

be opposed by a few die-hards who are still fighting the Civil War.

Recently, at The White House observance of Human Rights Day, Dec. 6, 1978, President Carter again called for Senate approval of ratification. He said: "Eighty-three other nations have ratified the Genocide Convention. The United States—despite the support of every President since 1948—has not. In international meetings of the United Nations and elsewhere, and when I meet with foreign leaders, we are often asked why. We do not have an acceptable answer. I urge the United States Senate to observe this anniversary in the only appropriate way: by ratifying the Genocide Convention at the earliest possible date".

My information is that the Foreign Relations Committee will hold no further hearings on the Genocide Treaty. Presumably the Committee will report the treaty out favorably again, as it did previously. However, the Senate leadership has indicated it will not put it on the calendar until it is assured of the 60 votes necessary to impose cloture, thus stopping a filibuster. Because the matter has been dragging so long, most senators are indifferent to it. Accordingly, it is doubly important that members of the Senate hear from citizens around the country. Members of this Commission are here in a representative capacity. This means that you represent some organization probably having a national standing. If every member of this Commission were to request the national office of his/her organization to have members around the country write to their senators urging that the Genocide Treaty be brought on for a vote on the Senate floor, this could well produce the desired result. It is amazing what a limited number of letters from around the country can accomplish.

Our failure to ratify these treaties approaches a national disgrace, and there would be nothing gained by attempting to explain away our non-action on any credible basis. This applies with particular force to our failure to ratify the treaty against Genocide, which, unbelievable as it may be, has been pending in the United States Senate since 1948.

Mr. PROXMIRE. I thank the distinguished majority leader for his generosity, and I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements therein limited to 5 minutes each.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

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

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

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

TAIWAN ENABLING ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the pending business, S. 245, which the clerk will report.

The 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.

The Senate resumed the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. ROBERT C. BYRD. I thank the Chair. I ask unanimous consent that the time be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 80

(Purpose: To amend section 111 (a) of S. 245)

Mr. BOREN addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time? Does the Senator from Oklahoma wish to propose an amendment?

Mr. BOREN. Yes, Mr. President, I have an amendment that I have previously sent to the desk.

The ACTING PRESIDENT pro tempore. The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BOREN), for himself, Mr. DOLE, Mr. HOLLINGS, Mr. HELMS, Mr. MORGAN, and Mr. BAYH proposes an amendment numbered 80:

On page 12, strike out—

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

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

The amendment is as follows:

On page 12, strike out lines 5 through 12, and substitute:

SEC. 111. (a) For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights, or interests in, properties, tangible and intangible, and other things of value, owned, acquired by, or held on or prior to December 31, 1978, or thereafter acquired or earned by the people on Taiwan.

Mr. BOREN. Mr. President, this amendment has a very simple purpose. It would allow Taiwan to keep its diplomatic real property in the United States.

The section as now written provides that Taiwan can keep its foreign exchange assets, bank deposits, and property, but it makes an exception of diplomatic real property acquired prior to October 1, 1949.

The property in question is located at Twin Oaks, the former Republic of China Embassy on Woodley Road in Northwest Washington (including 19½ acres of land); the Chancery and the military attache's office on Massachusetts Avenue. The combined value of the property is about \$3 million.

The House Foreign Affairs Committee has already taken this action.

The Senate Foreign Relations Committee considered the matter and decided to let the courts decide the question of ownership of diplomatic properties.

However, with all due respect for the work of the committee, I see nothing wrong and, in fact, I see a great deal right, with leaving the property in the hands of the people who have had it for the last 30 years.

In light of the back-handed treatment received by our friends and allies on Taiwan, there is no justification for adding the indignity of summary eviction to the list.

We are not dealing with an enemy, but with a friend. Taiwan has consistently supported this Nation politically and militarily. Taiwan is also our eighth leading trading partner. We have an annual bilateral trade of \$7.2 billion. Taiwan is one of the best cash customers for our agricultural products.

It may be "normal" diplomatic procedure to transfer control of such property when government's change, but there is very little normality to this whole issue.

The State Department has argued that the United States "acknowledges" but does not necessarily agree with the position that there is one China and that Taiwan is a part of China. In addition, our Government has chosen to leave ambiguous the question of the Taiwanese government's status with respect to international law. There are in force 17 treaties and other agreements still in existence which were negotiated with the then government on mainland China prior to 1949.

We are therefore not dealing with a situation here in which one government in a definite geographical area has replaced another which no longer has a defacto ability to govern any area. It is not like the recent situation in Iran, for example, where one regime has replaced another from a factual point of view. We are dealing with a friendly government which is fact remains the effective government over a geographical area known as Taiwan and 17 million people.

To allow Taiwan to retain its diplomatic property is small compensation to an old and trusted ally. The passage of this amendment would in a small way be a symbolic gesture that would indicate to the rest of the world, who are watching our handling of this matter, that we mean what we say in professing a strong desire to maintain future cultural, economic and security ties to 17 million friends.

I urge the Senate to adopt this amendment. It is in the interest of this country to do so as a gesture to our friends on Taiwan. It is in our interest to do so as a message to our allies around

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I had asked the Defense Department to explain the rationale for increasing the strategic airlift program at a cost of about \$13 billion. But efforts by my Subcommittee on Priorities and Economy in Government and by GAO were completely frustrated by the Pentagon.

The Pentagon first denied the committee and the GAO access to requested documents. Subsequently, the same kind of information concerning strategic airlift that had been discussed openly was classified on national security grounds.

Prior to 1977 Defense Department spokesman used statistics about airlift requirements in public statements. Yet, in December 1977 Defense Department spokesmen told my subcommittee that similar information was now considered classified.

OVERSIGHT SYSTEM INEFFECTIVE

Most of us thought progress was made in eliminating unnecessary classification under the oversight system put into effect in 1972. This turns out not to be the case.

Although I asked GAO to investigate the problem of overclassification, its inquiry revealed that the systems employed by the agencies that do most of the classifying is too slipshod and weak to learn anything substantive about specific classification actions.

Agencies such as the Pentagon and the CIA do not keep adequate records, do not maintain up-to-date inventories and do not report accurately about their classification actions.

EVIDENCE OF MASSIVE OVERCLASSIFICATION

There is now evidence of massive overclassification of national security documents and flagrant noncompliance by the Pentagon and other agencies with procedures set up to prevent abuses of the classification system.

According to GAO, oversight of the Government's classification program has been ineffective because the National Security Council and the Interagency Classification Review Committee did not require agencies to comply with procedures that would have provided complete information on their classification activities.

The program was established in 1972 by an Executive order of President Nixon to prevent classification of Government documents on national security grounds.

The purpose was to make information about Government affairs more readily available to the public, except for information bearing directly on defense and foreign relations.

PERVASIVE MISREPORTING

But there is more unnecessary classification and overclassification today than ever before and there is pervasive misreporting by Government agencies of the facts.

The Pentagon reported 3.6 million classifications actions in 1977. GAO estimates the correct number at from 50 to 100 million.

The CIA reported under 600,000 classification actions annually when the true number was about 5,000,000.

NONCOMPLIANCE OF GOVERNMENT AGENCIES

The Pentagon and the CIA also did not comply with the regulations concerning classification abuses.

One of the great difficulties, Mr. President, is that almost anybody who is cleared for high security matters, including secretaries and clerks, is free to take that stamp and classify material willy-nilly. Of course, it is always easier to classify material because it not only avoids any kind of possible mistake but it also makes it possible to avoid criticism.

Knowledge and understanding by the press and by the public are matters that should be debated.

The regulations prohibit unauthorized classification, unnecessary exemptions and other improper actions.

GAO found that in the 6-month period ending December 31, 1977, the CIA reported only "nothing to report."

The Pentagon's National Security Agency refused to comply with the regulations on grounds that there are no practical means to monitor all classification actions.

GAO finds the agency's failure to collect and report statistics on classification abuses unjustified.

GAO points out that most agencies do report statistics concerning abuses based on inspections and reviews.

VIRTUALLY ANYONE WITH A CLEARANCE CAN CLASSIFY

A major reason for the massive and almost controlled classification of government documents is that agencies are allowing persons other than authorized classifiers to take classification actions.

Virtually anyone in the Pentagon with a security clearance can classify information.

Relatively low level persons, including clerks and stenographers, are allowed to put security stamps on Government documents.

Overclassification and the failure to declassify promptly results in millions of dollars of increased costs for extended storage and protection of the material and for government employees who periodically review the material to see if it can be reclassified.

THE NEW SYSTEM IS LIKELY TO BE INEFFECTIVE

President Carter issued a new Executive order last year to replace the 1972 Program.

But GAO concludes that the new system does not provide solutions to the oversight and monitoring problems in the earlier system. The situation is worse than it ever was before that order was issued. Congress needs to legislate a solution to the problem, and I hope we do that and do that this year.

MORE SUPPORT FOR THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, contrary to what the rest of this body may think, I am not the only person who thinks the Senate ought to wake up from its 30 years of indifference and move for the immediate ratification of the Genocide Convention. I recently received a copy of an address given by Mr. Bruno V. Bitker which goes right to the heart of the issue. Mr. Bitker is a former chairman of the Governor's Commission of the United Nations and has long been active in the crusade for human rights.

Mr. President, I commend this article to my colleagues and urge them to lend their support for the immediate ratification of this treaty. I ask unanimous consent to have Mr. Bitker's article printed in the RECORD.

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

REPORT OF BRUNO V. BITKER

It can be said with assurance that the adage that it is an idea whose time has come now applies to international human rights. In the words of Dr. Zbigniew Brzezinski at the recent White House Observance of the 30th anniversary of the Universal Declaration of Human Rights, "human rights is the genuine historical inevitability of our times". Domestically the time had arrived with the American Revolution, although it took a civil war to more fully recognize the unique philosophy set out in the Declaration of Independence and the United States Bill of Rights.

Internationally the sanctity of the individual was recognized in the United Nations Charter and become legally binding on all the nations that have become parties to the Charter. In the United Nations this led to the adoption in 1948 of the Universal Declaration of Human Rights. That Declaration was initially deemed a mere declaration (as was our own Declaration of Independence) and not a binding treaty. But in the ensuing 30 years it has been cited frequently in international documents as well as in constitutions of newly created states and in legislation of most member nations, including the United States. It thus has become the common law of the international community.

In addition the United Nations has adopted a number of treaties on specific subjects covered in a more general way by the Universal Declaration. These include the Convention on Genocide, on Racial Discrimination, on the Political Rights of Women, on Civil and Political Rights and on Economic, Social and Cultural Rights. In every case, the United States was a leader within the United Nations in drafting and securing adoption of these treaties. Regrettably, however, when it came to signing on the dotted line, the United States has a record that borders on the disgraceful in failing to ratify these treaties.

The most egregious example of our failure to ratify various human rights treaties is that on the Genocide Convention. It was adopted by the United Nations on December 9, 1948. It was signed by the United States two days later. Eleanor Roosevelt, then our representative on the UN Human Rights Commission and Secretary of State George C. Marshall, were the most prominent among those seeking and securing unanimous UN approval of the treaty.

In June, 1949, President Truman sent the treaty to the U.S. Senate for its advice and consent to ratification. It was assumed that the Senate would act routinely. But much to everyone's surprise, the states' righters (principally southern senators) raised all sorts of objections, claiming that the treaty would breach sovereignty, and was a back door method to securing civil rights within the United States. The American Bar Association supported the southerners and opposed ratification. However, in 1976, The Bar Association reversed its position and supported ratification.

Over the years the Senate Foreign Relations Committee has conducted hearings on the treaty and each time it reported it out favorably. But whenever the Committee's recommendation reached the Senate floor, either an actual or threatened filibuster has prevented a vote being taken. And now, 30 years later, the treaty is still in the deep freeze in the Senate awaiting another chance to be voted on, up or down. It continues to

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the world that we will not completely forsake a friend in any situation.

Mr. STEWART assumed the chair.

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

Mr. BOREN. I yield to the Senator from North Carolina.

Mr. MORGAN. Mr. President, I am a cosponsor of this amendment with the distinguished Senator from Oklahoma. I hope that staff members around the Senate Office Buildings who are monitoring the debate on the floor will take the time to inform their Senators of the importance of this amendment.

I think the Senator has very ably and very well stated his position and the way many of us feel. Taiwan has been a long-time ally of this country. By the resolution which is pending before the Senate I think it is the intent of the Senate and the Congress that the United States will continue, even if it is in a quasi-official way, to carry on relations with Taiwan.

Even common courtesy, Mr. President, requires that we accord some respect to the rights of the people of Taiwan.

I am reliably told that within just a matter of 2 or 3 days after the recognition of mainland China the Taiwanese were told they would have to vacate the premises.

I am told reliably that it was just a few days or a matter of a few days that the members of the State Department were out taking up the diplomatic passports, or whatever they have in this country, which was entirely uncalled for. Time will solve many of these problems.

I think if there is any branch of our Government which is completely removed from the people of this country it is the State Department. Maybe if we talked about requiring the Foreign Service employees to take a little time off and go back and live with the people for a while, some of the difficulties that we have might not occur.

I think it is only fair and right that as long as we intend to carry on relations with Taiwan that we allow them to hold the property that they have held prior to the time of the recognition. I am pleased to join with the Senator in the sponsorship of this amendment.

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

Mr. BOREN. I yield.

Mr. HELMS. Mr. President, I commend the distinguished Senator for his amendment. As he knows, I am a cosponsor of it. Indeed, I drafted a similar amendment. I am so glad that he has stepped forward and has taken the leadership in this matter. This is just simple justice that the Senator proposes. It is nothing more and nothing less.

The amendment would bring the Senate bill into conformity with the House bill by providing that for the purposes of U.S. court actions, the normalization of relations between the United States and the PRC would have no effect upon the legal rights the ROC had in diplomatic properties.

Is that about the size of it?

Mr. BOREN. The Senator is correct.

It is to let them keep the property they have had all these years.

Mr. HELMS. Section 111 provides for such protection for all other assets or properties of the ROC or its citizens in the United States. But the language specifically exempted "diplomatic real properties situated in the United States which were acquired prior to October 1, 1949."

According to State Department representatives testifying before Congress, the question of diplomatic properties should be left to court decisions. Nonetheless, they indicated their own lack of neutrality in the matter by arguing that the two buildings represent a "symbol of government" and that they thought that Peking had a "better claim" on them.

In effect, turning this particular decision over to courts will amount to an indirect manner of the PRC seizing the properties. No other interpretation can be placed on it. In other countries the PRC has taken just such actions and obviously only awaits the disposition of the Taiwan legislation before attempting to act.

Historically the properties have always been identified with the Government of the Republic of China on Taiwan. The ROC acquired the properties in 1947 while the civil war already raged in China and thus, for all but 2 years, the properties have been occupied by the Government in Taipei.

The arbitrary cutoff date of 1949 should no more apply to diplomatic real properties than to anything else acquired earlier than 1949 by the ROC or its citizens. An interjection of court action in this one instance can set a dangerous precedent for the PRC to move on other ROC rights, as Stanford law professor Victor Li testified before the Foreign Relations Committee:

The PRC may consider the obtaining of the state of Chinas diplomatic property an important political and symbolic act. If the executive or the courts transfer the property to the PRC as the successor government, then other ROC assets, such as the several billion dollars in bank deposits may also be jeopardized.

Technically this amendment would only assert that the ROC had the legal capacity to transfer the properties to Friends of Free China last December and not that they now own them. The State Department even challenges the right of the ROC to transfer the properties before January 1, 1979, when they still had full diplomatic relations with the United States.

The two properties do have tremendous symbolic importance to the ROC as the seat of their representation in Washington for three decades. The ability of Peking, with congressional and State Department acquiescence, to take the properties would indicate a further abandonment of Taiwan at a time when ROC morale is already abysmally low.

Certainly it cannot be argued that the failure to turn those properties over to Peking will somehow endanger the normalization process. Yet it could have serious consequences to Taiwan that go beyond our domestic law.

In many other instances when one government is recognized in place of another government the new government has been able to assert the rights and take the assets of the previous government. However, in this instance, the United States is not recognizing Peking as a successor government, since the thrust of the entire bill is to protect existing rights of Taiwan and not transfer them to the PRC. One government has not displaced the other government, since in reality both continue to exist as viable international entities.

Now, Mr. President, there is a serious flaw in the attempt of the committee bill to use the date of October 1, 1949, as a cutoff for real properties, even though that is the official founding date of the PRC. Yet many of the agreements which the legislation retains in force also took place with the ROC before 1949. Thus the State Department attempted to make a distinction between the period before and after 1949, but only limit it to diplomatic real properties in the United States.

Mr. President, I ask unanimous consent that a list of agreements with Taiwan entered into before 1949 be printed at this point in the RECORD.

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

AGREEMENTS WITH TAIWAN ENTERED INTO BEFORE 1949

The following list of 14 agreements were all entered into between the United States and the Republic of China before 1949 when the ROC government left the mainland for Taiwan. All of these agreements still remain in force today and under the propose legislation (Sec. 104) they will remain in force in the future.

The list indicates that the U.S. government recognizes a legal continuity of the government of the Republic of China extending before 1949. Thus, only on the matter of real diplomatic property is an attempt made to create a distinction between the period before and after 1949.

ECONOMIC AND TECHNICAL COOPERATION

1. Economic aid agreement, exchange of notes, and exchange of aide memoir. Signed at Nanking July 3, 1948 (aide memoir dated July 27 and 28, 1948); entered into forces July 3, 1948.

2. Agreement concerning the United States relief assistance to the Chinese people, and exchange of notes. Signed at Nanking October 27, 1947; entered into force October 27, 1947.

3. Agreement establishing a joint commission on rural reconstruction in China. Exchange of notes at Nanking August 5, 1948; entered into force August 5, 1948.

POSTAL MATTERS

4. Parcel post convention. Signed at Peking May 29, 1916, and at Washington July 11, 1916; entered into force August 1, 1916.

RELIEF SUPPLIES AND PACKAGES

5. Agreement relating to duty-free entry of relief goods and relief packages and to the defrayment of transportation charges on such shipments. Exchange of notes at Nanking November 5 and 18, 1948; entered into force November 18, 1948.

6. Arrangement for the direct exchange of certain information regarding the traffic in narcotic drugs. Exchanges of notes at Nanking March 12, June 21, July 28, and Aug-

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ust 30, 1947; entered into force August 30, 1947.

CUSTOMS

7. Arrangement relating to reciprocal free-entry privileges for consular officers of articles imported for their personal use during official residence. Exchange of notes at Washington September 29 and December 16, 1930; entered into force December 16, 1930.

CLAIMS

8. Agreement relating to claims resulting from activities of United States military forces in China. Exchange of notes at Nanking October 13, 1947, and March 17, 1948; entered into force March 17, 1948.

EXTRATERRITORIALITY

9. Treaty for the relinquishment of extraterritorial rights in China and the regulation of related matters, and accompanying exchange of notes. Signed at Washington January 11, 1943; entered into force May 20, 1943.

LEND-LEASE

10. Preliminary agreement regarding principles applying to mutual aid in the prosecution of the war against aggression. Signed at Washington June 2, 1942; entered into force June 2, 1942.

11. Agreement under section 3(c) of the Lend-Lease Act. Signed at Washington June 28, 1946; entered into force June 28, 1946.

12. Agreement on the disposition of lend-lease supplies in inventory or procurement in the United States. Signed at Washington June 14, 1946; operative September 2, 1945.

13. Treaty looking to the advancement of the cause of general peace. Signed at Washington September 15, 1914; entered into force October 22, 1915. Exchange of notes signed May 11 and 19, 1916.

14. Treaty of Arbitration. Signed at Washington June 27, 1930; entered into force December 15, 1932.

Mr. HELMS. Mr. President, in conclusion, I commend my friend from Oklahoma for his amendment. I do think that regardless of any disposition by Senators on any other aspect of this legislation, his amendment is a matter of simple equity and justice. I think the Senator for yielding to me.

Mr. BOREN. Mr. President, I thank both of the Senators from North Carolina for their remarks. I think they are absolutely correct; this is a very small step that we can take to try to demonstrate to an old and trusted friend that they are not forgotten by this Congress or by the people of this country. I think, indeed, the people of this country would feel strongly that Congress should take this step. They recognize the fundamental moral commitment that we have to those people, 17 million free people. I appreciate very much the remarks that have been made.

Mr. President, I also ask unanimous consent that the Senator from Utah (Mr. HATCH) be added, at his request, as a cosponsor of this amendment.

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

Mr. BOREN. Mr. President, reserving the remainder of my time, I yield at this time.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CHURCH. Mr. President, I certainly have no objection to the people on Taiwan continuing to occupy the Twin Oaks property if, as a matter of law, it belongs to them. However, this is the first time in my experience in this

body that the Senate has ever undertaken to determine the ownership of real property. I rather doubt that we have the authority to do that. I am positive we lack the competence to do it. We have courts for this purpose.

I had thought we were a Government of laws, and that the question of ownership of real property would be relegated to the forum which, under the law, has the competence to deal with it. If we adopt the amendment offered, we shall place Congress in the position of declaring that the title to certain real property in this city belongs to the people of Taiwan. If we do that it would be approved, doubtless, by the constituents of our respective States. I am not so certain that such a determination would stand up in the courts.

The fact of the matter is that the title to this property is contested. Under international law, diplomatic real property is the property of the state. The accredited representatives of the state are entitled to control that property. If, on January 1, 1979, Twin Oaks and the chancery were owned by the Republic of China, international law would require that the People's Republic of China succeed to the ownership of the property.

We can flout international law if we choose. Yet I question the authority of Congress to displace one owner of real property for another, simply because we side with one party or the other for sentimental reasons.

The cause for the dispute, Mr. President, lies in the fact that, on January 1, 1979, the properties in question were not owned by the Republic of China, because they were transferred to a non-profit group, the Friends of Free China, in late December of 1978, and they were transferred for a nominal consideration. So the issue is joined. It is one that Congress cannot competently pass upon. The courts alone can really determine who owns the property in question. Thus my first objection to the Senator's amendment is that it does violence to international law, which we should generally uphold and respect. It would also get our new relationship with the Peking Government off to a bad start, for Congress will be attempting to declare one party the owner of real property when the title is in dispute and may be the subject of future litigation.

I think that there is a better way that this question can be handled. It was not the intention of the committee to declare the People's Republic of China the owner of this property. It was simply the intention of the people to respect our courts, to try to observe the principle that we are a government of law, and that the proper forum for determining title to real property is the courts.

So, on behalf of Mr. JAVITS and Mr. KENNEDY, I send to the desk a substitute amendment. This substitute amendment would eliminate any ambiguity concerning the purpose of the committee by stating that the property in question, its ownership and occupancy, are matters that should be determined in accordance with our laws by the courts. I send that substitute to the desk and ask that it be stated at this time.

The PRESIDING OFFICER. The Chair reminds the Senator that an amendment is not in order under the unanimous-consent agreement until the time on the first amendment has been yielded back or used.

Mr. CHURCH. I thank the Chair. I realize the time under the first amendment has not expired. I shall not call up my substitute amendment until the time has been yielded back on both sides. I am prepared, however, to yield back my time if the Senator from Oklahoma is prepared to do likewise.

Mr. BOREN. Mr. President, there were others who wished to be heard. I think before we go to the substitute, I should like to defer for just a moment until I have determined that before yielding time back.

Mr. CHURCH. Very well. I withhold the remainder of my time, Mr. President.

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

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

Who yields time?

Mr. BOREN. Mr. President, I yield such time as desired to the Senator from Utah.

Mr. HATCH. I thank the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Utah may proceed.

Mr. HATCH. Mr. President, I would like to be added as a cosponsor to the amendment of the distinguished Senator from Oklahoma. I compliment him for bringing this amendment to the floor and pointing out to the Nation as a whole that there may be an injustice here that should not exist.

All the amendment says is that:

For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights, or interests in, properties, tangible and intangible, and other things of value, owned, acquired by, or held on or prior to December 31, 1978, or thereafter acquired or earned by the people on Taiwan.

There is nothing there that says we have to recognize anything, at least the way I read it; there is nothing there that affects anything other than:

The ownership of, or other rights, or interests in, properties, tangible and intangible, and other things of value, owned, acquired by, or held on or prior to December 31, 1978.

I think it is a reasonable amendment. I certainly join in cosponsorship thereof because I believe that not only have we kicked our friends in the teeth in this matter when we did not have to and when we could have recognized the people on mainland China, but we have added indignity on indignity in rejecting some amendments that have been brought forth here on the floor of the U.S. Senate as though the only way we can have an inviolate bill is, of course,

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to take whatever the Senate Foreign Relations Committee sends to the floor.

That is not precisely the way the U.S. Senate was structured to work or is supposed to work. Our job is, as Senators, to do the very best we can, not only for our constituencies, but for all the people throughout the country and, of course, for our friends throughout the areas in this world.

One of the most long-term, valued friendships we have had has been with the people on the island of Taiwan. I would like, since we probably will have to recognize fully on the final vote here the recognition of mainland China, to at least recognize some of the common courtesies to the people on Taiwan, and also not to be so afraid of amendments such as this because they are not going to do any harm and they might do a great deal of good.

As a matter of fact, I suspect that, under the circumstances, almost any gesture of friendship we make at this point will do a great deal of good.

Many of us believe that had patience and restraint been exercised, we could have recognized both mainland China and Taiwan and not have abrogated the treaty obligations that we have had for so many years.

I suspect that is true, and I have had it on good authority from some of the top people in international affairs that that is the case and that we did not have to act in this particular way. Nevertheless, we have under this administration.

What the distinguished Senator from Oklahoma would like is that we not continue to rub salt in the wounds, but that we do recognize some of the basic rights of the people on Taiwan.

I certainly respect him in this endeavor and I compliment him for it.

If I read his amendment correctly, I do not believe that the proposed substitute which will be offered at the conclusion of time restraints will add one thing to it, but will diminish much from it. Nevertheless, that substitute will be added and we will have to see what happens on the floor of the Senate.

I do, for the purposes of standing up for the people on Taiwan, without causing problems with our newfound friends on mainland China, support the amendment of our distinguished colleague from Oklahoma.

I thank the Chair.

Mr. BOREN. Mr. President, I thank the Senator from Utah. I am proud to have him as a cosponsor of this amendment.

I wish to comment, Mr. President, on some remarks made earlier by the Senator from Idaho. He has talked in terms of legal precedents. He has talked in terms of the fact that it is not usual for the country that has no longer been recognized, the government that has no longer been recognized, to hold diplomatic property. But I would say there is nothing very usual in this whole situation. We are here dealing, really, with an unprecedented situation.

We are dealing with a situation in which, in fact, if not in theory, but in

fact, the government in question continues to be the effective government over a geographical area known as Taiwan. It continues to be the effective government of 17 million people, 17 million free people, who participate in their own governmental affairs.

We are not here dealing with a situation in which one regime has physically replaced another. We are dealing with a situation which our own Government has recognized as unique.

It must be unique to continue in force 17 executive agreements and treaties with a nation which in theory we no longer recognize as a full governmental entity under international law.

So the precedents that might apply in the normal situation do not apply here. It is not the normal situation to set up a commission and to give the representatives of that commission diplomatic standing, but we did that in the case of the People's Republic of China before we recognized them.

It is not the usual situation to establish a new commission to continue to deal with the people on Taiwan, with the Republic of China, but we are doing it.

So time and again, our own Government, our own State Department, has recognized this situation as unique, and it is not sufficient, as the Senator from Idaho has done, to merely point to the precedents which might apply in a normal situation, far different from the one that we are dealing with.

I also must differ with the Senator respectfully when he says that this is merely a sentimental gesture.

I think what we are dealing with here goes far beyond the bounds of the sentimental. We are dealing with the attitude of this Nation toward one of its allies, toward a friend. We are dealing with the situation where all around this world those who have been our allies in the past are carefully watching this country to see how well it keeps its commitments.

I do not need to remind the Members of this body of the serious situation in the Middle East and the number of nations there who are now watching carefully the attitude of this country toward those with whom it has been allied.

The government on Taiwan, the Republic of China, never has done anything to deserve mistreatment by the Government of the United States. They have been our friend. They have assisted us militarily in Korea and elsewhere when called upon. They have been our friend in terms of trade and close economic relationship. They have been an example in Asia of the effectiveness of free enterprise and what a free economic system can do.

We are here setting precedent, not merely a matter of legal precedents of the past. We are here setting policy. How healthy it would be for us to state, as a matter of policy, that while we are going to move ahead with a relationship with 800 million people on the mainland, that does not mean that we have to turn our backs on the people of Taiwan, who have been our friends.

It is time for this body to send a message to those around the world who are watching us that we do not forget those who have stayed with us in all situations in the past.

Mr. President, at this time I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, the question of propriety enters into my decision to say something on this subject, because I happen to be a member—I believe I am the president—of the Friends of Free China, who acquired title to this property before the first of the year. I did not intend to enter into this discussion because of the question of propriety, and I am not certain whether I will vote on it, because it might be considered a conflict of interest. Nevertheless, I think Congress should know what brought this thing on.

The President totally disregarded the wishes of Congress, which told him last September, with four dissenting votes out of the entire Congress, that he should consult with the Senate or Congress prior to any decision to abrogate—if that is the term one wants to use—or end the defense treaty with Taiwan. He did not do this.

I was visiting at Fort Huachuca, about 170 miles to the southeast of my home in Scottsdale, Ariz.; and I was contacted by the White House and told that the President would call me when I had flown back to central Arizona around 5 o'clock in the evening. Naturally, I was kind of interested, because the present White House does not make a habit of calling me about anything.

When I returned home, I was told by my wife that the Ambassador from Taiwan was in the State capital that day, at Phoenix, to address a group of fellow Chinese. Then I began to suspect something. He called me shortly thereafter and told me, before the Secretary of Defense called me, about the breaking off of relations with Taiwan.

If international law bears on this—although I am not a lawyer, I have a strong suspicion that it does—let us see how it might apply in this case. I call the attention of the Senator from Idaho to this matter, because I feel that, regardless of what we do with this amendment or his amendment, we do not obviate the fact that the courts can decide either issue we choose to try. If international law is correct, the recognized Government of Taiwan at that time owned the land we are talking about; and, as the Government of China, they had every right to do what they wanted with that land.

Taiwan disposed of this land by title to a group of us who have long been associated with the Friends of Free China. We went to the State Department, and Assistant Secretary Christopher told us that the Red Chinese were going to move into that land and claim it. We told him in no uncertain terms that, if they did, they would have a lawsuit on their hands; and I think one lawsuit for the United States at one time over one subject is probably enough.

We had hoped that nothing would happen; and I have to say, Mr. Presi-

dent, that nothing has happened. The Red Chinese have retained their headquarters in the hotel they bought on Connecticut Avenue, and they have made no effort at all to go into the Twin Oaks land or other properties formerly owned by the recognized Government of China, which at that time was Taiwan.

That is the background of this whole thing. If the State Department wants to push the Red Chinese into this property, there will be a lawsuit.

All the amendment of the Senator from Oklahoma does is to recognize the status that existed when Taiwan was the Government of China. We are not arguing about that now.

If the amendment of the Senator from Idaho is adopted, it will not change the situation one bit. We will go to court. I do not care how many amendments are put on it. We have title to it, properly executed, and I think the courts will rule in favor of the Friends of Free China.

I just wanted to explain that as the background. As I say, I do not know whether I will vote on this, because I feel that I do have a conflict of interest, being one of the owners, with no intention in the world of ever doing anything with this property but seeing it used for purposes for which the former Government of China wanted it used—mostly the Taiwan people.

I yield to the Senator from Kansas, if it is all right with the Senator from Oklahoma.

Mr. DOLE. Mr. President, how much time remains?

The PRESIDING OFFICER. Two seconds remain on the proponent's amendment.

The time has expired.

[Laughter.]

Mr. HELMS. Mr. President, I ask unanimous consent that 5 minutes of my time on another amendment be granted to the Senator from Kansas.

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

Mr. DOLE. Mr. President, 2 seconds might have been enough to make the point, but they slipped away quickly.

This amendment is designed to rectify an omission in the present legislation with respect to certain properties long owned by the Republic of China and of historic and symbolic interest to the people on Taiwan. Twin Oaks and the embassy property on Massachusetts Avenue are identified in the minds of all citizens of the Republic of China and many Americans as well, as the physical personification of the relationship and friendship between our two countries. This property belonged to the Republic of China during such times of travail as World War II, when the Americans fought side by side with the Chinese against a common foe.

There is no need for the gratuitous insult of taking away this living symbol from an entity and a people with whom we plan to maintain full cultural and economic relations, with whom we plan to maintain all necessary legal and business dealings short of full, diplomatic ties, and with whose security we still

believe to be of grave concern to the United States. This property has never had any legal claim by the present government in Peking nor any predecessor regimes, regardless of our present recognition of its legal authority to rule on the mainland.

The House version of this bill properly refuses to do what the current version of S. 245 allows. To attempt to take away the "diplomatic real properties" would undercut the very faith which this bill is designed to retain in our dealings with Taiwan.

It seems to me, after listening to the debate and not having been privy to some of the discussions, that inasmuch as last September we adopted an amendment, by a vote of 94 to 40, which stated that Congress should be consulted before anything was done that might affect the future of Taiwan—in effect, that is what it said—this amendment makes a great deal of sense. I am happy to be a cosponsor of this amendment with the Senator from South Carolina, the Senator from North Carolina, and the Senator from Oklahoma.

We have heard all the discussion, the debate, and the testimony as to how we are going to maintain our friendship with Taiwan. It seems to this Senator that this property never has had any legal claim by the present government in Peking or any predecessor regimes, regardless of our present recognition of its legal authority to rule on the mainland.

The Senator from Kansas understands that the House version of this bill refuses to do what S. 245 does, and it seems to be that this amendment should be adopted without any so-called perfecting amendments by the Senator from Idaho or anyone else. It is clear; it is concise. It merely states the facts, and I hope it will have the support of the majority of my colleagues.

I appreciate the distinguished Senator from North Carolina yielding time on his amendment.

Mr. CHURCH. Mr. President, I think a few more words of clarification are needed.

All of us recognize the long period of friendship and alliance between the United States and the people of Taiwan. Indeed, this bill is addressed to that very issue, and undertakes to safeguard our continuing friendship and relations with the people of Taiwan. The bill was carefully worked out in the committee so that we not only could continue to maintain our commercial and cultural ties with the people on Taiwan, but also that we would give them a broad measure of reassurance with respect to their future security. That is what this bill is all about.

Now, suddenly, the question about Twin Oaks, the embassy property which was acquired by the Government of China back in 1945, has come up.

That property was acquired before the Government of China had to flee the mainland to Taiwan, before the mainland Government at Peking replaced the Chiang Kai-shek regime as the effective Government of China.

We have recognized the Peking government as the successor government to the Chiang Kai-shek regime. Under international law this property would normally pass to the successor government.

If the amendment offered by the Senator from Oklahoma were to be adopted, Congress, in effect, would be saying that our recognition of the Peking government may not be considered as affecting the ownership of this property. In other words, the adoption of this amendment would be our declaration that Congress disregards international law with respect to this property.

The Senator from Arizona is quite right when he says the issue of ownership has now been placed in doubt because prior to our recognition of the Peking government a conveyance was made to the Friends of China. The validity of that conveyance would be an issue in a court action. I have no reason personally to believe that it is not perfectly valid, yet I am not competent to judge that point, and neither are the other Members of the Senate.

It is not the proper function of Congress to determine title to real property. That is a function for the courts.

Mr. President, there are other reasons why we should hesitate to pass this amendment. Among them is the fact that the U.S. Government has a claim to 180 buildings on 51 tracts of real property in 9 cities in China. These properties were confiscated during and after the Communist takeover in 1949.

The recent trip by our Secretary of the Treasury, Mike Blumenthal, in which an agreement was struck with the Peking government relating to outstanding American claims against China dealt with private claims, not our own governmental claims. And as we all know, a rather favorable settlement was reached with the Peking government in connection with those private claims.

But I must emphasize that our own Government still retains claims against the Peking government for the recovery of very substantial amounts of real property and buildings located thereon in China, to wit, 180 buildings on 51 separate tracts of property.

The Chinese, in their turn, have certain claims for real property acquired by the Chinese Government in the United States prior to 1949. This property that is located in many places in the United States, and is not confined to Twin Oaks.

So it is altogether reasonable to assume that the two governments are going to get together and negotiate their claims and counterclaims, and square away this question between them. We will complicate that negotiating process unnecessarily. We could indeed prejudice our own claims with respect to property located in China, the recovery of which we now desire, if we pass this amendment.

I see no good reason in connection with a rational assessment of American interests to enact this amendment. It will complicate matters for us in connection with our own claims. In any case it may prove to be a futile act.

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Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. CHURCH. Yes; I am happy to yield.

Mr. GOLDWATER. We would not be involved in an argument with Peking. It would actually be an argument between the present owners of the land and the State Department and probably Peking, although Peking has shown so far no desire to take the step that would initiate the action. That is a serious question, the fact that the ownership now rests in a group called the Friends of Free China. I think that any government with residents in Washington has the right to sell its property. Will the Senator not agree with that?

Mr. CHURCH. Yes; I will agree.

Mr. GOLDWATER. Even understanding the duress under which they operated, we could take any government around this world that is having pressures on it at the present time and they might sell their property here to a group of Americans or a group of other people and then if any argument came up with the government that replaced that government—we might even take the Government of Iran as an example, although they still own their property, but we could substitute Iran for Taiwan and be in the same fix—the argument would then rest or bear between the owners of the title and in this case the State Department.

As I say, I have heard nothing from Peking about wanting to move into Twin Oaks. I will repeat the purpose of our having this land is not to acquire it for our own purposes, as God knows, but to make it available for the purposes that this bill speaks so laudably of, maintaining and encouraging the cultural, academic, et cetera, relations between Taiwan and the United States. And the intent of the Friends of Free China is to develop that land into such a place. I wanted to just make it clear, and I am sure it is clear in the Senator's mind, that this is not an action any more between two countries. It is an action between a group of American citizens and the State Department or the State Department and Peking.

I thank the Senator for yielding.

Mr. CHURCH. I have no way of knowing whether the Peking government will choose to sue in our country for recovery of the Twin Oaks property. But if that happens I am certain that the Peking government, as well as the Friends of China and quite possibly the State Department, would be joined in the suit.

My only point is that determination of title properly rests with the courts, and one of the issues no doubt would be the conditions that existed at the time the transfer of the property was made. But that is a question for the courts to decide, not for Congress.

Now, one other point, Mr. President, before we proceed. I am not at all certain, as I have said before, that it is within the authority of Congress to pass judgment on the title to real property. I doubt it very much.

If the desire is, as stated by the dis-

tinguished Senator from Oklahoma, to make certain that this property remains in the hands of the Taiwanese authorities, then Congress really ought to buy it. We know we can do that. We ought to buy it and turn it over to the Taiwanese.

As a matter of fact, I am told this was the residence of Alexander Bell, the inventor of the telephone. Maybe the best way to resolve this question is to reclaim it for the United States and make it a shrine for one of our most beloved inventors.

But to attempt to say by way of statute that it belongs to the Taiwanese or to some other group, instead of to the Peking Government, not only does violence to international law. It attempts to place Congress in the status of the courts, and could complicate our future negotiations with the People's Republic of China on many claims that we will be asserting for the recovery of real property in China which we will have need for in the years to come.

For all these reasons I think this amendment should be rejected.

Mr. BOREN. Mr. President, will the Senator yield for a question?

Mr. CHURCH. Yes; I am happy to yield.

Mr. BOREN. I wonder, as I understand the argument of the Senator from Idaho, his argument is that this property would pass to the People's Republic as the successor government, which has been recognized by the United States, to the Republic of China.

Mr. CHURCH. Except for the fact that a transfer of the property was attempted prior to our recognition of the Peking government, which raises a justiciable issue.

Mr. BOREN. Yes; I understand. But the basic argument, as I understand, is this is a successor government, and under international law it is the normal way to proceed.

If that is true, why then under section 104 and section 108 of the bill, under the commentary as contained in the committee report, do we not make the government of the People's Republic of China the successor in terms of all international agreements and treaties? We specifically provide that, in fact, we continue to have these agreements and treaties in force. I can think of no other situation in which that is true. We simply do not say that we retain the treaties and agreements with the Shah's government now that we recognize the new government in Iran, for example. If they are the successor government in terms of the property, is it not true that we are recognizing them as the successor government in terms of treaties and other agreements? However, we continue these treaties with Taiwan.

Mr. CHURCH. In answer to the Senator's question, when one government replaces another in any country the successor government may or may not choose to honor the previous treaties. Furthermore, the United States, for its part, may or may not choose to honor previous treaties with a successor government.

The purpose of the bill is to furnish us with the vehicle by which we make our choice. In this case we are choosing to continue to honor the agreements we entered into with what we formerly recognized as the Republic of China on Taiwan.

Mr. BOREN. Mr. President, will the Senator yield further?

Mr. CHURCH. I yield.

Mr. BOREN. Is this not though a rather unique situation in terms of international law, where rather than say to the successor government, "Do you want to continue agreements on further," we have firm agreements with the people on Taiwan? So I am asking is this not unique? If we opted for unique treatment in terms of the agreements, why can we not here opt for unique treatment in terms of keeping the property without, as the Senator said earlier, doing violence to international law? It does not say we are concerned with doing violence to international law in terms of the agreements. It seems to me it does not do violence. It merely confirms the friendship to continue the property in this case.

Mr. CHURCH. Well, I find it difficult to follow the Senator's argument. In the first place, he is dealing with two different relationships. One is a contractual relationship. As I said earlier, we can elect in a case of this kind either to confirm our previous contracts with the governing authorities on Taiwan, or we can abrogate them by virtue of our recognition of Peking for what it is in fact, namely, the Government of China. By this bill we choose to confirm our previous contractual arrangements with the people on Taiwan.

The question of ownership of real property located in the United States, it seems to me, is quite a different matter. I see that the distinguished Senator from New York is on his feet. He is a very able lawyer, and I want to defer to him—but let me simply reiterate that my principal objection to the Senator's amendment is that I think it does not serve the best interests of our country, inasmuch as we have some plans of our own that we want to negotiate with China. This is a question, it seems to me, that should be left to the courts rather than be determined by Congress.

Mr. JAVITS. Mr. President, so that the debate may not be interrupted, as I would like to discuss this matter for 5 or 10 minutes, I ask unanimous consent that the time may be deemed expired, as only we have the time, and that the substitute amendment may now be submitted and read by the clerk.

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

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Does that substitute amendment carry a 1-hour time limit?

The PRESIDING OFFICER. The Senator is correct.

The clerk will report.

UP AMENDMENT NO. 35

(Purpose: To describe further certain diplomatic real properties in which the people on Taiwan have interests, and for other purposes)

The legislative clerk read as follows:

The Senator from Idaho (Mr. CHURCH), for himself, Mr. KENNEDY, and Mr. JAVITS, proposes an unprinted amendment numbered 35 as a substitute for amendment No. 80 by Mr. BOREN.

In lieu of the language proposed to be inserted by the proposed amendment insert the following:

"Sec. (a) For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights or interests in, properties, tangible and intangible, and other things of value, owned or held on December 31, 1978 or thereafter acquired or earned by the people on Taiwan, except, however, diplomatic real properties situated in the United States which were acquired prior to October 1, 1949: *Provided, however,* That this act shall not be deemed to affect the right of any domestic or foreign entity or government to ownership or occupancy of diplomatic real properties situated in the U.S. which were acquired prior to October 1, 1949, or the jurisdiction of the courts in the U.S. to adjudicate disputes relating thereto."

Mr. JAVITS addressed the Chair.

Mr. HELMS. Mr. President, will the Senator yield for a question?

Mr. JAVITS. Will the Chair let me know when I have used 5 minutes?

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mr. HELMS. Mr. President, will the Senator yield for a question?

Mr. JAVITS. I have not started yet, but I will yield.

Mr. HELMS. Knowing the Senator from New York as I do, and being aware that he and the distinguished chairman are on the same side as concerns the amendment, I felt secure in assuring some of the opponents of the Church substitute that the Senator from New York would yield time for opposition to the substitute.

Mr. JAVITS. I certainly would. We do not have to because the opposition is entitled to a half-hour, and if Senator BOREN would like to have the opposition, I am sure we will ask unanimous consent to yield a half-hour to him.

Mr. HELMS. Does the Senator agree that the time in opposition, then, be yielded to Senator BOREN?

Mr. JAVITS. Yes.

Mr. HELMS. That answers the question. The distinguished Senator is, as always, most gracious.

Mr. JAVITS. Mr. President, I would like first to answer the Senator's question, because I think that gets us right on track. I am speaking for myself, both as a lawyer and a Senator.

This bill is a unilateral declaration by the United States, and the Institute of Taiwan in the United States may choose to reject the U.S. offer to give it the benefit of all the treaties which we had with the Republic of China when they were recognized as the Republic of China. It may reject it. That offer is unilateral. We have no contract.

If the Institute accepts it, then there is a contract. So we have a perfect right to

incorporate it by reference in this bill. Without the bill, they have got nothing except an offer, which they could write us a letter and say they accept. But we chose to offer it in this bill, and that is all we are doing, in my opinion. There is no privity of contract, and therefore the argument that this should carry over to the real property does not apply, because we do not own the real property.

We have a right to make them an offer about treaties, if you want to call them treaties, but we have no right to make an offer of real property we do not own.

The second point is this: I must say that I understand and sympathize with the proponents of the original amendment. The Taiwanese are our friends, and they have performed magnificently in 30 years. They have developed the second highest standard of living in Asia. That is quite a feat for a people who did not start with the industrial techniques and knowledge of the Japanese, who have the first standard of living. They have a good, tough military force, and they believe in free institutions, even though they do not get to promote them as yet, because of the way in which that government was created and the discipline it engendered because of the dreams of Chiang Kai-shek that he could one day take the mainland.

So there is no quarrel about it. There is no doubt that they are our friends, and we want to do everything in the world we can for them.

But we have made a national decision, and let us not be kidded about it. That national decision is that notwithstanding the great things they have done for us, and notwithstanding the fact that for decades the Communist government on the mainland preached hatred of the United States of America, and that they shot our boys down in Korea, and that they undoubtedly were the backbone of a great deal of what hurt our people in terms of 50,000 dead in Vietnam, the fact is that we believe that in our national interest we now have to try to normalize relations with them by recognizing them diplomatically.

Once we make that decision, lots of things flow from it. There is no avoiding it. The Twin Oaks property is one of those things. All the proponents of the amendment are doing is looking back with regret. Well, they have an absolute right to vote against this, and to do everything they can to try to torpedo the recognition of the People's Republic of China, including this amendment, but that is all they are doing, because the fact is that it is international usage of a very established character that where, as in the United Nations, where the People's Republic steps into the seat of the Republic of China, and while Chiang Kai-shek was alive we did not do anything about it—

The PRESIDING OFFICER (Mr. JOHNSTON). The Senator's 5 minutes have expired.

Mr. JAVITS. May I have another 3 minutes?

Mr. CHURCH. I yield the Senator 3 additional minutes.

Mr. JAVITS. This was an entity which we no longer recognize, but the title was in that entity only because it was the government we did recognize. I do not know how the original title acquired in 1945 is inscribed, but probably it is inscribed in such a way that they can take, the Republic of China, and transfer from the group which is called the Friends of China. But no matter what is said here, under the Constitution of the United States, in a case we have had very recently involving India, that could easily be contested in the courts, and it may be unconstitutional to strip whatever entity owns the property of the title.

So whatever we do by passing this amendment is simply substituting a suit by the State Department, with all the exacerbation that would involve, we are substituting a suit between our Government and the Friends of China for a suit between those who represent Taiwan here, the Friends of China, and the People's Republic of China. In my judgment, we are infinitely better off leaving that litigation between the two parties in interest, and the situation will then be, if it is true—and of course it may not be true—that the People's Republic of China has the right to possession of this real property, title to which was acquired before October 1949, then has there been a valid transfer? And there are various doctrines in law and equity which relate to the validity of that transfer. You know, for example, is it made in the middle of the night, as one case says, to enable a dictator to cash in the property and run away with the money? The courts have held that invalid. That is not quite this situation, but it is a matter of a state of facts which the courts will decide.

The real analogy Senator BOREN could have made is, if it is true that this has to be decided in the courts, why is not the same thing true about the billions of dollars deposited in American banks, which stand to the credit of the Republic of China?

The reason that is not true is that we have a legitimate right to posit our legislation on the fact that after 30 years, that is—

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. JAVITS. May I have just 1 more minute? I yield myself 1 minute.

We have the right to posit our legislation on the fact that after 30 years, that kind of property is not likely to be the property of other than the entity which is the Republic of China that we have described, and that therefore it is property that belongs to it, because it was not property acquired before 1949, when this split and revolution took place.

I believe there is a chance, a fair chance, that having certified this title in the legislation respecting property which, at the best, can hardly be identified as pre- or post-1949, it will stand up. But as to this property which is real property, title to which was acquired in 1945, it seems to me there is no question as to the normal application of the rule of law.

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The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. JAVITS. I yield myself 1 more minute. As to the normal application of the rule of law, which would be that the successor government takes the property unless there is some reason to the contrary, in this case the disposition of the title.

So for all those reasons, I think all we are doing is seeking trouble if we try to decide this question here and now in the way the original amendment proposes. The way Senator CHURCH and I have proposed is a way in which we do not prejudice the rights of our friends, just as we are protecting them in the way of security and in many other ways, just so that we do not make fools of ourselves under the law.

So I hope Senators will support Senator CHURCH and me in our proposal.

Mr. McCLURE. Mr. President, will the Senator yield for a question?

Mr. JAVITS. We have half an hour. I will gladly attempt to answer the question.

Mr. McCLURE. Will the Senator from Oklahoma yield me about 3 minutes to propound a question to the Senator from New York?

Mr. BOREN. I yield to the Senator.

Mr. McCLURE. I thank the Senator for yielding, because both the Senator from Idaho, the chairman of the committee, and the Senator from New York have indicated that it is the desire not to settle the title issue in this legislation, to leave that to the court. Yet I read the amendment proposed by the two Senators, with other cosponsors, as settling the title issue. If the Senator will look the second page of the amendment under what is section A, it says: "For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership," and then there is some other language, and the last two lines on what will be shown on that sheet as lines 11 and 12 are, "except, however, diplomatic real properties situated in the United States which were acquired prior to October 1, 1949."

It seems to me a necessary reading of that language has to be that if it is diplomatic real property acquired prior to October 1, 1949, recognition of the People's Republic of China shall affect the ownership. It may not be the intention of the authors of the amendment, but it appears to me, Mr. President, that that is the necessary construction of the language which has been employed.

Mr. JAVITS. May I reply? I will yield myself a minute to reply.

Mr. McCLURE. Mr. President, allow me to yield back to the proponents of the measure whatever time I have remaining.

Mr. JAVITS. The answer is that that is academic now because we are, ourselves, submitting an amendment which reads differently and does preserve the judicial rights.

Mr. McCLURE. Will the Senator yield? I am reading from the amendment which the Senator has offered.

Mr. JAVITS. No, the Senator is not. The Senator is reading from the origi-

nal statute. The amendment we offered says:

Provided, however, That this act shall not be deemed to affect the right of any foreign—

And so forth.

Mr. McCLURE. I am reading from the Senator's amendment lines 11 and 12, the last two lines on that amendment.

The PRESIDING OFFICER. Who is yielding time?

Mr. JAVITS. I yield myself 1 minute, Mr. President, from the proponents' time.

The whole clause taken together, it seems to me, makes it very clear that there will be no prejudice to any litigation. We will read it again. Certainly, what the Senator describes as our intention is obviously not our intention.

Mr. McCLURE. Will the Senator from Oklahoma yield 1 additional minute?

Mr. BOREN. I yield.

Mr. McCLURE. I thank the Senator from Oklahoma for yielding and I thank the Senator from New York for his response, but I assure the Senator I am reading from the amendment at the desk. That amendment, in its last two lines, with lines 5 and 6, says, in effect:

For all purposes, including actions in all courts of the United States, recognition of the People's Republic of China shall not affect diplomatic real properties situated in the United States which were acquired prior to October 1, 1949.

That may not be the intention of the authors of the amendment, but that is its necessary effect and can be construed in no other manner.

Mr. JAVITS. Mr. President, I yield myself another minute.

That is not the language we submitted. The desk may have made some correction and I will have to get at that. But here it is, right here.

Mr. McCLURE. It is identical.

Mr. JAVITS. I am sorry, but this is the desk's version. We will look at it. What is the use of arguing about it? There is still time to change it.

Mr. McCLURE. You take this copy and I will take that one.

The PRESIDING OFFICER. Who yields time?

Mr. GOLDWATER. Will the Senator from Oklahoma yield me a moment for a question of the Senator from New York?

Mr. BOREN. I yield.

Mr. GOLDWATER. I would like to ask the Senator from New York—

The PRESIDING OFFICER. Does the Senator from Oklahoma yield?

Mr. BOREN. I yield to the Senator from Arizona.

Mr. GOLDWATER. I would like to ask the Senator from New York the question that I asked the Senator from Idaho. Even though the land we are talking about was acquired in 1945, prior to the establishment and recognition of the only government of China, mainly on the Island of Taiwan, and the people of Taiwan having taken over the government of Taiwan, therefore, they took over, if international law applies and I have to assume it does, they took over the property we are talking about, as a government, is it not true that that government

has the right to dispose of that property at any time they want to?

Mr. JAVITS. They have the right to dispose of property in accordance with law because, and I made it clear, I say to Senator GOLDWATER, the law also provides for fraudulent transfer and other legal defenses against the transfer. That is why I feel we ought to leave it to the courts.

Mr. GOLDWATER. If it were fraudulent, I would agree 100 percent.

Mr. JAVITS. But that does not rely on the Senator from Arizona.

Mr. GOLDWATER. I know that.

Mr. JAVITS. The fact is that the Friends of China have received in the greatest good faith the deed of transfer and the courts may hold that the ones who made the transfer had no business to make it. I do not know that. But there is law which supports that kind of arguable claim. I do not know that it will stand up. I really do not know.

Mr. GOLDWATER. I admitted that the transfer was probably made under duress. But I also got the assurance from the Senator from Idaho that a government has the right, I think any government has the right, to dispose of the property of that government at any time they care to. As the Senator says, being a lawyer—and I am probably blessed because I am not—there may be some question. I would think that that should be left to the court. But I have to agree that on the language of both the Senator from Idaho and the Senator from New York I do not see how it changes the original intent of the Senator from Oklahoma. In fact, it does the very thing that the Senator from Idaho is accusing the amendment of the Senator from Oklahoma as doing, legislating something that should be decided by the courts.

Mr. JAVITS. Mr. President, if I may yield myself 2 minutes of our time, let us get it perfectly straight. This amendment now, as we sent it to the desk—and I will ask Senator CHURCH to modify it—reads as follows:

For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights or interests in, properties, tangible and intangible, and other things of value, owned or held on December 31, 1978, or thereafter acquired or earned by the people on Taiwan, provided, however, that this act shall not be deemed to affect the right of any domestic or foreign entity or government to ownership or occupancy of diplomatic real properties situated in the United States which were acquired prior to October 1, 1949, or the jurisdiction of the courts in the U.S. to adjudicate disputes relating thereto.

That is the way it reads and we will see that it does read that way. Whatever the desk may have done with it, I am not bound by it.

Mr. McCLURE. Will the Senator from New York yield for a clarification?

Mr. JAVITS. Yes.

Mr. McCLURE. As I understand it now, as read by the Senator from New York, that would, in essence, strike the two lines that I made reference to earlier and substitute in lieu of them the language which appears prior to it on the page the way it is now at the desk?

Mr. JAVITS. Exactly. I am grateful to the Senator. I never realized this was the way they had it at the desk.

Mr. McCURE. I thank the Senator.

Mr. HATCH. Will the Senator from Oklahoma yield for a few minutes?

Mr. BOREN. I yield.

Mr. HATCH. Mr. President, I am concerned about the clause in this section of the bill, that the distinguished Senator from New York just struck from the amendment, which appears to me to be aimed directly at the properties of the Republic of China here in Washington and at Twin Oaks. As I am sure my colleagues are aware, both of these properties were transferred to Friends of Free China, Inc., a nonprofit organization, on December 22, 1978. This action occurred prior to the effective date of U.S. recognition of the People's Republic of China on January 1, 1979. This transaction took place in accordance with the law of the District of Columbia.

According to international law, a legal government has the right and the power to buy or sell its property as it sees fit and such decision is not subject to the review of other states. As I have stated previously, this transaction took place on the 22d of December, at which time the Republic of China was the recognized government of China. The question that I must ask pertains to the this subject. What right or what principal of international law, or domestic law for that matter, gives the State Department the authority to question this transfer of property within the United States?

Recognition of a foreign government will not invalidate the acts done in the United States by a previously recognized government. This point is emphasized in the case of *Guaranty Trust Co. v. United States*, 304 U.S. 126 (1938), at which time the U.S. Supreme Court said:

The one (i.e., recognition) operates only to validate to a limited extent acts of a defacto government which by virtue of the recognition, has become a government de jure. But it does not follow that recognition renders of no effect transactions here with a prior government. . . . If those transactions, valid when entered into, were to be disregarded after the later recognition of a successor government, recognition would be but an idle ceremony, yielding none of the advantages of established diplomatic relations in enabling business transactions to proceed, and affording no protection to our own nationals in carrying them on. So far as we are advised no court has sanctioned such a doctrine.

This is the same practice in other countries as well. In the case of *Civil Air Transport, Inc. v. Central Air Transport Corp.*, (1953) A.C. 70, the British court took a position similar to the U.S. court's position that I have stated before. That case dealt with airplanes flown by the Republic of China Government employees in October 1949, to Hong Kong, and sold by the ROC Government on December 12, 1949, to two Americans, who sold them to plaintiff. The British Government recognized the ROC Government at the time in question but, from January 5-6, 1950, recognized the PRC as the Government of China. Defendant PRC Government agency claimed that recognition by the British should be

given retroactive effect and invalidate the purported sale of the plane by the ROC Government. In dismissing the case and the PRC's claim to the airplane, Viscount Simon said for the court, the Judicial Committee of the Privy Council, which is the supreme judicial review organ for colonial litigations:

A government's policy in buying or selling chattels which it owns is not subject to the review of foreign tribunals, and whether its action in this regard is against the interests of those it is supposed to serve is a political question. British courts cannot take it on themselves to pronounce whether a foreign government, recognized by H. M. government, is acting contrary to the interests by its people, and a government is certainly not a trustee in these matters in any legal sense."

In yet another case decided by a British court, *Boguslawski v. Gdynia-Ameryka Linie* (1950), 1 K.B. 157, affirmed, (1952) 2 All E.R. 470, it was held that a union contract between the petitioners and the Ministry of Industries and Commerce of the Polish Government-in-exile, in its capacity as the supreme manager of shipping by the Polish law of 1939, concluded in London on July 3, 1945—that is, 3 days before British derecognition of that government—was valid and enforceable before a British court.

Bringing the current situation more into perspective, I cite the example of the Canadian Government. The Republic of China sold its Embassy property in Ottawa, Canada, before the Canadian recognition of the PRC and that transfer was considered as valid. The Canadian Foreign Ministry did not support the PRC's claim, if any, to that property.

Therefore, Mr. President, as I have stated, there is no legal basis for the Department of State to support the PRC's claim to the former ROC diplomatic estate.

For this reason, I think that the better of the two amendments is the amendment of the distinguished Senator from Oklahoma. The property that we are speaking of here is valued at a few million dollars. When I read of the large amounts of dollars that may well be involved in the trade between the United States and the PRC, I think this is rather insignificant.

What I am suggesting is that, at least in the opinion of a number of us, the amendments of the distinguished Senator from Oklahoma is the superior amendment and does recognize our friends on Taiwan to a greater degree, I think, without doing violence to international law that exists today and as have been defined by this country, England, Canada, and other international courts and tribunals, we ought to support the amendment of the distinguished Senator from Oklahoma and vote down the amendment the distinguished Senator from Idaho.

By voting down the amendment of the distinguished Senator from Idaho—which, it seems to me, throws this thing into limbo and does not protect our friends on Taiwan and shows that we really are somewhat callous with regard to our feelings for the people on Taiwan here on the floor of the Senate—I think

we will then have the opportunity to vote for the amendment of the distinguished Senator from Oklahoma. That, in my opinion, would be a greater thing to do and would create better feelings between this Nation and the people on Taiwan without doing violence to our new friends on mainland China. I hope everybody will vote down the Church amendment and vote for the amendment of the distinguished Senator from Oklahoma (Mr. BOREN).

Mr. JAVITS. Mr. President, I yield myself 3 minutes from the time of the proponents.

Mr. President, it seems to me that the Senator from Utah has just made the most eloquent argument for Senate Church's amendment and mine. Certainly, this is a hotly converted legal question in the United States, Great Britain, and Canada. I shall furnish for the Record a whole list of cases, including the very case cited, Guaranty Trust against the United States, which indicates that there can be defenses in such cases.

That is all we are saying. If the Senator wishes to substitute the Senate of the United States for the courts of the United States, I do not know that we have any such power; I do not believe we do in a constitutional question, the ownership of property, which is clearly subject to this branch of the law. All we are seeking to do is, without in any way prejudicing the rights of any of the parties to the dispute, not to get the State Department to be the litigating party. That is the whole essence of this argument that we just heard, that the State Department is maintaining, the State Department is demanding, the State Department is contending. It does nothing of the kind. Under our amendment, the parties who are in interest, the holders of the title and those who wish them to hold that title and anyone who challenges that title, will be in court. That will not be the United States and it will not be the State Department. That is all we are seeking to provide for.

I respectfully submit that this is the most eloquent argument for the substitute amendment which we have submitted and that, if Members believe that way, they should decidedly vote for this amendment which we have submitted as a substitute.

Mr. BOREN. Mr. President, how much time remains to opponents?

The PRESIDING OFFICER. The opponents have 14 minutes, the proponents have 17 minutes.

Mr. BOREN. Mr. President, I yield myself 5 minutes.

In reply to the arguments that have just been made by the Senator from New York, I have to say with all honesty that I think the Senator from Utah earlier established a very strong case that the legal precedents are with those of us who are opposing the substitute. The transfer, when it was made, was perfectly legal under the laws of the United States and under every legal precedent in terms of the right to convey property within the boundaries of the United States. If we are talking about doing violence to

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the law, it would do violence to the law to set aside this transaction.

I also point out that if we are talking here about Congress and the Senate injecting itself into the question of conveying or conferring title to property, the bill as passed by the Senate Committee on Foreign Relations does that itself by confirming to the people of Taiwan the other properties, other than diplomatic properties, all of the rest of them, as being their property. It makes no exception as to whether or not these other properties were acquired prior to or after 1949.

The Senator from New York has made it a point to say that since this property was acquired prior to 1949, this diplomatic property, in the language of the bill and the amendment, that we should leave it up to the courts to decide who should own it. Yet the committee itself has conferred the other properties of the people of Taiwan which were acquired prior to 1949. No exception is made as to whether or not these properties were acquired prior to 1949.

In addition, as we have already seen under international law, it may be usual for one government to succeed to another; yet we are very clearly, intentionally treating this usual situation in an unusual way, a unique way, because it is a unique situation.

We are here dealing with a government which retains de facto, if not de jure, power to govern 17 million people located on Taiwan, and rather than to ask the People's Republic of China whether or not they want to succeed to our agreements entered into with the Republic of China, we have chosen through use of the institute to continue our past international agreements and treaties with the Republic of China, with the people on Taiwan, through the utilization of the institute.

So I would submit that the Senator from New York, quoting the other actions taken by the committee and the suggestions made to this body by the committee, has himself made it clear that it is a matter of choice when we choose to confirm certain kinds of property to the people of Taiwan, and when we choose to confirm certain kinds of international agreements, we do it, without regard to the usual situation as it affects international law or the domestic law of this country.

According to domestic law, it is right and proper for this Senate to confirm the property and the previous conveyance by the people of Taiwan—I speak of the diplomatic property.

More important, in terms of what is right and fair and just, in the broader sense, it is right and proper just to take this action as a small gesture to a long-time friend and trusted ally. In terms of what is right and in the best interests of the future relationship of the United States with other allies around this world, I submit it is in our national interest that we take this step and any other step that we can take to demonstrate that we do not turn our backs on those who have been our friends, that we do not totally abrogate previous commitments entered into.

I submit that the prestige of this Nation is plunging all around the world, and plunging in countries of strategic importance to this country, including some nations in the Middle East which have a vital role in the maintenance of our energy supplies. Our prestige is plunging because people are asking, Is the United States of America the kind of nation that turns its back on its friends, that does not keep its commitments, that runs for cover when trouble arises, that will forget about past friendship when a short-term economic advantage, perhaps, is seen, by changing relationships with the previous allies?

That is why our prestige is plunging. That is why people cease to rely upon the United States and its protective umbrella.

I submit for all of these reasons we should reject the substitute amendment, that we should then pass the original amendment and put the Senate on record in favor of making this important gesture to a free people on Taiwan.

Mr. President, at this time I yield 2 minutes to the Senator from North Carolina.

Mr. MORGAN. Mr. President, I believe that the Senator from Oklahoma has eloquently made a case for his amendment. But just for emphasis, let me say again, as he did, that the bill itself, the present section, is exactly as the amendment that is offered by the Senator from Oklahoma with the exception of deleting the last sentence, and that section says:

For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights, or interests in, properties, tangible, and intangible, and other things of value, owned, acquired by, or held on or prior to December 31, 1978, or thereafter acquired or earned by the people on Taiwan.

Then: "except, however, diplomatic real properties situated in the United States which were acquired prior to October 1, 1949."

The amendment would simply make the provisions of 111(a) applicable to all of the property.

Therefore, Mr. President, I believe that an up or down vote on the amendment of the Senator from Oklahoma would be appropriate. I, therefore, state that at the expiration of all the time, I will move to table the amendment of the Senator from Idaho.

Mr. GOLDWATER. Will the Senator yield me 1 minute to make a point that keeps coming up?

Mr. BOREN. I am happy to yield to the Senator.

Mr. GOLDWATER. Mr. President, we keep hearing reference to December 31, 1978. I would remind my colleagues, the transaction we are speaking of which moved that real property from the Republic of China to private hands occurred before that.

So we are mistaken if we believe our transaction took place after the People's Republic of China had been recognized by our President as the one China.

The property is owned by a nongovernmental agency, and that is what we are talking about.

The PRESIDING OFFICER. Who yields time?

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. How much time is left on each side?

The PRESIDING OFFICER. The proponents have 14 minutes. The opponents have 9 minutes.

Mr. GOLDWATER. Who would be the proponents on this issue?

The PRESIDING OFFICER. The proponents of the amendment in the second degree, the Senator from Ohio (Mr. GLENN).

Mr. GLENN. Proponents are those who propose the modification to Senator BOREN's amendment.

Mr. GOLDWATER. I thank the Chair. Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I yield myself such time as may be required.

TWIN OAKS AND OTHER DIPLOMATIC PROPERTY

Mr. President, it would be a mistake for Congress to legislate the ownership of Twin Oaks and the chancery.

Normally, under international law, diplomatic real property is the property of the State; the recognized representatives of the State are entitled to exercise the incidents of ownership. If Twin Oaks and the chancery were today owned in the name of the Republic of China international law would require that they be given to the People's Republic of China.

In this case, however, there is a special issue. The properties are not owned in the name of the Republic of China because they were transferred to a non-profit group, the Friends of Free China, on December 22, 1978, for \$10, as Senator GOLDWATER has said, under duress. These properties were transferred after the President's announcement of December 15, 1978, and before recognition became effective on January 1, 1979. The Department of State says that these properties should belong to the People's Republic of China, but there is a unique and unprecedented legal issue here that is for the courts to decide: namely, Was the transfer to the Friends of Free China during the 2-week notice period in December a valid transfer or can it be set aside? That is not an issue for us to resolve by legislation. It is an issue for the courts to decide.

An amendment preventing the People's Republic of China from contesting its rights to Twin Oaks and the chancery could put us in violation of our international obligations, and it would certainly be a sour note on which to begin normalization.

The other property that we are dealing with—bank accounts, foreign exchange deposits, and the like—is very different.

First, it is the product of the economic activity of the people on Taiwan over the last 30 years; it would be unthinkable to take that property away and give it to the People's Republic of China.

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Second, the bank deposits do not have the symbolic importance that an embassy has as the embodiment of a state in a foreign country.

The People's Republic of China has agreed that we can maintain commercial relations with the people on Taiwan. Since normal banking relations are essential to the conduct of commercial relations, it makes sense to distinguish the banking assets from the diplomatic property.

Accordingly, I cannot support any amendment which would deny the People's Republic of China a fair chance to litigate whether the transfer of the diplomatic properties to the Friends of Free China was valid. Therefore, I intend to support the amendment acknowledging the court's right to decide.

Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. I thank the Senator from Ohio for yielding.

Mr. President, I am pleased to cosponsor the amendment proposed by Senator CHURCH. It makes clear that this issue should be left to the courts, where it belongs. It reduces the risk of political misunderstanding. It deserves the support of this body.

This amendment provides that the ownership of Chinese diplomatic real properties, "or other rights or interests therein, may be determined by the courts." Unlike the amendment of the Senator from Oklahoma (Mr. BOREN), it does not prejudice an issue that is properly left to the courts.

It does not run the risk of undermining the important relations that our Nation is developing with the People's Republic of China.

Mr. President, Congress cannot and should not abdicate its responsibility to resolve issues of public policy. But this is not such an issue: It does not involve a determination of public policy, but the settlement of a dispute—a dispute, moreover, which centers upon unsettled questions of fact and complex questions of law.

These questions, I submit, are of precisely the type that courts were intended to decide.

A few facts are clear. We know that the properties in question were purchased by the Chinese state in the 1940's—before the People's Republic came to power—and we know that they were transferred to the "Friends of Free China" after President Carter announced that the United States would recognize the People's Republic, before the United States actually did so—and for virtually no consideration.

What we do not know, however, is whether that transfer is valid. What is the organization called "the Friends of Free China"?

What was its relationship to the ROC Government? Was this really an arm's-length transaction made in good faith? Do principles of state succession apply—would not the People's Republic have succeeded to this property had it not been sold? Did the representatives of the ROC Government who conveyed it have a duty to the Chinese state to use or dispose of properties consistent with the interests

of that state? If so, does that duty apply to a successor state? Was that duty breached? If it was breached, were the "Friends of Free China" on notice that the ROC sellers lacked the capacity to sell these properties? Is \$10 adequate consideration for a property valued at well over a million dollars?

Were the "Friends of Free China" bona fide purchasers? How does the law of the District of Columbia affect these transactions?

Mr. President, if the Senate is to address this issue responsibly, these are some of the question—and there are many others—that require answers. Who in this Chamber is prepared to provide these answers? I am not. The Senator from Oklahoma and his cosponsors have not. The Foreign Relations Committee did not—it expressly avoided the whole issue in this bill. And it did so for good reason: Under our constitutional system, it is most emphatically the province of the judiciary to resolve disputes over the ownership of property.

That is one of the principal reasons we have courts. There are certain kinds of questions that the judicial branch, institutionally, is far better suited to answer than the legislative branch. And the reason that the courts are charged with answering those questions goes to the heart of our system. The theory is that property disputes should be settled not through a test of political influence, but through the application of legal logic—that a party should prevail, not because he is better able to muster powerful political support, but because he is better able to present powerful legal arguments—and that those arguments are best weighed and compared, not by a partisan politician, but by an impartial judge whose decision will depend upon the way similar disputes were decided previously. It is this time-honored principle of decision based upon precedent—*stare decisis*—that makes ours a government of laws, rather than men. If we as a legislature decide arbitrarily, because of the political influence of one of the parties, to take this dispute from the courts and to decide it ourselves, we abandon that principle and we replace the force of law with the force of lobbies.

Why should any Senator be afraid to allow the courts to decide the issue on its merits? I submit, Mr. President, that it is not fear that the issue will be decided unfairly.

And I submit that it is not fear that the people on Taiwan or the "Friends of Free China," will be discriminated against. It must be a fear that, under the law, the force of their case is not strong enough to allow them to prevail under the same legal precedents that apply to all other litigants before our courts. I do not believe that this is a proper reason for depriving the courts of their traditional role.

It is true, Mr. President, that certain questions of first impression are presented by this issue. It is also true that the bill does address the ownership of other kinds of property. But the novelty of a question, in and of itself, has never been viewed as grounds for disqualifying the courts—indeed, the courts are there

to resolve the novel and the unique dispute.

This leads me to the other reason, Mr. President for urging the adoption of our substitute amendment. It is that a political move to withhold diplomatic real property would represent an insult to the Peking Government. It would complicate our efforts to reclaim United States real properties in China. I know that there are those who argue that we should not be swayed, in this body, by the reactions of foreign governments, and that may at times be true. But it is fair to ask how this Nation would react if we were in the Chinese position. How would those of us here in this Chamber feel if a foreign legislature voted to take our embassy—the highest symbol of our country—and give it to some other entity? We may not all view the current dispute in those terms, but it is certain that the Chinese do, and it is equally certain that the adoption of the Boren amendment would not add to, and could subtract from, the friendship and understanding that is just beginning to take root between our two countries.

Mr. President, I believe that this issue should be left to the courts. The Senate should not prejudice this issue. The Senate should not diminish our important new relationship with the People's Republic of China.

I believe that the Senate is willing to act as a responsible partner in shaping a policy of friendship between the United States and China, and I hope that our substitute amendment will be adopted.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I am prepared to conclude the debate. I just want to make one final plea.

I know the appeal that this amendment has, but it could get us into a good deal of mischief.

Suppose, for example, we adopted the amendment as offered by the distinguished Senator from Oklahoma. We would thus attempt, by legislative decree, to determine the ownership of this property. This would be a most unusual procedure and one that may indeed be unique. It is also a procedure for which we lack competence and, quite possibly, authority.

Then suppose the court comes along, even after the adoption of the amendment, and decides that under the governing law, which it is not within the power of Congress to set aside, the title for this particular property belongs to the People's Republic of China.

Then what are we obliged to do? Is it then incumbent upon us to compensate Taiwan for the deprivation of the property that we attempted by this amendment to place in their hands? I think it is unwise for Congress to attempt to usurp the function of the courts.

Moreover, if this amendment is adopted it could create serious difficulties for us in our upcoming negotiations with the People's Republic of China in our own endeavor to recover more than 51 tracts of real estate in China—and an even larger number of buildings—that we wish to possess for purposes of carrying on our own business with China, now

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that relations have been normalized with Peking.

For these several reasons, I think the substitute amendment should be approved. It would place the question of ownership of this particular property, which now is a litigable issue, where it belongs—in the courts of this country—and would thus uphold the rule of law.

Mr. President, I am prepared to yield back the remainder of my time.

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

Mr. BOREN. I yield to the Senator from North Carolina.

Mr. HELMS. I thank the Senator from Oklahoma.

Mr. President, I find myself intrigued by such tender solicitude for Red China. All the concern that we are going to preempt the courts of the United States simply will not hold water.

I think the amendment of the Senator from Oklahoma, for which the distinguished Senator from Idaho has offered a substitute amendment, is an expression by the Senate to our friends on Taiwan that "There are some of us who are not willing to sell you down the river." It is an expression that we want to extend at least some equity to the people on Taiwan.

With all due respect to my friend from Idaho, his amendment in the nature of a substitute is a gutting amendment to place us back on square one.

So, if Senators want to end a message of friendship and respect to the people on Taiwan, they will vote to table the Church amendment. But if they want to say, "We are going to continue to give everything to Red China" then they will vote for the Church amendment.

But in any case, Mr. President, this Senate is not going to resolve this matter satisfactorily because it is impossible to resolve it satisfactorily.

Simply said, the President sent a scrambled egg up to the Senate and said, "Unscramble it." It cannot be done.

I think that the unscrambling may occur with a new President, perhaps one who will take office in January 1981, who would then renew diplomatic relations with Taiwan again. But that remains to be seen.

In the meantime the amendment of the distinguished Senator from Oklahoma, unfettered by the proposed substitute amendment, is, in my judgment, a course of honor for this Senate to take and a manner of extending to our friends on Taiwan a little hope and a little comfort.

I commend the Senator from Oklahoma and I hope that the Church amendment will be defeated.

I thank the Senator.

Mr. BOREN. Mr. President, I yield myself sufficient time to complete the debate.

I thank the Senator from North Carolina for his remarks.

I think we have tried to make unduly complicated today a matter that is very, very simple and very, very straightforward.

The Senator from Massachusetts and others, who have just spoken in support

of the substitute amendment, have been splitting legal hairs.

It comes down to whether or not we are going to allow the people on Taiwan to keep their other property, their bank accounts, and other forms of property. We have not been told this is a matter to be left to the courts. The committee itself speaks to the point as a matter of policy and says that this property will be conferred to the people of Taiwan.

When we raise the question of international law and the status of the people on Taiwan and the Republic of China under international law, the committee does not say we are going to follow all of the precedents of international law. In fact, on page 7 of the committee report is stated:

The Administration has stated that it recognizes the People's Republic of China (PRC) as the sole legal government of China. It has also acknowledged the Chinese position that Taiwan is a part of China, but the United States has not itself agreed to this position. The bill submitted by the Administration takes no position on the status of Taiwan under international law, . . .

Then it sets up a whole series of unique relationships with the people of Taiwan, including the provision of this act as submitted by the committee to keep in force all the legal agreements and treaties that existed previously with the people of Taiwan, many of them entered into prior to 1949.

So I submit that the proponents of this substitute have talked on both sides. They have said, "We must not touch this question because it is a matter of law, it is a matter of precedents," and then time and time again they themselves have said, "No, it is a matter of policy," and they have acted as if it were a matter of policy by the decisions they themselves have written into this act.

We are certainly here dealing with a unique situation. I hope in some respects it is so unique that it is never repeated again, that a friend and an ally of this country would be treated as shabbily as they have been treated, given only a few hours advance notice in the middle of the night that they would no longer be recognized by the Government of the United States, even though they had without exception unflinchingly been our international friend.

This amendment, the substitute, it is said does not take any position as to whether or not the property will remain in the hands or be placed in the hands of the people of Taiwan or the People's Republic. I suggest that it is not totally neutral because as a matter of general legal interpretation if Congress takes positive action in regard to certain categories and does not take action in regard to others there is generally a presumption raised that an exception has been made.

I think the fact that we are taking positive action in regard to certain kinds of property but then choosing not to take positive action under this substitute amendment on others will have some impact and bearing on the courts.

I again suggest, just as we have not left the question of existing international agreements made prior to 1949 or after

1949, neither one, with the people of Taiwan in doubt in this bill, just as we have not left in doubt the title of the bank deposits and other forms of property, whether acquired prior to 1949 or after 1949, there is no reason why this Senate should not admit that this is a policy question and we are here dealing with a very simple question: Shall we say to the People's Republic of China on the mainland, "We are so anxious to gain your favor on every point, even though by recognizing you and establishing relations with you we have already conferred great benefit on you in the international councils of state, potentially great benefits in an economic realm that might flow from future trade, as a matter of policy we have to please you by crossing every 't' and dotting every 'i' to your liking?"

Are we to say to the people of the world that as a matter of policy this country should not even make one small symbolic gesture to a trusted and long time friend and ally?

When we talk about injecting morality into international relations, we talk about the sensitivity of this country to human rights, I suggest to the Members of the Senate that, as a matter of policy, there could be but one decision in keeping with what all of us regard as just and fair to a long-time friend and ally, and that decision is to send a small symbolic message to the people on Taiwan and to other allies around the world whose confidence—

The PRESIDING OFFICER. All of the time of the Senator from Oklahoma has expired.

The Senator from Idaho has 1 minute remaining.

Mr. JAVITS. Mr. President, I yield myself 1 minute.

Mr. President, we have confirmed bank deposits, money, and other property which could conceivably be identified as belonging to the people on Taiwan through their earnings to the tune of billions, and now the Senator says, "Send them a small symbolic message."

We have sent them a big symbolic message. We have pledged ourselves to their security as well as these billions of dollars in cash and bank deposits, as well as establishing for them here commercial relations, as well as giving them arms sufficient for their defense.

I respectfully submit that all the Senator is asking us to do is to look back with him at the time before when we should not have recognized the People's Republic of China, and that I do not believe the Senate should go along with.

The PRESIDING OFFICER. All time has expired.

Mr. MORGAN addressed the Chair. The PRESIDING OFFICER. The Senator from North Carolina.

Mr. MORGAN. Mr. President, I move that the substitute amendment lie upon the table.

Mr. HELMS. Yeas and nays, Mr. President,

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 substitute amendment of the Senator from Idaho, as modified.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

(Mr. HARRY F. BYRD, JR., assumed the chair.)

Mr. DeCONCINI (After having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from Delaware (Mr. BIDEN). If he were present and voting, he would vote, "nay." If I were at liberty to vote, I would vote, "aye." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Florida (Mr. CHILES), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from South Dakota (Mr. McGOVERN), the Senator from Wisconsin (Mr. NELSON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "nay."

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Oklahoma (Mr. BELLMON), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 49, nays 36, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—49

Baker	Hayakawa	Pryor
Bayh	Heflin	Randolph
Bentsen	Heinz	Sasser
Boren	Helms	Schmitt
Boschwitz	Hollings	Schweiker
Bumpers	Humphrey	Simpson
Byrd,	Jepsen	Stafford
Harry F., Jr.	Kassebaum	Stevens
Cochran	Laxalt	Stewart
Cohen	Leahy	Stone
Danforth	Long	Talmadge
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Ford	Morgan	Wallop
Garn	Nunn	Warner
Hatch	Pressler	Young
Hatfield	Proxmire	

NAYS—36

Baucus	Glenn	Metzenbaum
Bradley	Hart	Moynihan
Burdick	Huddleston	Muskie
Byrd, Robert C.	Inouye	Packwood
Cannon	Jackson	Percy
Chafee	Javits	Riegle
Church	Johnston	Roth
Cranston	Kennedy	Sarbanes
Culver	Levin	Stevenson
Durenberger	Magnuson	Tsongas
Durkin	Mathias	Williams
Evon	Melcher	Zorinsky

ANSWERED "PRESENT"—1

Goldwater

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

DeConcini, for.

NOT VOTING—13

Armstrong	Gravel	Ribicoff
Bellmon	Matsunaga	Stennis
Biden	McGovern	Welcker
Chiles	Nelson	
Eagleton	Pell	

So the motion to lay on the table UP amendment No. 35 was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on agreeing to the amendment offered by the Senator from Oklahoma (Mr. BOREN).

The amendment was agreed to. Mr. HELMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President—

The PRESIDING OFFICER. The Senate is not in order. The Senator will suspend until the Senate is in order. Business cannot be transacted until the Senate is in order. Will Senators help expedite the work of the Senate by taking their seats? Will Senators take their seats so the work of the Senate can continue?

The Chair recognizes the Senator from Utah (Mr. HATCH).

AMENDMENT NO. 98

(Purpose: To protect the trade of Taiwan and the United States)

Mr. HATCH. Mr. President, I call up amendment No. 98 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an amendment numbered 98:

On page 14, line 8, after "peaceful means" insert the following: "including discriminatory trading practices, boycotts or embargoes, and other similar measures".

Mr. HATCH. Mr. President, I yield myself such time as I need.

Mr. President, I rise to offer an amendment that will clarify what may prove to be a problem in the future. The whole purpose of the amendment is to reinforce the intent of the legislation before us and to clarify its reference to a bill that was passed by the Congress last year.

Last year the Congress passed Public Law 95-52, which amended the Export Administration Act to cover the area of boycotts by foreign nations of U.S. firms in order to obtain what may be defined as political objectives. At that time the legislation was intended to cover the Arab boycott, but I find that is equally applicable in this situation. I am speaking, of course, of title II of the Export Administration Act. This legislation prohibits Americans from participating in or supporting a trade boycott initiated by a foreign country against a nation friendly to the United States.

Mr. President, I ask unanimous consent that the language of title II be printed in the RECORD at this point.

There being no objection, the language of title 2 was ordered to be printed in the RECORD, as follows:

TITLE II—FOREIGN BOYCOTTS

PROHIBITION ON COMPLIANCE WITH FOREIGN BOYCOTTS

SEC. 201. (a) The Export Administration Act of 1969 is amended by redesignating section 4A as section 4B and by inserting after section 4 the following new section:

"FOREIGN BOYCOTTS

"SEC. 4A. (a) (1) of the purpose of implementing the policies set forth in section 3(5) (A) and (B), the President shall issue rules and regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

"(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of rules and regulations issued to carry out this subparagraph.

"(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

"(C) Furnishing information with respect to the race, religion, sex, or national origin of any other United States person or of any owner, officer, director, or employee of such person.

"(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotted country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary of Commerce.

"(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

"(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by rules and regulations issued pursuant to this paragraph, and no United States person shall,

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as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

"(2) Rules and regulations issued pursuant to paragraph (1) shall provide exceptions for—

"(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotted country, on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

"(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms after the expiration of one year following the date of enactment of the Export Administration Amendments of 1977;

"(C) complying or agreeing to comply with the unilateral selection by a boycotting country, or national or resident thereof (other than a United States person) of carriers, insurers, suppliers of services within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

"(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

"(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country; and

"(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such rules and regulations may contain exceptions for compliance with import laws of that country.

"(3) Rules and regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

"(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

"(5) Rules and regulations pursuant to this subsection shall be issued not later than 90 days after the date of enactment of this section and shall be issued in final form and become effective not later than 120 days after they are first issued, except that (A) rules and regulations prohibiting negative certification may take effect not later than one year after the date of enactment of this section, and (B) a grace period shall be provided for the application of the rules and regulations issued pursuant to this subsection to actions taken pursuant to contracts or other agreements in effect on or before March 1, 1977. Such grace period shall be two years after the date of enactment of this section and may be extended for three additional one-year periods in cases in which good faith efforts are being made to amend such contracts or agreements.

"(6) This Act shall apply to any transaction or activity undertaken with intent to

evade the provisions of this Act regardless of whether such transaction or activity involves the interstate or foreign commerce of the United States."

"(b) (1) In addition to the rules and regulations issued pursuant to subsection (a) of this section, rules and regulations issued under section 4(b) of this Act shall implement the policies set forth in section 3(5).

"(2) Such rules and regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Secretary of Commerce, together with such other information concerning such request as the Secretary may require for such action as he may deem appropriate for carrying out the policies of that section. Such person shall also report to the Secretary of Commerce whether he intends to comply and whether he has complied with such request. Any report filed pursuant to this paragraph after the date of enactment of this section shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any articles, materials, and supplies, including technical data and other information, to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary of Commerce shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policies set forth in section 3(5) of this Act."

(b) Section 4(b) (1) of such Act is amended by striking out the next to the last sentence.

(c) Section 7(c) of such Act is amended by striking out "No" and inserting in lieu thereof "Except as otherwise provided by the third sentence of section 4A(b) (2) and by section 6(c) (2) (C) of this Act, no".

STATEMENT OF POLICY

SEC. 202. (a) Section 3(5) (A) of the Export Administration Act of 1969 is amended by inserting immediately after "United States" the following: "or against any United States person".

(b) Section 3(5) (B) of such Act is amended to read as follows: "(B) to encourage and, in specified cases, to require United States persons engaged in the export of articles, materials, supplies, or information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person."

ENFORCEMENT

SEC. 203. (a) Section 6(c) of the Export Administration Act of 1969 is amended—

(A) by redesignating such section as section 6(c) (1); and

(B) by adding at the end thereof the following new paragraph:

"(2) (A) The authority of this Act to suspend or revoke the authority of any United States person to export articles, materials, supplies, or technical data or other information, from the United States, its territories or possessions, may be used with respect to any violation of the rules and regulations issued pursuant to section 4A(a) of this Act.

"(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the rules

and regulations issued pursuant to section 4A(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

"(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the rules and regulations issued pursuant to section 4A(a) of this Act shall be made available for public inspection and copying."

(b) Section 8 of such Act is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 6(c) (2), the".

DEFINITIONS

SEC. 204. Section 11 of the Export Administration Act of 1969 is amended to read as follows:

"DEFINITIONS

"Sec. 11. As used in this Act—

"(1) the term 'person' includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof; and

"(2) the term 'United States person' means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President."

PREEMPTION

SEC. 205. The amendments made by this title and the rules and regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, and any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

Amend the title so as to read: "A bill to amend and extend the Export Administration Act of 1969."

Mr. HATCH. Mr. President, it is an acknowledged fact that the people on Taiwan are heavily dependent upon foreign trade. In 1978 Taiwan's worldwide exports comprised 48 percent of its gross national product. This was about \$11 billion out of a \$22 billion gross national product. This reliance upon foreign trade places the people of Taiwan in a very precarious position. With the recognition of the People's Republic of China by the United States, it raises the question of possible interference in that trade. The amount of trade between the United States and Taiwan is significant. It may well be jeopardized by Chinese attempts to place economic pressure upon American businessmen who seek to open the mainland market. This legislation before us today has as one of its major purposes to create the American Institute on Taiwan. The purpose of this Institute is to promote the trade between the two parties. In his announcement of the new China policy on December 15, 1978, President Carter stated:

I have paid special attention to ensuring that normalization of relations between the

United States and the Peoples Republic will not jeopardize the well-being of the people of Taiwan.

The people of the United States will maintain our current commercial, cultural and other relations with Taiwan through nongovernmental means.

This language makes it very clear that the United States plans on a continuing development of trade with Taiwan. However, this may not be in the best interests of the Peoples Republic of China and they may wish to take actions that would discourage this build up of trade.

Being more specific, the fear that I have is that the potential danger of interference by the PRC in the trade and other economic relations that Taiwan now has with other countries may become a reality. If the PRC is permitted to mount an effective campaign of economic harassment they will eventually be able to economically suffocate Taiwan.

A classic example of this type of harassment would be the pressure placed upon Japan and Japanese businessmen. In 1973 and early 1974 the Government of Japan was under severe PRC pressure to cut off air service between Taipei and Tokyo. In 1974, while the air service was allowed to continue, Taiwan's China Airline was compelled to use a Japanese domestic airport rather than an international airport in Tokyo. At the same time subtle pressure was being applied to Japanese businessmen who hoped to do business with the PRC. It became known that the continued development of trade between Japan and Taiwan might endanger future business dealings with the PRC by those Japanese firms. It is obvious to anyone in the business community what the ramifications of such pressure would have upon decisions involving trade relations between any firm wishing to deal with both the Chinas.

Mr. President, this issue arose during the attempt by certain Arab nations to impose a boycott on the nation of Israel. At that time the problem was handled in the Banking Committee of the Senate. Legislation was passed which extended the Export Administration Act to cover problems that occur in this area. Section 3(5) of the act sets forth U.S. policy against foreign boycotts as follows:

It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against countries friendly to the United States; (B) to encourage and request domestic concerns engaged in . . . export . . . to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting . . . (such) . . . restrictive trade practices or boycotts . . .

This section of the act was further strengthened last year and I have had that section entered into the record to show my colleagues its impact.

Mr. President, it is because I feel that some form of boycott might occur, be it overt or covert, that I think this language should be added to the bill to make it perfectly clear that the United States will not tolerate such intervention in our own trade matters. We are committed to the development of trade between the

United States and Taiwan and encourage such trade between Taiwan and other nations. To do less would be an abandonment of the economic system that is modeled after the system that we have developed in the United States. I encourage my colleagues to support this amendment.

I encourage my colleagues to support this amendment again as a showing of support, moral, ethical, and reasonable support, for the people on Taiwan.

Mr. President, I ask for the yeas and nays on my amendment.

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

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, I yield myself such time as I may require.

Mr. President, I rise to oppose the amendment by the distinguished Senator from Utah.

When the Senator says in his amendment that this would include discriminatory trade practices I would submit that practically every nation in the world has discriminatory trade practices of one type or another. We have quotas; we have tariffs. Probably a discriminatory trade practice could be defined as anything short of most-favored nation status.

To inject that into the very carefully worked out wording of this section 114, it seems to me, not only is unnecessary, but changes the intent and meaning of this section to a considerable degree.

I might ask the distinguished Senator from Utah if he will turn to page 31 of the committee report. In referring to this particular section and the intent of it, the report states:

Subsection (b)

The Committee made clear in its discussion of subsection (b)(1) that the United States was concerned with external threats or coercion rather than with internal challenges to the security or to the social or economic system of the people on Taiwan. In discussing the matter of possible coercion, the Committee indicated that the United States would maintain its capacity to resist not only direct force but indirect force as well, such as a blockade or a boycott, that would jeopardize the social or economic system of the people on Taiwan. During the hearings, several Senators emphasized the applicability of the anti-boycott provisions of the Export Administration Act to the China-Taiwan context. Those provisions make illegal compliance by U.S. citizens or corporations with economic boycotts against Taiwan.

Mr. President, I think that pretty well spells out the intent of the committee. It indicates that the section here provides for boycott application. It points out also the applicability of the antiboycott provisions of already existing law, the Export Administration Act, and that it would apply in this China-Taiwan context.

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

Mr. GLENN. I am glad to yield.

Mr. HATCH. During the debate on this

question with Senator HARRY F. BYRD, the distinguished Senator from Ohio happened to be managing the bill or was on the floor at that time. The Senator from Ohio stated: "The Senator has quoted repeatedly that particular part of the report today." This was with regard to the Byrd amendment that was withdrawn last week.

Senator GLENN, at the time, said:

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 call to the attention of the Senator from Ohio that that is precisely why I am requesting this amendment, because the reports are not law. I think it is important that we recognize through this amendment that those reports are not law and thus, through this amendment, make it law. I think it is a fair thing to do for the people on Taiwan. I hope the Senator will reply to that.

Mr. GLENN. I reply to the Senator that if he will read subsection (b)(1), he will see it applies to all the things he is trying to do. It says:

(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;

I do not see how we can be any more explicit, any more definitive, than that language. That language was very carefully worked out in committee. We went over and over it, had much debate on that particular item, with a view toward covering exactly the situation and exactly the intent that the Senator from Utah has expressed as his reason for submitting the amendment to the bill. I think the Senator's point has already been covered.

Mr. HATCH. Where was the Senator reading from?

Mr. GLENN. The bill itself, page 14, subsection (b) and (1) under it, lines 13 through 17, page 14.

(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;

It seems to me that that really spells out in very good and well-stated detail the fact that we would oppose any moves or boycotts or other forms of coercion, as we say, completely openly, "or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan."

Mr. HATCH. Will the Senator yield again for a comment?

Mr. GLENN. Yes.

Mr. HATCH. The reason we want to put this amendment in, and I submit, if the Senator is in agreement, the amendment is basically there. All we

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want to do is make it more explicit in paragraph (3), page 14, at line 8. What we would do is insert after "peaceful means" the words "including discriminatory trading practices, boycotts or embargoes and other similar measures."

The language in (b) (1) is not clear. In fact, in my opinion, it is ambiguous. We would solve the problem, I say, and I suggest that the manager of the bill ought to accept this language.

Mr. CHURCH. Mr. President, this language is addressed to the wrong section of the bill, in my judgment. Subparagraph (3), beginning on line 7 of page 14, is a statement having to do with the policy of the United States. It reads:

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;

This section deals with the underlying and continuing concern of the United States that the Taiwan question not be resolved by resort to arms. It says that if mainland China were to attack Taiwan, such an action would constitute a threat to the peace and security of the Western Pacific area and be of grave concern to the United States.

Now, that is the subject matter of this particular paragraph. If we were to include the words suggested by the Senator from Utah, we would in effect be saying that any discriminatory trade practice that might be adopted by mainland China with reference to its own trade with Taiwan would constitute a threat to the peace and security of the Western Pacific area.

That goes very, very far. The language goes even farther, and I cannot imagine language so imprecise as the words "other similar measures." Other similar measures to what? If you take the previous words, you get "discriminatory trading practices, boycotts or embargoes or other similar measures." That includes a whole host of possible actions quite beyond our imagining. Are we to say that such actions, whatever they may be, are going to constitute a threat to the peace and security of the Western Pacific area? Mr. President, we engage in discriminatory trade practices. We engage in embargoes.

Mr. GLENN. Will the Senator yield?

Mr. CHURCH. I shall be happy to yield in just 1 second.

To suggest that anything mainland China might do, even if it takes the form of actions that we ourselves sometimes take, constitutes a threat to the peace of the western Pacific area goes further than anyone would want to go, bearing in mind the fundamental necessity to protect American options and to preserve American interests in that part of the world.

This amendment makes no sense.

I yield.

Mr. GLENN. I thank the Senator.

Mr. President, I was going to amplify about discriminatory trade practices.

I submit that the Senator from Utah, with all good intent, might be well advised to check with the Senator from

North Carolina on his right before he wished to put this in because there are several billion dollars worth a year of textiles that come off the island of Taiwan.

If we say that there are to be no discriminatory trade practices, it means we have no quotas, no tariffs, issued against the Taiwan position, or anyone else.

I presume it would mean we dump all Taiwan's textile output on its own industry in this country, and we could not stand against that.

I would say, in August 1978, agreement was reached on curbing textile exports from Taiwan. This is an agreement that, apparently, would go down the drain.

The format was the same as earlier agreements restricting footwear and color televisions. Then, in December 1978, a bilateral trade agreement was concluded that is expected to balance Taiwan's MFN benefits. This was necessary since Taiwan does not participate in the multilateral trade negotiations.

So it seems to me this is even more hazardous to American industry and business and, in particular, those States that deal heavily with textile matters and whose livelihood depends on that than I had first thought when I read the Senator's amendment.

I thank the distinguished Senator from Idaho for yielding.

Mr. HATCH. Will the Senator yield?

Mr. CHURCH. Yes, for a question.

Mr. HATCH. Yes.

Mr. President, I would agree that this particular amendment would change those types of trade agreements. On the other hand, I think it does satisfy in this section because we are talking about the only real form of Taiwan economic existence. We are saying in this particular amendment that after "peaceful means," we would insert "including discriminatory trading practices, boycotts or embargoes, and other similar measures."

I believe the Senator from Ohio was wrong on his particular assertion. However, I think the Senator from Idaho made some telling points. I think he is correct that this may be the wrong section to put this in and, because of the threat to the peace and security of the Western Pacific area and grave concern to the United States, I can see why some people would want that in there.

But I have to admit that the amendment would be more appropriate at a different place in the particular bill.

Mr. CHURCH. Would the Senator be good enough in the light of his comment to withdraw the amendment at this time without prejudice?

Mr. HATCH. Yes.

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

The PRESIDING OFFICER. Is there objection?

The Chair hears none.

Without objection, it is so ordered.

Who yields time?

The Senator from North Carolina (Mr. HELMS).

AMENDMENT NO. 74

(Purpose: To amend the Taiwan Enabling Act to provide further for the security of Taiwan.)

Mr. HELMS. Mr. President, I have an amendment at the desk, No. 74, which I call up and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 74.

Mr. HELMS. 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 10, strike out "and".

On page 14, line 12, strike out the period and insert in lieu thereof a semicolon and "and".

On page 14, between lines 12 and 13, insert the following:

"(5) to continue contacts by each military service of the Armed Forces of the United States with the corresponding military service of the Armed Forces of the people on Taiwan."

Mr. HELMS. Mr. President, I yield myself such time as I may require.

Mr. President, in his testimony to the Committee on Foreign Relations in response to an inquiry by Senator SRONE, General Jones, chairman of the Joint Chiefs, indicated that while the military could live with a relationship with the military forces of the people on Taiwan on a basis other than service to service, obviously, or it seemed obvious to the Senator from North Carolina, General Jones would prefer otherwise.

Mr. President, with this amendment all the Senator from North Carolina seeks to do is to continue service-to-service contacts between the military people of the United States and the military of the people on Taiwan.

I do not want the President to cut off that channel of communication; and that, in effect, is all this amendment is saying. In no way is the Senator from North Carolina attempting to confer an official contact so as to give the people on Taiwan a status that is not contemplated in this bill.

I would welcome any comment by the distinguished Senator from Idaho.

Mr. CHURCH. Mr. President, if I understand the Senator correctly, there is nothing in this bill that would prevent the use of American military personnel in connection with the performance of a contract relating to arms that might be negotiated between the American Institute and the Taiwanese Institute.

In other words, it would seem to me that implementing such a contract could appropriately require the use of civilian experts or military experts, as the case might be.

Mr. HELMS. Mr. President, I think the legislative history based on the statement by the distinguished Senator from Idaho is satisfactory. I see no purpose

pursuing the amendment. Therefore, I withdraw it.

The PRESIDING OFFICER. The amendment has been withdrawn.

Who yields time?

The Senator from North Carolina.

AMENDMENT NO. 78

Purpose: To amend the Taiwan Enabling Act to provide further for the security of Taiwan

Mr. HELMS. Mr. President, I have amendment No. 78 at the desk and I call it up and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 78:

On page 14, line 20, insert after "defensive character" a comma and the following: "including all-weather fighters, antisubmarine warfare weaponry, and antiship missiles".

Mr. HELMS. Mr. President, I have again discussed with the distinguished Senator from Idaho and others the intent of this amendment.

I want to make this clear, Mr. President. I have been very encouraged with the work in committee done by the distinguished Senator from Idaho and the distinguished Senator from New York, the chairman and ranking member, in connection with the legislation now pending.

My primary concern relating to this particular amendment is to assure that Taiwan's legitimate defense needs are met, that the military status quo in the Taiwan Straits is maintained and that Taiwan has an adequate deterrent capability.

In order to assure that such needs are met, this Senator believes that the bare minimum of Taiwan's defensive weaponry needs must include advanced all-weather fighters, antiship missiles, and advanced antisubmarine warfare weaponry.

I do not purport that this is an all-inclusive list, nor does it name specific weapons systems. That should be up to the President, in consultation with the people on Taiwan.

Moreover, Mr. President, the Senator from North Carolina cannot go into a great deal of detail, because, as the able Senator from Idaho knows, this matter was discussed in executive session with General Jones. I do not want to risk, by inadvertence, appearing to state his position.

As to this amendment, I simply want to let the President and the PRC and the people on Taiwan know just what the Senate means when it says that we will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive nature, and I stress the word "defensive." These are the arms of a defensive nature about which I am speaking.

No Senator wants to bear the burden of having forced an unwilling Taiwan into an act of desperation in joining the nuclear club or alinement with the So-

viet Union, but that is a real risk if we make a mistake in the Senate. We all bear potential responsibility for that if we do not give Taiwan the legitimate and reasonable assurances that Taiwan needs.

This in no way implies that the Foreign Relations Committee has not gone a very long way in attempting to do just that. It is simply a matter that we need to go a little further, in the judgment of the Senator from North Carolina, and say to the President, with all due respect to him and his constitutional authority and duty, that we want the President to know that these weapons systems are the bare minimum of what we feel will allow Taiwan to provide for its own self-defense.

After all, many references have been made in this Chamber—and in the Foreign Relations Committee, for that matter—concerning the President's failure to consult adequately with Congress on the process of what is called normalization. In all candor, the President did not seek the counsel of the Senate. Thus, I think we are in the position of making, or being forced to make, some changes in the legislation submitted by the administration.

I do not want, and I do not think we really can afford, another conflict with the President on this matter. All I seek to do is to make our position clear from the outset.

I will be happy to have the comments of the distinguished Senator from Idaho.

Mr. CHURCH. First, Mr. President, I thank the distinguished Senator from North Carolina for his expression of concern relating to the future security needs of Taiwan. It is one that I share with him.

The operative words of the statute before us are as follows:

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.

First, during the coming year arms already in the pipeline destined for Taiwan have been characterized by the government there as adequate for its defense requirements. So under the arrangement that the President has made with Peking, there will be no further sale of arms during the coming year. It is clear that the arms already in the pipeline will suffice.

Looking beyond the coming year, the United States has reserved—the President, himself, in his arrangement with Peking has reserved—our right to reinstate the sale of defensive weapons to the people on Taiwan. The Senate committee went a step further by adding the word "sufficient." I think that the sentence I have read is not susceptible to any misinterpretation. It says:

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.

I am sure that the able Senator from North Carolina will agree that we must reserve to our Government the right to determine what is sufficient. But the kinds of weapons to which he has re-

ferred—all-weather fighters, antisubmarine missiles, and antiship missiles—all three of these categories include weapons that are designed to be defensive in character and therefore would be appropriate for our consideration in determining what constitutes sufficient weapons for the defense of Taiwan.

I agree with the Senator that as long as this is clear, and I think our colloquy has made it clear, it would be unwise to attempt to actually designate given weapons in the statute itself. We want to retain for ourselves the necessary latitude to make our own determination with respect to what best serves this objective—namely, a sufficient defense capability for Taiwan.

Mr. HELMS. I believe that all three of us—the Senator from New York, the Senator from Idaho, and the Senator from North Carolina—agree on this point, and I want to make it crystal clear for the record.

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

Mr. HELMS. I yield.

Mr. JAVITS. "A sufficient self-defense capability," it seems to me, must include all-weather fighters, antisubmarine warfare weaponry, and antiship missiles. These are defensive weapons. So I cannot see any question about that.

Mr. HELMS. Mr. President, I thank the Senator from New York and the Senator from Idaho.

I believe it is clear that the weapons I have mentioned are agreed to be a bare minimum. With that legislative history having been made, my purpose has been accomplished, and I withdraw the amendment.

The PRESIDING OFFICER. Amendment No. 78 is withdrawn by the Senator from North Carolina.

Who yields time?

AMENDMENT NO. 98 (AS MODIFIED)

(Purpose: To protect the trade of Taiwan and the United States)

Mr. HATCH. Mr. President, I send to the desk a modification of my original amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an amendment numbered 98, as modified:

On page 14, line 8, after "peaceful means" insert the following: "including boycotts or embargoes".

The PRESIDING OFFICER. The Chair notes that inasmuch as the yeas and nays have been ordered, unanimous consent is required to modify the amendment.

Mr. HATCH. I ask unanimous consent that such modification take place.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HATCH. I also ask unanimous consent that the order for the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there

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objection? The Chair hears none, and it is so ordered.

Mr. HATCH. Mr. President, it is my understanding that the managers of the bill are willing to accept this language as it has been revised, because it now will fit within the section we discussed before. I see no further reason for us to debate.

Mr. CHURCH. Mr. President, as I understand the amendment as revised, the words "discriminatory trading practices" as well as the words "and other similar measures" have been stricken.

Mr. HATCH. That is correct.

Mr. CHURCH. So that if the amendment were accepted, subsection (3), beginning on line 7 of page 14, would read as follows:

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

Mr. HATCH. That is correct.

Mr. CHURCH. Mr. President, we have no objection to inserting—

Mr. JAVITS addressed the Chair.

Mr. CHURCH. I am sorry. I spoke too soon. I first defer to the Senator from New York.

Mr. JAVITS. If the Senator from Idaho has no objection, it is all right.

Mr. CHURCH. I defer to the Senator from New York, and then I will speak my piece.

Mr. JAVITS. Mr. President, the amendment is satisfactory to me, but I wish to ask the Senator from Utah a question.

I would not wish the amendment to be construed as limiting the effect of the words of lines 15 and 16 which read "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;"

Mr. HATCH. I do not believe those words will limit the effect of that provision.

Mr. JAVITS. The Senator does not believe these words will limit it?

Mr. HATCH. I do not believe they will.

Mr. JAVITS. That is very important to me because there may be other forms of coercion.

Mr. HATCH. I agree.

Mr. JAVITS. All right. I thank the Senator.

That is satisfactory.

Mr. HATCH. All right.

Mr. CHURCH. Mr. President, I have no objection to the amendment as modified.

Mr. DOLE. Mr. President, the purpose of the amendment offered by the Senator from Utah and which I cosponsored is to amend section 114, which is the key section stating U.S. policies and assurances for Taiwan. It is of vital importance that threatens to Taiwan of economic coercion such as boycotts or embargoes designed to harm the cultural and economic life of the people on Taiwan should also be of "grave concern" to the United States. Our own business and trading interests would be gravely affected by any attempt on the part of the PRC to organize and carry out an economic threat against Taiwan.

The matter of airline services is an example of pressures that can be placed on countries wishing to do business with Taiwan as well as the PRC. Japan encountered heavy pressure in this regard at the time of normalization of relations with the PRC. It is only too clear that the United States will have to be especially vigilant on matters of this nature and should introduce language about "boycotts or embargoes."

Another matter of relevance here is the already announced policy by Peking to try to expel Taiwan from the World Bank, the Asian Development Bank, and the International Monetary Fund. Given the size of the United States commitment to such entities, and given the degree of Taiwan's cooperation with and financial dependence on their services, such a move could prove very seriously damaging to the very well-being of the people on Taiwan which the bill is designed to protect.

Mr. HATCH. Mr. President, I ask unanimous consent that Senator Dole be added as a cosponsor.

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

Does the Senator yield back his time?

Mr. HATCH. I yield back my time.

Mr. CHURCH. I yield back the remainder of my time.

Mr. HATCH. I move adoption of the amendment.

The PRESIDING OFFICER (Mr. HEFLIN). The question is on agreeing to the amendment as modified of the Senator from Utah.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina.

UP AMENDMENT NO. 36

(MODIFICATION TO AMENDMENT NO. 81)

Mr. HELMS. Mr. President, I send to the desk a modified version of amendment No. 81 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 36.

Mr. HELMS. 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 10, line 12, after "Taiwan," insert the following: "including, but not limited to, the performance of services for the United States through contracts with commercial entities in Taiwan."

Mr. HELMS. Mr. President, the purpose of this bill is "to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes." It is ver astonishing, Mr. President, that there is very little in

the bill about either commercial or cultural relations. Indeed, it is hard to imagine what the "other relations" referred to might be.

In fact, if you examine the bill carefully, it obviously was drafted by diplomats thinking only in terms of traditional diplomatic activity. The Institute was conceived strictly as an entity to function as a surrogate diplomatic mission. The phrase "commercial, cultural, and other relations" is really a kind of code-word that says one thing on the surface, but in reality denotes something quite different.

Unfortunately, the ambivalent legal status of our new relationship with the people on Taiwan has resulted in the necessity to do something rather more specific than the Department of State had in mind. The committee adopted a number of amendments pinpointing specific, practical problems involved in conducting the new relationship—problems which the State Department simply had refused to face. These amendments made the Institute more viable than it had been in the State Department version.

The State Department adopted as its vehicle the concept of a non-profit corporation, which would perform diplomatic work on contract. I am concerned, however, that the diplomats, not being familiar with the world of business and commercial contracts, were completely confused about such work-a-day matters. When you are used to Government procurement all your life, you have very little appreciation of how the real world lives. The State Department's idea of how a corporation operates has as much relationship to reality as Marie Antoinette's dairy barn.

Now the Foreign Relations Committee worked very hard on this problem, as on others. But there were so many changes in the administration bill, that it was difficult to assess the overall bill until it was reported and printed as a whole. I have, therefore, a number of perfecting amendments that are not meant as criticisms of the committee's work so much as just taking a second look at what the committee wrought. I know that the distinguished chairman will consider them in that light.

Now I first want to draw attention to section 109, which says:

Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to United States law to render or provide to, or receive or accept from, the people on Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by the people on Taiwan.

Mr. President, what does this language say, in short? It says that whenever the U.S. Government acquires services on Taiwan, the institute has to contract with the parallel instrumentality set up by the Government of the Republic of China. I know why this was put in. The legal minds of the State Department were anxious to provide a cutout, a

laundry, so to speak, to clean up any actions that might smack of government-to-government relationship. Their horror of a government-to-government relationship burned so bright in their minds that they completely forgot the real world—that is to say, there will be many times when the relationship will be directly with the real people on Taiwan, as distinct from the code word "people on Taiwan" dreamed up by the diplomats.

In other words, the Institute may have to deal directly with the people in the real world. It may want to make commercial contracts for services. It may want to paint walls, rent cars, buy food, hire plumbers. Nowhere is there any authority in this bill for the Institute to make such contracts. All it says is that when the President or a Government agency wants to make contracts for services, the contracts must be made through the institute, which, in turn, must contract through the corresponding ROC instrumentality.

This is fine if it is a question of visas or consular services; it is ridiculous if we have a question of commercial services, which bear no taint of government-to-government contacts anyway.

Moreover, section 109 must be read in conjunction with section 106. Section 106 says that programs conducted by the President with respect to the people on Taiwan shall be conducted by or through the Institute. In other words, anything that the President or a Government agency wants to do on Taiwan must be done through the Institute in 106, while in 109 any services must be procured through the Institute and through the corresponding ROC instrumentality.

I might also point out that anything that the institute does on Taiwan will be done through U.S. Government funds. Thus any action of the Institute is an action of the President or a U.S. Government agency, and it must be done through the ROC instrumentality. Even if it wants to buy a cup of coffee, it must be done through the ROC instrumentality.

Now, I will admit, there is a clause which might be construed as helping this dilemma. It says these actions shall be done "in the manner and to the extent directed by the President." According to the committee report, this is supposed to give the President "maximum flexibility." If that is so, then it gives him the flexibility to set aside the very authority the bill is supposed to be giving him.

I think that it is important, therefore, to clarify the authority that the Institute has, and through the Institute, the President, to deal directly with commercial entities in Taiwan. Such an authority would be entirely consistent with the intent and spirit of the bill. It would clarify the President's authority, and give government agencies the power to contract for services with commercial entities in Taiwan.

In order to accomplish this, I intend to offer an amendment to section 105, where the basic authority for the Institute is laid down. On page 10, line 12, after the enumeration of the actions authorized to be conducted, my amendment would add the phrase, "including

but not limited to the performance of services for the United States through contracts with commercial entities in Taiwan."

Mr. President, I believe that the distinguished managers of the bill are prepared to accept this amendment as modified.

Mr. President, I suggest the absence of a quorum to be charged to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. 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. CHURCH. Mr. President, as I read the amendment, which has been modified by the insertion of four additional words, "But not limited to," and place that modified amendment in its intended place in the text of the bill, section 105 would read as follows. And I ask the Senator from North Carolina to attend me so there may be no misunderstanding:

Whenever authorized or required by or pursuant to United States law to conduct or carry out programs, transactions, or other relations with respect to a foreign country, nation, state, government, or similar entity, the President or any department or agency of the U.S. Government is authorized to conduct and carry out such programs, transactions, and other relations with respect to the people on Taiwan, . . .

And then his words would follow. The words of the amendment " * * * including, but not limited to, the performance of services for the United States through contracts with commercial entities in Taiwan. * * * "

And then it would read, " * * * in accordance with applicable laws of the United States."

Is that correct?

Mr. HELMS. The distinguished Senator is correct.

Mr. CHURCH. Mr. President, I have conferred with the ranking Republican member of the committee. He has no objection to the insertion of this additional language in section 105. I have no objection to it. Therefore, the managers of the bill are willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified of the Senator from North Carolina.

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HELMS. I thank the Chair and I thank the distinguished Senator from Idaho.

UP AMENDMENT NO. 37

(Purpose: To make clear the term "people on Taiwan" includes nongovernmental commercial activities to meet the purposes of the act regarding maintenance of "commercial" relations)

Mr. HELMS. Mr. President, I send to the desk an unprinted amendment,

which I understand the chairman has examined and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 37.

Mr. HELMS. Mr. President, I ask unanimous consent that the 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 24, insert the following after "it" insert "or organizations and entities subject to the laws of Taiwan."

Mr. HELMS. Mr. President, this amendment, section 101, on page 8, line 24, grows out of my previous amendment, the grant of authority to deal with commercial entities. It would make clear that the term "people on Taiwan" includes nongovernmental commercial activities to meet the purposes of the act regarding maintenance of "commercial" relations.

It would add the phrase "or organizations and entities subject to the laws of Taiwan" to the definition of "people on Taiwan."

It is just as simple as that.

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

Mr. HELMS. I am happy to yield to the distinguished Senator.

Mr. JAVITS. This, again, is simply as to form. Will the Senator and his staff direct their attention to page 9, line 9, that reads " * * * and other entities formed under the law applied on Taiwan, * * * "? It seems to me, again, to avoid legal questions as to why we used different language, it might be well to use in both places the same language. After "it" insert "or organizations and other entities formed under the law applied on Taiwan."

It simply is a question of consistent style so no one says, "Why did you say this in one place and not in another?"

Mr. HELMS. I am delighted to accept the Senator's suggestion.

Mr. JAVITS. If the Senator will revise the amendment accordingly it is quite acceptable to me.

Mr. HELMS. I thank the Senator.

Mr. President, since it will just take one stroke of the pen, I modify the amendment.

I again thank the Senator from New York.

The PRESIDING OFFICER (Mr. BAUCUS). Will the Senator please restate his modification.

Mr. JAVITS. If I may read it.

Mr. HELMS. Mr. President, on my time, 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. HELMS. 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. HELMS. Mr. President, I ask that the clerk read the amendment as modi-

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fied so that I can be certain it meets the approval of the distinguished managers of the bill.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk read as follows:

On page 8, line 24, insert the following after "it" insert "or the organizations and other entities formed under the law applied on Taiwan".

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

Mr. HELMS. Yes.

Mr. JAVITS. That amendment is quite satisfactory to me under that wording.

Mr. CHURCH. Mr. President, the amendment is also acceptable to me. I ask its approval by the Senate.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. CHURCH. I yield back my time.

Mr. HELMS. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question now is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 91

(Purpose: To ensure that the Institute has adequate personnel and facilities to strengthen and expand commercial and cultural ties between the people of the United States and all the people of Taiwan.)

Mr. HELMS. Mr. President, I call up my amendment No. 91 which is at the desk and I ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 91:

On page 11, delete lines 4 through 8, and substitute the following:

Sec. 107. In carrying out its activities, as described in this Act, the Institute shall take all appropriate steps to ensure it has adequate personnel and facilities to accomplish such purposes, including the capability to strengthen and expand the commercial and cultural ties between the people of the United States and all the people of Taiwan and to promote full human rights for all the people of Taiwan.

Mr. HELMS. Mr. President, I am disturbed at reports I have heard that the organizers of the Institute are planning to cut back on the staff which will be available to perform the necessary services for the people on Taiwan and American citizens and entities visiting or working in Taiwan. I have heard that the staff will number no more than 50 in Taiwan and only 7, including secretarial assistance, in Washington, D.C.

Now I am not an advocate of inflated bureaucracies or of overstaffing. But I grow suspicious when the only effort to cut back bureaucracy is when there is an attempt to downgrade our relation-

ship with Taiwan, even though our commercial and private relationship is rapidly increasing. This looks more like a political move, than an economy move, and it could seriously hamper the maintenance of commercial, cultural, and other relations with the people on Taiwan. It will also hurt American investment and Americans visiting and working on Taiwan.

Moreover, there is a serious doubt whether the State Department can supply enough retired diplomats who have the necessary experience with running a corporation to run it efficiently and prudently. It is an entirely different thing to run a corporation than it is to run a Government agency. I think that it is difficult to believe that a staff of seven, including secretarial assistance, can provide the necessary accounting and fiscal control for an operation that may be spending as much as \$5 million per year.

Finally, if the primary purpose of the Institute, as stated in the title of the bill, is to provide commercial relations, it is difficult to believe that the State Department can provide the necessary expertise in this vital area. The Department has not been known for aggressiveness in this area in the past.

There is doubt, therefore, that the Institute will have the necessary personnel to accomplish the purposes of this bill. I am therefore proposing to add a short clause to section 107, which would say that in carrying out its activities as described in the act, the Institute shall take all appropriate steps "to ensure it has adequate personnel and facilities to accomplish such purposes, including the capability" to strengthen and expand the ties between the people of the United States and all the people on Taiwan.

Now I realize that section 107 was originally set up to promote human rights, but since it talks about strengthening and expanding the ties between our two peoples, it appears to be an appropriate place to insert my language.

Mr. President, it is my understanding that the distinguished managers of the bill, Mr. CHURCH and Mr. JAVITS, have examined this amendment and are willing to accept it.

The PRESIDING OFFICER (Mr. HELMS). Who yields time?

Mr. HELMS. Mr. President, while the distinguished managers of the bill are studying it, I suggest the absence of a quorum with the time charged to me.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, I wish to modify my amendment by striking the language of the amendment and inserting the following language:

On page 11, line 8, strike the period, and add a comma followed by the words "and to provide adequate personnel and facilities to accomplish the purposes of this section."

I send that modification to the desk.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment is so modified.

The amendment, as modified, is as follows:

On page 11, line 8, strike the period and insert the following: ", and to provide adequate personnel and facilities to accomplish the purposes of this section."

Mr. HELMS. Mr. President, with the modification in place, I believe the amendment is satisfactory to the managers of the bill, and I am prepared to yield back the remainder of my time.

Mr. JAVITS. Mr. President, that modification is satisfactory to me.

Mr. CHURCH. Mr. President, I have no objection to the modification, it now being appended to the original language of section 107 as the concluding phrase. In such form, I find the amendment acceptable, and I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 91), as modified, of the Senator from North Carolina.

The amendment, as modified, was agreed to.

Mr. HELMS. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 85

(Purpose: To authorize the Institute to assist or protect the persons and property of citizens or entities of United States nationality in Taiwan)

Mr. HELMS. Mr. President, I call up my amendment No. 85, and ask for its consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 85:

On page 20, after line 2—

Mr. HELMS. 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 20, after line 2, insert the following paragraph:

"(4) to perform any other duties in keeping with the purposes of this Act and otherwise authorized by law which assist or protect the persons and property of citizens or entities of United States nationality."

Mr. HELMS. Mr. President, I note once again that the purpose of this act is to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan. But nowhere in the act is there any language providing assurances to Americans already in Taiwan or who have investments there that the Institute will, as is the case of U.S. embassies in other countries, serve and act to represent them. This after all, is one of the purposes of

foreign representation which is sometimes ignored by the representatives of our Government who tend to forget or sometimes cannot be bothered to perform as public servants of the people, as well as the Government, of the United States.

It is clear, of course, that U.S. embassies are supposed to assist U.S. citizens and U.S. investments abroad. But the Institute is a new creation. It does not carry the obligations of custom and law usually borne by our embassies. I believe that it is necessary to add a paragraph in section 206(a)—the section listing the duties of Institute employees—"to perform any other duties in keeping with the purposes of this act and otherwise authorized by law which assist or protect the persons and property of citizens or entities of U.S. nationality."

Mr. President, that is the purpose of the amendment. I believe that the Senator from Idaho has studied this amendment, and may be willing to accept it.

Mr. CHURCH. Mr. President, I wonder if the Senator would consider modifying his amendment, simply for purposes of grammatical clarity, by adding a semicolon after the word "seamen" on line 2 of page 20, and then the word "and".

Mr. HELMS. If the Senator will withhold for a moment, until I find the appropriate line.

Mr. CHURCH. Mr. President, in order that we may execute a slight modification which will make the amendment acceptable, I suggest the absence of a quorum and ask that it be taken from my time.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, I send a modification to the desk. I will state it so that it will appear in the RECORD. On page 19, at the end of line 25, strike "and". On page 20, line 2, after the word "seamen" strike the period, insert a semicolon, insert the word "and" and then pick up the remainder of the amendment. I send the modification to the desk.

The PRESIDING OFFICER. The Senator has the right to make the modification.

The amendment, as modified is as follows:

On page 19, at the end of line 25, strike "and".

On page 20, line 2, strike the period and insert a semi-colon and the word "and".

On page 20, after line 2, insert the following paragraph:

"(4) to perform any other duties in keeping with the purposes of this Act and otherwise authorized by law which assist or protect the persons and property of citizens or entities of United States nationality."

Mr. CHURCH. Mr. President, I have conferred with the Senator from New York (Mr. JAVITS). He is willing to accept the amendment as modified, and I am also willing to accept it. I think it

now reads properly, listing seriatim the duties to be performed by the Institute. So I am happy to accept the amendment. I think it adds to the bill, and constitutes a duty that should be performed by the Institute.

Mr. HELMS. I thank my able colleague. Mr. CHURCH. Therefore, I am willing to relinquish the remainder of my time, and I call for a vote.

Mr. HELMS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment, as modified. (Putting the question.)

The amendment, as modified, was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 83

(Purpose: To place direct responsibility upon the Institute to carry out the purposes of this Act.)

Mr. HELMS. Mr. President, I send another amendment to the desk, my final amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 83:

On page 21, line 16, at the end of the paragraph add the following sentence: "Such action shall not, however, relieve the Institute of the responsibilities placed upon it by this Act."

Mr. HELMS. Mr. President, I note with satisfaction that section 304 provides for a certain degree of accountability to Congress for the President's directives to the Institute. However, I am concerned that a mere reporting function is insufficient, and that in the future it might be construed as relieving the Institute of the responsibility which Congress has placed upon it. The mere reporting function, it seems to the Senator from North Carolina, is not sufficient. I think it would be very helpful to have some definite language indicating that the responsibilities imposed by Congress are not relieved merely by the reporting function.

That is the purpose of the amendment. I believe once again the distinguished managers of the bill have examined it and may wish to approve it.

Mr. CHURCH. Mr. President, first of all, I commend the Senator from North Carolina for his diligence. As a new member of the committee, he attended the hearings and participated in the markup of the bill, and he has carefully scrutinized it since the markup. I believe these amendments have been helpful, and commend him for them.

As I understand this amendment now offered, it would add to section 304 in the following manner:

The President is authorized to prescribe such rules and regulations as he may deem

appropriate to carry out the purposes of this act. Such rules and regulations shall be transmitted promptly to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives. Such action shall not, however, relieve the Institute of the responsibilities placed upon it by this Act.

Mr. President, I have no objection to this amendment, and I am informed by the ranking Republican member of the committee (Mr. JAVITS) that he has no objection. I am prepared to yield back the remainder of my time.

Mr. HELMS. Mr. President, I thank the distinguished chairman of the committee. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment. (Putting the question.)

The amendment was agreed to.

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

Mr. CHURCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi.

UP AMENDMENT NO. 38

(Subsequently numbered Amendment No. 99)

(Purpose: To permit individuals representing the people on Taiwan to be admitted to the Senate diplomatic gallery)

Mr. COCHRAN. Mr. President, I call up my amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Mississippi (Mr. COCHRAN) proposes an unprinted amendment numbered 38.

On page 13, line 15, before "The" insert "(a)".

On page 13, after line 24, insert the following:

(b) In exercising its duty under paragraph 2 of rule XXXIV of the Standing Rules of the Senate, the Committee on Rules and Administration of the Senate shall issue regulations providing that the head and first secretary of the instrumentality referred to in section 109, and their families and suites, shall be admitted to the gallery in the Senate chamber set apart for the use of the diplomatic corps. This subsection is enacted as an exercise of the rule-making power of the Senate.

Mr. COCHRAN. Mr. President, the current section 113 as it exists now relates to an authorization of the President to extend to the instrumentality established by the people on Taiwan and the appropriate members thereof such immunities and privileges as are compatible with missions of other foreign countries.

I think it is in keeping with the sentiment of section 113 and the authorization that the Senate extends to the President that the Senate itself should extend this courtesy and the opportunity to have the privileges of the diplomatic corps gallery to those who are identified in the amendment I have offered. I would hope that the distinguished chairman of the Foreign Relations Committee and the

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managers of the bill before us could accept the amendment.

Mr. CHURCH. Mr. President, I am informed by the Parliamentarian that inasmuch as this proposal would amend the Rules of the Senate it is subject to a point of order. If that point of order were sustained it would have to lie over for a day before the Senate could properly consider it.

This is the first time I have seen the amendment. I am not prepared to accept it at this time, pending some inquiry into the possible implications of the amendment as it relates to official recognition of representatives of this institute, and to the possible effect the amendment would have upon the American commitment to officially recognize only one Chinese Government; namely, the Peking government.

Rather than to raise a point of order at this time and force the matter to lay over until tomorrow, I wonder if the Senator would be willing to withdraw the amendment at this time so I may make these inquiries. If at the appropriate time tomorrow he wishes to call up his amendment again, I certainly would not raise a point of order.

Mr. COCHRAN. Mr. President, in view of the representation of the distinguished chairman, I will withdraw the amendment at this time with the intention of bringing it before the Senate tomorrow. I ask permission to withdraw the amendment at this time. I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator has the right to withdraw the amendment.

Mr. CHURCH. I thank the Senator for his cooperation.

The PRESIDING OFFICER. The Senator from Kansas.

UP AMENDMENT NO. 39

(Subsequently numbered amendment No. 100)

(Purpose: To provide for the appointment of a Director to head the American Institute in Taiwan)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 30.

On page 11, between lines 3 and 4, insert the following:

(c) The Institute shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate and who shall hold such appointment for a period of not to exceed two years.

Mr. DOLE. Mr. President, the amendment I have sent to the desk I believe is very concise and easily understood, though perhaps controversial. I am not certain if the floor managers would be willing to accept the amendment. It concerns the question of congressional oversight.

There is no doubt about it. The American Institute on Taiwan will be carrying out U.S. foreign policy and on rare occasions the Director of the Institute may

even be placed in the position of initiating policy and acts which will affect U.S. strategic interests. It seems to me that for that reason the Senate ought to have the right to confirm the person appointed as Director.

This amendment creates such an official avenue and safeguards the principles of advise and consent set forth in the Constitution.

Again, the Senator from Kansas wants to make it very clear that I do not intend to upset the balance which my distinguished colleagues on the Senate Committee on Foreign Relations have been able to work out. It is not my intent to destroy the delicate understanding upon which our normalization with the mainland rests. I feel we have much to gain potentially from a strong relationship with Peking.

The language I propose in this amendment does not raise the quality of our relations with Taiwan one iota. This is perhaps unfortunate, but let me say again it is not my intention to wreck the understanding which has been laboriously worked out. My only concern here is with the constitutional responsibility of the Senate. It seems to me that the bill as it now stands is asking the Senate to abrogate—to terminate, rather—some of that responsibility which we in the Senate now have to act as a watchdog and a safeguard for U.S. interests in the foreign policy area.

The relationship we are implementing with Taipei is unprecedented. Let us not abdicate our duty to oversee the actions of the executive department in this one, small matter, for a short term and perhaps transitory political expediency. Once the director of this institute is appointed he will be technically unfettered to act as he pleases. It is necessary for us to have an opportunity to judge the worthiness of this unofficial official, who will have such unprecedented power.

To those who say that senate confirmation of the director would destroy the non-governmental character of the institute, I ask how can the Secretary of State, acting for the President, have the sole authority to appoint this individual without giving an air of officiality to the proceedings? How can the Congress provide all the funds for this institute without making it seem that there is some small degree of government interest and involvement? The administration and the committee have satisfied themselves on this score and have written the definitions to comply with their conclusions.

There is, however, a larger definition we must satisfy also. By this I mean the primary obligation the constitution imposes on us. This amendment only addresses that one problem, the obligation for the Senate to advise and consent to certain actions by the executive department. I do not believe it is in the best interest of the United States to make this accommodation to suit the requirements of the Communist regime in Peking. I urge the Senate to reject the precedent this would cause, by giving favorable consideration to this amendment.

Let me reemphasize that I applaud the chairman and I applaud the members of the committee for working out a very delicate balance. It seems to me that if

we are concerned about the nongovernmental character of the Institute, we also have to look at the appropriations and everything else that might affect the Institute. All the Senator from Kansas suggests is that we have the right to confirm the director.

I do not know any objection to the amendment, but I withhold the remainder of my time.

Mr. CHURCH. Mr. President, reluctant as I am to say so, there are serious objections to the amendment. It does great violence to the bill.

I agree with the able Senator from Kansas that Congress should continue to exercise oversight. The committee went to great pains to see to it that we would be in a position to do so. Congressional oversight over the operation and management of the Institute created by this bill is assured by other provisions of the bill. Appropriations for the Institute would have to be authorized on an annual basis, so Congress continues in effective control. The Comptroller General will have access to the books and record of the Institute, so that its proceedings will be constantly under the supervision of the executive branch. The Institute will also operate under a contract with the Department of State, whose senior officers are appointed by the President with the advice and consent of the Senate.

Mr. President, the Committee on Foreign Relations fully considered this issue in order to meet concerns expressed by members of the committee. The Secretary of State has assured the chairman that he will inform the committee of prospective appointments of the Institute's trustees and officers, and will undertake to resolve any reservations the committee may express. A copy of the Secretary's letter to this effect, dated February 23, 1979, addressed to me as the chairman, sets forth the State Department's position. I ask unanimous consent that the text of that letter may be printed in the RECORD.

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

WASHINGTON, D.C.,
February 23, 1979.

HON. FRANK CHURCH,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: As you know, under the articles of incorporation and bylaws of the American Institute in Taiwan, the Secretary of State appoints and removes the trustees of the Institute.

Because the Institute is not an agency or instrumentality of the Government, and because its trustees are not officers of the United States, it would not be appropriate for the Senate to advise and consent to the appointment of trustees or officers. However, the names of prospective trustees and officers will be forwarded to the Foreign Relations Committee. If the Committee expresses reservations about a prospective trustee or officer, we will undertake to discuss and resolve the matter fully with the Committee before proceeding.

This arrangement will enable the Institute to retain its character as a private corporation and enable the Senate to participate in the selection of trustees in an appropriate manner.

Sincerely,

CYRUS VANCE.

Mr. CHURCH. Mr. President, what are the objections to the amendment offered by the Senator from Kansas? They are several and they are of prime importance.

If the Senate were to approve this amendment, it would be an act inconsistent with normalization of our relations with Peking. Our ability to have diplomatic relations with the People's Republic of China, and simultaneously to maintain commercial, cultural, and other relations with the people on Taiwan depends upon the latter relationship being conducted on an unofficial basis.

The American Institute on Taiwan, under the terms of this bill, is created under the District of Columbia nonprofit corporation law as a private organization precisely to avoid the appearance of officiality that the adoption of the pending amendment would create. Appointment of a Director of the American Institute in Taiwan through the procedures specified in the Constitution—that is to say, appointment by the President by and with the advice and consent of the Senate—would connote an official status, which is precisely what we seek to avoid in this legislation.

I do not know the purpose of the Senator in offering this amendment. He says that he acknowledges that American interests are advanced by recognizing Peking. If that is so, why offer an amendment which goes to the very heart of what we are trying to do? Why is this such a delicate matter? Not because primarily Peking insists on making it so, but because both Peking and Taipei continue to claim to be the government of China. Furthermore, Taipei acknowledges that Taiwan is part of China, and that there is but one China.

Since both governments take that position, then we can recognize one or the other, but we cannot recognize both. If it is, as the Senator from Kansas says, obviously in the American interest to recognize the government that is actually in charge, then it follows that our relations with the other government must be conducted on an unofficial basis. That is the basis of the bill.

I hope the Senate will not start to tamper with the essential purpose of the bill by adopting the amendment offered to the Senator from Kansas. If we make officials of this corporation, which is established under the laws of the District of Columbia as a private organization, making them appointable by the President subject to Senate confirmation, we lift them to official status, for this is the constitutional method by which we appoint members of the Cabinet, chiefs of our own executive agencies, ambassadors to foreign lands, and justices to the Supreme Court.

This is the constitutional formula for appointing and confirming to office officials of the Government of the United States. Therefore, the adoption of this amendment would be inconsistent with the major objective sought to be served by the bill.

I hope that when this matter comes to a vote tomorrow the Senate will reject this amendment. It could do serious injury to the bill.

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

Mr. CHURCH. Mr. President, I reserve the remainder of my time.

Mr. DOLE. Mr. President, I thank my distinguished colleague.

As the Senator from Kansas has indicated, I do not want to upset the balance. I commend the chairman and the distinguished Senator from New York and others who have tried to forgo the proper balance, and who have in most areas. It seems to me that because of this delicate relationship we could perform just this one small function and preserve our constitutional right to advise and consent with reference to the director.

Mr. President, it is a very easily understood amendment. I do not want to take any other further time of the Senate. I would be willing to vote, and I ask if the Senator from Idaho might want to vote now, or—

Mr. CHURCH. Voice vote?

Mr. DOLE. I have not looked at the attendance. I might—

Mr. CHURCH. Voice vote or go over until tomorrow?

Mr. DOLE. Why not go over until tomorrow, and maybe it will be a voice vote tomorrow, but then I will have the right to ask for the yeas and nays.

I might say to the distinguished majority leader that I am perfectly willing for the vote to go over or do it now. But I think they would prefer, in the event there may be a rollcall, to have it come tomorrow. It is certainly satisfactory to this Senator.

Mr. CHURCH. A voice vote right now?

Mr. DOLE. I understand. I appreciate that.

[Laughter.]

Mr. DOLE. I did that in Indianapolis on Saturday.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendment by Mr. DOLE be temporarily set aside with the understanding that it will be the pending question before the Senate on tomorrow when the Senate resumes consideration of the Taiwan Enabling Act.

Mr. DOLE. As far as the Senator from Kansas, the debate is finished, I yield back to the remainder of my time.

I just want to reserve the right to ask for the yeas and nays tomorrow, if I make that request.

Mr. ROBERT C. BYRD. The Senator will have that right.

Mr. DOLE. All right.

The PRESIDING OFFICER. The Chair notes that on tomorrow—to any specific time?

Mr. ROBERT C. BYRD. It will be the pending question on tomorrow.

The PRESIDING OFFICER. It will be the pending question on tomorrow.

Mr. ROBERT C. BYRD. Yes, when the Senate resumes.

Mr. DOLE. Mr. President, I think the Senator from Kansas might just reserve 5 minutes of my time in the event the distinguished Senator from Idaho conjures up some good argument against the amendment.

Mr. CHURCH. I reserved the remainder of mine.

Mr. President, I am surprised my argu-

ment has not already persuaded the Senator from Kansas to withdraw his amendment. However, if he wants to reserve 5 more minutes I will reserve the same, and then we can proceed to a vote.

Mr. ROBERT C. BYRD. Mr. President, with the amendment set aside temporarily, if there is any other amendment which any Senator wishes to call up, it would be a good time to do it now, with the understanding that on tomorrow the pending question when the Senate resumes consideration of the Taiwan Enabling Act will be the further consideration of the amendment by Mr. DOLE.

The PRESIDING OFFICER. The Senator from New Hampshire.

UP AMENDMENT NO. 40

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an unprinted amendment numbered 40:

On page 22 following line 23, insert the following new section:

THE PURPOSE IS TO REQUIRE

"SEC. 403. The President shall notify the Chairman of the Senate Committee on Foreign Relations and the Speaker of the House of Representatives thirty days prior to the issuance to the People's Republic of China of any license required under Section 38 of the Arms Export Control Act."

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HUMPHREY. Yes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it may be in order to order the yeas and nays at this time on the amendment by Mr. DOLE.

Mr. CHURCH. Mr. President, reserving the right to object, it had been my intention to make a motion to table the amendment, but I would not want to agree to a unanimous-consent agreement that would foreclose my motion.

Mr. ROBERT C. BYRD. That would not foreclose the Senator.

Mr. CHURCH. Very well.

Mr. DOLE. 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it may be in order at this time to order the yeas and nays on a motion to table the amendment by Mr. DOLE in the event such a motion is made, which Mr. CHURCH says he intends to make.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I ask for the yeas and nays on the motion to table.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. I thank the Senator for yielding.

Mr. HUMPHREY. Mr. President, the

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purpose of my amendment is to require the President to notify the chairman of the Senate Committee on Foreign Relations and the Speaker of the House of Representatives 30 days prior to the issuance to the People's Republic of China of any license required under section 38 of the Arms Export Control Act.

Serious thought apparently is being given in some Government and business circles to selling defense-related technology and even weapon systems to the People's Republic of China. I am heartened, however, by President Carter's statement of January 26, that he does not plan to enhance the military capability of the PRC.

Mr. President, I ask unanimous consent to have President Carter's statement printed in the RECORD.

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

QUESTION. Mr. President, in regard to Mr. Brezhnev's warning to the West against the sale of sophisticated arms to China, as I understand it, the United States is not planning to make any such sales. West Germany says it will sell only to its allies, but the attitude is very different in Paris and London. Question is, what is the U.S. attitude towards sale of such weapons by its allies and, secondly, what, if anything, are we doing in support of that attitude?

THE PRESIDENT. We have responded very clearly to President Brezhnev who contacted me directly about these sales. We will not sell weapons to either China or Russia. Secondly, our allies are independent, sovereign nations and they would resent any intrusion by us into their weapons sales policies. We have a very clear understanding among ourselves, particularly Germany, Great Britain and France and the United States. We discussed this at some depth at Guadeloupe. Our publicly expressed and privately expressed advice to the other nations is that the sale of any weapons should be restricted to defensive weapons, and, of course, President Giscard d'Estaing, Prime Minister Callaghan, Chancellor Schmidt would decide with their advisors on what is or is not a defensive weapons sale.

The Soviets need not be concerned about this, in my opinion. They have expressed their opinion to the foreign leaders as well as to myself. And I think my response was, basically cast in the posture of reassurance to the Soviets. We certainly have no intention to sell weapons to the Soviet Union or China.

The technologically advanced equipment, computers and so forth, would have to be assessed on the basis of each individual item and whether it could contribute in a substantial way to the enhancement of the military capabilities of both the Soviet Union and China. And, in general, we will apply the same restraints of that kind of sale to both countries.

Mr. HUMPHREY. Mr. President, I remind my distinguished colleagues that Mr. Carter's statement concerning arms sales policies toward the PRC was considerably more forthright than that of William Cooper, Under Secretary of State for Economic Affairs. Mr. Cooper, in testimony before the Senate Banking Committee, would not give assurance that the administration would not sell strategic commodities or weapon systems to the PRC. All he would say and I quote, "We will try to maintain a balance in our relations with China and the Soviet

Union and what that means in practice at the moment is that we will not sell military equipment to either country, either China or the Soviet Union."

Whom are we to believe? Are we not planning to sell weapons to the PRC or are we not planning to sell them for the moment? Over the last decade, the United States—largely due to Congress concern and foresight—has become more sophisticated in monitoring the transfer of U.S. technology and weapon systems overseas.

The President, however, is given a great deal of flexibility in dealing with arms sales to the PRC. Loopholes in the present laws are summarized in a paper which I ask unanimous consent to have printed in the RECORD.

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

LOOPHOLES IN PRESENT LEGISLATION GOVERNING TRANSFER OF GOODS AND TECHNOLOGY WITH POSSIBLE MILITARY USES

1. Sec. (4) of the Export Administration Act of 1969 states that "in administering export controls for national security purposes . . . United States policy toward individual countries shall not be determined exclusively on the basis of a country's communist or non-communist status but shall take into account such factors as the country's present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control re-transfers of United States exports in accordance with United States policy and such other factors as the President may deem appropriate." Thus, under the Export Administration Act the transfer of defense related technology to the PRC is theoretically possible.

2. The Arms Export Control Act does not place absolute constraints on the transfer of weapons to communist nations. All that is said is that it is "the sense of Congress that sales and guarantees . . . shall not be approved where they would have the effect of arming military dictators who are denying the growth of fundamental rights or social progress to their own people. Provided, that the President may waive this limitation when he determines it would be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate."

3. The Foreign Assistance Act of 1961 prohibits military assistance "to any communist country" but even here the President is given some flexibility to waive restrictions if he finds and promptly reports to Congress that (1) "such assistance is vital to the security of the United States; (2) that the recipient country is not controlled by the international communist conspiracy and (3) such assistance will further promote its independence of the recipient country from international communism." I would have a difficult time agreeing with the President that these provisions could be met by the PRC but one finds strange arguments advanced in some academic circles at least that there is no such thing as an international communist movement, and that Peking is an independent actor and that furnishing aid would enhance Peking's independence from the Soviets.

Mr. HUMPHREY. Mr. President, many will ask why we need to make law what the President has said he will not do; that is, sell weapons to the PRC. These reasons come to mind. Not only do regulations presently in force give the President great leeway concerning possible

arms sales to the PRC, the President in my opinion, at least, has proven to be anything but consistent in foreign affairs. Taiwan is a poignant case in point. The President promised not to abandon Taiwan and then proceeded to do just that without consulting with the ROC or with the U.S. Congress. Might he not change his mind abruptly about arms sales to the PRC?

Lastly, arms sales to the PRC are being discussed in the press and elsewhere.

China's shopping list for U.S. weapons promises to be a long one. According to the New York Times of March 9, China is very interested in buying U.S. warplanes, particularly the Lockheed C-130 military transport and the Lockheed P-3C antisubmarine patrol plane. Peking is also interested in some of the advanced electronic equipment produced by McDonnell Douglas. I also understand they are interested in purchasing high-technology hydrofoil turbines that now propel our U.S. Navy hydrofoil missile combatants.

Is it fair to place serious restraints on arms sales to a good and loyal ally of more than 30 years while at the same time, contemplating selling arms and defense related technology to the PRC—Taiwan's bitter and sworn enemy?

The administration, in fact, has agreed—only reluctantly—to supply Taiwan after 1979 with "selected defense weaponry on a restricted basis." Several witnesses before the Foreign Relations Committee including Vice Admiral Snyder, former head of Taiwan Defense Command, expressed concern that vital weapons that Taiwan really needs have been withheld from them for political reasons. At present, Taiwan's Navy which consists of World War II vintage destroyers would be no match for the PRC's patrol boats and modern destroyers which are armed with Styx ship-to-ship missiles or the PRC's submarines. These subs may be primitive by Western standards but the PRC has twice the number of attack subs that the United States has in the entire western Pacific. The PRC's surface and submarine force would permit China to sever Taiwan's sea lines of communication relatively quickly. I point out that Taiwan's forces were never designed to act alone but in concert with U.S. forces under the provision of the Mutual Defense Treaty.

Mr. President, if the past several weeks have proven anything, it is that Peking government is quite willing to destabilize Asia just to prove a political point; that is, it will not be pushed around by Vietnam. Not only did Peking commit thousands of troops and kill thousands of people just to give Vietnam a slap in the face; Peking's action against Vietnam endangered the peace throughout southeast Asia, and suggested that the People's Republic of China will not hang back from attacking Taiwan if it thinks it can get away with it. Yet, even after China's demonstration of contempt for world opinion, there are those in our country who would provide the People's Republic of China with military equipment.

It is time, that the United States

stopped hastily committing itself to programs or agreements just for the sake of having successful negotiations. This is basically how the administration approached Taiwan and the Senate has worked diligently over the past 2 months to pick up the pieces to insure Taiwan some measure of security and international standing. I fear, that given our zeal to be liked by the Communists, we will begin selling defense materiel to the PRC despite the obvious long-term pitfalls of doing so.

In the future, it is conceivable that the PRC and the United States may be adversaries. The Chinese Communists themselves view the new relationship with the United States as a temporary phenomenon designed in the short term to gain advantages vis-a-vis the U.S.S.R. To quote my colleague Senator HELMS, as he expressed himself in the Foreign Relations Committee report,

The old Chinese strategy, playing the near barbarian (the USSR) off against the far barbarian (the United States) continues to hold sway in the minds of Peking's strategists. At the same time, given Communist ideology whether it be the Soviet or Chinese-brand detente or peaceful coexistence, is no more than a guise to gain the strength to tackle capitalism, i.e., the West and our way of life.

It is time that the American people exerted less effort to "being liked," less time bending over backward to insure successful negotiations with former enemies, and exerted more effort toward being respected. The administration's hasty and shameful abandonment of Taiwan cost the United States dearly in respect and credibility. Turning around and selling arms to Taiwan's enemy will further erode our worldwide respect and credibility.

This amendment will insure that we, as a Nation, that we, as a legislative body, are given clear warning that the United States may be embarking on a course of action that could have dangerous consequences 5 to 10, or even 20 years down the road. Basically, my misgivings about selling defense technology to the PRC boil down to two basic questions: Should we create another military superpower that our grandchildren may have to confront? Will they appreciate our efforts to make China even more powerful than it otherwise would have been? Absolutely not.

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

Mr. HUMPHREY. I yield.

Mr. HELMS. Mr. President, I commend the distinguished Senator from New Hampshire on this amendment and for the other fine work he has done with respect to this legislation. I wonder whether he would give me the privilege of cosponsoring the amendment.

Mr. HUMPHREY. Yes.

Mr. HELMS. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the amendment.

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

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

Mr. HUMPHREY. I yield.

Mr. McCLURE. Mr. President, I join

my friend and colleague from North Carolina, and I ask unanimous consent that my name be added as a cosponsor of the amendment.

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

Mr. McCLURE. Mr. President, I commend the Senator from New Hampshire for the very lucid statement he has made. I appreciate the constructive work he has done on this measure.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the name of the Senator from Utah (Mr. HATCH) be added as a cosponsor of the amendment.

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

Mr. ZORINSKY. Mr. President, I also commend the Senator from New Hampshire for his forthrightness and his astuteness in suggesting this amendment—that the President shall notify the chairman of the Senate Committee on Foreign Relations and the Speaker of the House of Representatives 30 days prior to the issuance to the People's Republic of China any license required under section 38 of the Arms Export Control Act. The committee will accept this amendment.

In addition, I note that on January 26, 1979, the President stated that we will not sell weapons to either China or Russia; and the committee, after hearings, will consider supporting the President on this issue.

Mr. President, I again state that the Foreign Relations Committee will accept this change in the form of this amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. ZORINSKY. I yield back the remainder of my time.

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

Mr. HUMPHREY. I yield.

Mr. GOLDWATER. Mr. President, I compliment the Senator. In his first effort on the floor, he has had a meaningful amendment adopted, one that can put a little more muscle in this piece of legislation which came to us so sadly lacking in strength. Thanks to people like this young man, we have added a little strength to it.

Mr. HUMPHREY. I thank the Senator from Arizona for his kind comments.

Mr. JAVITS. Mr. President, I join in accepting the amendment. I understand that it applies to the munitions list, as it is called.

Under the circumstances as I see them today, I see no particular prejudice to the United States or to our national interests in this required notice period.

I thank my colleague for his work, as others have, on this amendment.

Mr. HUMPHREY. I thank the Senator from New York.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HUMPHREY. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The agreement was agreed to.

Mr. ZORINSKY. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 41

(Subsequently numbered amendment No. 101)

Mr. HUMPHREY addressed the Chair. Mr. JAVITS. Does the Senator have another amendment?

Mr. HUMPHREY. Yes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an unprinted amendment numbered 41:

On page 23 after "section 601", and before "this Act shall have taken effect on January 1, 1979" insert the following:

"Contingent upon the President of the United States securing written assurances from the Peoples Republic of China that the Peoples Republic of China will not undertake military operations of any nature against the people of Taiwan."

Mr. HUMPHREY. Mr. President, the amendment I have sent to the desk is a very simple amendment. It is clear-cut. It makes the effective date of the treaty, January 1 of this year, contingent upon the President securing from the People's Republic of China written assurances that the People's Republic of China will not engage in military aggression against the Republic of China on Taiwan.

Mr. President, as we all know, the President of the United States chose to ignore the request of the U.S. Senate that he consult with this body before drastically altering the relations between this country and the Republic of China. He chose to ignore the request embodied in the International Security Assistance Act passed by this body last July by a vote of 94 to 0.

Had he consulted with this body, Mr. President, I believe that he would have been asked to obtain the assurances which this amendment seeks to obtain, but he did not consult with this body. To make matters worse, it has come out during the hearings of the Foreign Relations Committee that his people in Peking did not bother even to ask for such assurances—did not bother even to ask.

I can hardly believe that.

Mr. Woodcock when asked why he did not broach that question replied that he thought it might create a roadblock in the involvement of relations between the United States and the PRC.

So the upshot, Mr. President, is that we are terminating the mutual defense treaty as of the end of this year and we are replacing it with a vaguely worded security section of S. 245, a section which I believe was worded vaguely in a deliberate way, while we are not even providing the Republic of China assurances that the PRC has peaceful intents toward that island nation.

Mr. President, the handling of this

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matter by the President is shocking. I am shocked that he failed to press the People's Republic of China for assurances of this nature and it is time to rectify it. I ask my colleagues to rectify it by voting for my amendment which will make the effective date of this treaty contingent upon the President's securing such written assurances, and that is the simple purpose of my amendment, Mr. President. It is very clear. It is very easy to understand. It is very simple.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Mr. President, we have not even seen this amendment.

I suggest the absence of a quorum so we may get some copies.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, the disposition of Members tonight, and this goes for Members who may be with or may not be with the Senator, is to not have any rollcall votes on amendments. We have already put two over, and if the Senator insists on going ahead with his amendment, we will simply have to debate it for a while, which I do not think is going to promote the case for him or promote the case for the bill.

My strong suggestion to the Senator is that we agree that his amendment shall be called up after the amendment tomorrow that Senator DOLE already has priority for and then, of course, the Senator can have his rollcall or whatever he wishes.

But it does not seem to work tonight for a lot of Members on both sides. So if that is agreeable I will ask unanimous consent reserving all the Senator's rights.

Mr. HUMPHREY. Yes, as long as my rights are reserved I shall be happy to work in that fashion.

Mr. JAVITS. Mr. President, I ask unanimous consent that the amendment offered by the Senator may follow for consideration the amendment which Senator DOLE by unanimous consent is to bring up when this bill becomes the pending business tomorrow and all time utilized on this amendment tonight may not count against the 1 hour time limit on the amendment when it is called up.

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

Mr. JAVITS. I thank my colleague. 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. BOSCHWITZ. 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. BOSCHWITZ. Mr. President, I ask unanimous consent that I may be

permitted to make a statement not in regard to the matter at hand.

The PRESIDING OFFICER. Who yields time?

Mr. BOSCHWITZ. Mr. President, last Thursday on March 8, 1979, the Senate agreed—

The PRESIDING OFFICER. The Senator must have time yielded.

Who yields time?

Mr. JAVITS. I do not know. Do we have any time on the bill?

The PRESIDING OFFICER. Five hours equally divided.

Mr. JAVITS. I yield the Senator 10 minutes.

Mr. BOSCHWITZ. It shall take me about 1 minute.

ANNOUNCEMENT OF POSITION ON VOTE—SENATE RESOLUTION 93

Mr. BOSCHWITZ. Mr. President, last Thursday, on March 8, 1979, the Senate agreed by voice vote to defer implementation on the honorarium limit in rule XLIV to January 1, 1983.

At this point, let the record show that I would have voted against Senate Resolution 93 had there been a rollcall vote.

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. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak therein up to 5 minutes each and that the period not extend beyond 30 minutes.

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

THE CLINICAL LABORATORY IMPROVEMENT ACT OF 1979

Mr. KENNEDY. Mr. President, I am pleased to join my good friend and distinguished colleague Senator JAVITS in sponsoring the Clinical Laboratory Improvement Act of 1979. This bill is substantially similar to the bill that unanimously passed the Senate in the 94th Congress.

The clinical laboratory industry now costs the American people over \$12 billion a year. By 1980, approximately 9 billion clinical laboratory tests will be conducted annually at a cost of about \$15 billion to the American people. Because the work of clinical laboratories is so integrally connected with the case of patients, without high quality laboratory services America's health care system is in jeopardy.

While the Clinical Laboratory Improvement Act of 1967 resulted in improved quality of laboratory perform-

ance, the law covered only the large interstate laboratories, less than 10 percent of all laboratories throughout the country. The American people have had to depend upon a variety of other sources including States government, individual laboratories, and individual practitioners to assure the quality and reliability of laboratory work. This patchwork system of regulation has not adequately served either the doctor or his patient.

Reports of clinical laboratory ineptitude appear much too frequently. We have learned of a distressing litany. Many laboratories, for example, have never been inspected, dirty and broken laboratory equipment is being used by inexperienced technicians, reagents are unlabeled and outdated, and patient specimens are being tested with used and unwashed pipettes.

During hearings held in the last Congress before my Health Subcommittee, we learned that although high volume laboratories may be more proficient than smaller laboratories—such as those found in doctors' offices and Medicare certified laboratories—the level of quality was still undesirable. For example, 7.6 percent of the interstate laboratory determinations, 16.5 percent of laboratory tests prepared by other large laboratories, and 26 percent of the sample lab work done in Medicare reimbursed labs were incorrect. Almost 1 out of 5 microbiological determinations, then, are inadequate. This is poor medical care and it is expensive medical care. It should no longer be tolerated.

The American health care consumer often finds it impossible to evaluate and judge the quality of laboratory testing which he receives. He has no influence on his physician's choice of laboratory; nor has he any indication of relative costs. Tests which cost \$10 in one lab cost \$45 in another. It is true that lower charges may be attributed to automation, but even among the larger, automated labs there are incredible price variations.

In addition, there is growing evidence of fraud and abuse within the clinical laboratory field particularly in connection with the Medicaid program.

The Clinical Laboratory Improvement Act of 1979 is designed to improve the quality of laboratory performance by requiring all laboratories to comply with national standards designed to assure accurate and reliable testing. And the bill allows us to achieve this result without creating a new Federal bureaucracy.

The program is meshed into the existing Medicare certification program which is staffed and administered by State personnel in every State. The bill also has cost savings provisions by amending Medicare to discourage unwarranted markups of bills for laboratory services and to place reasonable limitations on payments to hospital-based pathologists.

This legislation will help in our continuing battle to insure quality health care and stabilize health care costs, a fact that has been recognized by the Senate twice before in passing similar legislation in the 94th and 95th Congresses. I join with Senator JAVITS in asking my colleagues to once again favorably con-

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sider this vital legislation when it is before you.

SENATOR MILTON YOUNG'S CONTINUOUS SERVICE IN THE SENATE FOR 34 YEARS

Mr. PRESSLER. Mr. President, I wish to pay tribute to Senator MILTON R. YOUNG who, 34 years ago today, was appointed to this body and has served continuously since. He has served with great distinction here. In our part of the country, South and North Dakota, he is certainly one of the most respected veteran leaders in our area.

I have looked to him for leadership on several occasions, particularly in matters that pertain to water, agriculture, and appropriations. The latter are committees on which he has served as ranking member.

I wanted to call the Members' attention to the fact that it was 34 years ago today that he was first appointed to this body and he has served continuously since. I certainly commend him on that.

Senator YOUNG in 1968 received the highest percentage of vote of any Republican Senator in the Nation. He has never lost an election. Coming from a farm myself, I am happy to note that he was actively engaged in farming until he became a U.S. Senator. His career is an inspiration to us younger Members. North Dakota and the Nation can be very proud and grateful for his service.

THE LATEST WORD ON IRS VERSUS PRIVATE SCHOOLS

Mr. HATCH. Mr. President, the recently republished IRS regulations regarding the tax-exempt status of private, religious schools do not correct the fundamental flaw inherent in these regulations. The IRS claims the revised version restricts the scope of the regulations. Nevertheless, they predicate their actions on the assumption that the majority of American private schools are discriminatory.

In other words, should a private or religious school fall into the category of being a "reviewable" school, it is according to the IRS, *prima facie* discriminatory, and subject to losing its tax exemption.

Upon examining the newly proposed regulations, one comes to the conclusion that our Internal Revenue Service has taken upon itself the responsibility for implementing an aggressive affirmative action policy. Yet, it is a policy which IRS Commissioner Jerome Kurtz has said: "We have almost no specific guidance."

In reading these regulations and considering the Commissioner's statement, one can almost hear Mr. Justice Blackmun in his dissent in *Alexander v. American United, Inc.*, 94 S. Ct. 2065 (1974), in which he warned of the potential for abuse of power vested in the IRS:

There appears to be little to circumscribe the almost unfettered power of the Commissioner. This may very well be so long as one subscribes to the particular brand of social policy the Commissioner happens to be advocating at the time . . . but applications of our tax laws should not operate in so fickle a

fashion. Surely, social policy in the first instance is a matter for legislative concern.

I agree with Mr. Justice Blackmun. Social policy is a matter for legislative concern and it is an affront to the Congress of the United States to have an administrative agency attempt to set social policy. Legally and politically, an agency such as the IRS is restricted in its rule-making authority. It is restricted to making "procedural" decisions, but not "substantive" policy decisions—an area which is reserved by the Constitution's article I to Congress.

When the IRS first released its "private school" regulations, responsibilities in the Congress over such regulations were not consulted. And yet, these regulations give the individual IRS agent incredible subjective authority to determine the guilt or innocence of a private or religious school.

For example, I quote the following statement taken from the proposed regulations:

The schools will be considered to have a racially non-discriminatory policy as to students if the school can show that it has undertaken actions or programs reasonably designed to attract minority students on a continuing basis.

I call your attention to the word "reasonably." It is a code word—the buzz word which gives the IRS broad, sweeping and open-ended power to evaluate the evidence a private or religious school may submit in its own "defense." Such a blank check goes beyond the authority granted to the Internal Revenue Service. This authority is limited to the areas of taxation and the collection of revenues, not in the admission, recruitment and employment policies of private and religious schools.

Furthermore, the numerical quotas set forth in these regulations are in direct contradiction to the Supreme Court's decision in *Bakke* against Board of Regents (1978). That decision struck down numerical quota systems similar to the one proposed in these regulations. These IRS regulations raise serious questions about constitutional propriety.

Since the original issuance of these regulations, the IRS has taken for granted that any school under these rules which is classified reviewable is, in fact, discriminatory. It must be inferred that the IRS believes such schools to be *prima facie* discriminatory solely because, subsequent to their establishment or expansion, these schools had "insignificant minority enrollments."

Given a total absence of allegations of specific discrimination, a school's insubstantial minority enrollment could be accounted for reasons other than an intent to discriminate.

For example, it could be due to factors like tuition cost, lack of special programs available in public schools, an inconvenient location, religious objections, and other factors that are not in the least related to intended discriminatory conduct.

A pivotal factor in this brief commentary on the proposed regulations is whether or not a tax-exemption is, in fact, a form of Federal subsidy. I believe

that it is not, and that it was never intended to be construed as one. Rather, tax-exemptions have been the tools by which government has been prevented and restrained from taxing, refrained from destroying institutions which must be free from governmental intervention. Never has Chief Justice John Marshall's maxim been more appropriate.

The power to tax involves the power to destroy.

Finally, there is the issue of the "open door." I have already alluded to it in my statements about the broad and sweeping power such regulations grant the IRS. But the real danger is the precedent set and the encouragement given to the IRS by these regulations to encroachment on the activities and rights of religious schools and churches. If the IRS gains control over the Nation's religious schools through its power to tax, it is presuming to make substantive policy. It is presuming to do the legislative job reserved for Congress. It is folly to assume IRS employees are capable legislators or experts in the areas of religion, sociology, and racial questions, and yet by their regulatory behavior they presume to be. And the risk this poses to the freedom of American private schools today, will become the danger jeopardizing church organizations and religious groups tomorrow. Freedom of worship and religious practice is protected by the first amendment, but this becomes meaningless when it is the Federal Government through the IRS which determines who can and who cannot practice or organize through the power to tax.

Since the beginning of this, the 96th Congress, I have introduced two bills intended to address the problems posed in IRS versus private schools, S. 103 (The Save Our Schools Act) and S. 449 (The Charitable Organizations Preservation Act). I am privileged to have the support of many colleagues who have cosponsored either or both pieces of legislation. I am especially thankful, though, to my friend, the senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) who has decided to hold hearings on this subject in the Senate Finance Committee's Subcommittee on Taxation, which he chairs. These April hearings, however, will deal with more than IRS versus private schools. In the most fundamental sense, by the nature of the subject to be considered, they will deal with the restoration of the Congress role to set substantive policy. We must never again allow this legislative power to be taken from us. We must never again allow those who for the best of reasons would commit the worst of constitutional offenses, by removing the power of government from those who were elected to wield it. The power to legislate is a power of Congress. Every schoolchild learns this civic lesson early on, but now it is our responsibility to remind those who may have forgotten it.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following com-

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The PRESIDING OFFICER. If there be no further morning business, morning business is closed.

TAIWAN ENABLING ACT

The Senate continued with the consideration of S. 245.

UP AMENDMENT NO. 42

Mr. KENNEDY addressed the Chair. The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself and Mr. CRANSTON proposes an unprinted amendment numbered 42:

On page 14, line 22, insert " , or the social or economic system" after "the security".

Mr. KENNEDY. Mr. President, is there a time limitation for amendments?

The PRESIDING OFFICER. One hour equally divided.

Mr. KENNEDY. I yield myself whatever time I shall need.

Mr. President, I welcome and support the committee's careful and thorough work on S. 245, the Taiwan Enabling Act. It is a tribute to the leadership of Senator CHURCH and Senator JAVITS and to their colleagues on the committee.

In particular, I welcome the incorporation by the committee of section 114, designed to help insure the future security of the people on Taiwan. This section reflects the full substance of the Taiwan security resolution (S.J. Res. 31) introduced by 30 Senators, including Senator CRANSTON and myself, as well as by Congressman WOLFF and 106 Members of the House. We welcome its incorporation in the bill.

I would ask the chairman, my distinguished friend from Idaho, whether a small, perfecting change would be acceptable in paragraph b(3) of section 114. This paragraph is based on section 2 of the joint resolution introduced by Senator CRANSTON and myself, to wit: On page 14, line 22, we would direct the President to inform the Congress promptly of any threat not only to the "security" of Taiwan, but also to the "social or economic system of Taiwan."

This change would require the President to report on the same military, economic, and social factors in which we have stated the interest of the United States in paragraph b(1). Senator CRANSTON and I believe, and hope Senator CHURCH and the committee would agree, that the reporting requirement should encompass the full scope of our future interests in Taiwan.

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

Mr. KENNEDY. I yield.

Mr. JAVITS. Mr. President, this is an excellent suggestion. I was consulted about it and advised this approach, and I am pleased that Senator Kennedy has chosen to go that way. The amendment is entirely acceptable to me.

Mr. CHURCH. Well, Mr. President, while I do not claim to be a Leonardo da Vinci, I had thought that the committee's diligence had enabled us to bring to the floor the legislative equivalent of a Mona Lisa. I am startled to find so many artists with paintbrush in hand who have come to the floor to alter this little coloration or that.

Now, I have no objection to adding these two or three words to the final paragraph, if the Senator feels compelled to offer them. Section 114 of the bill presently reads, in subparagraph (3) on page 14:

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;

I understand the Senator would like to add, after the word "security" on line 22, two additional words?

Mr. KENNEDY. The Senator is correct. On line 22 on page 14, to add the words "or the social or economic system" of Taiwan, in conformance with the same words on lines 16 and 17, which state our opposition to jeopardizing "the security, for the social and economic system, of the people on Taiwan." Then, paragraph (3) says, "The President is directed to inform the Congress promptly of any threat to the security of Taiwan," and there is no mention of the social and economic factors.

The reason I bring it up, Mr. President, is that at many points section 114 basically tracks the language of our original resolution (S.J. Res. 31). I agree that it is not a matter of grave importance, but I think we should, in directing the President to report to Congress, use the same words as those used in the statement of our policy. It seems to me that this would be both a conforming amendment and of some value and use.

Mr. CHURCH. Mr. President, the Senator makes a good case, and I have no objection to the amendment. Therefore, I am prepared to yield back the remainder of my time, and urge the Senate to adopt the amendment.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield back his time?

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Massachusetts (Mr. KENNEDY).

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business of not to exceed 10 minutes, with Senators permitted to

speak therein for not to exceed 5 minutes each.

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

NUCLEAR REPROCESSING

Mr. THURMOND. Mr. President, an interesting article on the merits or demerits of nuclear reprocessing appeared in the December 1978 issue of the Electric Power Research Institute Journal. It is authored by Carolyn Heising, presently engaged in postdoctoral research at the Massachusetts Institute of Technology who carefully examines the pros and cons of nuclear reprocessing.

The conclusion is most interesting. Dr. Heising finds, after comparing nine currently available routes to weapons material, that the commercial reprocessing route is relatively unattractive. She estimates there is only a 3-percent likelihood that a nonweapons state would choose this route over some other.

Mr. President, I have been urging the administration to pursue a more progressive policy in the nuclear energy field. We cannot afford to bypass the opportunities offered in this area. The President needs to lead the Nation in a commitment to nuclear energy and, at the very least, to the light water reactor. To do otherwise will greatly weaken us in the energy scarce days ahead.

Mr. President, I ask unanimous consent that this article by Dr. Heising be printed in the RECORD.

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

THE REPROCESSING DECISION

(By Carolyn D. Heising)

Decision makers charged with formulating energy policy are confronted with some of the most complex, uncertain, and controversial issues of our times, particularly in the nuclear power area. In the United States, legislators must decide whether or not to permit the nuclear power industry to commercialize reprocessing technology that would separate out and recycle plutonium and unused uranium from the spent fuel. The decision makers must weigh not only the economic implications of closing the fuel cycle but also the risks to society that attend the introduction of such a technology. These risks must be compared with those associated with leaving the fuel cycle open.

The reprocessing decision is difficult for legislators because the potential consequences could be very positive or very negative and because the decision is not easily resolved in the customary legislative process. The charged atmosphere of the adversary political process leads only to greater confusion as advocates present ever more heated arguments. Therefore, an analysis that treats the decision from a logical, quantitative perspective could be of considerable value to the interested decision maker.

Bayesian decision analysis was used to examine reprocessing costs associated with risks and economic benefits. This method is well established and has been used to analyze many uncertain decision situations (1). Examples include applications in the NASA space program and in personal decisions, such as deciding whether or not to undergo a medical operation. The method is unique because it permits a probabilistic description of important events that must be taken into account in coming to policy conclusions on reprocessing spent fuel, such as uranium

supply and price, electricity demand, and the number of nuclear power plants needed to meet demand.

In decision analysis, important policy questions are modeled as event trees, each branch of which represents a future possible path the United States might follow. Smaller tributaries branching off from the main paths indicate possible futures with respect to economic prices, supply availabilities, and other uncertain parameters. Once the event tree is constructed, it becomes the analyst's task to assign probabilities to each branch. When probabilities have been estimated, the tree is folded back into a smaller tree with fewer branches until the expected values for each principal option have been completed. This done, the best decision becomes clear: the option exhibiting the largest positive expected value. Finally, the sensitivity of the outcome to the probability estimates is tested by using new sets of estimates to recalculate the expected values.

THREE PATHS

With respect to the reprocessing decision, three options or paths are available for the United States to follow. These include the permit, delay, and prohibit paths. If the United States follows the permit path, the nuclear fuel cycle can be closed in the near future, which would allow uranium and plutonium to be recycled and help to conserve precious resources. To follow the delay path means the next administration will face the same decision at a later date, while spent fuel continues to mount at reactor sites across the country. The prohibit path would outlaw reprocessing and plutonium as a reactor fuel and would leave the country with no recourse but to throw away its spent fuel without the benefit of recycle. This would be accomplished by building temporary repositories for spent fuel assemblies, followed by permanent disposal in geologic formations.

The choice of which path the United States should follow depends on which can be expected to produce the greatest benefit to society. These benefits need not be only economic; they can also be measured in terms of risk reduction, cleaner air, or improved public health. To assess differences in benefits between options, it is necessary to identify the potential benefits of each option along with its risks. Once identified, these can be quantified and compared.

QUANTIFYING BENEFITS

The major economic benefit associated with reprocessing is the potential reduction in the consumer's electricity bill. The reprocessing decision can have an effect on electricity bills in two ways: by affecting fuel costs in the current generation of nuclear power plants (LWRs) and by affecting the future of advanced nuclear power systems, principally the breeder reactor (LMFBR). Engineering-economic computer models were designed to compute the potential differences in these effects implied by the three decision options of permit, delay, and prohibit. Because prohibition of reprocessing effectively eliminates the breeder, this option exhibited the largest cost penalty. The delay option was found to be the second most costly since delays in breeder commercialization result, and more expensive fuel must be used in the current generation of reactors. The permit option was found to be most economic because recycling and use of the breeder could start sooner, thereby conserving the more accessible (thus cheaper) uranium ore. It was found that the permit path would save the American consumer over \$2.5 billion a year (at a 6% discount rate) in reduced electricity bills compared with the delay alternative.

TECHNOLOGICAL RISKS

Technological risks are associated with all three decision options. Basically, there are three distinct categories of risk that are important in the nuclear fuel cycle:

- Health, environmental, and safety risks
- Nuclear theft and sabotage
- Nuclear weapons proliferation risks

Examples of the first category include occupational exposure to routine radiation emission and public consequences of accidents in fuel-cycle facilities. Safeguard risks, the second category, refer to acts that hypothetically might be directed against the fuel cycle by disgruntled employees and/or terrorist groups. These include disturbances at site locations, initiation of accidents by explosives, or theft of nuclear material. The third category, nuclear proliferation risk, refers to an illegal diversion of nuclear material from a facility by a national government bent on building crude nuclear explosives. Each of these categories of risk was examined and quantified for the decision options of permit (closed cycle), delay, and prohibit (open cycle).

HEALTH, ENVIRONMENT, AND SAFETY RISKS

The nuclear fuel cycle poses some measure of risk to the environment and to the health and safety of persons employed at or living near fuel cycle facilities. A review of recent studies indicated that while all three risks are small, the health risks outweigh the risks associated with safety. The major component of the health risk was routine occupational exposure to low-level radiation. It was found that the health risk to society was on the order of \$6,000 to \$80,000 a gigawatt-year and that the difference between open and closed cycles was negligible. In fact, closing the fuel cycle would lead to improvements in public health as a result of reduced uranium mining and milling (2).

NUCLEAR SAFEGUARDS RISK

A safeguards assessment method was developed to compare the differences in social costs between the open and closed cycles for nuclear theft and sabotage. Facilities representing both cycles were examined for three categories of events: those that precede the act (e.g., access to technical information, organizing the attack), those that constitute the act (e.g., entry, overcoming security), and those that follow the act (e.g., dispersal of toxins, processing materials for explosives). Using the best available information on safeguard system reliability, facility layout, and the requirements for a successful intrusion, these events were assigned probabilities and arrayed sequentially into event trees to determine expected values.

It was found that the closed cycle represents the greater risk. However, the increase in the cost to society was found to be only on the order of \$250,000 a year (at a 6% discount rate), or about half a cent per family. Comparing this figure with the calculated benefits of a closed cycle (\$2.5 billion per year) yields a benefit-cost ratio of 10,000 to 1.

NUCLEAR PROLIFERATION RISK

The third major area of social concern for which the open and closed cycles should be compared is the risk of nuclear proliferation. The analysis presumed that if the value to society from closing the nuclear fuel cycle (\$2.5 billion a year) exceeded the expected cost of increased nuclear proliferation under closed-cycle conditions, then it would be in the best interests of the United States to permit reprocessing. Getting to the expected cost required many assumptions, but mathematically it was obtained by multiplying the amount the United States would be willing to spend to thwart proliferation (v_p) by the increased likelihood of proliferation under closed-cycle conditions (Δ).

To elaborate, the value of nonproliferation (v_p) is interpreted as the dollar amount the United States would be willing to pay per year to prevent a future event of proliferation from occurring. In short, the value v_p can be interpreted as an annual premium for insurance against the spread of nuclear weapons. And this value, in turn, depends on how society views the effects of proliferation, since they can be construed as either good or bad.

Some experts claim the probability of nuclear war decreases as the number of countries with atom bombs increases and point to such potential good effects as global equalization of wealth and a more lasting peace. Other experts think proliferation will have little effect on the world one way or the other. They believe nations will have adequate time to adjust to the emergence of new weapons states and point to past events of proliferation as evidence of such accommodation (e.g., reaction to India's emergence as a weapons state). However, the predominant opinion is that proliferation will result in regional nuclear war, possibly leading to an all-out nuclear confrontation between the superpowers. Therefore, from this viewpoint, the United States should be willing to pay substantial sums of money to help prevent future proliferation events.

Adopting this perspective and examining United States response to past events of proliferation, a nominal value of nonproliferation of \$12 billion a year was considered an accurate reflection of how much the United States would be willing to pay. This figure corresponds to an annual 10 percent increase in the U.S. defense budget, or roughly \$240 a year for a family of four.

Turning to the likelihood of proliferation, or more specifically, the difference in proliferation, likelihood between closed and open fuel cycles (Δ), several questions must be asked. First, what influence does the United States have on decisions of nonweapons states to deploy reprocessing? And second, if a nonweapons state decides to proceed, does the existence of commercial reprocessing plants in that country affect the likelihood that it will be successful in constructing its first nuclear bomb? To answer these questions, alternative routes to nuclear material by a nonweapons state must be rated and compared with the commercial power plant reprocessor (3-6).

A nonweapons state's decision on which route to take will depend on several considerations, including weapons attainable from the material flow, the cost of each route, the number of technical people required to operate the technology, the level of support industry required, and the capability for clandestine operation to prevent other countries from applying sanctions. The quality of the material is also very important. All these considerations must be weighed by decision makers in the nonweapons state.

After comparing some nine currently available routes to weapons material, it was found that the commercial power reactor-commercial reprocessor route is comparatively unattractive to a nonweapons state. Specifically, given access to such a route, it is estimated that there is only a 3 percent likelihood that a nonweapons state would choose this route over some other (7). Therefore, by closing the nuclear fuel cycle, the United States would incur, at most, only a 3 percent greater chance of proliferation than if it decides to prohibit or delay reprocessing.

In summary, allowing nuclear fuel reprocessing to go forward in the United States can be expected to increase the costs to society by a maximum \$360 million a year [$\Delta \times v_p = (0.03) (\$12 \times 10^9) = \$360 \times 10^6/\text{yr.}$]. This is approximately one-seventh of the expected benefit (reduced electricity bills) to