has endorsed a particular Constitutional theory. I strongly disagree with any such theory of Constitutional interpretation. Finally, I am concerned about the inclusion of this para-

graph inasmuch as Committee members were not given any opportunity to review the report before it was filed. Where it is necessary for the Committee and Senate to move as quickly as possible on important legislation such as this, I believe it is particularly important that the Committee report language be as carefully developed, as possible and limited as much as possible to an explanation of the bill which the Committee has agreed to report.

I would appreciate your consideration of appropriate steps to eliminate the paragraph to which I have referred, from the Committee report, or to have a statement by the managers of the bill which would correct the gross misimpression which I believe will result if this language is incorporated in the Committee Report.

Warm personal regards.

Most cordially,

RICHARD (DICK) STONE.

WASHINGTON, D.C.

HON. RICHARD STONE,
Dirksen Senate Office Building,
Washington, D.C.

Have just learned State Department doubts consular section of American Institute in Taiwan will have power to notarize documents after Taipei consulate ceases operation February 28, clearly certain U.S.-Taiwan commercial relationships will be adversely affected because Taiwan notaries customarily refuse to notarize documents in languages other than Chinese. Although this is relatively small item, it illustrates again inadequacy State Department provisions for maintaining business relations on as usual basis.

Your continuing efforts tremendously appreciated by American businessmen in Taiwan.

ROBERT P. PARKER,
President.

Mr. STONE. When I first saw this bill and objected to the vagueness of its original language, I was told the vagueness was necessary, that I should not worry about it, that things would continue as they always had. I did not think that would be the case, and that suspicion has been proved correct. The bill as originally written would have left the Government of the Republic of China in some dim nether world, neither country nor ally.

Throughout the committee hearings and the markup sessions, I worked with others on the committee—the chairman and the ranking minority member in particular—to remove the vagueness, to make sure it was clear exactly how the relationship between the United States and the Republic of China on Taiwan would continue. Our committee rewrote this bill, providing numerous guarantees which were not in the original version. In some areas, particularly the area of military security for the Republic of China, I feel our language falls short, and, when offered, I intend to support amendments strengthening our commitment to the future security of the Republic of China on Taiwan.

In the area of our economic commitment to Taiwan, I think this bill, now that the committee has worked on it long and hard, effectively assures that the commercial ties between the Republic of China and the United States can remain strong.

The first thing that had to be done to guarantee that was to define exactly who it is we are dealing with. Under Japanese

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law, it was possible for the derecognition of the Republic of China, the recognition of the People's Republic of China, and the establishment of an unofficial relationship between Japan and the Republic of China to be done by executive fiat. That cannot work in this country. It may be all well and good to want an unofficial relationship with something called the people on Taiwan, but somewhere along the line American law must spell out exactly who are the people on Taiwan.

This bill now does that by defining the people on Taiwan as the governing authority on Taiwan, recognized by the United States prior to January 1, 1979, as the Republic of China. That tells Members of the Senate, the business people and the U.S. courts exactly who it is we have this unofficial relationship with, and it does not breach the agreement reached with the People's Republic of China that the United States and the Republic of China would not officially have direct government-to-government status in their future dealings with each other.

While I still think it is not the business of the United States to tell any country what to call itself and we should call the Republic of China by the name it has chosen for itself, the language of this section of the bill is a good compromise. The Department of State says it can live with it. The Republic of China can live with it. The People's Republic of China can live with it, and, even though it is not what I would most like to see the United States do, I can live with it.

Another key part of the bill comes in sections, 102, 103, and 104. There the committee spells out in clear, legal terms, the intention of the United States to continue unchanged the economic relationship and treaties we had with the Republic of China before the first of this year. The new committee language specifically continues, in the absence of formal diplomatic ties, the standing of the Republic of China, its agencies, its corporations, and its citizens to sue and be sued in U.S. courts. Without that guarantee, there would be real questions as to the validity of contracts, and the continuation of American investment and trade in the Republic of China would be imperiled.

I would also call attention to section 111 of the committee bill. The two subsections there make it clear that the property and assets of the Republic of China in the United States remain under the control and ownership of the Republic of China and would not be open to attachments or claims by or against the government on the mainland. A major aim of this provision is to protect bank deposits of the Republic of China in U.S. commercial banks—some \$4 billion in New York City banks alone.

Without this protection, the economies of both countries would be threatened. When Fidel Castro came to power in Cuba, I recall all sorts of claims against the Cuban Government established by Castro and the assets of others from Cuba were attached in attempts to gain compensation for losses incurred by Americans in Castro's takeover. The same thing happened earlier in U.S.

courts when the People's Republic of China sought to gain control of assets held in the name of the Republic of China by the Wells Fargo Bank.

For the same kind of legal battles to take place now over the cash reserves of the Republic of China held in the United States could mean an economic disaster for the United States. The stock market would fall, and interest rates would soar. The language adopted in committee avoids all that.

There is one other section I would like to comment on. That is section 113 dealing with privileges and immunities for the representatives of the Republic of China who are assigned to the offices of that country's institute in the United States. The bill simply says those representatives shall enjoy the privileges and immunities comparable to those provided to missions of foreign countries while carrying out their official duties. I suggested this language to the committee, and the members adopted the language, following the lead of many Senators who cosponsored my bill on privileges and immunities.

The extension of these standard diplomatic privileges and immunities means the representatives of the Republic of China will be able to do their jobs in this country, and it also manifests our intention to be as fair as possible to the Republic of China in this whole difficult situation. When we granted the People's Republic of China a liaison office in this country prior to the extension of diplomatic recognition, its representatives received these privileges and immunities on a diplomatic basis. Since it was agreed by the Department of State that there would be no formal diplomatic recognition of the Republic of China, the privileges and immunities extended to the members of Republic of China offices in this country are not fully diplomatic. They do parallel the diplomatic privileges and immunities granted other foreign missions, however, and they do show clearly the United States does recognize the Republic of China is to be represented as if it were a foreign country.

There are other important parts of this bill—not the least of which are the sections relating to security—but the sections I have outlined are those on which I worked during the committee hearings and which I think are absolutely necessary if this new arrangement is to work.

As I said, I would like to see stronger language on the security question—asserting, perhaps, that an attack on the Republic of China would be considered a threat to the national security of the United States rather than simply a matter of grave concern—but on the whole, this bill is much better than it was originally. It is not perfect, but it will work. And under its provisions I am sure the United States and the Republic of China can continue to be close friends and will remain profitable trading partners for a long time.

Mr. JAVITS. Will the Senator yield?

Mr. STONE. I yield.

Mr. JAVITS. I thank the Senator very much for his fine statement and also for the very fine work which he did on this

bill, particularly in respect of insuring the assets of the people of Taiwan here in this country. The Senator mentioned New York City where the banks are very heavily involved. He joined very effectively in fashioning what was needed to deal with that situation.

I might say, too, that my agreement between the Senator and myself, I will propose an amendment to section 111 which will make it clear that organizations and other entities formed under the laws of Taiwan will also be included within the purview of the rights which are preserved.

That is necessary, as the Senator and I understand, because section 101(b) defining people on Taiwan speaks of the governing authority on Taiwan, its agencies, instrumentalities, and political subdivisions.

That may or may not include corporate entities or comparable entities organized under the laws on Taiwan.

To make that certain, with the Senator from Florida I will propose an amendment which will make that sure in section 111.

The reason I am not doing it this minute I would like to explain to the Senate. It is because Senator Dole is raising the whole issue as to whether we should call it the people on Taiwan or Taiwan. So in order to have our amendment technically correct we have to wait until that is decided.

Mr. STONE. I think that is quite valid. I thank the distinguished Senator from New York, the ranking member of our committee, not only for his very kind words about my efforts at the committee level, but I want to thank him for his terrific leadership on this issue. From the very first day the committee started to consider this bill, it was wonderful. When I offered one of the clarifying amendments to the effect that the Republic of China ought to be preserved in its ownership of its assets, it was the Senator from New York who correctly pointed out that we needed additional provisions, taking care not only of the Government and its agencies but the individuals, the corporations, the trusts, all of which the Senator's and my amendment, which he will offer, would address.

Mr. JAVITS. Right.

Mr. STONE. Mr. President, the purpose of the proposed amendment of section 111 is to insure that the objectives of the Congress, as set forth in Senate Report 96-7, are fulfilled and to avoid any ambiguity or potential litigation. Senate Report 96-7 makes clear the Senate's intent that the rights and obligations of natural persons, juridical entities and the authorities on Taiwan are not affected by the normalization of relations with the People's Republic of China. Section 111, as reported by the Senate Foreign Relations Committee, already deals with the rights and obligations of natural persons and the authorities on Taiwan. Section 111, as amended, would make clear that the term "people on Taiwan" as used in section 111 would also include organizations and other entities formed under

the law applied on Taiwan as well as natural persons and the authorities on Taiwan covered by the definition in section 101(b). The result of the proposed amendment is thus to avoid any implication of a diminution of the rights and obligations of juridical entities on Taiwan, including corporations and all other nongovernmental organizations and entities.

Let me close by saying that if the Congress does not rapidly complete action on this bill before us, we are, at this moment and for the days to come, in a very difficult and dangerous situation in terms of the commerce and trade between the Republic of China on Taiwan and the United States. We are in a hiatus, we are in a gap, which has been brought about by the normalization of relations and official recognition of Peking without the establishment of the institutions to carry on our commercial relationship with Taiwan.

This is not the purpose of the Government or the people of the United States. Therefore, earlier in my remarks, I had unanimous consent to introduce a joint resolution and a statement clarifying the purpose of that resolution which would authorize and direct the President of the United States to continue in effect the temporary actions justified and authorized by his Presidential memorandum in effect, temporarily continuing the relationships in order to keep validating papers and visas and the consular and other efforts that have to be made if trade and commerce are to continue. I hope this bill can be enacted swiftly enough so that we do not get into a commercial crunch. If this does not happen, then, week after week, the more than \$7 billion worth of trade between the Republic of China on Taiwan and its citizens and firms and our own U.S. Government and our citizens and firms get to be a little bit shaky. That is a situation which we cannot tolerate for too much longer.

Mr. GLENN. Will the Senator yield?

Mr. STONE. I yield.

Mr. GLENN. We are already in a crunch. We do not have an American Institute on Taiwan and we do not have any money appropriated for such an entity. We have no authority to transfer the embassy funds over for that purpose. As of this moment, the things we speak of in the U.S. Senate are in limbo in Taiwan until this bill is passed and until we get the authorization and appropriation transferred over from the embassy to the new American Institute on Taiwan.

Mr. STONE. The Senator from Ohio, the distinguished floor manager of the bill, is correct. If that happens rapidly, that is fine. The resolution, though, that I have introduced would, if passed, allow and direct the administration to continue, on an informal, unofficial, and temporary basis, the actions of our representatives who are still in Taiwan and the representatives of the Republic of China who are still in Washington and in this country so that we do not get into a commercial crunch.

After all, if you lose 1 month out of a year and the year's trade is \$7 billion,

query: How much of that can we afford and can Taiwan afford to lose? Up to this point, it has not manifested itself too severely, although I have received a wire, a cable, from the American Chamber of Commerce on Taiwan complaining and expressing concern about this situation. If, in the next few days, we do not get a move on, I am afraid that we are going to have to consider some kind of temporary relief of the sort that I have introduced because it is of vital economic interest to both countries that we continue this trade.

Mr. SARBANES. Will the Senator yield on that point?

Mr. STONE. I yield.

Mr. SARBANES. I think the point the Senator is making is a good one. I think it is one of the strongest arguments for expeditious action on the legislation now pending before the Senate.

Mr. STONE. Quite right.

Mr. SARBANES. It would, of course, meet in every respect that at least the committee has been able to shape the legislation, all of the various problems to which the Senator has addressed himself. This legislation is very important in order to enable the long-standing economic and cultural relationships which have existed to continue to exist. I think the committee has acted with expedition and we are hopeful now that we shall be able to move here, in the Senate, on this matter in the next day or two and complete this legislation, reconcile our position with the House, and place it into law. That, of course, would then meet, in the most fully developed sense possible, all of these problems.

Mr. STONE. The distinguished Senator from Maryland is correct. I just want to say, in conclusion, that I think that my colleagues on the Committee on Foreign Relations were careful, were constructive, and were very responsive to the business community of the United States as well as the people and the business community and the Government of the people on Taiwan, the Republic of China. We made good strides in this bill. I am sure there will be some strengthening amendments offered on the floor and that we will rapidly enact this legislation so that our friendship and trade with the Republic of China on Taiwan and the people of Taiwan can continue and even increase.

The PRESIDING OFFICER. The question occurs on the amendment of the Senator from Kansas.

Mr. JAVITS. Mr. President, I yield to the Senator from Ohio.

Mr. GLENN. Mr. President, the amendment suggested by the Senator from Kansas goes right to the very heart of what we have attempted to do in the Senate Foreign Relations Committee. We have endeavored to make the American Institute on Taiwan an acceptable entity that could exist with the normalization of relations with the People's Republic of China. We have tried to make sure that the American Institute on Taiwan is acceptable to both parties—acceptable to the people on Taiwan and acceptable to the People's Republic of China. I think we have reached that balance. There

have been those, of course, who have suggested that the people on Taiwan could declare their immediate independence, a move to be a separate entity entirely. I do not think that would be possible now. Some years ago, that might have been one of the options that the Republic of China might have wished to consider. But I think the situation now would be very muddled if that were the direction in which they were to go.

As I see it, the amendment by the distinguished Senator from Kansas would try to push a little bit in that direction. It tries to establish a separate entity by changing the language only this slight amount. Both sides of the street on Taiwan—the People's Republic of China and the Republic of China representatives—have said throughout the many years past that they are all part of one China.

One of the few things they have agreed upon has been that it is truly all one China. I think it would be a drastic mistake if we went ahead and indicated it was other than the one China that both sides have said all along is the case.

So I hope, Mr. President, that my colleagues in the Senate will see fit to vote against this amendment.

The committee, on page 8, already defines the inclusion of the governing authorities on Taiwan.

I read that section which starts on line 19 of page 8 of the bill, as follows:

(b) Except as provided in section 205(d) of this Act, the term "people on Taiwan", as used in this Act, shall mean and include the governing authority on Taiwan, recognized by the United States prior to January 1, 1979 as the Republic of China; its agencies, instrumentalities, and political subdivisions; and the people governed by it in the islands of Taiwan and the Pescadores.

I think that is as clear a definition of the people on Taiwan and as meaningful a definition as anyone could come up with.

To try to alter that to some piece of geography, to try to redefine it at this point, would really do gross violence to the bill—the normalization process we have brought forward.

Mr. STONE. Will the Senator yield?

Mr. GLENN. Certainly.

Mr. STONE. Was it not the intention of our committee in this definition not to exclude the islands of Quemoy and Matsu for commercial purposes, but to exclude them for purposes of security, supporting assistance and security questions?

Mr. GLENN. It is my recollection that that type of situation which did not wish to give any military security guarantees to Quemoy and Matsu, from which there have been artillery fire exchanged for many years with the mainland. We did not intend to inject ourselves into that type of situation which did not seem to be called for.

But we did not preclude there being commercial arrangements with those islands as part of Taiwan's operation, if that was what they wanted.

Mr. STONE. As the Senator from Ohio might recall, it was at that point in our discussion when I referred to the excellent pottery that is done on the

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island of Quemoy and the great covered teapot with the handle I brought back from that island.

Mr. GLENN. I recall the conversation. I would not vouch for the quality of the Senator's teapot.

Mr. STONE. Not only that, but the tea it produces is excellent.

I thank the Senator.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER (Mr. EXON). The Senator from New York.

Mr. JAVITS. Mr. President, first let it be noted, in respect to the previous colloquy, that the Mutual Defense Treaty between the United States and the Republic of China on Taiwan did not include Quemoy and Matsu. So even if we sought to recreate it, we would leave them out.

The important point here is, question: It avails us nothing, why should we provoke the People's Republic of China when we are just trying to get started on some kind of better, more normal relationship?

Yet that is exactly what this amendment, unfortunately, would do.

I know my friend from Kansas and he will tell us that all he is doing is calling a spade a spade. But sometimes it is unnecessary to call a spade a spade, everybody knows it is a spade, everybody understands and sees it, why rub it in?

That is all this is about.

Our definition includes every human being, every corporation, every trust, everything that will be included if the amendment is approved, except that it does not irritate the People's Republic of China.

Now, I would protest, I would irritate them until the cows come home, if it meant anything. But it does not, so why do it?

Second, if there is such a thing as propaganda in respect of these international affairs, and I believe there is a great deal of that, I think we are much better off dealing with the people on Taiwan than we are with Taiwan per se, for this reason: If Taiwan were governed by the people on Taiwan, then I would say, "Well, there's a lot to that case, but it is not." There are a good many Taiwanese in that government now, but it is still governed essentially by the apparatus that came over from the mainland in 1949.

Therefore, when the issue is dealing with substantive questions and piercing the artificialities of legal concepts, and so forth, we really are dealing with the people on Taiwan. Therefore, that is, in my judgment, a far more accurate picture of the intention and design of the issue than if we said Taiwan alone.

So, in addition to the other arguments which have been made about the Shanghai communique, which of course is a fact, the fact is that both Chiang Kai-shek and Mao Tse-tung agreed on one thing, that there is one China.

The important point here is that we do not do anything for ourselves, and we unnecessarily irritate the other side.

Last, and perhaps more decisive than

anything else, this really is a more accurate description of what we are doing in this bill.

Mr. STONE. Will the Senator yield?

Mr. JAVITS. Yes.

Mr. STONE. The Senator will recall that the Senator from New York and I made quite a fight in the committee early on to get a definition into this bill which said the Republic of China, because the bill that we were considering when it came to us never said it. The most that was offered was some explanatory notes down in the committee report somewhere, which would not have done it, which would not have carried it, and would have caused our friends on Taiwan unnecessarily to lose face for no purpose.

So the Senator from New York, the leadership of our committee, and I worked very hard to get a definition that would do the job, and we have done that. Therefore, to alter it at this point might well just push the situation over the edge to the point where the purpose to be served by friends of Taiwan might not practically be served.

Now, I intended to support some of the strengthening amendments to our bill, such as I did when Senator PERCY offered his security amendment to the security issue at the committee level. But to tamper with this carefully drafted and redrafted and re-redrafted definition is at the root of this bill, I think, and I think the Senator from New York probably agrees with this, it would be a bad mistake for the friends and supporters of Taiwan.

Mr. JAVITS. I agree.

For the reasons which I have stated and which have been stated, Mr. President, I hope the Senate will reject the amendment.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I will just take a minute.

As I have said earlier, in complimenting the committee, I appreciate the efforts by all three Senators who have spoken.

Certainly I would not want to provoke anyone or anything, but it seems to me it is just a matter of judgment.

Their judgment has been quite good in some areas and perhaps it could be perfected by those of us who are not privileged to sit on the Committee on Foreign Relations.

I noticed that the House version treats it differently. I do not know that anybody has been provoked by the action on the House side.

It seems to me that we could adopt this amendment without doing violence to either our friends on Taiwan or the People's Republic of China. It does bring the language into somewhat more line with the terminology used in the House version. It seems to me that it is sort of a clever way to pretend that we are not really dealing with a legal entity or Government on Taiwan.

I have no further points to make. It might be a good first vote, to see what the temperature is in the Senate with

reference to any amendments, and therefore I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Kentucky (Mr. FORD), the Senator from Hawaii (Mr. INOUE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD) is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

The PRESIDING OFFICER. Have all Senators present voted?

The result was announced—yeas 33, nays 62, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—33

Armstrong	Heinz	Proxmire
Bellmon	Helms	Roth
Cohen	Hollings	Schmitt
DeConcini	Humphrey	Schweiker
Dole	Jepsen	Simpson
Domenici	Kassebaum	Stevens
Exon	Laxalt	Thurmond
Garn	McClure	Tower
Goldwater	Nelson	Wallop
Hatch	Packwood	Warner
Hayakawa	Pressler	Young

NAYS—62

Baker	Durkin	Morgan
Baucus	Eagleton	Moynihan
Bayh	Glenn	Muskie
Bentsen	Gravel	Nunn
Biden	Hart	Pell
Boren	Heflin	Percy
Boschwitz	Huddleston	Pryor
Bradley	Jackson	Randolph
Bumpers	Javits	Ribicoff
Burdick	Johnston	Riegle
Byrd,	Kennedy	Sarbanes
Harry F., Jr.	Leahy	Sasser
Byrd, Robert C.	Levin	Stafford
Cannon	Long	Stevenson
Chafee	Lugar	Stewart
Chiles	Magnuson	Stone
Cochran	Mathias	Talmadge
Cranston	Matsunaga	Tsongas
Culver	McGovern	Welcker
Danforth	Melcher	Williams
Durenberger	Metzenbaum	Zorinsky

NOT VOTING—5

Church	Hatfield	Stennis
Ford	Inouye	

So Mr. DOLE's amendment (UP No. 27) was rejected.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 28

(Purpose: To clarify the definition of "People on Taiwan")

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) for himself and Mr. STONE proposes an unprinted amendment numbered 28:

On page 12, at the end of line 12, insert the following:

For the purposes of this section 111, the term "people on Taiwan" includes organizations and other entities formed under the law applied on Taiwan.

Mr. JAVITS. Mr. President, I believe this amendment will be acceptable, and I would like to explain it to the Senate.

The purpose of the amendment is to make clear that the term "people on Taiwan" as used in section 111 includes organizations and other entities formed under the law applied on Taiwan, as well as natural persons and the authorities on Taiwan. The result of the proposed amendment is thus to avoid any implication of a diminution of the rights and obligations of corporations and other nongovernmental entities on Taiwan.

Section 101(a) was adopted in order to make it clear that the power of suing and being sued in the courts of the United States—

Mr. GLENN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. We will have order in the Senate.

The Chair recognizes once again the Senator from New York.

Mr. JAVITS. Shall not be affected by the fact that the United States has recognized the People's Republic of China, and the right of action in all of these cases is already preserved both by the definition of what we mean by "the people on Taiwan" contained in section 101(b), and also by other provisions of this act which relate to the preservation of all rights in both people on Taiwan as defined to mean the "governing authority on Taiwan recognized by the United States prior to January 1, 1979 as the Republic of China; its agencies, instrumentalities, and political subdivisions; and the people governed by it in the islands of Taiwan and the Pescadores."

This amendment is intended to make it clear that, in section 111 when we speak of agencies, instrumentalities, and political subdivisions, we not only refer to the governing authority on Taiwan, heretofore known as the Republic of China, as well as the people governed by it but we refer also to all forms of nonofficial, nongovernmental artificial persons, legal entities, corporations, trusts, and other entities organized under the law applicable on Taiwan.

In order to make that crystal clear, the banks and other enterprises which hold important assets of those entities believe that this particular provision should be included, to remove any possibility of wrong inferences being drawn in respect of any potential actions at law.

I think the amendment only buttresses what we have already said, and I hope it may prove acceptable to the other manager of the bill.

The PRESIDING OFFICER. The Senate will please be in order. The Chair recognizes the Senator from Ohio.

Mr. GLENN. Mr. President, the Senator from New York and the Senator from Florida, in proposing this amendment, I think, have done an excellent job in bringing to our attention a fact on which the committee probably did not put sufficient stress, American interests in Taiwan. Our trade with Taiwan was \$7.2 billion last year, and it is expected to reach \$9 billion to \$10 billion in 1979, \$500 million in private investment in Taiwan.

So I think, in advancing this in the interests of financial stability and in the interests of the banking community that deals back and forth on a daily basis in these huge numbers in Taiwan, I am quite willing to accept this, and I think it is a good addition to our legislation.

Mr. JAVITS. Mr. President, may I say that Senator STONE made his argument for this amendment when he made his speech a little while ago, which immediately preceded action on the preceding amendment.

We are ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. I thank the Chair.

Mr. HELMS. Mr. President, I believe the distinguished Senator from New Hampshire (Mr. HUMPHREY) has an amendment, and I will yield to him.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

UP AMENDMENT NO. 29

Mr. HUMPHREY. I thank the Senator from North Carolina.

Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an unprinted amendment numbered 29.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, line 19, strike out "section 205 (d)" and insert "subsection (c)":

"For the purpose of applying section 102 of this Act to the Internal Revenue Code of 1954, and to any regulation, ruling, decision, or other determination under such Code, the term "people on Taiwan" shall mean the governing authority on Taiwan recognized by the United States prior to January 1, 1979, as the Republic of China and its agencies, instrumentalities, the political subdivisions; except that when such term is used in a geographical sense it shall mean the islands of Taiwan and the Pescadores."

On page 10, strike section 106(a) and insert the following new subsection (a):

"Programs, transactions, and other relations conducted or carried out by the President or any department or agency of the United States Government with respect to

the people on Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through the Liaison Office to the Republic of China (hereinafter "the Liaison Office"). Under such terms and conditions as are consonant with the purposes of this Act, the President shall extend, or enter into an agreement extending, to the Liaison Office to be established in the United States of America by the Republic of China, and to the members thereof, the same privileges and immunities subject to the corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and members thereof, upon the condition that privileges and immunities are extended on a reciprocal basis to the United States Liaison Office on Taiwan at no less than the level established herein."

Strike "Institute" wherever it shall appear and insert in lieu thereof "Liaison Office".

On page 10, strike out section 106(b). Beginning on page 16, line 1, strike all through page 20, line 6.

On page 20, line 17, after the word "Taiwan", strike out "on an unofficial basis". Beginning on line 18, strike all through page 21, line 4.

On page 22, strike out subsection (b) and insert in lieu thereof:

"(b) For purposes of subsection (a), the term 'agreement' includes any agreement entered into between the Liaison Office and the Taiwan authorities or the instrumentality established by the Taiwanese authorities."

Mr. JAVITS. Mr. President, may we ask the Senator a question in connection with this amendment? I note the Senator's amendment affects different parts of the bill. Is it all one idea or are they different.

Mr. HUMPHREY. It is one idea, one field.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, over the years, many polls have been taken on the attitude of the American people toward the China issue. One consistent result has been opposition by a majority of Americans toward the recognition of mainland China at the expense of the Republic of China. Flying in the face of the will of the people, the administration has taken just this action, and we have been brought here now, not to put the finishing touches on the policy that will best protect the security of the western Pacific area, but to salvage whatever is possible to insure the survival of the Republic of China as a free nation.

Next to the question of recognition itself, the most important matter to be determined is the legal nature of our new relations, given the absence of recognition. Thus, today I am introducing an amendment which would eliminate the White House's planned American Institute on Taiwan and establish instead government-to-government relations through an official U.S. Liaison Office in Taiwan.

Mr. President, there are a number of reasons which can be given in favor of this change, and which I will describe during the course of my remarks. But the first and most powerful argument is that of simple fairness.

From 1973 through the end of 1978 our relations with the People's Republic of China were conducted through a liaison

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office. Yet the creation, and later the continued existence, of this liaison office in Peking was strongly supported in a bipartisan manner by three administrations. Moreover, when the concept was first broached, a flurry of legislation occurred in Congress in its support. It was argued that the importance of our relations with the People's Republic of China and the level of contact merited no less than a liaison office. Given the scope of our relations with Taiwan, the argument applies equally to this situation.

I find it astounding that an argument which on its face speaks for itself should be so easily cast aside by the administration.

Many reasons are given, but the fundamental one is fear that government-to-government relations with Taiwan will anger Teng Hsiao-ping.

This is a symptom of the malaise affecting our overall foreign policy. Increasingly, we are permitting our foreign policy to be dictated, not by our national interests or by the factors which will best protect regional security, but by the priorities of other nations, after our adversaries.

Prof. Ray Cline of the Georgetown Institute on Strategic and International Studies, in his testimony before the Senate Foreign Relations Committee, described the President's proposal as "a Chinese fortune cookie baked by Communist Vice Premier Teng Hsiao-ping. It is being handed to you by the White House and the State Department, but the message inside was written by Peking." It is preposterous that we would be allowing the People's Republic of China to dictate our policy toward Taiwan; to say that we have no recourse as the President seems to imply, is a sad statement on our national decline from power.

In many ways it is particularly unfortunate to make Taiwan the victim of our deteriorating foreign policy. The Republic of China has been an unwaveringly loyal ally of the United States, dismissing the benefits which might have accrued to it from an informal alliance with the Soviet Union against the Chinese mainland.

I might add, Mr. President, that while I was in Taiwan some weeks ago, some of us asked a high official of the Republic of China why they had not played their "Russian card."

Their answer was, "You may have given up your principles, but we have not."

Moreover, in only 30 years' time its people have turned a backward island with a rural economy into an Asian showcase of prosperity. All of us who have visited Taiwan have been deeply impressed by the commitment of the Taiwanese to increased economic prosperity and the retention of the freedom they now enjoy. It would be reprehensible for the United States to take any actions that endanger the benefits they have worked so long to reach.

It is ironic that President Carter's change in the U.S. policy is partially based on the premise of recognizing reality. But in practice, in recognizing one reality, that of the PRC, he is turning

his back on two others. On the one hand, he is attempting to ignore the undisputable geographical fact that Taiwan exists, and that 17 million people live on it. Let us put this in context. There are countries with less than one-tenth of Taiwan's population, with less than one-tenth of its GNP; there are tiny countries most Americans never even heard of—all of which the United States sees some value in having relations with. Bearing this in mind, what kind of sense does it make to turn our backs on Taiwan?

The other reality he is ignoring is that, as Dr. Cline explains, there are two Chinese states and two Chinese Governments, and this has been the situation for exactly 30 years. President Carter said we should recognize reality. Reality is duality. The United States needs dual relations, no relationship with Peking, one with Taipei. There is no reason under normal standards of international laws and custom why these relationships should not be equal. Thus, recognizing the existence of the People's Republic of China as a separate entity need not have implied the derecognition of the existence of the Republic of China.

In his excellent minority views on S. 245, the distinguished Senator from North Carolina (Mr. HELMS) argues that there is a "calculated ambivalence" in our new policy "which can be explained only by fundamental intellectual dishonesty." He describes his logic eloquently:

The Institute is an attempt to yoke together two logically contradictory propositions under a semantic gloss in order to avoid the inherent consequences of our actions. The New China policy seeks to deny the juridical existence of the sovereignty exercised by the government of the Republic of China, while at the same time reaping benefits which can be conferred only by recognizing that sovereignty.

Put in other words, the United States wishes to retain such ties as will allow it to pursue its interests, and in connection with these, deal with the elected authorities of the Republic of China, thus tacitly admitting their legitimacy. All the while, however, we will be busy proclaiming that they lack such legality. In summary, we will treat the Republic of China Government as a government, but deny that it is one. Such a policy, as Senator HELMS observes, "can be explained only by fundamental intellectual dishonesty."

The charade we are asked to undertake is a particularly flimsy one considering the strong quasi-governmental underpinnings of the proposed Institute. In virtually every respect it will function as though it were a U.S. agency. Employees will be paid at the same rate as though they were in Government service, and their service will count toward Government pensions. The funding for the Institute will come from the U.S. taxpayers, and audits of its books are to be performed by the Comptroller General of the United States. Finally, the bill provides that "agreements and transactions made or to be made by or through the Institute shall be subject to the same congressional notification, review and approval requirements and procedures as if such agreements were made

by or through the department or agency of the United States on behalf which the Institute is acting."

So it will be a Government agency in everything but name. It will function like one, it will be monitored and funded by Congress as though it were one, and its employees will receive Government-level salaries and benefits out of the U.S. Treasury. But we are nevertheless asked to pretend it is not one, because to do so would irritate our Communist adversaries. It is difficult to accept this nonsense.

Another point can be cited which underscores still further the absurdity of the situation. We still have, and will continue to have for the remainder of the year, a Mutual Defense treaty with Taiwan. How on Earth can a country recognize another for purposes of its defense in the case of a threat, yet refuse to establish a liaison office within its territory? This contradictory logic will have practical implications as well. The necessary military contact growing out of our treaty obligations, as well as of our commitment to provide Taiwan with defensive arms, will be rendered far more difficult by the nature of the ties foreseen by the administration.

Mr. President, the bill which Congress ultimately approves will not settle all questions on the China issue. The need for decisions, many of them crucial, will arise with time and be left to the discretion of the administration. The source of many of these questions will be the administration's ambivalent position on sovereignty over Taiwan. In the Shanghai Communiqué and President Carter's December 15, 1978, statement, the official U.S. position is respectively that of "acknowledging" and "recognizing" that both Chinas feel there is but one China, of which Taiwan is a part. Ostensibly, the use of these terms rather than "acceptance" of this premise on the part of the People's Republic of China puts us in a neutral position. Against this, however, must be weighed our current diplomatic recognition of the People's Republic of China and our rejection of the legitimacy of the Republic of China Government. When this is taken into account, our ostensibly neutral position changes to one close to recognition of the People's Republic of China sovereignty over Taiwan.

Mr. HELMS. Mr. President, will the Senator yield for one moment at that point?

Mr. HUMPHREY. I yield.

Mr. HELMS. I concur with the Senator's amendment. I think it is an important one and would like to have a rollcall vote. I note that there are enough Senators present for a second. Perhaps we could get the yeas and nays on the Senator's amendment, if he wishes.

Mr. HUMPHREY. Very well. I am almost finished, and will be glad to yield then.

Mr. HELMS. All right.

Mr. HUMPHREY. I thank the Senator. Administration statements have done little to reassure this concern. Prof. Ray Cline has colorfully described the spokesmen for the new China policy, in their appearances before the Foreign Relations Committee, as—

bobbing and weaving in the face of . . . questions to avoid making any legal binding governmental commitment to Taiwan's security or permanent ties with the United States.

This situation raises important questions about our reaction to an economic boycott or actual military aggression by mainland China against the Republic of China. Will the United States in fact respond? Or will a determination that the problem is a strictly internal one prevent us, the language in S. 245 notwithstanding, from helping Taiwan?

Having government-to-government relations will not solve this problem by itself, but it will be of significant assistance. It will be acknowledgment of the sovereignty of the Republic of China and the legality of its government.

It can be argued that the Republic of China's recent acceptance of the American Institute on Taiwan obviates any need for further discussion of government-to-government relations. Such a position, however, ignores many of the facts. From the time of the President's announcement on December 15, the Republic of China Government took the firm position that nothing less than relations at an official level would be adequate. It continued to hold staunchly to this position for 2 months. When it finally softened its stand, it was only days away from the March 1 deadline for the old relations to lapse. With so much at stake, including the possibility that the old ties would be replaced by an absolute vacuum, it is safe to presume that the Republic of China was in no position to bargain. Even now, however, its official position remains that government-to-government relations would be preferable.

Mr. President, all this amendment seeks to do is insert some degree of fairness in our future relations with Taiwan. If it was proper to have government-to-government relations with the People's Republic of China at a time when we did not recognize its government, it can be no less proper to have such ties with the Republic of China now that we have withdrawn recognition from it. To have an agency that in every way acts like a government agency but which we are supposed to pretend is a private entity is a sham, and a slap in the face at a loyal ally. We should not let the concerns of mainland China establish the priorities for American foreign policy.

Mr. President, the essence of S. 245 is the acknowledgment by this body of Peking's claim to Taiwan. Those who vote for the American Institute idea and the Taiwan counterpart in this country are saying to the world, "Yes, Taiwan is simply a rebellious province of the People's Republic of China." I reject that, Mr. President. The People's Republic of China has never ruled Taiwan. The free people of Taiwan have no wish to be ruled by the Communists on the mainland.

Mr. President, this American Institute proposal is a sham. The People's Republic of China is not fooled by it; the Republic of China is not fooled by it; the world is not fooled by it; the American people are not fooled by it; and many

Members of this body are not fooled by it.

I repeat, the essence of S. 245 is the acceptance by the U.S. Senate of Peking's contention that Taiwan is merely a rebellious province of the People's Republic of China.

I reject it absolutely, and invite my colleagues to join with me in rejecting the contention by voting for my amendment to S. 245, which amendment would require the liaison office in Taiwan.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. I do not want to preempt the distinguished sponsor of this amendment. Does he desire the yeas and nays on this amendment?

Mr. HUMPHREY. I do, yes.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. HELMS. What the Senator is saying, in effect, is that we had a liaison office previously in Red China, and that was at the time we were recognizing Taiwan. Now it is just why not the reverse?

Mr. HUMPHREY. That is correct. We had a liaison office in Peking. Now the question is why should we do less for our friends than we did for our Communist adversaries.

Mr. HELMS. I will say to the distinguished Senator that a great many Americans are asking that question today in connection with the legislation pending before the Senate. Again, I commend the Senator from New Hampshire for his amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio.

Mr. GLENN. Mr. President, I believe the first thing to be said about the amendment is that we cannot force the Taiwanese to say that there are two Chinas. They have consistently held to their view that it has been only one China, although they were on the island and there were some nearly 1 billion other people of Chinese heritage on the mainland. They have consistently agreed that there were not two Chinas.

The difference between the situation with the liaison office in Peking and the liaison office on Taiwan is very simply one of acceptance by both parties. In the previous situation, when we have maintained an Embassy on Taiwan and a liaison office in Peking.

The Government on Taiwan did not object to that as far as I know. They may have made some comments but there were no serious objections to it. That is not the case now.

The new relationship has been established and predicated on the fact that there would not be that dual recognition of two Chinas by the United States which neither side of the strait agrees with. In fact, the authorities on Taiwan have already accepted the unofficial offices which will be created by the establishment here of a Taiwan Coord-

inating Council on North American Affairs, and which will also serve as counterpart of our American Institute on Taiwan.

I think that the bill we have here, Mr. President, has achieved everything short of the official relations that the distinguished Senator might wish to provide. We are providing immunities and arms sales. At this point, it seems to me that to upset it by mandating a liaison office on Taiwan would only rupture the entire agreement and, in fact, work to the detriment of the people on Taiwan.

We had a discussion earlier this afternoon of the current status of the people on Taiwan. They are in limbo of sorts because we do not have a replacement for the embassy, we do not have the American Institute, and we do not have the appropriations or authorization to transfer the formal embassy funds over to operating that institute. In fact, our trade and commerce that we have right now is in fact in limbo and operating on a day-to-day basis until we get this new institute established.

I would hope that we would not see fit to take a chance of rupturing this entire agreement. I think it would stand an excellent chance of not only being vetoed once we finish our work on it, but I think it would stand an excellent chance of being turned down by the People's Republic of China—even perhaps the people on Taiwan.

I have had two groups visit me in the last few weeks from Taiwan and they are very much concerned that we begin to make this new relationship work, and that our trade patterns not be unduly interrupted with Taiwan.

I am sure that the people of Taiwan would not agree with upsetting things any further than they have already been upset.

Furthermore, one last argument I think is key. U.S. interests have to come to the fore today. Our best interests in this country are certainly not served by twisting the tail of the PRC or furthering any disagreement with them. Since the people on Taiwan have accepted this new relationship and are trying to make it work, I think we would be well advised to go along with what has been provided in this bill and not upset it by trying to re-establish an official diplomatic relationship, even at the low level of a liaison office, which this amendment would do.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. JAVITS. Mr. President, naturally, this amendment could be divided. It is perhaps improper to apply it to the whole act.

For example, it has within it the statement, "strike 'institute' wherever it shall appear and insert in lieu thereof 'liaison office.'" I assume that means throughout the bill. It could be objected to as to form and so forth, but I have no desire to do that, and I will not. That is why I ask the Senator if it is one idea. If it is, we will vote on it as one concept and there is no point in fractionating it.

I am opposed to the concept because, Mr. President, this is really a case of the tail wagging the dog. We have an historic problem. Here are 800 million to 1 bil-

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lion people in the world with whom we enjoy no effective relationship except by sufferance of a liaison office, which was understood to be a threshold proposition leading toward a normalization of relations which was so established. Indeed, I wish to refresh the Senate on a little bit of that history.

The fact is that this subject of a review of our policy with the People's Republic of China was first broached in 1970. I had the honor in that year to be the delegate from the Senate to the United Nations General Assembly. The speech which I wrote on that occasion called for review of our China policy. President Nixon endorsed that speech. He then went further in 1971 by seeking normalization with the People's Republic of China, and then making his famous trip to Peking preceded by that of Dr. Kissinger, which first opened the door to the possibility of normalization.

The liaison office was a step in that process. It was not an isolated thing, nor was it a post script to another relationship, like what it would be with Taiwan.

(Mr. TSONGAS assumed the chair.)
Mr. JAVITS. It was an original action leading up to another state of relationships between us and the People's Republic of China, which has now been consummated. So let us not live in a dream world. We have decided not to butter up the People's Republic. They could not care less whether we butter them up or not. I think we will be treating them rather roughly in days ahead, just as they will be treating us. I assure you, you will not see the end of acerbic criticism in the United Nations or elsewhere by the People's Republic of us, nor by us of them, any more than you see it with the Soviet Union.

But any illusion that we are in some alliance with the People's Republic of China is, in my judgment, out of the question. I would not be for it if that were the case. I do not want an alliance with the People's Republic of China, but I want access to them and I want an opportunity to deal with them as I would deal with any other country. And I want a representative in Peking with as much standing and authority as the Russian ambassador has.

I should like to open up China to journalists, travelers, trade and cultural interchange in a way that is only halting and inadequate when it is left to the liaison office concept. That is why we are doing this. We are not doing this to suit them, we are doing it to suit us.

It was clearly written into the contract which we are now making in terms of recognition that we would accept the special status of Taiwan as they would. This is not a one-way street. There is nothing that would prevent the People's Republic of China from trying to suffocate Taiwan tomorrow, causing us to invoke the mutual defense treaty, I think every Senator who wants to vote for this had better understand that this calls off the deal. That it is not the deal we made.

It could be right, it could be wrong. It could only be semantics or it might be real. But that is the deal we made. So if you want to normalize relations with the People's Republic of China, you can-

not vote for this amendment. If you do not, vote for it, by all means.

I think it is very unwise. I think we should normalize. I think that is essential to our own future in the world. But if you do not want to do it, this is an ideal opportunity to dump it. That is the realistic part of this equation.

As to the mechanics of the liaison office, I think it is very clear that we have had a liaison office with the People's Republic by arrangement. That arrangement was a step in the direction of normalization. That does not equate with a liaison office with Taiwan, because as far as Taiwan is concerned, that would be substituted for an embassy, which is what we had before. That would really be an artificial smokescreen. It would have the same rights, the same privileges, the same duties, except we call it a liaison office. So it defies the whole objective, which is to recognize what both Chiang Kai-shek and Mao Tse-tung always contended—that is, that there is one China, and Taiwan is a province of China—but, at the same time, to protect the economic and social and, indeed, political system on Taiwan.

I think it is a fair settlement and a settlement highly in the interests of the United States. We feel just as strongly, and we made it clear to the People's Republic when we did the deal, that we are going to supply them with arms, but we are not going to let them be subdued by force, direct or indirect. We told the People's Republic, "If you try it, you take us on." Would they not have the right to say the same thing to us? It is not up to us to say that they are arbitrary in not tolerating this as an amendment to the deal, which they will not.

So, in my judgment, we have to make the fundamental decision. That is the fundamental decision. That is their part of the bargain. We are getting our part of the bargain. We are getting in there on a recognized and established basis.

Their part of the bargain is that we should not have an official relationship of an embassy or what is tantamount to an embassy with the people on Taiwan. In my judgment, we have very carefully architected a bill which does everything in substance that we need to do without invalidating the deal. I think the deal is so desirable in the national interests of United States that I do not want to see it invalidated.

Therefore, Mr. President, I am against this amendment and I hope very much that it will be rejected.

Mr. HATCH and Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. Mr. President, at the appropriate time, I shall move to table the amendment. I do not want to shut off debate now. I just want to notify my colleagues that I shall move to table it.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from New Hampshire for his approach here. Frankly, one of the arguments which has been used by proponents of normalization—and I should set the record straight; I am for normalization of relations with mainland China, but not

at the cost of abdicating our responsibilities to the people of Taiwan. I think it is a failure on our part not to recognize 900 million people in this world. But I think there is a way of doing that without necessarily kicking our friends in the teeth or acting in ways which some people in our society and throughout the world have considered to be dishonorable.

As I understand it, all the distinguished Senator from New Hampshire is asking is that we have a very simple process of a liaison office in Taiwan to show that we have not totally rejected these people; that we have not, in our abrogation of the treaty with them, forgotten that they exist; that we do have respect for them and that we should, at least, give them some benefit when you consider that we have done the same for the mainland Chinese for some years since President Nixon allowed it to occur.

I do not think establishing a liaison office necessarily has to destroy the relationship with mainland China. I am not sure that that argument really should be offered. But if that is the way it is, then, as far as I am concerned, so be it, because that is not too much to ask of this great Nation, to recognize that we do have a moral commitment to the people on Taiwan and that a liaison office may help us to keep those moral commitments alive and the trade relationship which has existed in response to those moral commitments and many promises through the years in a good legal status.

I should like to join as a cosponsor in this amendment. It is not with a desire to scuttle any reasonable recognition of the mainland Chinese; it is with a desire not to scuttle the moral commitment that we have to the people on Taiwan, and our desire to recognize that we have entered into some 59 trade agreements with them in response to many moral commitments by many Presidents of this country who have indicated that we will not let them down, that they will always be our friends, and that we will always be committed to them.

In my humble opinion, we have let them down, and to not even have a liaison office, it seems to me, in our fear that we might not be able to sell Coca-Cola or have business or even have a political relationship, which would be higher than the prior two categories with the people of mainland China would be, I think, is pretty shortsighted on our part.

I have also been interested in the argument which has always been made by those who are proponents of recognition of mainland China that both Taiwan and mainland China want a one-China policy. Well, that is hardly the way to put it. I think that that is an overglossing of what both of them want. Taiwan wants a one-China policy as long as Taiwan controls that one China. Mainland China wants a one-China policy so long as mainland China controls that one China. As I view it ethically, philosophically, and mathematically, that means a two-China policy, because there are two different entities here who want to be dominant and who want to control that one China.

I do not believe, from having chatted with a great number of Taiwan people,

that they would be dissatisfied with this amendment. As a matter of fact, I had great reason to believe that they would be very pleased, under present circumstances, that we would favor them to this limited extent, especially since we have disfavored them to such a great degree. I do not care what anybody says about this issue; we all have to look at it with, at least a certain degree of shame—the way it occurred, the timing in which it occurred, the process in which it occurred, the zealous approach to achieving economic advantage, and the loss of prestige which has inevitably resulted.

I would like to see this simple amendment passed. I do not think it would destroy our relationship with Teng Hsiao-ping. If it does, then it seems to me that relationship is too tenuous to begin with. I do not think the U.S. Senate needs to clamor after it, the satisfactions desired so much by Teng Hsiao-ping and other leaders on mainland China. Nor should we ignore the responsibilities we have, perhaps, to recognize mainland China just because some people on Taiwan feel that that should never have occurred.

I think there has to be balance in this matter and the problem, as I see it, is that we do not have a balance. We have a one-sided view, a one-sided philosophy, controlled by those who are, it seems to me, desirous of establishing this relationship at all costs under the present circumstances.

Who am I to criticize that viewpoint because my fellow Senators did not create these circumstances?

We now have to resolve what has been a fait accompli by an administration which disregarded the prestigious Senators on the Hill and the prestigious Members of Congress who had made a very important request prior to our adjournment of the 95th Congress, and that request was simply to be consulted before the President normalized relationships with mainland China.

What bothers me is that not only were we not consulted, but it was so flagrant in the way we lacked consultation, and, in process, we have fallen all over ourselves to support this one-sided approach, to the detriment of our long-term friends, and I think to the greater detriment of ourselves, in the spirit of world peace.

I really believe the Senator from New Hampshire, for his first amendment on the floor of the Senate, can be very proud as he stood up for principle, albeit a very reasonable, modest request, after the fait accompli has occurred.

I think he deserves praise for that and he deserves, I think, support for that.

As a freshman Senator, I know how difficult it is to stand up and bring forth a first amendment.

This is no earth-shaking amendment. All it is, is a simple recognition that we have to continue business, we have to continue a modest relationship, we have to continue to try to be moral with regard to the people on Taiwan. Perhaps the best legal way to do it without totally slapping mainland China in the face, because nobody wants to do that, is to have a liaison office, a simple liaison office which we have already established a precedent for in mainland China.

I commend the Senator from New Hampshire. I hope this will be the first in a great number of well thought-out amendments which may very well do a great deal to help our country to be morally secure and more acceptable in the world of nations and among our fellowmen, especially in this country, sending a message to both Taiwan and Mainland China, which I consider to be not only a reasonable message, but an essential message.

I ask unanimous consent that I be added as a cosponsor on this amendment.

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

Mr. HATCH. I thank the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. I will wait for the Senator from North Carolina, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, what we are doing in this Senate is this: we are playing a game with Taiwan. It is called, "Heads Peking wins, tails Taiwan loses." No other face can be put on it.

I say that with all due respect to my friends who differ on this issue, but I think there are several things that need to be clarified. There has even been an attempt to blame Taiwan for the intemperate actions of U.S. policy.

For example, some administration apologists have glossed over history with respect to the diplomatic history of Taiwan and asserting that Taiwan has been "adamant" with respect to the one-China concept.

Now, historically, the position that Taiwan has been taking is that there is one China with two governments claiming to be sovereign. But from a practical standpoint Taiwan has tacitly admitted that the Government of the Republic of China does not control the mainland. If we forget that, then we are implicitly saying, "Well, there is nothing to this business of East Germany and West Germany, there is nothing to this business of North Korea and South Korea," and so forth. The implication of that is very clear, I think, to millions of Americans who are already concerned about the sell-out of Taiwan and the failure by the President of the United States or his advisers—and I hope it was the latter—even to have the courage to negotiate on the question of our relationship with both Chinese Governments.

Mr. President, I had the unpleasant duty of voting against Mr. Woodcock as first Ambassador to Peking. I did that out of no personal aversion to Mr. Woodcock. He is a very pleasant gentleman, very intelligent. But he sat in my office and he made clear that the judgment had been made not even to raise the question of the use of force against Taiwan, let alone the continued recognition of Taiwan.

But does any Senator on this floor know how such a negotiation would have come out? Just suppose we had maintained the integrity of our commitment to our friend and ally, Taiwan? I am concerned that there was no need, let alone any moral excuse, for selling out our

friend and ally. Moreover, nothing could be clearer than the fact that China—Red China—needed us—not the other way around.

But a more important question is, how timid are we going to be as a Nation? Have we reached the point that we are trembling and fearful in a diplomatic confrontation with a Communist country that we do not even bring up the issues we consider important, no matter how much morality is involved in it, no matter how much obligation we have to a loyal friend and ally?

My own gut instinct about it, Mr. President, is that America has shamed itself before the world, and I do not blame the few remaining friends that we have for wondering what will happen to them—and I include Israel and Lebanon, South Africa, Japan, and even Europe in that.

But this glossing over of Taiwan's position with respect to "one China" needs to be examined a little bit more closely than it has been on this floor.

I have at hand the November-December issue of a publication known as "Asian Affairs and American Review." The edition is dated November-December 1977, a year before the ill-considered decision by President Carter to break relations with Taiwan.

Like the Senator from Utah, I have no objection to recognizing the reality of Red China. I do not know of any Senator who does. My problem is what the President has done to Taiwan.

In this issue of "Asian Affairs and American Review," is an article entitled "Normalizing Relations with China: Some Practical and Legal Problems," by Hungdah Chiu, who is a professor of law at the University of Maryland School of Law. On page 72, Professor Chiu has this to say, with respect to the position that Taiwan has taken concerning one China:

Now let us turn to the PRC's claim to Taiwan. While the legal arguments summarized above would support the ROC's claim to Taiwan, the same arguments would not support the PRC's claim to Taiwan, for several reasons. In the first place, the PRC has denied the validity of both Japanese peace treaties mentioned above. On August 15, 1951, before the San Francisco treaty was signed, Premier Chou En-lai denounced the proposed treaty as "illegal, and therefore null and void." On May 5, 1952, after the treaty entered into force, Chou again repudiated it as "completely illegal." Peking can hardly claim any benefit from a document which it considers to be "illegal and void." Moreover, after Japan's renunciation of its claim, to Taiwan, the PRC could not acquire title over the island through the international law principle of occupation, because it had no physical control over the island. Nor could the PRC act through the ROC occupation to claim title over Taiwan because it considers the ROC government to be an "illegal group" or even "bandits." Clearly, a government can no more claim benefits through a regime which it does not recognize as legal than it can through a document which it has declared illegal and void.

Some PRC writers have argued that because Taiwan was originally Chinese territory, a peace treaty is not necessary to transfer title back to China, especially since the Treaty of Shimonoseki ceding Taiwan to Japan was abrogated as a result of the outbreak of the Second Sino-Japanese War in 1937. International practice, however, does

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not support the Chinese position. The provinces of Alsace and Lorraine, for example, were originally French territory, but were ceded to Germany in 1871. Subsequently, they were returned to France through the Treaty of Versailles signed between the Allied and Associated Powers (including France) and Germany on June 28, 1919. In other words, French sovereignty over its former territory did not automatically revert after World War I, but required the formal treaty mechanism. There does not appear to be any precedent or principle of international law supporting the PRC position that on October 25, 1945, Taiwan was restored to China *de jure* and *de facto*.

If this is correct, then the PRC's claim is primarily based on the theory of historical irredentism. PRC writers and officials have frequently argued that Taiwan is historically Chinese; and that during the Japanese occupation (1895-1945), the people of Taiwan longed for reunification with China. But while this is an undoubted historical fact, it can hardly support the PRC's claim to Taiwan today. In the first place, during the period of Japanese occupation, China was run by a government which permitted a free enterprise economy, and society was relatively free. If the people of Taiwan had known at the time that mainland China would become the totalitarian, highly regimented society it is today, it is unlikely that they would have longed so fervently for reunification. The fact that very few people from Taiwan participated in the Communist movement in China during the Japanese occupation period seems to support this point. And today, it seems abundantly clear that the vast majority of the people on Taiwan do not want to be united with the PRC.

Second, according to Edgar Snow, who was a close friend, Mao Tse-tung himself did not include Taiwan among China's "lost territories" to be regained from Japan. In an interview at Yen-an on July 16, 1936, Mao said: "If the Koreans wish to break away from the chains of Japanese imperialism, we will extend them our enthusiastic help in their struggle for independence. The same thing applies for Formosa." Third, the doctrine of self-determination is now an accepted principle of international law, and one that has not been opposed by the PRC. This principle would certainly overrule any historical claim of the PRC toward Taiwan, since the great majority of the people of Taiwan now clearly oppose unification with the PRC.

In the 1972 Shanghai Communiqué, the United States declared: The United States acknowledges that all Chinese on either side of Taiwan Strait maintain there is but one China and Taiwan is a part of China. The United States government does not challenge that position.

Some people have argued that the United States has thereby accepted the PRC's claim to Taiwan in the Shanghai Communiqué. But this is certainly not true. The phrase "does not challenge" is not equivalent to a recognition of the PRC claim. This interpretation was also confirmed by a high official of the US government. Soon after the issuance of the Shanghai Communiqué, Assistant Secretary of State for East Asian and Pacific Affairs Marshall Green denied that it represented any change in the position held by the United States since 1950, namely, that the status of Taiwan was as yet undetermined. Moreover, it was disclosed recently that at the time of negotiating the Shanghai Communiqué, then Secretary of State Kissinger wanted to accept the PRC's position on Taiwan by stating in the Communiqué that the United States "accepts" rather than "does not challenge" the belief of "all Chinese" in one China. But he was rebuffed in that attempt, possibly by President Nixon.

A question closely related to the legal

status of Taiwan is the ROC's claim to the mainland of China. If the ROC continued to make an *unconditional* claim to sovereignty over the mainland now controlled by the PRC, then, despite the special legal status of Taiwan, there would be no reason to question the PRC for making a similarly *unconditional* claim to sovereignty over Taiwan.

I interject to say that that is merely plain commonsense. Professor Chiu continues:

Since its removal to Taiwan, however, the ROC has gradually imposed important limitations on its claim to the mainland. In the first place, treaties which were formerly applicable to all of China were tacitly revised to limit their application to Taiwan. For instance, the 1946 treaty of friendship, commerce, and navigation between the United States and the Republic of China has not been applicable to mainland China since the early 1950s.¹¹ Similarly, new treaties or agreements concluded since 1950 have all been limited in their application to the Taiwan area. For example, the 1954 mutual defense treaty with the United States provides in Article VI: "For the purposes of Articles II and V, the terms 'territorial' and 'territories' shall mean in respect of the Republic of China, Taiwan and the Pescadores."

Second, the ROC has pledged, in an exchange of notes accompanying the 1954 mutual defense treaty, not to use force against the mainland without the consent of the United States. Third, in a joint communique issued by President Chiang Kai-shek and US Secretary of State John Foster Dulles on October 23, 1958, the ROC publicly made a more general pledge not to use force against the mainland. It states:

The government of the Republic of China considers that the restoration of freedom to its people on the mainland is its sacred mission. It believes that the foundation of this mission resides in the minds and the hearts of the Chinese people, and that the principal means of successfully achieving its mission is the implementation of Dr. Sun Yat-sen's three people's principles (nationalism, democracy, and social well-being), and not the use of force.

This pledge of the nonuse of force to achieve national unification was confirmed recently by a statement of the ROC Foreign Minister, Shen Chang-huan, on July 1, 1977, in which he said:

It has been the consistent position of the government of the Republic of China to carry out its responsibility of delivering our 800 million compatriots from Communist tyranny by political means, while the Chinese Communists have never given up their design to "liberate" Taiwan by force. The "peace settlement" theme being harped on by the Chinese Communists is but an attempt on their part to forcibly impose their tyrannical rule on the 16 million Chinese on Taiwan.

In view of the above analysis, it seems clear that the ROC has, in fact, suspended its claim to the Chinese mainland by renouncing the use of force to achieve unification. The PRC, however, still insists on the use of force to "liberate" Taiwan—a territory to which it does not have a clear legal title. Such "liberation" by force is prohibited by international law, and by the Charter of the United Nations, as an attempt to vindicate a claim to territory by the use of force.

So I say to the Senator from New Hampshire: How does any Senator in this body get away with saying, "Oh, well, Taiwan was adamant that there would be one China and so there had to be one China or nothing"? The trouble with that is that it simply is not so, and

history proves what Taiwan's position has been.

No matter what we do about the Taiwan issue, let us at least be fair to Taiwan. Let us be historically accurate as to Taiwan's position. We have done enough to a great ally by the abrogation of the mutual defense treaty. We have done enough to the people on Taiwan by turning our backs on them. Let us not compound the problem by misrepresenting the history of Taiwan's position.

So again I compliment my friend from New Hampshire for submitting this amendment, his first amendment in his career as a U.S. Senator and his enlightening elucidation of it. It is a good amendment; it is a simple amendment. The amendment simply says, "Let us treat one government as we have treated the other. We had a liaison office in Peking when we did not recognize Peking. So now that the President, in his wisdom—or lack of it—has broken relations with Taiwan, let us at least be as fair to our friends on Taiwan, and have a liaison office there."

What is wrong with that? Who really can argue with that—unless we want to continue this posture of timidity, this business of trembling so fearfully in confrontation with a Communist country? Do we really want to stop being Americans?

I do not know about other Senators, but this Senator thinks it is time for the Senate to demonstrate a willingness and the backbone to stand with our friends. At a very minimum, surely we must refuse to participate in selling our allies and friends down the river.

I compliment the Senator from New Hampshire. I hope that the distinguished managers of this bill will change their minds about a tabling motion and let there be an up and down vote. But in the event there is a motion to table, I hope Senators will reject the motion.

Mr. MORGAN. Mr. President, it is with considerable reluctance that I am participating in the discussion of S. 245, the Taiwan Enabling Act. My reluctance is predicated on two reasons: First, our act postpones but nevertheless formalizes the demise of Taiwan as a free and democratic nation, and second, we are forced to react to a situation that could have been avoided.

We should be under no illusion that, however well-intentioned our bill is, it acknowledges the fact that Taiwan is an integral part of Communist China, and that Taiwan's own communication is only a question of time. There is no historical evidence to indicate that a Communist and a democratic-capitalist regime can coexist within one state. The history of the Soviet Union and of Vietnam points to absorption; the continued separation of the two Germanies, the two Koreas and the two Yemens points to the unbridgeable gap between the two systems. Consequently, when S. 245 seeks to insure a continuity in the relations between two democratic nations, it is merely attempting to achieve the desirable goal of postponing the inevitable: the eventuality of a Communist Taiwan. Let us not be deluded but that we are only gaining a temporary respite with this bill

and not a permanent solution. In Vice-Premier Deng Xiaoping's words, "The liberation of Taiwan is but a matter of time."

What concerns me, Mr. President, is that we maneuvered ourselves into this situation which by no means was unavoidable. In our haste to recognize the People's Republic of China, we are willing to accept Peking's so-called compromise of letting us live in a make-believe world for a little while longer while they are reaping the benefits of recognition far in excess of their own gesture. The PRC's four modernization goals need American investment, trade, and technical know-how. Their present hostility toward the Soviets demanded a closer association with the United States, easier access to military equipment and the neutralization of our 7th Fleet in the Taiwan Straits. The antihegemonial clause served the same purpose, as did the premature visit of the Vice Premier to Washington and American forbearance of the Chinese invasion of Vietnam.

In all honesty, Mr. President, what we have gained with our recognition of the PRC at this time aside from some monetary rewards and the potential of future trade is nil. We did not bargain for Taiwan's independence or at least autonomy, we lost a friend, we lost credibility, and we lost a useful ally and an island of strategic importance. The entire evolution of this matter must be characterized with what Evans and Novak described as "diplomatic masochism."

These are the reasons, Mr. President, why I am reluctant to engage in this debate. We seem to have no choice if we value our friends in Taiwan but to agree to the Enabling Act which, let me emphasize again, can create only a rather transient facade of normalcy. Our recognition of the PRC acknowledges that Taiwan is a mere province of China, and its ultimate fate is inextricably linked to that of Peking. Under these circumstances, it appears to me that we must seek to accomplish three objectives: security for Taiwan, protection of American economic interests, and maintenance of Asian-Pacific stability. Are the provisions of S. 245 the best contribution toward these goals?

In section 101 of the bill, we are in effect saying that we will accord to Taiwan all the sovereign privileges, short of diplomatic recognition, as if it were a state. Since our administration acknowledges Taiwan to be a province of China, we are placing ourselves in a rather untenable position that can easily be challenged by Peking and the international community. It also creates a questionable precedent. Given the facts as they are, however, I cannot see a viable alternative. But let us not deceive ourselves, we are establishing a legal anomaly that can only be sustained as long as we are prepared to back it up.

Section 112 of the Enabling Act seeks to secure continuity in our economic relations with Taiwan by maintaining the services of the Overseas Private Investment Corporation. This is a laudable objective as long as Taiwan can maintain its free market society and can protect

foreign investment on equitable terms. Somehow, this ought to be expressed as a precondition for our assistance and, to the extent that the benefits of free enterprise are advantageous to Peking, will also be respected by the PRC. The transition of Taiwan's economy toward a State-directed and managed economic system will be gradual as its trade with the mainland expands and Peking demands ideological concessions in return. For this reason, Congress and the American business community may require more frequent analytic reports from the President than the 5 years stipulated in section 112(c).

Can Taiwan's security be assured with the delivery of some defensive weapons? Again, Mr. President, we are conjuring an illusion of security that cannot really be taken seriously. Shipment of arms to enhance a self-defense capability, as requested in section 114(b)(2), may raise the cost of invasion but cannot prevent it. Punitive actions, as we have recently seen in Vietnam, may be contemplated at a prohibitive price of lives and material. In addition to the transfer of weapons systems, we should endeavor to increase Taiwan's productive capacity in the arms field. Although the PRC can be expected to expand its military potential at a greater pace, we can at least insure for Taiwan a measure of independence in armament production.

Still, Taiwan's ultimate security will depend upon the United States and our willingness to become directly involved in any future conflict. Are we prepared to do that, Mr. President? The Enabling Act, in section 114, views force and any other form of coercion with "grave concern" and directs the President to inform Congress, and to meet dangers "in accordance with constitutional processes. Can such language act as a sufficient deterrent to armed aggression? Can we prevent an all out subversion of Taiwan's political system and its people?

To my mind, Mr. President, only an unequivocal statement that any change in the status quo of Taiwan would be detrimental to our own security interests, could possibly serve this purpose. Such an assertion would be in line with the posture statement for fiscal year 1979, by Gen. George S. Brown, Chairman of the Joint Chiefs of Staff, that "the Location of the * * * Republic of China (makes it) important to the United States in peacetime and militarily significant in wartime." Taiwan has been an essential element of our vital military presence in the Western Pacific, both in terms of its direct military value to us and in its linkage to our security commitments to our friends and allies in that region.

In the end, however, our most effective deterrent may not be of a military nature but simply economic leverage. Peking should be placed on notice that commerce, trade, credit, and overseas training opportunities will be terminated in the event of hostile actions against Taiwan. If China treasures its modernization program as much as it professes to, Taiwan will be relegated to be of mere symbolic significance. Thus the question arises as to how long the

PRC will prefer our credits and technology to a military incorporation of Taiwan. The initial approach to an answer must be to establish a clear linkage between the well-being of the PRC and the security of Taiwan.

Mr. President, completely absent from the Enabling Act, for obvious reasons, is reference to the termination of the Mutual Defense Pact with Taiwan. Although it may not be germane within the context of our debate today, the rather abrupt ending of a security treaty, and the consequences for our own interests, do deserve further consideration. While the President should have sufficient flexibility for conducting our foreign policy, I am favorably inclined to the view that Congress is entitled to be given reasonable notice when a treaty termination is contemplated. No one likes unpleasant surprises whether it is Taiwan or the U.S. Congress.

Finally, Mr. President, this leaves the question of whether our new arrangement with Taiwan adds to the stability of the West Pacific region. I cannot help but be rather pessimistic about the answer. The future of Taiwan cannot, and should not be viewed in isolation. By voting for the Enabling Act, we must inevitably consider the consequences it can have for the area between Vladivostok and Jakarta. Our policy has been characterized by successive ad hoc moves which are difficult to fit into a cohesive pattern. Our Philippine base negotiations were apparently successfully concluded despite our disenchantment with martial law rule. Our troop withdrawal from Korea appears to be an on-again, off-again proposition. We declare our half-hearted support for the Association of Southeast Asian Nations, ASEAN, although it is the best thing we have going for us in that part of the world. Thailand is reassured of our adherence to the 1954 Manila Pact despite the fact that we are reducing our presence in the area. Japan's defense is guaranteed and yet we are dismantling the security sphere mentioned in article VI of our Mutual Defense Treaty. And I could go on pointing to apparent inconsistencies. Perhaps our situation can best be described by what Harvard Prof. Stanley Hoffman called "The Perils of Incoherence." And there definitely are perils, Mr. President.

As for ourselves, the unavailability of Taiwan will greatly complicate and potentially weaken our defense posture in the Pacific. We must reassess the bases, control points, intelligence assets, and logistics lines still at our disposal. We must make adjustments to our remaining capabilities so that we can still present credible defense assistance to our allies in the Pacific.

The Chinese connection will remain rather tenuous. In the case of Vietnam, the Peking leaders have demonstrated an absence of foreign policy predictability which will not be conducive to sound future relations. As a matter of fact, it is not difficult to anticipate a more permanent Soviet presence in Vietnam to counteract more rapidly any future Chinese incursions.

The Sino-American rapprochement has no doubt increased Soviet insecurity

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in East Asia. It has already led to a strengthening of its Pacific Fleet and to a more active base development in the Kurile Islands. Our carefully balanced approach to the Soviet Union appears to be in danger, and not entirely unintentionally. Vice-Premier Deng Xiaoping, when addressing the 3d Plenary Session of the Chinese Communist Party Central Committee on July 20, 1977, said, "we belong to the Marxist camp. They want to use the split between us and the U.S.S.R. to destroy the world socialist system. Why can't we take advantage of the contradiction between them (the United States and the Soviet Union) and initiate actions that would be favorable to our policy?" To my mind, Mr. President, they are beginning to succeed.

I have little doubt that our treatment of Taiwan has aggravated our security posture in East Asia. Our friends in the region will need more than verbal reassurance: They need evidence of our resolve to remain a Pacific power. There should be no recognition of North Korea until China is willing to do likewise in South Korea. Japan needs encouragement to channel more of its resources into self-defense and to take a greater interest in the economic development of Southeast Asia. ASEAN requires more than our paternal benevolence to prosper as a viable regional organization. And ultimately, we must make a constructive effort to bring all nations of the area into a mutually beneficial relationship.

In conclusion, Mr. President, I support S. 245, the Taiwan Enabling Act, not because it is the best that we can do for a friend and trusted ally, but because I see no realistic alternative.

UP AMENDMENT NO. 29 (AS MODIFIED)

Mr. HUMPHREY. Mr. President, I send to the desk a technical correction to my amendment and I ask unanimous consent that it be so modified.

The PRESIDING OFFICER. Is there objection to the modification? If not, it is so ordered.

The amendment, as modified, is as follows:

On page 8, line 19, strike out "Section 205 (d) and insert in lieu thereof "section 101 (c)".

On page 8, following line 25, add a new subsection (c).

"For the purpose of applying section 102 of this Act to the Internal Revenue Code of 1954, and to any regulation, ruling, decision, or other determination under such Code, the term "people on Taiwan" shall mean the governing authority on Taiwan recognized by the United States prior to January 1, 1979, as the Republic of China and its agencies, instrumentalities, the political subdivisions; except that when such term is used in a geographical sense it shall mean the islands of Taiwan and the Pescadores."

On page 10, strike section 106(a) and insert the following new subsection (a):

"Programs, transactions, and other relations conducted or carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by it through the Liaison Office to the Republic of China (herein after "the Liaison Office"). Under such terms and conditions as are consonant

with the purposes of this Act, the President shall extend, or enter into an agreement extending, to the Liaison Office to be established in the United States of America by the Republic of China, and to the members thereof, the same privileges and immunities subject to the corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and members thereof, upon the condition that privileges and immunities are extended on a reciprocal basis to the United States Liaison Office on Taiwan at no less than the level established herein."

Strike "Institute" wherever it shall appear and insert in lieu thereof "Liaison Office".

On Page 10, strike out section 106(b).

Beginning on page 16, line 1, strike all through page 20, line 6.

On page 20, line 17, after the word "Taiwan", strike out "on an unofficial basis". Beginning on line 18, strike all through page 21, line 4.

On Page 22, strike out subsection (b) and insert in lieu thereof:

"(b) For purposes of subsection (a), the term "agreement" includes any agreement entered into between the Liaison Office and the Taiwan authorities or the instrumentality established by the Taiwanese authorities."

Mr. HUMPHREY. Mr. President, I thank the senior Senator from North Carolina and the Senator from Utah for their remarks supporting my amendment, and I would like to address myself very briefly to the remarks of the distinguished Senator from New York.

The distinguished Senators from New York and Ohio are men against whom I do not stand up here to do verbal battle, men who are more skilled at this point than I am in that field. After all, I am No. 100 in this body.

But I do want to say yes, there is a fundamental question here—in fact, there are very fundamental questions involved in this amendment, the most fundamental of which is, "Shall the United States sell out on the installment plan its ally in Taiwan, the Republic of China?" And I say, "No," and I say further, without my amendment to S. 245, that is exactly what this body will do if it chooses to pass that bill.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. I was just going to move to table.

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum.

Mr. HELMS. Mr. President, if the Senator will withhold that—

Mr. HUMPHREY. I will withhold it.

(Mr. HELMS and Mr. JAVITS had a colloquy, which is printed earlier in today's RECORD, by unanimous consent.)

Mr. HELMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. Does the Senator from New Hampshire insist upon his point of order?

Mr. HUMPHREY. No.

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Is there a point of order pending?

The PRESIDING OFFICER. It has been withdrawn. The Senator is recognized.

Mr. DOLE. Just let me say very quickly, I know we have other amendments and there are other matters pending, but I support the efforts of the distinguished Senator from New Hampshire.

The Senator from Kansas, on the opening day of this Congress, introduced two amendments to clarify our relations with the Republic of China. It seems to me that it is a legal fiction that we are talking about, that everyone suggests they want normalization to proceed, and we are also concerned that somehow we might revoke or upset that delicate relationship we have with the People's Republic of China, that we have had a long relationship of friendship and alliance with the Republic of China which has served well our strategic interests in Asia and the Pacific, and that certainly under such conditions the statements suggested by the distinguished Senator from New Hampshire for clarification would be appropriate. So I commend the distinguished Senator for his efforts, and support them.

Mr. JAVITS. Will the Senator from Ohio seek recognition, and yield to me?

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. GLENN. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I know we are ready to vote, and I do not want to stand in the way of a vote, but I think we ought to have all the facts before us as one thing is being overlooked.

The argument has been made that we will irritate them a little more. My argument is that we will have vitiated the agreement with them, of which this is an aspect.

Why do I say that? Because the joint communique issued on December 15, 1978, which is the deal, says so. Let me read it. The President announced it, and it reads as follows:

The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979.

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

The United States of America and the People's Republic of China reaffirm the principles agreed on by the two sides in the Shanghai Communiqué and emphasize once again that:

Both wish to reduce the danger of international military conflict

Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony.

Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

Both believe that normalization of Sino-American relations is not only in the interest of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

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The United States of America and the People's Republic of China will exchange Ambassadors and establish Embassies on March 1, 1979.

That is why I say what I do. The argument is very clear. Senator HATCH says, "If that is the way it is, then, as far as I am concerned, so be it." To wit, that is the end of the deal.

Senator HUMPHREY says if the Chinese consider this to be a breach of the deal, so be it, the deal is breached. The rest of us, I hope, will see that when you lay one issue beside the other, especially in view of the reservation which we made and which we are now implementing, it is very different, and that one is an elephant and the other a somewhat lighter animal.

In other words, we have to make a choice here whether or not we will go through with this deal on the basis of unofficial dealing with Taiwan. That is what we are doing, and I think extremely effectively legally.

I call attention to the preemption clause in this bill, which makes this bill the paramount law, whatever may be the District of Columbia law if we are going to organize a District of Columbia corporation. So this bill will be paramount.

Either we make the deal or we do not. I believe the geopolitical situation of the world, of which we are such a key part, makes this highly desirable in our national interest.

But let us call it what it is. The deal is off or it is on. We ought to be honest enough, if we want the deal, to keep it. If we do not want the deal, we can junk it. I think that is what this amendment is all about.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I concur completely with the remarks of the distinguished Senator from New York. I think if this amendment were to pass, we will have ruined our relations with Taiwan and killed any relations we have with the PRC—resulting in the worst of both worlds, really. I do not see that there would be any advantage to us.

The people of Taiwan I have talked with—the two Government groups that have come through my office in the last couple of weeks—have indicated a desire to get on with this new relationship under the institute and their coordinating council here.

I think the hazards of this amendment are that it would, in effect, kill the whole normalization process, as I see it.

Mr. GOLDWATER. Mr. President, may I ask the chairman if the so-called Shanghai communique, or Shanghai letter, has been printed at any point in any RECORD?

Mr. GLENN. Not in this debate, it has not.

Mr. GOLDWATER. Does the Senator know if it is available?

Mr. JAVITS. Yes, I have it right here.

Mr. GOLDWATER. The reason I raise the question, as I discussed earlier with Dr. Kissinger, he told me that after President Nixon's visit to China there had been no determination on what to do with Taiwan. I am trying to find the letters he has written to me, and I think

it would be a good idea to make the Shanghai communique a part of the record.

Mr. GLENN. I ask unanimous consent that it be printed in the RECORD.

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

TEXT OF UNITED STATES-PEOPLE'S REPUBLIC OF CHINA COMMUNIQUE ISSUED AT SHANGHAI, FEBRUARY 27, 1972

President Richard Nixon of the United States of America visited the People's Republic of China at the invitation of Premier Chou En-lai of the People's Republic of China from February 21 to February 28, 1972. Accompanying the President were Mrs. Nixon, U.S. Secretary of State William Rogers, Assistant to the President Dr. Henry Kissinger, and other American officials.

President Nixon met with Chairman Mao Tse-tung of the Communist Party of China on February 21. The two leaders had a serious and frank exchange of views on Sino-U.S. relations and world affairs.

During the visit, extensive, earnest and frank discussions were held between President Nixon and Premier Chou En-lai on the normalization of relations between the United States of America and the People's Republic of China, as well as on other matters of interest to both sides. In addition, Secretary of State William Rogers and Foreign Minister Chi Peng-fei held talks in the same spirit.

President Nixon and his party visited Peking and viewed cultural, industrial and agricultural sites, and they also toured Hangchow and Shanghai where, continuing discussions with Chinese leaders, they viewed similar places of interest.

The leaders of the People's Republic of China and the United States of America found it beneficial to have this opportunity, after so many years without contact, to present candidly to one another their views on a variety of issues. They reviewed the international situation in which important changes and great upheavals are taking place and expounded their respective positions and attitudes.

The U.S. side stated: Peace in Asia and peace in the world requires efforts both to reduce immediate tensions and to eliminate the basic causes of conflict. The United States will work for a just and secure peace: just, because it fulfills the aspirations of peoples and nations for freedom and progress; secure, because it removes the danger of foreign aggression.

The United States supports individual freedom and social progress for all the peoples of the world, free of outside pressure or intervention. The United States believes that the effort to reduce tensions is served by improving communication between countries that have different ideologies so as to lessen the risks of confrontation through accident, miscalculation or misunderstanding. Countries should treat each other with mutual respect and be willing to compete peacefully, letting performance be the ultimate judge. No country should claim infallibility and each country should be prepared to re-examine its own attitudes for the common good.

The United States stressed that the peoples of Indochina should be allowed to determine their destiny without outside intervention; its constant primary objective has been a negotiated solution; the eight-point proposal put forward by the Republic of Vietnam and the United States on January 27, 1972 represents a basis for the attainment of that objective; in the absence of a negotiated settlement the United States envisages the ultimate withdrawal of all U.S. forces from the region consistent with the aim of self-determination for each country of Indochina.

The United States will maintain its close ties with and support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. The United States places the highest value on its friendly relations with Japan; it will continue to develop the existing close bonds.

Consistent with the United Nations Security Council Resolution of December 21, 1971, the United States favors the continuation of the ceasefire between India and Pakistan and the withdrawal of all military forces to within their own territories and to their own sides of the ceasefire line in Jammu and Kashmir; the United States supports the right of the peoples of South Asia to shape their own future in peace, free of military threat, and without having the area become the subject of great power rivalry.

The Chinese side stated: Wherever there is oppression, there is resistance. Countries want independence, nations want liberation and the people want revolution—this has become the irresistible trend of history. All nations, big or small, should be equal; big nations should not bully the small and strong nations should not bully the weak. China will never be a superpower and it opposes hegemony and power politics of any kind. The Chinese side stated that it firmly supports the struggles of all the oppressed people and nations for freedom and liberation and that the people of all countries have the right to choose their social systems according to their own wishes and the right to safeguard the independence, sovereignty and territorial integrity of their own countries and oppose foreign aggression, interference, control and subversion. All foreign troops should be withdrawn to their own countries.

The Chinese side expressed its firm support to the peoples of Vietnam, Laos and Cambodia in their efforts for the attainment of their goal and its firm support to the seven-point proposal of the Provisional Revolutionary Government of the Republic of South Vietnam and the elaboration of February this year on the two key problems in the proposal, and to the Joint Declaration of the Summit Conference of the Indochinese Peoples. It firmly supports the eight-point program for the peaceful unification of Korea put forward by the Government of the Democratic People's Republic of Korea on April 12, 1971, and the stand for the abolition of the "U.N. Commission for the Unification and Rehabilitation of Korea."

It firmly opposes the revival and outward expansion of Japanese militarism and firmly supports the Japanese people's desire to build an independent, democratic, peaceful and neutral Japan. It firmly maintains that India and Pakistan should, in accordance with the United Nations resolutions on the India-Pakistan question, immediately withdraw all their forces to their respective territories and on their own sides of the ceasefire line in Jammu and Kashmir and firmly supports the Pakistan Government and people in their struggle to preserve their independence and sovereignty and the people of Jammu and Kashmir in their struggle for the right of self-determination.

There are essential differences between China and the United States in their social systems and foreign policies. However, the two sides agreed that countries, regardless of their social systems, should conduct their relations on the principles of respect for the sovereignty and territorial integrity of all States, non-aggression against other states, non-interference in the internal affairs of other states, equality and mutual benefit, and peaceful coexistence. International disputes should be settled on this basis, without resorting to the use or threat of force. The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.

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With these principles of international relations in mind the two sides stated that:

Progress toward the normalization of relations between China and the United States is in the interests of all countries;

Both wish to reduce the danger of international military conflict;

Neither should seek hegemony in the Asia-Pacific region and each is opposed to efforts by any other country or group of countries to establish such hegemony; and

Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

Both sides are of the view that it would be against the interests of the peoples of the world for any major country to collude with another against other countries, or for major countries to divide up the world into spheres of interest.

The two sides reviewed the long-standing serious disputes between China and the United States. The Chinese side reaffirmed its position: The Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities which aim at the creation of "one China, one Taiwan," "one China, two governments," two Chinas," and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

The U.S. side declared: The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes.

The two sides agreed that it is desirable to broaden the understanding between the two peoples. To this end, they discussed specific areas in such fields as science, technology, culture, sports and journalism, in which people-to-people contacts and exchanges would be mutually beneficial. Each side undertakes to facilitate the further development of such contacts and exchanges.

Both sides view bilateral trade as another area from which mutual benefit can be derived, and agreed that economic relations based on equality and mutual benefit are in the interest of the peoples of the two countries. They agree to facilitate the progressive development of trade between their two countries.

The two sides agreed that they will stay in contact through various channels, including the sending of a senior U.S. representative to Peking from time to time for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest.

The two sides expressed the hope that the gains achieved during this visit would open up new prospects for the relations between the two countries. They believe that the normalization of relations between the two countries is not only in the interest of the Chinese and American peoples but also contributes to the relaxation of tension in Asia and the world.

President Nixon, Mrs. Nixon and the American party expressed their appreciation for the gracious hospitality shown them by the Government and people of the People's Republic of China.

Mr. GLENN. Mr. President, I move that the amendment of the Senator from New Hampshire be laid on the table.

Mr. HUMPHREY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from New Hampshire. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Hawaii (Mr. INOUE), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD) is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "nay."

The PRESIDING OFFICER (Mr. DECONCINI). Have all Senators voted who wish to vote on this amendment?

The result was announced—yeas 57, nays 38, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—57

Baucus	Glenn	Muskie
Bayh	Gravel	Nelson
Bentsen	Hart	Nunn
Biden	Heflin	Packwood
Bradley	Huddleston	Pell
Bumpers	Jackson	Percy
Burdick	Javits	Proxmire
Byrd, Robert C.	Johnston	Pryor
Cannon	Kassebaum	Ribicoff
Chafee	Kennedy	Riegle
Chiles	Leahy	Sarbanes
Cochran	Levin	Sasser
Cranston	Magnuson	Stafford
Culver	Mathias	Stevenson
Danforth	Matsunaga	Stewart
Durkin	McGovern	Talmadge
Eagleton	Melcher	Tsongas
Exon	Metzenbaum	Wallop
Ford	Moynihan	Zorinsky

NAYS—38

Armstrong	Goldwater	Pressler
Baker	Hatch	Randolph
Bellmon	Hayakawa	Roth
Boren	Heinz	Schmitt
Boschwitz	Helms	Schweiker
Byrd,	Hollings	Simpson
Harry F., Jr.	Humphrey	Stevens
Cohen	Jepsen	Stone
DeConcini	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Warner
Durenberger	McClure	Weicker
Garn	Morgan	Young

NOT VOTING—5

Church	Inouye	Williams
Hatfield	Stennis	

So the motion to lay on the table UP amendment No. 29 was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was laid on the table.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 30
(Subsequently numbered amendment No. 93)
(Purpose: Relating to termination of mutual defense treaties.)

Mr. HARRY F. BYRD, JR. Mr. President, I send to the desk an amendment and ask that it be stated. I offer this amendment on behalf of myself, Mr. THURMOND, Mr. WARNER, Mr. HELMS, Mr. HAYAKAWA, and Mr. GARN.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Virginia (Mr. HARRY F. BYRD, JR.), proposes an unprinted amendment numbered 30:

At the end of the bill add the following new section:

"Sec. —. It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation."

Mr. HARRY F. BYRD, JR. Mr. President, this is, I think, a very important amendment. It is a very brief one. It says that it expresses the sense and the view of the Senate that approval by the Senate is required to terminate any mutual defense treaty between the United States and another nation. It does not deal specifically with Taiwan.

As the Senate knows so well, our Nation has quite a few mutual defense treaties. Some of these are of vital importance to our Nation and to the free world. All of these treaties have been enacted with the approval of the Senate of the United States.

I think it is important to set the record straight for the future as to how these treaties may be terminated.

Now, I was persuaded to offer this amendment because of a very significant paragraph in the report from the Committee on Foreign Relations on the pending legislation, namely, S. 245. I refer to page 19 of the committee report. It, of course, deals with the President's action in regard to Taiwan.

This is what the paragraph on page 19 says:

It appears to the Committee, therefore, that the constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain.

I say again, that is from the committee report of the Foreign Relations Committee dealing with S. 245.

That committee report states clearly that the Senate has powers granted to it by the Constitution to participate in the process of treaty termination. It says further that the Senate in this particular case, the one dealing with Taiwan, has not chosen to exercise its authority. Had it done so, the committee report says, a different conclusion "would likely obtain."

So what this sense of the Senate pro-

vision would be doing is saying that, in regard to the termination of subsequent treaties, subsequent termination of treaties, the Senate will play its constitutional role and is so serving notice now on whomever might be President at any future date.

I realize that there are those in the Congress who feel that this matter, and matters of this type, and many matters, should be turned over to the Chief Executive. Some Members are glad to wash their hands of this whole problem. But, Mr. President, as this committee report states, the Senate has a constitutional role in the process of treaty termination.

Now, does the Senate want to exercise that role, or does it want it to go by default?

The committee report says that, insofar as the treaty of friendship with Taiwan is concerned, the Senate and the Congress decided to let that go by default.

If the Senate will approve the amendment which has just been stated, then it will serve notice that it is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

I realize that there are different views as to whether the Senate should participate or whether the matter should be left entirely to our Chief Executive.

As one Senator, I feel the Senate should participate. I hope the Senate will approve this amendment.

Mr. President, I yield to my distinguished colleague from Virginia (Mr. WARNER).

Mr. WARNER. Mr. President, as a cosponsor of this amendment, I join in the remarks of the distinguished senior Senator from Virginia.

It is apparent that the Founding Fathers made clear the intent in article 2, section 2, of our Constitution that the executive branch is to share the power of international treaties with the Senate. The Senate was clearly meant to have a major role in these dealings, and the Founding Fathers thought it wise for a deliberative body such as the Senate to guard against certain actions of our Chief Executive officer.

To me, this section in the Constitution is a clear example of the checks and balances existing between the executive branch and the legislative branch.

It is essential to the preservation of the blueprint of our Nation that we, the Senate, go on record with this amendment. It is essential at this time in our history, when we as a nation are so dependent upon our allies, particularly in NATO, for the mutual security of the free world, that this amendment should be adopted.

Mr. HARRY F. BYRD, JR. I thank my distinguished colleague from Virginia.

I point out, Mr. President, that the major treaties the United States has of a defense nature do provide that either party may terminate the treaty after giving of notice serves only to make it with the treaty with the Republic of China. The provision is in article X.

But it is important to note that the

giving of notice serves only to make it possible for termination to occur; otherwise the treaty, under article X, continues indefinitely. The giving of notice does not cause termination; it only makes it possible, after 1 year, for a party to terminate without the consent of the other party but nevertheless in accordance with its own constitutional process.

That is the issue. Article X says simply that "a party may terminate 1 year after notice has been given to the other party"; it does not say a party must terminate nor does it say termination occurs automatically.

Now, Mr. President, to the Senator from Virginia, "a party" means that either government may terminate.

I take the Government of the United States to be both the executive branch and the legislative branch—and if it includes legislative branch, then it includes the Senate in particular, which has required to ratify all the treaties we now have.

So I think it certainly is reasonable and appropriate that the Senate have a role in the termination of such treaty.

I, for one, am very glad to see in this committee report a very clear, definite, and precise statement in regard to the powers granted to the Senate by the Constitution to participate in the process of treaty termination. Frankly, I had not expected to find such an unequivocal statement.

I want to read it into the record again, because to me it is clear. It says on page 19:

It appears to the Committee, therefore, that the constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination.

Those are the words of the Foreign Relations Committee. Then the Foreign Relations Committee report goes on to say:

Had either done so, a different conclusion would likely obtain.

To me, that is highly significant.

I have no quarrel with any Senator who wants to take the position that the matter of terminating treaties is something that should be determined only by the Chief Executive, that the Senate has no role to play. It is perfectly all right with me if those Senators want to take that view. However, I take the contrary view; and I am very glad to note that the report of the Committee on Foreign Relations sustains the viewpoint of the Senator from Virginia in this regard.

Mr. President, I yield to the Senator from North Carolina.

Mr. HELMS. I thank the Senator.

The Senator from Virginia is addressing with this amendment—perhaps I should say that we are addressing with this amendment, because the Senator from North Carolina is a cosponsor of it, as is the junior Senator from Virginia and others—we are addressing a very fundamental and vital issue, and that is whether the Congress of the United States is going to abdicate its responsibility under the Constitution. It is as simple as that.

I have been amazed, in my years in the Senate, to hear Senators say, in effect, "Well, on this nomination, the President is entitled to have whom he wishes; therefore, I am going to vote for the nomination, even though I do not particularly care for the nomination." That is not what the Constitution tells us to do. The Constitution says that our responsibility is to advise and consent, and the very same thing is true with respect to the Senator's amendment.

It is time for the Senate to fish or cut bait on this business of abrogation of treaties. The Senator, with his amendment, is putting the Senate on notice that it has to take a position, yea or nay, as to our responsibility.

I am proud to be a cosponsor of the Senator's amendment, and I thank him for letting me be.

Mr. HARRY F. BYRD, JR. I am glad the Senator from North Carolina is a cosponsor.

I point out that the committee report, in effect, chastises the Senate for not exercising what it says are our constitutional prerogatives.

Mr. HELMS. Exactly. I hope the Supreme Court will read that section and interpret it properly, as the Senator from Virginia has, because the Senator is exactly right in his statement.

Mr. HARRY F. BYRD, JR. I thank the Senator from North Carolina.

Mr. President, I yield to my colleague from Virginia.

Mr. WARNER. Mr. President, if it is resolved that the President alone has the authority to invoke the abrogation mechanism, it would then follow that he has the authority to do so with other treaties containing similar language. This would present major problems for the stability of the future of U.S. foreign relations, as a number of our other treaties have similar, if not identical, abrogation clauses.

The admission that the sanctity of these treaties depends solely on the will of the U.S. President would, at the least, create concern among our other allies that a fate similar to that of Taiwan might await them should a future President find his diplomatic commitments to them inconvenient. It might also create considerable concern among U.S. citizens as to the future security of the United States itself, if no congressional authority would be required to invoke termination.

I ask unanimous consent to have printed in the RECORD a list of the termination clauses of the present treaties dealing with security. They are: Mutual Defense Treaty, United States and Republic of China, ratified by the United States February 11, 1955, article 10; North Atlantic Treaty (NATO), ratified by the United States July 25, 1949, article 13; Mutual Defense Treaty, the United States and the Philippines, ratified by the United States, April 15, 1952, article 8; Security Treaty Between Australia, New Zealand, and the United States, ratified by the United States April 15, 1952, article 10; Mutual Defense Treaty, the United States and the Republic of Korea, ratified by the United States February 5, 1954, article

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6: Southeast Asia Collective Defense Treaty, ratified February 19, 1955, article 10; Mutual Cooperation and Security Treaty, the United States and Japan, ratified by the United States June 22, 1960, article 10; Inter-American Treaty of Reciprocal Assistance, ratified by the United States December 12, 1947, article 25.

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

TERMINATION MECHANISMS OF U.S. TREATIES IN FORCE

1. Mutual Defense Treaty, U.S. and Republic of China; ratified by U.S.: February 11, 1955. Article 10: "This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other Party."

2. North Atlantic Treaty (NATO); ratified by U.S.: July 25, 1949. Article 13: "After the Treaty has been in force for twenty years, any Party may cease to be a party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation."

3. Mutual Defense Treaty, U.S. and Philippines; ratified by U.S.: April 15, 1952. Article 8: "This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other Party."

4. Security Treaty between Australia, New Zealand, and U.S. (ANZUS); ratified by U.S. April 15, 1952. Article 10: "This Treaty shall remain in force indefinitely. Any Party may cease to be a member of the Council established by Article VII one year after notice has been given to the Government of Australia, which will inform the Governments of the other Parties of the deposit of such notice."

5. Mutual Defense Treaty, U.S. and Republic of Korea; ratified by U.S. February 5, 1954. Article 6: "This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other Party."

6. Southeast Asia Collective Defense Treaty; ratified February 19, 1955 (SEATO). Article 10: "This Treaty shall remain in force indefinitely, but any Party may cease to be a Party one year after its notice of denunciation has been given to the Government of the Republic of the Philippines, which shall inform the Governments of the other Parties of the deposit of each notice of denunciation."

7. Mutual Cooperation and Security Treaty, U.S. and Japan; ratified by U.S. June 22, 1960. Article 10: "... after the Treaty has been in force for ten years, either Party may give notice to the other Party of its intention to terminate the Treaty, in which case the Treaty shall terminate one year after such notice has been given."

8. Inter-American Treaty of Reciprocal Assistance (Treaty of Rio de Janeiro); ratified by U.S.: December 12, 1947. Article 25: "This Treaty shall remain in force indefinitely, but may be denounced by any High Contracting Party by a notification in writing to the Pan American Union, which shall reform [sic?] all the other High Contracting Parties of each notification of denunciation received. After the expiration of two years from the date of the receipt by the Pan American Union of a notification of denunciation by any High Contracting Party, the present Treaty shall cease to be in force and with respect to such State, but shall remain in full force and effect with respect to all the other High Contracting Parties."

Mr. WARNER. Mr. President, each of these treaties has language closely resembling that found in the treaty with Taiwan which the President intends to abrogate.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from Virginia (Mr. WARNER) has pointed out many of the important treaties which the United States has with other nations. If the Senate is unwilling to go on record as saying that it has a role to play in regard to the termination of those treaties, that would mean, as my colleague from Virginia has just pointed out, that any of those treaties could be abrogated by a future President on his own initiative, at any time.

To quote again from the report of the Foreign Relations Committee, the Senate having refused to exercise its responsibility in this regard, it would be considered appropriate for the President to act unilaterally.

I say again that the issue is clear-cut: Either the Senate feels it has a role to play and wants to play that role, or the Senate feels it does not have a role to play and does not want to play a role.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, article II, section 2, of the Constitution provides:

He—

Referring to the President—
shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.

That is the particular section to which I refer. In other words, the President can make a treaty with another country if two-thirds of the Senate concur.

Mr. President, if the President of the United States, acting under that authority, made a treaty with a country and the Senate ratified it, then if he saw fit, under the procedure he used in canceling the mutual defense treaty with Taiwan, the President could turn around immediately and cancel such a treaty. In other words, why could he not cancel every treaty this country has entered into? If the President could cancel a treaty with Taiwan, why could he not cancel the NATO Treaty or any other treaty? What is the difference?

Mr. President, evidently anticipating that the President might pursue such a course, Congress last year inserted in Public Law 95-384, the International Security Assistance Act of 1978, the following provision:

It is the sense of the Congress that there should be prior consultation between the Congress and the executive branch on any proposed policy changes affecting the continuation in force of the Mutual Defense Treaty of 1954.

There we have a specific act of Con-

gress in addition to the constitutional provision providing for the President to enter into a treaty with the approval of the Senate of the United States. In specific words, "It is the sense of the Congress," to do what? That there shall be prior consultation between Congress and the executive branch.

My understanding is that there was no prior consultation, and I believe the report on the Taiwan Enabling Act so states. So here we really have, I think, two points raised:

When this Government enters into a treaty, two specific steps are required: One is the President has to submit the treaty, and the other is the Senate has to ratify the treaty. That conforms to the Constitution and is the constitutional authority for so doing. But in addition to that, we have the statutory authority here which says there shall be prior consultation between the Congress and the executive branch on any proposed policy changes affecting continuation in force of the mutual defense treaty.

In other words, Congress was telling the President of the United States that, "If you are considering any changes in our relationship with Taiwan then there must be prior consultation."

There was no prior consultation. So the President of the United States on his own authority has seen fit to abrogate the Mutual Defense Treaty, ignore Congress, and cast Taiwan to the wolves. That is the effect of his actions.

I commend the Senator from Virginia for offering his amendment there which provides that it is the sense of the Senate that approval of the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

That to me makes sense and I think it makes sense to the American people. If under the Constitution the Senate has to ratify a treaty, why would the Senate not have to ratify or approve the cancellation of a treaty?

Can this Government enter into a treaty requiring the President and Congress both to act and then turn around and give the President alone the authority to cancel that agreement any time, anywhere, any place as he sees fit?

I do not think that is the intention of the Constitution. I do not think that is the proper construction of the Constitution, and I hope the amendment of the able Senator from Virginia will be adopted.

Mr. HARRY F. BYRD, JR. I thank the Senator from South Carolina and to further buttress what the Senator from South Carolina has said the Foreign Relations Committee itself in its own report here on page 19 says that the Senate has a constitutional role to play and that if it does not exercise that role it is its own fault.

That is what I am suggesting we do here. I think this matter of Taiwan is very serious, but I think something even more serious than the question of Taiwan is what is going to happen to all these other defense treaties and how may they be terminated by some future Pres-

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ident at some future date? And what the Senate does in regard to this pending amendment will establish a precedent for many years to come as to what will happen in the way of terminating defense treaties with other nations.

Mr. THURMOND. Mr. President, will the Senator yield further?

Mr. HARRY F. BYRD, JR. I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, if the action of the President of the United States here goes unchallenged and he is allowed to cancel a treaty at any time with any nation as he sees fit, where does that leave the United States with regard to all of its treaties?

Mr. HARRY F. BYRD, JR. Where does it leave our allies?

Mr. THURMOND. Where does it leave our allies?

In other words, our allies look upon this country as a republic where no individual or even no one branch of Government has all the authority but where we have a tripartite system of Government, one branch of Congress, to make the law, the executive branch to administer the law, and the judicial branch to interpret the law. Each branch is a check and a balance on the other, and that is exactly what we have in this instance. We have the President of the United States entering into a treaty with another country provided the Senate by two-thirds vote, not even a majority, two-thirds vote approves such a treaty. If it requires a two-thirds vote of the Senate to act upon treaties, does it make sense then that one man, the President, can undo all of that? To me it just simply does not make sense, and I do not think it will to the American people.

I realize there will be arguments made that the President has such authority. But he cannot terminate the Mutual Defense Treaty without Senate ratification. That is the greatness of our Government. We have a Government of the people, as Lincoln said, by the people, and for the people. Representatives in Congress have so much power, the executive branch has so much power, and the judicial branch has so much power. In the matter of treaties our forefathers did not wish to entrust sole power to any one individual or any one branch of Government, and that is the reason they provided that in the case of a treaty that the President would submit the treaty but the Senate would have to ratify it, and not only approve it, but approve it by two-thirds vote of Senators present and voting.

That was not done in this case to cancel such a treaty. I think it would be a sound precedent here today if we turned down that action and followed the Constitution. I think it would be very helpful in the future for other Presidents to know that they cannot indiscriminately cancel treaties of vital importance because of their own whims that maybe it is not a good treaty.

I wish to thank the Senator.

Mr. HARRY F. BYRD, JR. I thank the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I under-

stand from the Senator from Virginia that the amendment he suggests will not be applicable to this particular situation but only to apply to future situations; is that correct?

Mr. HARRY F. BYRD, JR. My feeling is that treaties ratified by the Senate can be terminated only by Senate participation.

The Foreign Relations Committee report says that since the Senate in its judgment failed to exercise its constitutional prerogatives then the treaty in regard to the Republic of China is not subject to Senate consideration at this point.

I am not sure whether that is the correct interpretation or not. The proposal offered by the Senator from Virginia and my other colleagues does not specifically mention any treaty. It states that:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

Mr. GLENN. I thank the Senator for his comments.

Although I am sorry that the suit brought by the Senator from Arizona (Mr. GOLDWATER) has come up in this particular regard with respect to Taiwan and the normalization processes with the PRC; it is good that we will have the opportunity to get this issue settled once and for all. I think it is somewhat amazing that we have gone this far in our history without having a similar issue brought to the courts, but that is not the case.

So I think the administration, in proceeding with the normalization process, utilized Presidential authority to cancel treaties or to change them. There is a long list of cases that I could read off that have demonstrated past president's utilization of this authority. There are some 15 or 18 of them, I believe all within this century, that fall within that regard.

Therefore, I do not think this was just an effort by the President to suddenly take unto himself some now authority that he did not have hitherto; he merely followed the precedents created by his predecessors.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield at that point?

Mr. GLENN. Let me make just one more point, if I may. On its face, the Constitution itself provides no senatorial or congressional role in treaty terminations. The President's constitutional responsibility for the execution of the laws and implementation of the treaties, and his executive powers under article II, section 1 of the Constitution have been interpreted to give the President the power to terminate treaties. This power, as I stated, has been firmly supported by the 20th century practice in this country, and in all those instances Congress acquiesced, and, I might add, by the great majority of legal scholars who have addressed the issue.

I agree with the Senator it is good to get this thing settled, and I fully support taking this issue to the courts, although I am sorry to see it taken up on this particular case.

I hope that rather than making this

an amendment to this particular bill—this enabling legislation—that we could take this to the Committee on Foreign Relations and have hearings on it, and explore more fully how we should approach this; what the limitations on the President should be; how far we should go with it; should it be completely binding; should it be a two-thirds vote, for instance, to unratify a treaty, as well as two-thirds vote to approve it?

I think there might be some different considerations there. I do not believe we have considered adequately all of the ramifications. I would certainly support sending this to the committee, having hearings on it, unfolding the case for it or against it, either one, and I hope the Senator from Virginia will agree with that approach.

Mr. HARRY F. BYRD, JR. In regard to the treaties that have been terminated, of which the Senator has a list, has any mutual defense treaty been terminated by unilateral action?

Mr. GLENN. I do not believe so, but I do not believe we had mutual defense treaties until after World War II, so that limits the time period.

Mr. HARRY F. BYRD, JR. But so far as the Senator, the manager of the bill, knows there has been no case where a mutual defense treaty has been terminated by executive action.

Mr. GLENN. In that time since World War II, which is the only time we have had mutual defense treaties, the answer is no. I believe the Senator is correct.

Mr. HARRY F. BYRD, JR. The report of the Committee on Foreign Relations itself establishes, in the judgment of the committee, that the Senate does have a constitutional role to play.

The Senator from Ohio, the able Senator from Ohio, mentioned that he hoped this would be settled once and for all by the courts.

I am not certain I can share that view. It seems to me this is a matter to be settled once and for all by the Senate of the United States.

I do not know how the Court is going to rule—none of us do, of course—but the able Senator from New York, who is an outstanding constitutional lawyer, indicated earlier today that the Court might very well take the view that this is a political decision to be made by the Senate or by the Congress.

It seems to me that that is a view that the court could very logically take. My own judgment is that this is a matter that should be determined by the Senate of the United States. Since it is the Senate of the United States which is the body that has the obligation and the responsibility to ratify treaties submitted by the executive branch, then it also has a role to play, according to the report of the Committee on Foreign Relations itself, a constitutional role to play in the termination of any treaties.

Mr. GLENN. I would say to the distinguished Senator from Virginia that my hope was that the courts would settle it, that what I hoped the court would do would be to develop a case either for or against it.

The courts can always say that this

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is an area in which they do not have sufficient judgment or background. They could toss it right back to us, claiming that it is primarily a political decision.

In any event, if we did not like the decision of the court we could still pass legislation later on, after we had held a sufficient number of hearings to develop all sides of this particular question, and decide what the vote should be. Should it be two-thirds? Should it be a majority vote? There are lots of questions I would like to see answered before I would go ahead and try to pass this.

In the section, I might add, in the committee report, the committee also stated that the formulation which they were referring to—termination by the President of this defense treaty—would fall in sort of a twilight zone of categories which they had spelled out earlier in this report, they went ahead and said:

The President would, accordingly, appear to possess the constitutional authority to do so absent any statute enacted by the Congress or resolution adopted by two-thirds of the Senate directing contrary action.

So we did not take a positive stand on this one way or the other, as I saw it, and our discussions of its were along the line that there should be hearings to develop whatever the process of deratification might happen to be.

Mr. HARRY F. BYRD, JR. Mr. President, if the Senator would not mind yielding at that point—

Mr. GLENN. I might add that I excerpted that from the same paragraph there so we have to take that whole paragraph to get the whole picture.

Mr. HARRY F. BYRD, JR. But what the Senator from Virginia has been reading is only one paragraph, so I will read the whole paragraph:

It appears to the Committee, therefore, that the constitutional prerogatives of the Congress and the Senate have not been invaded in that neither the Congress nor the Senate has elected to exercise the powers granted it by the Constitution to participate in the process of treaty termination. Had either done so, a different conclusion would likely obtain.

That is the total paragraph.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. HARRY F. BYRD, JR. Yes.

Mr. JAVITS. I did not read this before it was put out, and I would like to give you my view as a lawyer.

I believe it is a question which the courts may or may not decide. It is up to them. I have made it very clear that the way is perfectly clear for a court decision. We are not prejudicing it either way.

I think what the Senator read is overstated. We do not know what the courts will do, or whether they will take jurisdiction at all. What I would have written, and what I think is the real feeling in the committee, is that as far as we are concerned, we are willing to legislate on the theory, on the hypothesis, that the President does have the right to terminate in the absence of contrary action by the Congress. But we do not know what the court would decide in another suit, that we could even restrain it if we acted, if we passed the law. The court

might very well hold that the Constitution gives the President, as the chief negotiator of the United States—and they have decided that time and again—the power to terminate, even though it gives us the power to ratify.

Therefore, I would like to say this to you, Senator BYRD—and you are uniquely a Senator to whom one can talk this way—your amendment, with all respect, is so easy to vote for, because I am an advocate of war powers, and I have spent most of my life here trying to seek a voice for Congress in the war powers process.

Mr. HARRY F. BYRD, JR. I know you have, and I have supported you.

Mr. JAVITS. Of course you have. And I have always worried about voting for something without adequate hearings.

This matter has not been considered. Secondly, we have a very effective way, Senator, in which to enforce this. We do not have to depend on the Constitution or on a sense resolution. If we write a reservation into each treaty that we ratify, saying: "If this treaty should be terminated, the President has to come and get two-thirds of the Senate to agree to it before he terminates it," that is the law, and there is no question about our constitutional power to do that. And I want no treaty unless he complies with that reservation.

So what I would like to see, Senator—I am only giving you the optimum—a declaration, perhaps a commitment—FRANK CHURCH will be here tomorrow—by the Foreign Relations Committee, in which we would undertake to consider this question, with the idea of either bringing a piece of legislation to the Senate floor or with the idea of making it a rule of our committee that we would write into every treaty ratification a reservation respecting this question of termination.

To me that would be a very responsible course, and I would most respectfully suggest, as we are not going to finish this tonight, that perhaps the Senator might consider just laying it over until tomorrow. I am the ranking minority member of the committee; let us give the chairman and myself an opportunity to discuss this, take it up with the other members of the committee, and perhaps we could produce something satisfactory in terms of dealing with this question in the substantial and dignified way in which it should be dealt with.

As I say, I just lay that before the Senator; he can press his amendment just as he likes.

Mr. HARRY F. BYRD, JR. I thank the able Senator from New York.

I just want to read this; it is only a few words, probably 18 words, and I think it is dignified. It says:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

That is not very difficult to understand. We either favor the Senate having that right or we oppose it, one way or the other.

Mr. JAVITS. Will the Senator yield again?

Mr. HARRY F. BYRD, JR. Just a moment.

Mr. JAVITS. It is certainly not difficult to understand, but it makes a policy declaration which is of a serious nature. Again, it is a first in our history. We have not done this for 200 years.

I would like to hear what objection there is to it. I am on your side, but I would like to hear what is the opposition.

Mr. HARRY F. BYRD, JR. Well, there are a hundred Members of the Senate. They can state their objections.

Mr. JAVITS. No, I do not think that is quite true, Senator. I think here you need the witness, the President or the State Department representing him.

Mr. HARRY F. BYRD, JR. You mean we need the State Department to tell the Senate what it should do about a sense of the Senate resolution?

Mr. JAVITS. No, that is not at all what I suggest. We hear the State Department all the time on lots of things that we have the power to do. We can deny the money, but we hear them. That is all I am saying; we ought to hear them.

So I would suggest again, most respectfully, that this matter be held overnight, so that we have an opportunity to find out what the other side of the case is.

Mr. HARRY F. BYRD, JR. I appreciate that.

I might point out to the able Senator from New York that this resolution, in these exact words, was introduced the first day of this session, on January 15, the first day of the session, and the Foreign Relations Committee has done nothing about it. They had plenty of time to get witnesses in here if they wanted to get witnesses.

Mr. JAVITS. Oh, Senator BYRD, the Foreign Relations Committee has been about as busy as the Finance Committee or any other committee you are a member of. They have not done lots of things about lots of bills. This is not the only one.

Mr. HARRY F. BYRD, JR. That is true of many committees, I will say. But, Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER (Mr. BRADLEY). The Senator is correct.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GOLDWATER. Mr. President, I ask unanimous consent that my assistant, Mr. Emerson, be accorded the privilege of the floor for the duration of this debate.

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

Mr. CHAFEE. I would make the same request for Mr. Don Prather of my staff.

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

Mr. BOSCHWITZ. Mr. President, I

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make the same request for Mr. James Cowie of my staff.

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

Mr. JAVITS. Mr. President, I again suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the pending amendment, unprinted amendment No. 30, be temporarily laid aside for a period not to exceed 20 minutes and at the end of that time the present pending amendment would then become again the pending amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

THE TAIWAN BILL AND THE NATIVE TAIWANESE

Mr. PELL. Mr. President, in my view S. 245, the Taiwan Enabling Act, is an appropriate and effective instrument to facilitate the continuation of our 30-year relationship with Taiwan. I support the President's decision to normalize relations with the People's Republic of China, but at the same time we cannot in good conscience or in our own political and economic interest cut off all contact with Taiwan. Certainly, our concern for human rights would ring hollow if, by cutting off all ties with Taiwan, we were to signal that we were indifferent to an invasion from the mainland and the extension of Communist repression to Taiwan.

Under the bill we are considering today, the United States will, through a newly created private entity, have relations with the "people on Taiwan" instead of with the formerly recognized government of the Republic of China, which was situated on Taiwan but claimed to be the government of all of China. The newly coined term of art, the "people on Taiwan", is defined under the bill to include both the governing authorities on Taiwan and the people governed by those authorities. In this connection, the bill also contains language, in section 107, which I sponsored, directing the Institute "to strengthen and expand the ties between the people of the United States and all the people on Taiwan and to promote full human rights for all the people on Taiwan."

This language was the result of a compromise in the Foreign Relations Committee that modified my original proposal which read as follows:

In carrying out its activities, the Institute shall take all appropriate steps to strengthen and expand the ties between the people of the United States and those individuals and entities on Taiwan that are representative of the majority of the people on Taiwan.

In proposing this amendment, it was my intention to underscore the need for the United States to show its concern for the rights of the native Taiwanese who constitute 85 percent of Taiwan's population, but who share in little of the

island's political power. The roots of the Taiwanese majority go back some 300 years and the native Taiwanese always have considered themselves to be separate from mainland China. The regime of the mainlanders who arrived only after World War II has been characterized by severe repression of the human rights of native Taiwanese, although there has been some improvement in recent years. Tensions between the native Taiwanese and the Nationalist Government have, not surprisingly, been high as the Taiwanese sought to have a greater say in their own government.

In my view, the United States should have been faithful to its adherence to the principle of self-determination by pushing for an independent Taiwan after World War II.

I well remember this was the original American doctrine because in those years I attended military government school, and I trained for many months in the language, the geography, the customs, and the culture of Formosa. We were told that if there was one group of people the Formosans disliked more than the Japanese it was the Mainland Chinese, therefore, the idea was that we should govern them until they could govern themselves.

That all changed after the Cairo Conference between Chiang Kai-shek, Stalin, Roosevelt, and Churchill.

Then, with the occupation of Taiwan by Chiang Kai-shek, the belief of the United States in Taiwanese self-determination was completely glossed over.

I believe the Senate should, in this bill, give some recognition to the plight of the Taiwanese majority and the need for the new Institute to concern itself with the human rights of this majority. The recent events in Iran have, I hope, made it clear that the United States ought not be seen as the underwriter of a particular regime.

In promoting human rights on Taiwan, it is my expectation that the new Institute will apply all of the elements, including the one relating to political rights, that Secretary of State Vance set forth in his Athens, Ga., speech of April 30, 1977. The pertinent statement made by Secretary Vance on this point is as follows:

Third, there is the right to enjoy civil and political liberties—freedom of thought, of religion, of assembly; freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.

Mr. President, through this bill the United States is defining a new relationship with Taiwan. In so doing, we ought, in my view, to make clear that this new relationship includes a heightened concern for the real Taiwanese, whose origins on the island go back at least 12 generations. Throughout most of Taiwan's recorded history, except for the period of Japanese rule from 1895-1945, the Taiwanese have run their own affairs and always considered themselves to be separate from China. I am confident, and I hope, that before long the current mainland dominated government on Taiwan will pass from the scene and be replaced by a native Taiwanese controlled

government. We ought, therefore, to take a long view of our interests regarding Taiwan and lay the groundwork now for a close and harmonious relationship with the Taiwanese leaders of the future.

Mr. President, I am glad to yield at this point to the Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I should like to take this opportunity, as a new Member of this body, to compliment the Foreign Relations Committee for its work on S. 245. The members of this committee have reworked the original administration proposal to provide greater guarantees to the future security of Taiwan, to include more specific language defining our commercial and cultural relations, and to generally include more creative and just solutions to the problems created by the normalization of relations with the People's Republic of China.

I believe that the normalization of relations with the PRC was an historic inevitability, and I support this policy as a significant step toward a new U.S. policy in Asia which better insures our national security and national interests, and creates a framework for a lasting peace and improved relations with all nations of this region.

I especially commend the committee for its work on section 114 and for addressing the question of the security of Taiwan much more judiciously than did the administration's original bill. I share the concern of the members of this committee that the United States honor its traditional commitments and stand by its allies in these changing times.

As we move ahead in these next few days with debate on the question of our relations with Taiwan and the PRC, I am concerned that we address the issue—as Senator PELL has done—of the right to self-determination as it applies to the people of Taiwan.

As ironic as it may be, I would like to use the same phrase from the Declaration of Independence that I found myself using frequently against this body and its counterpart body during my recent campaign: "The just powers of government are derived from the consent of the governed." This principle was invoked as a fundamental part of U.S. foreign policy after World War I, by President Woodrow Wilson, who expanded on these words to state his belief that "No right anywhere exists to hand people about from sovereignty to sovereignty as if they were property."

I commend the Senate Foreign Relations Committee and my colleague Senator PELL for addressing this issue during the hearings. I concur with Senator PELL that it would be wrong for this body to treat this issue of U.S. relations with the PRC and the ROC as though we were "handing people from sovereignty to sovereignty as if they were property."

The fact is that there is a major split between the 85 percent of the population who are native Taiwanese, and the 15 percent who are mainland Chinese and came over to the island beginning in 1949. The native Taiwanese have been systematically excluded from full political participation for 30 years. Martial

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law began in 1949 under the rationale of a continuing "state of war." I fail to see the legitimacy of these grounds for the abrogation of constitutional liberties 30 years later.

There have not been free elections in the history of the ROC in Taiwan. The elections scheduled for this past December were cancelled. While the change in U.S. policy at that time did cause some uncertainty and disruption, the Foreign Relations Committee has heard testimony that the Kuomintang regime feared defeat at the hands of the opposition "Non-Partisan Movement," and welcomed the opportunity to cancel the elections. Since then, no elections have been rescheduled, and the Government has broken up meetings of the opposition. On January 21 Yu Teng-fa, the 77-year-old leader of the opposition and a former magistrate, was arrested. Mr. President, I believe that the Senate should be aware that Yu Teng-fa is scheduled to be put on trial this Friday on trumped-up charges. I would like to go on record as protesting this repressive policy and in favor of justice for Yu Teng-fa.

I have conferred with Dr. Richard Kagan of Hamline University in St. Paul, Minn. Dr. Kagan submitted testimony to the Foreign Relations Committee. I ask unanimous consent to have this testimony, which can be found on pages 865-873 of the hearings, printed in the RECORD.

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

PREPARED STATEMENT OF DR. RICHARD C. KAGAN, ASSISTANT PROFESSOR OF HISTORY, HAMLINE UNIVERSITY, ST. PAUL, MINN.

I would like to thank the Senate Foreign Relations Committee for the honor and opportunity of inserting my views and materials into the record. Because I had very little time to prepare, I hope that this does not seriously flay my argument, my judgment, and my clarity.

I am preparing these remarks on behalf of the Clergy and Laity Concerned. Through their auspices I was able to travel to Taiwan from Dec. 14 to Dec. 28, 1978, in order to observe the upcoming elections. During this time I travelled by car, bus, train, and airplane from Taipei to Kaoshiung with many intermediate stops. Due to the announcement of Normalization on the 16th of December, the elections which were to be held on December 23rd were suspended. My stay in Taiwan, nevertheless, was consumed with interviews of both non-partisan (reform) candidates, the staff of Party candidates, and Government officials. Although the conversations often included discussion of normalization, they focused on the nature of the government's rule, and the future for the majority of Taiwanese.

What follows in my remarks concentrates on this period of interviews and travels, but it also draws on my two month experience in Taiwan during the summer of 1978, and my own research on Taiwan history.

PROFESSIONAL BACKGROUND

I received a Ph.D. in Asian History from the University of Pennsylvania in 1969. Since then I have published on U.S.-China Relations, and the history of China. But most germane to this committee is the book which I edited and for which I wrote the introduction, "The China Lobby in American Politics" by Ross Y. Koen, Harper & Row, 1974. Currently I am an Assistant Professor at Hamline University, St. Paul, Minn.

PURPOSE OF THE TESTIMONY

The declaration of Normalization provides the United States with the opportunity to restructure totally our relations with the authorities in Taipei. The United States can discard the fiction that the Kuomintang (KMT) represents any interests other than the narrow interests of a ruling group which keeps power only through the use of martial law and the economic exploitation of its own island base. Normalization provides the occasion to hear the voice of the population of Taiwan.

These Hearings can focus on the nature of the rule of the Taipei government, and call attention to the historical fact that Taiwan's future has always been linked to international power politics. Up until now, international power politics have never taken account of the interests of the Taiwanese.

Finally, my testimony will outline the growth of a strong opposition force in Taiwan. This is not simply an "old" struggle between the dominant Mainlanders (the refugees from 1949) and the Taiwanese, but is the result of the economic and political effects of U.S. policy. The new struggle is parallel to struggles in developing countries throughout the world but especially in South Korea, the Philippines, Indonesia, Thailand, and Malaysia. Rapid economic growth has been unequally distributed. Great growth has also produced great gaps between the affluent and the poor. As in many other countries, the governmental response has been to declare martial law and to exacerbate the ecological, social, and economic problems.

The Senate's decision to consider Taipei, Beijing, or the Opposition's claims will result in promoting or impeding the furtherance of human rights and human welfare for the people of Taiwan. I hope my testimony will help to clarify the consequences of the choices that are made.

INTRODUCTION

The historical writing regarding Taiwan is plagued by fabrications, propaganda, and sheer ignorance. Of course many excellent works have appeared in Chinese and Japanese. But the English language works, and even more particularly the works for the general public, are few and on the whole inadequate.

The earliest popular work on Taiwan was George Psalmanazar's "Description of Formosa" (1704). This work became a best-seller in England, France, Germany, and Holland. Yet the book was a thorough hoax and fabrication. The author who had claimed to be a Formosan was in fact a Frenchman who populated the area with fictitious elephants and British knights, and who described fanciful scenes of human sacrifice. Once the book was exposed, the term "Formosan" became associated with fraud and deception in British slang.

This ignorance about Taiwan has not yet been dissipated. Secretary of State John Foster Dulles began his testimony of Taiwan's history (Hearings on the Mutual Security Treaty, Executive Sessions of the Senate Foreign Relations Committee, 84th Congress, Vol. VII, First Session, 1955, p. 117) with this assurance: "There is a very long history there which I have studied. . . ." Yet in his brief survey he states that: "One of the main items of intercourse between Formosa and China in those days (17th-18th century) was that as the Chinese on Formosa killed the indigenous people, they salted their flesh and sold it back to China. . . ." The shade of Psalmanazar was definitely stalking the hearing.

Now, twenty-four years later, the Senate is again discussing the security of Taiwan. Yet, it has not significantly moved much closer to an understanding of the history and current condition of Taiwan than in 1704 or 1955. For instance the Congressional Research Service in its Issue brief (#IB76053)

on China-U.S. Relations does not, to my knowledge, include a major reference to the political-economic conditions on Taiwan.

In summarizing, I urge the Committee to gather more information on Taiwan before making a considered decision regarding our future relations with that island-province. Our lack of correct intelligence has often misled our good intentions into the abyss of tragic policy—for ourselves and others.

HISTORICAL BACKGROUND

Two competing descriptions of Taiwan's history exist with contradictory conclusions for the status of Taiwan.

On the one side is the argument from Beijing and Taipei. Taiwan has historically been part of China: the natives, with the exception of the aborigines (who number about 240,000 or 2% of the population) are ethnically and culturally Chinese, the island has been under the control of China since the 17th century and achieved separate province status in 1885. In 1895 Taiwan was ceded to Japan as a war prize in the Sino-Japanese War, 1894-1895. Whereas the Ch'ing dynasty and the Republic of China (founded in 1911) never dropped its claim to Taiwan, the Chinese Communist Party initially acknowledged that Taiwan in the 1930's was a "weak and small nationality" which would have to have its own independent course of revolution and its own authentic sovereignty.

The Cairo Conference of 1943 laid the international legal foundations for Taiwan's return to China. Since then both the Nationalists and the Communists have argued that Taiwan is in fact legally as well as historically part of China. With the establishment of the government of the People's Republic of China in 1949 and the outbreak of the Korean War in June 1950, U.S. policy supported Chiang K'ai-shek's claim to represent China. The Shanghai Communiqué in 1972 reaffirmed the U.S. commitment to the proposition that Taiwan was a part of China. And normalization not only assumed this but placed the legitimacy for rule back in the domain of Peking.

On the other side is the argument that Taiwan has had a significantly different political and economic history which can legitimize a claim for independent nationhood. This argument is abbreviated by the epigram: Taiwanese are ethnically Chinese but not politically Chinese.

The Taiwanese make a comparison between Anglo-Saxon's in England and Anglo-Saxon's in North America. Their common ethnic heritage neither prevented a war of revolution nor the development of American or Canadian nationalism.

The Taiwanese draw upon a history which stresses continual colonialization and exploitation by foreign powers and attempts for self-rule. The first wave of heavy Chinese migration occurred in the 17th century under the sponsorship of the Dutch colonialists who required the services of migrant laborers and skilled farmers. From 1662-1683 Taiwan was used as an island outpost for a pretender to the Dragon throne in Peking. The defeat of this ill-fated undertaking resulted in the loose incorporation of Taiwan into China's rule. In fact the Taiwanese lived outside the range of direct rule. Taiwan was considered by Peking as a frontier post—a malarially infested island to send convicts and exiles, and ruled by local gentry and religious figures. China willingly gave the island up to Japan in 1895 despite the appeal of the citizenry to support an Independent Republic. This was the first Republic in Asia, and was quelled by Japanese troops and turned into an island colony.

When Japan surrendered Taiwan in 1945, it was unclear who would receive the island. Under the command of General Douglas MacArthur, Chiang K'ai-shek was given the mission of disarming Japanese troops and bringing order to the island.

At first the Taiwanese greeted the Nation-

alist troops and Mainlanders with joy. They believed naively that the new government would abolish the colonial policies of the Japanese and would promote the Democratic goals of Sun Yat Sen's Three People's Principles and the New Deal of Franklin Delano Roosevelt. By their actions, the Nationalist troops and officials expressed their disdain for the Taiwanese. Considered either as traitors or as un-Chinese and thus uncivilized the Taiwanese suffered under illegal confiscation of property, vandalism, the spread of lawlessness, rape, and the destruction of health and hygienic facilities. Within 18 months the economy was reduced to a barter system, and diseases hitherto wiped out began to reappear.

In 1947, an unarmed rebellion attempted to create an autonomous republic. History appeared to be repeating itself. The Nationalists, utilizing U.S. troop carriers, attacked the island and brutally killed and imprisoned the leadership. Up to 20,000 people may have been slaughtered. (One of the major groups to suffer from death and imprisonment were the Presbyterians, who had been active in opposition to Japanese rule. In 1948 they quietly changed the name of their press organ from "Restoration to the Mainland Publishing House" to the former name of the "Taiwan Church Press.")

In 1949, the Nationalists established their regiment in Taipei and declared martial law. Although certain democratic rituals are allowed, the Nationalists have ruled Taiwan through the military for thirty years. The Taiwanese regard themselves as colonialized again. For those Americans who declaim against selling out Taiwan to the Mainland, the Taiwanese reply: why were you not concerned about selling us out to the Nationalists? In 1979 a strong independence movement has again developed. In sum, it is in the interests of both the Nationalists and Communists to prevent the expression of an independent Taiwan. In the New Year's "Message to Compatriots in Taiwan" the Communist Party seeks an alliance with the KMT against the purveyors of the politics of independence: "The Taiwan authorities have always taken a firm stand of one China and have been opposed to an independent Taiwan. We have this stand in common and it is the basis for our co-operation." In previous Senate testimony, Professor John K. Fairbank ironically observed: "When one mentions the idea of an independent Taiwan, one is known as a capitalist spy in Peking, and a Communist traitor in Taipei." (U.S. Policy with respect to Mainland China, U.S. Senate Committee on Foreign Relations, 89th Congress, 2nd Session, 1966, p. 177)

Whichever view of Taiwan's history is accepted or rejected will effect policy considerations and the people's welfare.

MARTIAL LAW

Since 1949, the Republic of China has ruled Taiwan by means of martial law. Although today, the government claims that only a small percent of the country's laws fall under the military jurisdiction, in fact, the threat and use of the military is a reality. The Taiwan Garrison Command enforces all aspects of martial law through the use of military police, secret military courts, special agents who monitor meetings, tap phones, inspect the mails, and use provocateurs to break up meetings, create disturbances, and confiscate materials which are deemed subversive. One cannot exaggerate the consequences and effects of this system. Because it acts in secret, a pall of fear and a sense of paranoia impedes and often prevents any open critical political, religious, or economic discussion. I have been present at peaceful meetings which were broken up by agents who physically threatened the participants.

One leading Mainlander intellectual, writer for several important journals, and former political prisoner, compared the trials of

Soviet dissidents with the numerous trials in Taiwan: "In the Soviet Union, one can at least demonstrate; even if only for 5 minutes and for 100 feet. Here, now there is not even that opportunity."

What is obvious to anyone who travels around the island is the large number of military police, secret police, and government agents. Uniformed military police are stationed at all major crossroads, tunnels and bridges. Plainclothed counter-insurgency military men have been brought into the cities. One can observe these young men hanging around street corners with small walkie-talkies in shoulder bags.

The new president of Tung-hai University is the former head of the Taiwan police academy. The regulations regarding student activities have become so restrictive that, as one University professor put it, "There is nothing they are allowed to do but follow the line." The Universities are receiving more political affairs and military intelligence officers and police to oversee student affairs in the class room.

The size of the military (800,000 troops with 2.5 million in reserve for a population of 17 million in fact, is not necessary just for return to the Mainland. In the Senate Hearings of 1955 on the Mutual Security Treaty, Secretary of State Dulles revealed that Chiang Kai-Shek had assured the Secretary that the Republic of China could not capture the mainland by military force.

To many observers, the size of the military is maintained to intimidate the population, and to enforce loyalty through military discipline.

Yearly expenditures on the military according to the 1977 report from the Republic of China, amount to 57,753,587,639 Taiwan dollars (over 1.5 billion U.S. dollars) or 53.82 percent of the entire budget. The closest figure is the 10+ billion Taiwan dollars (260+ million U.S. dollars) spent on economic development. This expenditure amounts to 10.3 percent of the budget. Besides the Administration of Finances (6.6 percent), and Miscellaneous projects (7 percent), all other categories range well under 5 percent of the budget. The Ministry of the Interior, which supervises health, worker, and other social services received 1.1 percent. Within the national defense, the bureau for intelligence work receives almost 1.6 billion Taiwan dollars or 41.5 million U.S. dollars. It has not been possible to ascertain what percent of this is spent on domestic surveillance, (as opposed to surveillance on the Mainland), but we can assume that it is a significant amount.

GOVERNMENT

Working under the protective umbrella of martial law are the national legislative bodies: The National Assembly which meets only once every six years to elect the President, and the Legislative Yuan, which makes laws. The representatives for both bodies were elected on the Mainland in 1948. No general elections have been held since then, because both branches represent all the people in China and elections cannot be held until the Mainland is recovered.

The National Assembly originally had 2,961 members; only 1,248 are still living and their average age is 74. In 1969, 15 supplementary representatives from Taiwan were added to the National Assembly, and these are elected positions.

The Legislative Yuan has a similar problem—of its 759 members elected in 1948, only 406 are left, including 60 supplementary representatives from Taiwan added in 1969 and 1972.

The government takes the position that Taiwan is just a province of China. Thus Taiwan has its own Provincial Assembly in Taichung. This Assembly has almost no power—no control over taxes, expenditures,

budgetary decisions, etc. Local elections for this assembly and for municipal offices have been allowed in recent years with a limited time for electioneering. But one trend seems clear: whenever non-Party candidates become too powerful they are either arrested, or their position is no longer available. Thus the mayorship of Taipei, and governorship of Taiwan are now appointed positions.

In fact, the government is run by the Nationalist Party or KMT. The pledge of Allegiance to the Flag is directed not to the state or nation but to the Party. Membership in the Party provides some privileges and status. Threat of excommunication is used to prevent deviance.

SOCIAL AND ECONOMIC PROBLEMS

The non-partisans are responding to the consequences of economic and social change which have resulted from unplanned and uncontrolled economic investment, domestic and foreign. Within the last decade, a large group of writers have written realistic novels and poems about the hardship of workers, women, farmers, and the unemployed. After a local study in 1970, the analysis by four university professors confirmed the view of these writers of social realism:

"The daily lives of the workers have no protection nor do their lives have security. They desperately need higher wages, and occasionally they ask help from the labor unions. But when they find out that the leaders of their unions are none other than their employers, they can only wish that some day their employers might feel the pangs of conscience in the quiet of the night and grant them the favor. From time to time some of the more daring workers might attempt to seek higher wages through bargaining with their employers, but they usually are easily disposed of by severe political means. The other workers can only helplessly drive their wives and daughters to seek jobs so that they can maintain a subsistence living. Most of them live in the outskirts of the cities or in dark alleys behind huge buildings. In a tiny room of two or three mattresses a family of seven or eight exists. A nineteen-inch television set on the mattresses might maintain the facade of civilized living; however, from shouldering the heavy burden of civilization on their pale and bloodless faces are carved the deep lines of sorrow . . ." (cited from the Chinese "An Analysis of Social Forces").

Taiwan's prosperity has been gained primarily through a disregard for the environment and a reliance on a cheap labor force. The continuation of these conditions can only result in negative consequences for the people on Taiwan and for the international community. It is not in our interest to promote growth which results in the complete pollution of 19 of Taiwan's 24 rivers. Liu Wen-Kui, director of the Taipei City Sanitation and Sewage Administration, has noted, "that daily waste water from residences and factories in Taipei totals 1.1 million tons."

The human and monetary costs of water pollution are extreme. A study completed in 1970 has indicated: "Of 3,313 schoolchildren in 6 schools in 1968, 25.3 percent harbored ascarid roundworms; in 4 Taipei suburbs in 1970, 40 percent of 2,629 children harbored roundworms, hookworms, and liver-flukes; for all of Taiwan in 1970, 5,672 of 7,759 children (in same sample) harbored some waterborne parasite." An earlier study published in 1968 concluded that "77.4 percent of all schoolchildren and 73 percent of the total population harbored intestinal parasites."

The non-partisans argue that conditions have worsened. The government responds by banning the criticism and restricting research.

FEMALE LABOR IN TAIWAN

No where is the dependence on cheap labor more consciously and institutionally experi-

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enced than in the lives of female factory workers. In a 1974 report to the Conference on Population and Economic Development in Taiwan, Ms. Yen Hwa describes the role of female workers: "(Taiwan) expanded its labor-intensive manufactures for export to developed countries as a basic strategy to accelerate its economic growth. The female labor force has played a significant role in providing a part of the ample labor supply as well as in maintaining the competitiveness of products in international markets."

Work is not a vocation. There is no chance for upward mobility. The total female labor force in 1974 only records .39% attaining the rank of administrative or executive workers. The most significant use of women workers is in the development of light industry for export, notably the textile and electronics industries in Taiwan's 3 Export Processing Zones. 85% of the 67,000 workers are women and the overwhelming majority of these are young and unmarried. As of December 1977, well over 60 percent of these workers earned between NT\$1600 and NT\$3400 per month—this is equivalent to U.S. \$40-\$90 per month.

To begin to relate the preceding discussion of the EPZ labor force and wage levels to the issue of the quality of life, one might ask the question, "Are EPZ workers, and especially women workers, satisfied with their position in the factories?" Contrary to many reports published in this country, a number of recent studies addressing the issue of worker attitudes have shown considerable levels of dissatisfaction, especially among women. Anthropologist Lydia Kung's research has shown the bitterness of many women workers:

"Many workers at the factory say that working here amounts 'wasting away' our time, 'burying our youth', because each day by the time we get off work, it's already very late. There's hardly any time or opportunity to meet with friends. In the factory, where one has no freedom, it is as if we've sold our lives to the company."

Kung concludes:

"... the 'bitter' quality of factory work derives from a combination of working conditions and the attitudes they encounter in the course of their work. They earn money through manual labor; their hands may become coarse and rough; the plant can at times be hot; inadequate ventilation leaves fumes or lint in the air; their uniforms become soiled; their tasks repetitive and monotonous; and many cannot leave the assembly lines or walk around."

A detailed study of 576 women workers in the Nantze Export Processing Zone has conclusively indicated significant levels of dissatisfaction, especially in the electronics industry. The survey found that over 70 percent (124 out of 173) were either somewhat (40 percent) or very dissatisfied (30 percent) with their jobs in that industry. Principal reasons for dissatisfaction included low salaries, the perceived difficulty of the work, the loss of eyesight due to working with mini-electronic circuits, excessive noise, and the basic feeling of alienation from their labor. Nowhere is the general sentiment of unhappiness shown more pervasively than in the high turnover rate in NEPZ factories. Of the workers questioned in 1978, nearly 50 percent said that they had changed jobs one or more times in their first year of employment in the NEPZ. Many women workers are driven to prostitution. Abortion clinics abound in the EPZ areas.

THE ELECTIONS THAT WEREN'T

The most significant local political development in 1978 was the rise of a collection of non-partisan candidates and embryonic opposition party. This group of candidates synchronized their campaigns for the December 23rd national election. Political observers on the island predicted a substantial victory for the non-partisans, with estimates of the total non-partisans vote reaching over 60

percent. The announcement of Normalization on the 16th provided the government with the excuse to suspend the elections and to harass and arrest the leaders of the opposition.

The primary centers for this resistance were in the Taipei-Taoyuan area, the Taichung-Changhua region, and the cities of Tainan and Kaoshiung. In the 1977 local elections of Taoyuan county, the KMT election officials were charged with election fraud. The people demonstrated in protest. They burned the police station, destroyed official cars, and drove the police off into the safety of the military barracks. Several people were shot to death, and after a few days order returned. But the non-KMT magistrate won! What is significant is the general refusal of the troops forcefully to quell the riot. The crowd chanted to them—you are our brothers, don't join the government. Large wall posters queried whether Communist tactics differed at all from the KMT's rigged election tactics. Although no deaths resulted, a similar incident occurred in the Changhua area. In Kaohsiung, the second largest city in Taiwan, a four day riot occurred over the same issue. There troops were brought in, but there was no violence. Whereas these incidents revealed the existence of mass based opposition, they also signaled the government that long-range pre-emptive measures must be organized to limit the power of this group.

THE NONPARTISAN MOVEMENT

Perhaps the best way to describe the movement is through its political platform. A ten point declaration was drawn up for the non-partisan convention called for December 25th, and to be held in the Ambassador Hotel in Taipei. However, the Garrison Command refused to allow the meeting. The Hotel was surrounded by military and police, and special agents waited inside to take pictures of all non-partisans who entered. Consequently, the platform was not fully discussed, and only a few signatures could be obtained. Nonetheless, the platform represents the consensus of the candidates.

Point number one demands the full implementation of constitutional government. This would include completely reelecting the representatives of the central government, the proclamation of self rule for all the cities, counties, and the province, the establishment of an independent judiciary, the severance of the military from KMT control, the protection of academic independence, freedom of speech, unobstructed debate, and repeal of the press censorship. At the heart of this plank of the platform is the charge to abolish martial law and to protect civilians from receiving military trials. Finally, the government is petitioned to respect personal dignity, i.e. to protect personal freedom, stop torture, illegal arrest and imprisonment, and to desist from invasion of privacy through wire taps and forced entries.

The remaining nine points of the platform focus on social and economic problems: administration of fair elections, creation of a national medical and unemployment insurance, aid to the farm population, enactment of basic labor laws which would guarantee collective bargaining (striking is a capital offense), enactment of tax reforms, creation of a reasonable sales system that will protect the producers and give protection for the income and rights of fishermen.

REACTION TO NORMALIZATION

For the government of Taiwan, normalization of relations between the United States and the People's Republic of China was a blow. But for the Taiwanese, it provided the opportunity to argue for independent development of their own island in their own self-interest.

Normalization produced a wave of anti-American demonstrations on Taiwan. The

demonstrators were drawn from young students frightened by government propaganda about an imminent Communist invasion and from cadets of the military and government academies. These anti-American demonstrations did not reflect the views of the majority of the people there, many of whom actually welcomed normalization. Why? Because normalization destroys the myth which has justified the martial law and huge military expenditures used by the government on Taiwan to legitimize its claim to represent all of China. Normalization has encouraged those who wish to replace the ruling KMT Party, which represents the interests of mainland refugees, with a government reflecting the interests of the 17 million Taiwanese.

Among the leading critics of the myth is the Presbyterian Church, which in its Declaration of Human Rights in 1977 urged the Taiwanese to take "effective measures whereby Taiwan may become a new and independent country." Following President Carter's announcement, leading Presbyterians resolved to intensify their appeal for self-determination. They feel that the future of Taiwan is likely to be determined—unless there is direct interference from the mainland—by the struggle between the awakening Taiwanese and a weakened KMT.

The second major group to criticize the KMT's claim to rule all of China is the existing opposition party in Taiwan. One opposition candidate reflected the dominant views of his organization when he commented: "In the short run, normalization is bad because of its effect on the elections, but in the long run it is good because the KMT no longer can defend its claim to represent China. The Taiwanese now have a chance to rule their own territory."

A minority view within this opposition looks forward to reunification with the mainland—but under Taiwanese terms and based on widespread popular support. Supporters of this view argue that 10 years is needed to re-educate people away from anti-Communism thinking. Their great fear is that Peking either will become impatient and invade—thus producing tremendous disorder and loss of life—or will join with the United States in backing a KMT puppet regime over the island. The latter scenario would mean the stifling of internal reform and continuation of a semi-colonial status for Taiwan.

In sum, most self-conscious Taiwanese believe that normalization merely "recognizes the fact of 30 years of history." They have always agreed that the KMT should return to the mainland; they just disagree on why they have to pay for the KMT's financial and military preparations.

One politician, a former political prisoner, expressed this resentment and independence: "The KMT has neither the duty nor the right to forever assume full responsibility for national and governmental affairs. . . . We are all in the same boat, whether we continue to hold recovery of the mainland as an ultimate goal or whether we seek a temporary alternate route of survival."

Whether the Taiwanese are allowed to find such an "alternate route" to develop their own island in their own self-interest, or whether international powers will stifle them again, remains to be seen.

GOVERNMENT RESPONSE

The government had been well aware of the threat of the non-partisans. The Taiwan Garrison Command had prepared to interfere with the elections by means of a plan called "Operation Clear Sincerity." Concerned agents were to pay close attention to the every utterance of army personnel during the period approaching the election, and during the campaign itself. This was in order to differentiate the troops into those with strong KMT loyalties, and those who were less vocal in their "patriotism."

Ten days before the balloting, each house-

hold in the military dependent villages was to be visited, and three days before, to be given their "assignment cards," indicating to whom they were to give their "sacred ballot." On the day of the voting, party personnel were to be sent to drum up votes and furnish "necessary assistance" to achieve voter turnout in the military dependent villages. Soldiers known to be pro-KMT were to be given assignment cards, and on election day were to be ferried to vote in street clothes. Soldiers in vehicles, were to stop over 200 meters from the polling booth and get out and proceed to the station individually, and not in groups. This was to avoid giving people the impression that it was an operation organized by the military. Afterwards, the soldiers who had cast their "sacred ballot" would be given a day's leave.

Those believed to be of less sure loyalties, however, were to be given military duties which would prevent their leaving the base for the balloting station.

The military was instructed to maintain close collaboration with the election offices of their local KMT candidates throughout the campaign period. In the dependents' villages and on the bases, non-partisan and other "illegal" and "bad" publication, leaflets, fliers, posters, etc. that "distorted the truth" were to be found out and confiscated. People living in the villages were to be organized into hit squads that would leave their refuge for the battlefield of the election place and heckle non-partisan candidates, etc. The aim of this was to contribute to "mass opposition" to the "poisonous thoughts." Non-partisans were always to be referred to as "some social personages". Seven agents were to be assigned to each non-partisan election office to watch and create disturbances. During campaign activities such as rallies, the police would step in if "violence" was about to break out between non-partisan supporters and their "opponents"—and the latter whisked off to the safety of the local police station so that their agent provocateur identity would not be exposed.

But the suspension of the elections obviated the need of "Operation Clear Sincerity." The day following the announcement of normalization and suspension of the elections, President Chiang Ching-kuo "ordered the Executive Yuan to collect all opinions made by candidates during the campaign in the past week and send them to related departments for reference." (China Post, December 18). General Wang Ching-hsi, Commander of the Taiwan Garrison Command warned that application of martial law would intensify if "a small minority of conspiratorial elements, used by the communist bandit or Taiwan independence elements, take advantage of the situation to develop splittist, destructive or subversive activities damaging to national security and the people's welfare. Illegal activities include the holding of illegal marches or assemblies." General Wang then commented that he was pleased to see that all the (non-partisan) campaign posters had been ripped down. The following day, December 18, President Chiang declared to a high-level KMT meeting, "Taiwan is always a part of the Republic of China and anyone talking of an independent Taiwan is betraying his country and people. We will not allow talk, organizations, or actions like that to exist on this bastion."

Nonetheless, the non-partisans continued to organize. Seventy-seven year old Yu Teng-fa, a former magistrate of Kaoshiung County, became the head of the opposition and called another conference for February 1, 1979. However, on Jan. 21st he was arrested on charges of having "met and discussed subversive matters" with a communist agent. He was forcibly taken out of his home and his family could not learn of his whereabouts. Two days later, the KMT suspended

publication of China Tide, a major forum for the opposition. In addition rumors vilifying non-partisan's moral and political behavior were circulated, and posters were pasted on walls which called for the death of oppositionist candidates. A non-partisan official explained: "We accepted the suspension of the elections because it was a defensive move by the Kuomintang. But the arrest of Yu. . . is an attack on us." Another opposition politician said: "I'm not optimistic about the future." (See "Far Eastern Economic Review" Feb. 2, 1979).

Most recently, in order to attack anyone critical of the KMT the Taiwan Garrison Command announced that during the period January 20th to February 19th, over a million security agents, reserve troops, policemen, military police, and aboriginal youth would be mobilized for an all-out day and night effort to root out all kinds of "criminals and subversives."

CONCLUSION AND RECOMMENDATION

In concluding, I would like to bring to your attention the speech of a Catholic Father on December 10th, 1978 on the occasion of the 30th Anniversary of the Universal Declaration of Human Rights. Despite intensive pressures by the KMT threatening the laymen and priests if they attended the ceremony, the celebration was well-attended. Speaking in Taiwanese, the priest expressed the bitterness of his situation: "When I tell a poor man not to steal a chicken, everyone praises me and says that this is what the Church should do. On the other hand, when I tell a legislator not to steal, I am accused of being involved in politics." He told his flock that Human Rights is not just the job of a church specialist but is "now regarded as a basic responsibility of every Christian." He then elaborated on the rights which were lacking in Taiwan. Primary among them were the right to just economic order, right of conscience and political participation, and the right to a secure life.

I entreat this Senate Committee to consider seriously the human rights of the people on Taiwan. The initial means to accomplish this is to understand that the KMT does not express the wishes of the majority of the Taiwanese. For many Taiwanese the Senate's worry about the possibility that Peking might attempt to solve the "Taiwan question" by force begs the issue if at the same time the Senate neglects the reality of the KMT's seizure and control of Taiwan.

Taoyuan County Magistrate Hsu Hsin-liang, a leading member of the non-partisans and currently under KMT harassment, warned that, "if the government and ruling party do not have the confidence to move democracy and freedom but attempt to suppress the movement for democracy by force, they will fall in the same way as the Shah of Iran."

The U.S. Government should ensure that the people on Taiwan have the opportunity to pursue their rights and welfare. Their desire to express their own position of the future of Taiwan without KMT or outside threats should be respected. Most important is to remove U.S. government policies and support from furthering the exercise of martial law. Second, advise the Undersecretary of State for Human Rights that the conditions of the Taiwanese are still of great importance to U.S. policy. This can be effectuated by insisting that whatever continued relations are established with Taiwan, a person fluent in Taiwanese be directly involved in U.S.-Taiwan contacts. Third, appoint a study Committee to research the political-social-and-economic conditions of Taiwan. Although we cannot make up for past neglect, we should not repeat it.

Finally, it is in our self-interest to end our involvement in the civil war in China. A genuinely democratic, and economically

and socially sound Taiwan will be a benefit to Beijing, Taipei, Tokyo, and Washington, D.C.

Mr. DURENBERGER. Mr. President, Dr. Kagan has been a frequent visitor to Taiwan. He last visited Taiwan from December 14 to 28, 1978, on behalf of the Clergy and Laity Concerned and had an opportunity to investigate the political situation first hand and in depth.

Some of the crimes punishable by death are: circulating rumors and beguiling the public; strikes; and the very ambiguous and convenient category of inciting rebellion.

I should like to address a few questions to the distinguished Senator from Rhode Island.

In light of this evidence of a lack of democracy and self-determination, I would like clarification of section 107 of this bill. Specifically, what monitoring of the political situation will be done by the AIT? Will there be a specific official assigned to report to the State Department? And does section 107 effectively require ongoing and regular reporting to Congress?

Let me say, in conclusion, that I do not raise these issues as an abstract statement of moral concern. I am confident that many of us in this Chamber would like to see a greater embodiment in our foreign policy of the principles of "just consent of the governed" and for the self-determination of all peoples. From a practical as well as strategic point of view, I believe that our security, economic and overall foreign policy interests are linked inextricably to political stability in Asia. Yet, it is possible that the ROC Government may be inciting greater instability through its repression of the huge majority of the population who are native Taiwanese. In Iran, we have seen all too bluntly what can happen when we stress support of foreign governments and pay too little attention to the rights and interests of people.

As we consider this bill, I am concerned that we lose sight neither of our long-term strategic interests nor, more importantly, of our historic commitment to the right of all people to national self-determination.

Mr. PELL. I thank my colleague for his remarks and kind words.

Mr. JAVITS. Mr. President, will the Senator yield to me momentarily?

Mr. PELL. I yield.

Mr. JAVITS. Mr. President, I have been advised that this is Senator DURENBERGER's maiden speech, and I congratulate him, on behalf of the minority, for this speech. He could not have chosen a topic more characteristic of the freedom-loving nature of the people he represents in Minnesota.

This is a very key, deeply troublesome, and aggravating point. I do not wish to interfere in any way with the answers. Perhaps I will join in the answers. I just wish to congratulate the Senator on speaking up for the people of Taiwan the way he has done in his maiden speech. It does great credit to him and the State he represents.

Mr. DURENBERGER. I thank the Senator.

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Mr. PELL. Mr. President, I join in congratulating the Senator from Minnesota. I did not realize it was his maiden speech. It was delivered effortlessly and professionally.

In answer to the Senator's question as to who would have the responsibility for monitoring the human rights involved here, the man responsible for that function would be the Foreign Service officer who is assigned to that post as a so-called human rights officer. He, in turn, would be under the supervision of the man—he would not be Ambassador; I do not know what he would be called—who is in charge of the institute. He would be the man responsible, and his reports would be sent to the State Department and would be made available to us if we wished to see them.

Mr. JAVITS. Mr. President, does that terminate the colloquy?

Mr. PELL. I yield the floor.

The PRESIDING OFFICER. The question now recurs on the amendment of the Senator from Virginia.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARRY F. BYRD, JR. I yield to the Senator from Arizona.

Mr. GOLDWATER. I thank my friend from Virginia.

Sitting here this afternoon listening to the colloquy, I was rather particularly impressed by the lack of knowledge that was displayed on exactly what the Constitution says in this field, but more particularly what our Founding Fathers had to say in this important field. I simply wished to interrogate my friend.

For example, John Jay wrote in the *Federalists*, and this relates to the problem we are talking about:

They who make laws may, without doubt, amend or repeal them; and it will not be disputed that they who make treaties may alter or cancel them.

I think that leads toward the idea that the Senate has to participate in the abrogation of treaties, particularly defense treaties. Will the Senator agree?

Mr. HARRY F. BYRD, JR. I think the Senator from Arizona is quite right.

Mr. GOLDWATER. Every one of us has a book on his desk, or he should have, called the *Rules and Manual of the Senate*. These rules still include a precedent which was set forth by Thomas Jefferson who, as we all know, compiled the first manual of rules and practices of the Senate when he was Vice President. He said, and I quote, and it is in the manual:

Treaties being declared equally with the laws of the United States, . . .

And get this:

. . . to be the Supreme Law of the Land, it is understood that an act of the legislature alone can declare them infringed and rescinded.

Was the Senator aware of that language by Thomas Jefferson?

Mr. HARRY F. BYRD, JR. Thomas Jefferson was perhaps somewhat closer to the Constitution and understood it better than the lawyers down at the Department of State. I think that his statement is a highly significant statement, and I thank the able Senator from Arizona for reading it to the Senate.

This clear statement by Jefferson further emphasizes the fact that a President cannot unilaterally, acting on his own, abrogate what becomes, as the Senator from Arizona pointed out, the supreme law of the land once the Senate concurs and approves it as a treaty.

Mr. GOLDWATER. He can no more do that than he can repeal any law that might be on the books because, if we agreed, by any action that we do or do not take in this body, that the President has this power, then a treaty being a law, I suggest that any law that the President does not like he can repeal.

Mr. HARRY F. BYRD, JR. That certainly sounds logical to the Senator from Virginia.

Let us take a case. The Senator from New York (Mr. JAVITS) several years ago developed legislation regarding Presidential war powers. I think the Senator from Arizona opposed that.

Mr. GOLDWATER. That is right.

Mr. HARRY F. BYRD, JR. The Senator from Virginia favored it, and I voted with the Senator from New York and supported that.

But it certainly seems logical that if a President can unilaterally set aside a treaty then he can also unilaterally set aside the War Powers Act which seeks to curb the powers of his office and which does curb the power of his office.

If he can set aside a treaty, why can he not set aside any other law on the statute books, as the Senator from Arizona suggested? I think the Senator is quite right. Obviously, the President cannot.

I think too that we should note that the Constitution does not provide specifically a method for repealing a statute yet no one asserts that the President can void a statute without Congress. He cannot void a treaty without the Senate.

Mr. GOLDWATER. I may continue, Mr. President, if the Senator will yield further.

Mr. HARRY F. BYRD, JR. I yield again.

Mr. GOLDWATER. The same parallel between laws and treaties was made by James Madison. On January 2, 1791, less than 4 years after the Constitutional Convention, he wrote a detailed exposition on treaties to Edmund Pendleton in connection with the Treaty of Peace with Great Britain explaining:

That the Contracting powers can annul the Treaty can not, I presume, be questioned, the same authority, precisely, being exercised in annulling as in making a treaty.

I see my friend from New York is in the Chamber.

I think this question has to be turned over in the minds of those Senators intending to vote either this afternoon or tomorrow. If the President can abrogate

this particular treaty, is it not true that he can abrogate treaties with NATO without coming to us for advice and consent?

Mr. HARRY F. BYRD, JR. I certainly think so. The purpose of the pending amendment is to make clear to a President, that mutual defense treaties cannot be terminated without the question of termination being submitted first to the Senate.

Mr. GOLDWATER. I further ask the Senator if he does not think it is true that the President could also unilaterally pull out of the United Nations Charter Treaty without even asking us whether it is all right.

Mr. HARRY F. BYRD, JR. Well, if the Senate accepts the precedent that the President, acting alone, can abrogate or eliminate the treaty of friendship with Taiwan, by the same reasoning he can certainly abrogate any other treaty that the United States has ratified.

That is why I think this amendment is so vitally important way beyond the question of Taiwan.

That is only one treaty. We have a dozen or more treaties, mutual defense treaties, such as NATO, which the Senator from Arizona just mentioned, which are vitally important to the United States and vitally important to the entire free world.

Mr. GOLDWATER. I wanted to engage the Senator from Virginia on this question because while the Constitution is not too precise in this field—and I think the Senator would agree to that—

Mr. HARRY F. BYRD, JR. Yes. But neither is it precise in specifying a mode for rescinding statutes; it only states how they may be enacted.

Mr. GOLDWATER. [continuing]. Nevertheless, the Founding Fathers, in my opinion, made it very clear that the power to make treaties rested in part with the Senate or the entire Congress, and the power to repeal or abrogate a treaty rested with the Senate or the entire Congress.

I believe I am correct in saying that there has only been one defense treaty abrogated in the entire history of our country, that was by an act of Congress either just during the end of Adams' time or during his time. The Congress did it, and the President later agreed to it.

So I wanted to get these points made if I could, thinking that possibly we might not vote tonight, and that some of the Members who are not present, thinking we would not vote today, could have a chance to read these comments in the RECORD tomorrow.

I will just close by observing that in his careful analysis of the treaty abrogation power, Madison did not once consider the possibility of the President alone terminating a treaty, even where the other side had committed a breach of it, which offers an insight, in my opinion, into what the Founding Fathers thought about the subject.

I want to thank the Senator from Virginia, the State which is the home of one of my favorite liberals, Tom Jefferson,

who did so much to make this country what it is.

I hope when we do get ready to vote that our colleagues in this body will pay very careful attention to what the Founding Fathers said about this, and the fact that this is the first time a President has ever tried this.

I thank the Senator for yielding.

Mr. JAVITS. Mr. President, does the Senator from Virginia have the floor?

Mr. HARRY F. BYRD, JR. Could I just make a brief comment?

May I just say that the able Senator from Arizona has made a most significant contribution to this debate.

I think the facts and statements that the Senator from Arizona has made available to the Senate should be tremendously helpful to the Members of the Senate in deciding how to vote on the pending legislation.

Undoubtedly the Senate, if it wishes, can say, "Well, we will table this amendment; we will vote it down. We do not want to have anything to do with the treaties after they are made. We will just let the President do whatever he wants." We have the authority to do that. Those Senators who want to do that certainly have the right to so vote.

The Senator from Arizona and the Senator from Virginia happen to take a different course. We believe the Senate has a constitutional role to play, just as the report of the Committee on Foreign Relations states. Here is the time to play that role.

Those who do not want to participate in it can say, "We are going to vote down this amendment. We are going to table it. We are going to oppose it one way or another. We are going to get rid of it some way."

Well, that is all right. The Senator from Arizona and the Senator from Virginia have been on losing sides before. It is nothing new to us.

But I just wonder why a person would want to be in the Senate if he is going to abdicate a vital constitutional role, namely, the role of the treaty-making process and, as the report of the Committee on Foreign Relations says, "the constitutional role to participate in the process of treaty termination?"

As the entire history of our country shows, going back to the lines quoted a moment ago by the Senator from Arizona from passages written by Virginians, incidentally, Thomas Jefferson and James Madison, the entire history of our country shows that it was certainly the clear view of those famous men of that era, and I think it is certainly logical, as the Senator from Arizona mentioned in his earlier remarks, that if a President could unilaterally set aside what is known as the supreme law of the land, then if he could do that in this case then he could do that in many, many other cases, including statutes of the Congress.

Here is an opportunity for the Senate to express its own view on this vital issue, and I associate myself with the Senator from Arizona, and I am proud to stand with him.

Mr. SARBANES. Mr. President, will the Senator from Virginia yield for a question?

Mr. GOLDWATER. I might just remind my colleagues that last fall we passed a resolution asking that the President come to us before he did anything about this treaty, not just his body, but the other body, too. I think there were four votes against it in the entire Congress. I may be wrong, but I think it was that. So while it was not law, it was certainly an expression of the Constitution the President should have understood.

I thank the Senator from Virginia for yielding.

Mr. HARRY F. BYRD, JR. I yield to the Senator from Maryland.

(Mr. BAUCUS assumed the Chair.)

Mr. SARBANES. Is the approval to which the Senator refers, the approval of the Senate, is that by a majority vote of the Senate?

Mr. HARRY F. BYRD, JR. Approval is ordinarily in that form; what is critical is that some formal legislative action occur.

Mr. SARBANES. The Senator means it would take two-thirds to ratify the treaty but that only a majority could terminate it?

Mr. HARRY F. BYRD, JR. I think it could. However, if the Senate would prefer to have it spelled out as two-thirds I would be willing to accept such a proposal.

Mr. SARBANES. I do not have an answer for the Senator from Virginia on that question which, I think, is a rather important one. That question, however, is one of the reasons that seems to me to support the suggestion made earlier in the afternoon by the managers of the bill that an amendment of this sort which raises some very basic constitutional questions, ought to be the subject of hearings.

I appreciate the thrust of some of the arguments which the Senator from Virginia has advanced. On the other hand, as a matter of logic one could quite easily argue that if it takes two-thirds to approve a treaty it ought to take two-thirds to terminate a treaty.

Let me ask the Senator from Virginia this question: Does the Senator feel that the Senate could terminate a treaty if the President did not wish a treaty terminated?

Mr. HARRY F. BYRD, JR. Well—possibly the entire Congress; I believe that has happened once already.

Mr. GOLDWATER. Mr. President, will the Senator yield at that point?

Mr. HARRY F. BYRD, JR. Yes.

Mr. GOLDWATER. I might say the only treaty, defense treaty, that has ever been abrogated was done precisely that way by the entire Congress.

Mr. SARBANES. The entire Congress, the House and the Senate.

Mr. GOLDWATER. Just a moment. If the Senate did not choose to do it, then the whole Congress could do it. But it does require a two-thirds vote in the Senate to abrogate a treaty when they are asked to do it alone or the President sends down a message he wants it done that way which, I think, is the proper way.

Mr. SARBANES. Well, now, can Congress, meaning the House and the Senate, terminate a treaty?

Mr. GOLDWATER. That was the case, as I related earlier, either at the end of Adam's term or thereabouts. They abrogated a treaty with France. Later the President came back and approved what Congress had done.

If the Senator from Virginia will allow me, I ask unanimous consent to have printed in the RECORD at this point the history of the terminations of 51 treaties or treaty provisions that have taken place during the history of our country since July 7, 1798.

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

TERMINATION OF TREATY OR TREATY PROVISION WITH LEGISLATIVE ACTION (51)¹

A. Termination with legislative approval or ratification (48)²

Authorizing legislation, treaty, and total treaties affected:

Act of July 7, 1798, 1 Stat. 578, French-American Treaties of 1778-1788, 4.

H.J. Res. of April 27, 1846, 9 Stat. 109, Convention on Boundaries with Great Britain, 1.

S. Res. of March 3, 1855, 9 Senate Executive Journal 431, Commercial Treaty with Denmark, 1.

J. Res. of Jan. 8, 1865, 13 Stat. 566, Reciprocity Treaty with Britain, 1.

J. Res. of June 17, 1874, 18 Stat. 287, Treaty of Commerce and Navigation and Commercial Convention with Belgium, 2.

Act of February 26, 1883, 22 Stat. 641, Amity Treaty with G. Britain, 1.

J. Res. of December 21, 1911, 37 Stat. 627, Treaty of Commerce and Navigation with Russia, 1.

Seamen's Act of March 5, 1915, 38 Stat. 1184, Several treaties and conventions, 25.

S. Res. of May 26, 1921, 61 Cong. Rec. 1793, International Sanitary Convention, 1.

Treaty on Principles and Policies Concerning China (Nine Power Agreement) of February 6, 1922, 2 Bevans 375, Treaty of Commerce and Navigation with Japan, 1.

1944 Chicago Convention on International Civil Aviation, 3 Bevans 944, 965, 1928 Pan American Convention on Commercial Aviation, 1.

1946 Convention for the Regulation of Whaling, 4 Bevans 249, 1937 Convention for the Regulation of Whaling, 1.

Trade Agreements Extension Act of 1951, 65 Stat. 72, Treaties of Friendship, Commerce and Consular Rights with Hungary and Poland, 2.

1948 Convention on Safety of Life at Sea, 1929 Convention on Safety of Life at Sea, 1.

Foreign Assistance Act of 1961, 75 Stat. 424, Commercial Convention with Cuba, 1.

Export Control Act of 1948, 50 USC App. 2021 et seq.

Trading with the Enemy Act, 50 USC App. 1 et seq.

Mutual Assistance Act of 1954, 22 USC 1934.

Inter-American Treaty of Reciprocal Assistance of 1947, 4 Bevans 559.

Cuban Resolution of 1962, 78 Stat. 697.

Byrd Amendment of 1971, 85 Stat. 427, § 503, "One aspect of our treaty obligations under the U.N. Charter." *Diggs v. Shultz*, 470 F. 2d 461 (D.C. Cir. 1972), 1.

Fishery Conservation and Management Act of 1976, 16 USC 1801, Three Conventions on Fisheries, 3.

B. Termination with implied authority conferred by inconsistent legislation (3)²

Date of legislation, treaty, and total treaties affected:

Tariff Act of July 24, 1897, 30 Stat. 151 Commercial Convention with Switzerland, 1.

National Industrial Recovery Act of 1933,

Footnotes at end of article.

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48 Stat. 195, Convention on Abolition of Import and Export Prohibitions and Restrictions, 1.

Trade Agreements Act of June 12, 1934, 48 Stat. 943, Treaty of Commerce and Navigation with Italy, 1.

FOOTNOTES

¹ One incident of Congressional ratification of a Presidential notice is not included in the table because notice was withdrawn before the treaty was terminated. In 1865, shortly after President Lincoln had notified Great Britain of our withdrawal from the Rush-Baggot Convention regulating naval forces upon the Great Lakes, Congress defended its power in the field by passing a Joint Resolution based on the principle that Lincoln's action was invalid until ratified and confirmed by Congress. H.J. Res. of Feb. 9, 1865; 13 Stat. 568.

² Congress terminated all existing treaties of the Hawaiian Islands with foreign nations in the Joint Resolution of July 7, 1898, but the action is not included in the table because those treaties were not ratified under the Constitution.

³ Another treaty which was terminated because of inconsistent legislation is the 1891 Treaty of Amity, Commerce and Navigation with the Independent State of the Congo. In 1916, Belgium, which had annexed the Congo, twice denounced the whole treaty after Congress directed the termination of a substantive article thereof in the Seamen's Act of 1915. The treaty is counted only once in the above tables, being included with those treaties affected by the Seamen's Act in Table A. Termination of the treaty is reported by the State Department under the heading "Abrogation of Treaties and Provisions of Treaties which Conflicted with the Seamen's Act of March 4, 1915," Foreign Relations, 1920, vol. 1, pp. 207-209.

Mr. SARBANES. Will the Senator from Virginia continue to yield for further colloquy?

Mr. HARRY F. BYRD, JR. Go ahead.

Mr. SARBANES. Is it the view of the Senator from Virginia that the Congress, meaning the House and the Senate, can terminate a treaty?

Mr. HARRY F. BYRD, JR. A treaty being in the nature of a statute, I suppose that Congress, by joint action, the two Houses acting together, could do it. It has already happened at least once. I believe it was in 1798.

Mr. SARBANES. But is it the Senator's view that the Senate alone could terminate a treaty?

Mr. HARRY F. BYRD, JR. I would not think the Senate alone could do it, no. Under most of the treaties we have, as the Senator from Maryland knows, the provision that termination may be undertaken by either party only after 1 year's notice implies that such termination will be done in accordance with a party's internal constitutional process.

The Senator from Virginia contends that "either party" means either government. Under our form of government, the Senator from Virginia contends, it is the executive branch and the legislative branch acting together which forms the Government or the "party" which may terminate after 1 year's notice.

Mr. SARBANES. Well, of course, we could write into a treaty prior to ratifying it provisions defining what we mean by "party" in terms of terminating a treaty.

Mr. HARRY F. BYRD, JR. Certainly. But it is patently clear that "either

party" means, in this case, either the United States or Taiwan. Any other conclusion would not be logical.

Mr. SARBANES. There is legal authority that says that "party" means the President, and termination has occurred in the past on that basis. That has been a part of treaty law, and that is what has taken place.

Mr. HARRY F. BYRD, JR. If the Senator will yield at that point, I think he will find that no mutual defense treaty has been unilaterally abrogated. And all that has happened here is that notice has been given. "Either party" may now terminate or not terminate as each sees fit, in accordance with its own constitutional process.

Mr. LONG. Mr. President, will the Senator yield to me at that point?

Mr. HARRY F. BYRD, JR. I yield.

Mr. LONG. I came into this discussion rather late in the game and have not heard all the profound discussion of this matter one way or the other, but it was my impression that the authority is made clear by article VI of the Constitution, which reads:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The impression I gather from that article is that a treaty signed by the President and ratified by a two-thirds majority of the Senate is the law, and if you have a later law to the contrary, it would supersede that law. In case of conflicting laws, whichever law is the latest of the two would prevail. That is the impression that I have.

If you want to repeal a law, you have to do it with another law. The Executive can make agreements, but he is sworn to uphold the law himself, so that he cannot repeal a law just by saying "I just don't like the law; I am not going to abide by it."

If one of us tried to do that, we would be put in jail. They would say, "You don't have the right to decide what law you are going to abide by or what law you are not going to abide by." As I say, they would put us in jail.

I am told the Attorney General has stated in recent years that even the President is subject to the law and has to abide by it, or get in deep trouble. So I just cannot understand how, if you make a law, it would cease to be the law unless you repeal it by a subsequent law or amend the Constitution. Can the Senator explain to me how you go about repealing a law? A treaty is described here as being the supreme law of the land. It is described, with the Constitution and the statutes, as being the supreme law. How can the President abrogate a law, just by saying, "I don't like it any more, it no longer suits our purpose, out with it"? How can you repeal a law just by the Chief Executive saying he is tired of it?

Mr. HARRY F. BYRD, JR. I am just as much in the dark about that as the Senator from Louisiana is. A President can veto a bill before it becomes law, of

course. But once legislation becomes law, whether it be a treaty or a statute, I am certainly of the same persuasion as the Senator from Louisiana, that the President by himself cannot repeal that law, that it takes joint action with Congress to do that.

Mr. LONG. It totally baffles me try to understand how a law could be amended by the stroke of the pen of the Executive, unless Congress has acquiesced in that, or unless the Senate has acquiesced by a two-thirds vote as to a treaty. I do not understand how a treaty could be repealed by a simple declaration of the President.

Mr. HARRY F. BYRD, JR. The Senator from Virginia does not understand how that would be done—at least constitutionally—either. If that can be done, it seems to me that ratification of treaties by this body serves little purpose.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. LONG. A President once told me that he could not do everything by just a stroke of a pen, but that was a way of changing a policy in a department.

Mr. HARRY F. BYRD, JR. An Executive order.

Mr. LONG. Yes, an Executive order, telling the people working under him or his cabinet officers that they are to do business in certain ways, because he thought it was wrong to do business otherwise.

That, I think, is strictly within the ballgame. There are all kinds of Executive agreements the President can make, as long as he can get us to uphold them. A succeeding President could respect them or not respect them, depending on his view of the matter.

But I fail to see how a treaty can be treated so casually.

Mr. HARRY F. BYRD, JR. The Senator from Louisiana has been around this Chamber almost as long as any Senator, with two or three exceptions. In all those years, can the Senator from Louisiana recall a time when any President—and he has served under many of them—has attempted unilaterally to strike down either a major treaty or a major piece of legislation by his own act, without the acquiescence of Congress?

Mr. LONG. I cannot recall it.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. Yes.

Mr. GLENN. I think all the questions that have been raised by the Senator from Maryland are very good questions; and the discussion which the Senator from Louisiana, the Senator from Virginia, and the Senator from Arizona have had indicates the lack of certainty and lack of knowledge that we have with respect to what is constitutional and what is not, the time that would be required to abrogate or to go through a deratification process, what the voting numbers should be, whether it be a majority or whether it be two-thirds, and so on.

All of these are very relevant questions to the proposal of the Senator from Virginia. I would like to state again that I would be happy to accept this as

a matter which the Foreign Relations Committee should look into, hold hearings and get a hearing from our constitutional scholars in on both sides. Although we have not looked into this question indepth, we had no intention of dodging this. Since it was being brought up in the court, we expected that this issue would be thoroughly examined. If we were required to take action after that, we would be willing to. Certainly, court action would not preclude any action we might want to take, either pro or con. But the complexity and great importance of this matter leads me to caution against passing it on a hasty basis tonight just to get it on this bill.

I would be happy to accept this for the Foreign Relations Committee, to have hearings on it, to look into it indepth, and bring it back to the floor. I would sincerely hope, as I expressed earlier, that the Senator from Virginia would take that course, rather than forcing a vote upon us tonight, when we are, obviously, ill-prepared to consider something of this magnitude.

Mr. HARRY F. BYRD, JR. I thank the Senator from Ohio. I think this proposal we have before us tonight, if adopted, would not in any way preclude the hearings that the Senator from Ohio has generously indicated he would hold. I want to again read just what we will be voting on, if and when we are able to get to a vote. It just says this:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

We are expressing our own view. Certainly we have a view as to whether we do or do not have a role. The Foreign Relations Committee report on page 19 states we have a constitutional role, right here in black and white.

Mr. GLENN. Will the Senator yield in that regard?

Mr. HARRY F. BYRD, JR. Yes.

Mr. GLENN. The Senator has quoted repeatedly that particular part of the report today. I can only say that he is well aware that these hearings and the reports that follow do not have the force of law behind them nor are they anything but expressions of opinions. In fact, sometimes there are errors. I was surprised when I read that particular part, because I think it overstates the situation and should not have been there. I am certain that if we took that back to the committee, had everyone read that particular item and vote on it, that language would have been stricken from the report. So I hope the Senator from Virginia will not pin us to the wall too hard on the exact language of the committee report.

Mr. HARRY F. BYRD, JR. I think those of us who are not on the committee have to be governed to some extent at least by the committee report. It is certainly a clear report. I had not heard any member of the committee object to it until I brought it up. As a matter of fact, the committee—

Mr. GLENN. I objected to it. I agree with the Senator objecting to it.

Mr. JAVITS. I objected to it before, long before it was brought up. In the col-

loquy with Senator HELMS. I told him that I thought this was overstated. And also with Senator GOLDWATER.

Mr. HARRY F. BYRD, JR. The fact is that this is a committee report. It was submitted to the Senate by the Foreign Relations Committee.

Certainly, the Members of the Senate have some reasonable right to accept this report and the accuracy of the report, particularly when the report dovetails precisely with what the Senator from Arizona has been saying, and many other Senators have been saying, and with what the Senator from Louisiana has been saying, that a President cannot particularly when the report dovetails exactly with the arguments made by those two Senators as well as with those of my colleague from Virginia, and with those two Senators as well as with those the Senator from South Carolina, and many other Senators in this Chamber.

As for the precise amendment which the Senate hopefully will be permitted to vote on at one time or another, it is clear. We do not need any public hearing to know what our own judgment is as to whether it is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation. We either feel that way or we do not.

Mr. GLENN. If the Senator from Virginia feels that way, can he give very specific clearcut answers to all of his 99 colleagues on the issues raised by the Senator from Maryland? What would be the number of people who would vote on this?

Mr. HARRY F. BYRD, JR. This says that the question of termination of any mutual defense treaty shall be submitted to the Senate by the Chief Executive. I think that is clear. I would have no objection to requiring a two-thirds vote if the Senate feels that is desirable.

Mr. SARBANES. Will the Senator yield?

Mr. HARRY F. BYRD, JR. Yes.

Mr. SARBANES. I want to respond in part to some of the comments made also by the Senator from Louisiana.

There are two separate issues. One is should the President alone be able to terminate a treaty? That matter is the subject of a suit now pending in the courts. There is historical precedent for the view that he can. I can envision a situation in which we would want the President to be able to terminate a treaty and to move quickly. I suggest to the Senator from Virginia if he thinks about it he could also envision like situations in which the President, possessing the Executive power, has to move quickly and terminate a treaty.

We cannot make a treaty unless the President submits it to us. There is no way that the Congress, the House and the Senate, or the Senate alone, can make a treaty of its own initiative. It must be submitted to us by the President. In that respect, treaties are very different from statutes.

That issue is a very complicated constitutional question. The way to address it if it is desired to have a Senate role in the formulating may well be to spell it

out in the resolution of ratification. The Senator from Arizona is in court on this issue. He has testified before our committee and has raised some very interesting questions.

Leaving the question of termination by the Executive alone to one side, there is still the very difficult question of how do you terminate a treaty even if it requires more than the Executive alone.

This amendment itself by the statement of the Senator from Virginia is unclear as to whether you do it by a majority vote of the Senate or by a two-thirds vote. If you do it by a majority, what is the logic of requiring two-thirds to approve a treaty and a majority to terminate it?

On the other hand, the Senator from Louisiana when he drew his analogy to repealing a law, said that the Congress could repeal a law. That is quite true. But the Congress is the House and the Senate and, it takes both to repeal a law just as it takes both to pass it.

Mr. JAVITS. And the President.

Mr. SARBANES. I will get to the President in a minute.

It is the House and the Senate acting together by a majority vote that pass and repeal laws. Yet you make a treaty by two-thirds of the Senate without action by the House. It is now suggested you can repeal it by a majority vote of the House and the Senate. Can a President veto the repeal of a treaty passed by a majority of both Houses? If he does, can the Congress override his veto of the repeal of a treaty by a two-thirds vote in both the House and the Senate?

Suppose a President does not want to terminate a treaty to begin with? Can we initiate the termination of the treaty in the Congress? Can the House of Representatives initiate the termination of a treaty? Can the House pass a resolution terminating a treaty and, if so, what vote would be required? If the House sent such a repeal over to us what would we then do with it? If we passed it, by what vote? Would the President have a veto authority with respect to the termination of that treaty?

I have raised all these questions really to underscore and subscribe to what the Senator from Ohio has suggested. There are a great number of unanswered questions. Even if you take the most narrow view of the amendment offered by the Senator from Virginia there will remain unanswered questions. It seems to me that the suggestion made by the Senator from Ohio that there is a need to delve into this matter in a very careful and considered way, is a very good suggestion.

All the questions raised concerning the very difficult issue of how one proceeds in this area makes the counsel that the Senator from Ohio was offering earlier particularly wise and prudent counsel.

Mr. GOLDWATER. Will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Arizona.

Mr. GOLDWATER. I think this is a good point to get some history into this. That is why I absented myself from the floor long enough to look up some things that I do not think have been in the RECORD yet.

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The answer to how a treaty is terminated is in history. The normal procedure for terminating treaties is by joint action of the President and Congress or the Senate. On 51 occasions, treaties have ended with legislative action. In only four instances have treaties been ended without legislative action, and that was done under international law, such as the principle that a treaty ends if the other nation goes out of existence—as in the case of the Netherlands, which I mentioned was in the days of Adams.

The Senate did not have a specific reservation to treaties spelling out the power of the Senate to act on treaty termination because it was obvious that, during all of history, the Senate has participated in this act under treaties identical to the language of the notice provision in the Taiwan treaty.

I just wanted to make that a matter of history so that we know what we are up to. We are establishing a precedent by allowing the President to get away with this. As I said earlier, if the President cares to send a message to the Senate saying he wants to abrogate this treaty, there is no question in my mind that the Senate will comply with the President's request. So we are not trying to knock down any decision of the President. I think we are just trying to keep the record straight and trying to keep the President on the right track so that somebody might not come along someday and say, "I am tired of NATO," sign his name and we are out of NATO; "I am tired of the U.N.," sign his name and no more U.N.; "I don't like this law against this," sign his name, and no more law.

I think it is very simple, what we are talking about. I do not think it is complicated. I think 201 years of history stand behind those of us who are arguing on behalf of the proposal of the Senator from Virginia.

I thank my friend from Virginia for having yielded again.

Mr. HARRY F. BYRD, JR. I yield to the Senator from North Carolina.

Mr. HELMS. I thank the Senator.

Mr. President, also very clear is the Senator's intent in his amendment. You can drag in all these "what ifs" and other hypothetical things, but the point is that this question would not be before the Senate if the President had sent it to the Senate and had conferred with the Senate and given the Senate an opportunity to act on it.

As I understand it, the position of the Senator from Virginia is very clear. He is saying, and I am putting this in the form of a question to him, the Senator is saying and saying no more than this: The President can give notice of intent to terminate, but he can terminate only after he receives authority to act by statute authorizing him to terminate a treaty.

Mr. HARRY F. BYRD, JR. The Senator from North Carolina is quite correct.

Mr. HELMS. That is very simple. I do not know that we need to have extensive hearings on this. A Senator is either in favor of the Senate's exercis-

ing its responsibility or a Senator is not in favor of that. That is what the Senator from Virginia is saying, is it not?

Mr. HARRY F. BYRD, JR. That is correct. I see no objection to hearings if the Senate will pass the amendment now pending. That does not preclude hearings. If they want to have hearings and go into other details, that is perfectly satisfactory with me.

I would think that the Senate would want to make clear its own view, and that is what it is expressing, its own view that the Senate has a role in the treaty-making process and in abrogating a treaty.

There is no need to write this procedure into each new treaty nor to amend the ones already ratified. It is clear from the face of the Constitution; there is no more ambiguity here than there is in the constitutional provisions for making statutes. We do not write into each statute the method of repeal; nor do we do it in treaties. All that is written into a treaty is that, as a matter of international law, 1 year's notice will be given before, pursuant to internal constitutional process, abrogation will occur, or not occur, as the case may be.

Mr. HELMS. It is amazing to me that, depending on which side of an issue a person may be on, his opinion may change. I notice the discussion about arithmetic, whether it is a majority vote or two-thirds. They had no problem with that arithmetic when the matter of extending the ERA ratification period was up. Those of us who tried to say, "two thirds," heard, "Oh, no, a majority vote is just right." But when the Senator from Virginia comes forward with an amendment that is just as clear and simple as it can be, the question is, "Oh, is it 51 votes or two-thirds, or what?"

By the way, when are we going to vote on the Senator's amendment?

Mr. HARRY F. BYRD, JR. The Senator from Virginia has been ready for 2 or 3 hours.

Mr. HELMS. So has the Senator from North Carolina. I ask the distinguished acting minority leader: When will we vote?

Mr. JAVITS. As soon as the Senator from Virginia sits down, I shall put the question.

Mr. HELMS. Is that an answer to my question?

Mr. JAVITS. Yes.

Mr. HELMS. Then I say to the Senator: sit down.

Mr. JAVITS. Mr. President, I am going to take my text from the Senator from Virginia. He says the words are plain, just as written. It says:

It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

So he wishes us to adopt the proposition that it is not approval by the Congress, it is approval by the Senate and, we must assume, by majority vote.

He has himself conceded that that is not what he means. Those are the words. That is what he wants us to adopt.

Second, Mr. President, it is my judg-

ment as a lawyer that what this does is put U.S. foreign policy in one of the worst tailspins it has ever been in. I shall say why.

The power of the President to have given this notice of termination, which he has given, is being challenged. This says the Senate agrees with the challenger. Therefore, it raises a big legal question: If the action of the President in giving notice of termination of this treaty is invalid, this whole piece of legislation falls. It would really be ridiculous to adopt it, because we would be doing something exactly contrary to what we believe. So the Mutual Defense Treaty, if he has no power to terminate it, remains in effect. That is what this resolution says.

It does not say, "should be," it does not say "will be." It says "it is." So we are substituting for the Supreme Court of the United States and we are deciding this question now, in the Senate.

I believe, from what I have heard, that that may be the clear purpose and intent of the Senator from Virginia, the Senator from North Carolina, and perhaps a majority, I do not know. But let us face it: That is what it is.

Mr. President, I think the Senate ought to have an opportunity to vote very clearly on whether it wishes to take this legal position and to say to the President, "We are going to really say that we do not consider your action to have been lawful in giving notice to the Republic of China that this treaty is terminated. It sounds like a sense resolution, but it is not, because this is our opinion. It is unlawful, Mr. President, what you have done and we say so. It is the sense of the Senate that you cannot do this. You have to get our approval, whatever that may mean."

So, Mr. President, this is not just another sense resolution that gives some pious hope and expectation of what we may and may not wish to do; this is the real McCoy. This is the end of it, because we are giving our legal opinion, our opinion that what the President has done is unlawful. And I cannot do that, however much I may wish to construct and I will lend myself to constructing.

And I am not asking the Senator to adjourn for 20 minutes, not at all. If he can get a vote, he will get it and he will get it very promptly, maybe tonight, maybe tomorrow morning. That is not my purpose at all. But let us understand what we are doing and if the Senate wants to knock this whole thing down, this is as good an occasion as any. It would be my purpose and intention and it has been my purpose and intention, because I think this is a very pertinent question, just as I applied myself, and the Senator from Virginia was very gracious, about developing a methodology respecting an area of the Constitution which was in the twilight zone; to wit, the war powers resolution.

It was a methodology. We cannot change the powers of a President under the Constitution. When that issue was debated, I think my colleagues will remember that I said a President could say to us, "I'm sorry, gentlemen, but I am going to disregard this whole thing, because you are trying to take away my constitutional powers."

Senator GOLDWATER appeared before us and argued that very strongly, that very thing.

But we felt it was a methodology very carefully worked out and, though the President vetoed it, we passed it over his veto. In that spirit of comity which represents the triumph of our society, the Presidents previous and the present President are accepting that methodology as what the Congress wants.

But this goes a lot further than that. This is not just a methodology. I think we could probably work out a methodology which would resolve this question. But this resolution, if we adopted it, just as the Senator from Virginia says, we can read the words, it is simple. This is what they said.

Well, what they say is that the President has acted unlawfully, that is the sense of the Senate. Therefore, this whole edifice we have been developing goes crashing down.

That is great for people who are against it anyhow. But, apparently, a majority of the Senate is not against it.

So whether we vote tonight or tomorrow, I think it is very important to get that clear.

Finally, the Senator said something which I do not agree with, with all respect, and I would like to straighten it out. That is, that a motion to table is some kind of a substantive reverse. It is not. This is precisely what a motion to table was made for. It does not decide the merits. It gives us another opportunity, either never to do it, or to do it sometime, or even to do it later in this bill, in some way that suits us.

I will vote for the motion to table. I do not intend to prejudice this effort to find a way to deal with what is a very knotty and, apparently, quite an original question, can a President unilaterally give notice of the termination—everybody is using the word "abrogate" and I know that is wrong. There is no abrogation here at all. The treaty says it can be terminated within 1 year by either of the parties.

The question, Who is the party? It is the Government of the United States. But who acts for that Government? The President does lots of things under the Constitution. He commands our armies without congressional action. He can send men to their death without congressional action. That is power given him directly by the Constitution.

So I think this thing can be resolved, but it needs to be resolved effectively and intelligently.

As I see it, in this resolution, it is just a matter of torpedoing this whole thing, because we say the President did not have the authority to give the notice of termination, so the whole thing falls on that ground.

So I hope very much a motion to table will be made and that we may have the right and the duty to vote up or down as to whether we want to go forward with this, we may even want to do something about this, or whether we want to stop it here and now on this resolution.

I yield to the Senator.

Mr. GOLDWATER. If the Senator will

yield for an observation, I do not believe that this is a resolution. I believe it is an amendment. I do not think there is any requirement in the Constitution that calls for a two-thirds vote on any amendment, whether it is to a treaty or not.

I just wanted to make that clear.

The PRESIDING OFFICER. Will the Senator use his microphone?

Mr. GOLDWATER. What the distinguished Senator from New York did with the War Powers Act, he did not take away the power of the President as Commander in Chief to go to war. He merely put some limitation on it.

So I see where we can draw a parallel between his successful action, and I think we are trying to do the same thing, the Senator will remember the debates we had on this floor during the war powers debate.

It was repeatedly stated that the courts, the Supreme Court four times, I think it was, has turned down a chance to decide whether or not the Constitution meant for the President to be the Commander in Chief. That is still a little fuzzy.

I just wanted to make the point that this is an amendment, not a resolution, and it does not require a two-thirds vote on it.

Mr. HELMS. If I may ask the Senator one question, just for the record, he does agree that the Mutual Defense Treaty has no relationship to the proposal for the Institute, the Institute would have nothing to do with the Mutual Defense Treaty?

Mr. JAVITS. But all the other provisions of this particular law, the very reason for the law, the whole Taiwan provision and other essential aspects of what we are doing, are occasioned by the fact we have assumed, it is certainly clearly assumed that there is a mutual defense treaty which is being terminated as of the end of this year, otherwise we would have a very different statute.

Mr. HELMS. I agree. But it has nothing to do with the Institute?

Mr. JAVITS. It does not have to do with the Institute.

Mr. HELMS. I thank the Senator.

Mr. STEVENS. If the Senator will yield, I am constrained, Mr. President, to say that I cannot support the position of the Senator from Virginia, maybe for a reason that others would not think of.

But I had the occasion to work in the administration of President Eisenhower and I have seen now 8 years of control of the executive branch by a party that did not control the Congress, and I cannot see fettering the actions of a President by requiring confirmation of a decision to terminate a relationship.

I can understand full well, on the entering into of a new relationship, the constitutional responsibilities to the Senate. But I do not see we ought to take this position, and I hope the Senate will not support it, primarily because we do not have that constitutional power, so far as I am concerned, and we should not attempt to usurp the President's power in the role of foreign affairs, particularly in a situation where the President does not have a majority of the Congress.

The inference here may well be it would take two-thirds. I do not know. But at least it would take a majority of those voting, and I have seen too many times when on a purely political issue that was not there, and to deter, the President in his responsibility under the Constitution in establishing new relationships, because of the lack of such support, I think would be wrong.

Therefore, I really cannot support the position of the Senator from Virginia on this. I hope the Senate will not support the Senator from Virginia.

I think we should insist to the fullest extent possible that the Congress, and particularly the Senate, have our full constitutional role in foreign affairs. I know of nothing in the Constitution that gives us such a role as that sought by the Senator from Virginia.

Mr. JAVITS. I thank my colleagues, Mr. President.

May I say the reason I made the point about tabling is that we who may vote to table, we do not want to be, at least I certainly do not want to be, prejudiced in what I may do on this particular matter, and on another occasion, and within another frame of reference.

It certainly is not going to foreclose me from trying to fashion some way of dealing with what is a matter, obviously, of great importance, not dealt with directly by the Constitution, and, if we do choose to deal with it, we will do it in a deliberate and intelligent way and not in what I consider a highly improvident way, which would be to negate the President's legal authority in an amendment to this very measure which all falls if we say right here and now that in our opinion he has no such legal authority.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MOYNIHAN. Mr. President, I associate myself fully with the Senator's remarks, and I wish to make an observation which may be marginal at this moment, but which in very short order may be very central to our considerations.

President Carter, whom we all have just sent off to the Middle East with our prayers and our great hopes, in a recent interview in Atlantic Monthly magazine, in an article by James MacGregor Burns, expressed it as his view that if the Senate should fail to advise and consent to the ratification of a strategic arms limitation treaty, he would proceed to act as if the treaty were in effect. That is a matter which raises very large questions and ones which are going to concern us if that eventuality should come about. Therefore, it is all the more important that we be meticulous in asserting what is our power and what clearly is not.

The idea of implied powers is pervasive in the Constitution, and nothing is more clear than the initiative of the executive in foreign affairs. In the spirit of checks and balances, the Constitution places one restraint on that initiative. It is common throughout the Constitution to have these restraints, one body on the other, and that the President may not enter treaties without the advice and consent of the Senate. That his initiative is otherwise a full and plenipotentiary initia-

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tive in foreign affairs, extending to putting an end to a relationship, it is clear, has not been questioned in almost two centuries of the Republic.

At a time when the President is suggesting that he might assert a different premise, it seems to me that we have a greater responsibility to be strict constructionists, to be careful to attend to the precedent and to the clear practice of two centuries.

I believe the Senator from New York is clearly correct in this, and I shall be happy to support him.

Mr. JAVITS. I thank my colleague very much. I count his support very important, considering his very rich background in this field.

Mr. WARNER. Mr. President, as a cosponsor of this measure, I would like to put a question to those voicing opposition to the vote.

Hearings have been requested as a compromise. Would it be the intent of those proposing the hearings that the hearings would embrace the threshold question of whether or not the President acted properly in this case, before we, as a body, proceed with the measure before us, S. 245?

Mr. JAVITS. As for me, I cannot say that I would agree to hold up this case until we had those hearings; but I certainly would have no conceivable objection to having the hearings cover every subject, including the President's action in this case. The only point the Senator made which I could not accept is that this should be held up until we decide.

Mr. GLENN. Was it the Senator's intent that this would be held up until a decision was made?

Mr. WARNER. I think that in the debate it has been brought forth that there are many serious questions, and that is the predicate upon which the hearings were requested. Therefore, on the assumption that there is a serious question should we not hold up this matter until the hearings produce a result on which we can vote as a body, thereby interpreting this provision in the Constitution?

Mr. GLENN. I concur with Senator JAVITS. I think that in the consideration of what we are going to do, we examine every treaty that has been treated, including this one. But I would not want to hold up this legislation. Otherwise, it might go on for a long period of time.

Mr. WARNER. The point made by Senator JAVITS was that we could make a grievous error if we proceeded now to vote on this matter, and suppose we came to the conclusion that the President lacks the power to terminate.

Mr. JAVITS. I will tell the Senator why that is incorrect. I mentioned this morning—and I repeat—that the committee had to answer two questions: one, what was its legal opinion about the President's power to give notice of termination? It said that that question is unclear, and it gave no legal opinion, unless we adopt this amendment, and that squared away Senator GOLDWATER.

I said we had another question, and that is, Shall we act on this legislation? That implies that we accept the fact that that mutual defense agreement is terminated and will be at the end of the year.

We answered that in the affirmative. We will act. We are not passing on the general issue, but in this case we are going to act on the hypothesis that it is terminated.

That seems to me to square exactly with why I say we would sit on this until such time as we decided. We have decided. We are ready to act on this particular matter.

Mr. WARNER. I thank the Senator.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I had thought it might be possible to reach a vote this evening in relation to this amendment, but a good many Senators have gone from the Hill. Therefore, I ask unanimous consent that a vote in relation to the pending amendment occur tomorrow at 12 o'clock noon.

The PRESIDING OFFICER. Is there objection?

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, is it the intention of the majority leader that there be 20 minutes or a half hour, or something like that, for debate prior thereto?

Mr. ROBERT C. BYRD. I would be glad to include that in the order, Mr. President, that beginning at 11 a.m., there be 1 hour of debate, to be equally divided between Mr. HARRY F. BYRD, JR., and Mr. GLENN; that, in the meantime, the Senate, by unanimous consent, could set aside this amendment in order to take up other amendments or other matters.

Mr. HARRY F. BYRD, JR. Would votes be taken on other amendments?

Mr. ROBERT C. BYRD. They could be. I doubt that there would be, at this hour, it being almost 7 p.m. The agreement would allow for only 1 hour prior to the debate on the pending amendment.

I really would like to come in at 9 o'clock tomorrow and have 2 hours on other matters, but I could assure the Senator that there would be no other amendment voted on prior to his, if he wishes me to include that in the order.

Mr. HARRY F. BYRD, JR. I think that might be desirable.

Mr. ROBERT C. BYRD. The Senator understands that this request does not waive the right of Senators to move to table.

Mr. HARRY F. BYRD, JR. That is correct.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. I thank the Senator from Virginia, and I thank all Senators.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the Senator from Wisconsin (Mr. PROXMIER) be listed as a cosponsor of the pending amendment, unprinted amendment No. 30.

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

● Mr. BAKER. Mr. President, as we turn to S. 245, the Taiwan Enabling Act, I believe it appropriate to note the importance of this legislation. It is important not only to continuing our good and mutually beneficial relationship

with Taiwan, but also as a means to insure that as we embark on the promising but uncharted course of our new relationship with the People's Republic of China we remain steadfast in our allegiance to our friends and our principles as a nation.

As I have said many times in the past, Mr. President, I have no quarrel with our recognition of the People's Republic of China, which I have long considered the inevitable and logical conclusion to the process begun with President Nixon's visit to Peking in 1973. This significant step in the process of normalization must be managed carefully and developed with a realistic appraisal on both sides of the Pacific of its prospects. It is a relationship that offers both problems and promises, but I am convinced that it can contribute significantly to the interests of the United States.

Nevertheless, in developing that new relationship, however promising, the United States must not sacrifice our principles of integrity and credibility as a nation. So as it pertains to the manner in which we treated our longtime friend and ally, the people and government on Taiwan, I do quarrel with the administration's recognition of Peking. In not seeking assurances that the dispute between Peking and Taipei be settled peacefully—in not seeking to maintain an official relationship with Taipei—and by acting precipitously without prior consultation with the Congress or with officials of the Government of the Republic of China—the administration treated cavalierly and shabbily a friend of the United States. In doing so the administration tarnished our integrity and credibility and, if for no other reason, this legislation, as amended by the Foreign Relations Committee, is extremely important.

This legislation helps to remove that tarnish, Mr. President, because it now contains a provision that I believe reflects the overwhelming sentiment of the American people to the continued security and prosperity of Taiwan. Moreover, it provides a mechanism of maintaining our relationship with Taiwan greatly improved over that proposed by the administration. Although no mechanism so constructed could substitute for a continued official relationship, I believe this will suffice as the foundation for a sound and prosperous relationship in the years to come.

It may be, Mr. President, that the Senate will wish to modify or strengthen the language reported out of the Foreign Relations Committee. More important than the mere words, however, is the spirit of the commitment of the American people to preserve our relationship with a secure Taiwan. That commitment will hold firm even as we move forward in the development of a new relationship with the Chinese on the mainland. ●

● Mr. LAXALT. Mr. President, although I intend to support strengthening amendments, I will not oppose S. 245, the Taiwan Enabling Act. It seems to me that it is essential that we provide some mechanism for continuing relations with Taiwan and clearly state our on-

going security commitment to that island nation.

But I deplore the sequence of events which has made the bill necessary, a sequence which to my mind is part and parcel of an overall foreign policy which quite frankly frightens me. With this in mind, I will leave it to my distinguished colleagues to debate the finer points of S. 245, while confining my observations to the deplorable decision to jettison Taiwan, which made this bill necessary.

THE DECISION

Few in this body seriously object to extending diplomatic recognition to the People's Republic of China (PRC). I think most of us felt that this was a decision bound to come and even to a certain extent overdue.

But I do object, and I believe many of my colleagues object, to the manner in which the announcement was made, to the absence of consultation with the Congress, and to the extremely poor nature of the bargain struck.

Quite literally in the dead of night and right in the middle of the holiday season with Congress out of town and the Nation preoccupied with other matters, President Carter presented us with a secretly negotiated, fait accompli. As I understand it, our allies of some 30 years standing were cut loose with less than 1 hour's notice. This was a bit much from an administration which had made a campaign issue of the secretive nature of its predecessor's "Lone Ranger" methods and fancied itself to be in the Wilsonian tradition of "open covenants openly arrived at."

Yet, bad as it was to not consult with our allies, neglecting "prior consultation" with the Congress in clear violation of the Dole-Stone amendment to the International Security Assistance Act of 1978 was even worse. Although the administration did claim to have consulted with some Senators, this apparently consisted of at best a few hours' notice prior to the President's appearance on national television. As a cosponsor of the Dole-Stone amendment, this was certainly not my idea of "prior consultation" and I doubt whether it will satisfy any of the other 93 of my colleagues who approved the amendment in a unanimous vote.

In fact, the suddenness of the decision made in extreme secrecy at a time when Congress was not in session could certainly lead one to believe that the administration intentionally chose to evade the provisions of the Dole-Stone amendment. This is particularly disturbing from an administration which had chided its predecessor for not working well with Congress on foreign policy and which had pledged to the electorate in 1976 to do better.

But it is the substance of the China decision that I object to most. The People's Republic of China got everything it has asked for and then some. The United States was left with scarcely a fig leaf to cover what I consider a disastrous retreat. And Taiwan, of course, got nothing at all.

President Nixon could have secured the same terms in 1972 at the time of the

Shanghai Communique. President Ford could certainly have secured them during his term of office. Indeed, it is fair to say that the terms offered by Teng Hsiao-p'ing and accepted by President Carter are little different than those offered to and rejected by five Presidents over the last 20 years.

The substance of the People's Republic of China demands has been known for a long time. The People's Republic of China has insisted: First, that diplomatic relations with Taiwan had to be terminated; second, that all U.S. military forces and installations had to be removed from the island; and third, that the United States-Republic of China Mutual Security Treaty had to be terminated.

Mr. President, the People's Republic of China achieved each and every one of these objectives. They also got a 1-year moratorium on new arms sales commitments by the United States to Taiwan.

In exchange for what? We can now call our mission in Peking an embassy rather than a liaison office. But, as the Foreign Relations Committee noted in its committee report on S. 245, the liaison office already was an embassy in all but name. The People's Republic of China has promised to be somewhat more sympathetic to economic offers tendered by our businessmen. But then again, the present political climate is very volatile. It could change, leaving our businessmen right back where they started. Finally, the People's Republic of China might even look the other way if we were to sell Taiwan arms of a defensive nature after the end of the year. But as the committee hearings show, even this is far from certain.

What about the use of force? Would the People's Republic of China pledge not to use force in resolving the Taiwan issue? Teng Hsiao-p'ing made it clear while in this country that it would not. Although the Foreign Relations Committee has gone to some length to express our concern that the Taiwan situation be resolved peacefully, the fact is the administration proceeded to recognize Peking without any commitment at all from the People's Republic of China on this score.

In exchange for tangible concessions of a concrete nature, then, we have secured ambiguous assurances from a 74-year-old leader of a highly explosive country, and nothing at all about a renunciation of the use of force. If Mr. Teng is in control in the People's Republic of China today, he may not be tomorrow, and there is no way for anyone to be certain just what will happen to President Carter's new China policy once Teng passes from the scene.

ITS CONSEQUENCES

Mr. President, I strongly believe that this new China policy is built on sand. I also believe that it is morally reprehensible in that we are abandoning a tried and trusted friend without cause and taking up with that friend's mortal enemy.

Let me turn now for a moment to the consequences. In foreign policy, as in any other area of human endeavor, our actions produce certain effects. It seems to me that the effects of the new China

policy will be of at least three sorts: First, on ourselves; second, on our allies; and third, on our adversaries.

For ourselves, I cannot believe that this action, in the aftermath of Vietnam and in view of all the President's campaign promises of a more moral foreign policy, says very much that is favorable about the kind of moral image we Americans wish to convey to the world. Surely power politics is a difficult business in the best of times. But the American people have always thought themselves better than the sordid norm. Although historically as a nation we have done what we had to do to survive, we have legitimately looked upon our nation as something better, a moral beacon amid the squalor of Old World rivalries.

In the past we left the hobbling and weaving and moral ambiguity to others. Now we have turned, I believe viciously and without cause, on a close friend. I cannot believe that this conforms to what our people have a right to expect this Nation to be in foreign affairs. And I am sure that our people will waste no time in repudiating it. But I am afraid that the cynicism and arrogance characteristic of turning on a friend will have left an additional scar which it might take some years to erase.

And what about our other friends and allies overseas? Mr. President, how would you like to be sitting in Bonn, Tokyo, Riyadh, Tel Aviv, or Brussels? To say nothing of London, Paris, Rome, or anywhere else this country is relied upon for security assistance? Quite frankly, an American administration capable of turning 180 degrees and repudiating its most solemnly pledged commitment to an ally of 30 years' standing is capable of most anything. And those responsible for the destinies of these and other friendly nations know this very well.

We in Nevada have a strong tradition of personal integrity. A man's word is his bond, and either you can trust him or you cannot. World politics, at bottom, is no different. Nations, like individuals, need to have reputations for trustworthiness and reliability. Those who do will find their share of friendship and support in the world. Those who do not risk being thrust backward, alone and isolated to face a hard world on its own terms.

This country in particular needs to be mindful of this lesson. Since the end of World War II, we have entrusted our security to a network of regional alliances, the common denominator of which has been the very same mutual security pledge violated by the administration's December 15 announcement. Whether we will be able to continue to do so now becomes an open question.

For our adversaries the lessons of December 15 must be even more perplexing. Press reports during the time of Vice Premier Teng's visit indicated that the administration had caved in so readily on Taiwan that Teng apparently began to wonder whether we would be of any use to him in his efforts to contain Moscow. The Russians are, of course, already strongly entrenched in Southeast Asia, courtesy of their Vietnamese ally,

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and with their Navy present in ever greater numbers in the Western Pacific have been given a virtual carte blanche to involve themselves even more actively in matters pertaining to the Formosa Straits.

Yet I am sure that even Moscow and Peking have had second thoughts about our capricious abandonment of a close ally. In the nuclear age, a certain amount of predictability is desirable in relations between adversaries, just as it is among allies. Nations with their fingers on a nuclear trigger need to know that the other side is reasonable, rational, and not likely to do anything foolish. A policy such as that announced by the President on December 15, indicating an ability and a willingness to turn a full 180 degrees throws all such reassuring assumptions out the window and adds a disturbing element of instability to the nuclear balance.

Mr. President, I am unhappy with S. 245. Not for what it does, but for what it represents. We in the Senate need to pass it to do what we can to make the best of a bad bargain. But I am afraid that our Nation and those immediately responsible will be long time living that bargain down.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, following any further discussion of this amendment this evening, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond 30 minutes, with statements therein limited to 5 minutes each.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, I ask the Senator if this means there will be no more roll-call votes tonight.

Mr. ROBERT C. BYRD. There will be no more rollcall votes tonight.

Mr. HARRY F. BYRD, JR. The request of the majority leader was that when the discussion of this amendment concludes, there be routine morning business?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

UP AMENDMENT NO. 31

Mr. GLENN. Mr. President, I send a technical amendment to the desk. The present section 107 should be 106(c); other sections should be renumbered accordingly.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. GLENN) proposes an unprinted amendment numbered 31:

The present section 107 should be renumbered section 106(c). Other sections should be renumbered accordingly.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HARRY F. BYRD, JR. Mr. President, I should like to make several very brief comments.

The pending amendment, UP amendment No. 30, does not take away from the President any power the President has. What it says is perfectly clear: It is the sense of the Senate that approval by the Senate of the United States is required to terminate any mutual defense treaty between the United States and another nation.

It was brought out clearly in colloquy between the Senator from North Carolina (Mr. HELMS) and the Senator from Virginia that it has nothing to do with the President's right, the President's authority, to give the 1-year notice of his intention to submit to the Senate the abrogation of a particular treaty. It does not take any power away from the President. What it seeks to do is to say to the President that he cannot unilaterally abrogate a treaty. It is a very clear amendment.

All sorts of red herrings have been brought into this discussion this evening, but they do not apply in most cases. This takes nothing away from the President. It does assert the Senate's constitutional role in the treaty-making process, and in the treaty terminating process.

Contrary to what has been implied by the Senator from New York, this amendment would have no effect whatsoever to invalidate the notice already given by the President. That has been done. The amendment does not in any way challenge that authority. The amendment does not even state an opinion for or against that decision; the amendment simply asserts the Senate's view of the constitutional role of the Senate in this important area. If we are unwilling even to state our view, then we can expect to be ignored in this and future cases.

Several Senators addressed the Chair. The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I understand we are in the morning hour.

The PRESIDING OFFICER. Is there further discussion on the amendment offered by the Senator from Virginia?

Mr. PROXMIRE. Mr. President, it is my understanding there is no further discussion of Senator Byrd's amendment. The majority leader has secured unanimous consent that we be in a morning hour and that a morning hour be permitted to make statements until 7:30 p.m.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. If there be no further discussion of the amendment, pursuant to the previous order, there will now be a period for routine morning business.

Mr. PROXMIRE. Yes.

The PRESIDING OFFICER. Is there morning business?

AMIN: A REMINDER OF GENOCIDE

Mr. PROXMIRE. Mr. President, recently there have been news reports from Africa that the government of Idi Amin is beginning to crumble. After a 4-month war with Tanzania, the Ugandan army is tired and discouraged. Machinegun fire can be heard in Kampala almost every night. Some reports claim

that 80 members of Amin's family have been evacuated from Uganda.

If the Amin government falls, it will mean the end of one of the most brutal and oppressive regimes of the last decade. It will mean the overthrow of an egomaniacal tyrant of the last slaughter of hundreds of thousands of Ugandans. How has this butcher been allowed to murder Acholi and Langi tribesmen as well as Christians for the last 8 years? What has the United States done to halt these atrocities? Sadly, the answer is nothing. While we have politely condemned genocide in Uganda, we have dragged our feet in ratification of the only international treaty which attempts to prevent and punish mass-murder: the Genocide Convention.

Over the last 30 years while we have considered and reconsidered the Genocide Convention, millions upon millions of people have been the victims of genocide.

As we hail the imminent demise of the regime of Idi Amin, we must see to it that such human devastation never recurs. One way to accomplish this is that we must ratify the Genocide Convention.

MUTUAL SAVINGS BANKS

Mr. PROXMIRE. Mr. President, on January 9, 1979, the U.S. district court for the district of New Jersey ruled that provisions of New Jersey law which prohibit geographical discrimination in mortgage lending are applicable to national banks. I am pleased with this result. It is consistent with the legislative history of the Equal Credit Opportunity Act Amendments of 1976 which I believe makes clear that State laws prohibiting discrimination in lending, and which provide greater protection to applicants, should apply to federally chartered creditors.

Last August, in a similar case involving the State of California's antiredlining law, the U.S. district court for the eastern district of California ruled that Federal law preempts State antidiscrimination laws as they apply to federally chartered savings and loan associations. This case is now on appeal, and I hope the appeal is successful.

Last October, Congress passed legislation to give mutual savings banks authority to convert to a Federal charter. One provision of this legislation explicitly provides that mutual savings banks converting to a Federal charter must continue to comply with applicable State law pertaining to discrimination in the extension of home mortgage loans or adjustments in the terms of mortgage instruments based on neighborhood or geographical area, if the Federal Home Loan Bank board determines that State law and regulations impose more stringent requirements than Federal law and regulations. When this legislation was being considered by the Senate, I engaged in a discussion with Senator Brooke on the Senate floor designed to make clear that this explicit provision addressed only the issue of applicability of State law to converting mutual savings banks, and that this new provision did not affect existing law applicable to Federal savings

and loan associations. My remarks at that time were certainly not intended, and could not in any case, contravene or reverse the legislative history of the Equal Credit Opportunity Act Amendments. Last year's legislation simply did not address this issue, one way or the other.

In response to a question from Senator Brooke on the Senate floor last October, one of my comments was that Federal law will continue to govern Federal savings and loan associations in the anti-discrimination area. This statement was made in the larger context of a statement explaining that the then pending legislation would not change existing law in this area as it affects Federal savings and loans. It also gave recognition to the fact that at that time, the only court interpretation of existing law was that Federal savings and loans were not subject to State antidiscrimination laws.

Since that time, as I have noted, the U.S. district court for the district of New Jersey has issued a ruling with respect to New Jersey's antiredlining law. While that ruling applies to national banks, it is possible that some of the court's reasoning may bear on the legal situation as it affects Federal savings and loans. Also, as I have noted, the California case is on appeal. My remarks last October were certainly not intended to affect the outcome of the appeal of that case, which should be decided on its own merits in accordance with existing law regarding the applicability of State antidiscrimination laws to Federal savings and loans, which, as I have noted, was not changed one way or the other by last year's legislation. If the appeal of the California case is successful, then certain of my remarks made last October would be rendered inaccurate and inapplicable.

Mr. President, I am making these comments because I have just learned that the bank board has cited my remarks of last October in its brief in defense of the appeal of the California case. Since I believe that the board's citation of my comments was done in a manner which misinterprets the basis and intent of my remarks, I believe it is necessary for me to set the record straight.

THE DEATH OF GEN. MUSTAFA BARZANI

Mr. PROXMIRE. Mr. President, I take a moment to take notice of the death of Gen. Mustafa Barzani who for 40 years fought for the freedom of his Kurdish people. On one occasion about 3 years ago General Barzani asked to come to my office. Through an interpreter he explained that he was present to thank me for a speech I had made dealing with the repressive measures taken against Kurdish tribesmen and women by the Iraqi and Iranian regimes. He spoke softly and directly. He indicated that one of the major disappointments of his life was the reversal in policy dictated by Secretary of State Kissinger that led to the bloody suppression of his revolt against the Iraqi Government. He asked for assistance, where possible, for Kurdish refugees. And then he left. He had said what he came to say.

The story of the U.S. role in the Kurdish revolt is not a pleasant one. It is an example of the worst form of geopolitics, the political games played by individuals and nations. When it served U.S. purposes, we supplied aid to the Kurdish cause. And when Secretary Kissinger felt it necessary to seal an alliance with the Shah of Iran, who was increasingly concerned about his western border, then the United States abruptly withdrew its assistance. The Kurdish people were the pawns in the chess game.

When Secretary Kissinger speaks of not allowing concern for human rights to dominate U.S. policy, perhaps he is thinking of the example of the Kurdish people—a four century struggle for independence that once looked promising but was snuffed out in a quick behind-the-scenes diplomatic agreement.

Mr. President, I ask unanimous consent that articles from the Washington Post and New York Times on General Barzani be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 3, 1979]

GEN. MUSTAFA BARZANI, EXILED
KURDISH CHIEFTAIN, DIES
(By J. Y. Smith)

Gen. Mustafa Barzani, the colorful guerilla chieftain who unsuccessfully fought for Kurdish independence in Iraq for more than 15 years, died Thursday evening at Georgetown University Hospital following a heart attack. He was 76.

Gen. Barzani, who was known to his followers as "the grand old man of Kurdish independence," came to the United States in June 1976. He was suffering from lung cancer and underwent treatment at the Mayo Clinic in Rochester, Minn. He lived in Washington, and at the time of his death, in McLean.

His exile here began a year after the collapse of his final campaign before an onslaught by the Soviet-equipped Iraqi army in the spectacular mountain regions that are the homeland of the Kurds.

The military defeat followed a political disaster. In March 1975, Iran withdrew its support for the Kurds as part of the settlement of a border dispute with Iraq. The two nations had been on the point of open war over the Kurdish question. The settlement of the border question defused this threat and with it what some regarded as a much wider threat to stability in the Middle East. Thus, the United States supported it.

Gen. Barzani and about 200,000 of the estimated 2 million Kurds living in northeastern Iraq fled to Iran, which offered them the choice of remaining—there is a sizable Kurdish population in Iran—or of returning to Iraq.

Shortly before he fled, Gen. Barzani told an interviewer "Sometimes things are good. Sometimes they are bad. Now they are bad. It is a fact of life."

Ironically, Shah Mohammed Reza Pahlavi of Iran, who had withdrawn Iranian support of the Kurds, also was in exile at the time of Gen. Barzani's death, having been forced to leave his country by the revolution of supporters of the Ayatollah Ruhollah Khomeini.

Gen. Barzani's departure from Iraq in 1975 ended a 17-year period in which he was the most visible of Kurdish leaders. In 1958, he had returned from an 11-year exile in the Soviet Union to a hero's welcome in Baghdad, the Iraqi capital. The Iraqi army had just overthrown the British-backed Hashemite dynasty and had launched Iraq on a

path of socialism and intense Arab nationalism.

At first, it appeared that the new regime would be agreeable to allowing the Kurds a measure of autonomy. When these hopes failed, Gen. Barzani led his troops, the Pesh Merga, which means "forward to death," into battle.

The war continued intermittently for 10 years. In 1970, the Iraqis, their resources sorely strained by the effort, agreed to give the Kurds substantially what they wanted. They were to have their own local government and armed forces, five seats in the Iraqi cabinet and a vice presidency.

On however small a scale, this would have been the realization of a Kurdish dream. The Kurds claim a history of 4,000 years. There are an estimated 12 million of them living in an area encompassing the borders of five countries: Iran, Iraq, the Soviet Union, Syria and Turkey. An Aryan people with an Indo-European language, they are Sunni Moslems.

An independent Kurdistan had been promised by the Treaty of Sevres in 1920 between the Allied powers and Turkey. The promise was ignored by all parties.

Gen. Barzani apparently had doubts that the Iraqi proposals of 1970 would be implemented. In September 1971, nine persons dressed as holy men visited him at his headquarters in the village of Haj Omran near the Iranian border. One was a "human bomb." When he exploded, four other "holy men" and a Kurdish soldier were killed. Gen. Barzani escaped unharmed. His followers blamed the Iraqis for the attempt on his life.

The Iraqi concessions were to be implemented by 1974. As the deadline drew near, it appeared that they would not. The major stumbling block was the Kurdish claim to the rich Kirkuk oil fields and a failure to reach agreement on the boundaries of the Kurdish sphere.

It was at this point that the shah of Iran offered to support Gen. Barzani in a renewed war against the Iraqis. The Israelis also reportedly offered covert assistance because Israel shared Iran's interest in tying down the Iraqi army and because it was concerned about its Iranian oil supplies.

According to the House Select Committee on Intelligence (the Pike Report), Gen. Barzani insisted on a U.S. guarantee of the shah's good intentions. The United States agreed to this, and supplied the Kurds with "untraceable" captured Soviet and Chinese arms through Iran.

Iranian army units took part in the subsequent fighting and Iraqi forces made incursions inside the Iranian border.

The Pike report maintains that the Kurds would have gained at least some measure of autonomy without further fighting. It is said the United States hoped that the Kurds would wear down the Iraqis, but that there was no intention of supporting Gen. Barzani through to victory.

In exile here, Gen. Barzani occasionally spoke out in favor of Kurdish rights. Mostly, his life was quiet.

He was born in the village of Barzan in Iraqi Kurdistan into a family of religious scholars and tribal leaders. He earned the title of mullah, or religious wise man. After his years in the Soviet Union, he sometimes was called "the Red Mullah."

He got his first experience of oppression at the age of 3, when he and 25 members of his family were imprisoned by officials of the old Ottoman Empire. He was in jail for nine months on that occasion.

In 1931, he and 40 other members of the family were restricted to a small village after Gen. Barzani's brother, a tribal leader, led an unsuccessful uprising against the British. But he remained active in behalf of Kurdish independence throughout the 1930s and into the 1940s.