

Exchange Mail

DATE-TIME 6/24/98 5:57:45 PM
FROM Farrar, Jay C.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Halperin, David E.

CARBON_COPY

TEXT_BODY Clear for us.

-----Original Message-----

From: Halperin, David
E.

Sent: Wednesday, June 24, 1998 5:34 PM

To: @DEFENSE - Defense

Policy

Cc: @NONPRO - Export Controls; @LEGISLAT - Legislative Affairs;
LaFleur, Vinca S.; Gray, Wendy E.

Subject: SRB Wall Street Journal
CTBT/ABMT op-ed [UNCLASSIFIED]

Draft of SRB op-ed in response
to Senator Helms WSJ essay of 6/18 (available on request). Comments
back to me, please -- by 10 am Thursday if possible (only 800 words
to read) -- so we can get it to SRB on the road. Thanks. << File:
SRB CTB WSJ.doc >>

Exchange Mail

DATE-TIME 6/24/98 7:43:09 PM

FROM Farrar, Jay C.

CLASSIFICATION UNCLASSIFIED

SUBJECT RE: Update on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]

TO Bouchard, Joseph F.
Andreasen, Steven P.
Bell, Robert G.
Bouchard, Joseph F.
Kelly, Sandra L.
Langley, Janice M.
Mulligan, George D.
vonLipsey, Roderick K.
Witkowski, Anne A.
Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.
Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hill, Roseanne M.
Hunerwadel, Joan S.

CARBON_COPY**TEXT_BODY**

Hoorah for Joe!! This is good news and hopefully will not preclude SFRC from taking up other business that we would like it to consider.

-----Original
Message-----

From: Bouchard, Joseph F.
Sent: Wednesday, June 24,
1998 7:30 PM
To: @DEFENSE - Defense Policy; @LEGISLAT - Legislative
Affairs; @LEGAL - Legal Advisor
Subject: Update on Law of the Sea
Treaty Ratification Effort [UNCLASSIFIED]

Senator Helms met with
Secretary Cohen, Secretary Dalton and General Shelton this afternoon
to discuss the Law of the Sea Treaty. The meeting went very well
and Senator Helms expressed a willingness to schedule hearings on

the treaty. This is a major breakthrough in the ratification effort.
Next steps:

- * Get Secretary Albright to tell Senator Helms that she concurs with holding hearings on the Law of the Sea Treaty.

- * As soon as we get word that hearings are indeed scheduled, the Ocean Policy IWG will stand up a "command center" to closely coordinate the final ratification push. DOD has agreed to host the command center.

- * Deliver to targeted papers a series of op-ed pieces that the Ocean Policy IWG has been coordinating. This is to pre-empt or at least minimize the impact of the inevitable anti-treaty op-ed pieces that will appear.

- * Push even harder the message we've been sending to the Senate -- that this is a bipartisan effort supported by the Republican leadership and that the treaty should not be held hostage to other issues before the SFRC on which the Administration and the majority party (or the SFRC Chairman) do not agree.

Joe
Bouchard

Exchange Mail

DATE-TIME 6/25/98 6:39:23 AM
FROM Bouchard, Joseph F.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Update on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]
TO Allen, Charles A.

CARBON_COPY

TEXT_BODY Gov't officials only. No shadow writing.

Joe Bouchard

-----Original

Message-----

From: Allen, Charles A.

Sent: Wednesday, June 24,
1998 7:43 PM

To: Bouchard, Joseph F.

Cc: @LEGAL - Legal Advisor

Subject: RE:

Update on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]

Joe,
this sounds good.

A cautionary note: Are the op-ed pieces being prepared for USG officials to submit to papers in their official capacity? Such would be OK, subject to normal reviews and clearances. But keep in mind that we cannot "shadow write" op-eds for others to submit to papers.

-----Original Message-----

From: Bouchard,
Joseph F.

Sent: Wednesday, June 24, 1998 7:30 PM

To: @DEFENSE

- Defense Policy; @LEGISLAT - Legislative Affairs; @LEGAL - Legal
Advisor

Subject: Update on Law of the Sea Treaty Ratification Effort
[UNCLASSIFIED]

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- * Get Secretary

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Joe Bouchard

Exchange Mail

DATE-TIME 6/25/98 10:39:47 AM
FROM Andreassen, Steven P.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Halperin, David E.
Bell, Robert G.
Caravelli, John M.
Edwards, Joan K.
Harris, Elisa D.
Hill, Roseanne M.
Samore, Gary S.
Tucker, Maureen E.
LaFleur, Vinca S.
Gray, Wendy E.

CARBON_COPY

TEXT_BODY

Dave -- Just met with Bob on this, and we will have some suggestions.
Doubt we will get them to you by 11:00, but will send ASAP. Steve.

-----Original

Message-----

From: Halperin, David E.

Sent: Thursday, June 25,
1998 9:59 AM

To: Andreassen, Steven P.; Bell, Robert G.; @NONPRO

- Export Controls; LaFleur, Vinca S.; Gray, Wendy E.

Subject: FW:

SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]

Importance: High

Steve

and Bob -- I've edited from Steve's edits. (My comments in blue;
Steve's in red.) I must leave here by 11 am for the day, so if we
want to get it to SRB before bedtime in China, we should get it done
before then. I think it could wait til tomorrow, though.

Nonpro,

any comment before I send this to SRB?

(Steve, Please note: Got

your edits from Vinca. You forgot to send it to me.)

Legis has

cleared

-----Original Message-----

From: LaFleur, Vinca S.
Sent: Thursday,
June 25, 1998 9:07 AM
To: Halperin, David E.
Subject: FW: SRB Wall
Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

-----Original
Message-----

From: Andreasen, Steven P.
Sent: Wednesday, June
24, 1998 8:26 PM
To: @DEFENSE - Defense Policy
Cc: @NONPRO - Export
Controls; @LEGISLAT - Legislative Affairs; LaFleur, Vinca S.; Gray,
Wendy E.
Subject: FW: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

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-- A few edits -- most important, I think we should avoid the "classic" missile defense debate with Helms, and instead point to our own (robust) program and note it is consistent with and supported by our arms control commitments. I did not have a chance to show this to Bob before he departed; you might want to send around a clean draft before he gets in around 10:00 a.m. tomorrow, at which point I'll have him focus on this. Thanks. Steve.

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To: @DEFENSE -
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Subject: SRB Wall Street
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Draft of SRB op-ed in response
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SRB CTB WSJ.doc >>

Exchange Mail

DATE-TIME 6/25/98 10:45:46 AM
FROM Halperin, David E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Andreasen, Steven P.

CARBON_COPY

TEXT_BODY

Thanks. I'm still leaving at 11. Back in by 9 am tomorrow, so we can shoot to get it to Sandy soon after his arrival in Beijing (plane lands 7:30 am ET tomorrow).

-----Original Message-----

From: Andreasen,
Steven P.
Sent: Thursday, June 25, 1998 10:40 AM
To: Halperin,
David E.; Bell, Robert G.; @NONPRO - Export Controls; LaFleur, Vinca
S.; Gray, Wendy E.
Subject: RE: SRB Wall Street Journal CTBT/ABMT
op-ed [UNCLASSIFIED]

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Steven P.; Bell, Robert G.; @NONPRO - Export Controls; LaFleur, Vinca
S.; Gray, Wendy E.
Subject: FW: SRB Wall Street Journal CTBT/ABMT
op-ed [UNCLASSIFIED]
Importance: High

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 Importance: High

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 Cc: @NONPRO - Export
 Controls; @LEGISLAT - Legislative Affairs; LaFleur, Vinca S.; Gray,
 Wendy E.
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Exchange Mail

DATE-TIME 6/25/98 11:26:59 AM
FROM Bell, Robert G.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Update on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]
TO Bouchard, Joseph F.

CARBON_COPY**TEXT_BODY**

ok -good

-----Original Message-----

From: Bouchard, Joseph F.

Sent: Wednesday, June 24, 1998 7:30 PM

To: @DEFENSE - Defense

Policy; @LEGISLAT - Legislative Affairs; @LEGAL - Legal Advisor

Subject: Update

on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]

Senator

Helms met with Secretary Cohen, Secretary Dalton and General Shelton this afternoon to discuss the Law of the Sea Treaty. The meeting went very well and Senator Helms expressed a willingness to schedule hearings on the treaty. This is a major breakthrough in the ratification effort. Next steps:

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not be held hostage to other issues before the SFRC on which the Administration and the majority party (or the SFRC Chairman) do not agree.

Joe Bouchard

Exchange Mail

DATE-TIME 6/25/98 1:37:03 PM
FROM Andreasen, Steven P.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Tucker, Maureen E.

CARBON_COPY**TEXT_BODY**

I would go so far as to say "muscular"...certainly, a program that goes beyond Mort Halperin senior's tastes and desires, which is reflected in his young son's work...

-----Original Message-----

From: Tucker,
Maureen E.
Sent: Thursday, June 25, 1998 1:01 PM
To: Andreasen,
Steven P.
Subject: RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]

Yes,
we do have a robust program, Mr. Andreasen.

-----Original Message-----

From: Andreasen,
Steven P.
Sent: Wednesday, June 24, 1998 8:26 PM
To: @DEFENSE
- Defense Policy
Cc: @NONPRO - Export Controls; @LEGISLAT - Legislative
Affairs; LaFleur, Vinca S.; Gray, Wendy E.
Subject: FW: SRB Wall
Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Dave

-- A few edits -- most important, I think we should avoid the "classic" missile defense debate with Helms, and instead point to our own (robust) program and note it is consistent with and supported by our arms control commitments. I did not have a chance to show this to Bob before he departed; you might want to send around a clean draft before he gets in around 10:00 a.m. tomorrow, at which point I'll have him focus on this. Thanks. Steve.

-----Original Message-----

From: Halperin,

David E.

Sent: Wednesday, June 24, 1998 5:34 PM

To: @DEFENSE -

Defense Policy

Cc: @NONPRO - Export Controls; @LEGISLAT - Legislative
Affairs; LaFleur, Vinca S.; Gray, Wendy E.

Subject: SRB Wall Street

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Exchange Mail

DATE-TIME 6/25/98 7:38:04 PM
FROM Andreasen, Steven P.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Tucker, Maureen E.

CARBON_COPY**TEXT_BODY**

...Blond hair...blue eyes...six feet...lost just a tad bit of hair
on top (although not really that noticeable)...

-----Original

Message-----

From: Tucker, Maureen E.
Sent: Thursday, June 25,
1998 7:14 PM
To: Andreasen, Steven P.
Subject: RE: SRB Wall Street
Journal CTBT/ABMT op-ed [UNCLASSIFIED]

Actually, no.

-----Original

Message-----

From: Andreasen, Steven P.
Sent: Thursday, June 25,
1998 7:07 PM
To: Tucker, Maureen E.
Subject: RE: SRB Wall Street
Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Robust...Clean...and
Muscular...remind you of a certain NSC director?

-----Original

Message-----

From: Tucker, Maureen E.
Sent: Thursday, June 25,
1998 6:47 PM
To: Andreasen, Steven P.
Subject: RE: SRB Wall Street
Journal CTBT/ABMT op-ed [UNCLASSIFIED]

Robust AND clean? This
is too much.

-----Original Message-----

From: Andreassen, Steven

P.

Sent: Thursday, June 25, 1998 3:28 PM

To: @DEFENSE - Defense

Policy; @NONPRO - Export Controls; @PLANNING - Strat Plan & Comm;

@LEGISLAT - Legislative Affairs

Subject: FW: SRB Wall Street Journal

CTBT/ABMT op-ed [UNCLASSIFIED]

Importance: High

Dave -- In coordination

with Bob, I have "lined-in-lined-out" the draft you sent below; I am also attaching a "clean" version of what that draft would look like to ease in translation. Not to belabor the point, but the administration is committed to a "robust" (indeed, "muscular") deployment readiness program as it relates to national missile defense. This is more than just "technology demonstration" -- we have a program designed to field a limited ABM system by 2003, if the threat so warrents. Thanks again for your hard work on this. Steve.

<< File: Berger

Again, Clean Again.doc >>

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David E.

Sent: Thursday, June 25, 1998 9:59 AM

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Steven P.; Bell, Robert G.; @NONPRO - Export Controls; LaFleur, Vinca

S.; Gray, Wendy E.

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op-ed [UNCLASSIFIED]

Importance: High

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Subject: FW: SRB Wall Street
Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

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Sent: Wednesday, June
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To: @DEFENSE - Defense Policy
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Controls; @LEGISLAT - Legislative Affairs; LaFleur, Vinca S.; Gray,
Wendy E.
Subject: FW: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
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CLASSIFICATION UNCLASSIFIED
SUBJECT RE: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
TO Andreasen, Steven P.

CARBON_COPY**TEXT_BODY**

thank you. I'll send it to China.

-----Original Message-----

From: Andreasen,
Steven P.
Sent: Friday, June 26, 1998 5:32 PM
To: Halperin, David
E.
Cc: @DEFENSE - Defense Policy
Subject: FW: SRB Wall Street Journal
CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Dave -- Bob has
approved with these edits. If ok with you, let er rip. Thanks.
Steve.

-----Original Message-----

From: Halperin, David E.

Sent: Friday, June 26, 1998 4:08 PM
To: @DEFENSE - Defense Policy
Subject: FW:
SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Steve

-- Took your phrase; tried to fix the other phrase you disliked;
and dropped one other word ("seriously"). Let me know. David

-----Original
Message-----

From: Andreasen, Steven P.
Sent: Friday, June 26,
1998 3:48 PM

To: Halperin, David E.
Cc: @DEFENSE - Defense Policy
Subject: FW:
SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Dave

-- we are down to four words: instead of "clarify our right to test," suggest instead "clarify conditions for testing." Rationale is as follows: we do not want to imply that we do not have the "right" to test TMD systems under the ABMT: we do. What we have clarified is the testing conditions, not the right. If you can accept, send me a "clean," and I'll clear with Bob around 4:00 when he gets back to the office. [FYI -- "endanger the process" is still not my favorite phrase. Sounds like State Dept, stripe-pants speak. My only suggestion is the possible insertion of "binding agreements" after "deadly arsenals," which is a bit more concrete. Your call.]

-----Original Message-----

From: Halperin,
David E.
Sent: Friday, June 26, 1998 3:09 PM
To: @DEFENSE - Defense
Policy
Subject: FW: SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Steve

-- another volley. If these changes don't work for you, call me and let's escape cyberspace, sit down face to face and finish this up. Thanks.

-----Original Message-----

From: Andreasen, Steven
P.
Sent: Friday, June 26, 1998 12:23 PM
To: @DEFENSE - Defense
Policy; @NONPRO - Export Controls; @PLANNING - Strat Plan & Comm;
@LEGISLAT - Legislative Affairs
Subject: FW: SRB Wall Street Journal
CTBT/ABMT op-ed [UNCLASSIFIED]
Importance: High

Dave -- I've

made some edits on the ABM grafs, again. Two points: First, I think we can and should include the appropriate references to "deployment," since that is part of our program. Second, I've reinserted a reference to the ABM succession agreement: in short, if we only explicitly reference our intent to transmit the two demarcation agreements to the Senate for approval, we risk fueling suspicions in the Senate

that we will NOT transmit the succession protocol.

-----Original

Message-----

From: Halperin, David E.

Sent: Friday, June 26, 1998

10:25 AM

To: @DEFENSE - Defense Policy; @NONPRO - Export Controls;
@LEGISLAT - Legislative Affairs; LaFleur, Vinca S.; Gray, Wendy E.

Subject: FW:

SRB Wall Street Journal CTBT/ABMT op-ed [UNCLASSIFIED]

Importance: High

Steve

-- I messed with the ABM grafts again, still with an eye to making this accessible to the public/acceptable to the WSJ editors. Your last draft moved us closer, and I hope you think this one finishes the job or at least comes close. Use "track changes" if you want to see how I edited your last draft. Thanks.

-----Original

Message-----

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Sent: Thursday, June 25,
1998 3:28 PM

To: @DEFENSE - Defense Policy; @NONPRO - Export Controls;
@PLANNING - Strat Plan & Comm; @LEGISLAT - Legislative Affairs

Subject: FW:

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<< File: Berger Again, Clean Again.doc >>

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Exchange Mail

DATE-TIME 7/1/98 8:31:08 AM
FROM Cosgriff, Kevin J.
CLASSIFICATION ~~CONFIDENTIAL~~
CLASSIFICATIONREASON 1.5(d)
DATECLASSIFIEDON 06/29/1998
DECLASSIFYON 06/29/2008
SUBJECT RE: NSC Priorities ~~CONFIDENTIAL~~
TO Bouchard, Joseph F.

CARBON_COPY Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.
Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hill, Roseanne M.
Hunerwadel, Joan S.

TEXT_BODY

Consider it added

-----Original Message-----

From: Bouchard,
Joseph F.

Sent: Wednesday, July 01, 1998 7:19 AM

To: Cosgriff,
Kevin J.

Cc: @LEGISLAT - Legislative Affairs; @LEGAL - Legal Advisor

Subject: RE:

NSC Priorities ~~CONFIDENTIAL~~

Kevin,

I would also note that
the 1997 State Department letter to the SFRC Chairman on treaty
priorities
(sent at the beginning of each session of Congress) included the
Law of the Sea Treaty in the highest priority of treaties (with CTB,
etc.). Here is what the President said at the National Ocean Conference

DECLASSIFIED
E.O. 13526 5/16/2017
White House Guidelines, September 11, 2006
By VL NARA, Date 2/7/2017
2006-1363-F(3)

in Monterey on June 12:

Fifth, we must join the rest of the world in ratifying, at long last, the Convention on the Law of the Sea. (Applause.) The character of our country, and, frankly, the nature of a lot of the economic and political success we have enjoyed around the world has rested in no small part on our continuous championing of the rule of law at home and abroad. The historic Convention on the Law of the Sea extends the rule of law to the world's oceans.

There is not a scientist here in any discipline who seriously believes that we will ever turn the tide on these dangerous trends until we have a uniform legal system that can provide a framework necessary to give us a global approach to this problem. This convention assures the open seaways that our Armed Forces and our fishing, telecommunications

and shipping industries require. But it also, I will say again, gives us the framework to save the oceans while we grow as a people and while we grow economically.

This year, during this legislative session, the United States Senate should, and must, confirm its leadership role by making America a part of the community of nations already party to the Convention on the Law of the Sea.

Joe Bouchard

-----Original

Message-----

From: Baker, James E.

Sent: Tuesday, June 30, 1998

10:34 PM

To: Bouchard, Joseph F.; Cosgriff, Kevin J.

Cc: @LEGISLAT

- Legislative Affairs; @LEGAL - Legal Advisor

Subject: RE: NSC Priorities

~~[CONFIDENTIAL]~~

Kevin:

Haven't had chance to update as requested.

This certainly remains one of Legal's priorities. In addition to noting that Defense shares this view, recall that the President recently cited in Monterey to the importance of advice and consent to ratification and recent contacts by senior advisors with Sen. Helms. As stated earlier ratification of LOS would be a significant Presidential legacy in the area of national security, environment and rule of law. Joe and Chuck Allen are both experts in this area; we have the right

staff team in place to make this happen here.

-----Original

Message-----

From: Bouchard, Joseph F.

Sent: Tuesday, June 30,
1998 3:36 PM

To: Cosgriff, Kevin J.

Cc: @LEGISLAT - Legislative
Affairs; @LEGAL - Legal Advisor

Subject: FW: NSC Priorities ~~[CONFIDENTIAL]~~

Kevin,

Bob

approved submission of the following as an addition to the Defense section:

3. Obtain Senate advice and consent to ratification
of the United Nations Convention on the Law of the Sea.

Joe Bouchard

-----Original

Message-----

From: Bell, Robert G.

Sent: Tuesday, June 30, 1998
12:02 PM

To: Cosgriff, Kevin J.; @AFRICA - African Affairs; @ASIA
- Asian Affairs; @BOSNIA - Bosnian Affairs; @CEE - Central/Eastern
Europe; @COMM - WHSR Comm Officers; @DEFENSE - Defense
Policy; @DEMOCRACY

- Dem/Human Affairs; @ENVIRON - Environmental; @EUROPE -
European

Affairs; @EXECSEC - Executive Secretary; @GLOBAL - Global
Affairs;

@INTECON - Economic Affairs; @INTEL - Intelligence Programs;
@INTERAM

- Inter-American; @LEGAL - Legal Advisor; @LEGISLAT - Legislative
Affairs; @NESASIA - NE/South Asia; @NONPRO - Export Controls;

@PLANNING

- Strat Plan & Comm; @PRESS - Public Affairs; @RUSSIA -
Russia/Ukraine

Subject: RE:

NSC Priorities ~~[CONFIDENTIAL]~~

Kevin:

Need a few "tweaks" in
Defense (and Russia) section to take account of some recent arms

control set backs:

Russia

In lieu of saying "enter START II into force...etc.", change to read: "Secure Duma approval of the START II Treaty and the Extension Protocol and begin formal negotiations on START III and related agreements." [RATIONALE: START II cannot enter into force now in 1998 since a precondition is that the Senate approve the Extension Protocol and we will not even submit that agreement until after the Duma has approved START I and that will not now likely happen until after the Senate adjourns in October. So "entry into force of START II" has now become a 1999 goal - one that should be noted in the SOU in January.]

Defense

Delete para's 1&2 and
insert in lieu thereof the following:

1. Obtain Senate advice
and consent to the CTB or, at a minimum, persuade Senators Lott and Helms to schedule ratification hearings before the Senate adjourns so as to facilitate early approval of the treaty in 1999. CTB ratification, if not secured this year, should be highlighted in the SOU.

2.
Begin formal negotiations with Russia on START III immediately following
Duma approval of START II. If the Duma approves START II before the next Congress convenes, use the congressional adjournment period to begin laying the ground for what will be a difficult ratification battle with the Senate in 1999 over the four ABM/START-related agreements
signed in New York in September 1997 (agreements we've pledged to submit for Senate advice and consent as soon as the Duma approves START II). The SOU should make the case for these accords.

-----Original
Message-----

From: Cosgriff, Kevin J.

Sent: Monday, June 29, 1998

3:50 PM

To: @AFRICA - African Affairs; @ASIA - Asian Affairs; @BOSNIA - Bosnian Affairs; @CEE - Central/Eastern Europe; @COMM - WHSR Comm

Officers; @DEFENSE - Defense Policy; @DEMOCRACY - Dem/Human Affairs;

@ENVIRON - Environmental; @EUROPE - European Affairs;
@EXECSEC -
Executive Secretary; @GLOBAL - Global Affairs; @INTECON -
Economic
Affairs; @INTEL - Intelligence Programs; @INTERAM - Inter-
American;
@LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs;
@NESASIA
- NE/South Asia; @NONPRO - Export Controls; @PLANNING - Strat
Plan
& Comm; @PRESS - Public Affairs; @RUSSIA - Russia/Ukraine
Subject: NSC
Priorities ~~[CONFIDENTIAL]~~

<< File: priorities new_.doc >>

This

is the latest version of the 2nd Half 1998 Priorities. An earlier version went to SRB and this one incorporates his feedback plus current events. We'd like comment from Senior Directors or Acting Senior Directors by Wednesday midday, please, with the goal to have an updated version available for SRB to review on his return flight should he so desire.

Additionally, while these are NSC priorities, we'd like to hear from Seniors about which ones rise to the level of Presidential priorities; defined as something that; 1) might mandate a significant amount of his time, or 2) might be of such significance as to be worthy of his mentioning in the 1999 State of the Union as an example of a major foreign policy accomplishment initiative.

Please

address responses to @ExecSec. Thank you. Kevin

Exchange Mail

DATE-TIME 7/8/98 6:01:56 PM
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Jim's Friday breakfast with Pickering [UNCLASSIFIED]
TO Hachigian, Nina L.

CARBON_COPY Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hill, Roseanne M.
Hunerwadel, Joan S.
Bouchard, Joseph F.

TEXT_BODY

I strongly concur as well. As I have noted before, this will be good for national security and good for the rule of law. An important legacy for the President. Thank you.

-----Original Message-----

From: Bouchard,
Joseph F.
Sent: Wednesday, July 08, 1998 5:39 PM
To: Hachigian,
Nina L.
Cc: @DEFENSE - Defense Policy; @EXECSEC - Executive
Secretary;
@LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs
Subject: RE:
Jim's Friday breakfast with Pickering [UNCLASSIFIED]

Nina,

Once again, if you are looking for an important but easy topic, I propose that Jim encourage Pickering to have Secretary Albright call Senator Helms to urge him to schedule hearings on the Law of the Sea Treaty this month so that the Senate can vote on it no later than September. Sandy Berger discussed the Law of the Sea Treaty ratification strategy

with Secretaries Albright and Cohen in March and April. The President laid the groundwork for an Albright call by emphasizing the

importance
of ratifying the treaty in his Friday speech at the National Ocean Conference in Monterey. The President also told the Chairman of the panel that reviewed ocean law and security at the conference that ratifying the Law of the Sea Treaty is his top treaty priority for the rest of the year. Senator Helms told Secretary Cohen on June 24 that he would hold hearings on the treaty. We need Albright to call to get Helms to commit to a date. The attached paper provides background and talking points for Jim. Bob Bell concurs.

Joe
Bouchard

-----Original Message-----

From: Hachigian, Nina L.

Sent: Wednesday, July 08, 1998 10:31 AM

To: @ALLNSC - NSC Staff

Subject: Jim's

Friday breakfast with Pickering [UNCLASSIFIED]

Please send me
topics for the Steinberg-Pickering breakfast by noon tomorrow (Thursday).
If you have previously sent me a topic that is still current, please send me that email again. Thanks.

TRANSLATED_ATTACHMENT

LOS-mem7.doc
POINTS TO BE MADE FOR STEINBERG-PICKERING
BREAKFAST
ON THE LAW OF THE SEA TREATY

Background

There are critically important national security, economic and environmental grounds for ratifying the UN Convention on the Law of the Sea. The Administration should attempt to gain Senate advice and consent to ratification in 1998 rather than waiting until later because the United States will lose its provisional seat on the International Seabed Authority if it has not ratified the treaty by October 31. That would have serious long term negative consequences for U.S. ocean interests and our competitiveness in the seabed mining industry.

There is strong bipartisan support for the Law of the Sea Treaty in the Senate.

Senate Republican leadership (Lott, Stevens, Lugar, McCain, Warner, Murkowski and

Snowe) all support the treaty. Senator Stevens has approached Helms on the

treaty and Senator Lott has agreed to do so. In a meeting with Secretary Cohen

on June 24, Senator Helms agreed to schedule hearings on the treaty.

We are

confident that we can dispose of the Law of the Sea Treaty quickly without

prejudicing efforts to ratify the Comprehensive Test Ban Treaty.

Remarks by the President on the Law of the Sea Treaty last Friday at the National

Ocean Conference (attached) were perfectly timed to support our ratification

effort. President Clinton submitted the treaty to the Senate after it had languished for twelve years; it is entirely appropriate that ratification of the

treaty be a legacy of his Presidency.

Points to be Made

- * The efforts by State and DOD have been successful in building strong bipartisan support for the Law of the Sea Treaty.

- * Please encourage Secretary Albright to call Senator Helms and urge him to hold hearings on the treaty this month and report it out of committee for a vote by the Senate no later than September.

- * We will be asking Secretary Cohen to follow up with Senator Lott, if necessary.

- * Secretary Albright should emphasize to Senator Helms that this is a bipartisan effort.

EXCERPT FROM REMARKS BY THE PRESIDENT TO THE NATIONAL OCEANS CONFERENCE

San Carlos Park
Monterey, California

June 12, 1998, 1:30 P.M. PDT

Fifth, we must join the rest of the world in ratifying, at long last, the Convention on the Law of the Sea. (Applause.) The character of our country, and, frankly, the nature of a lot of the economic and political success we have enjoyed around the world has rested in no small part on our continuous championing of the rule of law at home and abroad. The historic Convention on the Law of the Sea extends the rule of law to the world's oceans.

There is not a scientist here in any discipline who seriously believes that we will ever turn the tide on these dangerous trends until we have a uniform legal system that can provide a framework necessary to give us a global approach to this problem. This convention assures the open seaways that our Armed Forces and our fishing, telecommunications and shipping industries require. But it also, I will say again, gives us the framework to save the oceans while we grow as a people and while we grow economically.

This year, during this legislative session, the United States Senate should, and must, confirm its leadership role by making America a part of the community of nations already party to the Convention on the Law of the Sea.

Exchange Mail

DATE-TIME 7/8/98 6:02:14 PM
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: ABC Lunch [UNCLASSIFIED]
TO Allen, Charles A.

CARBON_COPY**TEXT_BODY**

Thanks for recommendation Chuck.

-----Original Message-----

From: Allen,
Charles A.
Sent: Wednesday, July 08, 1998 5:27 PM
To: Baker, James
E.
Subject: FW: ABC Lunch [UNCLASSIFIED]

Jamie, I recommend that
you add your concurrence to Bob Bell's on this item.

-----Original
Message-----

From: Bouchard, Joseph F.
Sent: Wednesday, July 08,
1998 5:24 PM
To: Malley, Robert
Cc: @DEFENSE - Defense Policy;
@LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @EXECSEC
- Executive Secretary
Subject: RE: ABC Lunch [UNCLASSIFIED]

Rob,

Once
again, I propose that Sandy encourage Albright to call Senator Helms
to urge him to schedule hearings on the Law of the Sea Treaty this
month. Sandy discussed the Law of the Sea Treaty ratification strategy
with Albright and Cohen in March and April.
The President laid the
groundwork for their calls by emphasizing the importance of ratifying
the treaty in his speech at the National Ocean Conference in Monterey
(excerpt attached). The President also told the Chairman of the

panel that reviewed ocean law and security at the conference that ratifying the Law of the Sea Treaty is his top treaty priority for the rest of the year. Senator Helms told Secretary Cohen on June 24 that he would hold hearings on the treaty. We need Albright to call to get Helms to commit to a date. The attached paper provides background and talking points for Sandy. Bob Bell concurs.

<<

File: LOS-mem6.doc >>

Joe Bouchard

-----Original Message-----

From: Malley,
Robert

Sent: Wednesday, July 08, 1998 8:31 AM

To: @ALLNSC - NSC

Staff

Subject: ABC Lunch [UNCLASSIFIED]

Please provide proposed
topics for next Monday's ABC lunch by OOB tomorrow.

Thanks

Exchange Mail

DATE-TIME 7/9/98 5:59:39 PM
FROM Bouchard, Joseph F.
CLASSIFICATION UNCLASSIFIED
SUBJECT Update on Law of the Sea Treaty Ratification Effort [UNCLASSIFIED]

TO Davies, Glyn T.
Dejban, Donna D.
Friedrich, Mary K.
Hachigian, Nina L.
Kerrick, Donald L.
Malley, Robert
Millison, Cathy L.
O'Brien, Penelope R.
Rice, Edward A.
Scott-Perez, Marilyn L.
Storey, Sharon V.
Andreasen, Steven P.
Bell, Robert G.
Bouchard, Joseph F.
Kelly, Sandra L.
Langley, Janice M.
Mulligan, George D.
vonLipsey, Roderick K.
Wasserman, Elaine P.
Witkowsky, Anne A.
Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.
Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hill, Roseanne M.
Hunerwadel, Joan S.

CARBON_COPY Budig, Nyda N
Crowley, Philip J.
Wozniak, Natalie S.

TEXT_BODY Update on Law of the Sea Treaty Ratification Effort :

* Key upcoming

action: If Secretary Albright has not called Senator Helms on setting a date for hearings on the treaty by Monday's ABC lunch, urge her to do so as soon as possible.

* Last week all seven living former Chiefs of Naval Operations sent a letter to Senators Lott, Thurmond and Helms urging the Senate to act promptly to ratify the treaty.

* RADM

Ryan (Navy OLA) delivered to Bud Nance written answers to questions on the treaty that were given to DOD at the June 24 meeting between Senator Helms and Secretary Cohen. Nance agreed to a briefing for SFRC and Helms staffers by OSD (Frank Miller and RADM Smith) on July 14 at 9:00 a.m. This briefing was described by Nance as a prerequisite for hearings on the treaty. Slocumbe will call Nance after the briefing to get Senator Helms to commit to a date for hearings.

* State

has asked Ed Hall to work with Bud Nance on setting a date for hearings. Hall agreed to help.

* Senators Murkowski and Chafee hosted a luncheon briefing on the treaty in the Russell building today. Briefers included VADM Ellis (CNO's staff), Paul Kelly (American Petroleum Institute), John Norton Moore (expert on ocean law), and Reed Harrison (AT&T). 20 Senate staffers were present, including Patty McNerney (SFRC) and Wayne Boyles (Helms). Tom Lippman (Washington Post) also attended. Event organizers believe it was very productive.

* DOD,

Navy, State and Commerce have launched full scale press effort, including submission of op-ed pieces to key papers, briefings for reporters, and meetings with editorial boards.

* DOD is seeking letters to

Senator Helms supporting the treaty from former Secretaries Cheney, Weinberger and Rumsfeld. State is seeking similar letters from Schulz and Baker.

* Commerce, supported by DOD and Navy, is seeking a letter supporting the treaty from President Bush. They have requested NSC assist with approach via Scowcroft.

Joe Bouchard

Exchange Mail

DATE-TIME 7/10/98 5:01:14 PM
FROM Bouchard, Joseph F.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: Senator Helms [UNCLASSIFIED]
TO Andreasen, Steven P.

CARBON_COPY

TEXT_BODY They didn't say and I didn't think to ask.

Joe Bouchard

-----Original

Message-----

From: Andreasen, Steven P.

Sent: Friday, July 10,
1998 4:39 PM

To: Bouchard, Joseph F.

Subject: RE: Senator Helms
[UNCLASSIFIED]

Importance: High

Didn't know...do we know what
the surgery is for (i.e., major or minor?)

-----Original Message-----

From: Bouchard,
Joseph F.

Sent: Friday, July 10, 1998 4:19 PM

To: @LEGISLAT -

Legislative Affairs

Cc: @DEFENSE - Defense Policy

Subject: Senator
Helms [UNCLASSIFIED]

FYI, this probably isn't news to you, but
Bud Nance told DOD and State leg affairs types today that Senator
Helms goes into the hospital for surgery on July 27.

Joe Bouchard

Exchange Mail

DATE-TIME 7/16/98 5:50:59 PM
FROM Bouchard, Joseph F.
CLASSIFICATION UNCLASSIFIED
SUBJECT RE: ABC LUNCH [UNCLASSIFIED]
TO Malley, Robert

CARBON_COPY Andreassen, Steven P.
Bell, Robert G.
Bouchard, Joseph F.
Kelly, Sandra L.
Langley, Janice M.
Mulligan, George D.
vonLipsey, Roderick K.
Wasserman, Elaine P.
Witkowski, Anne A.
Bartlett, L. June
Cosgriff, Kevin J.
Davies, Glyn T.
Dejban, Donna D.
Elkon, Nicole L.
Hilliard, Brenda I.
Hurwitz, Marc I.
Joshi, M. Kay
Kerrick, Donald L.
Millison, Cathy L.
Poole, Jennifer C.
Rice, Edward A.
Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hill, Roseanne M.
Hunerwadel, Joan S.
Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.

TEXT_BODY Rob,

Attached is a revision to the talking points. Only changes from previous version:

* Bud Nance has told DOD and State that hearings on the treaty will have to be in September because there is no time on the SFRC schedule prior to Helms going into hospital on July 27. Talking point on calling Helms was revised accordingly.

* Last talking point puts greater emphasis on bipartisan support for the treaty. This is needed to counter articles in press portraying Helms as the lone holdout against the treaty, which have not been helpful.

Joe Bouchard

-----Original Message-----

From: Malley, Robert

Sent: Thursday, July 16, 1998 10:17 AM

To: @ALLNSC - NSC Staff

Subject: ABC

LUNCH [UNCLASSIFIED]

At this point, topics for Monday mirror those of last week's cancelled lunch:

- 1) New Zealand security review
(ASIA -- please provide update if necessary)
- 2) ICC - state of
play (DEM -- update)
- 3) North Korea/KEDO funding (ASIA -- update
if necessary)
- 4) Law of the Seas (DEFENSE: only action item from
last week's points was call from MKA to Helms. Is that all?)

Any
additional topics need to get to me ASAP.

Would appreciate talking
points by 5:00 pm Friday.

Thanks

LAW OF THE SEA TREATY

Background

There are critically important national security, economic and environmental grounds for ratifying the UN Convention on the Law of the Sea. We should attempt to gain Senate advice and consent to ratification in 1998 because the United States will lose its provisional seat on the International Seabed Authority if it has not ratified the treaty by November 15.

Remarks by the President on the Law of the Sea Treaty last Friday at the National Ocean Conference (attached) were perfectly timed to support our ratification effort. President Clinton submitted the treaty to the Senate after it had languished for twelve years; it is entirely appropriate that ratification of the treaty be a legacy of his Presidency.

There is strong bipartisan support for the Law of the Sea Treaty in the Senate. Senate Republican leadership (Lott, Stevens, Lugar, McCain, Warner, Murkowski and Snowe) all support the treaty. Senator Stevens has approached Helms on the treaty and Senator Lott has agreed to do so. In a meeting with Secretary Cohen on June 24, Senator Helms agreed to schedule hearings on the treaty. Bud Nance has told DOD and State that the hearings will have to be in September because there is no time on the SFRC schedule prior to Helms going into hospital on July 27.

We are confident that we can dispose of the Law of the Sea Treaty quickly without prejudicing efforts to ratify the Comprehensive Test Ban Treaty or other treaty efforts.

Points to be Made

* The efforts by your staffs have been successful in building strong bipartisan support for the Law of the Sea Treaty. Bill, I appreciate your meeting

with
Helms and call to Lott.

* Madelein, the next time you speak with Senator Helms, thank him for agreeing to hold hearings and urge him to hold the hearings no later than early September.

* Everyone working the ratification effort should emphasize the strong bipartisan support for the treaty. Do not portray Helms as obstructionist, but as supporting the desires of the Republican leadership by agreeing to hold hearings.

EXCERPT FROM REMARKS BY THE PRESIDENT
TO THE NATIONAL OCEANS CONFERENCE

San Carlos Park
Monterey, California

June 12, 1998, 1:30 P.M. PDT

Fifth, we must join the rest of the world in ratifying, at long last, the Convention on the Law of the Sea. (Applause.) The character of our country, and, frankly, the nature of a lot of the economic and political success we have enjoyed around the world has rested in no small part on our continuous championing of the rule of law at home and abroad. The historic Convention on the Law of the Sea extends the rule of law to the world's oceans.

There is not a scientist here in any discipline who seriously believes that we will ever turn the tide on these dangerous trends until we have a uniform legal system that can provide a framework necessary to give us a global approach to this problem. This convention assures the open seaways that our Armed Forces and our fishing, telecommunications and shipping industries require. But it also, I will say again, gives us the framework to save the oceans while we grow as a people and while we grow economically.

This year, during this legislative session, the United States Senate should, and must, confirm its leadership role by making America a part of the

community of
nations already party to the Convention on the Law of the Sea.

Exchange Mail

DATE-TIME 7/20/98 9:07:31 PM
FROM Naplan, Steven J.
CLASSIFICATION UNCLASSIFIED
SUBJECT DRAFT: Nickles memo for SRB [UNCLASSIFIED]
TO Rudman, Mara E.

CARBON_COPY Schwartz, Eric P.
Abercrombie-Winstanley, Gina K.
Burrell, Christina L.
Farrar, Jay C.
Rudman, Mara E.
Naplan, Steven J.
Busby, Scott W.
Davis, Mary K.
Hawley, Leonard R.
Kale, Dora A.
Metzl, Jamie F.
Naplan, Steven J.
Ragan, Richard F.
Schwartz, Eric P.
Wippman, David

TEXT_BODY MARA: OK. ready for you to edit.

ERIC: don't comment on this
e-mail. Wait to comment on Mara's subsequent edits.

SN

TRANSLATED_ATTACHMENT 5165 Nickles Bill UPDATE memo.doc

July 20, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

FROM: ERIC SCHWARTZ, MARA RUDMAN, STEVEN NAPLAN

SUBJECT: Nickles Bill on International Religious Freedom

This memorandum describes the state of play on the revised religious freedom legislation sponsored by Senator Nickles, and offers recommendations on how we should proceed.

Background to the Legislation: On March 26, Senator Nickles, along with six cosponsors (notably including Senator Lieberman), introduced the International Religious Freedom Act (IRFA) of 1998. Senator Helms is also a cosponsor. The IRFA is an alternative to the Wolf-Specter bill. The Wolf-Specter bill passed overwhelmingly in the House (375-41) on May 14 in spite of an Administration veto threat. The Wolf-Specter bill contains a number of troubling provisions, most notably broad automatic economic sanctions. The Nickles bill, which provides greater flexibility in crafting foreign policy, but still contains problems, faces Senate Foreign Relations Committee mark-up this Thursday, July 23.

Politics of the Legislation: Senate Majority Leader Lott has promised that some form of international religious freedom legislation will be voted on in the Senate and we believe that the Congress will adopt some legislation on religious freedom, (likely by an overwhelmingly large margin) in this session.

The Nickles bill reflects an effort by a number of Senators to come up with legislation that permits the Administration greater flexibility than does

Wolf-Specter, while still credibly addressing the religious persecution issue.

Senator Helms has indicated his desire to move Nickles quickly, so that it - rather than Wolf-Specter - becomes the focus of attention on the Hill. There is a real chance that should Nickles falter in the Senate, (for lack of Administration support or lack of Democratic votes) that Senator Lott could bring

Wolf-Specter to the floor. The strong likelihood of Senate passage of Wolf-Specter virtually guarantees a veto-proof conference report of legislation that is most objectionable to the Administration.

KEY ELEMENTS OF THE NICKLES LEGISLATION

The bipartisan Senate-House staff group behind the Nickles legislation has worked in very good faith to modify their bill in order to accommodate many of the important, but technical, changes requested by the Administration. (i.e. lots of "shalls" have become "shoulds.") The negotiations have not, however, yielded significant changes to the most onerous requirement of an automatic condemnation list of "serious offenders" of religious freedom, including those countries with "particular severe" track records, a group which would likely include several key U.S. allies. The countries listed as "serious offender" states would be subject to punitive sanctions (from executive actions to economic sanctions), though the Nickles bill does afford extensive flexibility to the President.

New Positions: The IRFA establishes an Ambassador-at-Large for Religious Liberty under the Secretary of State as well as a nine member, bipartisan Commission on International Religious Freedom that would investigate violations and make policy recommendations. (Both of these mandates are similar to existing State Department initiatives.) Additionally, the IRFA urges (through a Sense of the Congress clause) the establishment at NSC of a Special Advisor on Religious Persecution. (At the request of the Administration, sponsors have expanded the flexibility permitted to the Administration in how such provisions would be interpreted and implemented.)

Training and Contacts: The legislation requires training for foreign service officers to aid them in recognizing religious persecution, and high-level Embassy contacts with imprisoned religious leaders abroad. The bill grants to

U.S.
citizens abroad equal access to U.S. embassies for religious activities
and
directs the State Department to maintain country-specific lists of
religious
prisoners.

Reporting and Sanctions: These are the critical sections of the
legislation, and
at the Administration's urging, some parts have been improved upon.
Others
remain problematic, but still better than Wolf-Specter, as they permit
greater
Administration flexibility.

Reporting: The Nickles bill has been modified to require several
reports.

May 1: An Annual Report to Congress on worldwide international
religious freedom
would provide information on the religious freedom practices of all
nations,
violators and not, as well as U.S. actions to address violations.

June 1: An internal USG document in which the President would be
required to
make determinations as to which nations fall into the category of
"countries of
greatest concern," (substitute terminology for the old "gross violators"
category.)

August 1: The Advisory Commission on International Religious
Freedom would
review the May 1 Annual Report, as well as the President's June 1
internal
determinations and then publicly report on its own policy
recommendations.

September 1: The President, (informed by the Advisory Commission's
August
report) would report to Congress the list of "countries of particular
concern"
regarding the right to freedom of religion, as well as his additional
intended
actions against them. This report would also list all actions taken
against all
violators (short of those of "particular concern").

Sanctions: For those governments that engage in any violations of religious freedom, the President is required to implement one of sixteen possible "executive measures and sanctions" of his choosing that are specified in the legislation, including "a private demarche", "a public demarche," "a public condemnation," "cancellation of scientific exchanges," "cancellation of cultural exchanges," "denial of state visits," and/or eight forms of economic sanctions (described below). He must also report to the Congress on his actions.

For those "countries of particular concern" (the former "gross violators"), the President is required to choose one of the eight economic sanctions among the sixteen listed measures. The eight economic sanctions include withdrawals, limitations, or suspensions on development assistance, OPIC and EXIM, security assistance, GSP, IFI loans, export licenses, and USG loans.

Flexibility: Beyond the ability of the President to pick and choose among listed measures and sanctions, additional provisions provide the Administration with flexibility in implementation. First, in lieu of the sixteen measures and sanctions, the Administration could negotiate "binding agreements" with a foreign government that obligated such government to take measures to cease, or take substantial steps to address and phase out the act, policy, or practice constituting the religious persecution. Second, with respect to "countries of particular concern", the President could substitute any action authorized by law for any of the eight economic sanctions listed in the legislation, so long as he makes the case that such actions are commensurate in effect to a substituted sanction and would serve the purposes of the Act.

WAIVERS: The President could waive any of the executive measures and sanctions if he determined that such a waiver served the purposes of the Act or was

necessary for national security reasons, or if he determined the government in question had ceased violations or had taken substantial steps to end them.

COMMENT AND RECCOMENDATION

While the Nickles bill has been significantly improved, it is far from ideal and we would prefer no legislation in this area. We believe, however, that some version of a religious freedom bill will be adopted with an overwhelming majority, likely with veto override numbers, and sent to the President this year.

It is clear to us that the Nickles sponsors are determined to see that their legislation requires some form of an internal determination on or public listing of particularly severe violators of religious freedom. There may be room, however, for an Administration interpretation of the listing mandate that would permit the oral public reporting on the countries of particular concern rather than a public list of the worst violators.

Given the environment we are presented with, and the likelihood of a veto proof majority for the Nickles bill, the prospect of this improved Nickles bill heading into conference, possibly even with an edge over Wolf-Specter in the conference process, may be the very best option we'll see.

Currently, we may have leverage to get the necessary changes that would allow the Administration to implement the legislation. Republican Senators Hagel and Gramms have not agreed to support the bill precisely because of the sanctions implication for those countries identified "of particular concern." In addition, Committee Democrats have not yet indicated their support of the bill, and some of them have made their support contingent on adoption of the Administration's

proposed changes.

If we were to get these requested changes, we would have a bill the Administration would not have to oppose, Democrats would be more likely to support at mark-up, and even Republicans Hagel and Gramms might support in order to demonstrate unanimity on the bill and on religious freedom.

On the other hand, if we cannot secure the necessary Administration changes, the Administration will be forced to oppose the bill, few - if any - Democrats would support the bill at mark-up, and Hagel and Gramms will be more certain to oppose.

Even if we were unable to get our requested changes at this time, it may still be inappropriate and inadvisable to threaten a veto. Such a threat could shut us out of ongoing negotiations as we head into conference on the bill, (as well as engender a great deal of ill will from the Hill and among religious groups). Instead, we could register our opposition and our desire to continue to seek specific changes as the bill moves to the floor of the Senate and to the conference table. We should reserve a veto threat until we have a final bill.

5

Exchange Mail

DATE-TIME 7/21/98 8:01:01 AM
FROM Rudman, Mara E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: DRAFT: Nickles memo for SRB [UNCLASSIFIED]
TO Naplan, Steven J.

CARBON_COPY Schwartz, Eric P.
Rudman, Mara E.

TEXT_BODY

Steve and Eric--

I answered a number of Eric's brackets, but Steve, ran out of time to explain how you get the second 90 day delay. Look in Title IV and you'll find the section I was referencing.

Also,
while Steve and I tried to include both the "particularly severe" and "gross violators" language (because I think likely they're going to return to the latter) I realize it's confusing and have now just kept all references to "particularly severe" since that's what's in the current draft.

-----Original Message-----

From: Schwartz,
Eric P.
Sent: Tuesday, July 21, 1998 6:27 AM
To: Rudman, Mara
E.; Naplan, Steven J.
Subject: FW: DRAFT: Nickles memo for SRB [UNCLASSIFIED]

Steve/Mara:

I
agree that Steve has done a very good job. It is too long, but shaving it would take time we don't have.

My major concerns are two-fold.

First, as outlined by by capitalized comments in the text, the discussion of the legislation is a bit confusing -- and if it's confusing to me, it certainly will be to SRB. Steve, see the questions I've

raised, and seek to clarify.

Second, I will defer to your judgment, but tactically, if our goal is to get the least bad legislation, do we want to be opposing Nickles (as is) on the Senate floor? I suppose we probably do -- in fact, if we don't, we might even strengthen the forces for Wolf-Specter -- our opposition keeps Nickles credible to the right, I suppose.

But if we do oppose Nickles, isn't that a call we need to coordinate with Bowles and other WH offices?

If so, we had better get hold of the COS's rep quickly.

Let me know what you need from me.

Eric

-----Original Message-----

From: Rudman,

Mara E.

Sent: Monday, July 20, 1998 10:22 PM

To: Schwartz, Eric

P.; @LEGISLAT - Legislative Affairs; Naplan, Steven J.;

@MULTILAT

- Multilateral and Humanitarian Affairs

Subject: FW: DRAFT: Nickles

memo for SRB [UNCLASSIFIED]

Eric-

I think Steve has done quite a good job here. My corrections in some cases go to accuracy, in others to adding illustration, etc. I know it's long, but I honestly have a hard time seeing how we give Sandy a definitive document in much shorter form.

But see what you can/want to do with it. My major concern is that we get him something that lays out our case speedily (ideally by sometime late Tues am....)

-----Original Message-----

From: Naplan, Steven J.

Sent: Monday, July 20, 1998

9:08 PM

To: Rudman, Mara E.
Cc: Schwartz, Eric P.; @LEGISLAT -
Legislative Affairs; Naplan, Steven J.; @MULTILAT - Multilateral
and Humanitarian Affairs
Subject: DRAFT: Nickles memo for SRB [UNCLASSIFIED]

MARA:
OK. ready for you to edit.

ERIC: don't comment on this e-mail.
Wait to comment on Mara's subsequent edits.

SN

TRANSLATED_ATTACHMENT 5165 Nickles Bill UPDATE memo.doc

July 20, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH MARA RUDMAN/ERIC SCHWARTZ

FROM: STEVE NAPLAN

SUBJECT: Nickles Bill on International Religious Freedom

This memorandum describes the state of play on the revised religious freedom legislation sponsored by Senator Nickles, and offers recommendations on how we should proceed.

Background to the Legislation: On March 26, Senator Nickles, along with six cosponsors (notably including Senator Lieberman), introduced the International Religious Freedom Act (IRFA) of 1998. Senator Helms is also a cosponsor. The IRFA is an alternative to the Wolf-Specter bill. The Wolf-Specter bill passed overwhelmingly in the House (375-41) on May 14 despite an Administration veto threat. Wolf-Specter contains a number of troubling provisions, most notably broad automatic economic sanctions. The Nickles bill, which provides

greater flexibility to the Executive Branch , but still contains problems, is scheduled for markup in the Senate Foreign Relations Committee this Thursday, July 23.

Politics of the Legislation: Senate Majority Leader Lott has promised that some form of international religious freedom legislation will be voted on in the Senate this summer. We believe that the House and Senate will conference Wolf-Specter with whatever the Senate acts upon and will send to the President in this session legislation on religious freedom. The legislation will likely be approved by veto override margins..

The Nickles bill reflects an effort by a number of Senators to craft legislation that permits the Administration greater flexibility than does Wolf-Specter, while still credibly (from the perspective of religious groups) addressing the religious persecution issue. Senator Helms has indicated his desire to move Nickles quickly, so that it - rather than Wolf-Specter - becomes the focus of attention on the Hill. There is a real chance that, should Nickles falter in the Senate (due to of Administration opposition and/or lack of Democratic votes), Senator Lott could bring Wolf-Specter to the floor instead, or that Wolf-Specter like "strengthening" amendments to the Nickles bill could be adopted.

Senate passage of Wolf-Specter, or a Nickles bill that appears to include much of Wolf-Specter, would in all likelihood result in a veto-proof conference report of legislation that is most objectionable to the Administration. Thus, as problematic as Nickles may be in its current form (see below), there remain strong reasons for us not to reject it out of hand. [ERIC - I'd like to stay away from language like "bad" - it starts SRB in on a refrain I've already heard too many times on this bill - that we making bad law to avoid worse law.]

KEY ELEMENTS OF THE NICKLES LEGISLATION

General Points: The bipartisan Senate-House staff group behind the Nickles legislation has worked in good faith to modify their bill in order to accommodate many (but not all) the important changes requested by the Administration. For example, they have changed "shalls" to shoulds in many places; ensured that the Ambassador at Large for Religious Freedom position does not usurp the authority of the Secretary of State or the Assistant Secretary for Democracy, Human Rights and Labor;" and made some structural changes related to disapproval resolutions that help the Executive Branch slow down such resolutions.

The negotiations have not, however, yielded significant changes to the most onerous requirement of an annual list of "serious offenders" of religious freedom, including those countries with "particular severe" track records. The countries listed as "serious offender" states would be subject to punitive sanctions (from executive actions to economic sanctions), though the Nickles bill does afford extensive flexibility to the President which would largely provide ways to avoid imposing the sanctions in question.

New Positions Established by Nickles: The IRFA establishes an Ambassador-at-Large for Religious Liberty under the Secretary of State as well as a nine member, bipartisan Commission on International Religious Freedom that would investigate violations and make policy recommendations. (Both of these mandates are similar to existing State Department initiatives.) Additionally, the IRFA urges (through a Sense of the Congress clause) the establishment at NSC of a Special Advisor on Religious Persecution. (At the request of the Administration, sponsors have expanded the flexibility permitted to the Administration in how such provisions would be interpreted and implemented.)

Training and Contacts: The legislation requires training for foreign

service
officers to aid them in recognizing religious persecution, and high-level Embassy
contacts with imprisoned religious leaders abroad. The bill grants to U.S.
citizens abroad equal access to U.S. embassies for religious activities and
directs the State Department to maintain country-specific lists of religious
prisoners.

Reporting and Sanctions: These are the critical sections of the legislation, and
at the Administration's urging, some parts have been improved upon. Others
remain problematic, but still better than Wolf-Specter, as they permit far
greater Administration flexibility.

Reporting: The Nickles bill has been modified to require several reports.

May 1: An Annual Report to Congress on worldwide international religious freedom
would provide information on the religious freedom practices of foreign
governments that engage in or tolerate acts of religious persecution, as well as
U.S. actions to address violations. (Note that we think we may have the latitude
to interpret this provision as allowing report on all nations, violators and
not.)

June 1: The President must determine whether any on the countries described in
the annual report "have engaged in or tolerated systematic, widespread, and
ongoing pattern of particularly severe violations of the right to religious
freedom."

August 1: The Advisory Commission on International Religious Freedom would
review the May 1 Annual Report, as well as the President's June 1 determinations
and then publicly report on its own policy recommendations.

September 1: The President, (informed by the Advisory Commission's August
report) would report to Congress the list of "countries of particular

concern" as well as his intended actions against them.

Sanctions: For those governments that engage in any violations of religious freedom, the President is required to implement one of sixteen possible "executive measures and sanctions" of his choosing that are specified in the legislation, including "a private demarche", "a public demarche," "a public condemnation," "cancellation of scientific exchanges," "cancellation of cultural exchanges," "denial of state visits," and/or eight forms of economic sanctions (described below). He must also report to the Congress on his actions.

For those "countries of particular concern", the President is required to choose one of the eight economic sanctions among the sixteen listed measures. The eight economic sanctions include withdrawals, limitations, or suspensions on development assistance, OPIC and EXIM, security assistance, GSP, IFI loans, export licenses, and USG loans; or he may take "commensurate action;" or he could waive the sanctions completely (see below), if he is prepared to explain which waiver he was using and why.

Flexibility: Beyond the ability of the President to pick and choose among listed measures and sanctions, additional provisions provide the Administration with flexibility in implementation.

* First, in lieu of the sixteen measures and sanctions, the Administration could negotiate "binding agreements" with a foreign government that obligated such government to take measures to cease, or take substantial steps to address and phase out the act, policy, or practice constituting the religious persecution.

* Second, with respect to "countries of particular concern", the President could substitute any action authorized by law for any of the eight economic sanctions

listed in the legislation, so long as he makes the case that such actions are commensurate in effect to a substituted sanction and would serve the purposes of the Act.

* Third, the President can [EXPLAIN HOW] gain an additional 90 day delay before he reports on what actions he has taken against the gross violator countries (moving from a September to a December report.)

WAIVERS: The President could waive any of the executive measures and sanctions if he determined that such a waiver served the purposes of the Act or was necessary for national security reasons, or if he determined the government in question had ceased violations.

COMMENT AND RECOMMENDATION

While the Nickles bill has been significantly improved, it is far from ideal.

Clearly, we would prefer no legislation in this area. We believe, however, that some version of a religious freedom bill will be sent to the President this year.

We further believe that some in Congress want nothing more than a Presidential veto of a religious freedom bill on which they can force a veto override vote in late September, making it a perfect election issue for marginal seats.

It is clear to us that the Nickles sponsors firmly believe that to maintain credibility with religious groups, the legislation must require some form of an internal determination on or public listing of particularly severe violators of religious freedom. There may be room, however, for an Administration interpretation of the listing mandate that would permit the oral public reporting on the countries of particular concern rather than a public list of the worst violators.

Given the political environment we are presented with, and the likelihood of a veto proof majority for any legislation in this area, the prospect of this

improved Nickles bill heading into conference, possibly even with an edge over Wolf-Specter in the conference process, may be the very best option we have.

Currently, we may have leverage to get the necessary changes that would allow the Administration not to oppose the legislation. Republican Senators Hagel and Gramms have not agreed to support the bill precisely because of the sanctions implication for those countries identified "of particular concern." In addition, Committee Democrats have not yet indicated their support of the bill, and some of them have said their support is contingent on adoption of the Administration's proposed changes. (In reality, we suspect most will fold and support the bill, whatever it contains, when a roll call vote is demanded.)

If we were to get these requested changes, we would have a bill the Administration would not have to oppose, Democrats would be more likely to support at mark-up, and even Republicans Hagel and Gramms might support in order to demonstrate unanimity on the bill and on religious freedom.

On the other hand, if we cannot secure the necessary Administration changes, and we are forced to oppose the bill, the mark up will be more contentious than it might otherwise be, Democrats might be divided, and Hagel might be more likely to oppose.

While we concur that our policy concerns (not to mention concerns about credibility) would mandate that we oppose Nickles without our necessary changes, we believe it would be inadvisable to threaten a veto. Such a threat would likely shut us out of ongoing negotiations as we head into conference on the bill, (as well as engender a great deal of ill will from the Hill and among religious groups). Instead, we could register our opposition and our desire to continue to seek specific changes as the bill moves to the floor of the

Senate

and to the conference table. We should reserve a veto threat until we see what this bill looks like when the Senate completes its consideration.

RECOMMENDATION

That you approve this general course of action as we approach floor action on

Thursday, and authorize us to work it in the interagency and with other White House offices.

Approve ____ Disapprove ____

7

5165

Exchange Mail

DATE-TIME 7/21/98 10:56:15 AM
FROM Rudman, Mara E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Nickles memo [UNCLASSIFIED]
TO Naplan, Steven J.

CARBON_COPY

TEXT_BODY

OK, made some changes mostly small, but I did rework the recommendation line to make it clear that we want permission to go back on revision on determination list/briefing issue. I just don't think, given all we list about problems in the bill, that we can recommend credibly supporting as is right now -- I thought main thing we wanted from this memo was (1) to educate SRB on situation and (2) get permission for one more run at revised proposal on the determination/briefing question, and (3) which we do least well, try to figure out our position for markup....

Also, remember to remove the package #. Thakns.

-----Original
Message-----
From: Naplan, Steven J.
Sent: Tuesday, July 21, 1998
10:31 AM
To: Rudman, Mara E.
Cc: Naplan, Steven J.
Subject: Nickles
memo [UNCLASSIFIED]
Importance: High

Mara: I've cleaned-up the edits, and filled-in language about the 90 day extension.

You may wish to re-read the entire thing, but at the very least, please review the last paragraph of the comments section and the recommendation box. (I've re-worded it to hopefully reflect the e-mail exchange between you and Eric. It now steers SRB to eventually support Nickles

as is, and leaves it to SRB to push us back to not-support/oppose/veto threat).

Eric defers to your tactical judgement on how to word this final section.

Also, Eric keeps urging that we engage the CoS office, to ensure that POTUS' views and his likely action when presented with a final bill, are considered during this end-game process.

Also, should we red-dot this? double red-dot?

SN

TRANSLATED_ATTACHMENT 5165 Nickles Bill UPDATE memo_.doc

July 21, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: MARA RUDMAN/ERIC SCHWARTZ

FROM: STEVEN NAPLAN

SUBJECT: Nickles Bill on International Religious Freedom

This memorandum describes the state of play on the revised religious freedom legislation sponsored by Senator Nickles, and offers recommendations on how we should proceed.

Background to the Legislation: On March 26, Senator Nickles, along with six cosponsors (notably including Senator Lieberman), introduced the International Religious Freedom Act (IRFA) of 1998. Senator Helms is also a cosponsor. The IRFA is an alternative to the Wolf-Specter bill. The Wolf-Specter bill passed

overwhelmingly in the House (375-41) on May 14 despite an Administration veto threat. Wolf-Specter contains a number of troubling provisions, most notably broad automatic economic sanctions. The Nickles bill, which provides greater flexibility to the Executive Branch, but still contains problems, is scheduled for mark-up in the Senate Foreign Relations Committee this Thursday, July 23.

Politics of the Legislation: Senate Majority Leader Lott has promised that some form of international religious freedom legislation will be voted on in the Senate this summer. We believe that the House and Senate will conference Wolf-Specter with whatever the Senate acts upon and will send legislation to the President in this session on religious freedom. The legislation will likely be approved by veto override margins.

The Nickles bill reflects an effort by a number of Senators to craft legislation that permits the Administration greater flexibility than does Wolf-Specter, while still credibly (from the perspective of religious groups) addressing the religious persecution issue. Senator Helms has indicated his desire to move Nickles quickly, so that it - rather than Wolf-Specter - becomes the focus of attention on the Hill. There is a real chance that, should Nickles falter in the Senate (due to Administration opposition and/or lack of Democratic votes), Senator Lott could bring Wolf-Specter to the floor instead, or that Wolf-Specter-like "strengthening" amendments to the Nickles bill could be adopted.

Senate passage of Wolf-Specter, or a Nickles bill that is amended to include much of Wolf-Specter, would in all likelihood result in a veto-proof conference report of legislation that is most objectionable to the Administration. Thus, as problematic as Nickles may be in its current form (see below), there remain strong reasons for us not to reject it out of hand.

KEY ELEMENTS OF THE NICKLES LEGISLATION

General Points: The bipartisan Senate-House staff group behind the Nickles legislation has worked in good faith to modify their bill in order to accommodate many (but not all) of the important changes requested by the Administration. For example, they have changed "shalls" to "shoulds" in many places; ensured that the Ambassador at Large for Religious Freedom position does not usurp the authority of the Secretary of State or the Assistant Secretary for Democracy, Human Rights and Labor; and made some structural changes related to disapproval resolutions that help the Executive Branch slow down such resolutions.

The negotiations have not, however, yielded significant changes to the most onerous requirement of an annual list of "serious offenders" of religious freedom, including those countries with "particular severe" track records. The countries listed as "serious offender" states would be subject to punitive sanctions (from executive actions to economic sanctions), though the Nickles bill does afford extensive flexibility to the President which would largely provide ways to avoid imposing the sanctions in question.

New Positions Established by Nickles: The IRFA establishes an Ambassador-at-Large for Religious Liberty under the Secretary of State as well as a nine member, bipartisan Commission on International Religious Freedom that would investigate violations and make policy recommendations. (Both of these mandates are similar to existing State Department initiatives.) Additionally, the IRFA urges (through a Sense of the Congress clause) the establishment at NSC of a Special Advisor on Religious Persecution. (At the request of the Administration, sponsors have expanded the flexibility permitted to the Administration in how such provisions would be interpreted and implemented.)

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Reporting and Sanctions: These are the critical sections of the legislation, and at the Administration's urging, some parts have been improved upon. Others remain problematic, but still better than Wolf-Specter, as they permit far greater Administration flexibility.

Reporting: The Nickles bill has been modified to require several reports.

May 1: An Annual Report to Congress on worldwide international religious freedom would provide information on the religious freedom practices of foreign governments that engage in or tolerate acts of religious persecution, as well as U.S. actions to address violations. (We think we may have the latitude to interpret this provision as allowing a report on all nations, violators and not.)

June 1: The President must determine whether any of the countries described in the annual report "have engaged in or tolerated systematic, widespread, and ongoing patterns of particularly severe violations of the right to religious freedom."

August 1: The Advisory Commission on International Religious Freedom would review the May 1 Annual Report, as well as the President's June 1 determinations and then publicly report on its own policy recommendations.

September 1: The President, (informed by the Advisory Commission's

August
report) would report to Congress the list of "countries of particular concern" as well as his intended actions against them.

Sanctions: For those governments that engage in any violations of religious freedom, the President is required to implement one of sixteen possible "executive measures and/or sanctions" of his choosing that are specified in the legislation, including "a private demarche", "a public demarche," "a public condemnation," "cancellation of scientific exchanges," "cancellation of cultural exchanges," "denial of state visits," and/or eight forms of economic sanctions (described below). He must also report to the Congress on his actions.

For those "countries of particular concern", the President is required to choose one of the eight economic sanctions among the sixteen listed measures. The eight economic sanctions include withdrawals, limitations, or suspensions on development assistance, OPIC and EXIM, security assistance, GSP, IFI loans, export licenses, and USG loans; or he may take "commensurate action;" or he could waive the sanctions completely (see below), if he is prepared to explain which waiver he was using and why.

Flexibility: Beyond the ability of the President to pick and choose among listed measures and sanctions, additional provisions provide the Administration with flexibility in implementation.

* First, in lieu of the sixteen measures and sanctions, the Administration could negotiate "binding agreements" with a foreign government that obligated such government to take measures to cease, or take substantial steps to address and phase out the act, policy, or practice constituting the religious persecution.

* Second, with respect to "countries of particular concern", the President could

substitute any action authorized by law for any of the eight economic sanctions listed in the legislation, so long as he makes the case that such actions are commensurate in effect to a substituted sanction and would serve the purposes of the Act.

* Third, if the President determines and certifies to Congress that negotiations with a government need to continue, the President can gain an additional (one-time) 90 day delay before he reports on what actions he has taken against the particularly severe violator countries (moving from a September to a December report).

Waivers: The President could waive any of the executive measures and sanctions if he determined that such a waiver served the purposes of the Act or was necessary for national security reasons, or if he determined the government in question had ceased violations.

COMMENT AND RECOMMENDATION

While the Nickles bill has been significantly improved, it is far from ideal.

Clearly, we would prefer no legislation in this area. We believe, however, that some version of a religious freedom bill will be sent to the President this year.

We further believe that some in Congress want nothing more than a Presidential veto of a religious freedom bill on which they can force a veto override vote in late September, making it a perfect election issue for marginal seats.

It is clear to us that the Nickles sponsors firmly believe that to maintain credibility with religious groups, the legislation must require some form of an internal determination on or public listing of particularly severe violators of religious freedom. There may be room, however, for an Administration interpretation of the listing mandate that would permit the oral public reporting

on the countries of particular concern rather than a public list of the worst violators.

Given the political environment we are presented with, and the likelihood of a veto proof majority for any legislation in this area, the prospect of this improved Nickles bill heading into conference, possibly even with an edge over Wolf-Specter in the conference process, may be the very best option we have.

Currently, we may have leverage to get some (not likely all) of the necessary changes that would allow the Administration not to oppose the legislation. Republican Senators Hagel and Gramms have not agreed to support the bill precisely because of the sanctions implication for those countries identified "of particular concern." In addition, Committee Democrats have not yet indicated their support of the bill, and some of them have said their support is contingent on adoption of the Administration's proposed changes. (In reality, we suspect most will fold and support the bill, whatever it contains, when a roll call vote is demanded.)

If we were to get the key change in briefing rather than providing a list of "particularly severe" violators, we would have a bill the Administration should not have to oppose, Democrats would be more likely to support at mark-up, and even Republicans Hagel and Gramms might support in order to demonstrate unanimity on the bill and on religious freedom.

On the other hand, if we cannot secure the most important Administration changes, and we are forced to oppose the bill, the mark-up will be more contentious than it might otherwise be, Democrats might be divided, and Hagel might be more likely to oppose.

Even if we cannot get any additional changes, while we concur that

our overall foreign policy concerns (not to mention concerns about our credibility on sanctions policy) would mandate that we oppose Nickles without these changes, we believe it would be inadvisable to threaten a veto. Such a threat would likely shut us out of ongoing negotiations as we head into conference on the bill, (as well as engender a great deal of ill will from the Hill and among religious groups). Instead, we could register our concerns and our desire to continue to seek specific changes as the bill moves to the floor of the Senate and to the conference table. We should reserve a veto threat until we see what this bill looks like when the Senate completes its consideration.

RECOMMENDATION

That you approve this general course of action as we approach committee action on Thursday, (which puts us on a path to offering one more comeback on how to handle the "particularly severe violators" determination and thus be able to ultimately support Nickles assuming it passes with some kind of change in this area), and authorize us to work it in the interagency and with other White House offices.

Approve ____ Disapprove ____

6

5165

Exchange Mail

DATE-TIME 7/21/98 3:09:45 PM
FROM Rudman, Mara E.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Nickles Bill UPDATE Memo to SRB [UNCLASSIFIED]
TO Malley, Robert

CARBON_COPY
TEXT_BODY Rob--

I made changes we discussed and some additional ones based on information I just gained from Biden's staff about a proposed substitute. Also added a little formatting in the end to (I hope) break up our text some and make our purpose in sending the memo a little more clear. (I would also love to change type face to CG Times because I think that would make it both more readable and shorter -- but I leave that to your discretion...)

-----Original Message-----

From: Naplan,
Steven J.
Sent: Tuesday, July 21, 1998 11:55 AM
To: @NSA - Natl
Security Advisor
Cc: @LEGISLAT - Legislative Affairs; @MULTILAT
- Multilateral and Humanitarian Affairs
Subject: Nickles Bill UPDATE
Memo to SRB [UNCLASSIFIED]
Importance: High

ROB MALLEY: this
is the memo Mara and Eric had promised. Please pass to Sandy.

thanks.

SN

TRANSLATED_ATTACHMENT Nickles Bill UPDATE memo.doc

July 21, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: MARA RUDMAN/ERIC SCHWARTZ

FROM: STEVEN NAPLAN

SUBJECT: Nickles Bill on International Religious Freedom

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Senate passage of Wolf-Specter, or a Nickles bill that is amended to include much of Wolf-Specter, would in all likelihood result in a veto-proof conference report of legislation that is most objectionable to the Administration. Thus, as problematic as Nickles may be in its current form (see below), there remain strong reasons for us not to reject it out of hand.

KEY ELEMENTS OF THE NICKLES LEGISLATION

General Points: The staff group behind the Nickles legislation has worked in good faith to modify their bill in order to accommodate many (but not all) of the important changes requested by the Administration. For example, they have changed "shalls" to "shoulds" in many places; ensured that the Ambassador at Large for Religious Freedom position does not usurp the authority of the Secretary of State or the Assistant Secretary for Democracy, Human Rights and Labor; and made some structural changes related to disapproval resolutions that help the Executive Branch slow down such resolutions.

The negotiations have not, however, yielded significant changes to the most onerous requirement of an annual list of "serious offenders" of religious

freedom, including those countries with "particular severe" track records. The countries listed as "serious offender" states would be subject to punitive sanctions (from executive actions to economic sanctions), though the Nickles bill does afford extensive flexibility to the President which would largely provide ways to avoid imposing the sanctions in question.

New Positions Established by Nickles: The IRFA establishes an Ambassador-at-Large for Religious Liberty under the Secretary of State as well as a nine member, bipartisan Commission on International Religious Freedom that would investigate violations and make policy recommendations. (Both of these mandates are similar to existing State Department initiatives.) Additionally, the IRFA urges (through a Sense of the Congress clause) the establishment at NSC of a Special Advisor on Religious Persecution. (At the request of the Administration, sponsors have expanded the flexibility permitted to the Administration in how such provisions would be interpreted and implemented.)

Training and Contacts: The legislation requires training for foreign service officers to aid them in recognizing religious persecution, and high-level Embassy contacts with imprisoned religious leaders abroad. The bill grants to U.S. citizens abroad equal access to U.S. embassies for religious activities and directs the State Department to maintain country-specific lists of religious prisoners.

Reporting and Sanctions: These are the critical sections of the legislation, and at the Administration's urging, some parts have been improved upon. Others remain problematic, but still better than Wolf-Specter, as they permit far greater Administration flexibility.

Reporting: The Nickles bill has been modified to require several reports.

May 1: An Annual Report to Congress on worldwide international religious freedom would provide information on the religious freedom practices of foreign governments that engage in or tolerate acts of religious persecution, as well as U.S. actions to address violations. (We think we may have the latitude to interpret this provision as allowing a report on all nations, violators and not.)

June 1: The President must determine whether any of the countries described in the annual report "have engaged in or tolerated systematic, widespread, and ongoing patterns of particularly severe violations of the right to religious freedom."

August 1: The Advisory Commission on International Religious Freedom would review the May 1 Annual Report, as well as the President's June 1 determinations and then publicly report on its own policy recommendations.

September 1: The President, (informed by the Advisory Commission's August report) would report to Congress the list of "countries of particular concern" as well as his intended actions against them.

Sanctions: For those governments that engage in any violations of religious freedom, the President is required to implement one of sixteen possible "executive measures and/or sanctions" of his choosing that are specified in the legislation, including "a private demarche", "a public demarche," "a public condemnation," "cancellation of scientific exchanges," "cancellation of cultural exchanges," "denial of state visits," and/or eight forms of economic sanctions (described below). He must also report to the Congress on his actions.

For those "countries of particular concern", the President is required to choose one of the eight economic sanctions among the sixteen listed measures. The eight

economic sanctions include withdrawals, limitations, or suspensions on development assistance, OPIC and EXIM, security assistance, GSP, IFI loans, export licenses, and USG loans; or he may take "commensurate action;" or he could waive the sanctions completely (see below), if he is prepared to explain which waiver he was using and why.

Flexibility: Beyond the ability of the President to pick and choose among listed measures and sanctions, additional provisions provide the Administration with flexibility in implementation.

* First, in lieu of the sixteen measures and sanctions, the Administration could negotiate "binding agreements" with a foreign government that obligated such government to take measures to cease, or take substantial steps to address and phase out the act, policy, or practice constituting the religious persecution.

* Second, with respect to "countries of particular concern", the President could substitute any action authorized by law for any of the eight economic sanctions listed in the legislation, so long as he makes the case that such actions are commensurate in effect to a substituted sanction and would serve the purposes of the Act.

* Third, if the President determines and certifies to Congress that negotiations with a government need to continue, the President can gain an additional (one-time) 90 day delay before he reports on what actions he has taken against the particularly severe violator countries (moving from a September to a December report).

Waivers: The President could waive any of the executive measures and sanctions if he determined that such a waiver served the purposes of the Act or was necessary for national security reasons, or if he determined the

government in
question had ceased violations.

COMMENT AND RECOMMENDATION

General analysis

While the Nickles bill has been significantly improved, it is far from ideal.

Clearly, we would prefer no legislation in this area. We believe, however, that some version of a religious freedom bill will be sent to the President this year.

We further believe that some in Congress want nothing more than a Presidential

veto of a religious freedom bill on which they can force a veto override vote in

late September, making it a perfect election issue for marginal seats.

It is clear to us that the Nickles sponsors firmly believe that to maintain

credibility with religious groups, the legislation must require some form of an

internal determination on or public listing of particularly severe violators of

religious freedom. There may be room, however, for an Administration

interpretation of the listing mandate that would permit the oral public reporting

on the countries of particular concern rather than a public list of the worst

violators.

Given the political environment we are presented with, and the likelihood of a

veto proof majority for any legislation in this area, the prospect of this

improved Nickles bill heading into conference, possibly even with an edge over

Wolf-Specter in the conference process, may be the best option we have.

Currently, we may have leverage to get some (not likely all) of the necessary

changes that would allow the Administration to be able to accept the legislation.

Republican Senators Hagel and Gramms have not agreed to support the bill

precisely because of the sanctions implications for those countries identified

"of particular concern." In addition, Committee Democrats have not yet indicated their support of the bill, and some of them have said their support is contingent on adoption of the Administration's proposed changes. Biden may seek to offer a substitute that addresses many of our concerns. (In reality, we suspect most will fold and support the bill, whatever it contains, when a roll call vote on final passage is demanded.)

Proposed actions

At this point, we seek the flexibility to get to an end result that keeps Democrats together with as many like-minded Republicans as possible and shows broad support for a bill on religious freedom that is in a form at least minimally acceptable to the Administration. We see two routes toward this end:

(1) Biden gains support for a substitute from all Democrats and pick up support from Hagel and Gramms as well, showing that he has a majority of SFRC votes and leading him either to offer his substitute in committee or extract changes we seek on key sections of Nickles, or (2) if Biden appears to lack necessary votes, we would seek to get the bill's drafters to accept an oral briefing rather than a written list of "particularly severe" violators, which should address our concern about the automatic condemnation aspect of a list. (It would still force us to use a waiver or find "commensurate action" to apply against the violators if we seek to avoid the otherwise applicable sanctions.)

Even if we cannot get any additional changes, while we concur that our overall foreign policy concerns (not to mention concerns about our credibility on sanctions policy) would mandate that we oppose Nickles without these changes, we believe it would be inadvisable to threaten a veto at this point in the process. Such a threat would likely shut us out of ongoing negotiations as the bill continues through the legislative process, and would engender a great

deal of ill
will from the Hill and among religious groups. Instead, we could
register our
concerns and our desire to continue to seek specific changes as the bill
moves to
the floor of the Senate and to the conference table. We should reserve
a veto
threat until we see what this bill looks like when the Senate completes
its
consideration.

RECOMMENDATION

That you approve this general course of action as we approach
committee action on
Thursday, (which puts us on a path to support the Biden substitute
and/or offer
one more comeback on how to handle the "particularly severe
violators"
determination and thus be able to ultimately support Nickles assuming
it passes
with some kind of change in this area), and authorize us to work it in
the
interagency and with other White House offices.

Approve ____ Disapprove ____

6

6

Exchange Mail

DATE-TIME 7/21/98 8:28:50 PM
FROM Naplan, Steven J.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Nickles Bill UPDATE Memo to SRB [UNCLASSIFIED]
TO Naplan, Steven J.

CARBON_COPY

TEXT_BODY this was superceded by Mara's updated version which included language on the Biden substitute

-----Original Message-----

From: Naplan,
Steven J.

Sent: Tuesday, July 21, 1998 11:55 AM

To: @NSA - Natl

Security Advisor

Cc: @LEGISLAT - Legislative Affairs; @MULTILAT

- Multilateral and Humanitarian Affairs

Subject: Nickles Bill UPDATE

Memo to SRB [UNCLASSIFIED]

Importance: High

ROB MALLEY: this

is the memo Mara and Eric had promised. Please pass to Sandy.

thanks.

SN

TRANSLATED_ATTACHMENT

Nickles Bill UPDATE memo.doc

July 21, 1998

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: MARA RUDMAN/ERIC SCHWARTZ

FROM: STEVEN NAPLAN

SUBJECT: Nickles Bill on International Religious Freedom

This memorandum describes the state of play on the revised religious freedom legislation sponsored by Senator Nickles, and offers recommendations on how we should proceed.

Background to the Legislation: On March 26, Senator Nickles, along with six cosponsors (notably including Senator Lieberman), introduced the International Religious Freedom Act (IRFA) of 1998. Senator Helms is also a cosponsor. The IRFA is an alternative to the Wolf-Specter bill. The Wolf-Specter bill passed overwhelmingly in the House (375-41) on May 14 despite an Administration veto threat. Wolf-Specter contains a number of troubling provisions, most notably broad automatic economic sanctions. The Nickles bill, which provides greater flexibility to the Executive Branch, but still contains problems, is scheduled for mark-up in the Senate Foreign Relations Committee this Thursday, July 23.

Politics of the Legislation: Senate Majority Leader Lott has promised that some form of international religious freedom legislation will be voted on in the Senate this summer. We believe that the House and Senate will conference Wolf-Specter with whatever the Senate acts upon and will send legislation to the President in this session on religious freedom. The legislation will likely be approved by veto override margins.

The Nickles bill reflects an effort by a number of Senators to craft legislation that permits the Administration greater flexibility than does Wolf-Specter, while still credibly (from the perspective of religious groups) addressing the religious persecution issue. Senator Helms has indicated his desire to

move
Nickles quickly, so that it - rather than Wolf-Specter - becomes the focus of attention on the Hill. There is a real chance that, should Nickles falter in the Senate (due to Administration opposition and/or lack of Democratic votes), Senator Lott could bring Wolf-Specter to the floor instead, or that Wolf-Specter-like "strengthening" amendments to the Nickles bill could be adopted.

Senate passage of Wolf-Specter, or a Nickles bill that is amended to include much of Wolf-Specter, would in all likelihood result in a veto-proof conference report of legislation that is most objectionable to the Administration. Thus, as problematic as Nickles may be in its current form (see below), there remain strong reasons for us not to reject it out of hand.

KEY ELEMENTS OF THE NICKLES LEGISLATION

General Points: The bipartisan Senate-House staff group behind the Nickles legislation has worked in good faith to modify their bill in order to accommodate many (but not all) of the important changes requested by the Administration. For example, they have changed "shalls" to "shoulds" in many places; ensured that the Ambassador at Large for Religious Freedom position does not usurp the authority of the Secretary of State or the Assistant Secretary for Democracy, Human Rights and Labor; and made some structural changes related to disapproval resolutions that help the Executive Branch slow down such resolutions.

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does afford extensive flexibility to the President which would largely provide ways to avoid imposing the sanctions in question.

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action;" or he could

waive the sanctions completely (see below), if he is prepared to explain which waiver he was using and why.

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COMMENT AND RECOMMENDATION

While the Nickles bill has been significantly improved, it is far from

ideal.

Clearly, we would prefer no legislation in this area. We believe, however, that

some version of a religious freedom bill will be sent to the President this year.

We further believe that some in Congress want nothing more than a Presidential

veto of a religious freedom bill on which they can force a veto override vote in

late September, making it a perfect election issue for marginal seats.

It is clear to us that the Nickles sponsors firmly believe that to maintain

credibility with religious groups, the legislation must require some form of an

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religious freedom. There may be room, however, for an Administration

interpretation of the listing mandate that would permit the oral public reporting

on the countries of particular concern rather than a public list of the worst

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Given the political environment we are presented with, and the likelihood of a

veto proof majority for any legislation in this area, the prospect of this

improved Nickles bill heading into conference, possibly even with an edge over

Wolf-Specter in the conference process, may be the very best option we have.

Currently, we may have leverage to get some (not likely all) of the necessary

changes that would allow the Administration not to oppose the legislation.

Republican Senators Hagel and Gramms have not agreed to support the bill

precisely because of the sanctions implication for those countries identified "of

particular concern." In addition, Committee Democrats have not yet indicated

their support of the bill, and some of them have said their support is contingent

on adoption of the Administration's proposed changes. (In reality, we suspect

most will fold and support the bill, whatever it contains, when a roll call vote

is demanded.)

If we were to get the key change in briefing rather than providing a list of "particularly severe" violators, we would have a bill the Administration should not have to oppose, Democrats would be more likely to support at mark-up, and even Republicans Hagel and Gramms might support in order to demonstrate unanimity on the bill and on religious freedom.

On the other hand, if we cannot secure the most important Administration changes, and we are forced to oppose the bill, the mark-up will be more contentious than it might otherwise be, Democrats might be divided, and Hagel might be more likely to oppose.

Even if we cannot get any additional changes, while we concur that our overall foreign policy concerns (not to mention concerns about our credibility on sanctions policy) would mandate that we oppose Nickles without these changes, we believe it would be inadvisable to threaten a veto. Such a threat would likely shut us out of ongoing negotiations as we head into conference on the bill, (as well as engender a great deal of ill will from the Hill and among religious groups). Instead, we could register our concerns and our desire to continue to seek specific changes as the bill moves to the floor of the Senate and to the conference table. We should reserve a veto threat until we see what this bill looks like when the Senate completes its consideration.

RECOMMENDATION

That you approve this general course of action as we approach committee action on Thursday, (which puts us on a path to offering one more comeback on how to handle the "particularly severe violators" determination and thus be able to ultimately support Nickles assuming it passes with some kind of change in this

area), and
authorize us to work it in the interagency and with other White House
offices.

Approve ____ Disapprove ____

6

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Exchange Mail

DATE-TIME 7/24/98 11:02:45 AM
FROM Busby, Scott W.
CLASSIFICATION UNCLASSIFIED
SUBJECT Revised ICC guidance [UNCLASSIFIED]
TO Budig, Nyda N
Crowley, Philip J.
Wozniak, Natalie S.

CARBON_COPY Allen, Charles A.
Baker, James E.
DeRosa, Mary B.
Highsmith, Newell L.
Hunerwadel, Joan S.
Busby, Scott W.
Davis, Mary K.
Hawley, Leonard R.
Kale, Dora A.
Malley, Robert
Metzl, Jamie F.
Naplan, Steven J.
Ragan, Richard F.
Schwartz, Eric P.
Wippman, David
Andreasen, Steven P.
Bell, Robert G.
Bouchard, Joseph F.
Kelly, Sandra L.
Langley, Janice M.
Mulligan, George D.
vonLipsey, Roderick K.
Wasserman, Elaine P.
Witkowski, Anne A.

TEXT_BODY**TRANSLATED_ATTACHMENT**

ICC guidance 7-24_.doc
INTERNATIONAL CRIMINAL COURT
July 24, 1998

What is your reaction to the comments by Senator Helms during

yesterday's hearing
that the United States should withdraw from all foreign peacekeeping
activities
and reopen our Status of Forces Agreements with other countries
given the final
text of the ICC treaty?

* We do need to assess the implications for U.S. policy of adoption of
the ICC
treaty and have begun the process of doing so. At the same time, we
note that
the treaty will not enter into force until 60 countries have ratified it.
This
will take some time. We need to make judgments in this area
judiciously and will
do so in the weeks and months ahead.

What is the U.S. reaction to the final text of the treaty relating to the
International Criminal Court?

* We are disappointed with the final text of the treaty. While we have
always
supported the establishment of a permanent court and continue to
support the
concept of such a court, we are concerned that this treaty's provisions
could
make persons, including U.S. citizens, who are involved in critical
international
activities -- like peacekeeping operation, humanitarian relief and
enforcement of
sanctions -- vulnerable to unwarranted prosecution before the court.

* In particular, we do not support the way in which the court's
jurisdiction may
be extended to the citizens of States that are not parties to the treaty.
Under
the treaty as drafted, the court may assert jurisdiction over a person if
it has
only the consent of the state where an alleged offense occurred. This
means that
U.S. citizens and others involved in international activities -- even
though
their countries may not be parties to this treaty -- could be hauled
before the
court without the agreement of their country of nationality. This
violates basic
principles of treaty law and could greatly inhibit the ability of the
United
States and others to participate in these sorts of operations.

* We find this jurisdictional provision particularly troubling because, in essence, it provides a shield to those who abuse human rights inside their own borders while making vulnerable others who are engaged in overseas activities.

* We have several other problems with the treaty, including the inclusion within the court's jurisdiction of the crime of aggression.

* We will be digesting the treaty over the next several days to determine what our response will be.

Will the U.S. actively oppose the establishment of the court?

* We are not prepared to answer that question at this time. We are studying the treaty to determine how to respond.

Why would the U.S. vote against this treaty while all of our chief allies supported it?

* The United States plays a unique role in maintaining international peace and security and we wish to ensure that we can continue to play such a role without undue interference. We are concerned that the treaty as drafted could jeopardize activities associated with this role.

Exchange Mail

DATE-TIME 7/24/98 11:31:10 AM
FROM Jordan, Donald L.
CLASSIFICATION UNCLASSIFIED
SUBJECT Input for the Homeboy Memo [UNCLASSIFIED]
TO Boulton, Darrien D.

CARBON_COPY Norris, John J.

TEXT_BODY * Africa Growth and Opportunity Act - There is some feeling among Administration officials that the Africa Trade Bill, having had Fast Track and other amendments attached to it by the SFC, is lost. The Legislative Affairs staff is seeking to identify next steps. The key appears to be in identifying a de-linking strategy in order to move the Bill forward. OPL is ready to bring back in business folk and Ambassadors that support the Bill to reenergize them. The bottom line - passage of the bill appears more and more unlikely.

* International Criminal Court - The end of the negotiations in Rome must be characterized as a frustrating failure. Our major objective was not achieved. We were unable to remove provisions granting the court jurisdiction over non-parties. The Treaty also seeks to add the crime of aggression, once an amendment defining the crime is accepted. NSC Democracy has tasked the IA to identify options for how we will respond to the Treaty. A number of Senators, led by Senator Helms, are calling for the U.S. to fight the formation of the court. Helms has stated he will seek assurances that U.S. soldiers will not participate in NATO or UN operations until our allies agree that our soldiers will not be subject to the court's jurisdiction. He is calling for renegotiations of all SOFAs and not to station troops in countries that refuse to exempt them from the court's authority.