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DRAFT WORKING PAPER

ARTICLE I

1. Antarctica shall be used for peaceful purposes only.

This means in particular that military activities of all kinds, including construction of military bases and installations, conduct of army, navy and air force manoeuvres as well as tests of any types of weapons shall be prohibited in Antarctica.

2. Nothing in the present Treaty shall prevent the use of military personnel or equipment, including naval vessels and military aircraft, for scientific research for peaceful purposes or to provide support therefor.

precludes the use of military personnel or equipment for inspection purposes. Mr. Filippov, however, intimated that if there was a strong feeling among the Group that a clause to this effect should be inserted in the second paragraph the Soviet Union would be prepared to insert such a clause.

The/....

The next meeting of the Group will be held on 26th August and I would be very grateful to receive your comments, even if only tentative ones, on the latest United States draft and the Soviet proposals, in particular, as it is likely that the other members of the Group will have their instructions by then.

Copy to London and Canberra.

W.C. DU PLESSIS

AMBASSADOR.

Article IV - the United States representative would inform the other members of the Group when the talks would take place and those members who wished to attend could do so. The French representative has indicated that the French attitude to Article IV is being reviewed and that he is uncertain when he will receive instructions. It is not likely therefore that the informal Group will meet before the French representative has received his instructions.

The United States representative during the last meeting raised the question of simultaneous meetings of the Conference Committees to which we have already referred in our minute 43/44 of 15th July, 1959. He felt that everybody would favour a short Conference but did not feel that simultaneous meetings of the Committees would help much to shorten the Conference. He repeated the view which we have already reported that both Conference Committees would be dealing with important aspects of the Treaty and that it might be desirable for Heads of Delegations to be present when these matters were discussed in each Committee. This would not be possible if the two Committees sat simultaneously. Furthermore, he felt that a lot of the Conference work would be done outside the Committee rooms and that time should also be allowed for this.

Not many members of the Group were in a position to discuss this matter. The representative of Belgium, however, indicated that his Government did not favour simultaneous meetings of the Committees.

The only other point raised during the meetings to which your attention should be drawn concerns the question of a preamble to the Treaty. The Australian representatives raised this question and expressed the view that it might be desirable to draft a suitable wording for a preamble. The representative of Norway, however, opposed this. He pointed out that there were many international Treaties which omitted the preamble which he thought unnecessary and an unfortunate carryover from a practice introduced at the United Nations. The representative of Chile also felt that a preamble was probably unnecessary because it often raised difficult problems of drafting. Furthermore it said mostly what the Treaty Articles in any event said and could possibly, if carelessly drafted, result in a conflict between the preamble and the Articles.

The/....

interest there. Now if this line is pursued the Union's position could well become very embarrassing. The Australians are of course well aware of this as a talk which a member of the Embassy subsequently had with the Australian representative proved. They do not want to embarrass us and, of course, desire our participation in the Treaty but at the same time are desirous of finding some means of preventing countries like India and the Soviet Satellites from becoming parties to the Treaty possibly on the basis of an accession clause which does not contain sufficiently stringent qualifications. It is not possible to say whether the Australians would pursue this line of thinking against our strong opposition; nevertheless if this should happen we would be unfortunately placed. In the circumstances you might deem it advisable to suggest to the High Commissioner, Canberra, that he might perhaps on a suitable occasion raise this point with the authorities in Canberra. This matter also illustrates how important it is for the Union to make known as soon as possible any decision which might be reached in regard to our Antarctic programme.

The only other speakers on this Article were the representatives of Japan and the United Kingdom who pointed out that their governments were still maintaining their proposals for dealing with this question.

During the course of the meetings there was also some discussion of Article IV (Rights and Claims). The Soviet Union, as reported last week, have stated that they are in general agreement with Article IV but that they would have preferred a shorter draft. Members of the Group feel that it is desirable to pin the Soviet Union down on this so as to avoid any possibility of their raising last-minute objections at the Conference. The proposal was therefore put forward that it might be desirable to try and secure a draft of this Article to which all members would agree. The French and the Argentines have both proposed certain amendments to the Article, and it was therefore suggested that the representatives of these two countries, the United States, the Soviet Union, Australia and possibly the Union (we as you know suggested an alternative to the Argentine proposal) should get together during the coming weeks in an effort to agree on a draft for this Article. It was eventually decided, however, that no specific countries should be mentioned but that informal talks might be held during the coming weeks on a revised draft for

Article/....

other than the Soviet representative who expressed misgivings about the retention of a compulsory jurisdiction clause in Article VII.

As to the Soviet draft on Article IX (Treatment of Third Parties) it is quite apparent, as we have already indicated, that this Article is going to pose the greatest difficulties in the way of the conclusion of a satisfactory Treaty. The representatives of Chile and the Argentine remain adamantly opposed to an accession clause. Both representatives considered that the United States draft of November last year adequately dealt with the position of non-signatories. They argued that the acceptance of an accession clause would tend towards the internationalisation of Antarctica and that they can in no way accept internationalisation of their national territory in Antarctica. The Chilean representative stated that his government considered the United Kingdom draft protocol on this question as acceptable in principle and that it might provide a solution to the problem.

The United States representative repeated their position namely that they had considered that the Treaty need not have an accession clause. The Department is, however, of course aware from our previous reports that the United States will, if it is necessary in order to get a Treaty which will include the Russians, in all probability agree to some sort of accession clause. Thus the United States representative intimated that he would be prepared to give consideration to an accession clause but that any provision for accession would have to be qualified - for example, it would have to be shown that the acceding State, which would have to be a member of the United Nations, has a real interest in Antarctica. In this connection I would in particular draw your attention to remarks made during the meetings by the Australian representative. In commenting on this question he stated that only countries which have a genuine scientific interest in Antarctica should be allowed to accede, so that it would be possible to prevent countries intent only on making mischief from becoming parties to the Treaty. He then went on to say that this genuine scientific interest might be determined on the basis of whether such countries had established a permanent presence in Antarctica. He thought that if a country was prepared to go to the cost of equipping expeditions and maintaining a station in Antarctica then that would be a good test of its genuine

interest/....

The Australian representative said that if the Soviet draft included a clause which would allow of the use of military equipment also for inspection purposes then he would support it as the Australian Government had all along adopted the attitude of wishing to be as explicit as possible. The United States representative on the other hand stated that they wished to maintain the draft articles as simple as possible and had therefore tried to avoid ennumeration wherever they could. No other representatives were prepared to speak on Article I but it seems to be the generally accepted view that this Article will not present insuperable difficulties in the way of agreement.

The Soviet draft on Article VI would include the High Seas in the Zone of Application and the Group as before remains divided on this question. One new development was a suggestion by the United States representative that if the High Seas were to be included then a possible way out of the difficulty might be to add a clause to the Article to the effect that it is not the intention of the Treaty to invade the rights of any country on the high seas. A number of representatives expressed an interest in the United States suggestion and he has agreed to submit a draft on this. It was, however, pointed out quite correctly by the United Kingdom representative that the inclusion of such a clause might well mean that the Group of Twelve who would sign the Treaty, would be discriminating against themselves because while they would be bound by the Treaty, non-signatories would not be. There is no point in repeating again here arguments advanced against the inclusion of High Seas in the zone of application; your attention is, however, drawn to the fact that the Australian representative, who has up to now argued in favour of the inclusion of the high seas in the delimitation, stated that his Government was having another look at this matter. This does not necessarily mean, however, that the Australian position on this question will alter.

None of the representatives who spoke on the Soviet draft Article VII (Settlement of Disputes) expressed themselves in favour of the Soviet amendment which would allow of submission of disputes to the International Court only when all parties to the disputes agree to do so. Most representatives stressed the desirability of retaining in the Treaty the idea of the compulsory jurisdiction of the International Court. The representative of the Argentine was the only speaker

other/....

30th July, 1959

AIRBAG

SECRET

The Secretary for External Affairs,
PRETORIA

Antarctica.

Two meetings of the Group of Twelve were held during the course of this week instead of the one meeting originally envisaged.

During the course of the first meeting on Tuesday, 28th July, the Soviet representative circulated draft texts (copies attached) on Article I (Peaceful Uses), Article VI (Zone of Application), Article VII (Settlement of Disputes) and Article IX (Treatment of Third Parties) and the discussions in this week's meetings centred mainly around these Articles. When the Soviet representative was asked whether the Articles in respect of which he had not circulated drafts were acceptable to the Soviet Union, he replied that this was the case, although they had felt that Article IV (Rights and Claims) might have been expressed in a shorter way. You will, however, recall that Mr. Filippov at last week's meeting had certain reservations as to the manner in which the question of civil and criminal jurisdiction was dealt with in Article VIII of the latest (June) draft of the United States.

The Soviet draft of Article I differs in the first place from the United States June draft in that it includes, as expected, a paragraph dealing with the prohibition of military activities in Antarctica. Paragraph 2 of the Soviet draft is identical to the text of the original United States draft circulated in November last year. In other words it precludes the use of military personnel or equipment for inspection purposes. Mr. Filippov, however, intimated that if there was a strong feeling among the Group that a clause to this effect should be inserted in the second paragraph the Soviet Union would be prepared to insert such a clause.

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43/44

SECRET

With the
Compliments of the
Embassy
of the
Union of South Africa
Washington, D.C.

The High Commissioner for the Union
of South Africa,
LONDON.

30th July, 1959

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AD/IGV/AG

rise to many complications and he therefore suggested that the word "civil" should be omitted from the United States draft.

Although the Group remains divided as to how the question of jurisdiction should be dealt with in the Treaty, there is one aspect of this matter upon which all appear to be agreed, and that is that provision should be made in the Treaty to provide adequate juridical protection to observers to enable them to do their duty without being molested. Such a clause could for example be inserted in Article V which deals with observers.

It is expected that the Group will meet fairly frequently during the coming weeks in an endeavour to reach a greater degree of agreement on questions on which the Group still appears to be divided. The next meeting will be on Wednesday, 2nd September, when it is likely that the question of the association of third-parties with the Treaty will be discussed.

Copy to London and Canberra.

J. G. STEWART

AMBASSADOR.

AD/IDV/RG

in the Article on Administrative Measures. He felt that the matter was far too complex to be solved before or at the Conference and that this question should rather be considered by a group of experts over a period of time. Similar views were expressed by the representatives of Chile and France.

We, on the other hand, following the instructions in your telegram No. 66, stated that we favoured a separate Article on this question for inclusion in the Treaty along the lines of the original United States draft Article V. We made the point that it was precisely because this was a complex question that we would like to see a separate Article in the Treaty - there were differences of opinion amongst countries on this question and further discussion after the conclusion of the Treaty might revive polemics on sovereignty which would be undesirable. We received support on this from the representatives of New Zealand, United Kingdom and Japan. The Soviet representative has also previously indicated that his Government favoured a separate article on jurisdiction, although today he stated that his Government's position was flexible and that they would accept the will of the majority. The representative of New Zealand felt that if this matter was left to be considered by a small group it might be months or years before any solution could be found. As for the United Kingdom representative he preferred the British proposal which was made earlier on this year (my minute 43/44 of 19th February, 1959) which would retain the original American draft of this article as paragraph one, would provide that the contracting parties co-operate with one another and enter into mutual arrangements in regard to such matters as arrest and extradition and which would provide for a means of settling claims by one party against another pending the making of such final arrangements as may be agreed upon. The representative of Japan did not refer to their draft proposal (my minute 43/44 of 19th February, 1959) but it is assumed that their suggestion still stands.

The representative of Australia was most pessimistic about the possibility of there ever being agreement on a satisfactory article on jurisdiction which was closely tied up with the question of sovereignty. He, however, felt that to avoid disputes the Group should face up to this problem before the Treaty and at the least ensure that some means be found to deal with any <u>criminal</u> acts. The application of the United States draft also to civil acts would, he thought, give

rise/....

so that the parties to the Treaty would not be discriminating against themselves. This of course gives rise to the difficulty, as we pointed out, that insofar as the Treaty signatories are concerned there is the danger of a conflict between the Treaty and International Law and the question arises which would be regarded as overriding the other? As far as non-parties are concerned it would seem to be correct to say, as pointed out by the Australian representative, that the regulations of the Treaty could not be imposed on them on the high seas, but only on the parties to the Treaty. In a sense, therefore, if the Treaty is regarded as overriding International Law on the high seas, we would be discriminating against ourselves by voluntary imposing through the medium of the Treaty limits (whatever they may be) on our activities on the high seas. Thus the parties to the Treaty could not conduct military exercises in that area, but presumably the Treaty could not give them the right to stop non-parties from doing so. The Australians argue that the parties to the Treaty should simply accept that this is so and go ahead with the Treaty on that basis. They suggest also that if the Treaty included a suitable accession clause it would no doubt ensure that all countries who might be active within the confines of the 60° South latitude would become parties to the Treaty and there would possibly be no problem of having to deal with non-parties in that area; but this need not be the case in practice.

It is obvious that this question of excluding or including the High Seas in the zone of application will have to be given further careful thought and consideration during the forthcoming weeks and that it will form the subject of a good deal of discussion before the Conference takes place. As your telegram No. 66 contained no reference to this Article we should be glad to learn whether your view remains that the High Seas should be excluded from the zone of application.

As to the question of jurisdiction, nearly all representatives appear to be agreed that the Treaty should contain some mention of this matter but there remains a difference of opinion as to whether there should be a separate article or whether it would merely be referred to (as in the United States June draft) in the Article on Administrative Measures.

The representative of Norway expressed the view that it would be preferable merely to refer to this question

in/....

26th August, 1959

Airbag

Secret

The Secretary for External Affairs,
PRETORIA

Antarctica.

The Group of Twelve met today as scheduled.

The Chairman invited representatives to express views on any aspects of the Treaty they would wish to raise and the subsequent discussion revolved mainly around the zone of application and the question of jurisdiction.

From the discussions it would appear that a number of representatives are veering towards the acceptance of a draft of the zone of application along the lines of that proposed by the Soviet Union, subject, however, to some such qualification as was recently suggested by the United States, namely, that it was not the intention of the Treaty to invade rights of any country on the high seas which were recognised by International Law. The representatives of New Zealand and Japan took this line although their position is apparently flexible. The United Kingdom representative stated that they had all along taken the position that a small group of powers should not attempt to legislate in a field which would effect all countries of the world, but they nevertheless felt that the United States suggestion had some merit. The representative of Australia, for reasons of which you are aware (and with which the New Zealanders now appear to agree) would appear to favour the Soviet definition without any qualification, although he intimated that the Australian position would depend upon what the other members of the Group felt about this question.

There appeared to be some confusion among the members of the Group as to what exactly the suggested qualification would mean. Thus the United States representative expressed the view that it was their understanding that the qualification would apply both to parties to the Treaty and to non-parties

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43/44

SECRET

26th August, 1959

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so/....

The Union is the only country of the Twelve which at the time of the Antarctic Conference, when the "criteria" are determined, will not have an expedition or base in Antarctica. If exceptions are to be made in favour of the original Twelve, therefore, this would seem to be necessary only to meet the position of the Union. It would seem, therefore, to be important that any decision on South African activity on the Antarctic continent be taken as soon as possible. Obviously our physical presence on the Continent cannot be established before the Conference, but I think it would be helpful to our friends if any firm decisions that may have been taken, and any preparatory steps towards an expedition etc., were known to them.

It is quite apparent that this matter will be the subject of a good deal more discussion both within the Group and bilaterally during the coming weeks. There is some doubt, however, as to whether any substantial degree of agreement can be reached on this before the actual Conference as it is considered that neither the Russians nor the Argentinians and Chileans will be prepared to give any ground before then.

The next meeting of the Group will be held on Wednesday, 9th September, 1959.

Copies to London and Canberra.

W.C. DU PLESSIS

AMBASSADOR.

Favouring limited accession	Favouring unlimited accession	Favouring U.S. draft and adamantly opposed to accession	Favouring U.S. draft but in final analysis probably willing to accept limited accession	Favouring British Protocol	Flexible
Australia	U.S.S.R.	Argentina	United States	France	Belgium
New Zealand		Chile	Norway	United Kingdom	
Japan			South Africa	South Africa	

From this table it can be seen that at least six countries will in the final analysis be prepared to accept a limited accession clause and three more, namely, Belgium, France and the United Kingdom could also probably be included in this category. This leaves the U.S.S.R. favouring unlimited accession and the Argentine and Chile opposed to any accession clause, even a limited one. The trend definitely seems to be towards the acceptance of some sort of limited accession clause although members of the Group who favour such a clause seem to be somewhat vague about details. Any acceptance of such a solution will, however, depend in the final analysis on how firm the positions taken by the last-mentioned countries in fact are.

What is particularly interesting to the Union as far as the Australian proposal for a limited accession clause is concerned is the apparent suggestion that the Group of Twelve are in a special position in that they have already qualified as founder members of the Treaty whereas countries wishing to accede would have to meet the criteria laid down by the Twelve. If this were accepted there could be no doubt that the Union's position as a founder member of the Treaty would be secure. There is, however, also the suggestion that a failure to maintain a continuing presence after the Treaty is signed would result in the party concerned becoming a nominal member only without participating in the administrative arrangements. Apparently such a continuing presence could only be manifested in their view by the actual mounting of an expedition to Antarctica although this might not necessarily have to be carried out each year.

The/....

No members of the Group expressed outright opposition to a limited accession clause. Of the South Americans who have all along been most strongly opposed to an accession clause, the Argentinian representative did not have any comment and the Chilean representative confined himself to asking a number of questions regarding the application of an accession clause. We have no reason to believe, however, that there has been any softening in their attitude to this question. The United States representative stated that they questioned the need for an accession clause as they considered that the Treaty as drafted was not denying anything to anybody. He was anxious though that this question should be resolved to the satisfaction of all. If there was to be an accession clause it would have to be a limited one.

The representatives of the United Kingdom and France expressed a preference for the British protocol rather than an accession clause. The United Kingdom representative argued that the protocol had the advantage that while it allowed of the association of third parties with the Treaty it did not involve the tricky problem of "criteria" which might not only be difficult to agree upon but even more difficult to put into practice. Furthermore, there would have to be some means of finding out whether the criteria were being met. He expressed the hope that the members of the Group had not forgotten about the protocol as the United Kingdom still believed it was the best way of solving the problem.

The strongest argument against the British proposal - which was made use of by both the Australian and New Zealand representatives - is that it would come pretty close to offering a kind of second-class membership to third parties. It was argued that it was doubtful whether other countries would sign a protocol which did not give them an equal status with the twelve founding members. Such a protocol it was said would draw more criticism than a provision for limited accession.

It might be interesting at this stage to attempt to place where each member of the Group at present stands on this question of third parties, and this has accordingly been done in the table below:-

Favouring/....

Antarctica would remain a party to the Treaty. The Australian representative thought that such a country would remain a nominal member, but would not participate in any administrative arrangements. The representative of Japan made the suggestion that it might perhaps be advisable to insert a clause in the Treaty providing that a country would cease to be a party to the Treaty if it no longer met the criteria required. The Australian representative, however, considered that this would be dangerous as it was not beyond the bounds of possibility that one of the Twelve might at some time no longer be able to meet the criteria. He felt that the Twelve were in a special position but this had its limits which could not be projected into the future. While the Twelve because of their special position could lay down criteria for others, once these others had acceded they would have to be regarded as being in the same position as the Twelve. An accession clause would ensure that countries met the obligations of the Treaty but they would also enjoy the benefits which would result from acceding to the Treaty.

One of the questions which comes to mind in relation to the limited accession clause as proposed above is, who is to decide whether a country which wishes to accede measures up to the required criteria, and this was also touched on briefly at the meeting. The Chilean representative considered that in the application of any such criteria there would have to be a screening of candidates for accession and that this screening would be done by the signatories. The Australian view seems to be that there would be no question of voting as suggested in the Japanese proposal for a limited accession clause, but that it would be understood that the accession of a country would require the approval of all signatories. The Treaty article would simply read that provided a country meets the criteria laid down it can deposit its instrument of accession. He apparently envisages that a country, a member of the United Nations and/or the Specialised Agencies wishing to accede would make known its intention to do so and also its continuous operations in Antarctica. If any party to the Treaty considered that the country in question did not measure up to the required criteria it would presumably object. This would mean that there would be a dispute which could be dealt with under the particular Article of the Treaty which provides for the handling of such disputes.

spent a few weeks there and returned home should not be regarded as having met the criterion of scientific participation.

The Australian representative considered that acceding countries should be able to show proof of a continuing presence in Antarctica. He felt that this was a fair test for even if an expedition was only on a small scale it would still involve considerable expense, logistic work and co-operation with other countries in Antarctica.

Not unexpectedly (in view of their decision to withdraw from their station in Queen Maud Land) the Norwegian representative expressed concern at the trend the discussion was taking. He stated that the Norwegian Government could never agree to such criteria. Norway, he said, had been active in Antarctica since 1912, but they have not been there every year and yet have regarded themselves as having a continuing interest in Antarctica.

To this the Australian representative made the interesting reply that he was talking about the qualifications necessary for acceding countries and not about the position of the Twelve whom he felt had an historical interest and a special position in Antarctica. Furthermore he added that it could no doubt be argued that Norway had a continuing presence in Antarctica even though it did not mount an expedition each year.

The representative of Norway replied that he still favoured the United States draft on the association of third parties with the Treaty but that his Government would nevertheless agree to a limited accession clause if the majority favoured it. He repeated, however, that the difficulty was to agree on criteria and that the requirement of continuing presence might be a difficult one for Norway to meet. In addition he considered that if Norway could not provide for a continuing presence in Antarctica he did not see how they could require acceding countries to have such a presence. In reply the Australian representative said that he could not see any reason why the Group of Twelve should have moral scruples of this nature - the Twelve in his view had a special position in Antarctica and there was no moral reason why they could not claim to be treated differently to other countries; the United Kingdom representative agreed.

The representative of Chile enquired whether an acceding country which suddenly ceased its activity in

AIRBAG

3rd September, 1959

SECRET

The Secretary for External Affairs,
PRETORIA

Antarctica

As expected, the meeting of the Group of Twelve on 26th August was devoted to the consideration of the question of association of third parties with the proposed Treaty.

During the course of the discussion the representatives of Australia, New Zealand and Japan emerged as the main proponents of a limited accession clause, as opposed to the Soviet suggestion for unlimited accession. The New Zealand representative felt that the strongest argument in favour of a limited accession clause was that it would make it much easier to answer criticism from countries who felt that the Twelve were trying to establish an exclusive Antarctic club. The reply to such criticism could then be that those countries were free to accede provided they could show a satisfactory interest in Antarctica. The Australians argue further that an accession clause is the best way to ensure that all countries which are or will be active in Antarctica will be bound by the terms of the Treaty. The thinking of those countries favouring a limited accession clause seems to be that any country which is able to meet certain criteria should be allowed to accede to the Treaty. Such criteria would be membership of the United Nations and/or the Specialised Agencies and participation in scientific work in Antarctica. As to the extent of the participation which would be required the New Zealand representative suggested that a country wishing to accede would have to launch a national expedition to Antarctica - the sending of a scientist with some other expedition would not be sufficient. Furthermore, the expedition would have to involve spending a winter in Antarctica - an expedition which merely

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SECRET

3rd September, 1959

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The High Commissioner for the
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intends appointing two representatives one of which would presumably be their Minister of Foreign Affairs and the other their Ambassador in Washington.

As to the holding of simultaneous meetings of the main committees, the United States representative indicated that he would have to be informed as to the intentions of the participants because he would need time to make the necessary arrangements for two groups of translators if meetings were to be held simultaneously. The Group eventually agreed that no simultaneous meetings would be held but that if the Conference became pressed for time it might be possible to find a means of meeting simultaneously by holding one formal Committee meeting and agreeing that the other Committee could meet at the same time by converting it into a working group which would not require simultaneous translation etc.

The Group also touched briefly on the question of opening addresses, and whilst there was no general agreement on a time limit some members expressed the hope that speeches would be confined to half an hour for each participating state. On this basis the first two days would probably be concerned with the appointment of officers, the adoption of the agenda and rules of procedure, and the opening addresses.

The only documents which will be before the Conference when it convenes will be the draft agenda and the Provisional Rules of Procedure. The United States draft treaty is not a conference document, and the United States draft will therefore probably be put forward under rule 27 of the rules of procedure (dealing with proposals and amendments) during the course of the Conference.

The Group is meeting again next week on 16 September.

Copies to London and Canberra.

J. G. STEWART

AMBASSADOR

9th September, 1959.

AIR BAG

The Secretary for External Affairs,

PRETORIA.

ANTARCTICA

There is not much to report on today's meeting of the Group of Twelve which was devoted entirely to a discussion of procedural matters relating to the forthcoming Conference.

As far as the date for the presentation of credentials is concerned the United States representative indicated that in conformity with rule 3 of the Provisional Rules of Procedure credentials should be lodged with the Conference Secretariat not later than the morning of 14 October 1959. He, however, indicated that it would be helpful if the names of the representatives on each Delegation could be conveyed to the Secretariat on an informal basis two weeks before the Conference convened, that is, on 1 October 1959. This would enable them to draw up a preliminary guide on the composition of the various Delegations, and would give them an idea of the number of persons involved.

The Group also agreed that the credentials of the Delegations and the full powers authorising a representative or representatives to sign an agreed Treaty could be incorporated in one document or be dealt with in separate documents. Each individual government would naturally determine which procedure would be followed.

After some discussion the Group agreed that Rule 1 of the Rules of Procedure should be interpreted to mean that each participating State would appoint a representative who would be Chairman of the Delegation but that this did not mean that each State could not appoint a further representative(s) in addition to its alternate representatives and advisers. Thus the Australian representative has indicated that his Government

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43/44

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9th Sept. 1959

With the
Compliments of the
Embassy
of the
Union of South Africa
Washington, D.C.

LONDON

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9th September, 1959.

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ANTARCTICA

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intends/.....

1. Peaceful uses
2. Freedom of scientific investigation
3. International Co-operation in Scientific Work in Antarctica.
4. Rights and Claims
5. Observation for peaceful use
6. Zone of application
7. Disputes
8. Jurisdiction
9. Administrative Measures
10. Non-signatories
11. Ratification, entry into force etc.

The Group were in general agreement that it would be desirable for the Conference to have such a list before it and the United States has undertaken to prepare a list for the consideration of the Group next week. There was also a suggestion that the modus vivendi which provides for setting in motion the consultative procedure established in the Treaty prior to its entry into force, should be included amongst the above list. This will, no doubt, be discussed again when the Group has the list before it.

Some representatives raised the question whether the list should not be presented in the form of a formal agenda for the Conference covering the substantive items (as opposed to the procedural agenda which has already been forwarded to Governments). No decision was, however, reached on this question and it will be taken up again when the Group considers the United States paper on the list of substantive items next week.

The Group will also be giving consideration to the desirability of drafting a suitable preamble for the Treaty. In this connection please see my minute 43/44 of 30th July, 1959.

The next meeting of the Group will be on Tuesday, 22nd September.

Copies to London and Canberra.

W.C. DU PLESSIS

AMBASSADOR.

co-operation up to the 60° S. Latitude limit but there would be free transit through the high seas. In other words the vessels of both parties and non-parties to the Treaty would not be subject to inspection on the high seas.

The United States suggestion did not evoke any immediate reaction from the Group, although the United Kingdom representative expressed the view that a proposal along these lines could provide a satisfactory compromise between the various proposals before the Group.

There was no comment from those members of the Group such as Australia, Argentine and the Soviet Union who favour the inclusion of the high seas in the zone of application. However, the Australian attitude when a suggestion along these lines was originally made (our minute 43/44 of 26th August, 1959) was that International Law should not be regarded as overriding the provisions of the Treaty as between the parties thereto, and there is no indication that their position has changed in any way. The Australians desire that the Treaty should at the least allow of inspection on the high seas as between the parties to it and the United States suggestion does not permit this.

Whilst the United States suggestion would in effect do away with the criticism that if the high seas are included in the delimitation, the parties to the Treaty would be attempting to legislate for a portion of the high seas which is subject to international law binding also on non-contracting states, it does not answer the question as to how the principle of peaceful uses can be enforced if inspection is not allowed on the high seas.

Further thought will have to be given to this matter and there will, no doubt, be a further exchange of views on this during the coming weeks. In the meantime we will be glad of any comments you may care to offer.

The only other matters touched on during the meeting related to questions of procedure. Thus the United States representative suggested that it would be desirable for the Group to agree on a list of substantive items which would be before the Conference when it convened. He assumed that these items would be those which the Group had been discussing during the meetings of the Group and he listed them as follows:-

1./....

18th September, 1959

AIRBAG

SECRET

The Secretary for External Affairs,
PRETORIA

Antarctica.

The Meeting of the Group of Twelve was held on 16th September, 1959, as scheduled.

There was a brief discussion of the zone of application of the Treaty and the United States has submitted a new draft of the zone of application which reads as follows:-

"The zone of application of the present Treaty shall be the area south of 60° S. Lat. without prejudice to any rights under international law pertaining to the use by any country of those parts of the high seas which are within that area."

This new draft Ambassador Daniels said should not be regarded as a proposal by them but should rather be termed a discussion paper. It incorporates the suggestion of the United States which was made at one of the recent meetings of the Group, namely, that if a delimitation of Antarctica were to include the high seas, it should contain a qualification that it was not the intention that such a delimitation would invade the rights of any country on the high seas which are recognised by International Law. Ambassador Daniels stated that it was possible that those members of the Group who favoured the inclusion of the high seas in the delimitation of Antarctica might find the phrasing suggested above more acceptable. Upon being questioned, Ambassador Daniels made it clear that where the provisions of the Treaty conflicted with International Law the latter would prevail, even although for the purposes of the Treaty the high seas South of 60° S. Latitude will be included in the area to which the Treaty will apply. If this were not the case he said, the parties to the Treaty would be discriminating against themselves as opposed to non-parties. The parties to the Treaty would extend their

co-operation/....

43/44

SECRET

18th September, 1959

With the
Compliments of the
Embassy
of the
Union of South Africa
Washington, D.C.

The High Commissioner for the Union
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43/44

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In the course of the preparatory talks in Washington the representatives of the twelve Governments recommended that the Conference on Antarctica should give consideration to the following points, which have been studied by the working group, in connection with the contemplated treaty:

1. Use of Antarctica for peaceful purposes.
2. Freedom of scientific investigation in Antarctica.
3. International cooperation in scientific investigation in Antarctica.
4. Questions of rights and claims in Antarctica.
5. Observation and inspection for purposes of ensuring peaceful use and observance of the treaty's provisions.
6. Relationship of treaty to countries which are not parties.
7. Zone of application of the treaty.
8. Settlement of disputes arising under the treaty.
9. Provision for administrative measures.
10. Jurisdiction over persons and offenses in Antarctica.
11. Final provisions.
12. Preamble.
13. Consultation pending entry into force of the treaty.

The working group has recommended that, if two committees should be established by the Conference, one committee might consider topics numbered 1, 2, 3, 5 and 6: and the remaining eight topics might be considered by the other committee.

9/22/59

that the possibility might be explored of accepting the latest United States delimitation subject to an exception along the lines that the Treaty provisions would apply to ships which are operating so close to Antarctica as to raise doubts regarding the possibility of infringement of the Treaty. This suggestion like the British reference to "appurtenant waters" is rather vague and would no doubt be presented with all sorts of difficulties if it were to be applied in practice.

The representative of Japan expressed the view that the question of determining in what measure the Treaty should apply to the waters surrounding Antarctica could possibly be left to be determined by the administrative body which would be set up by the Treaty. It does seem to us, however, that this question is too important a point to be left unsettled, and that States accordingly are unlikely to agree to a Treaty when they are not clear to what area that Treaty is to be applied. In this connection it will be recalled that when the question was posed to the Law Adviser in Pretoria, the advice given was that in order to satisfy the demands of juridical exactness and to avoid fruitless argument later regarding interpretation, the only way out of the difficulty would appear to be to somehow agree on a definite, albeit arbitrary, line to the south of which the rights of inspection and observation afforded by the Treaty would automatically apply.

It will be apparent from the above that the Group has not yet reached the stage when it is possible to agree on a satisfactory delimitation of Antarctica, although some ideas have been put forward which may possibly help towards a solution of this question. It will be discussed again when the Group meets on Friday, 25th September.

Any views which you may have on any of the matters referred to above will be appreciated.

Copies to London and Canberra.

A.G. Dunn

AMBASSADOR.

The representative of Australia did not press his suggestion for the adoption of a formal agenda listing the substantive items and eventually it was agreed that it should be left to the discretion of the United States Delegation to decide in what manner this list should be brought to the attention of the Conference. The assumption was that this would be achieved by the United States Delegation bringing the document to the notice of the Temporary Chairman of the Conference who, in accordance with Chapter II, Rule 7 of the Rules of Procedure, will be a representative of the United States.

The Group devoted the remainder of the meeting to a consideration of the zone of application without, however, being able to agree on any satisfactory delimitation of the zone.

The United States reaffirmed that the draft definition submitted by it at the last meeting of the Group (my minute 43/44 of 18th September, 1959) should be interpreted to mean that international law on the high seas would override the provisions of the Treaty as between the parties thereto.

One of the difficulties raised by the latest United States draft and other drafts which would exclude the high seas is to find the answer to the question as to how close the high seas approach to the continent of Antarctica. The United States thinking as it emerged at the Meeting appears to be along the lines that the Treaty should not be applied to the sea, but that if activity at sea is so close to Antarctica as to disclose some technical use of the Antarctic land then that activity would fall within the provisions of the Treaty.

This approach does not satisfy other members of the Group such as Australia and New Zealand. The Australians, while still of the view that the simplest way to deal with this question is to include the high seas South of 60° S latitude within the delimitation, are now evidently prepared to consider alternative suggestions. They however, feel very strongly that it is essential to define an area of sea around Antarctica within which inspection can be carried out - the right to inspect should then be able to be automatically invoked within this area. In principle they support the British view that waters appurtenant to Antarctica should fall within the provisions of the Treaty but they would require something more precise than the British proposal offers. The New Zealanders also feel that some area of the sea should fall within the purview of the Treaty - their representative has suggested

that/....

23rd September, 1959

AIRBAG

SECRET

The Secretary for External Affairs,
PRETORIA

Antarctica.

You will recall that at the last meeting of the Group which was held on 16th September, 1959, the representative of the United States undertook to prepare a list of substantive items which the Group could agree would be before the Conference when it convened. This draft list (copy attached) was presented to the Group when it met on 22nd September, 1959.

You will observe that the paper not only lists the substantive items but also indicates to which of the two committees each of the items will be allocated. This division follows more or less that which was agreed upon by the Group of Twelve last year. (See concluding paragraph and annexure to my minute 43/44 of 9th October, 1958).

Various members of the Group expressed the personal opinion that the draft appeared to cover all the substantive items discussed during the meetings of the Group. The only change agreed upon was the rewording of item 5 to read "Observation and Inspection" and not "Observation (Inspection)". The reason for this was that various members of the Group expressed the view that the word "inspection" should be given equal status with the word "observation". It was agreed that the draft should be referred to Governments for consideration and comment.

Brief reference was also made to item 12 of the United States draft list, namely, the question of drafting a preamble, and it was agreed that the Australian representative would present a draft on this to the Group for consideration.

The Group also devoted some time to the question of how the list was to be brought to the attention of the Conference.

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SECRET

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CONFIDENTIAL

MODUS VIVENDI

Pending the entry into force of the Treaty on Antarctica signed today, the Governments of Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, and the United States of America have agreed to set in motion the consultative procedure established therein.

To this end, representatives of the signatory states shall meet at the City of _____, two months after the date of signature of the Treaty, to constitute a Preparatory Committee. Each signatory state shall be represented by one representative on the Preparatory Committee, who may be accompanied by such alternate representatives, technical advisers and staff as his respective Government may determine.

The Preparatory Committee shall meet periodically thereafter, not less frequently than once every year, at such times and places as may be determined by the Committee itself.

The functions of the Preparatory Committee shall be of a consultative character, and any recommendations it may formulate shall be subject to the approval of all twelve Governments to become effective.

The Preparatory Committee shall consider the formulation, in a preliminary manner, of recommendations on the administrative measures provided for in Article VIII of the Treaty on Antarctica.

The Preparatory Committee shall remain in existence until the Treaty on Antarctica enters into force, and shall thereupon terminate automatically.

Signed _____

_____

CONFIDENTIAL

Chile

The Head of Delegation will be a former foreign minister. There will be two other representatives of Ambassador rank namely Ambassador Gajardo whom you will recall was present for some time last year at the Group's discussions and a Professor of International Law at the University of Chile. The remainder of the Delegation will consist of representatives of the Chilean Embassy in Washington.

The next meeting of the Group will be on Wednesday 30 September.

Copies to London and Canberra.

W. C. DU PLESSIS

AMBASSADOR

During the course of the meeting the United States circulated a revised draft of the modus vivendi. You will observe that the only change is the omission of the first sentence of paragraph 4 of the original draft. This sentence provided that the Preparatory Committee "shall have no power to commit any Government to any action whatsoever". Ambassador Daniels explained that it had been decided to omit this sentence as it was thought that the wording was too rigid. Ambassador Daniels also made the point that the modus vivendi would of course be a document quite separate from the Treaty but that it would have to be considered during the forthcoming Conference so that no time would be lost after signature of the Treaty before it could be brought into effect. The Group also expressed its understanding that the modus vivendi would enter into effect only if all parties were agreed upon it.

The United States also suggested that the Group might wish to give considerations to the deletion of the words "of Article I" in paragraph 1 of Article V (observers) of their June draft. This in effect would mean that observers would have free access to any part of Antarctica at any time not just in relation to Peaceful Uses of Antarctica, but in relation to any other aspect of the Treaty. While not much thought has been given to this suggestion there would at first glance appear to be no particular objection thereto.

During the course of the Meeting the representatives of the United States, Norway and Chile indicated that the likely composition of their Delegations would be as follows:-

United States

Unable as yet to be specific but their Head of Delegation under consideration is someone who has been active both at the Government level and in the State Department. Other members will probably be Ambassador Daniels, G. Owen, W. Fischer, and Neidle of the State Department Antarctic Division, a science adviser and two Senators, one from each of the major parties.

Norway

The Head of Delegation will be the Norwegian Ambassador in Washington, Mr. Oftedahl, Counsellor of Embassy, Dr. Orvin of the Norwegian Polar Institute, a representative from the Norwegian foreign ministry, the Naval Attaché and Assistant Military Attaché of the Norwegian Embassy, with another member of the Embassy acting as Delegation Secretary.

Chile/ .....

provision for limited accession. He added that the British Protocol might also provide an acceptable solution to this question.

As can be seen from the above the Group has not made a great degree of progress on the question of third parties beyond that already reported in my minute 43/44 of 3 September 1959. Any possibility of progress has been further complicated by the fact that the Soviet representative for some weeks now has not been able to attend the meetings presumably because he has been involved in the preparations for and arrangements during Kruschschev's visit - his stand-in has obviously not been in a position to contribute anything during the discussions. In any event it is presumed that the Soviet Union stands pat on its proposal for unlimited accession and that if they are prepared to compromise on this question at all it will only be at the Conference itself.

As to the question of jurisdiction you will recall (my minute 43/44 of 26 August 1959) that the Group remains divided on how this should be dealt with in the Treaty but that there nevertheless appears to be Agreement that the Treaty should contain some provision which would ensure adequate juridical protection to observers in order to enable them to carry out their functions without being molested. The United States has now proposed that whether or not the Group agrees on an article on jurisdiction the following provision re observers should be inserted in Article V of the Treaty:-

"Any person appointed as observer to carry out inspection provided for by the present Article shall be subject only to the jurisdiction of the country appointing him."

Ambassador Daniels strongly urged the Group to attempt to agree on a satisfactory article on jurisdiction which would cover all personnel in Antarctica but added that the Treaty should not be sacrificed merely because this did not prove possible. He felt that if it was not possible to agree on an article at the Conference then mention of this question should at the least nevertheless be included in the article on administrative measures along the lines of their June draft. Both the United Kingdom and Australian representatives strongly urged the desirability of agreeing on an article on jurisdiction. The Australian representative did not see why the above draft could not apply to all personnel and not just observers - he, however, maintained the Australian position, as previously reported, that the article (both as to observers and other personnel) should apply only in cases of criminal jurisdiction.

During/.....

United States position.

The Group also devoted some time to the consideration of the association of third parties with the Treaty. The representative of Norway repeated his government's view that the United States proposal submitted in November last year, for the association of third parties with the Treaty was the best way of dealing with this question. He, however, intimated that if the Group considered that a limited accession clause was desirable his Government might be prepared to agree to a proposal for limited accession along the lines of the Japanese proposal provided that the reference to voting was eliminated from the proposal.

The representative of Japan voiced the opinion that his government would be unlikely to oppose the Norwegian suggestion and the representatives of Australia and New Zealand again spoke in favour of accepting a limited accession clause. The New Zealand representative however, also came up with another suggestion which he said they had been mulling over in their minds but which was not a formal proposal on their part - this was that the Group might give some consideration to allowing unlimited accession to all countries which are members of the United Nations and / or the specialised agencies with the proviso that only those countries which showed proof of scientific activity (an expedition) in Antarctica should be allowed to participate in the activities on the administrative body set up in terms of the Treaty. This suggestion received the support of the Australian representative who indicated that it was conceivable that a country might wish to become a party to the Treaty for prestige reasons, but that such a country would have to produce administrative reasons to qualify for participation in any administrative machinery set up by the Treaty. Whilst the New Zealand suggestion might at first sight appear to be open to the same criticism which was applied to the British Protocol namely, that it gives rise to a kind of second class membership, in actual fact this argument can be countered in this case as acceding states which meet the requirement of scientific activity would be able to participate equally with the original twelve members in the Treaty activities.

The only other member of the Group to participate in the discussion was the representative of Chile who stated that his Government continued to support the United States draft which was submitted in November 1958, and remained opposed to any

provision/.....