

BUSINESS MEETING

Tuesday, June 25, 2019

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
WASHINGTON, DC.

1 The committee met, pursuant to notice, at 2:20 p.m., in Room S-116, The
2 Capitol, Hon. James Risch, chairman of the committee, presiding.

3 Present: Senators Risch [presiding], Rubio, Johnson, Gardner, Romney,
4 Graham, Isakson, Barrasso, Portman, Paul, Young, Cruz, Menendez, Cardin,
5 Shaheen, Coons, Udall, Murphy, Kaine, Markey, and Merkley.

OPENING STATEMENT OF HON. JAMES RISCH, U.S. SENATOR FROM IDAHO

6 **THE CHAIRMAN.** The business meeting of the Senate Foreign Relations
7 Committee will come to order.

8 On the agenda today are four treaties, eight pieces of legislation, and one
9 nominee. The four treaties we are considering are tax protocols for Spain,
10 Switzerland, Japan, and Luxembourg. Tax treaties are a critical part of the U.S.
11 tax landscape. They prevent double taxation for U.S. taxpayers. They help
12 eliminate tax uncertainty. They are important instruments in fighting tax fraud.

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1 In addition, they strengthen the ability of U.S. businesses to explore new
2 opportunities.

3 These protocols and resolutions of advice and consent to ratification are
4 not new. Each of them has already been approved by this committee at least
5 once. The committee favorably reported the Switzerland and Luxembourg
6 protocols in the 112th, 113th, and 114th Congresses. The Spain protocol was
7 reported favorably in the 113th and 114th Congresses. The committee reported
8 the Japan protocol favorably in the 114th.

9 Questions have been raised regarding taxpayer protections. As this
10 committee has previously heard from the Joint Committee on Taxation and from
11 senior Treasury officials, there are extensive protections provided for U.S.
12 taxpayer information under the longstanding practice of exchange of information
13 with the treaty partner. I urge my colleagues to oppose any amendments that
14 may be offered to the protocols or resolutions of ratification today. Any new
15 reservation adopted today will kill these treaties. Such reservations would
16 overturn decades of tax practice and procedures. They would call into question
17 our existing 1957 tax treaties. They would require renegotiation with our foreign
18 partners who have been waiting 8 years for the Senate to act. It is time to move

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1 these treaties forward to the full Senate for a vote where I expect they will receive
2 broad bipartisan support.

3 Also on today's agenda is Senate 727, the Global Fragility Act. This bill
4 requires a comprehensive strategy to address the drivers of conflict and
5 extremism in fragile states, and it calls for the Administration to identify clear
6 goals and objectives under that strategy. I want to thank Senators Coons and
7 Graham for working with us to negotiate a manager's amendment which
8 incorporates language from the House companion bill and input from the
9 Administration.

10 We will also consider Senate 1102, the Eastern Mediterranean Security and
11 Energy Partnership Act. This bill lifts the longstanding and ineffective arms
12 embargo on the Republic of Cyprus, authorizes international military education
13 and training for Cyprus and Greece, and funds foreign military financing for
14 Greece. It also prohibits the transfer of F35s to Turkey if it does not refuse the
15 delivery of the S-400 air defense systems from Russia. I would like to thank
16 Senator Menendez for working with us on this important legislation.

17 Also on the agenda is S. 1309, the Combatting Global Corruption Act. The
18 substitute amendment before us today reflects the text of Title VII of the Fiscal

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1 Year 2018 State Department Authorities Act that this committee reported
2 favorably in September 2017. I want to thank Senator Cardin for introducing this
3 bill and highlighting the problem of public corruption which erodes public trust,
4 robs essential services, keeps citizens trapped in poverty, and contributes to
5 economic and political instability.

6 We will also mark up S. 1945, the SAFE Act, which would amend the
7 Arms Export Control Act and narrow the emergency declaration authority in it. I
8 understand the motivations, but I will be opposing this bill.

9 And we will consider the following resolutions: S. Res. 34, the Resolution
10 Expressing the Sense of the Senate that the Governments of Burma and
11 Bangladesh Should Ensure the Safe and Dignified Return of the Rohingya
12 Refugees; Senate Res. 198, a Resolution Condemning Brunei's Dramatic Human
13 Rights Backsliding; Senate Res. 206, a Resolution Marking the 70th Anniversary
14 of the Geneva Conventions; and Senate Concurrent Resolution 10, a Concurrent
15 Resolution Recognizing that Chinese Telecommunication Companies, Such as
16 Huawei and ZTE, Pose Serious Threats to U.S. National Security. Thank you to
17 all the sponsors and co-sponsors of these important resolutions, and I want to

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1 thank everybody for being here --almost everybody. I hope you will stick with
2 us to keep a quorum as we proceed forward.

3 And with that, Senator Menendez?

**STATEMENT OF HON. BOB MENENDEZ,
U.S. SENATOR FROM NEW JERSEY**

4 **SENATOR MENENDEZ.** Thank you, Mr. Chairman. I am pleased that we
5 have a full legislative agenda before us which represents the hard work of many
6 members of the committee. I am pleased that in connection with last week's
7 unanimous consent agreement and vote on the armed sales resolution to
8 disapprove where you and I were able to work out an agreement to mark up the
9 SAFE Act today, which I thank you for, and a Yemen markup following the July
10 4th recess. I support passage of all the items on the agenda, but I will speak
11 briefly on only a few of them.

12 I am pleased that we are taking up S. 1102, the Eastern Mediterranean
13 Security and Energy Partnership Act. I am thankful to Senators Rubio, Coons --
14 bless you -- and the other co-sponsors. My recent CODEL to Nicosia and Athens
15 reinforced for me the strategic importance of the Eastern Mediterranean region
16 where the United States has significant national security interests. Our security
17 bond with Israel is unbreakable, our defense relationship with Greece is perhaps

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1 the best it has ever been, and our security relationship with Cyprus is growing.
2 With so much other uncertainty, particularly with respect to Turkey, now is the
3 time to reaffirm and strengthen our presence and relationships, and this bill
4 seeks to build on this positive momentum.

5 Mr. Chairman, thank you again for working with me to bring forward the
6 SAFE Act, a critical and timely piece of legislation. I want to thank all of the co-
7 sponsors: Senator Graham, Senator Paul who also had one of the original ideas
8 in this regard, Senator Merkley, Senator Leahy. I am also pleased that Senator
9 Lee has also decided to join us in this effort and ask for unanimous consent that
10 he be added to the bill as reported out by this committee.

11 **THE CHAIRMAN.** It will be so ordered.

12 **SENATOR MENENDEZ.** The Arms Export Control Act recognizes that in
13 cases of a military action, the President may need to proceed faster on sales than
14 the 15 or 30 days required for congressional review. Until recently, this provision
15 has only been used 4 times in 40 years. On May 24th, the Secretary of State
16 invoked these authorities for 22 separate sales to Saudi Arabia and the UAE
17 based on a purported emergency threat from Iran. But there is no way these
18 sales could be justified by a need to respond to an emergency threat from Iran.

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1 Rather, the State Department tells us they were for "sustaining the global supply
2 chain," for preventing "loss of sale to peer competitors," for "interoperability,"
3 and for maintaining U.S. "credibility as an arms sales supplier." Clearly those are
4 not emergencies.

5 This bipartisan bill directly addresses these abuses by restricting these
6 emergency authorities to only our closest security treaty allies and security
7 partner countries. These changes do not affect the 22 sales which we dealt with
8 by the resolutions of disapproval last week, but it will hopefully prevent us from
9 being faced with future abuses of this nature regardless of whether a Republican
10 or a Democrat is occupying the White House. I urge all of my colleagues to
11 support this bill.

12 I am pleased that we are taking up the Combatting Global Corruption Act,
13 which remains a serious threat to democracy, stability, and security around the
14 globe, and I want to thank Senator Cardin for his continuing efforts in this
15 regard. I support this important legislation and encourage my colleagues to do
16 the same. On the Global Fragility Act, I would like to commend Senators Coons,
17 Graham, and other co-sponsors for an excellent bill. The United States has to use
18 all of its tools in a strategic and a sustained effort to address fragile states. This

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1 bill, which requires the State Department and USAID and DOD to collaborate on
2 a 10-year strategy, is an important step in addressing the deeper drivers of
3 fragility and stability.

4 I support passage of all of the resolutions on the agenda. I appreciate the
5 work of Senators Merkley, Durbin, Booker, and Gardner on those items. I am
6 pleased to again support the four protocols and many of the tax conventions
7 between the United States and Spain, Switzerland, Japan, and Luxembourg. I
8 have supported these treaties across multiple Congresses. For some of these
9 treaties, this will be the fourth time. I am a strong believer in the benefits these
10 treaties provide our country. They play a critical role in relieving U.S. citizens
11 and companies from double taxation, encouraging foreign investment, and
12 enforcing U.S. tax laws on those who seek to evade it.

13 I conveyed directly to Secretary Mnuchin the Treasury Department's
14 initial interaction on these treaties without the full committee was completely
15 inadequate and resulted in a delay in taking up these four protocols. I am
16 pleased that Treasury responded quickly to my concerns, including providing a
17 written commitment that the chair and ranking member would be consulted on
18 any changes to the model tax treaty prior to negotiations based on a new model.

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1 I am pleased to support these four protocols. I look forward to working with the
2 chairman to find a way to move the other treaties pending before the committee.

3 I do intend to support Senator Paul in his effort.

4 And with that, Mr. Chairman, I thank you for the indulgence.

5 **THE CHAIRMAN.** Thank you, Senator Menendez. We will first consider the
6 nomination on the agenda, Mr. Eliot Pedrosa, to be U.S. executive director of the
7 Inter-American Development Bank. Is there discussion?

8 [No response.]

9 **THE CHAIRMAN.** If not, is there a motion to favorably report the
10 nomination?

11 **SENATOR MENENDEZ.** So moved.

12 **SENATOR RUBIO.** Second.

13 **THE CHAIRMAN.** It has been moved and seconded that the nomination be
14 favorably reported.

15 All those in favor, signify by saying aye.

16 [A chorus of ayes.]

17 **THE CHAIRMAN.** Opposed, nay.

18 [No response.]

1 **THE CHAIRMAN.** The ayes have it, and the nomination is agreed to and
2 will be reported as such.

3 We will now turn to the four tax treaties. We will start with the tax
4 treaties with Spain. Are there any amendments to the proposed tax treaty with
5 Spain?

6 **SENATOR PAUL.** Mr. Chairman?

7 **THE CHAIRMAN.** Senator Paul.

8 **SENATOR PAUL.** I have been following the tax treaties for some years now
9 and trying to improve them. I, like Senator Menendez, do support these treaties.
10 I think they have a great deal of benefit for our country to try to prevent double
11 taxation. I have tried to improve them over time and worked with two
12 Administrations on this, and have proposals today to the reservations. It has
13 been characterized in this meeting already that I am somehow trying to poison
14 these or destroy the treaties, and nothing could be further from the truth. It sort
15 of goes to my motives, and I guess only I know my motives, but I am not trying
16 to destroy the treaties.

17 If we amend the reservations, if you vote for my reservation today, it does
18 not affect the other countries. It only affects the United States, so it is not a

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1 poison pill in any way. It only is directed towards the United States. It does not
2 specifically do anything other than change the standard, the standard at which
3 you should look at someone's information. Reservations, and I have talked to
4 both the Government of Switzerland and the Government of Spain. Neither one
5 of them have put up any objections to these reservations. These do not do
6 anything to Spain or Switzerland.

7 What typically happens, and we have not done a lot of treaties around
8 here, is that if we amend the reservations, it goes out there, and it just remains.
9 They do not renegotiate the treaty at all. So when people say, oh, this would --
10 this is so terrible and this is not the time nor the place, and the treaties will be
11 destroyed, it is just not true. The treaties will not be renegotiated. If they object
12 in the first year, that can be a problem and it may have to be addressed at some
13 point. Why would they object to restrictions we are placing on our own
14 government? It is a standard on our government. It does not apply to Spain or
15 Japan or any of these countries.

16 The current treaties have a standard that says that the government can do
17 to Americans overseas or ask another government to do to Americans, that they
18 can look for any information that may be relevant to the treaty. Well, we all look

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1 at different standards. There is probable cause. There is suspicion. It may be
2 relevant as sort of the lowest-possible standard and "may be relevant to the
3 treaty" means maybe relevant to a treaty that says, hey, we should exchange
4 information. It is sort of like having no standard at all saying, well, you can have
5 anything you want, but it has to be relevant to the treaty. The treaty says we
6 should exchange tax information with the other side, so it really is not a
7 standard.

8 So what we have added is basically one sentence to the reservations that
9 says, "The United States shall only request, accept, or share deposit account
10 information if there is a reasonable basis for believing that such a person may not
11 have complied with the tax laws." All that means is they have to say Mr. Smith
12 we do not think is paying our taxes, and you can get all the information you
13 want. I would think that is what we would want.

14 I think what we do not want is for Americans overseas to be treated at a
15 lower standard than Americans are here. If someone wants to look at your bank
16 account here, they have to at least accuse you of a crime, and then once accused
17 of a crime, you have a chance to hire an attorney and try to quash the IRS

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1 subpoena. Overseas, if this is signed under the current standard, there will be no
2 ability to try to quash the subpoena because we will basically have authorized it.

3 There are 8 million Americans who live overseas. I have talked with the
4 Democrat Americans overseas and the Republicans overseas. There are two big
5 groups that represent these people. They are very concerned about their banking
6 privileges overseas. They are concerned that as we continue to add rules, that
7 banks do not want to even have their money, and it has become more and more
8 difficult for them. And we are not talking about billions of dollars. We are
9 talking about somebody trying to open an account in Spain or Switzerland with
10 \$2,000.

11 Now, people who are not paying their taxes, by all means we should get
12 the information on it. All you got to do is name them. Ours does not prevent
13 any of that. What it prevents is this idea that we are just going to troll through
14 Americans overseas with no standard. The standard that we want to put in here
15 is that there has to be some suspicion. You got to name them, name the account.
16 You got to somehow have some kind of accusation instead of maybe relevant,
17 which we think is not a standard.

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1 This will not sink the tax treaties. It is not my intention to sink the tax
2 treaties. But I have worked on this issue for 8 years now because I care
3 passionately about protecting the privacy of individuals, and that Americans
4 overseas should not have a lower standard of protection than Americans here.
5 This does not do anything to bind the other countries. It is a reservation. It is not
6 in the body of the treaty. And I have talked to at least two of the four
7 governments who have shown no indication that they will not accept the
8 reservations. The reservations are binding on us, and they become accepted as
9 part of the treaty if no one objects after a year.

10 So there will be no renegotiation of the treaty. There will be no killing of
11 the treaties. What will happen is if we pass this is that you will have done at
12 least a small thing, and it actually may be very small. When I talked to Treasury
13 about it, they did not object to it so much. They were kind of saying, oh, well, we
14 think we already have it. Well, if we think we already have it, why not add a few
15 words that make the standard a little bit better and a little bit more secure for
16 Americans who live overseas?

17 And so I would just ask that people not be persuaded by the traditional
18 argument around here is that, oh, if we change anything, it is too late to change

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1 anything, we should have done it before, it will never work, and nothing will
2 pass. It is just not true. These treaties will pass easily with this on it. There is no
3 evidence that any foreign country has said they will not accept the changes that
4 bind only us. And I would respectfully ask for a yes vote and a recorded vote on
5 my reservation amendment.

6 **THE CHAIRMAN.** Thank you, Senator. I am going to oppose both the
7 proposed amendment to the protocol and the resolution. There is no meaningful
8 legal distinction between the amendments to the protocols and the amendments
9 adding reservations to the resolution of advice and consent. They both have the
10 same effect to change the substance of the obligations under the treaty for both
11 the U.S. and the treaty partner. No U.S. administration will accept such a huge
12 and damaging change to decades of longstanding tax policy, nor will our treaty
13 partners accept such a change, and it would severely compromise their own
14 ability to enforce their own tax laws. It would effectively kill all of these treaties,
15 any of these that are added to it.

16 Now, more importantly, and I do not want to offend anyone with this, but
17 this same issue was raised in 2014 by Senator Paul in an undated letter to the
18 then chairman of this committee. Senator Paul made the same arguments. In a

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1 response on June 17th, 2014, the then chairman of this committee made as well-
2 reasoned, well-researched, well-documented response to that, much more than I
3 could here. It was obviously done with the help of experts who understand this
4 backwards and forwards. I am going to include both of these particular letters in
5 the record because I think they are so clear in rebutting the arguments that my
6 good friend, Senator Paul, has made.

[The information referred to is located at the end of this transcript.]

7 **THE CHAIRMAN.** With that, is there further debate?

8 **SENATOR PAUL.** May I make a response?

9 **THE CHAIRMAN.** Please.

10 **SENATOR PAUL.** At the time we did consider that there were no
11 reservations submitted, so there was not the alternative. So really I think it is a
12 new debate, and some people have said, well, we already voted on this once. I
13 voted for it once. It will be inconsistent if I do not this time. No, I think you still
14 can vote for the tax treaties with reservations. Last time they were not offered up
15 as a choice. This time they are offered.

16 There is no evidence that any country has said they will not accept this. In
17 fact, I have communication with two of the countries that say they do not have a

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1 problem with it. I have also been talking to Treasury in this Administration and
2 the previous Administration. There has been no statement by Treasury saying
3 they will not accept this. If these reservations are added, the treaties will be
4 passed, and no one will say another word, and we will forget this debate ever
5 happened.

6 My hope is that it will have small impact in protecting American privacy,
7 but in no way will it stop the tax treaties from going on. There is no evidence
8 that Treasury will reject this, the Administration will reject it, or any country.

9 **SENATOR JOHNSON.** Mr. Chairman?

10 **THE CHAIRMAN.** Senator Johnson.

11 **SENATOR JOHNSON.** I have a question. It is my understanding in U.S. tax
12 law, you know, U.S. citizens, that the standard is a relevant -- if the request for
13 information is relevant to engender the inquiry, and that is what is in these tax
14 treaties. So, in effect, if you increase that standard to a reasonable suspicion, I
15 guess, does that almost create a possibility for tax savings overseas? I mean, you
16 are actually increasing the standard for tax authorities to get information over
17 what it is in the U.S.

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1 **SENATOR PAUL.** No, we actually think we are creating the same standard
2 that we have in the U.S., a reasonable suspicion, which is the standard that we
3 think is in here in the United States. In addition, in the United States you have
4 the ability to go to court and object to it. If this tax treaty passes as is, you do not
5 have that ability as an American living overseas to try to quash a subpoena. So I
6 think this actually brings it back to the same standard that we have here in the
7 United States.

8 **SENATOR ROMNEY.** Mr. Chairman, just a question. Is this --

9 **THE CHAIRMAN.** Senator Romney, Senator Cardin --

10 **SENATOR ROMNEY.** Oh, I am sorry.

11 **THE CHAIRMAN.** -- Senator Cardin was next.

12 **SENATOR ROMNEY.** I am sorry. I am sorry.

13 **THE CHAIRMAN.** So we are going to go right down the line here, then
14 Senator Cruz, then you.

15 **SENATOR ROMNEY.** Okay.

16 **THE CHAIRMAN.** Senator Shaheen, we will get you, too.

17 **SENATOR CARDIN.** Well, first, I oppose the Paul amendment. These are
18 protocols and amendments to exist in treaties. I thought Senator Menendez

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1 raised a very good point about Treasury looking at changing the model tax treaty
2 provisions. There were three other treaties that I thought we would have on
3 today's business agenda. They were new treaties as I understand, but the
4 Administration had reservations in them concerning base erosion, which I find
5 interesting because that question I asked during the markup of the tax bill in the
6 Senate Finance Committee as to whether we had a treaty problem, and was
7 informed by Joint Tax that we did not.

8 Now we have the Administration looking at a reservation in regards to
9 those treaties. And, Mr. Chairman, I would suggest that the proper forum for
10 this is to have Treasury here to talk about the treaties on tax for our input so that
11 we can understand why the next three that we may be considering have
12 reservations in it when we were told in the Finance Committee it was not
13 necessary -- that it was not inconsistent with our treaties.

14 In regards to the Paul amendment, I am afraid there could be unintended
15 consequences of this amendment. This is something that should be talked about
16 and understood. These treaties are in existence today, so we really are amending
17 them. And this is not, I think, the right way to go about doing it, so I am going to
18 oppose the Paul amendment.

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1 THE CHAIRMAN. Senator Cruz.

2 SENATOR CRUZ. Thank you, Mr. Chairman. I support these underlying
3 tax treaties. I think they are good and beneficial agreements. But I also
4 commend Senator Paul for raising this issue. When he sent a letter earlier, I was
5 one of the co-signers of that letter. And I do think it is part of the responsibility
6 of all of us to be vigilant in protecting civil liberties of Americans as well, and I
7 think what Senator Paul has proposed is a reasonable proposal. I do not think it
8 is overreaching. I do not think it is aggressive to require simply a standard of a
9 reasonable basis to believe that a U.S. citizen has committed a crime. It is not a
10 very exacting standard.

11 Senator Paul is also correct that the Senate routinely ratifies treaties with
12 reservations. And so the last couple of days, I have been subjected to fairly
13 furious lobbying on this issue. I suspect I am not the only member of this
14 committee that has. And that lobbying has all suggested a chicken little situation
15 that if we do any reservation, the treaties will come crashing to the ground, and it
16 is all over. I do not find that persuasive. I do not believe this reservation is a
17 poison pill. We can ratify these treaties and simply say we are going to require

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1 some reasonable basis before the Federal government gets information on U.S.
2 citizens and their financial records.

3 I am also not terribly persuaded by the arguments of Treasury that, gosh,
4 they would much rather have the broader standard. I have worked in law
5 enforcement a long time. Law enforcement always wants more information
6 about American citizens, and they always argue it would be better to get as much
7 information as possible in all circumstances. I do not think this is an onerous
8 requirement to have some basic evidence of wrongdoing.

9 It is interesting. One of the defenses Treasury uses is, well, there is
10 separately a prohibition on fishing expeditions, so you do not have to worry
11 about this. Well, if the standard is any information that is relevant to the tax
12 laws, that is almost on its face a fishing expedition because every one of our bank
13 records would, by definition, meet that standard. So I intend to vote for Senator
14 Paul's amendment, and, in fact, I would ask unanimous consent that I be added
15 as a co-sponsor to Senator Paul's amendment.

16 **THE CHAIRMAN.** You will be, if there is no objection. I am going to go
17 back and forth. Senator Shaheen.

1 **SENATOR SHAHEEN.** I just wondered if there is legal counsel on either the
2 majority -- on both the majority and minority staff who can speak to whether this
3 would invalidate the treaties as they understand it.

4 **THE CHAIRMAN.** Is there a volunteer?

5 [Laughter.]

6 **MAJORITY STAFF COUNSEL.** Yes, if the reservation changes, the obligation
7 under -- in the treaty itself with respect to the other party, that would have to be
8 accepted by the other party. Is that the question?

9 **SENATOR SHAHEEN.** That is --

10 **THE CHAIRMAN.** That is way too simple.

11 **SENATOR SHAHEEN.** Can I just ask is there agreement from the minority
12 staff counsel that that is the case as well?

13 **MINORITY STAFF COUNSEL.** Yes, that is correct.

14 **SENATOR SHAHEEN.** Thank you.

15 **SENATOR PAUL.** I would say there is not universal agreement on the point,
16 though, because the thing is --

17 **SENATOR SHAHEEN.** I just wanted to get the --

1 **SENATOR PAUL.** I know, but I would like to respond to it. The thing is I
2 think there is a dispute here, and the dispute is whether the treaties have to be
3 renegotiated. I think that is absolutely false, they do not have to be. Reservations
4 are for the country, and what happens to a treaty is if no one objects under the
5 law of treaties, after 1 year it gets absorbed into the -- into the protocol of it. But
6 there has to be an objection by the other country. There will not have -- there will
7 not have to be another vote.

8 **SENATOR CRUZ.** What both are saying are consistent. I mean, the
9 countries can acquiesce to this is what I think Rand was saying.

10 **SENATOR SHAHEEN.** No, I understood what he said. I do not need an
11 interpretation. Thank you.

12 **THE CHAIRMAN.** Senator Romney.

13 **SENATOR CRUZ.** I apologize for sharing my interpretation.

14 **SENATOR ROMNEY.** Yeah. And, Ted, just to underscore what you just said,
15 they can acquiesce to the change or they can object to the change.

16 **SENATOR PAUL.** Sure.

1 **SENATOR ROMNEY.** So making a change opens the door for the -- for
2 another country to object and take it in a different direction. So I think you are
3 right --

4 **SENATOR PAUL.** Sure.

5 **SENATOR ROMNEY.** -- That what you are hearing is we make a change, and
6 it could be -- it could be rejected by other countries. Let me just ask a question
7 which is, is this a problem? Have we received concerns from taxpayers, from
8 citizens, that this is being abused?

9 **SENATOR PAUL.** Well, it has not changed yet. We are changing the
10 standard.

11 **SENATOR ROMNEY.** No, but -- no, but I mean as it currently exists, as the
12 law currently exists and as the treaty currently exists, has this been abused by us
13 or by other governments, and are we getting complaints of this nature?

14 **SENATOR PAUL.** Well, there are complaints from both Republicans
15 overseas and Democrats overseas about the new standard, but we do not
16 currently exist with the standards. They would not be complaining because we
17 have a different standard. The treaty with Switzerland currently says you have
18 to be alleged to have had fraud before they can get you information in

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1 Switzerland. So there has to be -- that is sort of more like a reasonable basis.

2 There has to be an allegation.

3 And so under Switzerland, no one is complaining about this particular
4 standard because it is not this standard yet. We are going to be lowering it from
5 an accusation of fraud to maybe relevant to the Tax Code.

6 **THE CHAIRMAN.** Senator Portman was next.

7 **SENATOR PORTMAN.** Let me just say there was a huge scandal in
8 Switzerland on this same issue in the mid-2000s with UBS, which we all
9 remember, precisely because the vast majority of U.S. accounts in Switzerland
10 were not providing information to U.S. tax authorities. In fact, the number was
11 19,000 accounts out of 20,000 U.S. clients who had accounts there. So that is one
12 reason we are doing this tax treaty, and, you know, how quickly we forget. So I
13 strongly support getting these things done. Team, it has been 9 years, I think,
14 while these have been pending. We have not done any other tax treaties. These
15 make sense. It does stop double taxation, and for those of you concerned about
16 that issue, which I hope we all are, we need this in place.

17 Second, it does provide information. And I respect Senator Paul's opinion
18 on this, but I will tell you here is the standard in U.S. law. It is not reasonable

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1 basis. It is relevance. The relevant language incorporates the same standard
2 used in Section 7602 of the Code, which deals with the authority to examine
3 books and witnesses in an examination of a domestic taxpayer return. So that is
4 what we use. I mean, that is our standard here. It is not reasonable basis.

5 So, look, I would imagine this is going to come up again on the floor, and I
6 am happy to take a look at it more closely, but let us not let this committee get
7 bottled up on this issue. I mean, we have reported these things out numerous
8 times. On the Democratic side, you guys are voting for these, too, and I just hate
9 to see us either stop this now because we cannot agree or send something to the
10 floor that these other countries may object to because they might.

11 And in terms of Treasury's view, talk to them. I mean, Ted, you
12 mentioned that. They are adamantly against this change. They are not neutral.
13 They think it is a bad idea because they are concerned about, again, what other
14 countries may do in response to this, and they want to have access to this
15 information. You are right, Ted, they like it because if it is relevant, they want to
16 get it to avoid another UBS scandal. So I hope we can vote these things out. We
17 can maybe have this discussion on the floor after we have had more time to look
18 at these issues that Senator Pau has raised today. But I do think that it is

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1 incumbent upon this committee to move these forward the way we have done so
2 in the past.

3 **THE CHAIRMAN.** Thank you, Senator. Senator Paul, do you have a motion
4 concerning the protocol or the resolution?

5 **SENATOR PAUL.** Yes, and one other item that is involved in the
6 amendment that we have not brought up, and that is it would make them
7 retroactive to the date they were presented. In each of the 50 States there are
8 companies that already because of the delay in this have had tax bills. So there is
9 an advantage to companies in each of your States to making these retroactive,
10 and they would be retroactive to the time of the presentation of the treaty after
11 we had already accepted it and they had accepted it. And there is a great deal of
12 benefit to companies in all 50 States to making these retroactive.

13 With regard to Senator Portman's discussion of relevance, there is a
14 difference between having a relevance standard and having a standard that
15 means relevance to something that may be in the Tax Code. So I do not think we
16 are talking about -- we can talk about apples and oranges as to relevant
17 standards, but I think a standard of reasonable suspicion of actually being
18 accused of something is not an unreasonable standard.

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1 **THE CHAIRMAN.** Do you have a motion, Senator?

2 **SENATOR PAUL.** Yes, I would like a recorded vote on the amendment, the
3 reservation that we have submitted for Spain.

4 **THE CHAIRMAN.** I have got two in front of me. I have got the protocol and
5 the resolution. I need a motion is what I need.

6 **SENATOR PAUL.** Yeah, this is a motion. I do not have the numbers on
7 them. So this would be a motion to accept the one that is entitled "Resolution of
8 Advice and Consent to Ratification of the Protocol to the Tax Convention with
9 Spain."

10 **THE CHAIRMAN.** That would be the resolution, and you move to adopt
11 your proposal in that regard.

12 **SENATOR PAUL.** Yes.

13 **THE CHAIRMAN.** Is there a second?

14 **VOICE.** Second.

15 **THE CHAIRMAN.** It has been moved and seconded that the amendment --
16 Senator Paul's first degree to the resolution be adopted. The clerk will call the
17 roll.

18 **THE CLERK.** Mr. Rubio?

1 SENATOR RUBIO. No.

2 THE CLERK. Mr. Johnson?

3 SENATOR JOHNSON. No.

4 THE CLERK. Mr. Gardner?

5 SENATOR GARDNER. No.

6 THE CLERK. Mr. Romney?

7 SENATOR ROMNEY. No.

8 THE CLERK. Mr. Graham?

9 THE CHAIRMAN. Aye by proxy.

10 THE CLERK. Mr. Isakson?

11 SENATOR ISAKSON. No.

12 THE CLERK. Mr. Barrasso?

13 SENATOR BARRASSO. No.

14 THE CLERK. Mr. Portman?

15 SENATOR PORTMAN. No.

16 THE CLERK. Mr. Paul?

17 SENATOR PAUL. Aye.

18 THE CLERK. Mr. Young?

1 **SENATOR YOUNG.** No.

2 **THE CLERK.** Mr. Cruz?

3 **SENATOR CRUZ.** Aye.

4 **THE CLERK.** Mr. Menendez?

5 **SENATOR MENENDEZ.** Aye.

6 **THE CLERK.** Mr. Cardin?

7 **SENATOR CARDIN.** No.

8 **THE CLERK.** Mrs. Shaheen?

9 **SENATOR SHAHEEN.** No.

10 **THE CLERK.** Mr. Coons?

11 **SENATOR COONS.** No.

12 **THE CLERK.** Mr. Udall?

13 **SENATOR UDALL.** Aye.

14 **THE CLERK.** Mr. Murphy?

15 **SENATOR MENENDEZ.** No by proxy.

16 **THE CLERK.** Mr. Kaine?

17 **SENATOR KAINE.** No.

18 **THE CLERK.** Mr. Markey?

1 **SENATOR MARKEY.** No.

2 **THE CLERK.** Mr. Merkley?

3 **SENATOR MERKLEY.** No.

4 **THE CLERK.** Mr. Booker?

5 **SENATOR MENENDEZ.** No by proxy.

6 **THE CLERK.** Mr. Chairman?

7 **THE CHAIRMAN.** No.

8 **THE CLERK.** Mr. Chairman, the ayes are 5, the nays are 17.

9 **THE CHAIRMAN.** The motion has failed. We will now move to the motion
10 to order the treaty favorably reported with the resolution of advice and consent
11 to ratification. Is there a motion?

12 **SENATOR MENENDEZ.** So moved.

13 **VOICE.** Second.

14 **THE CHAIRMAN.** It has been moved and seconded that the treaty be
15 reported favorably with -- for the advice and consent of the Senate in the
16 affirmative. Did you want a roll call vote on this?

17 **SENATOR PAUL.** I think we can do a voice.

18 **THE CHAIRMAN.** All those in favor, signify by saying aye.

1 [A chorus of ayes.]

2 **THE CHAIRMAN.** Opposed, nay.

3 [No response.]

4 **THE CHAIRMAN.** The ayes have it, and the motion has passed.

5 We will now move to the tax treaty on Switzerland. Senator Paul, did you
6 want to make a motion on that one?

7 **SENATOR PAUL.** I think it is the same discussion, so I think we will leave it
8 at that.

9 **THE CHAIRMAN.** Okay. Is there a motion to adopt the treaty and
10 favorably report the resolution of advice and consent?

11 **SENATOR MENENDEZ.** So move.

12 **VOICE.** Second.

13 **THE CHAIRMAN.** It has been moved and seconded that the Switzerland
14 treaty be sent to the floor with the advice and consent favorably from the Senate.

15 All those in favor, signify by saying aye.

16 [A chorus of ayes.]

17 **THE CHAIRMAN.** Opposed, nay.

18 [No response.]

1 **THE CHAIRMAN.** The ayes have it. The treaty will be reported favorably.
2 We now have the treaty with Japan. Is there a motion to report the treaty
3 favorably to the floor?

4 **SENATOR MENENDEZ.** So move.

5 **VOICE.** Second.

6 **THE CHAIRMAN.** Moved and seconded that it favorably be reported.

7 All those in favor, signify by saying aye.

8 [A chorus of ayes.]

9 **THE CHAIRMAN.** Opposed, nay.

10 [No response.]

11 **THE CHAIRMAN.** The ayes have it. The treaty will be reported.

12 The last one is Luxembourg. Is there a motion to adopt the Luxembourg
13 treaty and send it to the floor for affirmative advice and consent?

14 **SENATOR MENENDEZ.** So moved.

15 **VOICES.** Second.

16 **THE CHAIRMAN.** It has been moved and seconded that the Luxembourg
17 treaty be moved affirmatively to the floor for the advice and consent of the
18 Senate.

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1 All those in favor, signify by saying aye.

2 [A chorus of ayes.]

3 **THE CHAIRMAN.** Opposed, nay.

4 [No response.]

5 **THE CHAIRMAN.** The ayes have it, and that treaty will also be reported.

6 We now have four resolutions that the chair would like to consider en
7 bloc, and that would be Senate Resolutions 34, 198, 206, and Senate Concurrent
8 Resolution Number 10. We have discussed all of these in my opening statement,
9 in the ranking member's statement. Is there further debate on any of these
10 resolutions?

11 **SENATOR MENENDEZ.** If not, so move.

12 **THE CHAIRMAN.** Is there a second?

13 **VOICES.** Second.

14 **THE CHAIRMAN.** It has been moved and seconded that the four resolutions
15 be reported favorably to the floor.

16 Is there any -- I am sorry. All of those have been -- as amended. They
17 were -- they were modified by the amendments that were added. All right.

18 Senate Res. 34 is amended by the title, preamble, and revised resolving clause

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1 amendment. Senate Res. 198 is amended by the preamble and resolving clause
2 amendments. Senate Res. 206 is amended by the revised title, preamble, and
3 resolving clause amendments. Senate Concurrent Resolution 10 is amended by
4 the preamble and resolving clause amendments. All of those have been worked
5 on by both minority and majority staffs to get where we are with those, so.

6 **SENATOR MERKLEY.** Mr. Chairman?

7 **THE CHAIRMAN.** Yes?

8 **SENATOR MERKLEY.** May I please comment?

9 **THE CHAIRMAN.** Please.

10 **SENATOR MERKLEY.** A huge amount of work from many members on
11 those various amendments that go into Resolution Number 34, and appreciation
12 to our bipartisan co-sponsors, Senator Young and Senator Cruz and Senator
13 Ruben. Outside this committee, Collins and Tillis, Cardin, Kaine, Markey,
14 Coons. Thank you. This highlighting of the genocide in Burma is so important
15 for our Nation that we stand up for human rights around the world and speak to
16 it. And I appreciate so much the chairman including it in this markup.

17 **THE CHAIRMAN.** Thank you, Senator. All four of these are really
18 important. It is unfortunate we are moving as quickly as we are, but our time in

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1 the Senate is short. But we have had hearings on these and really underscored
2 the importance of all these. Everyone is to be commended on the work done.
3 Senator Cruz will be next and then Senator Markey.

4 **SENATOR CRUZ.** Just a brief observation. We are getting ready to vote on
5 S. Res. 198, which Senator Cardin and I introduced together. I think it is -- it
6 appears it is about to be adopted unanimously. I think that is a very good thing
7 for this committee and, I hope, the whole Senate, to loudly condemn Brunei's
8 human rights abuses. In particular their recent imposition of laws imposing
9 capital punishment on homosexuality are grotesque human rights violations, and
10 I think it is important that the Senate speak unequivocally in that regard.

11 **THE CHAIRMAN.** Thank you, Senator Cruz. Senator Markey was next and
12 then Senator Gardner.

13 **SENATOR MARKEY.** Thank you, Mr. Chairman. I want to thank Senator
14 Merkley for all the good work on this resolution and the acceptance of the
15 language which I proposed, which, one, really calls on Facebook to curtail the
16 use of that technology in order to foment hatred in that country against the
17 Rohingya. It is a huge tool that is being used in an extremely dangerous way.
18 And also encouraging the U.S. to amp its diplomatic role in that country and for

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1 the United States to urge the UN to do so as well. This is an ongoing crisis, and
2 we are at the center of it to a very large extent. And I thank Senator Merkley for
3 his great leadership.

4 **THE CHAIRMAN.** Thank you, Senator Markey. Well said. Senator
5 Gardner.

6 **SENATOR GARDNER.** Thank you, Mr. Chairman. The Senate Concurrent
7 Resolution comes out of the breakfast meeting we had with Secretary Pompeo
8 here a month or two ago to make sure that we are sending a message around the
9 globe that our concerns with Huawei and the security risks they pose is not just a
10 partisan issue or a Senate issue. It is indeed bipartisan, bicameral, and will last
11 long beyond any one administration. So this is our message that this is
12 important for us to focus on. Security issues do not get away with the end of a
13 Congress.

14 **THE CHAIRMAN.** There being no further debate, the chair would recognize
15 the motion to adopt all four.

16 **SENATOR MENENDEZ.** So move.

17 **THE CHAIRMAN.** It has been moved and seconded that the four resolutions
18 be adopted.

1 All those in favor, signify by saying aye.

2 [A chorus of ayes.]

3 **THE CHAIRMAN.** Opposed, nay.

4 [No response.]

5 **THE CHAIRMAN.** The ayes have it, and they all will be reported favorably
6 to the floor.

7 We will now consider Senate Bill 1309, Combatting Global Corruption Act.

8 Are there any members who would like to comment on this bill?

9 **SENATOR CARDIN.** Mr. Chairman, let me just thank you very much for
10 your cooperation on this. I thank Senator Young for his help putting this bill
11 together. This bill was passed by this committee in the last Congress with the
12 amendments that are being suggested. It does spell out that we will be using
13 anti-corruption measures in our bilateral relations with other countries so that
14 they can improve their record against corruption. And I thank the committee for
15 their support.

16 **THE CHAIRMAN.** Thank you, Senator. There being no further debate, the
17 chair would entertain a motion to adopt the -- we have got to do two votes on
18 this one. The substitute amendment --

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1 **SENATOR MENENDEZ.** So move.

2 **VOICE.** Second.

3 **THE CHAIRMAN.** It has been moved and seconded that the substitute
4 amendment be adopted.

5 All those in favor, signify by saying aye.

6 [A chorus of ayes.]

7 **THE CHAIRMAN.** Opposed, nay.

8 [No response.]

9 **THE CHAIRMAN.** The ayes have it. With that, Senate Bill 1309, as
10 amended, the chair would accept a motion to adopt.

11 **SENATOR MENENDEZ.** So move.

12 **VOICE.** Second.

13 **THE CHAIRMAN.** Moved and seconded that Senate Bill 1309 be adopted.

14 All those in favor, signify by saying aye.

15 [A chorus of ayes.]

16 **THE CHAIRMAN.** Opposed, nay.

17 [No response.]

1 **THE CHAIRMAN.** The ayes have it. 1309 has been adopted. It will be
2 referred to the Senate floor favorably.

3 We now have before us Senate Bill 727, the Fragility -- Global Fragility
4 Act. The manager's amendment to this bill incorporates the first degree
5 amendments filed by Senator Cardin. I will be supporting the manager's
6 amendment. Are there further comments on the bill?

7 **SENATOR COONS.** Mr. Chairman?

8 **THE CHAIRMAN.** Senator Coons.

9 **SENATOR COONS.** Mr. Chairman, if I might, I just want to thank you and
10 Ranking Member Menendez for having this constructive and substantive
11 meeting. I am grateful to Senator Graham for his real leadership on this and a
12 dozen others. This has 16 bipartisan co-sponsors.

13 In brief, the Global Fragility Act is the outcome of a long study that
14 develops a new strategy for how to address fragility in places like the Sahel or
15 the Northern Triangle. It authorizes a multi-donor global fragility fund. It looks
16 for a long-term sustainable investment in combatting fragility in places around
17 the world that are at the verge of becoming failed states.

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1 I look forward to working with my colleagues to refine and improve the
2 bill. I also just want to thank Senators Gardner and Markey for your work on the
3 ZTE/Huawei resolution, and I want to thank Senator Graham in particular for
4 being a real good partner on getting this bill moved to this point.

5 THE CHAIRMAN. Thank you, Senator.

6 SENATOR GRAHAM. Mr. Chairman?

7 THE CHAIRMAN. Senator Graham.

8 SENATOR GRAHAM. I want to thank -- I want to thank me.

9 [Laughter.]

10 THE CHAIRMAN. Your mother. Do not forget your mothers.

11 SENATOR GRAHAM. Yeah, the Academy. So this is a big deal to me
12 because it requires DOD, State, and USAID to work together to try and get the
13 private sector involved in other missions to create a new way of delivering aid to
14 fragile states. I have learned that there is no military solution to the War on
15 Terror. There is no military solution to facing a failed state. You pay now or you
16 pay later. I would rather invest now than have to go in later. Those are your
17 choices when it comes to the Sahel. Thank you all.

18 SENATOR SHAHEEN. Mr. Chairman?

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1 THE CHAIRMAN. Thank you, Senator. Senator Shaheen.

2 SENATOR SHAHEEN. Can I be added as a co-sponsor, please?

3 THE CHAIRMAN. No objection, Senator Shaheen will be added.

4 SENATOR CRUZ. Mr. Chairman?

5 THE CHAIRMAN. Senator Cruz?

6 SENATOR CRUZ. Mr. Chairman, I recognize that the sponsors of this bill
7 are acting in good faith and trying to address real problems. That being said, I
8 have significant concerns with this bill. In particular, the way, as I understand it
9 is drafted, it effectively creates a \$1.2 billion slush fund for the State Department
10 to spend in problematic countries, and those problematic countries are not
11 defined. It is countries that are fragile across the world. They can change at any
12 given time.

13 All of us at given points have lamented the power given to the executive
14 and how this Congress has given away its authority to the executive. My
15 Democratic friends right now are pulling their hair out at some of the decisions
16 President Trump makes with that executive authority. In a different
17 Administration, my Republican friends may be pulling their hair out at some of
18 the decisions made under that authority.

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1 There is a role for foreign aid, but I do not think it is wise to delegate that
2 decision to the executive with no meaningful constraints. If there is a place of
3 fragility that has a need for aid, I think the proper way to pursue it under the
4 Constitution is have the executive come to Congress and ask for funds for a
5 specific country, and then have Congress do our job, which is inquire how are
6 those funds going to be spent, what are the conditions going to be. Are they
7 going to be not spent in a way that furthers our enemies?

8 We have seen far too often money go out to problematic countries and
9 used and go directly to people who are enemies of America. And so this bill, I
10 think, has good intentions, but I think it would -- it would be a dangerous
11 precedent, and so I intend to vote no on this bill.

12 **SENATOR CARDIN.** Mr. Chairman?

13 **THE CHAIRMAN.** Senator Cardin.

14 **SENATOR CARDIN.** It may not alleviate your concerns, but in the
15 amendment that was just adopted, an amendment that I had offered, that
16 requires that before decisions are made as to fragile, which countries qualify,
17 there has to be a sit-down meeting with this committee where we get input as to
18 what they are thinking about, et cetera, before those decisions are made, and

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1 which the questions that you are raising would be asked. So there is an
2 opportunity for us to have input before the implementation of any specific
3 country.

4 **SENATOR CRUZ.** And I would say briefly, if I could, in response to that, I
5 recognize that, but we have all seen the power of default, that we have passed a
6 bunch of laws that give the President the authority. We are seeing it on trade
7 laws where the President acts on trade, and a bunch of us jump up and down
8 and scream, but we do not have the ability to change it. Yes, they would have to
9 sit down with us, but if we disagreed with their decision, we would have to get a
10 filibuster -- a majority able to overcome a filibuster to stop it. And in most
11 circumstances, that is incredibly difficult. I would rather the default be Congress
12 has to act rather than we have to act to stop whatever the executive tells us to do.

13 **SENATOR CARDIN.** I prefaced my remarks. It may not satisfy you
14 obviously.

15 [Laughter.]

16 **THE CHAIRMAN.** Forsooth. Senator Coons.

17 **SENATOR COONS.** I will just briefly, if I might, to my colleague. To
18 characterize it as a slush fund misses the core point of the legislation, which is to

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1 require coordination across the Department of Defense, USAID, and the State
2 Department, a coordinated strategy and consultation prior to there being
3 identification to specific countries. I would be happy to review the text of the bill
4 with you further to make sure that I am speaking to your concerns. I did not
5 know if any of my co-sponsors wanted to speak to it as well.

6 **SENATOR GRAHAM.** Mr. Chairman?

7 **THE CHAIRMAN.** Senator Graham.

8 **SENATOR GRAHAM.** To Senator Cruz, right. I mean, I am not trying to
9 create a runaway train. I am trying to do something different because what we
10 are doing is not working. So the people who came up with this proposal are Lee
11 Hamilton and Tom King. They are the chairmen of the 9/11 Commission. They
12 told us we spent trillions of dollars on kinetic activity. Mostly you really got the
13 tee shirt if you are lucky.

14 So we all believe prevention is better than intervention, but Sahel is going
15 to fail just as sure as we are all sitting here. I do not know if this can stop it, slow
16 it down, but I think we kind of need to have a coordinated plan, Senator Cruz,
17 that does not exist today. These agencies are ships passing in the night. One guy
18 is doing one thing. The next person is doing the next. We are telling them to

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1 come up with a coordinated plan, come back to us and tell us how it works. And
2 I am glad to have more oversight, but I just -- being chairman of the Foreign Ops
3 150 Account, our aid is missing the target. I am trying put it on the target in a
4 soft power way is what I am trying to do.

5 **SENATOR CRUZ.** Mr. Chairman, if I could briefly say something --

6 **THE CHAIRMAN.** Senator Cruz.

7 **SENATOR CRUZ.** -- And I do not think there is need to dwell on this
8 excessively. But I will say if the bill simply did what Senator Graham said and
9 required the Administration to come up with a coordinated plan, I could support
10 the bill. But it also authorizes \$1.15 billion in expenditures, and it is that
11 authorization that I think is ill advised.

12 **THE CHAIRMAN.** Thank you. All good points. Senator, the only thing I
13 disagree with you and Senator Cardin is that we have not adopted that one yet.

14 **SENATOR GRAHAM.** Oh.

15 **THE CHAIRMAN.** So I would -- I would entertain a motion to adopt the
16 manager's amendment.

17 **VOICE.** So moved.

18 **VOICE.** Second.

1 **THE CHAIRMAN.** Moved and seconded that the manager's amendment be
2 adopted. Is voice vote okay, Senator?

3 **VOICE.** On this one, yes.

4 **THE CHAIRMAN.** Okay. All those in favor, signify by saying aye.

5 [A chorus of ayes.]

6 **THE CHAIRMAN.** Opposed, nay.

7 [No response.]

8 **THE CHAIRMAN.** The ayes have it. The manager's amendment has been
9 adopted.

10 The chair would entertain a motion to approve Senate Bill 727, as
11 amended.

12 **SENATOR MENENDEZ.** So move.

13 **VOICE.** Second.

14 **THE CHAIRMAN.** Moved and seconded that Senate Bill 727, as amended,
15 be adopted.

16 A roll call vote has been requested. It is so ordered. The clerk will call the
17 roll.

18 **THE CLERK.** Mr. Rubio?

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1 THE CHAIRMAN. Aye by proxy.

2 THE CLERK. Mr. Johnson?

3 THE CHAIRMAN. No by proxy.

4 THE CLERK. Mr. Gardner?

5 THE CHAIRMAN. Aye by proxy.

6 THE CLERK. Mr. Romney?

7 SENATOR ROMNEY. Yes.

8 THE CLERK. Mr. Graham?

9 SENATOR GRAHAM. Aye.

10 THE CLERK. Mr. Isakson?

11 THE CHAIRMAN. Aye by proxy.

12 THE CLERK. Mr. Barrasso?

13 THE CHAIRMAN. No by proxy.

14 THE CLERK. Mr. Portman?

15 THE CHAIRMAN. Aye by proxy.

16 THE CLERK. Mr. Paul?

17 SENATOR PAUL. No.

18 THE CLERK. Mr. Young?

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1 SENATOR YOUNG. Aye.

2 THE CLERK. Mr. Cruz?

3 SENATOR CRUZ. No.

4 THE CLERK. Mr. Menendez?

5 SENATOR MENENDEZ. Aye.

6 THE CLERK. Mr. Cardin?

7 SENATOR CARDIN. Aye.

8 THE CLERK. Mrs. Shaheen?

9 SENATOR SHAHEEN. Aye.

10 THE CLERK. Mr. Coons?

11 SENATOR COONS. Aye.

12 THE CLERK. Mr. Udall?

13 SENATOR UDALL. Aye.

14 THE CLERK. Mr. Murphy?

15 SENATOR MENENDEZ. Aye by proxy.

16 THE CLERK. Mr. Kaine?

17 SENATOR KAIN. Aye.

18 THE CLERK. Mr. Markey?

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1 **SENATOR MARKEY.** Aye.

2 **THE CLERK.** Mr. Merkley?

3 **SENATOR MERKLEY.** Aye.

4 **THE CLERK.** Mr. Booker?

5 **SENATOR MENENDEZ.** Aye by proxy.

6 **THE CLERK.** Mr. Chairman?

7 **THE CHAIRMAN.** Aye.

8 **THE CLERK.** Mr. Chairman, the yeas are 18; the nays are 4.

9 **THE CHAIRMAN.** The motion is passed. Senate Bill 727, as amended, will
10 be referred to the floor of the Senate with an affirmative recommendation.

11 The committee now has before it Senate Bill Number 1102, the Eastern
12 Mediterranean Security and Energy Partnership Act. Senator Menendez.

13 **SENATOR MENENDEZ.** Mr. Chairman, I have spoken to this before. I
14 appreciate Senator Rubio and others in a bipartisan effort here, and I am happy
15 to move it when it is appropriate.

16 **THE CHAIRMAN.** Further debate?

17 [No response.]

1 **THE CHAIRMAN.** There being none, the first thing is the substitute -- I am
2 sorry.

3 **SENATOR MERKLEY.** You said further debate.

4 **THE CHAIRMAN.** Yes.

5 **SENATOR MERKLEY.** Yes.

6 **THE CHAIRMAN.** Senator Merkley.

7 **SENATOR MERKLEY.** Yeah, so I will be opposing this, and the reason I will
8 -- the reason why is it is adopting policy to promote LNG terminals around the
9 world. Right now as we sit here in this room, every time you have taken a
10 lungful of air, it has 33 percent more carbon than when I was born, and we are on
11 a rapid upward trajectory. We cannot base the next generation of power around
12 this world on natural gas or we are toast.

13 There are some 2 trillion galaxies in the world with a billion-plus stars.
14 We cannot even get to the next planet's star. We have to take care of this more
15 than we have, and right now we are messing it up. And I cannot support a
16 policy of saying let us enthusiastically assist and encourage LNG facilities for
17 energy for the next generation.

18 **THE CHAIRMAN.** Thank you, Senator.

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1 **SENATOR MENENDEZ.** Mr. Chairman, if I may, I appreciate my colleague's
2 concern, and I take a backseat to no one in terms of my longstanding
3 environmental record, including on the questions of global warming. The reality
4 is is in this region, there are huge explorations that have found natural gas, and
5 they are going to be ultimately pursued. The question is whether we harness
6 that in a way that pursues the national interests and security of the United States,
7 diversifies Europe's energy away from Russia as its gas station, or whether we
8 leave it in a way that will not be harnessed, but still will be ultimately explored
9 and pursued.

10 So it is in dealing with that reality that the bill speaks to that. In my mind
11 it is not that it is promoting it. It is harnessing that which already exists, so -- but
12 I do appreciate your comments.

13 **SENATOR CRUZ.** Mr. Chairman?

14 **THE CHAIRMAN.** Senator Cruz.

15 **SENATOR CRUZ.** I would just note that Senator Merkley's concerns, while
16 no doubt genuine, I think are being advanced in a way that would harm what he
17 is trying to do. But if you are concerned about the environment, if you are
18 concerned about the carbon emissions, by any measure, power generation from

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1 LNG pollutes dramatically and it is dramatically less carbon than it does energy
2 generation from coal. And, in fact, in the United States, the shift from coal to
3 LNG has resulted in the greatest reduction of carbon emissions in modern times.
4 And so I think if one is concerned about cleaning up the environment, trying to
5 stifle LNG is an ill-advised strategy that would only keep the environment dirtier
6 rather than cleaner.

7 **SENATOR MERKLEY.** Mr. Chairman.

8 **THE CHAIRMAN.** Senator Merkley.

9 **SENATOR MERKLEY.** My colleague has a point if you are only looking at
10 the point of combustion. But if you look at the entire LNG system, because of the
11 leakage of methane in the system, it has an equivalent or greater impact on global
12 warming. And this is true for LNG or for natural gas systems around the world.
13 So looking at point of combustion, your point is well taken. As a system, it is not
14 accurate.

15 **THE CHAIRMAN.** Is there further debate?

16 **SENATOR MENENDEZ.** Move the resolution. Move the --

17 **THE CHAIRMAN.** Substitute amendment.

18 **SENATOR MENENDEZ.** -- substitute amendment.

1 **THE CHAIRMAN.** Is there a second?

2 **VOICE.** Second.

3 **THE CHAIRMAN.** Will a voice vote do or a recorded?

4 All those in favor of adopting the substitute amendment, signify by saying

5 aye.

6 [A chorus of ayes.]

7 **THE CHAIRMAN.** Opposed, nay.

8 [A chorus of noes.]

9 **THE CHAIRMAN.** Who wants to be recorded as no? Senator Merkley and
10 Senator Markey will be recorded as no.

11 The chair will now entertain a motion to adopt --

12 **SENATOR CRUZ.** Mr. Chairman, very briefly, if I could ask unanimous
13 consent to be added a co-sponsor to that last bill.

14 **THE CHAIRMAN.** So no objection. Seeing none, Senator Cruz will be added
15 as a co-sponsor.

16 So now, a motion to approve Senate 1102, as amended.

17 **SENATOR MENENDEZ.** So move.

18 **THE CHAIRMAN.** It has been moved. Second? Is there a second?

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1 VOICES. Second.

2 THE CHAIRMAN. It has been moved and seconded that Senate 1102, as
3 amended, be adopted and be referred to the floor of the Senate with an
4 affirmative recommendation.

5 All those in favor, signify by saying aye.

6 [A chorus of ayes.]

7 THE CHAIRMAN. Opposed, nay.

8 SENATOR MERKLEY. Nay. This is on Bill --

9 THE CHAIRMAN. The Senate bill --

10 SENATOR MERKLEY. Yeah.

11 THE CHAIRMAN. The ayes have it. Does anybody want to be recorded as a
12 no? Senator Merkley. Senator Markey, do you want to be recorded as a no on
13 the bill? Sorry.

14 SENATOR MARKEY. I think I got a little bit distracted.

15 THE CHAIRMAN. You have been recorded. The amendment was adopted.
16 You were recorded as a no. We have now adopted the bill, as amended. Do you
17 want to be recorded --

18 SENATOR MARKEY. No.

1 **THE CHAIRMAN.** As a no. Senator Markey will be recorded as a no along
2 with Senator Merkley.

3 We now have before us Senate Bill 1945, the SAFE Act. Senator
4 Menendez.

5 **SENATOR MENENDEZ.** I spoke to this at the beginning. I just simply would
6 say regardless of who sits in the White House, I think it is critical that the Senate
7 and the Congress continue to have says on arms sales, and that the purpose of an
8 emergency, which has only been used 4 times in 40 years, be preserved as an
9 emergency, particularly with our closest NATO allies. And that is all this
10 legislation does. It preserves the prerogatives of the Senate. It guarantees that an
11 emergency is not used as a runaround at the end of the day, and ultimately still
12 will allow arms sales when it is appropriate to do so. And I urge my colleagues
13 to join us for the institution of prerogatives, as well as the policy.

14 **THE CHAIRMAN.** Thank you. Is there further debate?

15 **SENATOR YOUNG.** Yes. Can I make an observation? I have contacted --
16 we have contacted majority staff, minority staff, outside experts, and others and
17 asked a threshold question, at least a threshold question from me, which is give
18 me an example of where a declaration of an emergency would be required in

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1 order to expedite not an arms sale because that involves pending a contract, but
2 delivery of arms. Delivery of arms.

3 That is not the kind of thing that happens in a day. We can reposition
4 military assets. We can encourage our partners and allies to move into a region.
5 But I am not sure there would ever be a situation, but I remain open to that
6 information. We spent a lot of time -- I asked the same question of the
7 Administration incidentally today. They could not come up with an example. So
8 left with that, I will be supporting this. You are probably incentivized not to talk
9 your way out of that. But I just --

10 [Laughter.]

11 SENATOR YOUNG. I cannot conceive of an example. If needed, a president
12 can exercise his or her Article II authorities to aid a country in an emergency.

13 THE CHAIRMAN. Further debate?

14 SENATOR MERKLEY. I praise the work on this. This is -- this is excellent
15 and appropriate. I would like to be added as a co-sponsor.

16 THE CHAIRMAN. If there is no objection --

17 SENATOR ROMNEY. I want to ask a couple of questions, which is I think it
18 is an unusual list of the series of countries where you can declare an emergency

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1 and the President cannot send troops or send our military, but can send
2 weapons. And that list of countries does not include, for instance, Ukraine,
3 Taiwan. If I were the Taiwanese and this became a law, I would say how come
4 America is not willing to send us weaponry if we need weaponry, and why are
5 we being treated differently than four countries.

6 Japan, we can send -- we can send aircraft to Japan to help Japan, but we
7 cannot send help to Taiwan. And so I look at the list of countries, and I have
8 difficulty with this bill because it limits it to a relatively small number of
9 countries. And I do not -- if the President can do what this bill -- if the President
10 does not need this bill to do what needs to be done, then why are we voting on it
11 if he does not need --

12 SENATOR YOUNG. I did not introduce it.

13 SENATOR ROMNEY. Yeah, right --

14 [Laughter.]

15 SENATOR ROMNEY. I am just making the point, which is if the emergency
16 power is not needed, then I am not sure why we are restricting the emergency
17 power. I would say I would like -- if there is going to be emergency power

1 provided to the President, I would want to include a longer list of countries than
2 the ones that are listed.

3 **SENATOR CRUZ.** Mr. Chairman? Would the sponsor of this bill be open to
4 amendment to add Taiwan?

5 **SENATOR MENENDEZ.** Well, I am happy to answer. First of all, I co-chair
6 the Taiwan Caucus, so I love the Taiwanese and I think it is all important. But
7 the question here is not to create a right, but it is actually to constrain the use of
8 emergency as an end around Congress to ultimately make a weapons sale. We
9 can sell to the Taiwanese today. We can sell to anybody who we choose to when
10 it goes through the regular process of the committee and elsewhere.

11 The question is when does the President get the right to have an
12 emergency to ultimately allow a sale, and that is a very limited universe, which is
13 why the universe that you say is basically NATO partners and critical entities to
14 the United States that are established. And so that is why it is not a long list
15 because the regular sales process will accommodate anybody who this or any
16 other Administration wants to sell to.

1 SENATOR ROMNEY. May I just respond, which is -- which is it seems to be
2 unusual to say that there are certain countries where emergency may be needed,
3 but there are others that are not.

4 SENATOR YOUNG. May I -- may I respond?

5 SENATOR ROMNEY. And this affects presidents for a long, long, long time,
6 and I don't know how we can decide today which are the countries that need a
7 different provision relative to others that we may have great interest in.

8 SENATOR YOUNG. May I respond --

9 THE CHAIRMAN. Senator Young.

10 SENATOR YOUNG. -- Because he is talking about a situation in which an
11 emergency may be needed. I can conceive of none. Please help me. Offer me an
12 example in history in which an emergency power was needed in order to make
13 an arms sale, an end run around our foreign military sale prerogatives as a
14 committee. I can conceive of none. The floor is open. Please.

15 VOICE. Lend Lease.

16 SENATOR GRAHAM. Yeah, Lend Lease. Yeah, that is what it was all about.
17 So, let us get to the heart of the matter in case anybody --

1 SENATOR YOUNG. Wait, wait, wait. We could not be persuaded as a
2 Congress to go with Lend Lease?

3 SENATOR GRAHAM. Yeah, that is right.

4 SENATOR SHAHEEN. Correct.

5 SENATOR YOUNG. We could not be persuaded?

6 SENATOR GRAHAM. Yeah, there you go.

7 SENATOR SHAHEEN. That is correct.

8 SENATOR YOUNG. We could be persuaded. We need the executive branch
9 to come to us to make the argument. Otherwise, the only powerful person in this
10 room is Lindsey Graham as chairman of the Appropriations Committee --

11 SENATOR GRAHAM. So that is okay.

12 [Laughter.]

13 SENATOR GRAHAM. -- as opposed to the authorizing committee.

14 SENATOR ROMNEY. Senator, then you are saying this emergency power
15 should not be given to anybody.

16 SENATOR YOUNG. Yeah, that is right.

17 SENATOR ROMNEY. Well, but that is very different than what --

1 **SENATOR YOUNG.** But I do not want the perfect to be the enemy of the
2 good, so let us constrain.

3 **SENATOR ROMNEY.** This is -- this is listing a group of countries that says,
4 hey, these guys are people who we are willing to make emergency acts for, and
5 these over here we are not. If I am Ukraine or I am Taiwan or maybe there is a
6 longer list than that -- there are a lot of countries around the world that are going
7 to say that is interesting. I am not quite sure how the U.S. works and so forth,
8 but the President has power here, but he does not have power to protect us.

9 **SENATOR YOUNG.** Yeah, sure. I understand your rationale.

10 **THE CHAIRMAN.** Senator Graham.

11 **SENATOR GRAHAM.** Listen, Senator Romney, I get it, but let us just be
12 honest why we are doing this. The President wanted to give arms to Saudi
13 Arabia and most of us did not because the fact is the leader of Saudi Arabia did
14 something so outrageous, it was even hard for me to ignore it. It was really over
15 the top.

16 [Laughter.]

17 **SENATOR GRAHAM.** Clearly not in line with appreciating the relationship.
18 So what we are trying to do is say these are the folks that we have confidence in.

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1 We probably should have put Taiwan or maybe you should not put anybody.
2 But the reason we are doing this bill is because the Administration wanted to
3 give Saudi Arabia weapons after the Khashoggi murder, and we did not. That is
4 the only reason we are doing this. They put the UAE, they put other countries in
5 the sales, the transfer list. I want to be on record that the reason I am voting for
6 this is to send a signal to this Administration and other administrations that we
7 exist around here.

8 **SENATOR MENENDEZ.** I would just note that NATO Plus 5 is what is the
9 law today, so all -- we are basically restating the law, but eliminating everybody
10 else as an emergency, and there is a reason that NATO Plus 5 was established.
11 So I do not know if there is any other debate, Mr. Chairman, but I would ask to
12 move the --

13 **THE CHAIRMAN.** Motion to approve Senate Bill 1945 is your motion?

14 **SENATOR MENENDEZ.** Yes.

15 **THE CHAIRMAN.** Is there a second?

16 **VOICE.** Second.

17 **THE CHAIRMAN.** The motion has been made and seconded. Is there --
18 voice vote sufficient for everyone or do you want a roll call?

1 **SENATOR MENENDEZ.** A voice vote is sufficient.

2 **THE CHAIRMAN.** All those in favor of Senate Bill 1945, say aye.

3 [A chorus of ayes.]

4 **THE CHAIRMAN.** Opposed, nay.

5 [A chorus of nays.]

6 [Laughter.]

7 **THE CHAIRMAN.** Nay. The ayes have it. Senator Romney, Senator
8 Barrasso, and myself are recorded as nay.

9 That completes the committee's business. I ask unanimous consent that
10 staff be authorized to make technical and conforming changes.

11 It is so ordered.

12 Senator Barrasso also will be recorded as no.

13 Without objection, the committee will be adjourned.

[Whereupon, at 3:28 p.m., the committee was adjourned.]

United States Senate

WASHINGTON, DC 20510

Dear Chairman Menendez,

I am writing to request that we sit down to find a path forward on the pending tax treaties. I have made this offer to you on the Senate floor in the previous weeks, and on several other occasions since 2011.

Like you, I believe these tax treaties have a number of important tax and arbitration provisions that help facilitate U.S. business's competitiveness and global operations. However, as you know, I have grave concerns with the exchange of information provisions included in these treaties. These treaties are an encroachment upon our constitutional rights to privacy.

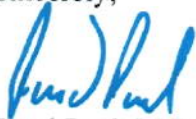
Prior treaties were more focused on information specific to suspicions of tax fraud while providing that serious allegations of tax wrongdoing were grounded in evidence. For example, the prior Swiss tax treaty provided guidelines required in order to determine a relevant need to investigate wrongdoing. Among the list of actions outlined that could constitute tax fraud were: forged documents, incorrect balance sheets, a false piece of documentary evidence, and falsified documents with the intention of illegally reducing taxes due, among many others.

Unfortunately, these new treaties demand information under a vague new standard that allows the government to access personal financial information that "may be relevant." This new, much lower and ambiguous threshold allows the government to access your bank records for hardly any reason at all, and will facilitate the bulk collection of the private financial information of all U.S. citizens living abroad.

So that we can find a path forward, I ask that you, as chairman of the Senate Foreign Relations Committee, to convene a meeting between us, and any other senators or administration officials with the authority and interest in negotiating these treaties. I believe we can find a way to include language similar to the previous Swiss tax treaty or include requirements that any intrusion into private bank accounts be subject to simple constitutional protections as afforded to all Americans by the Fourth Amendment.

I hope we can work together to provide constitutional protections within these tax treaties and allow them to proceed forward.

Sincerely,



Rand Paul, M.D.

ROBERT MENENDEZ, NEW JERSEY, CHAIRMAN

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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

June 17, 2014

Senator Rand Paul
124 Russell Senate Office Building
Washington DC, 20510

Dear Senator Paul,

Thank you for your letter dated June 13, in which you offer to find a path forward on the pending tax treaties. These treaties promote trade and investment, protect American companies from double taxation, and prevent tax avoidance and evasion. They do so by reducing withholding rates on various forms on income, such as dividends, interest, and royalties, and by providing mechanisms for exchanging information between U.S. and foreign tax authorities.

I would like to address each of the points in your letter.

First, you say in your letter that “these new treaties demand information under a vague new standard.” In reality, the standard in these treaties is neither vague nor new. The proposed standard is the same standard that has been in effect in the United States for decades for when Treasury can obtain information in a tax inquiry. This standard comes from a 1954 federal statute that authorizes the IRS, for the purpose of examining a tax return or determining a person’s tax liability, “to examine any books, papers, records, or other data which may be relevant or material to such inquiry.” 26 U.S.C. §7602(a)(1). This standard has been repeatedly upheld by the U.S. Supreme Court. *See e.g., United States v. Powell*, 379 U.S. 48 (1964); *United States v. Arthur Young & Co.*, 465 U.S. 805 (1984). A version of this standard has been part of the U.S. Model Tax Convention since 1996, and prior versions of the U.S. Model Tax Treaty were consistently interpreted as establishing the same standard. This standard is also consistent with the internationally established standard (which has been extensively defined in internationally agreed guidance) since before 1996. Since 1999, the Senate has approved at least 14 other tax treaties specifically providing for the exchange of information that is or may be relevant for carrying out the treaty or the domestic tax laws of either country.

Second, you say in your letter that “[p]rior treaties were more focused on information specific to suspicions of tax fraud.” You use as an “example” the existing Swiss tax treaty. In fact, the existing U.S.–Swiss tax treaty (which is proposed to be amended) is the only treaty that required an establishment of tax fraud before Switzerland would hand over any information on U.S. accountholders with Swiss bank accounts. No other U.S. tax treaty uses this standard. There is a reason why Switzerland has been a haven for tax cheats and bank secrecy, and that banks such as UBS and Credit Suisse have been embroiled in scandals involving tax cheating. The reason the language in the current treaty must be fixed is that this language allowed Swiss banks to shelter tax cheats, while the Swiss government and Swiss courts blocked U.S. requests for information citing the language as prohibiting the granting of such requests.

Third, you say that “[t]his new, much lower and ambiguous threshold allows the government to access your bank records for hardly any reason at all, and will facilitate the bulk collection of the private financial information of all U.S. citizens living abroad.” This is simply not true. These tax treaties only permit the exchange of information that is foreseeably relevant to carrying out the tax treaty or domestic tax laws. The proposed threshold would apply the same statutory standard to Americans with bank accounts abroad as already applies to Americans with bank accounts in the United States. Using the same standard makes perfect sense. There is no reason why people with foreign bank accounts should be able to hide their money from the IRS in a way that average, hard-working Americans cannot.

Finally, you say in your letter that “[t]hese treaties are an encroachment upon our constitutional rights to privacy.” Again, this is simply not true. These treaties contain safeguards to ensure that information is handled in the appropriate way and that confidentiality of information is appropriately preserved. Moreover, the proposed standard is the same standard that has been in effect in the United States for decades for when the Government can obtain information in a tax inquiry. The type of information that would be covered under the information exchange standard has been described by the Supreme Court in the domestic context as “critical to the investigative and enforcement functions of the IRS.” See United States v. Arthur Young & Co., 465 U.S. 805 (1984).

In light of the above points, it is clear that these tax treaties contain appropriate language and standards addressing information exchange. As such, I think it would be extremely bad policy to, as you propose in your letter, “find a way to include language similar to the previous Swiss tax treaty.” Doing so would only perpetuate and fuel the creation of new tax havens around the world. Simply put, I do not support changes to the tax treaties that will allow increased opportunities for tax evasion at the expense of law abiding American taxpayers.

Finally, because your letter seems to imply that there has not been adequate opportunity for you to have input into the process of considering these treaties, I feel I need to point out the robust process that the Senate Foreign Relations Committee has undertaken in considering these treaties. In February, Senator Cardin chaired a hearing to consider the treaties. That was an opportunity for you, as a member of the Senate Foreign Relations Committee, to come and ask witnesses questions about your concerns. Next, the Ranking Member and I offered an opportunity for you and the other Members of the Committee to submit amendments to the Resolutions of Advice & Consent for these treaties. That was another opportunity for you to put forth ideas to address your concerns. On April 1, the Committee considered the treaties and had a robust discussion in which all of the Members present expressed their strong and unqualified support for these treaties. That was another opportunity for you to express your concerns. And yet, it was not until May 7 that I heard of your concerns, when you wrote a letter to Leader Reid indicating your intent to object to “any unanimous consent request, motion, or waiver of any rule in relation to these treaties or any related measure.”

My view is that the Resolutions of Advice and Consent for these treaties that passed out of the Senate Foreign Relations Committee on April 1 are appropriate and adequate in their current form. However, in the spirit of putting forth a good faith effort to put your mind at ease, I would be willing to consider including in the Resolution of Advice of Consent for each of the

treaties, a statement as follows: "Supremacy of the Constitution—Nothing in the Convention authorizes the taking of any action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States."

Please let me know as soon as possible whether you are interested in this solution.

Sincerely,


Robert Menendez
Chairman