

INF 'Biden Condition' threatens U.S. Constitution

by Webster G. Tarpley

With the Senate debate on ratification of President Reagan's INF treaty now in progress, the United States faces a deadly triple threat. First, there is the INF treaty as signed by Reagan last December, which fatally weakens the NATO military posture and gives Moscow strategic preponderance over our Western European allies. But the INF treaty as brought to the Senate floor by the bill's manager, Sen. Claiborne Pell, will add on two additional disasters. The Biden Condition, which Pell's Senate Foreign Relations Committee added to the INF treaty by a 12-7 vote, will administer the final *coup de grace* to the already moribund Strategic Defense Initiative.

Beyond this, the Biden Condition will strike a devastating blow against the U.S. Constitution, sending the country toward a parliamentary regime with evident fascist overtones. Ironically, it is opposition to the Biden Amendment among senators otherwise favoring ratification which offers the best chance to delay, and thus to kill, the treasonous INF accord.

In the days after the INF treaty reached the Senate floor on Tuesday, May 17, some irreconcilable Republican foes of the INF accord came forward with killer amendments. Jesse Helms raised a cogent point of order that Mikhail Gorbachov had no credentials from the Soviet state empowering him to sign a treaty valid under international law, but this was tabled by a vote of 91-6, the nays being Helms, Humphrey, McClure, Pressler, Symms, and Thurmond. Two days later a Symms amendment barring the treaty from taking effect until the President certifies that the Soviets are complying with existing treaties was defeated on five separate roll call votes by margins ranging from 89-8 to 82-15. Other anti-INF irreconcilables, including Humphrey, Pressler, and Wallop, were also expected to offer amendments that would alter the text of the treaty. One Pressler amendment would block ratification until the President certifies that the Soviets are observing the Helsinki human rights standards; another would demand conventional parity between NATO and the Warsaw Pact. Wallop, Carnes, and McCain will seek changes

to strengthen U.S. enforcement in case of Soviet violations. Democrat Ernest Hollings will offer a reservation exempting conventional cruise missiles from the ban placed upon them in the present treaty text.

In the meantime, GOP leader Dole and Democratic whip Cranston are attempting to hype the need to complete summit action before Reagan's Moscow summit "deadline" of May 29. Majority leader Robert Byrd is skeptical about deadlines, and has hinted that he might hold INF hostage if the President vetoes the trade bill, which the latter is expected to do a day before leaving for Moscow.

With more than four-fifths of the Senate favoring the passage of the INF in some form, and only 15-17 senators opposed to passage, how can the INF be defeated? The fate of the Versailles Treaty in 1919 and 1920 shows how. At that time, 47 Democrats stood ready to vote for Woodrow Wilson's treaty as signed. The 49 Republicans were divided among 16 irreconcilables (the "battalion of death," led by Borah, LaFollette, and Hiram Johnson), about 20 strong reservationists around Henry Cabot Lodge, and 12 mild reservationists led by Frank Kellogg, the future Secretary of State. The Versailles Pact failed because, under Wilson's orders, most Democrats would only vote for the treaty without reservations, while the Republicans would only accept it with reservations. Then as now, a sick and disoriented President was addicted to summitry, and functioned under the control of a domineering wife.

A fighting chance

While the Democrats almost certainly have the votes to add the Biden Condition to the treaty by a simple majority, they may in doing so alienate a critical margin of moderate to liberal Republicans, thus causing the INF to fall short of the needed two-thirds. As the committee vote suggests, it may be a close call. Senators like Specter and Lugar, neither one a friend of SDI, are upset about the Biden Condition.

Pro-Soviet Senator Cranston, recognizing the potential of the Biden Condition to derail ratification, is seeking a compromise where Specter and Lugar can be reconciled with Biden and Nunn.

The Biden Condition is a gross violation of traditional constitutional doctrine giving the President the right to conduct foreign affairs. The Constitution's reference to treaties appears in Article II, Section 2, where among the powers of the President we read: "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the senators present concur." Thus, only the President can make a treaty, which cannot become law until the Senate approves the treaty text, making any amendments, reservations, conditions, understandings, provisos, or other changes senators deem necessary. Ratification occurs when the President signs the approved treaty text the Senate has sent back to him. After that, the President, and not a congressional committee, must make foreign policy, including the interpretation and reinterpretation of treaties according to the nation's paramount interests, as new and unforeseen circumstances arise.

In sharp contrast to this, the Condition offered by the discredited plagiarist from Delaware states: "That this treaty shall be subject to the following principles, which derive, as a necessary implication, from the provisions of the Constitution (Article II, Section 2, Clause 2) for the making of treaties:

"(a) the United States shall interpret this treaty in accordance with the understanding of the treaty shared by the Executive and the Senate at the time of Senate consent to ratification;

"(b) such common understanding is: (i) based on the text of the Treaty; and (ii) reflected in the authoritative representations provided by the Executive branch to the Senate and its committees in seeking Senate consent to ratification, insofar as such representations are directed to the meaning and legal effect of the text of the Treaty;

"(c) the United States shall not agree to or adopt an interpretation different from that common understanding except pursuant to a subsequent treaty or protocol, or the enactment of a statute.

"This understanding shall not be incorporated into the instruments of ratification of this Treaty or otherwise officially conveyed to the other contracting Party."

As former Assistant Secretary of Defense Frank Gaffney has pointed out, this Condition is an unconstitutional infringement on the President's treaty-making authority. In Senate debate on May 18, Senators Adams and Sarbanes referred explicitly to "the treaty-making power of the Senate," whereas it is the President who both makes and ratifies treaties, with Senate consent and amendment.

As even Howard Baker's sidekick, Arthur B. Culvahouse, the White House counsel, pointed out in a March 17 letter to Senator Lugar, the Biden Amendment seeks to bind the United States to a series of constraints that will not bind

the Soviet Union: "Exchanges in Senate proceedings in connection with the ratification of a treaty cannot alter the meaning of a treaty where they are not officially communicated to the other treaty party prior to the exchange of instruments of ratification. The result might be two INF treaties, one binding domestically against the President and a second one binding internationally between the United States and the Soviet Union."

It is true that the INF treaty is a slovenly and ambiguous document, reflecting the squalid haste of its drafting. In a competent treaty, language that is expected to bind the Soviet government would have to be watertight and unambiguous contract language. Competent drafting would obviate part of the contraband that Nunn and Biden are trying to bootleg in.

The Biden-Nunn position is that all testimony by administration witnesses before Senate committees during the ratification process becomes set in concrete. What if such testimony is contradictory, what if the Secretary of State says yes, the National Security Adviser says no, and the Secretary of Defense says maybe, to the same senatorial question? The recent conflict on whether the INF treaty bans futuristic weapons is a case in point. Ambassador Maynard Glitman assured the Senate that under the INF, futuristics were banned. It then turned out that they had never been discussed with the Soviets. Under the Biden Condition, this would have left the U.S. forbidden to build futuristic medium-range devices, while the Soviets remained free to interpret the treaty in their own interest. Even worse, if unforeseen events were to occur at a future time within the context of the INF treaty, the President would be powerless to reinterpret the treaty for the United States, but would be forced to request a new treaty from the Soviets, or to have the Senate pass a special unicameral statute of reinterpretation—a monstrosity of constitutional mutilation, and illegal under international law. The Biden Condition would indeed design two treaties, one between the President and the Russians—and the other between the President and the Senate, binding this country into a straitjacket far more confining than the garment tailored for the Muscovites.

If the Senate wished to "lock in" a specific interpretation where ambiguity were present, its clear option would be to add reservations and understandings which would also be binding on the other party to the treaty. The Nunn clique refuses to do this, stipulating that the Biden Condition is not to be sent to Moscow.

The Biden Condition's near-term goal is to bind the presidency to Sam Nunn's reinterpretation of the 1972 ABM treaty, confuting the so-called Sofaer doctrine and prohibiting tests of ABM devices outside of the laboratory, thus strangling the SDI. Nunn's latest brainstorm is a revision of the War Powers Act, attacking the constitutional separation of powers with a parliamentary "permanent consultative group" of 18 congressional leaders to meet with the President before U.S. forces are committed anywhere in the world, and then to authorize or end U.S. involvement.