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APPENDIX A: SENATE DEBATE OVER THE BYRD-HAGEL RESOLUTION, JULY 25, 1997

In July 1997, before the final negotiations on the Kyoto Protocol, Senators Robert Byrd (D-WV) and Chuck Hagel (R-NE) sponsored a resolution, which passed by a vote of 95-0, declaring that the Senate would reject any treaty that did not require “new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period.” The resolution also vowed to reject any treaty that would cause “serious harm” to the U.S. economy. The “sense of the Senate” debate held before the resolution was adopted revealed a wide range of interpretations of the resolution’s sparse language—especially concerning the requirements for developing country commitments. Reproduced below are the full text of the resolution and excerpts from the debate on July 25, 1997. For the full debate, go online to <http://thomas.loc.gov/cgi-bin/query/z?r105:S25JY7-15>:

S. RES. 98 (BYRD-HAGEL RESOLUTION) 105th Congress, 1st Session, July 25, 1997

Whereas the United Nations Framework Convention on Climate Change (in this resolution referred to as the ‘Convention’), adopted in May 1992, entered into force in 1994 and is not yet fully implemented;

Whereas the Convention, intended to address climate change on a global basis, identifies the former Soviet Union and the countries of Eastern Europe and the Organization For Economic Co-operation and Development (OECD), including the United States, as ‘Annex I Parties’, and the remaining 129 countries, including China, Mexico, India, Brazil, and South Korea, as ‘Developing Country Parties’;

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Whereas in April 1995, the Convention's 'Conference of the Parties' adopted the so-called 'Berlin Mandate';

Whereas the 'Berlin Mandate' calls for the adoption, as soon as December 1997, in Kyoto, Japan, of a protocol or another legal instrument that strengthens commitments to limit greenhouse gas emissions by Annex I Parties for the post-2000 period and establishes a negotiation process called the 'Ad Hoc Group on the Berlin Mandate';

Whereas the 'Berlin Mandate' specifically exempts all Developing Country Parties from any new commitments in such negotiation process for the post-2000 period;

Whereas although the Convention, approved by the United States Senate, called on all signatory parties to adopt policies and programs aimed at limiting their greenhouse gas (GHG) emissions, in July 1996 the Under Secretary of State for Global Affairs called for the first time for 'legally binding' emission limitation targets and timetables for Annex I Parties, a position reiterated by the Secretary of State in testimony before the Committee on Foreign Relations of the Senate on January 8, 1997;

Whereas greenhouse gas emissions of Developing Country Parties are rapidly increasing and are expected to surpass emissions of the United States and other OECD countries as early as 2015;

Whereas the Department of State has declared that it is critical for the Parties to the Convention to include Developing Country Parties in the next steps for global action and, therefore, has proposed that consideration of additional steps to include limitations on Developing Country Parties' greenhouse gas emissions would not begin until after a protocol or other legal instrument is adopted in Kyoto, Japan in December 1997;

Whereas the exemption for Developing Country Parties is inconsistent with the need for global action on climate change and is environmentally flawed;

Whereas the Senate strongly believes that the proposals under negotiation, because of the disparity of treatment between Annex I Parties and Developing Countries and the level of required emission reductions, could result in serious harm to the United States economy, including significant job loss, trade disadvantages,

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increased energy and consumer costs, or any combination thereof; and

Whereas it is desirable that a bipartisan group of Senators be appointed by the Majority and Minority Leaders of the Senate for the purpose of monitoring the status of negotiations on Global Climate Change and reporting periodically to the Senate on those negotiations: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should not be a signatory to any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, at negotiations in Kyoto in December 1997, or thereafter, which would—

(A) mandate new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties, unless the protocol or other agreement also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties within the same compliance period, or

(B) would result in serious harm to the economy of the United States; and

(2) any such protocol or other agreement which would require the advice and consent of the Senate to ratification should be accompanied by a detailed explanation of any legislation or regulatory actions that may be required to implement the protocol or other agreement and should also be accompanied by an analysis of the detailed financial costs and other impacts on the economy of the United States which would be incurred by the implementation of the protocol or other agreement.

Sec. 2. Secretary of the State shall transmit a copy of this resolution to the President.

EXPRESSING SENSE OF SENATE REGARDING UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

(SENATE—JULY 25, 1997)

MR. CHUCK HAGEL (R-Nebraska). [...] The Byrd-Hagel resolution is a strong bipartisan wake-up call to the administration.

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This resolution rejects the United Nations' current negotiating strategy of binding the United States and other developed nations to legally binding reductions without requiring any new or binding commitments from 130 developing nations, such as China, Mexico, and South Korea. In addition, this resolution rejects any treaty or other agreement that would cause serious economic harm to the United States.

[...] Mr. President, this makes no sense, no sense at all, given that these nations include some of the most rapidly developing economies in the world and are quickly increasing their use of fossil fuels. By the year 2015, China will surpass the United States as the largest producer of greenhouse gases in the world.

[...] If these nations are excluded, greenhouse gas emissions will continue to rise, and we would see no net reductions in global greenhouse gas emissions. The exclusion of these nations is a fatal flaw in this treaty.

[...]

MR. ROBERT C. BYRD (R-West Virginia). [...] I do not think the Senate should support a treaty that requires only half the world—in other words, the developed countries—to endure the economic costs of reducing emissions while developing countries are left free to pollute the atmosphere and, in so doing, siphon off American industries. There are those who say that the United States is responsible for the situation that has developed. They claim that the United States should bear the brunt of the burden. But the time for pointing fingers is over. In this particular environmental game there are no winners; the world loses. And any effort to avoid the effects of global climate change will be doomed to failure from the start without the participation of the developing world, particularly those nations that are rapidly developing and will rapidly increase their carbon dioxide and other greenhouse gas emissions.

[...] The concept which is embodied in the Byrd-Hagel resolution is that developing country parties should join the developed world in making new specific scheduled commitments to limit or reduce greenhouse gas emissions within the same compliance period.

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Now, does this mean that the Senate is insisting on commitments to identical levels of emissions among all the parties? Certainly not. The emissions limitations goals, to be fair, should be based on a country's level of development. The purpose is not to choke off Mexico's development or China's development. The purpose is to start addressing the greenhouse gas problem in the only meaningful way we can, that is, through globally and through binding commitments up front. The timeframe could be 5 years, 7 years, 10 years or whatever. The initial commitment to action, starting upon signature in Kyoto, could be relatively modest, pacing upwards depending upon various factors, with a specific goal to be achieved within a fixed time period. There are plenty of tools to encourage the developing world to make meaningful commitments.

[...] American industry has expressed concern that a treaty without developing country commitments would encourage capital flight and a loss of jobs in the United States. We do not as yet have available the administration's current best assessment of the economic impacts of various levels of emissions targets in the United States. However, preliminary work done by the Argonne Laboratory on this matter is worrisome in that its worst case scenario shows a very negative economic impact on American industry.

[...] Now, some of the Senators who have signed on to the resolution may have differing views about the treaty, but there is one thing that we are in agreement on—one or two things. These are set forth in the resolution beginning and concluding with the resolving clause. One, that all nations, all nations must take steps now, at the time of the signing of the treaty, to begin limiting their emissions of greenhouse gases. Mere promises will not be sufficient. Mere promises will not get by this Senate. A treaty will have to have the approval of a two-thirds supermajority in this Senate, and that is what we are telling the administration. We are letting the administration know that this Senate is not just going to consent or not consent on a treaty. This Senate is going to fulfill its constitutional obligations not only to consent but also to 'advise' and consent. And the resolution also provides that such a treaty must not result in serious harm to the economy of the United States.

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[...]

MR. JOHN F. KERRY (D-Massachusetts). [...] That common sense is the notion that if you are really going to do something to affect global climate change and you are going to do it in a fair-minded way that will permit you to build consensus in the country, which is important, and to build the necessary support to ratify a treaty, we are going to have to do this in a way that calls on everybody to share the burden of responding to this problem. That means that we need to have an agreement that does not leave enormous components of the world's contributors and future contributors of this problem out of the solution.

[...] Let me point out a couple of those areas where we had some concerns. There is language in the resolution about the developing nations accomplishing their reductions within exactly the same compliance period as the developed nations. I have come to the conclusion that these words are not a treaty killer that some suggested it might have been.

[...] There still appears to be a little bit of uncertainty as to what this phrase within the same compliance period actually means. But after a number of discussions with Senator Chafee's and Senator Byrd's staffs, I believe that we have reached an understanding that it means essentially that we want countries to begin to reduce while we are reducing, we want them to engage in a reasonable schedule while we are engaged in a reasonable schedule, but that if a developing nation needs more time to get a plan in place or needs to have more time to raise the funds and be able to purchase the technology and do the things necessary, that as long as there is a good-faith track on which they are proceeding, that if it took them a number of years, 2 years, 3 years, 5, or longer to be able to reach a particular goal, that certainly means within the same compliance period they are operating similarly to try to meet the standards that we want to set out. We believe that, given that less-developed countries are not currently projected to emit more emissions than industrial countries until at least the year 2015, it is reasonable to permit some flexibility in the targets and the timing of compli-

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ance while at the same time requiring all countries to agree to make a legally binding commitment by a date certain.

That is reasonable. But I think most of my colleagues would agree that if some country simply doesn't have the capacity, the plan, the money, or the technology, it may be they have to take a little more time and we should want to be reasonable in helping them to do that because the goal here is to get everybody to participate, not to create a divisiveness that winds up with doing nothing.

[...] Emissions trading not only advantages the U.S. business, but it would provide developing countries with incentives to sign up to binding legal commitments that most people believe are important in this treaty.

[...]

MR. TRENT U. LOTT (R-Mississippi). [...] And what would the developing nations contribute? What would our neighbors in Mexico have to do to help stop global warming? Nothing. What about other so-called developing nations like Korea, China, India, and Brazil? The treaty lets them off the hook. Mr. President, this is not an equitable international policy. This is not a level playing field for the United States.

[...] The Byrd-Hagel resolution would require developing nations to comply with the same regulations at the same time in the same treaty as the United States. This is not only equitable, it is the only way that there can be any real benefit to the global environment.

[...]

MR. A. MITCH MCCONNELL (R-Kentucky). [...] The Byrd-Hagel resolution addresses the unfairness in the agreement being considered by the administration. This resolution mandates specific scheduled commitments to limit or reduce greenhouse gas emission for developing nations, with the same compliance period.

If every nation doesn't agree to the same emission levels and timetables, what incentive will they have to negotiate in the future when they have an overwhelming competitive advantage? It is impor-

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tant that we not bargain away the economic advantages we have worked so hard to achieve.

[...]

MR. MAX S. BAUCUS (D-Montana). [...] The language contained in Senate Resolution 98 will help achieve the goal of including all countries in the new treaty.

It requires that the treaty mandate new specific scheduled commitments to limit or reduce greenhouse gas emissions for developing country parties within the same compliance period as developed countries.

But since developing and developed nations are starting from different places, it makes sense to require different targets. Here again, the language crafted by Senator Byrd helps. It does not specify that developed and developing countries meet the same targets and timetables.

[...] So although the language of the resolution requires new commitments from developing countries, the administration should seek emission targets that are more consistent with their level of industrialization.

[...]

MR. JON L. KYL (R-Arizona). [...] While I presume many supporters of this resolution agree that under no circumstances should the United States be subjected to legally binding emissions limitations, I believe the resolution is somewhat unclear. As I read it, it says the United States will agree to legally binding emissions if 'the protocol or other agreements also mandates new specific scheduled commitments to limit or reduce greenhouse gas emissions for developing country parties within the same compliance period.' Unfortunately, I believe this condition is not sufficient. As many of you know, it has been interpreted by different people in different ways. Some read it to mean that the Senate will not approve a treaty that does not include identical emissions level and target date requirements. Others, however, have read the same language and determined that it means any treaty must have equal commitments when it comes to setting timetables but not emissions levels. Unfortunately, it is easy to set developing countries on a timetable

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and allow them to continue to pollute in any amount they desire. The emissions levels can be easily set so that the developed countries have very stringent, and perhaps unattainable levels, while the developing countries have very lax, easily reached goals—all the while, all countries are operating within the same timetable.

[...] This approach, I believe, defeats the purpose of the treaty ratified by the Senate, which is to voluntarily reduce greenhouse-gas emissions on a global scale. The original intent was not to legally bind the Annex I countries to set timetables and emissions levels while only requiring the developing countries to comply with parallel timetables but not the same emissions standards.

[...]

MR. J. ROBERT KERREY (D-Nebraska). [...] The resolution before us requires commitments of developing countries to mitigate greenhouse gas emissions in the same timeframes as developed countries. This may resonate as promoting a policy that discourages the participation of many developing countries. However, the resolution will allow developing countries appropriate flexibilities in commitments to address global climate change abatement. The United States and other developed countries must accord newly developed and developing countries flexibilities and incentives to participate, and these need not create economic disadvantages to the United States or any other developed country.

I cannot emphasize enough the importance of this point. Without all countries on board, inaction becomes inevitable, because emission reductions achieved by one country will soon be offset by increased emissions from another.

An equitable approach that encourages commitments by all parties and that offers incentives to developing countries is needed. Market-based solutions to curb emissions will allow continued economic growth with minimal impacts. Developed countries are in a better position to implement emissions-curbing activities and technologies at low cost and impact, and to also transfer these abilities and technologies to developing countries and to aid in their economic advancement in a way that tempers emissions growth.

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While measures to stabilize greenhouse gases at a certain level will inevitably lead to some energy price increases, an international emissions-trading scheme could substantially reduce the potential costs. What is needed, however, is a policy to ensure that incremental costs of reducing or stabilizing emissions are equalized across firms, across sectors, and across countries. This can only occur if we take into account the economies, emissions and abilities of countries to participate, and if we assign actions accordingly and in appropriate timeframes.

Market mechanisms can reduce cost impacts of emissions reductions agreements. A preferable policy would be to set short- and long-term goals to stabilize greenhouse gas emissions, and to set quantity limits on emissions that are linked to prices. Targets and timetables for emission limitations cannot operate independently of market prices. An international tradeable emissions permits system, with price caps and floors, would have revenue potential and would be cost-efficient.

[...]

MR. JOSEPH I. LIEBERMAN (D-Connecticut). [...] New commitments by developing countries regarding their performance under the Framework Convention on Climate Change, of course, need to be consistent with their historic responsibility for the problem, as well as their current capabilities.

[...] The resolution says that developing countries can start with a commitment that is lower relative to the industrialized countries at first. Over time, however, the commitments of developing and developed countries must become comparable to ensure that every country does its fair share to address the problem.

Senate Resolution 98 states that developing countries have to start making quantified emissions reductions objectives within the same compliance period as developed countries. This means that at a stage to be negotiated over the compliance period of the Kyoto agreement, developing countries must begin to make quantified emissions reductions objectives. Senate Resolution 98 says that it is entirely appropriate for industrialized countries to start making quantified emissions reductions first, as long as developing coun-

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tries also commit to making quantified emissions reductions before the end of the time period worked out for the Kyoto agreement.

[...]

MR. JEFF BINGAMAN (D-New Mexico). [...] The central issue for us today is the role that the United States and other developed countries will play in any effort to control greenhouse gas emissions, compared to the role that developing countries will play. Here, too, the administration has shown considerable sophistication, compared to other parties in the negotiations. All developing countries are not alike—there is a world of difference between South Korea and Gambia, despite the fact that both are non-Annex-I countries. The world should expect more from South Korea, which aspires to join the OECD in the near future, than it should from Gambia. But there should also be a minimum level of expectations mandated by the upcoming agreement, even for countries like Gambia.

I believe that a careful examination of the proposal put forward by the administration shows that it is trying to make these principles part of the protocol.¹ We should go on record, in this res-

¹The administration's negotiating position for Kyoto had been expressed, *inter alia*, by Timothy E. Wirth, Undersecretary for Global Affairs, Department of State, who testified on Thursday, June 18, 1997.

"[...] We have proposed three separate elements for developing countries in our proposal for Kyoto:

"1. We call on developing countries to continue to elaborate on their commitments in the Convention—including by providing information on emissions on an annual basis (the same as for developed countries), and by taking "no regrets measures" (actions which may be valuable in their own right, and which also mitigate climate change). We also call for a regular review of the actions developing countries are taking (again, using a review process similar to that established to assess our own actions).

"2. We call on the newly developed countries (such as Mexico and Korea) to take on binding legal obligations to reduce emissions, recognizing that while the targets they adopt may not be the same as our own, such commitments will codify their new status, and differentiate them from the lesser developed countries.

"3. We call for the negotiation of a new legal instrument which will include legally binding obligations for all countries—including all developing countries—as a next step in the path toward the ultimate stabilization of greenhouse gas concentrations in the atmosphere at a level that is not dangerous."

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olution, in support of such principles. But we need to do so in a careful and sophisticated way, befitting the complexities of the problem of human-induced global climate change, and the international policy response to it.

I did not cosponsor the resolution that is now before us because of my concerns about how it expressed the relationship between what the United States should do and what the developing countries should do. It used the words 'new commitments' for both developed and developing countries in a way that suggested to me, at least, that the intent of the resolution was that the United States should not agree to any commitment that was not also going to be agreed to and implemented simultaneously by the world's poorest countries. That would seem to be a rather simplistic approach. We shouldn't ignore legitimate differences between countries at vastly different stages of development.

[...] I would like to engage in a colloquy with the senior Senator from West Virginia regarding the correct interpretation of the language of the resolution on one particular point of importance. The resolution refers to 'new commitments to limit or reduce greenhouse gas emissions for the Annex I Parties' as well as to 'new specified scheduled commitments to limit or reduce greenhouse gas emissions for Developing Country Parties.' Would it be correct to interpret the use of the words 'new commitments' in both phrases as suggesting that the United States should not be a signatory to any protocol unless Annex I Parties and Developing Country Parties agree to identical commitments?

MR. ROBERT C. BYRD (R-West Virginia). That would not be a correct interpretation of the resolution. In my testimony before the Committee on Foreign Relations on June 19, I made the following statement and deliberately repeated it for emphasis: 'Finally, while countries have different levels of development, each must make unique and binding commitments of a pace and kind consistent with their industrialization.' I believe that the developing world must agree in Kyoto to binding targets and commitments that would begin at the same time as the developed world in as aggressive and effective a schedule as possible given the gravity of

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the problem and the need for a fair sharing of the burden. That is what the resolution means. The resolution should not be interpreted as a call for identical commitments between Annex I Parties and Developing Country Parties.

[...] Mr. President, I will try to elaborate on my view with a two-part observation. First, with respect to significant emitters, such as China, it makes no sense for the international community to begin this effort by agreeing to unchecked emissions growth from newly constructed, but inefficient, power-generating and industrial facilities. It is neither cost-effective nor environmentally beneficial to go back and retrofit dirty smokestacks.

We all know that China in particular has near-term plans to increase its power-generating capacity exponentially. We must anticipate the prospect of significant new industrial development in China and other places by providing incentives for deployment of new, cleaner technologies. In short, we must bring back from Kyoto some commitments that China and other large emitters will grow in a smart way.

I want to make it clear that the current approach of the State Department is not acceptable to this Senator under the terms of the resolution. Their approach will not work. A promise by the developing countries to only negotiate at a later date is simply unacceptable. Any agreement resulting from negotiations in Kyoto, or thereafter, that includes binding commitments for developed countries must also include serious, specific, and binding commitments by the developing world.