

# BUSINESS MEETING

*Tuesday, July 22, 2014*

U.S. SENATE  
COMMITTEE ON FOREIGN RELATIONS  
WASHINGTON, D.C.

1           The committee met, pursuant to notice, at 10:08 a.m. in Room S-116, The Capitol,  
2 Hon. Robert Menendez, chairman of the committee, presiding.

3           **PRESENT:** Senators Menendez, Boxer, Cardin, Shaheen, Coons, Durbin, Udall,  
4 Murphy, Kaine, Markey, Corker, Rubio, Johnson, Flake, McCain, and Barrasso.

## **OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY**

5           **THE CHAIRMAN.** This business meeting will come to order.

6           Before we get to the heart of the meeting, let me just make an announcement. I  
7 know that the expectation is that we will be on recess in the first week of August, but  
8 for those who may be available, we are having a reception in honor of the African  
9 leaders and the heads of state. And I believe there are 20-some odd that have already  
10 agreed to join us for a congressional reception on August the 4th in the Kennedy  
11 Caucus Room from 4 to 6 o'clock. So to the extent that members might be here, we  
12 certainly urge you to join us in that regard. And I thank Senator Coons for reminding  
13 me to make sure we invite everybody. So hopefully some of you can attend.

14           We have a busy agenda. Let me start off moving to the Convention on the Rights  
15 of Persons with Disabilities, adopted by the United Nations in December of 2006 and

1 signed by the U.S. in June of 2009. It is now July of 2014, and I believe the time has  
2 come to ratify this treaty.

3 I strongly urge all members of the committee to support it. As you know, my  
4 view is that ratifying the disabilities treaty is essential to improving the lives of over 1  
5 billion people around the globe with disabilities, but here at home, 58 million  
6 Americans with disabilities right here, including 5.5 million disabled American  
7 veterans.

8 146 countries have already ratified the treaty. But protections will not come  
9 automatically. It will take U.S. leadership the treaty's protections not only become a  
10 reality, but reflect American values.

11 As I have said, from the U.S. Constitution, the treaty borrows principles of  
12 equality and the protection of minorities. From the Declaration of Independence, it  
13 borrows the inalienable right to pursue happiness. From the Americans with  
14 Disabilities Act and other landmark accessibility laws, the treaty borrows the concept of  
15 reasonable accommodation. By ratifying this treaty, we will be advocating for the  
16 adoption of American values around the world.

17 At the end of the day, if we fail to ratify this treaty, the U.S. point of view and  
18 U.S. interests will be marginalized. In short, we need to ratify the treaty if we are going  
19 to lead the way in raising worldwide accessibility to an American standard.

1           We are starting with the text of the resolution of advice and consent we left off  
2 with in 2012, but that is not starting from scratch. It contains three reservations, eight  
3 understandings, and two declarations.

4           Among other things, this includes an understanding written by Senators DeMint  
5 and Durbin to address home schooling concerns, negotiated text from Senator Rubio on  
6 the definitions of certain terms and powers of the Committee on the Rights of Persons  
7 with Disabilities and compromise text passed by the committee to make clear that the  
8 treaty is not part of the debate on abortion.

9           That said, from the beginning of this treaty consideration process, I have been  
10 clear that I will have an open process and will try to address anyone's concerns in order  
11 to help them get to "yes" on this essential treaty. In other words, if you want to vote for  
12 the treaty, let us discuss what you need, and I will see if we can accommodate you.

13           I had hoped to come to this markup knowing that we had the votes for this  
14 treaty on the floor, but that is not yet the case, despite considerable efforts by some of  
15 our Republican colleagues that worked very hard in this regard.

16           I know a number of members on the committee have submitted amendments. I  
17 intend to support some of the amendments offered by Senator Barrasso but do not  
18 intend to support others. My lack of support is not because I am not open to addressing  
19 the concerns represented in some of these amendments. The problem is that these

1 amendments do not come with votes for the treaty. And ultimately, it is the treaty that I  
2 am interested in and the votes to pass it, which is what we need to get the treaty done.

3         And the final point I will make before I call on Senator Corker — and then we  
4 will start the process — is that I know that there are some who say, well, why do we  
5 need the treaty. We already have the Americans with Disabilities Act. The problem is  
6 we cannot have global reach and the opportunity to make it more likely that an  
7 American traveling abroad for business, for pleasure, for family reunification will find  
8 themselves with the accessibility standards we have developed in the United States if  
9 we are not in the decision-making process that is so critical to establishing what those  
10 standards are. And when we do not ratify the treaty, then we do not end up getting to  
11 have a say. And so we live with the accessibility standards of others in the world that I  
12 would venture to say may very well be inferior to ours. That is one of the essential  
13 reasons why we need to ratify the treaty.

14         So I hope everyone here understands this is an ongoing process, and if you do  
15 really ultimately seek to support the treaty, but have concerns you want addressed on  
16 the floor, my door is open. I am happy to talk to anyone as it relates to how do we  
17 work to assuage your concerns and still get to the “yes” and not undermine the very  
18 essence of the treaty.

19         With that, let me recognize Senator Corker for his remarks.

**STATEMENT OF HON. BOB CORKER,  
U.S. SENATOR FROM TENNESSEE**

1           **SENATOR CORKER.** Well, thank you, Mr. Chairman, and I appreciate those  
2 comments. And I know that that additional reach-out is occurring.

3           I just want to say I am very proud the United States passed the ADA in 1990, and  
4 I am proud to support the efforts to further strengthen it in 2008. I have been inspired  
5 by the people I have met who have helped lead these efforts.

6           I also appreciate all the time and energy spent by the chairman and the State  
7 Department working with us on this treaty.

8           When we started this process, I hoped to find an opportunity for our country to  
9 enhance its leadership role in pushing for disability rights protections internationally.  
10 In going forward, I hope our country will continue to look for every opportunity to be a  
11 leader in these efforts because, as I have come to appreciate them even more during my  
12 time on this committee, fundamental rights of life, liberty, citizenship, equal treatment  
13 under the law go entirely unrealized in far too many places. I understand that that is  
14 what so strongly motivates supporters of this treaty.

15           However, as I have continued to study these issues and as we learn more about  
16 this type of treaty, I also have become concerned that the CRPD is simply not an  
17 appropriate tool for the United States to promote disability protections.

18           To begin with, I quickly developed significant concern that ratification of CRPD  
19 would have a major impact on our Constitution by altering the balance of power  
20 between the Federal and State governments, and these concerns were validated through

1 testimony to this committee. Under our Constitution, the Federal Government has  
2 limited powers and much authority over everyday lives of Americans is left to State  
3 governments and to people themselves.

4         However, based upon longstanding Supreme Court precedent in the case of  
5 Missouri v. Holland, the Federal Government's power can be expanded well beyond  
6 the Constitution's normal limits through ratification of a treaty. Because the CRPD  
7 deals extensively with matters that the Constitution leaves to the States, including  
8 family law, ratifying this treaty would significantly expand Federal authority.

9         This committee heard substantial testimony establishing that the federalism  
10 reservation adopted last Congress was insufficient to prevent this outcome.

11         We sought to address this concern by developing and negotiating a set of RUD's  
12 that would, first, prevent any expansion of Federal authority and, second, prevent a  
13 future Congress or President from undoing these protections while bypassing the  
14 Senate's advice and consent. In the end, that process made clear we cannot be certain  
15 that even the strongest RUD's would achieve these goals and stand the test of time. I  
16 have come to believe that with a treaty like the CRPD, any uncertainty in our ability to  
17 prevent significant changes to the Constitution and its structure is not acceptable.

18         That said, I urge the committee to include the strongest possible RUD's on this  
19 issue to give the American people the greatest assurance possible that this treaty will

1 not alter our constitutional system, should the treaty ultimately be ratified by the  
2 Senate.

3 In addition, the process of thinking through these legal issues has raised related  
4 concerns in my mind about these types of international agreements which have  
5 proliferated internationally without sufficient understanding and scrutiny. CRPD is a  
6 kind of treaty that, instead of dictating the relationships between countries, dictates how  
7 a particular country's government must treat its own people. In this way, treaties like  
8 the CRPD often seek to establish international laws or government authority in areas  
9 where it is simply not appropriate.

10 Specifically, the CRPD would seek to establish certain rights in the United States  
11 for those with disabilities, but in the United States, the rights of Americans are properly  
12 established by the Constitution. The CRPD also seeks to establish what our  
13 Government must proactively do to assist the disabled, reaching deep into many  
14 aspects of life, including education, housing, income assistance, health care, and family.

15 It is often said that our existing laws are sufficient to fully comply with CRPD  
16 due to the Americans with Disabilities Act. In fact, because the CRPD's obligations are  
17 so expansive, the administration's treaty transmittal package cites 13 different Federal  
18 statutes, as well as provisions of at least 24 others, that combine with an unaccounted  
19 for list of State laws to fulfill our responsibilities under this treaty. The policies  
20 embedded in each of these laws has been developed over the course of decades through

1 the give and take of our democratic process. Importantly, this democratic debate is not  
2 frozen in time in 2014. It continues.

3         So what is the best way to provide access for those with disabilities to their  
4 communities? How should assistance be provided to those who cannot work? How  
5 should we think about assisting and treating those impacted by mental illness? These  
6 questions are rightly decided through the democratic decision-making at the Federal  
7 and, yes, State and local levels, and the results of that process should not be called into  
8 question by this type of treaty commitment.

9         Ultimately, I am unable to vote for a treaty that could alter our Constitution, as  
10 well as undermine the legitimacy of our democratic process as the right way to make  
11 decisions about the treatment of our citizens. Were we simply discussing participation  
12 in a global forum to advocate for fundamental human rights protections, develop best  
13 practices, and promote U.S. standards, I expect there would be universal and  
14 enthusiastic support. However, a treaty like this carries with it significant legal  
15 implications for our constitutional system. It is not an appropriate means for domestic  
16 governance.

17         I am disappointed — truly disappointed — that I cannot support this treaty, but I  
18 stand ready to look at other ways to enhance ongoing U.S. efforts to improve  
19 circumstances for the disabled both at home and around the world.



1           And I thank you for the patience for listening to that. I speak very rarely at  
2 length, and I thank you for the way you conduct these committee hearings.

3           **THE CHAIRMAN.** Well, thank you, Senator Corker. I appreciate your concerns.

4           I will go to others in a moment, but since some of the concerns that Senator  
5 Corker raised I think echoes the concerns of others both on and off the committee, let  
6 me try to deal with some of them briefly.

7           First of all, you know, I believe very clearly that the treaty cannot be used to  
8 change the balance of power between the Federal Government and the States. And in  
9 my perspective, that point is even clearer in light of the Supreme Court's decision in  
10 Bond v. The United States. From my perspective, there was never a real worry of a  
11 Federal power grab when it came to the CRPD because the treaty would be  
12 implemented through previously enacted legislation whose constitutionality had  
13 already been upheld. But the Bond case shows that if the Federal Government does try  
14 to overstep its bounds, the Court is there to correct it.

15           Now, I think that to assuage some of these concerns, the committee last year  
16 adopted a declaration which states the Senate declares that in view of all of the  
17 reservations to be included in the instrument of ratification, current United States law  
18 fulfills or exceeds the obligations of the convention for the United States of America.  
19 And that declaration appears in the resolution text before us today.

1           And I would say to my dear friend that I understand that somehow he has a  
2 concern that the reservations, understandings, or declarations cannot withstand the test  
3 of time. I would simply ask him to think about when is it that the RUD's that have been  
4 previously passed by the Senate have not withstood the test of time. I think the answer  
5 to that, if one thinks about it, is that the RUD's have, when previously adopted, stood  
6 the test of time. I think when Jesse Helms passed his federalism provisions in the  
7 International Covenant on Civil and Political Rights, they have stood the test of time.  
8 So I hope that as we move to this markup and move beyond to the floor, that members  
9 will think about some of those realities.

10           Senator McCain?

11           **SENATOR MCCAIN.** Thank you, Mr. Chairman. I would like to thank you for the  
12 effort you have made on behalf of this treaty. We would not be here where we are  
13 today without the effort that you have made, and I thank you.

14           I will try to be brief, just to say that I think most of us who were around at the  
15 time look back with extreme satisfaction and pride at the passage of the Americans with  
16 Disabilities Act. It gave rights to those Americans with disabilities that they did not  
17 have before, and it has had an incredibly beneficial effect on those Americans with  
18 disabilities and their ability to lead lives which we guarantee to all of our citizens.

1           Mr. Chairman, I do not often count votes, but I do know that there is not a  
2 sufficient number of votes to pass this on the floor of the Senate. I say that with great  
3 regret, but I also have to say that is the reality.

4           It is also interesting to me that the entire disabilities community in America is  
5 solidly behind the treaty. It is also interesting to me that all of our veterans  
6 organizations are solidly behind this treaty as well for obvious reasons because so many  
7 of our brave Americans come home with disabilities that they suffered in defending the  
8 freedom of the rest of us.

9           And frankly, on a personal note, I am most disappointed because of the love and  
10 affection I have for the best example of American with disabilities who rose to the  
11 pinnacles of power and influence and dedication of one Bob Dole who has been the  
12 catalyst behind the effort that many of us have made.

13           I would like to thank Senator Barrasso, Senator Ayotte, and others who have  
14 worked hard to try to make this treaty a reality.

15           I understand the concerns that are made. I am not here to debate them, but I  
16 think sometime we may look back with regret when we travel to other countries and we  
17 see those citizens of other countries that do not have the same rights of those with  
18 disabilities that we have today in the United States of America. And I would not think  
19 that with the passage of this treaty that all of a sudden everything is going to change in  
20 the world and everybody is going to have the same rights as our Americans with

1 disabilities, but I would argue that it would be a major step forward. And it is a fact  
2 that this country protects the rights of our citizens with disabilities probably like no  
3 other. There may be some that are the same.

4         So it is not a proud moment for me here again to see the Senate caught up to a  
5 degree in the partisanship that unfortunately has characterized our gridlock on almost  
6 everything that we do around here. I hope that Bob Dole and many of our  
7 representatives in the disability community understand we will not quit on this issue  
8 because we believe it is a fundamental issue of human rights. And if there is anything  
9 that we should be standing for as representatives of the people we serve, it is the respect  
10 for human rights and advocacy for it.

11         So I thank you, Mr. Chairman, for all of your efforts. Again, maybe at a later  
12 time, we will be able to convince a number of our colleagues to give this the  
13 consideration for people all over the world who need the protections of this treaty. I  
14 thank you, Mr. Chairman.

15         **THE CHAIRMAN.** Well, let me thank you, Senator McCain and Senator Barrasso and  
16 Senator Ayotte and Senator Kirk who all were actively engaged, along with colleagues  
17 on this side, in trying to get to numbers that we want.

18         I think that the disability community deserves its day. They have made it very  
19 clear to me that they would like to have an opportunity to place this in a position to try  
20 to move forward.

1           But I certainly appreciate your efforts and it has been solid and rock fast, along  
2 with Senator Barrasso and others, in trying to get us to a point that I think would be  
3 correct. I am sorry that we may not be there yet, but I am not ready to throw in the  
4 towel. But I appreciate your efforts.

5           Senator Boxer?

6           **SENATOR BOXER.** Mr. Chairman, I ask unanimous consent to put my full statement  
7 in the record.

8           **THE CHAIRMAN.** Without objection.

**[The prepared statement of Senator Boxer follows:]**

**[COMMITTEE INSERT]**

9           **SENATOR BOXER.** And before Senator McCain has to leave, I just want to thank you  
10 for your statement because I thought it was so heartfelt and right to the point. It is a  
11 very elegant, simple point. We have led the way on the rights of disabled. How proud  
12 are we for that in this country? How can we now walk away when it comes to ensuring  
13 that our people when they travel abroad — you know, are discriminated against.

14           And my friend, Senator Corker — I listened to him. It is very legalistic and all  
15 the rest. Fine. Can we get above that and go with what we know is the right thing to  
16 do? This is America. This is the place where everyone is considered equal. For us not  
17 to ensure that our people are treated equally elsewhere is shocking. And we have to  
18 send a message that we will stand up.

1           And that is why I am so grateful to the chairman for this and to my Republican  
2 friends. Look, Senator Barrasso and I — we do not agree on a lot of things. We really  
3 like each other, but we do not. He is a very important member of Environment and  
4 Public Works. You know, maybe 2 out of 100 times —

5           [Laughter.]

6           **SENATOR BOXER.** And I tell you I treasure those moments.

7           SENATOR MCCAIN. What are those two?

8           [Laughter.]

9           THE CHAIRMAN. I am not sure you are helping him.

10          [Laughter.]

11          **SENATOR BOXER.** Well, he has got a 98 to 2 record with me. That should help him  
12 in his next election.

13          [Laughter.]

14          **SENATOR BOXER.** But the point is for us to come together like this is something that  
15 is way bigger than our political careers. It is about really protecting people who need  
16 protection.

17          I want to close just picking up on the point about our veterans. We know how  
18 many people we lost in the wars. We voted differently on the wars, but God, we all  
19 stand with those who fought and who did come home with such serious disabilities.  
20 And thank God that we have come so far that we can save the lives, but we have so

1 many, tens of thousands, who travel abroad, veterans. We want to make sure they are  
2 treated fairly.

3 And I do not know whether Senator Rubio is going to offer his abortion  
4 amendment, but if he does, I have a great counter to that from Dr. Bill Frist, former  
5 Senator here. We do not need to get into that.

6 This is an elegant, straightforward point. We have taken the lead on this. We  
7 want to make sure the world follows our lead, and until we do this, it seems to me we  
8 just lose the respect around the world.

9 So my thanks to the chairman again and to my Republican friends who stepped  
10 up here. And I look forward to making this a reality.

11 **THE CHAIRMAN.** Anyone else who wishes to speak to the treaty? Senator Durbin?  
12 Then we will consider amendments.

13 **SENATOR DURBIN:** Mr. Chairman, we often enter into a debate about whether we  
14 are exceptional, whether there is something different about this country. I believe there  
15 is. I do not believe we can take special credit for it, and I think we inherited a set of  
16 values and institutions which I believe will endure long beyond our lives and which we  
17 have benefited from, but to which we owe a great responsibility in our generation. I  
18 thank Senator McCain, Senator Barrasso, Senator Ayotte, and others for acknowledging  
19 this exceptionalism and saying the United States is going to join with other civilized

1 nations around the world in establishing our values and our principles when it comes to  
2 the disabled.

3 Keep in mind each year through Presidents, Democratic and Republican as well,  
4 we issue a human rights score card on the world. Our State Department issues a human  
5 rights score card on the world. How can a nation do that and not lead when it comes to  
6 issues of human rights? It really raises a serious question, does it not? Is it time for us  
7 to put in a provision, a rider saying no more human rights score cards and we are going  
8 our own way? I hope not.

9 I hope that what we stand for as a Nation, what we stand for as Members of  
10 Congress can lead us to say judge us too as we judge others. And if we are to be judged  
11 as we judge others, how do we explain defeating this treaty? How do we possibly  
12 explain that? I do not see it. When exceptionalism becomes exclusivity, do it our way  
13 and we answer to no one, it really has moved into arrogance. And I hope we never  
14 reach that point. We need some humility.

15 What we enjoy in this country we inherited, and we have an obligation to pass  
16 on. And as the world continues to watch us and asks of us every day to do something  
17 exceptional, this is one of those things.

18 I thank my colleagues for stepping up. I hope others will too.

19 **SENATOR MARKEY:** Mr. Chairman, briefly?

20 **THE CHAIRMAN.** Senator Markey?



1           **SENATOR MARKEY:** Thank you.

2           In 1990 — Senator McCain referred to it — we passed the Americans with  
3 Disabilities Act. In that law, I was able to add the language for closed captioning. I was  
4 able to add the language for ensuring that telephone calls could be made by the deaf,  
5 telephone devices for the deaf. It kind of transformed their relationship with our  
6 society. We led the way. That is 24 years ago.

7           In 2010, all information migrated over to wireless devices. If you are not  
8 communicating on a wireless device today, you are not able to participate in American  
9 society. So on a bipartisan basis, I was able to, with Republicans, add the language that  
10 said that all these devices have to be accessible to the deaf and the blind. In this room,  
11 as we sit here right now, at least one-third of the people are looking down at their  
12 wireless device as we sit here, Members of the Senate, as well as staff and visitors. They  
13 are looking at them. And unless we pass laws, then the deaf and the blind, 20 million,  
14 30 million Americans, would be excluded.

15           So I am very proud of the fact that the people in this room can look down at their  
16 devices. Hopefully we will reach a day where no one ever has to look up again, ever  
17 participate in a conversation with anyone.

18           [Laughter.]

19           **SENATOR MARKEY:** That would be great.

1           But if we are going to do that, then we have a chance — let us be honest — to sell  
2 these devices all around the world. We have a way of having a treaty that sets a  
3 standard. So you do not get a chance very often to do something that is good while you  
4 are doing well doing it, and that is true with every single thing that we are talking about  
5 here. Our standards are already the highest in the world.

6           So we are talking about the Electronic Association of America. We are talking  
7 about every industry on board with this. They see this as a great market for us, and it is  
8 going to do something very special for all those people all around the world who have  
9 the very same disabilities. So I just think that you do not get an opportunity to do this  
10 much good and do well doing it in the United States Senate, United States Congress.  
11 And I would urge adoption of the treaty.

12           **THE CHAIRMAN.** Thank you, Senator Markey. And to illustrate your point, the  
13 Business Roundtable and other major business entities are in support of the treaty in  
14 pursuit of its passage both on what is right for citizens with disabilities and also the  
15 economic opportunities to create standards globally that would have American  
16 products be sold abroad.

17           At this point, we have a 10:45 vote, and I will continue to keep the meeting going  
18 until its successful conclusion, regardless of what that ends up being.

19           So I would like to start off, unless there is anyone who wants to speak in general  
20 about the treaty. Senator Barrasso I know has a series of amendments.

1           **SENATOR CORKER.** If I could just respond briefly. It will be very brief.

2           Our country is an exceptional country. One of the reasons that we are that way  
3 is because of the way our Constitution is and the way we deal with issues through  
4 democratic institutions. And, look, we are the beacon of the world relative to the way  
5 we treat people with disabilities, and we are going to continue to be that. And this  
6 treaty will be in effect whether we are a part of it or not. But there is something  
7 exceptional about the way we deal with people in our country, the way we deal with  
8 laws. I know there was a comment made about legalistic points, but that is what we do.  
9 We pass laws, and we have to pay attention to their reach and their impact.

10           I know one person referred to the word “partisanship.” I would just have to say  
11 surely on a committee that has probably acted in more of a bipartisan way than any  
12 committee in the United States Senate, that has worked together to solve problems in a  
13 very bipartisan way, just because on an issue people disagree, surely people are not  
14 going to classify that as some kind of partisanship. I think we have an honest  
15 disagreement. It is heartfelt. And yet, I do not imagine there is any group of people  
16 that cares more about people with disabilities than the people sitting round this table  
17 and our colleagues in the Senate. And I do thank Senator McCain and Harkin and  
18 others, Senator Markey, as he mentioned, for their leadership on this issue.

19           So I know that there are some amendments. I thank you for the time and for the  
20 patience in giving a very long opening statement.

1           **THE CHAIRMAN.** Senator Barrasso?

2           **SENATOR BARRASSO.** Thanks, Mr. Chairman. I have three amendments. I would  
3 call up amendment number 1, Barrasso amendment 1.

4           It is an understanding that states that nothing in the convention limits the rights  
5 of parents to home school their children. It reiterates the rights of parents to educate  
6 their children, that those rights are protected.

7           **THE CHAIRMAN.** Does anyone want to be heard on it? I am going to support this  
8 amendment. I am going to support the amendment. While I do not think it is needed, I  
9 want to support — I mean, the bottom line is I do not think it is needed because I think  
10 that is clear, but I think that having been able to make it even more clearer and  
11 particularly support a long-term supporter of the treaty, I will do that. I believe the  
12 treaty and its resolution already make it very clear this treaty does not affect the rights  
13 of parents to home school their children, but I am happy to support the amendment to  
14 make the point that this is crystal clear. And I would urge my colleagues to vote yes.

15           Is there anyone else who wishes to speak on it?

16           [No response.]

17           **THE CHAIRMAN.** If not, I think we can do this by voice. All those in favor will say  
18 aye.

19           [Chorus of ayes.]

20           **THE CHAIRMAN.** All those who are opposed will say no.

1 [No response.]

2 **THE CHAIRMAN.** The ayes have it and the amendment is agreed to.

3 **SENATOR BARRASSO.** Mr. Chairman, Barrasso amendment number 2 clarifies  
4 through an understanding nothing in article 7 requires a change to existing U.S. Federal,  
5 State, or local law.

6 **THE CHAIRMAN.** I am going to support this amendment. I just want to make it clear  
7 that I understand the reference to law in this section to encompass Federal, State, or  
8 local law anyway. So I view this as a helpful clarifying amendment.

9 Is there anyone who wishes to speak to it?

10 [No response.]

11 **THE CHAIRMAN.** If not, unless there is an objection, we will do it by voice. All those  
12 in favor will say aye.

13 [Chorus of ayes.]

14 **THE CHAIRMAN.** All those opposed will say no.

15 [No response.]

16 **THE CHAIRMAN.** The ayes have it and the amendment is agreed to.

17 **SENATOR BARRASSO.** Mr. Chairman, just one other. I call up Barrasso amendment  
18 number 4, and there is a second degree to that.

19 This basically provides an understanding with regards to U.S. sovereignty and  
20 limits on the authority of what is called the Committee of Experts, that the United States

1 understands that the Committee of Experts has no authority to compel actions by the  
2 United States.

3 **THE CHAIRMAN.** Again, I am going to support this amendment. In my view, the  
4 issue is already addressed in the underlying text which was the 2012 committee-passed  
5 version. But I do not see any harm in assuaging these concerns explicitly which makes  
6 it clear the Committee on the Rights of Persons with Disabilities established by the  
7 treaty would have no power to make decisions that would have any legally binding  
8 effect on the United States.

9 Is there anyone who wishes to speak to the amendment?

10 [No response.]

11 **THE CHAIRMAN.** If not, all those in favor will say aye.

12 [Chorus of ayes.]

13 **THE CHAIRMAN.** All those opposed will say no.

14 [No response.]

15 **THE CHAIRMAN.** The ayes have it and the amendment is agreed to.

16 **SENATOR BARRASSO.** Thank you, Mr. Chairman. That is the second degree as well.

17 **THE CHAIRMAN.** And that vote included the second degree amendment, unless  
18 there is objection to that. If there is no objection, so ordered.

19 **SENATOR CORKER.** So it was a second degree and amendment 3 that just —

20 **SENATOR BARRASSO.** It was amendment 4.

1           **THE CHAIRMAN.** All right. Any other amendments?

2           **SENATOR RUBIO.** I would like to call up my amendment number 1. It has been  
3 alluded a moment ago by Senator Boxer.

4           And I want to begin saying this is not some sort of extraneous introduction of a  
5 deeply divisive issue with regards to abortion. It actually is on point, and I will explain  
6 why.

7           Article 25 of this convention requires state parties to provide persons with  
8 disabilities with the same range, quality, and standard of free or affordable health care  
9 programs as provided to other persons, including in the area, quote, of sexual and  
10 reproductive health. Unquote. So when the UN General Assembly met and approved  
11 the final text of the convention on December 13 of 2006, more than one dozen nations,  
12 including the United States, made official statements regarding their interpretation of  
13 that phrase, "reproductive health."

14           Here is what the pertinent part of the U.S. statement reads. It says, quote, in that  
15 regard, the United States understands that the phrase "reproductive health" in  
16 subparagraph (a) of article 25 of the draft convention does not include abortion, that its  
17 use in that article does not create any abortion rights and cannot be interpreted to  
18 constitute support, endorsement, or promotion of abortion. We stated that  
19 understanding at the time of the adoption of the convention in the ad hoc committee  
20 and note that no other delegation suggested a different understanding of that term.

1 End quote. That was the statement that was issued when that final text came before the  
2 convention on the part of the U.S. and a dozen other nations had similar regards.

3 So this amendment is entirely consistent with this. The adoption based on these  
4 facts really should not be controversial for the Senate to clarify the U.S. understanding  
5 of the term “reproductive health” within this convention. It is a straightforward  
6 amendment. It simply restates the official statement issued by the U.S. delegation to the  
7 UN during adoption of this convention by the UN General Assembly in 2006.

8 And let me close my presentation on this amendment by making the following  
9 point. For me, this issue of disabilities is not an academic one. I actually was raised by  
10 someone who experienced discrimination because of a disability. When my grandfather  
11 was 6 years old, he suffered polio in rural Cuba. So he lost the use of one of his legs.  
12 And one of the reasons why he struggled to provide for his daughters in Cuba his entire  
13 life is that he was disabled. People would not hire him. He would go apply for work  
14 and they would not give him the work. And my mother has told us on several  
15 occasions that while she never went to bed hungry, there were nights when she was  
16 convinced her parents did because of how much he struggled to find work, including  
17 work he was fully capable of doing. But there was a stigma associated with the fact that  
18 he had to walk with a cane and that he struggled so much to provide for his daughters  
19 even when they moved to Havana which was supposedly a cosmopolitan city. The  
20 only job he could find was renting out a chair in the back of a barber shop where he fit



1 shoes and even there, he was often mocked and made fun of because of the disability he  
2 suffered.

3 So for me, this issue is of great importance, and I want to be supportive of this  
4 effort. But for me, this is an issue of deep conviction. I know others share a different  
5 one, and I have tried to tailor this to be narrowly focused on the official statement that  
6 the U.S. issued as part of its delegation so there is no misunderstanding or ambiguity  
7 about what this resolution — what this convention applies to and what it does not. So  
8 that is why I am offering this amendment.

9 **THE CHAIRMAN.** Senator Boxer?

10 **SENATOR BOXER.** Thanks. I would again ask unanimous consent to place my entire  
11 statement in the record.

12 **THE CHAIRMAN.** Without objection.

13 **SENATOR BOXER.** Senator Rubio, that story of your granddad is a very touching,  
14 real story. That is why we should be supporting this treaty.

15 The issue you are bringing into this now, as you know, is one of the most divisive  
16 issues in America today, and there is no place for this abortion debate. And I will  
17 explain why.

18 This treaty is about ensuring that people living with disabilities are afforded the  
19 same protections and access to services including health care as non-disabled people. It  
20 simply says that disabled people should be treated like anyone else under the law. And

1 any amendment that would treat them differently goes contrary to the treaty itself.  
2 Abortion should not be singled out in this context, nor should any other health care  
3 procedure. This treaty is not about abortion, vasectomies, cancer screenings, prostate  
4 exams. You know, we deal with that as we do in health care debates.

5 Now, we had this same debate 2 years ago when Senator Rubio offered a similar  
6 amendment during this committee's consideration in 2012. And at that time, we came  
7 together and we adopted a second degree amendment that is now part of this treaty.

8 Chairman Kerry wrote it, and it says, just as a reminder to everybody, the United States  
9 of America understands that the convention is a nondiscrimination instrument.

10 Therefore, nothing in it, including article 25, addresses the provision of any particular  
11 health program or procedure. Rather, the convention requires that health care  
12 programs and procedures are provided to individuals with disabilities on a  
13 nondiscriminatory basis. So we basically say there is no difference whether we are  
14 disabled or not. We are entitled to the same procedures and treatments.

15 The resolution of advice and consent we are considering today includes Senator  
16 Kerry's amendment. So there is no reason to have this debate unless we want to inject  
17 this divisive issue.

18 And in closing, I am going to quote from an op-ed of Dr. Frist, who many us  
19 served with. He was a very strong leader here. In many parts of the world, he writes,  
20 people with disabilities, regardless of age, are believed to be sexually immature of

1 inactive. The assumption can make them targets for rape and other sexual crimes while,  
2 at the same time, gynecological and obstetrical care are withheld and considered  
3 inappropriate and unnecessary. In other cases, they are forcibly sterilized or forced to  
4 have abortions simply because they have a disability.

5 The treaty's sexual and reproductive health language is a necessary provision to  
6 protect these people. It does not define services. A ratifying country's existing law  
7 provides the definition. The agreement simply demands that those with disabilities not  
8 be denied any treatments based on their disability.

9 So in my view, Senator Rubio has every right — and I believe it is from a place of  
10 conviction. I am not in any way disparaging that. But the amendment is unnecessary.  
11 It is old news. We have dealt with it. It is an impediment to ratification of this critical  
12 treaty, and I urge us to reject it.

13 **SENATOR RUBIO.** Mr. Chairman, if I could respond?

14 **THE CHAIRMAN.** Senator Rubio?

15 **SENATOR RUBIO.** Senator Boxer makes two points that I want to address. Let me  
16 address it first.

17 The first is that this is one of the most divisive issues in America. No doubt  
18 about it. It is. And I think that people of good faith are on both sides of this argument  
19 and everywhere in between since it is a complicated issue, not a simplistic one. The  
20 divisiveness in America is about what the laws of the United States should be with

1 regards to regulating and/or restricting access to abortion. And from everything I have  
2 heard here today, this treaty in no way affects the laws of the United States. And  
3 therefore, this is not something that should be of concern to us in that regard.

4         The second point has to do with — it is a two-pronged argument. On the one  
5 hand, the argument is that procedures like abortion should not be restricted to people.  
6 On the other hand, the argument is that this language already restricts it. So I do not  
7 know which one of the two it is, leading to the ambiguity that now exists. As Senator  
8 Boxer correctly points out, in the underlying resolution, there is language that says  
9 nothing in the convention, including article 25, addresses the provision of any particular  
10 health program or procedure. It is my opinion that it does not go far enough towards it  
11 being specific on something that the negotiators made very clear and felt was necessary  
12 to address back in 2006 when the U.S. entered into this convention.

13         So basically I understand that the word “abortion” creates divisiveness and may  
14 cost us votes on the other side because the use of that term is a loaded one politically on  
15 both sides of the aisle. But it is a loaded term politically on both sides of the aisle, and  
16 its omission from this is keeping some people from supporting this. And so that is why  
17 I have restricted. The only thing I have asked for here is that we restate the language  
18 that was made forward in the official statements regarding the interpretation of the  
19 phrase “reproductive health.” I do not go any further than that. All I am asking us to  
20 do is to reaffirm what the U.S. has already said in the official statements when this thing

1 was ratified in December of 2006, and a dozen other countries joined on and no other  
2 delegation suggested a different understanding of that term. So what this boils down to  
3 apparently is that because the word "abortion" is being used, it could lead to some  
4 political difficulty in terms of ratification. That point I do understand, but I have tried  
5 to limit this to only restate the position that the U.S. already took in 2006.

6 **SENATOR DURBIN:** Mr. Chairman?

7 **THE CHAIRMAN.** Senator Durbin?

8 **SENATOR DURBIN:** I would like to pose a couple of questions to Senator Rubio for  
9 clarification. The statement made by Senator Boxer in my notes here suggests that in  
10 many countries disabled people are forced into abortions and sterilizations. So when  
11 you remove any reference to the abortion procedure, are you removing the protection  
12 of these disabled people from that form of discrimination?

13 **SENATOR RUBIO.** No. What we are trying to get back is the official statement of the  
14 U.S. that says, this article does not create any abortion right and cannot be interpreted  
15 to constitute support, endorsement, or promotion.

16 **SENATOR DURBIN:** My concern is when you go further and say in this section on  
17 reproductive health, article 25(a) does not include abortion, you are viewing it in terms  
18 of the elective abortion by a person. I am describing to you the other side of the coin  
19 where abortion and sterilization may be forced on a disabled person. And your  
20 removal of the abortion procedure in that context from protection under this treaty may

1 suggest that discrimination against disabled people involved in abortion is not one of  
2 the concerns of this treaty. And I think it should be. Do you not?

3 **SENATOR RUBIO.** Well, actually, Senator Durbin, I have tried to limit the language  
4 here to only apply to what the U.S. has already stated for purposes of avoiding all of the  
5 divisiveness that comes with this debate. I would be more than open to an amendment  
6 to my amendment that actually makes clear that forced abortions and forced  
7 sterilization is not something that we should be condoning. I am against that.

8 **SENATOR DURBIN:** I think we all agree. But I think you have left some ambiguity in  
9 your approach to it here as to whether you are protecting —

10 **SENATOR RUBIO.** I would be more that to write language that says that we would  
11 condemn. I would be happy to expand it to condemn forced abortion and sterilization  
12 if that is what you are proposing.

13 **SENATOR DURBIN:** Most of us feel that the treaty as written does that, and your  
14 amendment, I think, makes this a little more ambiguous.

15 The second question is this for clarification. If a country allows elective abortion  
16 to save the life of a mother in the first trimester that is allowed by law and the disabled  
17 person seeks to use that right under the existing law of that nation, are you suggesting  
18 here that they should not have that right if they are disabled?

1           **SENATOR RUBIO.** No. Every country has rights that regulate abortions. Again, that  
2 is the laws of their own country. We are talking about a clarification about what that  
3 term means with regards to this convention.

4           **SENATOR DURBIN:** You cannot have it both ways. I do not think you can say each  
5 country can decide this, but you want to override on the issue of abortion.

6           **SENATOR RUBIO.** No. It does not override it in any way. In no way does this  
7 restrict what a country makes legal in their own territory in terms of medical  
8 procedures. All I am making clear is that this term, as it is used in this convention as  
9 stated by the U.S. in its official statement with no objection from anyone — that that  
10 term as used here does not involve any inherent right to abortion as a result of this  
11 treaty — of this convention.

12           **SENATOR DURBIN:** I think once you have opened this door, you have a  
13 responsibility to make sure it is dealt with.

14           **SENATOR RUBIO.** But I do not understand that argument because I am already  
15 being told that what I am trying to achieve is already achieved in the text here.

16           **SENATOR DURBIN:** Well, what I am suggesting is once you have opened that door  
17 deciding you are going to take the abortion procedure and set it apart, then I think you  
18 have to address the possibilities. I have given you two, and I do not think your  
19 approach deals with it.

1           **SENATOR RUBIO.** But I think the approach has handled that for the following  
2 reasons. First, the position of many who oppose the language I proposed is that what I  
3 am seeking to achieve is already the case within the four corners of the document as it  
4 currently exists. Therefore, I am not adding any additional complexity to this that  
5 would not otherwise exist under the current language. All I am adding is clarity that  
6 restates the position that was taken by the U.S. at the time that this was signed and  
7 entered into with regards to the specific phrase.

8           **SENATOR BOXER.** Mr. Chairman, I know you do not want to prolong this —

9           **THE CHAIRMAN.** I am going to recognize you, Senator Boxer.

10          **SENATOR BOXER.** Can I speak now?

11          **THE CHAIRMAN.** Just give me a moment. We have a vote going on, and I do not  
12 want to cut any debate short. So we will take as much time as is necessary. But I am  
13 going to try to go up to the last minute of the vote and then recess and then  
14 immediately come back after the end of the vote.

15          Senator Boxer?

16          **SENATOR BOXER.** If I could just say, honestly it is so sad that we have to deal with  
17 this since the treaty is so clear. It is very clear. All it says is the convention requires that  
18 health programs and procedures are provided to individuals with disabilities on a  
19 nondiscriminatory basis. You do not have to get into this procedure or that procedure.  
20 Everyone has a procedure. The fact is there is nothing in this that changes any



1 country's laws. And all we are saying is if our people are caught overseas, for example,  
2 that they be treated equally in every way, no different than other people because they  
3 are disabled.

4         And by changing this — and I cannot get into all the details of what Senator  
5 Rubio does with this language. He is trying to redefine, frankly, what health  
6 procedures are and what they are not, and that is not appropriate to do in this  
7 document. And I think again it is very unfortunate that some members of the anti-  
8 choice part of our political life here — I am not saying it is all Republicans. I do not  
9 know. It might be. It might not be — would use this treaty as a way to fight that battle.  
10 It is so wrong. It is so wrong to the disabled people to catch them up in this darned  
11 debate. It is so wrong to the veterans. It is so wrong to people like your grandfather to  
12 throw this into this debate. It is unnecessary. We worked so hard to get the language  
13 Senator Kerry wrote, and he worked so hard. I read it.

14         And I will close with this, and I promise I will not respond anymore, Mr.  
15 Chairman, because I know I get a little excited. But the United States of America  
16 understands that the convention is a nondiscrimination instrument. Therefore, nothing  
17 in the convention, including article 25, addresses the provision of any particular health  
18 program or procedure. Rather, the convention requires that health programs and  
19 procedures are provided to individuals with disabilities on a nondiscriminatory basis.  
20 You cannot get clearer than that.

1 Thank you.

2 **SENATOR JOHNSON.** Mr. Chairman?

3 **THE CHAIRMAN.** Senator Johnson?

4 **SENATOR JOHNSON.** Senator Boxer said nothing in this treaty — it does not change  
5 any country's laws, and yet article 4, general obligations, point 1A, to adopt all  
6 appropriate legislative, administrative, and other measures for the implementation of  
7 the rights recognized in the present convention. The treaty obligates the parties to  
8 adopt appropriate legislative remedies for apparently whether or not they are meeting  
9 the standards of the treaty. So I do not see where you can say it does not change any  
10 country's laws. There is an obligation to do exactly that. So there is a legitimate  
11 concern.

12 I want to associate myself with Senator Corker's opening statement. I will not  
13 restate it.

14 But this is well intentioned. I appreciate the chairman's willingness to work with  
15 those of us who actually want to get a "yes" on this. But we cannot because there is  
16 ambiguity. There are legitimate concerns on sovereignty. And so to say that it does not  
17 change any country's laws, that is precisely what it is intended to do. And we are  
18 concerned about how that may change our lawmaking process and the kind of pressure  
19 it might put on us. So there are legitimate concerns for those of us that just cannot quite  
20 get to saying "yes," as well intentioned, as much as we want to help the disabled across

1 the world and certainly in America. And it is just sad that we are using words like  
2 “partisanship” and throwing these things around like we lack compassion if we are  
3 going to vote for the sovereignty of America and against the ambiguity that this treaty  
4 legitimately does create.

5 **SENATOR DURBIN:** Would the Senator yield for a question?

6 **SENATOR JOHNSON.** Yes, I am done.

7 **SENATOR DURBIN:** I would just say we also affirmatively state the Americans with  
8 Disabilities Act means that the United States law already conforms with this treaty. So  
9 we are not creating a new responsibility to pass any new legislation. We established  
10 that affirmatively.

11 **SENATOR CORKER.** If I could, Mr. Chairman.

12 **THE CHAIRMAN.** We are going to have a full debate, but we are going to preserve  
13 order. The last time I checked, I recognize people.

14 Senator Johnson, do you want to respond to that?

15 **SENATOR JOHNSON.** No. I have made my point.

16 **THE CHAIRMAN.** Senator Corker?

17 **SENATOR CORKER.** I will let Senator Rubio go.

18 **SENATOR RUBIO.** I just want to close with the amendment — I know where we are  
19 on the time here — by saying that again the perception that some are trying to create is  
20 that this is some issue regarding a domestic debate that we are having on the right to

1 choose or the right to life and I have air-dropped it into this issue. This came up in 2006.  
2 There was a specific statement made on the official record with regards to this  
3 phraseology. And all I am trying to do is re-recognize that in this specific text of this  
4 convention. That is all I am doing with regards to this.

5 And I do not understand the argument that, on the one hand, says we do not  
6 need your language because your language is already the case with the text that is  
7 already in place, but on the other hand, they are saying we do not want this language  
8 because it may change the way this convention is interpreted. So it cannot be both.  
9 Either this is already covered or it is not covered. And if it is already covered, then  
10 really all we should be debating is whether we need additional language. And I believe  
11 that we do and that is what I am arguing, that if we agree the existing text of this  
12 convention already deals with what I am saying — and all I am trying to do is create  
13 additional clarification in light of the statement that was made officially by the U.S. in its  
14 approval of the final text. That is all my amendment asks for.

15 **THE CHAIRMAN.** Senator Corker?

16 **SENATOR CORKER.** You have chaired this committee for a year and a half, and I  
17 think committee members have done a really good job mostly respecting differences of  
18 opinion. There is a legitimate debate here that is real. And the Supreme Court helped  
19 create this debate by rulings that they made earlier with regards to Missouri v. Holland.  
20 And so there is a legitimate debate.

1 I agree with Senator Johnson. Just because we say the laws we have on the books  
2 today calls us to be in compliance with a treaty, there is a conference. The treaty lives  
3 on. And in fact, it does affect U.S. law.

4 I just have to say I am disappointed. I know people have said they are  
5 disappointed that because people disagree regarding this treaty or because we have  
6 members that want to bring up things that they care deeply about, that somehow this  
7 treaty brings out Senators making pejorative comments about other people and judging  
8 them as if they do not have the same kind of compassion or that they are trying to excite  
9 differences by things they care about. We have a procedure here. It is called voting.  
10 We have an amendment. And I would assume the best way to dispense with this  
11 amendment is to vote on it and the others and move on with our business. But I too am  
12 very disappointed with the way this meeting has transpired.

13 **THE CHAIRMAN.** Okay. Let me first state I do not really think anybody questions  
14 anybody's depth of sincerity on their views. I think everybody has some deeply held  
15 views, and those have been and will continue to be respected by the committee. I think  
16 that there is a strong, passionate set of responses to those views, as it relates to what is  
17 the underlying law in the treaty on this and other issues.

18 Senator Johnson, if you will just withhold 1 minute so we can at least vote on this  
19 amendment. I appreciate that.

1           And, look, I have a concern that reflexively some members have opposition to  
2 treaties in general because any treaty seems to be a problem with federalism. I think  
3 that that is a mistaken view, and I hope we can work through that, whether it be this  
4 treaty or other treaties as well.

5           On this particular amendment, I will just simply say that the language negotiated  
6 last time was made clear that the treaty is a nondiscrimination treaty and prevents  
7 disabled women from being denied reproductive health services or being forced to have  
8 an abortion or to be sterilized. Those are pretty horrific practices that I believe have to  
9 end, and I believe that the language, contrary to the intent of the author I am sure,  
10 would in fact mean women with disabilities would continue to face such horrendous  
11 discrimination without the offending country violating their commitments under the  
12 treaty. I understand that there is some legitimate concerns here, and as I have said, I  
13 would be willing to continue to work towards seeing if there can be a common ground.

14           With that, I think the amendment has been fully debated, and I do not know if  
15 the Senator would accept a voice vote on it.

16           **SENATOR RUBIO.** I would like a roll call.

17           **THE CHAIRMAN.** The clerk will call the roll.

18           **THE CLERK:** Mrs. Boxer?

19           **SENATOR BOXER.** No.

20           **THE CLERK:** Mr. Cardin?

1           **THE CHAIRMAN.** No by proxy.

2           **THE CLERK:** Ms. Shaheen?

3           **THE CHAIRMAN.** No by proxy.

4           **THE CLERK:** Mr. Coons?

5           **SENATOR COONS.** No.

6           **THE CLERK:** Mr. Durbin?

7           **SENATOR DURBIN:** No.

8           **THE CLERK:** Mr. Udall?

9           **SENATOR UDALL.** No.

10          **THE CLERK:** Mr. Murphy?

11          **SENATOR MURPHY.** No.

12          **THE CLERK:** Mr. Kaine?

13          **SENATOR KAINE.** No.

14          **THE CLERK:** Mr. Markey?

15          **SENATOR MARKEY:** No.

16          **THE CHAIRMAN.** I would ask members to come back so we can continue. We have  
17 one more treaty to deal with.

18          **THE CLERK:** Mr. Corker?

19          **SENATOR CORKER.** Yes.

20          **THE CLERK:** Mr. Risch?

1           **SENATOR CORKER.** Yes by proxy.

2           **THE CLERK:** Mr. Rubio?

3           **SENATOR RUBIO.** Aye.

4           **THE CLERK:** Mr. Johnson?

5           **SENATOR JOHNSON.** Yes.

6           **THE CLERK:** Mr. Flake?

7           **SENATOR FLAKE.** Yes.

8           **THE CLERK:** Mr. McCain?

9           **SENATOR CORKER.** Yes by proxy.

10          **THE CLERK:** Mr. Barrasso?

11          **SENATOR BARRASSO.** Aye.

12          **THE CLERK:** Mr. Paul?

13          **SENATOR CORKER.** Yes by proxy.

14          **THE CLERK:** Mr. Chairman?

15          **THE CHAIRMAN.** No.

16          The clerk will report.

17          **THE CLERK:** Mr. Chairman, the nays are 10. The ayes are 8.

18          **THE CHAIRMAN.** The amendment is not agreed to.

19          The committee will stand in recess. Immediately after the last vote, we will

20 reconvene. And this committee stands in recess.



1 [Recess.]

2 **THE CHAIRMAN.** This meeting will come to order.

3 We have enough members at this point to at least consider other amendments.  
4 We will have to wait for a couple of more to actually vote on them, to the extent that  
5 there are any other amendments or comments.

6 Does anyone else wish to offer an amendment? Senator Johnson?

7 **SENATOR JOHNSON.** Mr. Chairman, I can either do this — I have got two  
8 amendments I would like to offer. I can do them together because they are somewhat  
9 dependent on each other. But let us just start with Johnson amendment number 1.

10 And the purpose is to really provide a reservation regarding nonseverability of  
11 reservations, understandings, and declarations. It is pretty basic. Again, I want to  
12 associate myself with Senator Corker's concerns that he expressed in his opening  
13 statement. I am not sure we can write reservations or understandings strong enough to  
14 guarantee our sovereign rights. This treaty does not have an effect on how we create or  
15 maintain or change laws in the future, but to the extent we could, I think it is extremely  
16 important that for me to even begin to consider voting for the treaty, I would have to be  
17 very certain that if any of the reservations or understandings or declarations are severed  
18 from the treaty in any way, shape, or form, that we would be able to withdraw from the  
19 convention. It is pretty simple, pretty basic.

20 **THE CHAIRMAN.** This is your amendment number 1?

1           **SENATOR JOHNSON.** Correct.

2           **THE CHAIRMAN.** Well, is there anyone who wishes to speak to the amendment?

3           Let me make a few points. You know, I know this is an idea that came up in the  
4 context of the second hearing, and I understand this is in response to some statements  
5 by the International Law Commission, the ILC, a body which, by the way, has no power  
6 to do anything that is binding. And I have to say that I think the proposed approach  
7 which is addressing this issue in the context of RUD's that are presented to our  
8 international treaty partners actually defeats the goal I think you are trying to achieve, a  
9 goal that I think most of us would share.

10           The U.S. has strenuously objected to any efforts to advance a severability theory  
11 as articulated by the International Law Commission. To quote the U.S. presentation at  
12 the UN just this year, the idea that a reservation could somehow be disregarded cannot  
13 be reconciled with the fundamental principle of treaty law that a state should only be  
14 bound to the extent it expressly accepts a treaty obligation. And I think that is the  
15 position you are trying to assert.

16           But by addressing the issue in this way in RUD's that would be presented to  
17 other countries at the point where the President files the instrument of ratification, we  
18 are raising the possibility in the international context that the ILC's proposed approach  
19 might be valid, which in my view it is not.

1 I will also note that in addition to the U.S., other countries, including the United  
2 Kingdom, France, Germany, to mention a few, have expressed their objection to the  
3 ILC's proposed approach. So my view is that even if a country agreed with the draft  
4 ILC view and objected to one of our reservations, that country would have no ability,  
5 no ability to compel us to do anything, much less require us to adhere to any obligation  
6 under the disabilities treaty to which we have reserved.

7 And I think we need to be very clear and consistent about what our view is. I am  
8 not aware of any prior treaty for which the Senate has adopted a reservation of this sort,  
9 and including such a reservation here would cast doubt on the status of RUDs adopted  
10 in connection with countless prior treaties for which we have not made such a  
11 reservation.

12 So while I understand the gentleman's intention, I think we actually might  
13 undermine the very essence of what we are trying to achieve. So I oppose the  
14 amendment and urge my colleagues to oppose it as well.

15 **SENATOR CORKER.** Mr. Chairman?

16 **THE CHAIRMAN.** Senator Corker?

17 **SENATOR CORKER.** I would have to say that it would be my perspective that the  
18 comments that the chairman just made actually argue strongly for the point that I tried  
19 to make in my opening comments. And I strongly support this amendment. But

1 candidly, this amendment would work even better if we had stronger RUDs in the first  
2 place that were being adopted.

3         So I do not know as we move through the process if this position continues to  
4 remain, my guess is it would be very difficult for others who have legitimate concerns  
5 about how treaties like this could affect U.S. law, affect U.S. law. Again, I will say that  
6 in our early conversations with the State Department, I think they understood the  
7 legitimate concerns that we had in this regard, and I would say that if this type of  
8 amendment is out of order and not going to be successfully passed upon, I will just say  
9 again I think that argues strongly for my opening comment and the concerns that I  
10 have.

11         So I strongly support this amendment, but I realize it is likely not to pass. But it  
12 is very relevant to ensuring that we do not have an expansion of Federal authority  
13 through treaties like this where it is unintended.

14         I would also like to say that the earlier comments about support of treaties in  
15 general, I actually wrote a big part of the resolution of ratification for the New START  
16 treaty on behalf of the Republican Caucus and do not view myself to be in that category.

17         **THE CHAIRMAN.** Well, thank you for your comments.

18         Anyone else?

19         [No response.]

20         **THE CHAIRMAN.** If not, do you want a recorded — a voice or a recorded?

1           **SENATOR JOHNSON.** Mr. Chairman, I would call up Johnson amendment number 2  
2 then.

3           **THE CHAIRMAN.** Well, no. Let us deal with your first one.

4           **SENATOR JOHNSON.** Well, I did not think we would be voting.

5           **THE CHAIRMAN.** Of course, we are going to — I am not saying that the amendment  
6 is not in order to be considered. I am just saying I am not supporting the amendment.  
7 You have every right to have a vote on the amendment. So do you wish a voice vote?

8           **SENATOR JOHNSON.** Yes, please.

9           **THE CHAIRMAN.** Okay. All those in favor will say aye.

10          **SENATOR JOHNSON.** Oh, no, excuse me. No, I mean roll call vote.

11          **THE CHAIRMAN.** The gentleman asked for a roll call vote. The clerk will call the  
12 roll.

13          **THE CLERK:** Mrs. Boxer?

14          **SENATOR BOXER.** No.

15          **THE CLERK:** Mr. Cardin?

16          **SENATOR CARDIN.** No.

17          **THE CLERK:** Mrs. Shaheen?

18          **THE CHAIRMAN.** No, by proxy.

19          **THE CLERK:** Mr. Coons?

20          **THE CHAIRMAN.** No, by proxy.

1           **THE CLERK:** Mr. Durbin?

2           **THE CHAIRMAN.** No, by proxy.

3           **THE CLERK:** Mr. Udall?

4           **SENATOR UDALL.** No.

5           **THE CLERK:** Mr. Murphy?

6           **SENATOR MURPHY.** No.

7           **THE CLERK:** Mr. Kaine?

8           **SENATOR KAINE.** No.

9           **THE CLERK:** Mr. Markey?

10          **SENATOR MARKEY:** No.

11          **THE CLERK:** Mr. Corker?

12          **SENATOR CORKER.** Yes.

13          **THE CLERK:** Mr. Risch?

14          **SENATOR CORKER.** Yes, by proxy.

15          **THE CLERK:** Mr. Rubio?

16          **SENATOR CORKER.** Yes, by proxy.

17          **THE CLERK:** Mr. Johnson?

18          **SENATOR JOHNSON.** Yes.

19          **THE CLERK:** Mr. Flake?

20          **SENATOR FLAKE.** Yes.

1           **THE CLERK:** Mr. McCain?

2           **SENATOR CORKER.** Yes, by proxy.

3           **THE CLERK:** Mr. Barrasso?

4           **SENATOR BARRASSO.** Aye.

5           **THE CLERK:** Mr. Paul?

6           **SENATOR CORKER.** Yes, by proxy.

7           **THE CLERK:** Mr. Chairman?

8           **THE CHAIRMAN.** No. The clerk will report.

9           **THE CLERK:** Mr. Chairman, the nays are 10. The ayes are 8.

10          **THE CHAIRMAN.** And the amendment is not agreed to.

11          Senator Johnson?

12          **SENATOR JOHNSON.** I want to call up Johnson amendment number 2, very

13          connected to the first amendment on separability. This is simply a reservation that

14          would state that reservations, understandings, and declarations shall not be withdrawn

15          or modified without passage of a new resolution for advice and consent representing

16          two-thirds of the Senate.

17                 Again, to me, just a failsafe, a table stakes amendment that if we could have any

18          confidence whatsoever these reservations would remain in force, that the

19          understandings and declarations that this body is going to adopt in order to adopt this

1 treaty, those of us who consider voting for it would have the peace of mind that the  
2 reservations and understandings and declarations remain in place.

3 So, to me, just a very basic, very simple table stakes-type amendment, and I  
4 would obviously appreciate a vote on it.

5 **THE CHAIRMAN.** Anyone who wishes to speak to the amendment? Senator Corker?

6 **SENATOR CORKER.** I would just say that I support the amendment for the same  
7 reasons as before. Again, these were — these types of amendments were amendments  
8 that we discussed at length with the State Department with an understanding that these  
9 types of amendments need to be enforced to protect us from, again, a conference, an  
10 international conference of some type in the future that we would be a party to having  
11 an effect on domestic law, again, much of which we reserve to the States.

12 So, in any event, I strongly support it, and I thank you for the time to speak for it.

13 **THE CHAIRMAN.** Let me say a declaration or reservation that RUDs shall not be  
14 withdrawn without passage by the Senate of a new resolution of advice and consent  
15 would be unprecedented, in my view. There have been no showing of a need for such a  
16 declaration.

17 I am not aware of any instance in which a President has unilaterally withdrawn a  
18 RUD. I am aware of only one example of withdrawal of a reservation, and in that  
19 instance, President Reagan sought and received the advice and consent of the Senate to  
20 withdraw a reservation to the 1970 Patent Cooperation Treaty.



1           And my substantive treaty policy concern with this proposed declaration is that  
2 it could undercut the longstanding U.S. position that our treaty relationships with other  
3 countries do not depend on whether they follow their domestic processes with regard  
4 to entry into force termination or on RUDs.

5           This might make it harder for the U.S. to push back against countries that seek to  
6 shirk their treaty obligations to us based on the argument that they are no longer bound  
7 to do so due to domestic legal reasons. All that being said, there may be language that  
8 we could work on in this area that might both assuage the Senator's concern and would  
9 be acceptable.

10           But I, of course, would rather do that in the context of getting to a "yes" vote on  
11 the treaty. So for now, especially as phrased, I will oppose the amendment.

12           Is there anyone else who wishes to speak to the amendment?

13           [No response.]

14           **THE CHAIRMAN.** Does the Senator want a recorded vote or a voice vote?

15           **SENATOR JOHNSON.** A recorded vote, please.

16           **THE CHAIRMAN.** The clerk will call the roll.

17           **THE CLERK:** Mrs. Boxer?

18           **SENATOR BOXER.** No.

19           **THE CLERK:** Mr. Cardin?

20           **SENATOR CARDIN.** No.

1           **THE CLERK:** Mrs. Shaheen?

2           **THE CHAIRMAN.** No, by proxy.

3           **THE CLERK:** Mr. Coons?

4           **THE CHAIRMAN.** No, by proxy.

5           **THE CLERK:** Mr. Durbin?

6           **THE CHAIRMAN.** No, by proxy.

7           **THE CLERK:** Mr. Udall?

8           **SENATOR UDALL.** No.

9           **THE CLERK:** Mr. Murphy?

10          **SENATOR MURPHY.** No.

11          **THE CLERK:** Mr. Kaine?

12          **SENATOR KAINE.** No.

13          **THE CLERK:** Mr. Markey?

14          **SENATOR MARKEY:** No.

15          **THE CLERK:** Mr. Corker?

16          **SENATOR CORKER.** Yes.

17          **THE CLERK:** Mr. Risch?

18          **SENATOR CORKER.** Yes, by proxy.

19          **THE CLERK:** Mr. Rubio?

20          **SENATOR CORKER.** Yes, by proxy.

1           **THE CLERK:** Mr. Johnson?

2           **SENATOR JOHNSON.** Yes.

3           **THE CLERK:** Mr. Flake?

4           **SENATOR FLAKE.** Yes.

5           **THE CLERK:** Mr. McCain?

6           **SENATOR CORKER.** Yes, by proxy.

7           **THE CLERK:** Mr. Barrasso?

8           **SENATOR BARRASSO.** Aye.

9           **THE CLERK:** Mr. Paul?

10          **SENATOR CORKER.** Yes, by proxy.

11          **THE CLERK:** Mr. Chairman?

12          **THE CHAIRMAN.** No. The clerk will report.

13          **SENATOR DURBIN:** Mr. Chairman, could I be shown as voting no as present?

14          **THE CHAIRMAN.** Please have Senator Durbin be recorded as "no" being present, not  
15 by proxy.

16          **THE CLERK:** Mr. Chairman, the nays are 10. The yeas are 8.

17          **THE CHAIRMAN.** And the amendment is not agreed to.

18          Is there any other amendments?

19          [No response.]

1           **THE CHAIRMAN.** If there are no other amendments and no Senator wishing to  
2 speak, I move that we consider the resolution of advice and consent to this treaty, as  
3 amended by voice vote, without objection.

4           All those in favor will say aye.

5           [A chorus of ayes.]

6           **THE CHAIRMAN.** All those opposed will say no.

7           [A chorus of noes.]

8           **THE CHAIRMAN.** The ayes have it, and the resolution of advice and consent is  
9 agreed to.

10          Let me move to the —

11          **SENATOR CORKER.** That was just passage of the treaty itself?

12          **THE CHAIRMAN.** Yes, yes.

13          **SENATOR CORKER.** I think it would be good for understanding as it goes to the  
14 floor, if it goes to the floor, for people to understand how the committee voted. If we  
15 could, I would like to have a recorded vote.

16          **THE CHAIRMAN.** I will be happy to do that, but I would ask that in the future that  
17 we do it at the time of requests so that we do not end up having to do it twice.

18          The clerk will call the roll.

19          **THE CLERK:** Mrs. Boxer?

20          **SENATOR BOXER.** Aye.

1           **THE CLERK:** Mr. Cardin?

2           **SENATOR CARDIN.** Aye.

3           **THE CLERK:** Mrs. Shaheen?

4           **THE CHAIRMAN.** Aye, by proxy.

5           **THE CLERK:** Mr. Coons?

6           **THE CHAIRMAN.** Aye, by proxy.

7           **THE CLERK:** Mr. Durbin?

8           **SENATOR DURBIN:** Aye.

9           **THE CLERK:** Mr. Udall?

10          **SENATOR UDALL.** Aye.

11          **THE CLERK:** Mr. Markey?

12          **SENATOR MARKEY:** Votes aye.

13          **THE CLERK:** Mr. Murphy?

14          **SENATOR MURPHY.** Aye.

15          **THE CLERK:** Mr. Kaine?

16          **SENATOR KAINE.** Aye.

17          **THE CLERK:** Mr. Corker?

18          **SENATOR CORKER.** No.

19          **THE CLERK:** Mr. Risch?

20          **SENATOR CORKER.** No, by proxy.

1           **THE CLERK:** Mr. Rubio?

2           **SENATOR CORKER.** No, by proxy.

3           **THE CLERK:** Mr. Johnson?

4           **SENATOR JOHNSON.** No.

5           **THE CLERK:** Mr. Flake?

6           **SENATOR FLAKE.** No.

7           **THE CLERK:** Mr. McCain?

8           **SENATOR CORKER.** Yes, by proxy.

9           **THE CLERK:** Mr. Barrasso?

10          **SENATOR BARRASSO.** Aye.

11          **THE CLERK:** Mr. Paul?

12          **SENATOR CORKER.** No, by proxy.

13          **THE CLERK:** Mr. Chairman?

14          **THE CHAIRMAN.** No. I am sorry. This is the final passage. I am sorry. Aye.

15          [Laughter.]

16          **THE CHAIRMAN.** And the clerk will report.

17          **THE CLERK:** Mr. Chairman, the yeas are 12. The nays are 6.

18          **THE CHAIRMAN.** And the —

19          [Pause.]

1           **THE CHAIRMAN.** Senator Shaheen is recorded as yes in person versus by proxy.  
2   That does not change the vote. The resolution of advice and consent is reported  
3   favorably to the full Senate.

4           Next is S.J. Res. 36, the Vietnam 1-2-3 agreement, a joint resolution regarding to  
5   the approval and implementation of the proposed agreement for nuclear cooperation  
6   between the United States and the Socialist Republic of Vietnam.

7           I want to remind members of the committee that even as we move forward with  
8   this 1-2-3 legislation that we continue to look to address issues we have with Vietnam  
9   on human rights, religious freedom, and political pluralism. I introduced this resolution  
10  to approve the Vietnam agreement, but with a 30-year time limit.

11          I am increasingly concerned about the movement by the State Department  
12  towards nuclear agreements of indefinite duration that circumvent Congress' oversight  
13  as envisioned in the Atomic Energy Act. This resolution will ensure Congress remains  
14  engaged in the approval process and continues to provide critical oversight of our  
15  nuclear cooperation agreement for years to come.

16          This is particularly true for Vietnam, a country with whom we have never had a  
17  1-2-3 agreement and because this agreement does not include any limitations on  
18  enrichment and reprocessing by Vietnam.

19          Senator Corker, do you have any remarks?

1           **SENATOR CORKER.** I do. I want to thank you for working closely with our side on  
2 the outcome that preserves congressional oversight of civilian nuclear cooperation  
3 agreements. This committee has —

4           **THE CHAIRMAN.** Excuse me. If I could ask — we still need, notwithstanding  
5 proxies, a working quorum. So if there is any way that members can stay, I would  
6 appreciate it. If it is impossible, then we will work accordingly.

7           Senator Corker?

8           **SENATOR CORKER.** This committee has an important obligation to review and  
9 provide recommendations to the full Congress on all 1-2-3 agreements submitted for  
10 consideration under the Atomic Energy Act.

11           I am deeply concerned, as you are, with the administration's current policy or,  
12 rather, lack of consistent policy toward negotiation of civil nuclear cooperation  
13 agreements. I am actually going to submit the rest of this for the record to move along  
14 so people can go about their business.

15           But I thank you for working out the manager's amendments, which I think  
16 address many concerns.

**[The prepared statement of Senator Corker follows:]**

**[COMMITTEE INSERT]**

17           **THE CHAIRMAN.** Is there anyone else? Well, let me proceed to my amendment in  
18 the nature of a substitute.



1           As drafted, the substitute will limit 1-2-3 agreements that enter into force after  
2 August 1st from lasting more than 30 years unless Congress approved an extension.  
3 This would not apply to your agreements already in force that have indefinite terms of  
4 duration.

5           And I want to thank Senator Corker for working with me to refine the language  
6 of the resolution which resulted in the manager's amendment I am offering. The  
7 changes Senator Corker suggested improved the resolution, placing new requirements  
8 on the proliferation assessment submitted to Congress alongside 1-2-3 agreements.

9           Now — well —

10           **SENATOR CORKER.** Mr. Chairman, I know we have some votes today later. Would  
11 it be possible to — to do whatever you do when we stall the meeting off until that time  
12 and maybe have those votes in one of the back halls?

13           **THE CHAIRMAN.** That is maybe a very good recommendation. In the interim, we do  
14 have enough members to at least debate any amendments to be considered. And then  
15 maybe if we do not get a voting quorum, we will reserve for that moment.

16           So I will hold the manager's amendment in abeyance. Are there any other  
17 amendments that wish to be offered?

18           Senator Corker?

19           **SENATOR CORKER.** Yes, sir. I would like to offer an amendment that I know you  
20 are aware of. When beginning negotiations on any type of agreement, the

1 administration should open the toughest possible position and negotiate from there. In  
2 this case, it would be the gold standard agreement. I think many of us who have  
3 attended hearings on this understand that.

4 As we learned from the administration, they entered the negotiations with  
5 Vietnam by offering a menu of options and essentially allowing the Vietnamese to  
6 choose the type of agreement they would like. This amendment encourages the  
7 administration to begin negotiations with a preference towards achieving the gold  
8 standard agreement. It adds a tenth criteria to Section 123(a), which would require an  
9 agreement to include legally binding commitments on enrichment and reprocessing  
10 technologies in order for the agreement to be considered nonexempt under the  
11 procedures outlined in Section 123(a) of the Atomic Energy Act.

12 Under the current procedures, the nonexempt agreement does not require  
13 positive action by the House and Senate in order to be implemented. That said, this  
14 amendment does not bind any administration to only negotiating a gold standard  
15 agreement. Per the underlying law, any agreement that is exempt from one of the  
16 criteria outlined in Section 123(a) would require positive approval from the House and  
17 Senate, as in the case of the India agreement.

18 I think with everything that is going on right now, as we focus on Iran, and  
19 enrichment by other countries, I think this is an important amendment and hope you  
20 will support it.

1           **THE CHAIRMAN.** Anyone wishing to speak to the amendment? Senator Markey?

2           **SENATOR MARKEY:** Yeah, I think — thank you, Mr. Chairman.

3           I think that Senator Corker is right on the money. I think that if there are any  
4 subsequent agreements that are reached by an administration to allow for enrichment of  
5 uranium or reprocessing of plutonium that are not included in the original agreement  
6 should have to come back to the Congress for our approval. That is the central issue.

7           It is whether or not these facilities that can generate electricity also turn out to be  
8 bomb factories, and they get turned into bomb factories by the enrichment in uranium  
9 or the reprocessing of plutonium. If such a decision is going to be made, we should  
10 make the decision.

11           And so, I think it is a very wise addition. I think it keeps the power in the  
12 Congress. It keeps it in the hands of those who ultimately are going to bear the  
13 responsibility of explaining to their constituents what happened to uranium or  
14 plutonium in other countries that we have agreements with. So I urge an "aye" vote for  
15 the Corker amendment.

16           Thank you.

17           **THE CHAIRMAN.** Senator Cardin?

18           **SENATOR CARDIN.** I certainly support what Senator Corker is trying to do, that is  
19 the gold standard for a 1-2-3 agreement includes the prohibition on enrichment. I  
20 strongly support that.

1           However, I am concerned with this amendment because 1-2-3 agreements are in  
2   the U.S. interest. It allows us to make sure that the use of nuclear materials are done  
3   appropriately in a country and that there is proper safeguard from theft and that we use  
4   the best technology from the point of view of safety, from the point of view of  
5   efficiency, et cetera.

6           Vietnam, for example, has alternatives to the United States. They could continue  
7   their arrangements with Russia. That is certainly not in our interest. It is not in the  
8   global interest. So we want to encourage countries to work with the United States, and  
9   the 1-2-3 agreements allow for those standards.

10          So I just really want to raise the concern, yes, we want to be tough in negotiating  
11   1-2-3 agreements, and we want to get the highest possible standards, including the gold  
12   standard that Senator Corker is referring to. But understand it is in our interest to enter  
13   into 1-2-3 agreements. It is in the interest of safety regionally to enter into 1-2-3  
14   agreements.

15          And you do not want to make it so difficult that future agreements are going to  
16   be more difficult to achieve, and therefore, countries will go towards other countries  
17   that do not have the same standards that we do on the use of nuclear material.

18          **SENATOR CORKER.** Mr. Chairman, if I could?

19          **THE CHAIRMAN.** Senator Corker?

1           **SENATOR CORKER.** I just want to point out this does not preclude an administration  
2 from negotiating any agreement that they would like to agree to. It just means that if  
3 we are going to allow a country to enrich that Congress has the ability to weigh in. So  
4 this does not keep the administration from negotiating any kind of agreement they  
5 would like to negotiate relative to 1-2-3 agreements.

6           **SENATOR MARKEY:** Would the gentleman yield?

7           **SENATOR CORKER.** Yes.

8           **SENATOR MARKEY:** Thank you.

9           You know, this allows for a 1-2-3 agreement. But if the 1-2-3 agreement does not  
10 include enrichment or reprocessing and that is the standard that this country has  
11 accepted, and there is going to be a modification in the negotiation between any  
12 administration 10 years from now, 15 years from now, 5 minutes from now, they have  
13 got to come back to us. Otherwise, we were in on the takeoff, but not on the landing of  
14 this program turning into a reprocessing and enrichment program. And we should  
15 vote. We are the authorizers for this.

16           So I think all the Corker amendment says is that you want to transfer a nuclear  
17 power plant, and it is in the agreement they cannot enrich. They cannot reprocess. It  
18 goes forward. It gets modified. We modify it. We approve it.

1           And we say that is a change in our relationship with that country that we at that  
2 time have assessed does lend itself to trusting that country with reprocessing or  
3 enrichment.

4           Thank you.

5           **THE CHAIRMAN.** Senator Shaheen?

6           **SENATOR SHAHEEN.** Maybe I am missing something here — excuse me. But as I  
7 understand this amendment, it does not require the 1-2-3 agreement to come back. It  
8 basically prohibits any activities related to the enrichment and reprocessing material  
9 and requires that that be part of the 1-2-3 agreement.

10           So as Senator Markey is describing it, it sounds like the purpose of the  
11 amendment is to require any change in the agreement to come back to Congress. Is that  
12 — that is not what I understand this to say.

13           **SENATOR MARKEY:** I am sorry. I misstated the Corker amendment. You are  
14 correct.

15           **SENATOR SHAHEEN.** Okay.

16           **THE CHAIRMAN.** Let me —

17           **SENATOR SHAHEEN.** So I guess I would share in the reservations that Senator Cardin  
18 has raised because I do think as we are negotiating with these countries, whether it is  
19 Vietnam or other countries in the future, they do have alternatives.

1           And while we certainly do not want them to — I think from a safety perspective,  
2 what you are proposing, Senator Corker, is important. But I think when we look at the  
3 potential for that to undermine our ability to get an agreement with countries like  
4 Vietnam, I am not sure that in the long run, it serves the purpose, the joint purpose that  
5 I know we all share.

6           **SENATOR CORKER.** If I could, Mr. Chairman?

7           **THE CHAIRMAN.** Senator Corker?

8           **SENATOR CORKER.** Again, I want to restate the administration has the ability to  
9 negotiate any such agreement they wish. It is just that if it includes enrichment, they  
10 bring it back to us for a vote.

11           And there may be some really good reason for it to include enrichment, but  
12 again, when we are having this international debate over — right now over a country  
13 wanting to enrich and concerns on both sides of the aisle regarding that, it would just  
14 seem that we would want to weigh in on an agreement that does include enrichment.  
15 That is all. But it does not keep them from negotiating that in their agreement.

16           **THE CHAIRMAN.** Let me — if I may, let me say that I agree that we should be  
17 pursuing gold standard agreements with every country that we have a nuclear  
18 cooperation agreement with, and I appreciate what you are trying to do in adding  
19 enrichment and reprocessing as a tenth nonproliferation standard.

1           However, I think it would be very difficult to pass this language through the full  
2 Senate, and I would rather find a compromise that would provide an incentive to the  
3 administration to push harder for the gold standard and an incentive for countries we  
4 are negotiating with to agree to a gold standard.

5           So if we agree to this amendment, I think we will make a statement against  
6 enrichment and reprocessing. But we will also prevent the bill from moving forward.

7           And what will happen here is if we do not have, as we have in our manager's  
8 amendment, a legislation that passes the committee that can be moved to the floor, then  
9 unless there is a resolution of disapproval, this agreement is going to go into force  
10 because of a lapse of the time for congressional action, and there will be no constraints  
11 on it, which is one of my present concerns.

12           And so, it is in that context, although I do agree with the aspirations and the  
13 goals you are trying to create, that I am not going to support the amendment, even  
14 though I understand the context of what you are trying to achieve.

15           I know that Senator Cardin wants to —

16           **SENATOR CARDIN.** Again, following up on Senator —

17           **THE CHAIRMAN.** And if I may just interrupt you before? I am told by committee  
18 counsel, and I will ask you to correct me if this is wrong, that we can vote on  
19 amendments with 6 or more people, but we cannot report out unless we have 10.



1           So what we will do is, if that is correct, then we will vote on amendments while  
2 we still have six or more, but we will find a later time to actually seek a vote on  
3 reporting out.

4           Senator Cardin?

5           **SENATOR CARDIN.** I think Senator Shaheen's point, I just want to clarify, and your  
6 point, I think you are absolutely correct. If this amendment were adopted, it would  
7 make it very difficult to get this current resolution passed.

8           So, and then, of course, the Vietnam 1-2-3 agreement would go into effect after 90  
9 days. So I think that is the effect, which means we would lose the limited time which  
10 we have a chance of it getting enacted.

11           Secondly, if I understand the difference of this amendment, it would require an  
12 affirmative vote of the Congress to approve the 1-2-3 agreement if it did not contain the  
13 gold standard, which, as we know, getting the Congress to act on issues is not always a  
14 certainty between the House and the Senate.

15           So it really does change the dynamics of 1-2-3 agreements, which is something  
16 we might want to take up, but I would hope we would not do it in context to the  
17 approval of the Vietnam 1-2-3.

18           **SENATOR CORKER.** So if the chairman — I realize we only have so many days left  
19 before the Vietnam agreement goes into effect. I do hope that the — I will not — the

1 lack of functioning, I want to use a different word than "happens a lot." I hope that lack  
2 of functioning right now will not prevent us from carrying out our duties, okay?

3 But if the chairman believes that there is a strong probability that we can get the  
4 agreement without this amendment through by unanimous consent before the time  
5 ends, if you believe you can do that, I will withdraw the amendment and take up the —  
6 what you said relative to trying to work out incentive to put gold standards in place.

7 If you think that is a real possibility we are actually UC this agreement on the  
8 floor.

9 **THE CHAIRMAN.** Well, I would not mislead my friend and say that going to the  
10 Senate floor and asking for unanimous consent has any guarantees these days,  
11 especially on a major subject like this. But I do appreciate, you know, the spirit in which  
12 you are offering it. But I would never mislead you.

13 I do not know. I think it may be possible, but you know, you know some of the  
14 views of some of our colleagues, and they may be such that they would not consent to  
15 —

16 **SENATOR CORKER.** And I have just been reminded that the House has to act on this  
17 also, which does add some complicating dynamics. So —

18 **THE CHAIRMAN.** So is there anyone else who wishes to speak to Senator Corker's  
19 amendment?

20 [No response.]

1           **THE CHAIRMAN.** In the absence of that, let me first go back, since we can vote at  
2 least on amendments, although we cannot report the bill as a whole without 10. Let me  
3 go back to the manager's amendment in the nature of a substitute, which I think there  
4 was no disagreement on, and ask that we pass the amendment on a voice vote, if that is  
5 acceptable?

6           All those in favor will say aye.

7           [A chorus of ayes.]

8           **THE CHAIRMAN.** All those opposed, say no.

9           [A chorus of noes.]

10          **THE CHAIRMAN.** The ayes have it, and the manager's amendment is agreed to.

11          Let me move to Senator Corker's amendment. How would the Senator wish to  
12 proceed on that?

13          **SENATOR CORKER.** A voice vote will be fine.

14          **THE CHAIRMAN.** All those in favor will say aye.

15          [A chorus of ayes.]

16          **THE CHAIRMAN.** All those opposed will say no.

17          [A chorus of noes.]

18          **THE CHAIRMAN.** The noes have it, and the amendment is not agreed to.

19          Is there any other amendments to be offered? Senator Markey?

1           **SENATOR MARKEY:** I have an amendment, and the amendment is one that just goes  
2 to what we all know is a big problem in nuclear agreements, and that is that it is hard to  
3 project into the future with regard to what the relationship is between our country and  
4 any country that we are dealing with.

5           And 40 years ago, as we sit here, the United States was at war with Vietnam.  
6 They were our bitter enemy. And the Ford administration and then the Carter  
7 administration was negotiating a transfer of six nuclear power plants to the Shah of  
8 Iran. That is 40 years ago.

9           Come forward 40 years, we are thinking about actually authorizing a strike  
10 against Iran because of their nuclear program, and we are talking about transferring  
11 nuclear materials to Vietnam. So we have to be humble as we talk about these issues,  
12 projecting out in the future what the status is of the countries that we are dealing with.  
13 And what has happened is that over and over again, we see that we cannot predict how  
14 these governments are going to react.

15           And we have had ad hoc actions by Israel. 1981, they went in to bomb the Osirak  
16 reactor in Baghdad, a Canadian and French power plant. In 2007, the Israelis went in  
17 again to bomb the Syrian nuclear facility. That is an ad hoc nonproliferation policy.  
18 That is not a policy that sets the standard in terms of what these countries should be  
19 allowed to do.

20           So what my amendment says —

1           **THE CHAIRMAN.** Excuse me, Senator Markey. Is this amendment 1, 2?

2           **SENATOR MARKEY:** This is amendment 2.

3           **THE CHAIRMAN.** Two. Amendment 2.

4           **SENATOR MARKEY:** So what my amendment does is end nuclear cooperation with  
5 any country involved in nuclear proliferation. If a country withdraws from the Nuclear  
6 Proliferation Treaty, it probably should not be getting American nuclear technology.

7           If a country is involved in the proliferation or enrichment of reprocessing  
8 technology without congressional approval, it probably should not be getting nuclear  
9 reactor technology. And if a country detonates a nuclear weapon, gives a nuclear  
10 weapon to another country, or helps another country design a nuclear weapon, it  
11 definitely should stop getting American nuclear reactor technology.

12           So we cannot predict the leadership of any country in the world going forward.  
13 Just impossible. So we should have a standard that we set from Congress in terms of  
14 how a subsequent administration acts if there is a violation of the 1-2-3 agreement.

15           If that country is, in fact, spreading nuclear weapons, spreading technology,  
16 spreading the capacity around the world, cooperating with other countries, that  
17 agreement should end, and we should state that as a — as a fact as we sit here,  
18 especially as we are looking at Iran right now. We are looking at actions that we are  
19 going to have to take as we see power plants that have been compromised and turned  
20 into nuclear weapons programs.

1           So that is the amendment, and I think it is something that is needed in order to  
2 preserve the prerogatives of the Congress that we state what it is that we want to see  
3 happen subsequent to a 1-2-3 agreement being put into place.

4           I thank you, Mr. Chairman.

5           **THE CHAIRMAN.** Senator Corker?

6           **SENATOR CORKER.** Mr. Chairman, I thank the Senator for his amendment, and I  
7 support it. And thank you for letting it be heard.

8           **THE CHAIRMAN.** Anyone else who wishes to — Senator Shaheen?

9           **SENATOR SHAHEEN.** I just had a question. Do we not have — could we not under  
10 current 1-2-3 agreements do that anyway? If we determined that the country that we  
11 had negotiated an agreement with were — had taken action that we thought was  
12 threatening with respect to nuclear weapons material, whatever, could we not  
13 unilaterally take action to stop cooperating under the agreement?

14           **SENATOR MARKEY:** We could. We could do that right now. But it would not be  
15 mandatory. There would not be a requirement.

16           And since we are the ones authorizing it, we are the ones saying we are going to  
17 start this whole process, then I am saying that if any of these violations occur, that the  
18 agreement ends. Not left up to the discussion of any subsequent administration making  
19 a determination on the short-term diplomatic or political needs of that administration  
20 because, ultimately, nonproliferation always gets short-changed, always. It is always

1 subordinated to whatever the near-term crisis is of the administration, always. Just  
2 kind of a rule.

3         So what I am saying here is that we get a chance here to kind of wipe the slate  
4 clean. Just say that this is the issue because, ultimately, if we are talking about Iran right  
5 now or we are talking about the Bush administration back in 2002 saying the next  
6 terrorist attack could come in the form of a mushroom cloud. They were talking about  
7 a compromised nuclear policy, and we authorized, you know, young men and women  
8 to go to go over there.

9         So that is pretty much the standard that we use for American — the use of our  
10 ultimate force, huh? So I am just saying is that we have to have a standard, too, because  
11 the longer it goes unaddressed is the deeper the problem gets. And we have just booted  
12 it from administration to administration.

13         So that is kind of the point that it is not left to the discretion of any particular  
14 Secretary of State or President. It is our decision, you know? If there is a violation of  
15 our agreement that we are authorizing, that that agreement is null and void, and we just  
16 stop cooperation.

17         **THE CHAIRMAN.** Let me say I agree, and I know that the Senator has spent a fair  
18 amount of his career in this regard in attempting to limit the spread of enrichment and  
19 reprocessing technology as much as possible.

1           However, I am concerned that the amendment as written would impose  
2 limitations on previous 1-2-3 agreements that the United States has signed which do not  
3 specifically address the gold standard issue.

4           For example, if Australia, a staunch U.S. ally and a key supporter of the nuclear  
5 nonproliferation regime, decides to develop its own nuclear enrichment capability  
6 under full IAEA safeguards to export civilian reactor fuel, which they have expressed  
7 an interest in doing, my understanding of the Senator's amendment would terminate all  
8 U.S. cooperation with Australia to punish them for a national decision which in no way  
9 represents a nuclear proliferation threat. And that is a clearly, I think, beyond what we  
10 would want to see.

11           In addition, if we are seeking to set no enrichment and no reprocessing as a new  
12 nonproliferation standard, it should be done in a straightforward way by adding it as a  
13 criteria to existing legislation, which is what Senator Corker was trying to do. But as I  
14 said, I think that would be difficult to pass this language through the full Senate, and I  
15 would rather find a compromise that provides incentives to reach for gold standards as  
16 a standard for agreement.

17           So I appreciate what the Senator is trying to do, and I would love to work with  
18 him in a way to get closer to what he wants, but at this point, I cannot support the  
19 Senator's amendment.

20           Senator Markey?



1           **SENATOR MARKEY:** Thank you. I appreciate it.

2           Well, the Australia 1-2-3 agreement already has to be amended if they want to  
3 enrich. It is in the agreement. And that is the way it should be, you know? That should  
4 be the process that it has to be amended.

5           And so, that is all I am saying, that Australia has the right kind of, you know,  
6 process, and we should be thinking in those terms going forward so that it would not  
7 affect Australia, and we would be able to, you know, just deal with this issue in terms of  
8 what we believe should be the standards for our continuation of a 1-2-3 agreement, and  
9 Australia does not fit into that category.

10          So — so, again, I just think that we just keep coming back to this. North Korea,  
11 Iraq, Iran, Syria, we are going to have it over and over again, as each year goes by, as  
12 more and more of these nuclear power plants go up around the rest of the world. And  
13 we have to set a standard. We have to determine what it is that we expect from these  
14 people who signed the nonproliferation treaty.

15          So I am even saying here, if a country withdraws from the nonproliferation  
16 treaty, should we continue, you know, nuclear cooperation with them? I am saying, no,  
17 we should not. It should just end because it is clear that the whole time that they were  
18 engaging in an effort to compromise the civilian power plant.

1           And that is really, I guess, the way I view it. That each power plant has a dual  
2 identity. On the one hand, it can generate electricity that has a side product of uranium  
3 and plutonium. And people say they want the electricity.

4           But on the other hand, in the hands of other people, they see it as a generator of  
5 plutonium and uranium that has this wonderful byproduct of electricity. And too  
6 many countries in the world just see it as a uranium and plutonium plant that has this  
7 wonderful electricity as a byproduct.

8           So, so knowing that and having this happen over and over and over and over  
9 again, I just think we should set the standard.

10           **THE CHAIRMAN.** Let me make two comments. Number one, I am not suggesting  
11 that a full withdrawal from the NPT would allow our continuation of our support to  
12 continue. I think that would be far different.

13           And with reference to Australia, I think we have a difference of the pertinence of  
14 this issue to Australia because Australia only limits exported U.S. technology, which  
15 means that, you know, in that case, it would have to be amended. But otherwise, it  
16 would not.

17           Senator Boxer?

18           **SENATOR BOXER.** I just wanted to make a point. I am not thoroughly versed on  
19 this. But I have to say Senator Markey is very compelling in his presentation.

1           And it seems to me what you are saying to the country that you are reaching an  
2 agreement with, do not just give us a wink or a nod. Because if you just walk off this  
3 path, it is not going to be up to one Senator to say let us revisit this. No, it is an  
4 automatic cancellation. I just think it puts us in a very morally correct position.

5           Now I do understand the politics that come into play with international  
6 diplomacy, et cetera, et cetera. I am hoping there is a way that, Mr. Chairman, you can  
7 work with Senator Markey on this before this comes to the floor.

8           I just think — I hope you can. Because I think he is hitting on some things — a  
9 lot of issues that are pretty important here, and especially as we look at the Iran  
10 circumstance as well. I mean, I think it would set a good precedent for that that we are  
11 not going to accept a wink and a nod. That is just not going to be enough.

12           So is there any way the two could, with Senator Corker, work together to  
13 somehow get this into a better place that you feel comfortable with and Ed feels  
14 comfortable with?

15           **THE CHAIRMAN.** Well, yes, we would love to work with Senator Markey to get to a  
16 point that could both move closer to achieving those goals, but it does not create some  
17 of the challenges I think that the amendment as presently constructed creates. I am  
18 happy to say to the Senator we are more than willing to work on it before we get to the  
19 floor, but he has every right to pursue his amendment at this time.

1           Now we have only six people here, which gives us enough to vote on the  
2 amendment, but not to report out any of this. So, at this point, if there is no other  
3 discussion on this amendment, could we take a voice vote, or do you want a recorded  
4 vote?

5           **SENATOR MARKEY:** I thank you, Mr. Chairman.

6           And again, this is if a country that we are dealing with detonates a nuclear bomb,  
7 if it withdraws from the NPT. It gives a nuclear bomb to another country, you know,  
8 knowing that they used our technology. That just ends the agreement right there. We  
9 will have to take other action as well, to sanction that country, to do other things with  
10 them.

11           But this is just kind of a start, just saying we recognize that at this late date that  
12 the NPT keeps getting violated by these countries, and they have to understand that  
13 there is no games that are going to be played. So I would ask for a recorded vote.

14           **THE CHAIRMAN.** If that is the gentleman's goal, I think we could work towards that.  
15 But as you have this amendment defined, it would go far beyond someone exploding a  
16 nuclear bomb and violating the NPT.

17           But having said that, the clerk will call the roll.

18           **THE CLERK:** Mrs. Boxer?

19           **SENATOR BOXER.** Aye.

20           **THE CLERK:** Mr. Cardin?

1           **THE CHAIRMAN.** No, by proxy.

2           **THE CLERK:** Mrs. Shaheen?

3           **THE CHAIRMAN.** No.

4           **THE CLERK:** Mr. Coons?

5           **THE CHAIRMAN.** No, by proxy.

6           **THE CLERK:** Mr. Durbin?

7           **THE CHAIRMAN.** No, by proxy.

8           **THE CLERK:** Mr. Udall?

9           **SENATOR UDALL.** No.

10          **THE CLERK:** Mr. Murphy?

11          [No response.]

12          **THE CLERK:** Mr. Kaine?

13          **THE CHAIRMAN.** No, by proxy.

14          **THE CLERK:** Mr. Markey?

15          **SENATOR MARKEY:** Aye.

16          **THE CLERK:** Mr. Corker?

17          **SENATOR CORKER.** Yes.

18          **THE CLERK:** Mr. Risch?

19          **SENATOR CORKER.** No, by proxy.

20          **THE CLERK:** Mr. Rubio?

1           **SENATOR CORKER.** Yes, by proxy.

2           **THE CLERK:** Mr. Johnson?

3           **SENATOR CORKER.** No, by proxy.

4           **THE CLERK:** Mr. Flake?

5           **SENATOR CORKER.** Yes, by proxy.

6           **THE CLERK:** Mr. McCain?

7           **SENATOR CORKER.** No, by proxy.

8           **THE CLERK:** Mr. Barrasso?

9           **SENATOR CORKER.** No, by proxy.

10          **THE CLERK:** Mr. Paul?

11          **SENATOR CORKER.** Not voting.

12          **THE CLERK:** Mr. Chairman?

13          **THE CHAIRMAN.** No. The clerk will report. Make sure you got the tally right.

14          **THE CLERK:** Mr. Chairman, the noes are 11. The yeas are 5.

15          **THE CHAIRMAN.** The amendment is not agreed to.

16                 We are going to reconvene off the floor. I understand that there are no more  
17 amendments on this legislation that is being pursued. So time for amendments will be  
18 closed.

19                 We can reconvene off the floor following the 2:15 p.m. votes today, which is what  
20 I intend to do, and will probably be in the President's Room. And we will get you all

1 notice of that, but that is our intention to recess and reconvene at 2:15 p.m. following  
2 those votes to report the legislation out.

3 I think Senator Corker wants to be recognized?

4 **SENATOR CORKER.** Mr. Chairman, thank you.

5 If I could, on all the business that we have today, I ask unanimous consent that  
6 members seeking to file minority or dissenting views be permitted the time provided  
7 for in the committee rules to file such views, and I would ask unanimous consent that  
8 that be approved.

9 **THE CHAIRMAN.** Without objection, so ordered.

**[The information referred to follows:]**

**[COMMITTEE INSERT]**

10 **THE CHAIRMAN.** With the thanks of the chair, we stand in recess until 2:15 p.m.

11 [Recess.]

12 **THE CHAIRMAN.** This meeting will reconvene. All amendments having — all  
13 amendments having been considered and voted upon, the vote is on to report S.J. Res.  
14 36, a joint resolution relating to the approval and implementation of the proposed  
15 agreement for nuclear cooperation between the U.S. and the Socialist Republic of  
16 Vietnam.

17 I am happy to entertain a voice vote unless people want a recorded vote.

18 Hearing none, all those in favor, say aye.

19 [A chorus of ayes.]

1           **THE CHAIRMAN.** All those opposed, say no.

2           [No response.]

3           **THE CHAIRMAN.** The ayes have it, and the resolution is favorably reported to the  
4 Senate.

5           I ask unanimous consent that the committee staff —

6           **SENATOR MARKEY:** Mr. Chairman, could I be recorded as no?

7           **THE CHAIRMAN.** Senator Markey shall be recorded as no.

8           I ask unanimous consent that the committee staff be able to make all appropriate  
9 technical and conforming changes as necessary. Without objection, so ordered.

10          And with the thanks of the chair, we are adjourned.

**[Whereupon, at 2:36 p.m., the hearing was adjourned.]**