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THE ANTARCTIC TREATY

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Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. B, 86th Cong., 2d sess.]

The Committee on Foreign Relations, having had under consideration Executive B, 86th Congress, 2d session, the Antarctic Treaty, signed at Washington on December 1, 1959, reports the treaty favorably and recommends that the Senate advise and consent to its ratification.

1. PURPOSES OF THE TREATY

Twelve countries are signatories of the treaty: the United States, the Soviet Union, and 10 other nations, including all 7 which have advanced territorial claims to Antarctica. Through the treaty, these countries accept the following objectives: the Antarctic Continent and surrounding areas shall be used exclusively for peaceful purposes; nuclear explosions and radioactive waste disposal shall be banned in the treaty area; no territorial claims or rights shall either be recognized or affected; freedom of scientific investigation shall be maintained and international cooperation to that end promoted; and complete rights of unilateral inspection shall insure fulfillment of these objectives. The overall purpose thus is to neutralize Antarctica and obviate future conflicts between nations so that knowledge may be derived from the continent to benefit all mankind.

2. BACKGROUND

In May 1958 the United States sent identical notes to each of the 11 other countries¹ which participated in the Antarctic program of the International Geophysical Year (IGY) of 1957-58, inviting them to join in a conference aimed at formulating a treaty on Antarctica. In so doing, the United States was mindful of broadened interest in

¹ Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, the Union of South Africa, the U.S.S.R., and the United Kingdom.

and claims to Antarctica by several countries, conflicts between Britain, Argentina, and Chile because of their overlapping claims, the refusal of the latter two nations to permit the question to be taken to the International Court of Justice, and the failure of U.S. efforts in 1948 to arrange a conference with the seven claimants looking toward a settlement of territorial interests. Added to these considerations was the fact that the U.S.S.R. had engaged in extensive activities during the IGY and had a number of bases in the Australian-claimed portion of Antarctica which it showed every intention of maintaining. The United States, therefore, was concerned lest the great benefits of international scientific cooperation derived from the IGY should end with the close of 1958, to be replaced by future national disputes and militant maneuvers. Friendly interest in such an endeavor, informally expressed by several projected treaty members, also stimulated U.S. adoption of the initiative.

All 11 governments accepted the U.S. invitation, and their representatives held extensive informal preparatory talks in Washington. The working papers developed in these talks formed the basis of discussion when the Conference on Antarctica convened on October 15, 1959. Six weeks of deliberations led to the signing of the treaty by all countries on December 1; at which time a final act, not requiring ratification, was also signed.

3. COMMITTEE ACTION

On February 15, 1960, the President of the United States transmitted the Antarctic Treaty to the Senate recommending early and favorable consideration. The President, in his message of transmittal stated that:

This is a unique and historic treaty. It provides that a large area of the world—an area equal in size to Europe and the United States combined—will be used for peaceful purposes only * * *. The spirit of cooperation and mutual understanding with which representatives of the 12 countries drafted the Antarctic Treaty and signed it for their respective governments is an inspiring example of what can be accomplished by international cooperation in the field of science and in the pursuit of peace.

The treaty, the President's message, and accompanying papers were referred to the Committee on Foreign Relations. The committee held public hearings on June 14, at which time the main administration witness for the treaty was the Honorable Herman Phleger, former legal adviser of the Department of State and head of the U.S. delegation at the Conference on Antarctica. The administration case for the treaty was continued by Rear Adm. David M. Tyree, Antarctic projects officer, representing the Department of Defense. Favorable testimony was also presented by Dr. Laurence M. Gould of the National Academy of Sciences, and by Dr. Philip C. Jessup, professor of international law at Columbia University. Testimony opposed to the treaty was presented by Senator Clair Engle, Senator Ernest Gruening, Representative John R. Pillion, Mr. Edouard A. Stackpole, and Miss Elizabeth A. Kendall.

In executive session on June 21 the committee, without a dissenting vote, ordered the treaty reported favorably to the Senate.

4. PROVISIONS OF THE TREATY

The Antarctic Treaty consists of a preamble and 14 articles. The preamble sets forth the objectives of the signatories and expresses the conviction that the treaty—

* * * will further the purposes and principles embodied in the Charter of the United Nations.

The first three articles provide that measures of a military nature, excluding the use of military personnel and equipment for peaceful purposes, shall be prohibited; that freedom of scientific investigation shall continue as during the IGY; and that measures to promote international scientific cooperation shall include exchanges of plans, personnel, and data among the contracting parties.

Article IV deals with the difficult and sensitive question of territorial claims and rights. It provides that the claims, bases of claims and rights—asserted or latent—of the contracting nations are not in any way affected by the treaty; nor is there any change in the position of each nation regarding the claims or rights of others. Moreover, no activity in Antarctica during the period of the treaty shall affect the current claims situation, and no new or enlarged claims shall be asserted for the duration of the treaty. In effect, then, the question of territorial claims and rights is "frozen" while the treaty is in force. It should be noted in this connection that the U.S. Government, in the initiative of May 1958, expressly stated and reserved all the rights of the United States, including that of asserting a claim.

Article V prohibits nuclear explosions and radioactive waste disposal, but does not bar the use of atomic powerplants in Antarctica for heat and light. It also would not prevent the terms of any future international agreement on the uses of nuclear energy being applied to Antarctica.

Article VI states that the treaty covers the area south of 60° S. latitude, including ice shelves, but does not affect the question of any nation's access to the high seas.

Articles VII and VIII relate to the system of inspection and to the exclusive jurisdiction of a contracting party over its own nationals regardless of their whereabouts in the treaty area. Each original treaty member, as well as any country acceding in future and becoming active in the area, shall have the right to name its own national observers. These observers shall have complete freedom of access at any time to all areas of Antarctica, including all installations, equipment, and means of transport within the areas. The contracting parties will tender the names of their observers to each other, and will inform each other in full as to all activities, equipment, and personnel on a continuing basis. The unrestricted right of aerial observation should be especially noted as consonant with President Eisenhower's "open skies" proposal.

Disputes between two or more contracting parties, according to article XI, should be resolved through consultation and means of their own choice. If not so resolved, any dispute may be referred to the International Court of Justice, but only with the consent of all parties to the dispute. In this connection, while the United States and the majority of the contracting parties were willing to accept compulsory jurisdiction by the International Court, the opposition of three signatories negated that proposal.

When all 12 contracting parties have ratified and the treaty has entered into force, it is provided under article IX that, within 2 months representatives of those nations would meet at Canberra to consider measures in furtherance of the treaty. Such meetings would occur thereafter at suitable intervals and places. Representation on this essentially administrative body would be automatic for the 12 original signatories, but in the case of any other acceding country would be contingent upon a demonstration of active interest in Antarctica through substantial scientific research activity there. This matter is interconnected with article XIII, which provides that the treaty shall be open for accession by any United Nations member, or by any other nation unanimously invited to accede by those contracting parties (hereinafter named the "consultative parties") entitled to participate in the above-mentioned meetings under article IX.

Amendment and duration of the treaty are covered by article XII. The treaty may be modified or amended at any time, but only by unanimous agreement of the consultative parties. While the treaty has no specified duration, it is provided that after 30 years any of the consultative parties may request a conference of all treaty members to review the operation of the treaty. Amendments approved at such a conference by a majority of those represented, including a majority of the consultative parties, will enter into force when ratified by all of the latter parties. Any country may withdraw from the treaty, effective 2 years after notification, if an amendment approved at such a conference does not enter into force within 2 years.

5. DISCUSSION OF OPPOSITION VIEWS

The two major and intertwined concerns of those opposed to the treaty are, first, the fact that the U.S.S.R. is among the 12 signatories; and, secondly, that the United States, despite its notable record of Antarctic exploration, has failed to make official claims based upon that record. Not only is there reluctance to enter into an agreement with the Soviet Union in view of its past practices with respect to treaties, but there is also opposition to what is considered a gratuitous invitation to the U.S.S.R. to enter the Antarctic on a basis of equality with nations possessing legitimate rights in the area.

On this question of Soviet participation, the central fact is that the U.S.S.R. has had scientific bases in Antarctica for several years and shows every sign of remaining there. To date, the Soviet Union has made no official claim beyond that of discovering Antarctica (based on the Bellingshausen voyage of 1819-21). It stated as early as 1948, however, that it had a rightful voice in whatever arrangements were made for the continent, and that it would not recognize any that were reached without its participation and consent.

Following its acceptance of the international scientific community's invitation to play a role in the IGY, the Soviet Union unexpectedly revealed that it planned an Antarctic expedition of considerable size. Indeed, next to the U.S. effort, the Soviet expedition was the most elaborate one to go to the continent in the 1955-56 season. During the IGY, Soviet participation was generally nonpolitical and cooperative, and there was no evidence that it had any but legitimate scientific aspects compatible with long experience in the Arctic regions.

Therefore, the treaty does not create a Soviet presence in Antarctica but merely deals with an existing situation. It does not give the U.S.S.R. any rights which it would not otherwise possess; specifically, it only confirms that the United States and the Soviet Union, neither of them having made official territorial claims, refuse to recognize the claims of others. Beyond these negative factors, the treaty also gives the signatories positive opportunities to cooperate both in their own self-interest and in the interest of world peace.

With regard to future Soviet adherence, opponents of the treaty seem to argue in opposite directions: on the one hand, they say that the U.S.S.R. will receive benefits which it does not now possess; on the other, they intimate that it will not observe the treaty. The obvious fact is that nations generally will ratify and respect those agreements that serve their national interests. It seems clear that the removal of a possible cause of military conflict and the preservation of freedom of movement and scientific inquiry are in the best interests of all nations. However, should the treaty be broken for any reason, the situation would revert to currently existing conditions. The language of the treaty is as conclusive as possible on this point, according to those most learned in international law who testified before the committee.

With regard to the argument that the United States should jettison a treaty which it initiated in favor of making an official territorial claim, proponents of this view not only fail to show any advantages but they ignore its disadvantages. The only territory yet unclaimed is that one-sixth of the continent between 90° and 150° W. longitude, possibly the least accessible and rewarding area of Antarctica. There already seems to be a tacit understanding among the claimants that this area would be reserved to the United States because of the extensive explorations of Admiral Byrd, his companions and successors. Short of making broader claims which would immediately embroil our relations with friendly countries, this is the one area open to us. If the United States were now to exercise this option, it would logically have to recognize the claims of other countries based on the same considerations of discovery, exploration and sporadic occupation. In return for this fraction, the United States would jeopardize its reserved rights of free access to all of Antarctica. Moreover, such a move would not be recognized by the Soviet Union, which, possibly along with other countries, might be stimulated to make official claims also. Many supporters of the present treaty regret that the United States did not make claims many years ago, but they recognize that the clock cannot be turned back.

Presumably, one of the main reasons why opponents of the treaty urge the United States to make official claims stems from the supposedly great economic potential of Antarctica. On this point, the noted geologist and Antarctic expert, Dr. Laurence Gould, who was second in command of the first Byrd expedition, not only declared that the continent's vast, low-grade lignite coal deposits are commercially worthless, but testified as follows:

* * * I would not give a nickel for all the mineral resources I know in Antarctica. The point is we don't know and to predicate a program or to presume that vast resources are there is nonsense. We haven't examined 1 percent of the

area geologically. * * * So that for many, many years to come * * * the most important export of Antarctica is going to be its scientific data. And that is terribly important indeed. There is no single field of geophysics which does not demand for its completion data which can come only from Antarctica * * *.

In any event, the treaty does not deal with economic considerations. If some valuable discovery were made in the future, it theoretically would be handled under the same conditions as now exist in the absence of a treaty. Practically, however, experience accumulated by the consultative parties might by that time result in a better disposition of the resource than would occur at present.

One further source of opposition is dissatisfaction with the ban on nuclear explosions and radioactive waste disposal, which is regarded as premature and contrary to the interests of populated world areas, as well as detrimental to the cause of Antarctic exploitation. The fact is that Southern Hemisphere countries, keenly aware that their weather systems originate in Antarctica, insisted on that prohibition. Here again, in the absence of a treaty, there are considerations which the United States, at least, would not wish to flout.

6. CONCLUSIONS

The Committee on Foreign Relations considers that the Antarctic Treaty is a notable instance of U.S. initiative, preceded by careful planning and followed by patient and skillful negotiations. The committee understands that the President took an unusually strong personal interest in the treaty, and that drafts of the various articles were cleared with all interested governmental agencies. It was especially glad to receive assurances of full support for the treaty from the Department of Defense spokesman.

The arguments presented in opposition to the treaty were carefully considered, but the committee did not find them at all persuasive. In particular, it noted that opponents did not offer any feasible alternative method of preventing disputes and national aggrandizement, and of insuring cooperative access to the scientific data of the entire continent. While the risks of entering into agreements with Communist countries are not discounted, the committee subscribes to the belief that a breakdown in communications between the Communist bloc and the free world is an immeasurably greater risk. It believes it is in the interests of the United States to arrive at an agreement with the U.S.S.R. in an area where mutual interests appear to coincide rather than diverge. The alternative to this course of action seems to entail drawing Antarctica into the arena of global conflict. Furthermore, it is considered that this treaty could set a valuable precedent for dealing with new situations arising in the space age.

Although the United Kingdom and the Union of South Africa have already ratified the Antarctic Treaty, the likelihood is that most of the contracting parties will await action by the United States as the initiating power.

The committee believes that the pending treaty will serve the best interests of the United States and its friends and allies, and will promote the overall cause of world peace. Therefore, it recommends that the Senate give its advice and consent to ratification of the Antarctic Treaty.