EXTRATERRITORIAL CRIMINAL JURISDICTION

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 763, H.R. 6148, and H.R. 7842

EXTRATERRITORIAL CRIMINAL JURISDICTION

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EXTRATERRITORIAL CRIMINAL JURISDICTION

THURSDAY, JULY 21, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, AND INTERNATIONAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:05 a.m. in room B-352 of the Rayburn House Office Building, Hon. Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Harris, and Sawyer.

Staff present: Arthur P. Endres, Jr., counsel; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Today's hearing has been called to consider separate—but somewhat related—bills which would expand Federal criminal jurisdiction to cover certain offenses committed outside of U.S. territory.

These are the first hearings held by this subcommittee on legislation relating directly to our jurisdiction over international law. I might add that we will be holding additional hearings in the future to consider other international law subjects, such as the legislation to implement the prisoner exchange treaties which have been entered into with Canada and Mexico.

The bills we are considering today are designed to fill two jurisdictional voids in our criminal laws—one created by an increasing U.S. presence in Antarctica—and the other created by a series of Supreme Court decisions which held that the exercise of court-martial jurisdiction over civilians in peacetime was unconstitutional.

The first bill relating to Antarctica has been sponsored for several Congresses by Hon. Dale Milford and just this Congress, it was introduced by the chairman of the full committee at the request of the administration.

The second bill relating to crimes committed by civilians serving with or accompanying the military abroad has been introduced on several occasions by Hon. Charles E. Bennett and in previous Congresses it received the support of the executive branch.

[The text of H.R. 763, H.R. 6148, and H.R. 7842 follows:]

95TH CONGRESS
1ST SESSION

H. R. 763

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. BENNETT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To subject certain nationals or citizens of the United States to the jurisdiction of the United States district courts for their crimes committed outside the United States and to provide for the apprehension, restraint, removal, and delivery of such persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Crimes Act of 1977".

SEC. 2. Chapter 1 of title 18, United States Code, is amended—

(1) by adding the following new section—

"§ 16. Criminal offenses committed by any member of the United States Armed Forces or by any person serving with, employed by, or accompanying the Armed Forces who is a national or citizen of the United States outside the United States, the Canal Zone, and the special maritime and territorial jurisdiction of the United States

"Any national or citizen of the United States who, while serving as a member of the United States Armed Forces or serving with, employed by, or accompanying the United States Armed Forces, is guilty of an act or omission committed or omitted outside the United States, the Canal Zone, and the special maritime and territorial jurisdiction of the United States—

"(1) while engaged in the performance of official duties; or

"(2) within Armed Forces installations or the area of operations of a unit in the field; or

"(3) against any member of the United States Armed Forces or any national or citizen of the United States serving with, employed by, or accompanying the United States Armed Forces—

which this title expressly declares to be an offense if committed or omitted within the special maritime and territorial jurisdiction of the United States, shall, other than for petty offenses, be guilty of a like offense against the United States and subject to a like punishment as that provided by this title for offenses occurring within special maritime and territorial jurisdiction of the United States.

"§ 17. Jurisdiction not exclusive

"Nothing contained in this title deprives courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by courts-martial, military commissions, provost courts, or other military tribunals."; and

(2) by adding the following items at the end of the analysis.

"16. Criminal offenses committed by any member of the United States armed forces or by any person serving with, employed by, or accompanying the armed forces who is a national or citizen of the United States outside the United States, the Canal Zone, and the special maritime and territorial jurisdiction of the United States.
"17. Jurisdiction not exclusive."

SEC. 3. Subtitle A of title 10, United States Code, is amended as follows—

(1) A new chapter is inserted after chapter 49 to read—

"Chapter 50.—PERSONS SERVING WITH, EMPLOYED BY, OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES

"§ 981. Apprehension, restraint

"(a) A warrant may be issued for the apprehension of any national or citizen of the United States serving with, employed by, or accompanying the armed forces outside the United States if—

"(1) there is probable cause to believe that he has committed an offense against the laws of the United States;

"(2) there is probable cause to believe that he has committed an offense against the laws of the foreign country in which he is physically present and in which he is serving with, employed by, or accompanying the armed forces; or

"(3) the competent authorities of the foreign country in which he is physically present and in which he is serving with, employed by, or accompanying the

armed forces request that he be apprehended and delivered to them to be tried for an offense against the laws of that country.

"(b) Any national or citizen of the United States serving with, employed by, or accompanying the armed forces outside the United States may be apprehended without a warrant if—

"(1) he commits an offense against the laws of the United States in the presence of the person making the apprehension;

"(2) the person making the apprehension has reasonable grounds to believe that the person to be apprehended has committed or is committing a felony cognizable under the laws of the United States; or

"(3) the person making the apprehension has reasonable grounds to believe that the person to be apprehended has committed or is committing an offense against the laws of the country in which he is serving with, employed by, or accompanying the armed forces.

"(c) Subject to section 989 of this title, any person apprehended under this section may be restrained under arrest or confinement pending his removal under section 982 of this title or his delivery to competent foreign authorities for trial.

"(d) The warrant shall be signed by a military judge, shall issue to a person specified in section 986(b) and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged or the request of the competent authorities of the foreign country. It shall command that the defendant be arrested and brought before the nearest available military judge within the time limits prescribed in section 989 of this title.

"(e) The person executing a warrant shall make return thereof to the military judge before whom the defendant is brought.

"§ 982. Removal

"Any national or citizen of the United States serving with, employed by, or accompanying the armed forces outside the United States may be removed from a foreign country to any place subject to the jurisdiction of the United States if after he has been given opportunity for a hearing pursuant to section 983 it is found that there is probable cause to believe that he has committed an offense against the laws of the United States. Upon such a finding, an order may be issued for his removal. Subject to section 989 of this title, the person may thereupon be apprehended and restrained under arrest or confinement, or, if he is in arrest

or confinement under section 981 of this title, be continued in arrest or confinement, pending his removal.

"§ 983. Hearing on removal for trial in district court

"The military judge shall inform the defendant of the charges against him, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of his right to have a hearing or to waive a hearing by signing a waiver before the military judge. The military judge shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him, shall allow him reasonable opportunity to consult counsel and shall admit him to bail as provided in section 988 of this title. The defendant shall not be called upon to plead. If the defendant waives hearing, the military judge shall issue an order of removal. If the defendant does not waive hearing, the military judge shall hear the evidence. At the hearing the defendant may cross examine witnesses against him and may introduce evidence in his own behalf. If it appears from the evidence adduced before the military judge that sufficient ground has been shown for ordering the removal of the defendant, the military judge shall issue an order of removal. Otherwise he shall discharge the defendant. If an order of removal is issued, the defendant shall be admitted to bail as provided in section 988 of this

title. If a defendant is held for removal the papers in the proceedings and any bail taken shall be submitted to the clerk of the district court to which the defendant is ordered.

"§ 984. Delivery to authorities of foreign countries

"(a) Any national or citizen of the United States serving with, employed by, or accompanying the armed forces outside the United States may be delivered to the competent authorities of the foreign country in which he is physically present and in which he is serving with, employed by, or accompanyng the armed forces, if the competent authorities of that country request that he be delivered to them to be tried for an offense against the laws of that country.

"(b) Notwithstanding section 989 of this title, a person subject to delivery under subsection (a) of this section may be restrained under arrest or confinement until the completion of the trial or other final disposition of the action against him.

"§ 985. Search and seizure

"(a) A search warrant authorized by this section may be issued by a military judge.

"(b) A warrant may be issued under this section to search for and seize any property which is—

"(1) Stolen or embezzled in violation of the law of the United States by a national or citizen of the United

States serving with, employed by, or accompanying the armed forces outside the United States; or which is

"(2) designed or intended for use or which is or has been used as the means of committing a criminal offense by a national or citizen of the United States serving with, employed by, or accompanying the armed forces outside the United States.

"(c) A warrant shall issue only on affidavit sworn to before a military judge and establishing the grounds for issuing the warrant. If the military judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a person specified in section 986(b) of this title. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the person specified to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the military judge to whom it shall be returned.

"(d) The warrant may be executed and returned only within ten days after its date. The person taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premise the property was taken, and shall be verified by the person seizing the property. The military judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

"(e) The military judge who has issue a search warrant shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and file them with the clerk of the district court for the district to which the defendant is ordered.

"§ 986. Warrants; orders

"(a) Only a military judge may under this chapter—

"(1) issue warrants for the apprehension of persons and search warrants;

"(2) issue orders for the removal or delivery of persons or for confinement or restraint pending trial by a foreign country.

"(b) Any provost marshal, military or air policeman, shore patrolman, or other member of the armed services assigned or detailed principally to like duties, may under this chapter—

"(1) serve warrants for the apprehension of persons;

"(2) apprehend persons without a warrant;

"(3) execute a search warrant.

"§ 987. Counsel

"Any person subject to proceedings under section 982 of this title may be represented by counsel at his own expense. However, at his request, he shall be furnished counsel, who may be a judge advocate as defined in section 827(b), title 10 of the United States Code, at any hearing held under section 982(a) of this title at no expense to himself.

"§ 988. Release

"Any person restrained under the provisions of section 981 or 982 of this title may be released by a military judge in conformity with the provisions of chapter 207 of this title.

"§ 989. Time limitations

"Subject to section 984 (b) of this title, no person shall be restrained under arrest or confinement under section 981 or 982 of this title for more than seventy-two hours, except that a person with respect to whom a finding under section 982 (a) of this title has been made may be restrained for the period of time reasonably necessary to accomplish his departure, but not for more than ten days from the date the finding is made. The period of restraint authorized in the preceding sentence is in addition to the time required on route to remove him from the country in which he is serving with, employed by, or accompanying the armed forces to the place to which he is to be removed.

"§ 990. Applicability of treaties

"The powers of apprehension, restraint, removal, delivery, and search and seizure authorized by sections 981, 982, 984, and 985 of this title shall, when exercised in a foreign country, be subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of customary international law."; and

(2) The chapter analysis, and the chapter analysis of part II, are each amended by inserting the following new item:

"50. Persons serving with, employed by, or accompanying the armed forces outside the United States..... 981."

SEC. 4. Section 814 (a) of title 10, United States Code is amended by adding the following sentence: " A member of an armed force who is in a foreign country may, upon the request of competent authority of that country, be apprehended and delivered to that authority to be tried for an offense against the laws of that country and pending such delivery may be restrained under arrest or confinement."

95TH CONGRESS
1ST SESSION

H. R. 6148

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1977

Mr. MILFORD (for himself and Mr. TEAGUE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code to discourage certain criminal conduct in Antarctica by United States nationals and certain foreign nationals and to clarify the application of United States criminal law to such conduct.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antarctic Crimes Act of 1977".

SEC. 2. Chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 16. **Offenses in Antarctica by United States nationals and certain foreign nationals**

"(a) Any act or omission which would be punishable as a criminal offense if committed within the special maritime and territorial jurisdiction of the United States shall be equally punishable if committed in Antarctica—

"(1) by a United States national;

"(2) by a foreign national who is a member of a United States expedition; or

"(3) by a foreign national with respect to—

"(A) the person or property of a United States national,

"(B) the person or property of a foreign national who is a member of a United States expedition, or

"(C) any property of the United States.

"(b) This section does not apply with respect to—

"(1) any foreign national who is exempt from United States jurisdiction under article VIII(1) of the Antarctic Treaty; or

"(2) any act or omission under this section by a foreign national over whom jurisdiction is asserted by his state of nationality before the commencement of any trial in a court of the United States concerning such act

or omission or before any acceptance by such court of a plea of guilty or of nolo contendere concerning such act or omission.

"(c) For purposes of this section—

"(1) the term 'Antarctic Treaty' means the Antarctic Treaty, entered into force on June 23, 1961 (12 U.S.T. 794);

"(2) the term 'Antarctica' means the area south of sixty degrees south latitude, excluding any part of the high seas, but including all ice shelves;

"(3) the term 'national of the United States' means a person who is a citizen or national of the United States within the meaning of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

"(4) the term 'foreign national' means a person who is not a national of the United States; and

"(5) the term 'United States expedition' means either—

"(A) a scientific expedition sponsored by an agency of the United States Government, or

"(B) any other expedition or trip, whether or not sponsored by the United States Government, which is organized or originates in the United States or which is conducted by individuals who are na-

tionals of the United States or by business organizations organized and doing business in the United States.

"(d) This section shall not prejudice the applicability of any other provision of law of the United States to conduct in Antarctica.

"(e) The President shall promulgate regulations to carry out the provisions of this section and section 3062 of this title."

SEC. 3. Chapter 203 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"**§ 3062. Procedure with regard to Antarctica**

"(a) In the implementation of the provisions of section 16 of this title and subject to such limitations as the President may prescribe, any member of a United States expedition in Antarctica, who is authorized to do so by the President, may—

"(1) apprehend persons for the purpose of enforcing the laws of the United States, protecting persons and property in Antarctica, or assisting foreign governments in the case of offenses committed against their laws in Antarctica;

"(2) restrain persons apprehended pursuant to paragraph (1);

"(3) search for and seize any property in Antarctica which—

"(A) is stolen, embezzled, or unlawfully acquired in violation of the laws of the United States,

"(B) is designed or intended for use or is or has been used as the means of committing a criminal offense against the laws of the United States, or

"(C) constitutes evidence of a criminal offense in violation of the laws of the United States; and

"(4) perform such other functions as are necessary to enforce United States laws in Antarctica.

"(b) For purposes of this section, the terms 'United States expedition' and 'Antarctica' shall have the meanings prescribed in section 16 (c) of this title."

SEC. 4. (a) The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"16. Offenses in Antarctica by United States nationals and certain foreign nationals.

(b) The table of sections for chapter 203 of such title is amended by adding at the end thereof the following new item:

"3062. Procedure with regard to Antarctica."

95TH CONGRESS
1ST SESSION

H. R. 7842

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1977

Mr. RODINO (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code, to define and discourage certain criminal conduct by United States nationals and certain foreign nationals in Antarctica.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antarctic Criminal Legislation Act of 1977".

SEC. 2. Chapter 1 of title 18, United States Code, is amended by adding the following new section:

"§ 16. Offenses by United States nationals and certain foreign nationals in Antarctica

"(a) Whoever, being a national of the United States, or a foreign national who is a member of a United States expedi-

tion, commits an act or omission in Antarctica, or being a foreign national, commits an act or omission in Antarctica with respect to the person or property of a national of the United States or of a foreign national who is a member of a United States expedition or the property of the United States, which would be punishable if committed within the special maritime and territorial jurisdiction of the United States, shall be guilty of a like offense and subject to a like punishment: *Provided, however,* That this section shall not be applicable to foreign nationals who as observers or exchange scientific personnel or members of the staffs accompanying any such persons are required under article VIII (1) of the Antarctic Treaty to be exempt from United States jurisdiction while in Antarctica for the purpose of exercising their functions: *And provided further,* That this section shall not otherwise be applicable to any foreign national with respect to any act or omission as to which the state of which he is a national asserts jurisdiction before trial under this section has begun.

"(b) As used in this section and in section 3062 of this title—

"(i) 'Antarctic Treaty' means the treaty on the Antarctic signed at Washington on December 1, 1959;

"(ii) 'Antarctica' means the area south of sixty degrees south latitude, excluding any part of the high seas, but including all ice shelves;

"(iii) 'national of the United States' means a person who is a citizen or national of the United States within the meaning of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 et seq.);

"(iv) 'foreign national' means a person who is not a national of the United States;

"(v) 'a United States expedition' means either (A) a scientific expedition sponsored by an agency of the United States Government, or (B) any other expedition, whether or not sponsored by an agency of the United States Government, organized or originating in the United States or conducted by individuals who are nationals of the United States or by business organizations organized and doing business in the United States.

"(c) This section shall be without prejudice to the applicability of other provisions of law to conduct in Antarctica.

"(d) The President or his delegate shall promulgate regulations to carry out the provisions of this section and section 3062 of this title.".

SEC. 3. The analysis of chapter 1 of title 18, United States Code, is amended by inserting immediately after and below item

"15. Obligation or other security of foreign government defined."

the following new item:

"16. Offenses by United States nationals and certain foreign nationals in Antarctica."

SEC. 4. Chapter 203 of title 18, United States Code, is amended by adding the following new section:

"§ 3062. Procedure with regard to Antarctica

"Any national of the United States authorized to do so by the President or his delegate, may perform the following functions in implementation of the provisions of section 16 of this title and subject to such limitations as the President may prescribe:

"(a) apprehend persons for the purpose of enforcing the laws of the United States, protecting persons and property in Antarctica and assisting foreign governments in the case of offenses committed against their laws in Antarctica;

"(b) restrain persons apprehended pursuant to subsection (a);

"(c) search for and seize any property in Antarctica (1) stolen, embezzled, or unlawfully acquired in violation of the laws of the United States, or (2) designed or intended for use or which is or has been used as the means of committing a criminal offense against the laws of the United States; or (3) that constitutes evidence of a criminal offense in violation of the laws of the United States; and

"(d) perform such other functions as are necessary to enforce United States laws in Antarctica.".

SEC. 5. The analysis of chapter 203 of title 18, United States Code, is amended by inserting the following:

"3062. Procedure with regard to Antarctica.".

Mr. EILBERG. In the course of our hearings today; we intend to explore a variety of complex questions involving constitutional and international law.

In particular, we hope to examine some of the following issues:

What is the nature and extent of the problems addressed by these bills?

Are the problems merely hypothetical or have some offenders escaped prosecution due to the absence of this type of legislation?

What is the constitutional basis for enacting criminal laws with extraterritorial application?

Are the procedures set forth in these bills for the apprehension, restraint, and return of the alleged offender adequate from a constitutional and public policy standpoint?

Does the United States have any international obligations, either expressed or implied, to enact the Antarctic legislation?

What would the U.S. Government do today if a crime were committed in Antarctica by, or against, a U.S. citizen?

Should the Congress undertake a comprehensive review of our laws and policies concerning extraterritorial jurisdiction?

More specifically, should the United States apply its criminal laws to all acts committed abroad by U.S. citizens, or only to certain acts or certain offenders?

I am hopeful that our witnesses today will assist us in our consideration of these and other matters and we look forward to their testimony.

The first witness today is one who has had long interest in the subjects that we have talked about.

The distinguished Congressman from Florida, our colleague and good friend, Charles Bennett.

TESTIMONY OF HON. CHARLES E. BENNETT, REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. Thank you, Mr. Chairman. I appreciate this committee coming to this legislation, particularly since I know the committee is terribly and extremely worked, and the burden is heavy upon you.

It's a pleasure for me to testify before your distinguished subcommittee on my bill, the Foreign Crimes Act of 1977. I first introduced this legislation several years ago in an effort to fill the jurisdiction void resulting from decisions of the Supreme Court of the United States relating to crimes committed by certain nationals or citizens of the United States in foreign lands.

My bill would confer jurisdiction on the U.S. district courts over certain serious offenses committed overseas by members and former members of the Armed Forces and by civilians serving with and accompanying them.

The first case creating a jurisdictional void for foreign crimes occurred in 1955 when the Supreme Court in *Toth* v. *Quarles*, 350 U.S. 11, reversed on constitutional grounds the conviction of an ex-serviceman by a court-martial for a murder allegedly committed while he was in the service.

In the *Toth* case, the Supreme Court ruled unconstitutional that section of the Uniform Code of Military Justice that extended the jurisdiction of court-martial to persons who are no longer members of the military service.

Then, in 1960, the Supreme Court restricted jurisdiction over crimes committed abroad by civilians connected with our Armed Forces. Until that time, the U.S. Government exercised court-martial jurisdiction over civilians serving with, employed by, or accompanying the Armed Services outside the United States.

However, in that year the Supreme Court declared this exercise of criminal jurisdiction unconstitutional during peacetime—*Kinsella* v. *Singleton*, 361 U.S. 234; *Grisham* v. *Hagan*, 261 U.S. 278; *McElroy* v. *Guagliardo*, 361 U.S. 281.

One would ordinarily think that the courts of foreign countries would exercise jurisidiction over civilians working overseas who committed crimes in those countries. Unfortunately, most host countries are reticent to accept jurisdiction over cases involving offenses in which the parties involved are exclusively members of the American military establishment stationed in those countries.

Except for certain offenses against the United States itself, such as treason, espionage, fraud against the Government, and larceny of Government property, wrongful acts committed by civilian employees and dependents abroad do not violate U.S. laws and cannot be punished by the United States, even if the wrongful acts would be crimes if committed within the United States.

This is also true for cases in which members of the Armed Forces abroad commit crimes which are not discovered until they have been discharged from the service.

Let me cite some examples. In February 1975, an American soldier stationed in West Germany allegedly put LSD in the coffee of 40 of his colleagues while they were engaged in NATO maneuvers. Before Army investigators could identify the guilty party, the soldier had been discharged from the service and had returned to the United States. Under current law, the United States has no way of prosecuting him.

In February 1971, Army specialist Monty Pruitt was lured into a wooded area near an Army base in West Germany and shot in the back of the head by a man later identified by Army investigators as an Army private at that same base.

The private allegedly had been having a love affair with Pruitt's wife, who allegedly offered the private half of Pruitt's $45,000 life insurance policy. Pruitt's body was found the next day, which unfortunately was the same day the private was discharged from the Army. Under current law, the private cannot be touched.

Another case involves John Christopher, a civilian contract employee for the U.S. Army in East Africa in 1963. Christopher was accused of killing a fellow American employee on African territory that was then subject to British jurisdiction.

The British offered to waive jurisdiction to the United States, saying that, "As this is purely an American affair, it would be convenient if the Americans take the case over." However, since Christopher was not subject to the Uniform Code of Military Justice, and because the crime was committed overseas, the United States could not take jurisdiction.

Fortunately, Christopher was tried by the British and received an 8-year prison sentence for manslaughter. But had the case arisen in another foreign country, Christopher might have gone free with no judicial proceedings at all.

My bill would fill the jurisdictional void by permitting the U.S. district courts to exercise jurisdiction over serious crimes which foreign countries choose not to try because local interests are not considered sufficiently involved, or where they cannot act effectively.

My bill covers members of the U.S. Armed Forces and persons serving with, employed by or accompanying the Armed Forces of the United States who are nationals or citizens of the United States.

The bill specifically addresses crimes committed: One, while engaged in the performance of official duties; two, within Armed Forces installations or the area of operations of a unit in the field; or three, against any member of the U.S. Armed Forces or any national or citizen of the United States serving with, employed by or accompanying the U.S. Armed Forces.

Of course, merely conferring jurisdiction upon the courts will not effectively deal with the problem unless authority is given certain officials to perform an arrest or to apprehend or restrain civilians who are serving with, employed by or accompanying the Armed Forces in time of peace.

Therefore, my bill also provides the necessary authority to enable U.S. officials in foreign countries to apprehend such a person and to provide for his return to the United States to stand trial when there is a probable cause to believe that he has committed an offense against the laws of the United States.

The bill would also grant such authority when there is probable cause to believe that such a person has committed an offense against the laws of a foreign country. The legislation would also apply when competent officials of the foreign country request the assistance of the U.S. officials in effecting the apprehension of such a person and his delivery to them for proceedings in accordance with the status of forces arrangements.

At the present time, the Department of Defense has been handicapped in discharging the obligations of the United States under the Status of Forces Agreements in reliance upon which foreign countries permit military personnel and civilians to enter their territory.

During the 93d Congress, an identical bill received favorable reports from the Departments of Defense, State, and Justice, and from the Administrative Office of the U.S. Courts. No reports were received on my 94th Congress bill and none have been received so far on the current bill, H.R. 763.

In view of this solid front of support for the bill, and in view of the obvious need to fill the jurisdictional void created by Supreme Court decisions, I urge the subcommittee to act favorably on H.R. 763.

There is one technical change I should bring to the attention of the committee. On page 11, line 25, the phrase, "This title," should be changed to read, "Title 18."

In the previous bill other things were in this bill. There were two titles. The other title was removed and this change of language is necessary to make it conform.

Mr. EILBERG. We are delighted to have you here, and we congratulate you on your fine statement, and for all of the work you have done in the preparation of this bill.

I hope this subcommittee will within a reasonable time report the bill out. You would be happy to know that the reports we have received from the administration are all favorable, and there are some minor changes indicated by their testimony.

It may be—and this is one member speaking—that we will combine your bill with the Antarctica bill, since they fit so closely together. There are some questions we have, but they are more or less of a technical nature.

Rather than detain you, we will let you go at this time, unless Mr. Harris has a comment.

Mr. HARRIS. No; I appreciate your testimony, Mr. Bennett. I, too, believe that this is legislation that is a long time coming. You have been working a long time on this, with administration support for the most part, as I recall. I think you are right in pressing on this, and I think we would be quite right if we moved the legislation.

Mr. BENNETT. In all of the years I introduced it, I have never had anybody tell me it shouldn't be passed. Obviously someone who commits murder and gets by with it, that is something we should not allow.

Mr. EILBERG. You raise fascinating cases. It is remarkable that Congress hasn't moved to close this gap yet.

Mr. BENNETT. Everybody is so busy. It's hard to take care of everything. I hope you can take care of it this time. I appreciate it.

Mr. EILBERG. We may come back to you later and ask for your advice.

Mr. BENNETT. The only thing I have heard about this bill is some people say why not include other people other than the military? The foreign countries have no hesitancy to touch nonmilitary people, but they do the military.

I want to do something to fill this void as quickly as possible.

Mr. EILBERG. Thank you, sir.

[The prepared statement of Hon. Charles Bennett follows:]

STATEMENT OF THE HONORABLE CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, it is certainly a pleasure for me to testify before your distinguished subcommittee on my bill, "The Foreign Crimes Act of 1977". I first introduced this legislation several years ago in an effort to fill the jurisdictional void resulting from decisions of the Supreme Court of the United States relating to crimes committed by certain nationals or citizens of the United States in foreign lands. My bill would confer jurisdiction on the United States District Courts over certain serious offenses committed overseas by members and former members of the Armed Forces and by civilians serving with and accompanying them.

The first case creating a jurisdictional void for foreign crimes occurred in 1955 when the Supreme Court in *Toth* v. *Quarles*, 350 U.S. 11, reversed on constitutional grounds the conviction of an ex-serviceman by a court-martial for a murder allegedly committed while he was in the service. In the *Toth* case, the Military Justice that extended to the jurisdiction of court-martial to persons who are no longer members of the military service.

Then, in 1960, the Supreme Court restricted jurisdiction over crimes committed abroad by civilians connected with our Armed Forces. Until that time, the United States Government exercised court-martial jurisdiction over civilians serving with, employed by, or accompanying the Armed Services outside the United States. However, in that year, the Supreme Court declared this exercise of criminal jurisdiction unconstitutional during peace time. (*Kinsella* v. *Single-*

ton, 361 U.S. 234; *Grisham* v. *Hagan*, 261 U.S. 278; *McElroy* v. *Guagliardo*, 361 U.S. 281).

One would ordinarily think that the courts of foreign countries could exercise jurisdiction over civilians working overseas who committed crimes in those countries. Unfortunately, most host countries are reticent to accept jurisdiction over cases involving offenses in which the parties involved are exclusively members of the American military establishment stationed in those countries.

Except for certain offenses against the United States itself, such as treason, espionage, fraud against the government, and larceny of government property, wrongful acts committed by civilian employees and dependents abroad do not violate U.S. laws and cannot be punished by the United States, even if the wrongful acts would be crimes if committed within the United States. This is also true for cases in which members of the Armed Forces abroad commit crimes which are not discovered until they have been discharged from the service.

Let me cite some examples. In February, 1975, an American soldier stationed in West Germany allegedly put LSD in the coffee of 40 of his colleagues while they were engaged in NATO maneuvers. Before Army investigators could identify the guilty party, the soldier had been discharged from the service and had returned to the United States. Under current law, the United States has no way of prosecuting him.

In February, 1971, Army Specialist Monty Pruitt was lured into a wooded area near an Army base in West Germany and shot in the back of the head by a man later identified by Army investigators as an Army Private at that same base. The private allegedly had been having a love affair with Pruitt's wife who allegedly offered the private half of Pruitt's $45,000 life insurance policy. Pruitt's body was found the next day which unfortunately was the same day that the private was discharged from the Army. Under current law, the private cannot be touched.

Another case involves John Christopher, a civilian contract employee for the U.S. Army in East Africa in 1963. Christopher was accused of killing a fellow American employee on African territory that was then subject to British jurisdiction. The British offered to waive jurisdiction to the United States, saying that "As this is purely an American affair, it would be convenient if the Americans take the case over". However, since Christopher was not subject to the Uniform Code of Military Justice, and because the crime was committed overseas, the United States could not take jurisdiction. Fortunately, Christopher was tried by the British and received an eight-year prison sentence for manslaughter. But had the case arisen in another foreign country, Christopher might have gone free with no judicial proceedings at all.

My bill would fill the jurisdictional void by permitting U.S. District Courts to exercise jurisdiction over serious crimes which foreign countries choose not to try because local interests are not considered sufficiently involved or where they cannot act effectively.

My bill covers members of the United States Armed Forces and persons serving with, employed by, or accompanying the Armed Forces of the United States who are nations or citizens of the United States. The bill specifically addresses crimes committed: 1. while engaged in the performance of official duties; 2. within Armed Forces installations or the area of operations of a unit in the field; or 3. against any member of the United States Armed Forces or any national or citizen of the United States serving with, employed by, or accompanying the United States Forces.

Of course, merely conferring jurisdiction upon the courts will not effectively deal with the problem unless authority is given certain officials to perform an arrest or to apprehend or restrain civilians who are serving with, employed by, or accompanying the Armed Forces in time of peace. Therefore, my bill also provides the necessary authority to enable United States officials in foreign countries to apprehend such a person and to provide for his return to the United States to stand trial when there is probable cause to believe that he has committed an offense against the laws of the United States. The bill would also grant such authority when there is probable cause to believe that such a person has committed an offense against the laws of a foreign country. The legislation would also apply when competent officials of the foreign country request the assistance of the United States officials in effecting the apprehension of such a person and his delivery to them for proceedings in accordance with the Statutes of Forces Arrangements. At the present time the Department of Defense has been handicapped in discharging the obligations of the United States under the

Status of Forces Agreements in reliance upon which foreign countries permit military personnel and civilians to enter their territory.

During the 93rd Congress, an identical bill received favorable reports from the Departments of Defense, State and Justice and from the Administrative Office of the United States Courts. No reports were received on my 94th Congress bill and none have been received so far on the current bill, H.R. 763.

In view of this solid front of support for the bill, and in view of the obvious need to fill the jurisdictional void created by Supreme Court decisions, I urge the subcommittee to act favorably on H.R. 763.

Mr. EILBERG. We await Congressman Milford who is the sponsor of the Antarctica bill. We will hear from the administration witnesses.

Our first witness will be Robert L. Keuch, Deputy Assistant Attorney General, Criminal Division, Department of Justice.

TESTIMONY OF ROBERT L. KEUCH, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. KEUCH. Thank you, Mr. Chairman.

Mr. EILBERG. You are free to either read your statement or summarize it. You may proceed in any way you wish.

Mr. KEUCH. In view of that fact and in view of the number of witnesses you have this afternoon I will submit the statement for the record.

I would like to make one or two observations about the statement.

The first one would be on page 11 of the statement. We do make the comment in preparing or recommending a change to the proposed legislation that a proposed change to lines 8 to 14 on page 3 of the bill Congressman Bennett was just discussing be enacted.

Since the statement has been prepared we have had opportunity to review a similar proposal by the Department of Defense which would be for the same purpose. We think it is shorter and preferable and we defer to the Department of Defense and support that amendment.

With that change I will submit the statement as read and present it to the committee.

Mr. EILBERG. Without objection your statement will be made part of the record.

[The prepared statement of Mr. Keuch follows:]

STATEMENT OF ROBERT L. KEUCH, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

My name is Robert L. Keuch, Deputy Assistant Attorney General of the Criminal Division, Department of Justice. It is a pleasure to appear before you today to discuss H.R. 6148 and H.R. 763. The purpose of H.R. 6148 is to discourage certain criminal conduct in Antarctica by United States nationals and certain foreign nationals and to clarify the application of United States criminal law to such conduct, while the purpose of H.R. 763 is to subject certain nationals or citizens of the United States to Federal court jurisdiction for crimes committed outside of the United States and to provide for the apprehension, restraint and delivery of such persons.

H.R. 6148 would add a new section, Section 16, to Title 18 of the United States Code. The effect would be to extend federal criminal law now applicable to the special maritime and territorial jurisdiction of the United States to acts or omissions in Antarctica by nationals of the United States or foreign nationals who are members of the United States expeditions. The bill also covers acts or omissions by foreign nationals in Antarctica with respect to the person or property of a United States national or of a foreign national who is a member of a United States expedition, or of property of the United States.

The new section 16, however, would not apply to foreign nationals who are observers, exchange scientific personnel or staff members accompanying such persons. There is a further exception for foreign nationals in cases where the country whose national is involved asserts jurisdiction over that person before the commencement of a trial or the taking of a plea of guilty or nolo contendere in a court of the United States. With regard to the first exception, that for foreign nationals who are observers, exchange scientific personnel or staff accompanying such personnel, Article VIII of the Antarctic Treaty, signed in 1959 by the United States and eleven other countries, provides that such persons shall be subject to the jurisdiction of their own countries. Thus this exception is mandatory so as not to contravene the treaty. The exceptions are set out in subsection (b) of the proposed Section 16.

Subsection (c) contains definitions pertinent to the legislation, subsection (d) provides that the legislation shall not prejudice the applicability of any other provision of law of the United States that is already applicable in Antarctica, and subsection (e) provides that the President shall promulgate regulations to carry out the provisions of the act.

This legislation would also add a new section 3062 to Title 18 to permit the President to authorize any member of a United States expedition in Antarctica to perform various law enforcement functions, such as apprehension and restraint of persons and searches and seizures, to implement the provisions of the new section 16. We are informed that, on the average, there will be about 1500 United States Nationals and persons serving with United States expeditions in Antarctica. It is also expected that during the next Antarctic summer about 400 American tourists will visit there as a result of the development of the area as a tourist stop.

At the present time a definite gap exists in our criminal legislation regarding criminal offenses committed in Antarctica. The Department of State advises that the United States has not made and does not recognize any territorial claims in Antarctica. While acts or omissions by United States military personnel in Antarctica are covered by the Uniform Code of Military Justice, crimes committed by civilians are not so covered. Legislation is needed to assure that United States citizens and certain persons accompanying our expeditions committing crimes on that continent will be prosecuted. The crimes that would be covered by this legislation are the same crimes proscribed by present federal criminal laws when committed within the special maritime and territorial jurisdiction. They are: arson, assault, maiming, larceny, receiving stolen property, murder, manslaughter, kidnaping, malicious mischief, rape, carnal knowledge, and robbery. These are, for the most part, violent crimes directed at individuals of the type most likely to be committed in the remote and isolated living environment of Antarctica.

I should add that although this bill provides for extraterritorial jurisdiction, in the opinion of the Department of Justice it has an adequate constitutional basis. It is settled that there is no constitutional impediment to the United States asserting jurisdiction over acts involving its nationals done outside this country, so long as Congress makes it clear that a particular statute is intended to have such an application. See, e.g., *United States* v. *Bowman*, 260 U.S. 94 (1922). With respect to foreign nationals, international law generally recognizes the right, under the so-called "protective" principle, of a soverign nation to punish acts, no matter where committed, that affect the safety or the functioning of a program of the state. Examples of federal laws resting upon a protective base are 22 U.S.C. 1203 and 18 U.S.C. 1546 (perjury or false statements committed by an alien in applying for a visa).[1]

It is also well established that a treaty, such as the Antarctic Treaty, can provide the authority for enactment of such a statute. See *Missouri* v. *Holland*, 252 U.S. 416 (1920). Indeed, the Congress only last year relied on this authority to pass the "Act for the Prevention and Punishment of Crimes Against Internationally Protected Persons", P.L. 94-467. Moreover Congress possesses other powers under Article I, Section 8 of the Constitution (e.g. defense, foreign commerce, and general welfare) that give it authority to make "necessary and proper" laws, including criminal laws, in aid of legitimate governmental research or other functions in Antarctica. Finally, it is important to note that H.R. 6148 does not purport to extend jurisdiction over all the crimes of foreign nationals

[1] See generally *United States* v. *Pizzarusso*, 388 F. 2d (2d Cir.), cert. denied, 392 U.S. 936 (1968).

in Antarctica. The statute applies only when the foreign national is a member of a United States expedition, or when the foreign national's act affects United States property. In these limited circumstances, where a nexus to an interest of the United States plainly exists, extraterritorial jurisdiction can be constitutionally asserted.

The Department of Justice favors the enactment of H.R. 6148 and it is our understanding that this bill is also favored by the State Department.

H.R. 763 would add a new section to Title 18 of the United States Code. This new section would make the criminal laws that apply in the special maritime and territorial jurisdiction (other than for petty offenses) applicable to certain crimes committed outside of the United States and outside of the special maritime and territorial jurisdiction if committed by a certain category of persons. Those persons are members of the United States armed forces, persons employed by or serving with the armed forces, or persons accompanying the armed forces. To be covered by the new section the crime would have to be committed while the United States citizen or national is (1) engaged in the performance of his official duties, (2) within an armed forces installation or area of operations in the field or (3) committed against any member of the armed forces or a citizen or national serving with, employed by or accompanying the armed forces.

H.R. 763 would add a second new section to Title 18 to provide that nothing in the bill is intended to deprive courts-martial or other military tribunals of concurrent jurisdiction over offenders as provided by other statutes or the law of war. Parenthetically, I might note briefly that since both H.R. 6148 and H.R. 763 propose to create a new section 16, it is evident that if both bills are enacted, to avoid confusion, one of them will have to be amended to renumber the title 18 section to be added.

Section three of H.R. 763 would add a new chapter, chapter 50, to Title 10 of the United States Code to authorize military authorities to apprehend, restrain, remove and deliver those civilians who commit crimes overseas that are federally cognizable.[2] The crux of this section is a provision for apprehension and removal to the United States of United States nationals or citizens serving with, employed by, or accompanying the armed forces. Removal may only be undertaken after a military judge has conducted a hearing to determine if there is probable cause to believe the person to be removed has committed an offense against the United States. The potential defendant may be represented at the hearing by counsel either at his own expense or, if he so requests, a judge advocate of one of the armed forces may be assigned as counsel at no expense.

Section three also provides that military judges may issue warrants for the apprehension of any United States national or citizen serving with, employed by or accompanying the armed forces outside the United States if there is probable cause to believe such a person has committed on offense against the laws of the foreign country, or authorities of the foreign country request that such a person be apprehended and delivered to it. No hearing is required prior to such a delivering-up of a person to a foreign government but the powers of apprehension, restraint, removal, delivery when exercised in a foreign country shall be subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of customary international law.

Section four of this bill would amend 10 U.S.C. 814(a), which is Article 14(a) of the Uniform Code of Military Justice, by adding a sentence stating that a member of the armed forces in a foreign country may, upon the request of competent authority of that country, be apprehended and delivered to that authority to be tried for an offense against the laws of the foreign country. Presumably regulations by one of the three Armed Services Secretaries would govern such apprehension and delivery since the preceding sentence to 10 U.S.C. 814(a) reads: "Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request to the civil authority for trial."

In our view, H.R. 763 would overcome certain constitutional problems that have arisen with respect to subjecting civilians and even ex-servicemen to court-martial jurisdiction.

Article 2(10) of the Uniform Code of Military Justice (10 U.S.C. 802(10)) provides that persons serving with or accompanying an armed force of the

[2] This express conferral of authority would clearly prevail over the general prohibition in 18 U.S.C. 1385 against using the armed forces for criminal law enforcement purposes, even assuming that that statute was intended to apply to enforcement in a foreign country. See generally, J. Harbaly and M. Mullin, *Extraterritorial jurisdiction and its Effect on the Administration of Justice Oversees*, 71 Mil. L. Rev. 1, 77–92 (1976).

United States in the field in time of war are subject to trial by court-martial. Article 2(11) of the Code (10 U.S.C. 802(11)) provides, with certain exceptions, that persons serving with, employed by, or accompanying the armed forces outside the United States are likewise subject to the jurisdiction of courts-martial. Article 3(a) of the Code (10 U.S.C. 803(a)) authorizes trial by court martial of any ex-serviceman who, while in the military service, committed any offense in the Code punishable by imprisonment for five years or more, provided that trial is not barred by the statute of limitations and the person cannot be tried in the civil courts.

In a series of well-known cases the Supreme Court has in large measure invalidated Articles 2(11) and 3(a). For example, in *Reid* v. *Covert*, 354 U.S. 1 (195), and *Kinsella* v. *Singleton*, 361 U.S. 234 (1960), the Court declared Article 2(11) unconstitutional to the extent that it provides for trial by court-martial of civilians serving with, employed by or accompanying the armed forces in time of peace. In *Toth* v. *Quarles*, 350 U.S. 11 1955), the court reversed on constitutional grounds the conviction of an ex-serviceman by a court-martial for a murder committed while he served in the service.

The practical result of these cases is that unless an agreement with a foreign country provides for jurisdiction over military dependents and employees and unless the foreign country actually exercises such jurisdiction, serious crimes by United States citizens may go unpunished. For example, a civilian employee of the Army in West Germany could severely beat another American. While West Germany might have jurisdiction based on a treaty or other agreement, there is no guarantee German authorities would be inclined to exercise such jurisdiction particularly if no German citizen were involved and the crime did not disturb the local community, as it probably would not if it took place on an American base. Unless West German authorities acted, the civilian criminal would go unpunished.

There is also a situation, illustrated by the *Toth* case, where a member of the armed forces can altogether escape trial for a crime. For example, a soldier could murder another soldier on a base in Germany but not be identified as the murderer until after his discharge. After that a court-martial is constitutionally barred but the United States civilian courts have no jurisdiction over the crime. Because H.R. 763 would plug these unjustifiable loopholes, the Department of Justice supports its enactment, although we have some suggestions for amendments to the bill which I will discuss later on.

Before reaching these points, however, I wish to make it clear that, as with H.R. 6148, it is the judgment of the Department of Justice that this bill has an adequate constitutional base. It is a firmly recognized principle of international law that a state may punish acts, wherever they are committed, because the person who committed them is a citizen of or bears some other special relationship to the state. The issue is whether Congress intended a particular statute to have extraterritorial application. Thus in the case of *United States* v. *Bowman*, 260 U.S. 94 (1922), the Court stated:

"Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement and frauds of all kinds which affect the peace and good order of the community, must of course be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended to include those committed outside of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard."

Since H.R. 763 clearly expresses an intent to punish crimes committed overseas, it would be given such effect by the courts following the *Bowman* doctrine.

Although, as noted, we generally support this bill, we would like to suggest two amendments and point out several minor errors.

As presently drafted, H.R. 763 would provide for concurrent jurisdiction in a court-martial and a federal civilian court over all offenses committed by servicemen outside the United States because of their official duties. This appears unnecessary since all that is really needed is a way to try ex-servicemen; those persons still in military service can be tried by courts-martial and concurrent civilian court jurisdiction could create difficult problems of coordination between the Departments of Defense and Justice. Accordingly, we suggest that lines 8–14, page 3, should be rewritten to read:

"* * * Nothing contained in the preceding section deprives courts-martial, military commissions, provost courts, or other military tribunals of exclusive

jurisdiction with respect to acts or omissions committed or omitted by members of the armed forces outside the United States, the Canal Zone and the special maritime and territorial jurisdiction of the United States, provided that with respect to such acts or omissions charges and specifications have been signed in accordance with Section 830 of Title 10, United States Code."

The signing of charges and specifications under 10 U.S.C. 830 (Art. 30 UCMJ) is the first formal step leading to court-martial. It stops the running of the statute of limitations and, under paragraph 11d of the Manual for Courts-Martial and in accordance with decisions of the Court of Military Appeals, is authority not to issue a discharge even though the defendant's enlistment subsequently expires. Thus, if charges and specifications are signed, the serviceman can be held for a court-martial and there is no need for a civilian trial.

Also to eliminate conflict with status of forces agreements with foreign countries and to make it clear that no prosecution should, except in extraordinary instances, be undertaken with respect to a person who has already been tried in a foreign country for the same act or omission, it is suggested that the following sentence be added beginning at line 7, page 3:

"Nothing in this section shall, absent the personal approval of the Attorney General, confer jurisdiction on any court of the United States with respect to an act or omission by a person who has been tried for such act or omission by a foreign country."

We note additionally the following points of form. First, the reference to "this title" in line 25, page 11 should be changed to "title 18, United States Code." Second, the word "issue" in line 19, page 10 should be changed to "issued." Third, the phrase "section 982(a)" in line 20, page 11 should be changed to "Section 982." Finally, there is a spelling error in the word "accompanying" in line 10, page 8.

With these amendments and corrections the Department of Justice supports the bill.

That concludes my statement. I would be happy to attempt to answer any questions.

Mr. EILBERG. The other members of the subcommittee may not have had an opportunity to read your statement so don't feel inhibited in saying what you think is important.

Mr. KEUCH. We do feel that the bills do answer two necessary voids in the present criminal jurisdiction, Federal criminal jurisdiction.

In both cases there are sound constitutional bases for the legislation. We support enactment of both proposed bills.

Mr. EILBERG. You don't wish to summarize beyond that point?

Mr. KEUCH. No, sir.

Mr. EILBERG. Can you describe what types of practical problems will be experienced by the Department of Justice in prosecuting offenses under the bills we are considering?

Mr. KEUCH. In consideration of the bills, the jurisdiction extending to Antarctica, we would have practical problems concerning the return of individuals to the jurisdiction of this country, the individuals who would be responsible for the investigation of crimes, apprehension of suspects of crimes and the rest.

The bill provides that apprehension and investigation and other procedures for removal and return to the United States to our court system would be pursuant to regulations to be promulgated by the Attorney General.

We anticipate that those regulations would address themselves to the problems as to what officials in the Antarctica staffs would have responsibility for exercising powers.

The means by which we could transfer an individual back, what manner, what method, what jurisdiction and venue to which the individuals would be transported. Because of weather conditions it may not be possible to speedily return an individual.

We think the regulations would have to address those problems. We could do practically everything possible to insure the same due process guarantees are provided to an accused who is removed from Antarctica that would be available if he were apprehended within the United States given proper recognition to the fact that they are in a remote area of the world in which we do not have territorial jurisdiction.

We think those problems could be worked out.

In all probability we would consider the use of—for return of the individuals—probably the closest U.S. marshal service could be utilized for the return of such individuals.

On the military crimes, the bill Mr. Bennett spoke about and plugging in loopholes created by Supreme Court decisions, we frankly see few practical problems. That is a jurisdiction that prior to the decision of the Supreme Court had been exercised to some extent by the military. There had been investigations, et cetera.

They have investigative forces in place that could be used and covered. We think the bill covers the necessary procedures for apprehension and removal.

Mr. EILBERG. In many cases it would be necessary to bring witnesses, perhaps a substantial number of witnesses at a substantial cost, to the site of the hearing or trial.

Could you comment on those problems?

Mr. KEUCH. Consistent with due process that would be a necesesary price we would have to pay for the enforcement of criminal jurisdiction.

Both bills, that involving Antarctica and that involving our military forces give recognition to that bill by limiting the jurisdiction in them to certain specified crimes.

Mr. EILBERG. The most serious crimes?

Mr. KEUCH. Violent ones. They are of the type likely to be committed in an area such as Antarctica. The bill filling the gaps in the jurisdiction over military men and those serving or working with them, has an exemption for petty offenses.

I believe that again points to the balance that would have to be struck. The expenses in situations where we have military forces, the rest would be nothing comparable to those we have in Antarctica.

Mr. EILBERG. What about the position of the defendant? I anticipate that many defendants would be without resources and would have great problems in bringing evidence or witnesses to any proceeding.

Mr. KEUCH. Our Federal rules of criminal procedure and our court rules already provide for the provision of counsel, for example, the return of witnesses at Government expense if a defendant is indigent and cannot afford the return of those witnesses and the court finds them necessary. Those protections would be available.

I note in giving jurisdiction to those serving with the Armed Forces or those working with them, there are specific provisions made for counsel should it be necessary. I think all of the protections of the rules of criminal procedure and our Federal judicial system would be available once they entered that system.

Mr. EILBERG. What policies or procedures have been established if any by the U.S. Government in the event of an offense by a U.S. citizen in Antarctica?

Mr. KEUCH. The answer has to be none. The problem has not been faced at this time.

There would be serious problems in alleging or taking the position that there was any territorial jurisdiction of the United States over any territory in Antarctica because of our treaty provisions and other concepts of international law.

The types of crimes we are concerned with are the violent types of crimes, those directed against the person.

Under our concept of international law those types of crimes are not subject to our criminal penalties unless Congress specifically indicated they would be.

There have been no procedures set up and it would be difficult under present law to fill the gap by any argument we would think would be legally sufficient.

Mr. EILBERG. Suppose that a serious crime were to occur today in Antarctica such as would fit into the scope of this legislation. What would you do about it? What would our Government do about it?

Mr. KEUCH. We can do nothing about it. There is no criminal jurisdiction over those crimes. The only exception in our concept of international law would be those crimes committed outside our territorial jurisdiction which are directed at the safety and security of the state.

I talk about white collar crimes, frauds against the United States which are not likely to be committed in that remote area.

We would have to return to the statutes involved and if in that statute the Congress had made clear there was extraterritorial jurisdiction intended, then we could bring prosecutions.

However, there again the personal crimes committed against individuals are the types that do not have extraterritorial jurisdiction specified. If they were, then action could be taken. But in the vast majority of these crimes there would not be jurisdiction.

Mr. EILBERG. On the subject of venue the Antarctic legislation does not address the venue provision. Would the Department try the person in the venue where he is arrested or was first brought as we do with the high seas?

Mr. KEUCH. You would be governed by 18 United States 3238. We would anticipate the venue would lie in the jurisdiction where the individual was first brought.

Mr. EILBERG. Would it be permissible for the Congress to authorize that the offense be tried in Antarctica or New Zealand?

Mr. KEUCH. I would like to defer, if I may, the question of the constitutionality of holding the trial, outside of the venue either of the location of the crime—such as removing it to New Zealand where we have neither territorial jurisdiction or any other.

As to the Antarctic situation, I would have to consider that. I think the practical matters of having a trial in those places as you have alluded to earlier—the situation of the problem of bringing witnesses and the rest, we may have the problem of transporting juries, court personnel, attorneys, judges to a remote area for a period of time.

It may be, on balance, a more practical solution to the problem of the witnesses—particularly the crimes we are talking about in Antarctica—to have the accused and witnesses returned to our jurisdiction for trial.

I would like to give the committee further responses as to that.

[The following additional information was submitted by Mr. Keuch:]

The starting point in assessing the constitutionality of a trial in New Zealand or Antarctica is, of course, Article III, Section 2, Clause 3 of the Constitution which states: "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed." We are aware of no case specifically holding that Congress can direct that such a place be outside of a state, territory or possession of the United States although the clear language of the clause indicates that this was contemplated by the framers of the Constitution. And, in *Reid* v. *Covert*, 354 U.S. 1, one of the cases that has necessitated this legislation, Justice Black's opinion for the court noted that

"The language of Art. III, § 2 manifests that constitutional protections for the individual were designed to restrict the United States Government when it acts outside of this country, as well as here at home. After declaring that all criminal trials must be by jury, the section states that when a crime is 'not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.' If this language is permitted to have its obvious meaning, § 2 is applicable to *criminal trials outside of the States* as a group without regard to where the offense is committed or the trial held." (354 U.S. at 7–8, italics added.)

The opinion then went on to state that "From the very first Congress federal statutes have implemented the provisions of § 2 by providing for trial of murder and other crimes committed outside the jurisdiction of any State 'in the district where the offender is apprehended, or into which he may first be brought.'" (354 U.S., 8) It thus appears that while authorizing a trial in a foreign country would be constitutional, it would be a procedure that Congress has so far avoided. Given the practical problems of holding a trial overseas which I mentioned in my testimony and which Dr. Todd of the National Science Foundation emphasized with respect to Antarctica, the Department of Justice recommends that these bills not be amended to provide for overseas trials and that the provisions of 18 U.S.C. 3238 govern the question of venue.

Mr. EILBERG. Mr. Harris.

Mr. HARRIS. If I can get a guy to go to Antarctica with me I can knock him off and not have fear of criminal sanctions?

Mr. KEUCH. It would depend on the particular criminal statute. If the crime is personal in nature, rather than directed against the State, the rule is Congress would have to specify specifically that our Federal laws had extraterritorial jurisdiction.

The types of crimes we are speaking about in the bill do not have those provisions. There has been case law as to the situation, the type of territory that Antarctica is, whether or not it would fall in our special maritime jurisdiction.

The one case I refer to in my prepared statement is one involving the other polar region. It was a great ice and land mass. The district court looked at it and said, because it was 99 percent water and 1 percent land that it was in our maritime jurisdiction. The court of appeals of the fourth circuit had great difficulty with either concept and they split and upheld the district court opinion.

Antarctica cannot be compared to our maritime jurisdiction. It does not fit into the special territorial jurisdictions because under the treaty and because of other considerations we have not made any claims for territorial jurisdiction over portions of Antarctia.

Mr. HARRIS. We have had no crimes of violence in Antarctica?

Mr. KEUCH. To this point we have not. We have had and will have

approximately 1,500 people in our expeditions and stations there. I would have to say the fact it is a difficult area to get to would mitigate against a great number of crimes.

This is the type of legislation dealing with a type of problem where you hope you have it before you need it. Congressman Bennett set forth a lot of examples of what has happened in that gap or that loophole. The first egregious example would be one too many.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Sawyer, do you have any questions?

Mr. SAWYER. No, Mr. Chairman.

Mr. EILBERG. Some legal scholars have suggested that Congress should reconsider entirely its laws with regard to extraterritorial jurisdiction because of the ambiguity surrounding that law; and, in fact the code provisions would extend criminal laws to cover several different extraterritorial offenses, such as violent crimes committed abroad when the victim is a U.S. official. Does the Department feel that a complete review of this subject is necessary?

Mr. KEUCH. Of course the Department's first answer is we feel that review was done in the context of the preparation of our draft which has now been discussed in Congress and has now resulted in the pending criminal code.

We think the proposed provisions in the code are salutary. We support them and recommend them. Neither of these bills would be inconsistent with those provisions, but would be consistent therewith.

In the context of the new Federal Criminal Code, that is one of the reviews that has been conducted. We think it is a good idea but it has been done.

Mr. EILBERG. Should our consideration of this proposal await such a review or review of the Federal Criminal Code bill?

Mr. KEUCH. I think not. In the normal legislative process the revised criminal code has a long road ahead of it. The types of crimes we are discussing here and the lack of jurisdiction over those crimes are serious matters.

The first egregious example in the Antarctic situation would be one too many. Congressman Bennett pointed out a number of examples related to the military service.

We feel these bills are not inconsistent with the concepts that would be enacted in the revised criminal code.

Mr. EILBERG. On pages 11 and 12 you suggest an amendment that would prevent the United States from prosecuting an individual from an offense if he had been tried for that offense by a foreign government.

You said such a prosecution could be personally approved by the Attorney General if it was an extraordinary case. What types of extraordinary cases do you have in mind? Should Congress enumerate those offenses?

Mr. KEUCH. This is consistent with the situation we now have when the Federal jurisdiction and State jurisdiction are involved. We have what has been referred to as the petite policy. We indicate in there that if an individual had been tried and prosecuted by the State jurisdiction and we intend to prosecute for the same offenses that we would not do so without personal approval of the Attorney General and then under extraordinary circumstances.

The situations weighed are severity of the offense. In some cases an act may be severe under our standard of jurisdiction. In our laws, Congress has passed an act making it serious but the foreign country may not view the act as being severe.

Perhaps all of the evidence was not available when the first charges were brought and subsequent information may disclose under the Federal system that additional criminal statutes may be violated by the same act.

We feel the extraordinary circumstances provision is to avoid those situations where, for a variety of factors, the prosecution under foreign law has not been sufficient or given proper recognition to the severity of the acts committed by the individual.

The difficulty in having to establish the full parameters of that policy I think would be one factor militating against or going against the committee or Congress trying to set forth each and every circumstance.

I believe our policy having to do with State jurisdiction has worked well. The courts acted as an arbiter of how the discretion whether to prosecute was exercised, as they would here because the question is not one of double jeopardy.

Mr. EILBERG. Mr. Keuch, do you see objection in the event we proceed to mark up to combining H.R. 763 with either 6148 or 7842?

Mr. KEUCH. No, sir. We point out there are amendments that would be necessary if we pass them both as they now stand but we would have no problem.

Mr. EILBERG. Thank you. You have been well prepared and we, the committee, thank you for your statement.

Our next witness is a congressional witness. We are happy to welcome to the stand our friend from Texas, and colleague, the Honorable Dale Milford.

TESTIMONY OF HON. DALE MILFORD, REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Chairman, I would first like to commend you and the members of your committee for devoting your attention to the important matter of Antarctica criminal legislation.

The Committee on Science and Technology, on which I serve, has long been concerned about the lack of legislation dealing with criminal conduct in Antarctica.

This concern arises from the committee's jurisdiction over the National Science Foundation—the civilian organization most heavily involved in Antarctic exploration.

Presently, the United States has 5 year-round stations on the Antarctic Continent with a summer population of about 3,000 persons and a winter population of about 300.

In addition, 10 other countries maintain another 25 stations supporting another 1,000 people in the summer and 400 in the winter.

It is important to digress to understand the situation I am talking about.

In these stations, some of which are owned by us and some of which are owned by other countries, the personnel pretty much intermingle.

Russia may have a station and in that station there would be 25 Russians and 15 Americans and 10 somebody else, all working in these stations in an intermingled fashion.

Just because we would own a station doesn't mean that only Americans would work at that station.

Under existing conditions, it is very doubtful that American civilians committing a crime on Antarctica are covered by U.S. criminal law.

However, such a person would still enjoy his constitutional guarantee of due process of law.

Thus, a person who commits arson, assault and battery, or even homicide, may not be technically criminal; even worse, restraining such a person who commits such an act may constitute a violation of his right to due process of law and grounds for a tort action for assault, false imprisonment, or false arrest.

Legislation is needed to clear up this ambiguity, to help deter possible criminal conduct, and to prevent the orderly handling of such incidents that may arise.

Mr. Chairman, this is the purpose of the legislation I have introduced and that is under consideration by this committee today.

This legislation amends chapter 1 of title 18, United States Code, by adding a new section, section 16, dealing with offenses committed in Antarctica by U.S. nationals and certain foreign nationals.

The legislation makes punishable as a crime any offense committed in Antarctica by a U.S. national, a foreign national who is a member of a U.S. expedition, or a foreign national with respect to the person or property of a U.S. national, member of a U.S. expedition, or the U.S. Government.

In recognition of provisions of international law, the legislation does not apply to persons exempt from U.S. jurisdiction under the Antarctica Treaty or to any foreign national over whom jurisdiction has been asserted by his state of nationality.

Mr. Chairman, this legislation is very similar to legislation that was introduced in previous Congresses—H.R. 10548 and its predecessor, H.R. 5248.

However, I feel that it is a significant improvement upon these former bills.

It more accurately describes the types of offenses punishable by the U.S. Code, the categories of individuals subject to this law, and the manner in which this law will be enforced.

These improvements are the result of input and refinements of the Congressional Research Service, the State Department, the Justice Department, and the National Science Foundation.

All have unofficially agreed that this is the legislation needed to protect our people in Antarctica.

I am pleased that Mr. Teague, chairman of the Committee on Science and Technology, has joined me in sponsoring this legislation.

I commend it to this committee and hope that this committee will act expeditiously in its consideration of this legislation.

I would like to point out the need for the legislation from an international point to you, Mr. Chairman.

I did not have this in my prepared text.

This need was first brought to my attention by our American Ambassador in New Zealand. There was a trip we made——

Mr. EILBERG. Ambassador Selden, when we visited New Zealand, expressed his interest to us.

Mr. MILFORD. You have probably heard the story, then. Not only does New Zealand have this problem, but the other nine or ten countries that we cooperate with and that are involved in the Antarctic Treaty have the same problem. They have the fear if a crime was committed they would be in the embarrassing position of having to try an American citizen under their laws and would not want to do this.

They even have the situation where they might find that a crime had not been committed as stated.

Their laws don't cover people that are not their citizens.

If our laws don't cover it, it is possible that somebody could shoot somebody and walk away from it or at the very least be in the embarrassing position of having to pick up an American citizen and having to try that citizen.

They are in favor of having us move on this matter.

That concludes my formal presentation. I would be glad to answer any questions you may have.

Mr. EILBERG. It is unusual when one subcommittee of Congress develops a legislative idea and brings it to another subcommittee or committee.

As we all know, very often legislation is introduced on personal whim. We are cognizant and recognize the fact that this is the work of another subcommittee. We appreciate the fact that we have this kind of communication and we are able at this time to hear your testimony and hopefully we will move on it after the recess.

Mr. MILFORD. There was one final thing in an informal conversation we had concerning the bill introduced by Mr. Rodino, H.R. 7842.

As far as we are concerned, we don't see a lot of difference in the two bills. It is more the legal writing style as far as I can tell and, not being an attorney, I would leave it up to the knowledge and expertise of the committee to determine which if either version you would like to go with.

But the content of the bills are identical and we are interested in seeing the legislation moved and whose name is on it is of no interest to us whatsoever if you will just move the legislation.

Mr. HARRIS. I have no questions. Thank you,

Mr. SAWYER. No. Thank you, Mr. Milford.

Mr. EILBERG. Thank you. We appreciate your testimony.

[The prepared statement of Hon. Dale Milford follows:]

STATEMENT OF HON. DALE MILFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Good afternoon. First, I would like to commend you, Mr. Chairman, and the members of your committee for devoting your attention to the important matter of Antarctica criminal legislation.

Mr. Chairman, the Committee on Science and Technology, on which I serve, has long been concerned about the lack of legislation dealing with criminal conduct in Antarctica.

This concern arises from the Committee's jurisdiction over the National Science Foundation—the civilian organization most heavily involved in Antarctic exploration.

Presently, the United States has five year-round stations of the Antarctic continent with a summer population of about three thousand persons and a winter population of about three hundred. In addition, 10 other countries main-

tain another 25 stations supporting another 1,000 people in the summer and 400 in the winter.

Aircraft, traxcavators, underground stations, and other modern devices—including a nuclear reactor—have replaced sled dogs and pup tents.

It is obvious that the various nations are in Antarctica not only to stay, but to multiply their efforts.

With the increase in population, as well as improvements in safety and comfort to Antarctic life, comes the attendant increase in social interrelationships.

Whether we wish to or not, we must face up to some of the grimmer implications of such increased interrelationships.

Under existing conditions, it is very doubtful that American civilians committing a crime on Antarctica are covered by United States criminal law. However, such a person would still enjoy his Constitutional guarantee of due process of law. Thus, a person who commits arson, assault and battery, or even homicide, may not be technically criminal; even worse, restraining such a person who commits such an act may constitute a violation of his right to due process of law and grounds for a tort action for assault, false imprisonment, or false arrest.

Legislation is needed to clear up this ambiguity, to help deter possible criminal conduct, and to permit the orderly handling of such incidents that may arise.

Mr. Chairman, this is the purpose of the legislation I have introduced and that is under consideration by this Committee today.

This legislation amends Chapter 1 of title 18, United States Code, by adding a new section (section 16) dealing with offenses committed in Antarctica by United States nationals and certain foreign nationals.

The legislation makes punishable as a crime any offese committed in Antarctica by a United States national, a foreign national who is a member of a U.S. expedition, or a foreign national with respect to the person or property of a U.S. national, a member of a U.S. expedition, or the U.S. Government.

In recognition of provisions of international law, the legislation does not apply to persons exempt from U.S. jurisdiction under the Antarctic Treaty or to any foreign national over whom jurisdiction has been asserted by his state of nationality.

Mr. Chairman, this legislation is very similar to legislation that was introduced in previous Congresses—H.R. 10548 and its predecessor H.R. 5248.

However, I feel that it is a significant improvement upon these former bills.

It more accurately describes the types of offenses punishable by the U.S. Code, the categories of individuals subject to this law, and the manner in which this law will be enforced.

These improvements are the result of input and refinements of the Congressional Research Service, the State Department, the Justice Department, and the National Science Foundation.

All have unofficially agreed that this is the legislation needed to protect our people in Antarctica.

I am pleased that Mr. Teague, Chairman of the Committee on Science and Technology, has joined me in sponsoring this legislation.

I commend it to this Committee and hope that the Committee will act expeditiously in its consideration of this legislation.

This concludes my prepared statement and I will be pleased to answer any questions you might have.

Mr. EILBERG. Our next witness is from the Department of Defense, Mr. Benjamin Forman, Assistant General Counsel.

TESTIMONY OF BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Mr. FORMAN. I don't know whether in view of the precedent just established a short time ago by Mr. Keuch in response to the chairman's invitation I should simply have my statement inserted in the record at this time and dispense with reading it and go ahead to the committee's questions or whether you would like me to read it.

Mr. EILBERG. I take it from your question that you would just as soon submit the statement for the record and submit to questioning.

You may proceed in any way you wish.

Mr. FORMAN. I will submit the statement.

Mr. EILBERG. Without objection, the statement will be made part of the record.

[The prepared statement of Mr. Forman follows:]

STATEMENT OF BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Mr. Chairman and Members of the Committee: The Department of Defense appreciates the Committee's invitation to appear before the Subcommittee in order to present the Department's views on H.R. 763 and H.R. 6148.

The Department of Defense was last asked for its views on the subject matter of H.R. 763 in 1973 when its designation was H.R. 107, 93d Cong. Our position at that time was set forth in detail in a letter dated May 22, 1973 from the General Counsel to the Chairman of the full Committee.

Our 1973 letter strongly urged enactment of the proposed legislation and set forth in detail our reasons for that position. We have reviewed those reasons, and are of the opinion that they are still valid. Accordingly, subject to two qualifications which I shall address later in this statement, we support enactment of H.R. 763 as drafted. Rather than reiterate that prior detailed exposition of our reasons, I have appended a copy of the 1973 letter to my statement, and request that it be inserted into the record of these hearings.

In the course of our review, we have examined the provisions of S. 1437 of the 95th Cong., the proposed "Criminal Code Reform Act of 1977". In part, S. 1437 deals with the problem of federal extraterritorial jurisdiction. From our perspective, if S. 1437 were enacted, section 2 of H.R. 763 would be unnecessary. In view, however, of press reports that other provisions of S. 1437 are controversial, and that, accordingly, enactment of S. 1437 is not likely for sometime, we recommend that the Subcommittee not delay action on H.R. 763 because of S. 1437.

A further reason for moving ahead with H.R. 763 regardless of the pendancy of S. 1437 is that S. 1437, unlike H.R. 763, does not in our opinion make adequate provision for the apprehension, and the return to the United States to stand trial, of those individuals who are charged with having committed offenses against the laws of the United States. In addition, unlike H.R. 763, S. 1437 does not address the problem of apprehension and delivery to foreign authorities of an individual charged with having committed an offense against the laws of the foreign country concerned—an obligation which arises from our Status of Forces Agreements.

Turning now to the qualifications previously mentioned to our present support of H.R. 763, the first of these is that the Department of Defense does not at this time have a position as to whether the functions which H.R. 763 would vest in a military judge should be so vested. Specifically, a question has been raised within the Department of Defense as to whether, in the light of our experience since 1973 in the administration of military justice, those functions should be vested in some other official, with military judges being limited to the court-martial process. We will use our best efforts to advise this Subcommittee of our position on this question within 30 days.

The second qualification concerns the concurrent district court and court-martial jurisdiction over members of the Armed Forces which would result from the Bill as drafted. As indicated in our 1973 letter, the reason why members of the Armed Forces need to be included in the coverage of the proposed new section 16 of title 18, United States Code, is to cure the jurisidictional void created by *Toth* v. *Quarles*, 350 U.S. 11, with respect to serious civil offenses committed by military personnel abroad who are not tried by court-martial for the offenses prior to their separation from military service. As H.R. 763 is drafted, however, federal civil jurisdiction is not limited to such former servicemen but includes those on active duty at the time of federal civil prosecution. This drafting defect could be cured by inserting the following sentence at the end of section 16, on page 3, at the end of line 7, of the Bill.

"The term 'member of the United States Armed Forces,' as used in this section,

excludes any offender who is subject to court-martial jurisdiction for the offense at the time he is charged with the offense."

The Chairman's letter to the Secretary inviting us to present our views on H.R. 763 also called our attention to H.R. 6148, which concerns a similar problem of jurisdictional voids with respect to Antarctica. When initial consideration was given a number of years ago to the problem of Antarctica, the Department of Defense had a direct primary interest, inasmuch as Department of Defense civilians were stationed in Antarctica. At this time, however, the Department of Defense has only one civilian employee whose duty station is Antarctica. Further, while the Commander, U.S. Naval Support Force, Antarctica has ultimate on-site responsibility for the safety and welfare of all members of the U.S. Antarctic Research Program, the agency now primarily concerned is the National Science Foundation. In the circumstances, although the Department of Defense supports the desirability of such legislation, we defer to the Departments of State and Justice and to the National Science Foundation on the technical aspects of the proposed Bill.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., May 22, 1973.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R. 107, 93d Congress, a bill "To subject certain nationals or citizens of the United States to the jurisdiction of the United States district courts for their crimes committed outside the United States and to provide for the apprehension, restraint, removal, and delivery of such persons."

The purpose of the bill is to fill jurisdictional voids resulting from decisions of the Supreme Court by (1) amending title 18, United States Code, to give Federal courts jurisdiction over certain serious offenses allegedly committed overseas by members and former members of the Armed Forces and by civilians serving with and accompanying them, and (2) amending title 10, United States Code, to authorize military authorities to apprehend, restrain, remove and deliver such civilians.

Until 1960, the United States exercised court-martial jurisdiction over civilians serving with, employed by, or accompanying the armed forces outside the United States. In that year, decisions of the Supreme Court (*Kinsella* v. *Singleton*, 361 U.S. 234; *Grisham* v. *Hagan*, 261 U.S. 278; *McElroy* v. *Guagliardo*, 361 U.S. 281) declared this exercise of criminal jurisdiction unconstitutional during peacetime. Earlier in *Toth* v. *Quarles*, 350 U.S. 11, The Supreme Court reversed on constitutional grounds the conviction of an ex-serviceman by a court-martial for a murder allegedly committed while he was in the service.

The exercise of jurisdiction by foreign courts over offenses committed by United States civilians overseas is not a wholly adequate substitute for United States jurisdiction. This is true because foreign tribunals occasionally do not wish to accept jurisdiction of cases involving offenses in which the parties involved are exclusively members of the American military establishment in the foreign country.

At present, except for certain offenses against the United States itself, such as treason, espionage, fraud against the Government, and larceny of Government property, wrongful acts committed by civilian employees and dependents in foreign countries which would be crimes if committed in the United States do not violate any laws of the United States and cannot be punished by the United States. The enactment of H.R. 107 would permit United States district courts to exercise jurisdiction over serious cases which foreign countries choose not to try because local interests are not considered sufficiently involved (for example, an offense involving another American as the victim) or where foreign countries cannot act effectively. In addition, some cases may arise where the offender is no longer amenable to trial by a foreign tribunal because he is no longer present in the territory of the host country concerned and the offense allegedly committed by him is not subject to extradiction either because the offense is not covered by the applicable extradition treaty or no extradition treaty exists with the host country concerned.

The competence of a nation to exercise jurisdiction over offenses committed abroad by its nationals is recognized in international law. Many nations exercise some penal jurisdiction on the basis of the nationality of the accused, and a large number provide for the punishment of all or many offenses which are commit-

ted by their nationals abroad. As noted above, certain offenses against the United States Government itself are punishable by the United States. The United States also exercises jurisdiction outside the actual territory of the United States in the case of offenses committed within the special maritime and territorial jurisdiction of the United States. Accordingly, it appears clear that the Congress may constitutionally proscribe serious offenses committed by civilians overseas who are United States nationals. Indeed, the United States Supreme Court in *Kinsella* v. *Singleton*, supra (361 U.S. 246), invited the Congress to do just that. Such legislation could take several forms, such as the assimilation of the District of Columbia penal statutes, the enumeration of specified Federal penal statutes, or the extension to all locations overseas of those Federal penal statutes which now apply to acts committed within the special maritime and territorial jurisdiction of the United States. The Department of Defense is of the opinion that the last is the most desirable, and that is the approach followed by H.R. 107.

The only persons who would be affected by the bill would be those individuals who are accused of having committed an offense proscribed in the bill while they were members of the U.S. Armed Forces, or persons serving with, employed by, or accompanying the Armed Forces of the United States and who are nationals or citizens of the United States. Former members of the United States Armed Forces have been included within the provisions of the bill to fill the jurisdictional void created by the holding of the United States Supreme Court in the *Toth* case with respect to serious offenses of a civil nature which are committed by U.S. military personnel abroad who are not tried by court-martial for those offenses prior to their separation from the military service. In the *Toth* case, the Supreme Court held that so much of Article 3(a) of the Uniform Code of Military Justice which seeks to extend the jurisdiction of court-martial to persons who are no longer members of the military service is unconstitutional.

Providing U.S. district courts with jurisdiction over crimes committed outside the United States would be futile unless accompanied by the means of implementation. The authority of the United States officials to perform an arrest, other than in a "citizen arrest" situation, is conferred by statute. Any arrest or apprehension in a foreign country, unless conducted in accordance with the laws of the United States and of the foreign country concerned, might subject the arresting person to legal action for assault, false imprisonment, or kidnapping, depending upon the circumstances. As a result of the Supreme Court decisions in 1960 cited above, there is now no law authorizing United States officials in foreign countries to apprehend or restrain civilians who are serving with, employed by, or accompanying the Armed Forces in time of peace. Accordingly, Congress would also provide the necessary authority to enable United States officials in foreign countries to apprehend a person serving with, employed by, or accompanying the Armed Forces and to provide for his return to the United States to stand trial when there is probable cause to believe that he has committed an offense against the laws of the United States. In addition, such authority is needed in the following circumstances: (1) when there is probable cause to believe that such a person has committed an offense against the laws of the foreign country concerned; and (2) when competent officials of the foreign country request the assistance of United States officials in effecting the apprehension of such a person and his delivery to them for proceedings in accordance with Status of Forces Arrangements by which they have the right to exercise jurisdiction over both the person and the offense. Without such authority, the Department of Defense has been handicapped in discharging the obligations of the United States under the Status of Forces Agreements in reliance upon which foreign countries permit military personnel and civilians serving with, employed by, or accompanying the Armed Forces of the United States to enter their territory. To meet this requirement, H.R. 107 would empower United States military authorities to apprehend any person serving with, employed by, or accompanying the United States Armed Forces abroad if he has committed, or if there is probable cause to believe he has committed an offense against the laws of the United States as specified in Sec. 2 of the bill, or against the laws of the foreign country concerned. It would also authorize the military authorities of the United States to remove with the consent of the host country, any such person from a foreign country when he is accused of an offense triable in a Federal district court of the United States and to deliver such person to the competent authorities of the foreign country in which he is present with the Armed Forces when the authorities of that country request that he be delivered to them for trial for an offense against their laws.

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For the foregoing reasons, the Department of Defense strongly urges enactment of H.R. 107.

The fiscal effects of this legislation are not known to the Department of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER
(For J. Fred Buzhardt).

Mr. FORMAN. As has been stated by the chairman and by Mr. Bennett and by Mr. Milford, the Department of Defense does support these bills. With respect to the Bennett bill, we have one language change averred to by Mr. Keuch of the Department of Justice which we recommend. It appears at the top of page 4 of my statement, and is designed to accomplish the stated objective that the Justice Department had of eliminating the concurrent jurisdiction of the District Courts where court martial jurisdiction would otherwise exist.

With regard to the other problem which we have with respect to H.R. 763, we have a reservation at the moment as to whether the functions which H.R. 763 would vest in a military judge should be so vested.

The question has been raised within the Department of Defense as to whether, in light of our experience since 1973 in the administration of military justice, those functions described in the bill should be vested in some other official—with military judges being limited to the court martial process as they now are, but for this bill.

We will use our best efforts to advise the subcommittee on our position as to this technical question within 30 days of this hearing.

[The following information was submitted for the record:]

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., September 28, 1977.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The written statement on H.R. 763 presented by me to the Subcommittee on July 21, 1977 noted that a question had been raised within the Department of Defense as to whether the functions which H.R. 763 would vest in a military judge should instead be vested in some other official. I undertook to advise the Subcommittee of our position on this point at a later date.

We have now completed our review on this matter, and have concluded that the functions of military judges should be limited to the court-martial process unless they are designated to exercise broader powers by the armed force concerned. To this end, we recommend that the proposed amendments contained in the enclosure to this letter be adopted by the Subcommittee.

These proposed changes to the Bill are additional to the separate unrelated amendment recommended by the Department of Defense at the bottom of page 3 and the top of page 4 of my written statement.

Sincerely yours,

BENJAMIN FORMAN,
Assistant General Counsel International Affairs.

Enclosure.

ADDITIONAL DOD RECOMMENDED CHANGES TO H.R. 763, 95TH CONGRESS

1. On page 6, strike out "a military judge" in line 1 and insert in lieu thereof "an appropriate military commander or his designee".
2. On page 6, strike out "986(b)" in line 2 and insert in lieu thereof "986(c)".
3. On page 6, strike out "nearest available military judge" in line 8 and insert in lieu thereof "appropriate military commander or his designee".

4. On page 6, strike out "military judge" in line 11 and insert in lieu thereof "appropriate military commander or his designee".

5. On page 6, insert the following new subsections between lines 12 and 13:

"(f) An appropriate military commander is defined for the purposes of this chapter as the officer exercising general court-martial jurisdiction over the armed force of the United States which the national or citizen of the United States is serving with, employed by, or accompanying. If there is no such officer in the immediate geographical area involved, the officer exercising general court-martial jurisdiction may designate another commanding officer to act in his stead as the appropriate military commander. The designee of the appropriate military commander also may be any officer certified under section 827(b) of title 10, United States Code.

"(g) The special hearing officer is defined for the purposes of this chapter as any officer certified under section 827(b) of title 10, United States Code, and designated as such by the appropriate military commander."

6. On page 7, strike out "military judge" in line 4 and insert in lieu thereof "appropriate military commander shall designate a special hearing officer to conduct the hearing on removal for trial in district court. The special hearing officer".

7. On page 7, strike out "military judge" in lines 8, 9, 15, 16, 20, and 21 and insert in lieu thereof "special hearing officer".

8. On page 8, strike out "a military judge" in line 20 and insert in lieu thereof "the appropriate military commander or his designee".

9. On page 9, strike out "a military judge" in line 9 and insert in lieu thereof "an officer authorized by title 10, United States Code, section 936 to administer oaths".

10. On page 9, strike out "military judge" in line 10 and insert in lieu thereof "appropriate military commander or his designee".

11. On page 9, strike out '986(b)" in line 15 and insert in lieu thereof "986(c)".

12. On page 9, strike out 'military judge" in line 24 and insert in lieu thereof "appropriate military commander or his designee".

13. On page 10, strike out "military judge" in line 15 and insert in lieu thereof "officer to whom the return is made".

14. On page 10, strike out "military judge who has issue" in line 19 and insert in lieu thereof "officer who has issued".

15. On page 10, strike out line 25 and all that follows through line 5, page 11, and insert in lieu thereof:

"(a) Only an appropriate military commander or his designee may under this chapter issue warrants for the apprehension of persons and search warrants.

"(b) Only a special hearing officer may under this chapter issue orders for the removal or delivery of persons or for confinement or restraint pending trial by a foreign country."

16. On page 11, strike out "(b)" in line 6 and insert in lieu thereof "(c)".

17. On page 11, strike out "982(a)" in line 20 and insert in lieu thereof "982".

18. On page 11, strike out "military judge" in line 24 and insert in lieu thereof "special hearing officer".

19. On page 11, strike out "this title" in line 25 and insert in lieu thereof "title 18 of the United States Code".

20. On page 12, strike out "982(a)" in line 6 and insert in lieu thereof "982".

21. On page 12, strike out "on route" in lines 10 and 11 and insert in lieu thereof "en route".

Mr. EILBERG. Since the Department of Defense has been reviewing this legislation, I'm wondering if you have any background or statistical information concerning the nature and magnitude of the problem.

Can you provide it for the record?

Mr. FORMAN. I can give you general data now as to the magnitude of the problem, but cannot give you precise data as to the number of offenses which would literally come under this bill as drafted, if it were enacted.

Looking at the last statistical period for which we have published statistics, which ended about a year and a half ago, there were 422

major offenses committed by civilian employees and dependents of members of the Armed Forces during the preceding year.

Mr. EILBERG. All over the world?

Mr. FORMAN. All over the world, 422. They include murder, rape, forgery, aggravated assault, drug abuse. Of that 422, drug abuse would not be covered at all by the bill. That would not be one of the offenses which would be incorporated by reference from the special maritime jurisdication, 103 of these 422 cases would be drug abuse. That reduces the total number of cases to 319 worldwide, during that reporting period.

Mr. EILBERG. Excuse me. You have just repeated figures applying to personnel, civilian personnel attached to the military.

Mr. FORMAN. Yes. That is, civilian employees or dependents of both the military member or a civilian employee.

Mr. EILBERG. Right.

Mr. FORMAN. If you eliminate the drug abuse, you have 319 cases falling within the category of crimes which would be of the kind covered by this bill. That is the kind of crimes that the bill attempts to deal with. However, as you will note, not all such crimes are really picked up by the bill. These categories of offenses are picked up only if you have one of three circumstances also pertaining:

Either that the offense was committed during the performance of official duties; was committed on one of our installations; or was committed against another member of the U.S. forces or a citizen serving with, employed by, or accompanying the forces, namely an employee or dependent.

My statistical breakdown does not indicate which of these 319 cases fall within 1 of these 3 categories. I am not sure that we would be able to go back into the files to determine that. It may be that we can on some of them, but I don't think we can give you a precise figure.

Mr. EILBERG. You can provide us with those precise figures.

Mr. FORMAN. I am not certain we can, but I will make an effort to see what we can come up with, to see how many of these might have been in that area. Clearly, if it is what we call an inter se offense, one American against another American that would be readily ascertainable. It might be more difficult, depending on the status of the files, to determine, for example, whether it took place onbase or offbase.

Mr. EILBERG. Were any off these cases prosecuted by foreign governments.

Mr. FORMAN. Of these cases, the foreign government relinquished jurisdiction to us in 136 of them.

Mr. EILBERG. What percentage is that?

Mr. FORMAN. That is roughly a little better than one-third.

Mr. EILBERG. What were the circumstances of those cases?

Mr. FORMAN. You mean what kind of offense?

Mr. EILBERG. Yes.

Mr. FORMAN. None of them during the reporting period, as I recall, involved a capital offense.

Mr. EILBERG. Rather than take the time now, would you submit that for the record?

Mr. FORMAN. Robbery, larceny, forgery, assault, some arson.

Mr. EILBERG. These are cases they did try or did not try?

Mr. FORMAN. Did not try. They relinquished the cases to us for other disposition. That other disposition, of course, was not a criminal prosecution because without this bill, we don't have authority to prosecute.

Mr. EILBERG. Why did the local authorities not prosecute, if you know?

Mr. FORMAN. For the most part, the offenses must have been offenses not of interest to them. They must have involved inter se offenses—one American against another American—and, therefore, did not disturb the peace or other interests of the local authorities. Presumably, these cases caused no public relations problems for the local authorities and, therefore, they permitted us to dispose of them.

Mr. EILBERG. Did we dispose of them?

Mr. FORMAN. Our disposition can only be limited.

Mr. EILBERG. What happened in those cases?

Mr. FORMAN. We can only take administrative measures of one kind or another. These range in degree of severity from sending a family home. For example, if there is a serviceman whose wife or son has committed a serious offense we might say, "Your tour is over; you go home." That would be a black mark against the serviceman's record.

Other sanctions such as denial of access to the PX for abuse of privileges or denial of other privileges, such as driving permits, et cetera, can be invoked.

But this really is not criminal prosecution.

Mr. EILBERG. What you are telling us, if I understand you correctly, is that in these cases of serious crime, there were no criminal prosecutions?

Mr. FORMAN. That is correct. I should add the caveat, Mr. Chairman, that what we are talking about, of course, are charges made by foreign governments similar to an indictment in this country. The mere fact you have such an indictment or information does not mean necessarily that the individual was guilty.

I wouldn't want to mislead the committee in assuming that in all of the 136 cases released to us for disposition, there was a failure of justice because there was no prosecution.

It may be that in a number of those there wouldn't have been any basis for prosecution even if H.R. 763 had been law.

Mr. EILBERG. For classification purposes, you describe them as being serious crimes.

Mr. FORMAN. The charges were, yes, serious offenses.

With reference to statistics, Mr. Bennett has given you some instances of cases where a serviceman committed a crime and then left the service before either the crime was discovered or before there was adequate evidence to prefer charges.

I can't give you additional statistics on those. However, I think it worthwhile to remind the committee that it wasn't very long ago that we had courts-martial in the military of offenses arising out of the My Lai incident in Vietnam. There were a number of ex-servicemen, that is to say ex at the time of the courts-martial who had been involved in that incident. A number of them admitted complicity in the offenses. Those ex-servicemen could not be tried by us, and could

not be tried in the district courts, because the offenses were not against title 18.

If this bill had been in force, and if it be assumed, as I think it rightly should be, that the offenses were committed in the course of official duty or in the area of operations of a unit in the field—as described on page 2, lines 15–18 of the bill, that there would have been a basis for prosecution of those persons.

The My Lai incident is a quite recent and dramatic instance where this bill would have been helpful.

Mr. EILBERG. Mr. Harris.

Mr. HARRIS. I am intrigued. This has been the situation for quite some time. There has been no change to create this situation as far as it applies to civilian employees or dependents of military employees; is that correct?

Mr. FORMAN. Not since 1960, sir. The situation has existed since 1960 with regard to the civilian employees and the dependents.

Mr. HARRIS. What existed before 1960?

Mr. FORMAN. Article 2(11) of the Uniform Code of Military Justice provides that the military do have court-martial jurisdiction over persons serving with, employed by, or accompanying the Armed Forces outside the United States.

Until 1960, we routinely court-martialed such individuals for offenses they committed overseas. We had a right to do so under the Uniform Code of Military Justice, and under our agreements with foreign governments.

The Supreme Court held article 2(11) in 1960 to be unconstitutional in times of peace. They had held a few years earlier that article 2(11) was unconstitutional as related to capital offenses, and in 1960, they held it unconstitutional in all cases.

During Vietnam, there were courts-martial of civilians accompanying the Armed Forces to Vietnam under article 2(10). Article 2(10) is worded differently covering persons serving with or accompanying an armed force in the field at the time of war. The courts held, however, that for the purposes of article 2(10) we were not in time of war, although for other purposes of the uniform code, we were in time of war.

Thus, we weren't able to court-martial civilians for offenses in Vietnam after that time.

Mr. HARRIS. Do you have the figures available in the period 1947 through 1960 inclusive, as to how many civilians were court-martialed?

Mr. FORMAN. I think we started keeping statistics in the early 1950's, but I'm not sure.

Our current statistic report breaks the offenses out by military, civilian, and dependent. I'm not sure that was the case prior to 1960. If not, it would be a massive undertaking to go through all of the files to determine how many civilians were court-martialed.

Mr. HARRIS. You don't think your files distinguished?

Mr. FORMAN. I am sure the individual case files did. I am talking about this statistical report which we have been preparing now since about 1952 or 1953.

Mr. HARRIS. I would like for you all to take a crack at it, to give us some measure of the problem. What you have just told me is for 16

years; there has not been any method by which you could handle crimes committed by civilians, including dependents of military in overseas bases.

Mr. FORMAN. That is correct. Other than foreign trial or by the type of administrative sanctions to which I have referred. There are 16 civilians now serving sentences in foreign jails.

Mr. HARRIS. As a general rule, though, if the offense for example occurred on-base, there is no foreign government that would take jurisdiction over that crime, is there?

Mr. FORMAN. They might, depending against whom the offense was committed.

Mr. HARRIS. Let's say inter se offense.

Mr. FORMAN. Generally, they are not interested.

Mr. HARRIS. It would be interesting to get a measure. We have a 13-, 14-year postwar, World War II period, especially with regard to Western Europe and then we have gone for 17 years and that is incredible.

Mr. EILBERG. Would you see what you can do?

Mr. FORMAN. We will see what we can do to give you the statistics prior to that time.

Mr. EILBERG. What is the publication you are referring to?

Mr. FORMAN. Annual report. Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel, December 1, 1974–November 30, 1975.

The report is prepared by the Office of the Judge Advocate General of the Army which acts as executive agent for the Department of Defense in compiling the statistics of all three departments as described by a DOD directive.

Mr. EILBERG. Is that the latest report?

Mr. FORMAN. This is the latest one I have. There should be another one coming out soon.

Mr. EILBERG. Can we have a copy of that and the one that will be coming out soon?

Mr. FORMAN. I have already given a copy of this one to Counsel. The other should be out fairly soon.

There is usually a lengthy delay in getting the statistics in from each command around the world, compiling them, putting them together, checking for errors, going out to the field, and so on, and that is why we run so late.

Mr. EILBERG. Will you make a note in your diary, so we can get a copy, if it comes out in the next several months?

[The information supplied by the Department of Defense appears in the appendix at p. 83.]

Mr. HARRIS. Do the Secretary and Department feel a sense of urgency as far as this legislation is concerned?

Mr. FORMAN. Are you talking about Secretary Brown?

Mr. HARRIS. Does the Secretary or Department of Defense feel a sense of urgency about it?

Mr. FORMAN. I'm not sure how to answer that question. Let me put it to you this way. We thought it was urgent 17 years ago.

We started working on it at that time. We had consultations with the Departments of State and Justice going back that long.

Mr. HARRIS. That was after the Supreme Court shot you down.

Mr. FORMAN. After the Supreme Court shot us down. Our first problem was to convince the Departments of State and Justice, particularly the Department of Justice, that we had a real problem along the lines of the questions you have asked, because this would be an added burden for the Department of Justice.

They would have the responsibility of doing the prosecution. It is not a burden to be sneered at, because of the problems to which the chairman previously alluded of obtaining foreign witnesses and so forth.

The Department of Justice was not interested in increasing its workload or budgetary expenses for minor crimes.

We haven't even discussed the minor crimes.

We had a problem trying to convince them that, yes, this was something that needed to be taken care of.

We then had the problem of trying to devise something which seemed most feasible among a number of alternatives. I believe we referred to three alternatives in this earlier letter from the General Counsel of the Department of Defense to Chairman Rodino.

We also had the problem, granting that there is a need, of deciding whether the void which had been created should be filled in its entirety namely, should the legislation cover all offenses, even if they are not inter se or on-base.

Mr. HARRIS. How long did it take you to resolve that? How soon did legislation get over here?

Mr. FORMAN. We did not resolve that in the executive branch until late 1969 or 1970. We were reporting on this periodically to a Senate Subcommittee of the Armed Services Committee, chaired by Senator Ervin.

Seven or so years ago, when the Senator introduced his own bills, we got clearance to say: Yes; we do have a need, your bills are technically defective for a number of reasons; and we recommend you substitute our draft bills for yours.

Our proposal of that date is essentially what Mr. Bennett has laid before you.

Mr. HARRIS. A bill was introduced in 1970?

Mr. FORMAN. It was introduced in 1970 or 1971, to the best of my recollection, by Mr. Bennett. At that time the proposal was for two bills, because we were addressing the amendments to title 18 and title 10 as two separate jurisdictional problems.

The Speaker referred one bill to this committee and one bill to the Armed Services Committee. No hearings were held and no action was taken.

In 1973, I think, Mr. Bennett combined the two bills into one bill which is essentially the bill you have before you. Being one bill, which starts off with title 18, rather than title 10, it then got referred to this committee.

We were asked for a report in 1973 by the Judiciary Committee. We filed a report strongly urging enactment of the legislation, having gotten for the second time executive branch clearances from Justice, State, and the Office of Management and Budget. No hearing was held then either. We heard nothing further until recently when this committee scheduled a hearing.

Do we feel a sense of urgency? We have felt it for some time, and we are delighted to have this committee moving on the bill.

Mr. HARRIS. There is someone in this government that feels a sense of urgency.

It has taken 10 years for DOD to get a recommendation over here and it has taken 7 years for Congress. I hope we get this out and passed this year, so we can beat DOD by 3 years.

Mr. FORMAN. As to Antarctic jurisdiction, to the best of my recollection, the problem of a jurisdictional void or gap in Antarctica was raised shortly after the Antarctic treaty was ratified.

At that time, a Law Review article was written by Prof. Richard Bilder of the University of Wisconsin, urging the need for such legislation, arguing that it was constitutional and attaching a draft. I can't remember whether he was then a member of the State Department legal adviser's office.

Mr. EILBERG. At this point we will make the article you are referring to by Mr. Richard Bilder, a part of the record. It is entitled "Control of Criminal Conduct in Antarctica."

This gentleman is from the University of Wisconsin Law School, associate professor of law, B.A. in 1949, Williams College, 1956, Robert Ross School.

[The article referred to appears in the appendix at p. 115:]

Mr. HARRIS. I'm worried about the 1,700 people that have or may be in Antarctica. We ought to cover them. What we are talking about with regard to the other legislation is several hundred thousand people, I think.

I feel a sense of urgency and I would like to compliment the chairman in moving in and grabbing this legislation.

Mr. FORMAN. I would like to make one additional point, particularly, in the face of the comment you have made about the number of people. While we urge the committee to have this bill enacted, the prime reason why this jurisdictional problem has not become a major issue in the press is, I believe, the fact that, as a general proposition, the people we employ overseas and the dependents of those employees and members of our Armed Forces, are of good character and comply with the law. The incidence of crime, as I recall the statistics when we last looked at them, was lower than the incidence of crime by persons in the continental United States.

Mr. HARRIS. Mr. Chairman, I'm not impressed by that argument at all. People are people.

I don't care whether they are overseas or here. When you put people together, you have conflicts, and you need a law and order process. The fact we have sent people overseas, potential victims, without that kind of protection, is criminal negligence.

Mr. EILBERG. For example, the people sent to Antarctica live in restricted quarters, under difficult conditions.

Mr. HARRIS. That is what I mean.

Mr. EILBERG. We are serious about the bill. The chairman is aware that this is a problem and that this is a bill that we should be working on.

Mr. SAWYER. I have no questions.

Mr. EILBERG. Mr. Forman, in your opinion is there a problem with military judges, as they appear in 763?

Mr. FORMAN. We don't have a position on it yet.

The problem, in brief, is that the military judge would be authorized by this bill to exercise a number of stated authorities which he does

not now have in the military justice system, that is, when sitting as a military judge.

The question has been raised as to whether these functions are appropriate for the military judge who, but for the bill, has certain other functions, or whether these are functions which should be exercised by the appropriate U.S. military commander or someone designated and acting under his direction and control, rather than a member of the judiciary.

There is some thought within the Judge Advocate General quarters in the military departments that the judge's function should be limited to the court-martial process. For example, that even in that court-martial process, his authority to act should come into play only after a case has been referred to him for trial by a military commander.

Absent that referral, there is no role for the military judge. Whereas, here in an analogous area, a military judge would exercise a number of functions which are in the province of the line officer.

Mr. EILBERG. Do you expect to resolve this problem?

Mr. FORMAN. We expect to resolve that within 30 days. If we resolve it against the military judge, we will submit appropriate language for making the necessary changes.

Mr. EILBERG. Section 3 of H.R. 763 sets forth proceedings for the apprehension, restraint, and removal of civilians who commit offenses abroad. There are several questions with respect to that section. First, do the U.S. military authorities possess power under the U.S. law to arrest or detain civilian offenders in the United States, abroad?

Mr. FORMAN. If by arrest you include the concept of restraint or confinement, my general answer would be that such authority is lacking, other than to the extent that a citizen would have it. That is to say, in the context of a citizen's arrest.

To give you a recent example of this—the most recent instance we had to look into the issue, occurred when the Vietnamese and other refugees from Southeast Asia came into this country and were located in military facilities, pending screening and relocation into the civilian communities. As soon as this occurred, or as soon as the planning started, it immediately occurred to us, No. 1, do we have the authority to prevent one of these refugees from walking out of the base? No. 2, what authority do we have with respect to offenses that might be committed on the base by one Vietnamese against another or, indeed, against an American?

Could we arrest them, confine them? What was the scope of our authority?

We concluded, and I believe the Department of Justice agreed with our conclusion, that we didn't have adequate authority, that our authority was limited to that of citizen's arrest and, therefore, that U.S. marshals were needed on base.

The Department of Justice agreed and did supply the U.S. marshals.

Mr. EILBERG. So that this bill would provide the authority that is lacking at the present time?

Mr. FORMAN. That is correct. In the overseas context.

Mr. EILBERG. Authority you are speaking of or lack of authority applies as well to off-base violations, obviously, as to on-base violations?

Mr. FORMAN. That is correct.

Mr. EILBERG. In the 1976 case of *U.S.* v. *Banks*, the ninth circuit held that the military officials may arrest and detain persons for on-base offenses by civil law. Would this hold true for on-base offenses by civilians in foreign countries, absent this statute?

Mr. FORMAN. I don't know what the basis would be for arresting a—confining a civilian—restraining his liberty, other than, as I say, in the citizen's arrest context, for example, of a crime committed in the presence of the arresting member of the Armed Forces—or possibly immediate action taken to protect the individual against harming himself or harming others—and solely for the purpose of immediately transferring custody to the civilian authorities.

What we are considering in this bill is actually confining an individual in our facilities, restraining his liberty for one of two purposes: Either as a temporary matter, pending a hearing and an order of removal being issued against that individual, so he can be returned to the United States and turned over to the Justice Department officials for trial, or if he is being held for foreign trial, that is by a foreign authority, to hold him in our custody and restraint, if necessary, in lieu of his otherwise having to suffer pretrial confinement.

Mr. EILBERG. I understand what you are saying. I repeat the question.

It may be that my statement of this decision is incomplete or inaccurate. But, again, it is my opinion that in the 1976 case, the ninth circuit held that military officials may arrest and detain civilians for on-base violations of civil law.

Will you comment on that case?

Mr. FORMAN. Do you have a citation?

Mr. EILBERG. Counsel will give it to you.

Assuming what I said is accurate, would the same hold true for on-base offenses by U.S. civilians in foreign countries?

You can reply to that later.

In your judgment are there constitutional impediments to the provision of H.R. 763 which authorize arrest, detention and delivery for trial of U.S. civilians by the military?

Mr. FORMAN. No, sir.

Mr. EILBERG. We will make that case a part of the record.

[The case referred and Department of Defense response thereto appear in the appendix at p. 145.

Mr. EILBERG. Mr. Forman, you have been helpful, and we appreciate your contribution and, hopefully, you will not have to wait 17 years before we see action, at least by the House, I will say.

Mr. FORMAN. We share that hope, sir.

Mr. EILBERG. Thank you.

Our next witness is Dr. Edward Todd, Acting Assistant Director, Astronomical Atmospheric, Earth, and Ocean Sciences, National Science Foundation.

TESTIMONY OF DR. EDWARD P. TODD, ACTING ASSISTANT DIRECTOR, ASTRONOMICAL, ATMOSPHERIC, EARTH, AND OCEAN SCIENCES, NATIONAL SCIENCE FOUNDATION, ACCOMPANIED BY CHARLES HERZ, GENERAL COUNSEL, NATIONAL SCIENCE FOUNDATION

Dr. TODD. Thank you, Mr. Chairman.

I have with me Charles Herz, General Counsel of the National Science Foundation. I don't feel competent to respond to questions of law.

I want to express the appreciation of the National Science Foundation to the subcommittee for taking up this issue which has been of increasing concern to the Science Foundation as our responsibilities in Antarctica increase.

The Science Foundation, by Presidential directive, with congressional concurrence, has been given in recent years total management and budget responsibility for all U.S. activities in Antarctica.

This responsibility reflects a transition from the use of Department of Defense resources in support of the Antarctic program to increasing use of support services provided by civilian contractors.

While there has always been a mix of civilian/military personnel in Antarctica, only in recent years have civilians represented so large a portion of the manpower on that continent.

The consequence of this transition is an increasing presence in Antarctica of large numbers of U.S. civilians from all walks of life.

These U.S. citizens are constrained to endure severe climatic and work conditions in a remote area, and are constantly interacting with small groups of equally constrained co-workers for long periods of time.

It is far from clear whether there is at present any law to govern or protect the rights of these U.S. citizens.

U.S. military personnel, who still comprise the majority of U.S. citizens in Antarctica, are subject to the Uniform Code of Military Justice and to highly structured and disciplined social groups.

Civilian contract personnel are combined into functional groups only during working hours, and form their own cliques when not on duty.

While these civilians are screened medically and psychologically, and are tested for group compatibility before deployment, there is no sure way to guarantee peaceful behavior over extended periods of time.

Let me hasten to say that there has been no instance of a criminal act in Antarctica by these civilian personnel of which I am aware. Foundation-support for this bill is based on preventive rather than remedial intent.

We have been fortunate thus far that no serious crimes have been committed in Antarctica—particularly fortunate when one considers the possible consequences.

If a U.S. national committed a serious crime in Antarctica, the United States would have no clear authority to apprehend, indict, or prosecute the perpetrator.

A further complication would occur if a U.S. national committed a crime in a sector of Antarctica claimed by another country, particularly if the victim were a national of the claimant state.

The United States could guarantee neither to protect nor to prosecute the perpetrator.

However, the claimant state might insist on its jurisdiction, noting the fact that the status of claims existing at the time of the ratification of the treaty was in no way affected by it.

This bill will not resolve all jurisdictional or claims issues in Antarctica.

It will, however, serve to ameliorate possibly serious incidents in Antarctica by assuring other states of U.S. intent concerning enforcement of its own standards of behavior.

It is clear that the growing influx of civilians increases the potential for some serious crime by a U.S. national in Antarctica.

It is equally clear that a perceived U.S. impotence to deal with such a situation could have far-reaching implications for the victim, the offender, and international relations.

Mr. EILBERG. In the interest of saving time, and knowing we may go to the floor at any time for rollcall, I wonder if we can just submit the rest of your statement for the record, if that is agreeable to you.

Dr. TODD. That is agreeable.

We see no major differences between the two bills, H.R. 6148 and H.R. 7842.

We strongly support the committee's work and encourage the passage of the legislation.

Mr. EILBERG. Without objection, the entire statement will be made part of the record.

[The prepared statement of Dr. Edward P. Todd follows:]

STATEMENT OF DR. EDWARD P. TODD, ACTING ASSISTANT DIRECTOR, ASTRONOMICAL, ATMOSPHERIC, EARTH, AND OCEAN SCIENCES, NATIONAL SCIENCE FOUNDATION

The National Science Foundation, by Presidential directive, with Congressional concurrence, has been given total management and budget responsibility for all U.S. activities in Antarctica. This responsibility reflects a transition from the use of Department of Defense resources in support of the Antarctic program to increasing use of support services provided by civilian contractors. While there has always been a mix of civilian/military personnel in Antarctica, only in recent years have civilians represented so large a portion of the manpower on that continent.

The consequence of this transition is an increasing presence in Antarctica of large numbers of U.S. civilians from all walks of life. These U.S. citizens are constrained to endure severe climatic and work conditions in a remote area, and are constantly interacting with small groups of equally constrained co-workers for long periods of time. It is far from clear whether there is at present any law to govern or protect the rights of these U.S. citizens.

U.S. military personnel, who still comprise the majority of U.S. citizens in Antarctica, are subject to the Uniform Code of Military Justice and to highly structured and disciplined social groups. Civilian contract personnel are combined into functional groups only during working hours and from their own groups/anti-groups when not on duty. While these civilians are screened medically and psychologically, and are tested for group compatibility before deployment, there is no sure way to guarantee peaceful behavior over extended periods of time.

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a sector of Antarctica claimed by another country particularly if the victim were a national of the claimant state. The U.S. could guarantee neither to protect nor to prosecute the perpetrator. However, the claimant state might insist on its jurisdiction, noting the fact that the status of claims existing at the time of the ratification of the treaty was in no way affected by it. This Bill will not resolve all jurisdictional or claims issues in Antarctica. It will, however, serve to ameliorate possibly serious incidents in Antarctica by assuring other states of U.S. intent concerning enforcement of its own standards of behavior. It is clear that the growing influx of civilians increases the potential for some serious crime by a U.S. national in Antarctica. It is equally clear that a perceived U.S. impotence to deal with such a situation could have far-reaching implications for the victim, the perpetrator and international relations.

Mr. Chairman, as you may know, the Foundation supported the Administration Bill that was sent to the Congress by the Department of State by letter of June 8, 1977. I believe the differences between the Administration Bill and H.R. 6148 are minor and involve matters of style. I believe that in the interest of conserving the time and resources of the Congress that H.R. 6148 should be supported. We believe that through H.R. 6148 the need for the rule of law in Antarctica will be met.

As the agency responsible for U.S. activities and for the health, safety, and welfare of U.S. citizens engaged in the U.S. Antarctic Program, the National Science Foundation is particularly concerned about the lack of clear criminal jurisdiction by the U.S. in Antarctica. Enactment of this Bill will correct what we view as a major deficiency in the U.S. Antarctic Program by providing the protection of U.S. law to all U.S. citizens and certain foreign nationals in Antarctica.

The Foundation is confident that existing administrative procedures are adequate for most day-to-day problems of behavior in Antarctica. Enactment of this Bill will satisfy requirements for jurisdiction over serious crimes in Antarctica. We are please to comment on this Bill, are optimistic about its enactment, and are committed to assist the Committee to this end in every way possible.

Mr. EILBERG. You probably do not have this information in your possession now, Dr. Todd, but we would like you to please describe the nature of the Antarctic research program, including the amount of funds expended annually, the relationship between the National Science Foundation and the U.S. Navy, the total population in Antarctica by season, including the percentage which represents U.S. citizens, the number of U.S. military and the number of foreign nationals who currently serve with the U.S. expedition?

Will you supply that information for the record?

[The material supplied appears in the appendix at p. 148.]

Dr. TODD. Yes, sir, I would be pleased to supply that for the record.

There is some fluctuation particularly in the number of foreign nationals accompanying our expedition. The number changes from one year to another.

I would be pleased at this time to give an offhand summary of the program that you think would be appropriate.

Mr. EILBERG. If you wish to do so, please do so. But we will expect a detailed further statement.

Dr. TODD. I will supply a longer statement for the record.

Since the enactment of the Antarctic Treaty following the enactment of the geophysical year, the treaty nations have agreed to carry out programs in Antarctica which are scientific in origin.

The sciences involved cover a range from the use of Antarctica as a laboratory to explore theoretical issues and heavy involvement in the sciences of the environment.

Our program at the present time is heavily involved in life cycles in the polar oceans surrounding the continent, behavior of the large masses of ice, glaceology, and behavior of large ocean ice sheets, geology, geophysics, geochemistry.

A large part of our program is focused on using the history that the massive Antarctic ice cap provides us to learn more about the changes in the world environment in the past several thousand years.

One can, for example, trace anthropogenic changes to the atmosphere.

The program fluctuates, as Mr. Milford suggests, to 1,400 U.S. citizens including civilian and military at the height of the austral summer in January and February, to the order of 60 people at the moment.

We have five year-round stations in good condition at the moment.

There are four occupied now. One is closed, but will be reopened soon.

Three of the stations presently occupied have only civilian personnel present. The fourth and largest station at McMurdo has a mixture of military and civilian personnel.

I would like to come back to a question the chairman asked earlier and that is on venue.

I will not speak as a lawyer because I am not sure I understand the subtleties of the question. But I will speak from the point of view of our practical experience in Antarctica.

The suggestion was made should we be so unfortunate to have a need for a trial that it be held in Antarctica. I recommend against that.

At the moment we have 60 people on the Antarctic Continent. They will have no visitors until October.

The continent, as we call it, is locked up.

The temperatures at most stations are so cold that if we should land one of our airplanes now, it is highly unlikely we could take off again. Below a certain point the snow surfaces become like sandpaper. We can't break the planes loose.

The general pattern is that toward the end of February we reduce station populations to the winter-over group, and close them up and send the airplanes back to New Zealand and to the United States for their repair and maintenance.

The people at those stations, then, are isolated until the following October.

Only once in the 20 years' history of my knowledge of the Antarctic Continent have we been able to make an emergency winter evacuation and that is at considerable risk to those attempting the job.

So, for that reason, and for the reason that during the period when the continent is locked up, the majority of the military personnel involved are stationed in California.

You might consider the possibility of Los Angeles in the venue question, or some such location.

Mr. EILBERG. Dr. Todd, one scholar has suggested a variety of nonregulatory approaches to regulate the conduct of U.S. citizens in Antarctica, that is contractual agreements setting forth certain standards of conduct with liquidated sanctions for violation of standards.

The United States could assess civil sanctions where appropriate.

He has suggested that an individual be required to waive any rights he may have against involuntary removal back to the U.S. or execute an agreement to return to the United States if so requested by U.S. authorities.

Has NSF or executive department given consideration to any of these ideas or any other nonlegislative approaches which would serve to control the conduct of Americans in Antarctica?

Mr. TODD. There has been consideration given, and for evaluation of some of possibilities I will defer to Mr. Herz.

There have been quite a number of occasions when we have evaluated an individual's performance and returned him to the United States prior to the completion of his formal duties.

In particular, very often, we try whenever possible to give extra careful screening to those people who are scheduled to winter over.

Additionally, we try to get them down to the continent at least a couple of months before the station is locked up for the winter season.

There have been a number of occasions when an individual's performance during the first couple of months in the Antarctic environment has been such as to cause us concern, and we have not permitted him to be part of the wintering-over crew.

There have been a few other occasions where personnel behavior is such that we have terminated employment and brought the individual home.

I have reservations as to whether the Science Foundation has authority to go beyond that.

Mr. EILBERG. Basically the question was a legal one.

Mr. HERZ. I would be glad to comment, Mr. Chairman.

We have given this only cursory consideration because the most cursory consideration has convinced us that the legislative approach is by far the better one.

If you get a serious crime like a murder, the kind of civil sanctions we could build into a contract, even if they were appropriate, would be inadequate to the occasion.

Another reason is that building civil sanctions into a contract, other than bringing someone home, is as much as we can do.

I have grave doubts whether a civil sanction and procedure is an appropriate way to handle a criminal matter.

We would almost have to incorporate large chunks of the criminal code by reference into our contracts. That would not only be clumsy, but inappropriate for us to take upon ourselves even if, as a theoretical matter, we could have legal authority to do it. This is a legislative matter properly brought to the attention of Congress, and we have attempted to do that.

Mr. EILBERG. You don't think it is feasible for one who is an employee to agree to submit himself to a particular jurisdiction or venue?

Mr. HERZ. I don't think it would be—you mean that he would agree to allow himself to be placed in jail if he commits murder in Antarctica?

I don't think it is feasible.

Mr. EILBERG. It is not feasible for him to agree that in the event of criminal conduct that he might agree to be tried or subject himself to criminal process in some particular place?

Mr. HERZ. That is an interesting question. It has not been raised with me before, Mr. Chairman. I would be glad to answer it for the record. My suspicion is that we either have jurisdiction to try a criminal offense or we do not. It is a matter of jurisdiction, and I doubt a citizen can create jurisdiction where none exists by simply agreeing to submit himself to it.

Mr. EILBERG. Please give us more on that if you would.

Mr. HERZ. I would be happy to.

[The following information was submitted by the National Science Foundation:]

RESPONSE FOR THE RECORD TO QUESTION POSED BY MR. EILBERG TO MR. HERZ

Any attempt on the Foundation's part to have a grantee, contractor, or principal scientific investigator create criminal jurisdiction in a particular United States District Court by agreeing to subject himself to criminal process there would almost certainly be ineffective. Parties can agree in advance on the *venue* in which a matter will be tried, but they cannot agree in advance to create even civil *jurisdiction* in a court that would otherwise lack jurisdiction. Thus, in *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934), the Supreme Court declared:

"Unlike an objection to venue, lack of federal jurisdiction cannot be waived or be overcome by an agreement of the parties."

The Court explained in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.* 308 U.S. 165, 167 (1939) that:

"The jurisdiction of federal courts—their power to adjudicate—is a grant of authority to them by Congress and thus beyond the scope of litigants to confer"

To the same effect are *Weinberger* v. *Bentex Pharmaceuticals*, 412 U.S. 645, 652 (1973); *Industrial Addition Ass'n* v. *Commissioner*, 323 U.S. 310, 313 (1945); *Walker* v. *Felmont Oil Corp.*, 240 F2d 912, 916 (6th Cir 1957); and *Barkman* v. *Sanford*, 162 F.2d 592, 593 (5th Cir. 1947), *cert. denied*, 332 U.S. 816 (1947).

The question has never to our knowledge been directly tested Although these cases all concern civil jurisdiction, the courts would undoubtedly be even more insistent that criminal jurisdiction cannot be created by agreement.

The Ninth Circuit has made clear in a criminal case, however, that "[t]he parties may not by conduct waive a lack of jurisdiction or concede to jurisdiction which does not in fact exist." *McCuster v. Cupp*, 506 F.2d 459, 460 (1974). That they may not do so by express agreement either seems quite clear.

Equally clear is the ample power of Congress to create extraterritorial jurisdiction over crimes committed in Antarctica. It does take an act of Congress, though to create jurisdiction over extraterritorial crimes, not already covered by the special maritime and territorial jurisdiction created under 18 U.S.C. § 17. *See, United States* v. *Bowman*, 260 U.S. 94, 97 (1922).

Dr. TODD. I might add one point of increasing pertinence to the issue. It is the following:

Each year there are few more U.S. citizens, civilians, spending one or more days on the Antarctic continent who have no contractual relationship to the Science Foundation or any other Federal agency.

There is one U.S. company operating a tourist service and it is very popular and I would expect in years to come he would be expanding that service.

At the present time the tourist services primarily are involved around the Antarctic peninsula which is further north and, therefore, warmer than the rest of the continent.

The tourist ship occassionally visits one of our stations or a station of another nation.

Last year there were 400 or 500 tourists who visited some part of Antarctica as a result of the tourist service.

Mr. EILBERG. That makes the prior question I raised more difficult.

Dr. TODD. With reference to those individuals, yes.

Mr. EILBERG. It is my understanding that there has been friction over the years between the National Science Foundation and the U.S. Navy with regard to activities in the Antarctic.

Has this been a problem and, if so, to what extent has it been alleviated in recent years?

Is this the reason NSF is making greater use of civilian contractors?

Dr. TODD. Let me answer that in two parts.

Yes, there has been friction. There always is when you have two bureaucracies working together.

However, if you look back over the years, the net performance has been exceedingly good.

The most severe cause of friction I can recall is how to manage the Officers' Club and, as a matter of fact, that is the strongest point of friction with which we are dealing this year.

I don't regard that as a serious problem.

The reason for the increasing use of civilian personnel is mixed up in administration, congressional policy, and cost effectiveness.

There has been in recent years a concerted opinion, seeming to develop by both the administration and the Congress, that the United States has no military mission in Antarctica.

This culminated two years ago in a flat-out determination that the Department of Defense has no mission in Antarctica except to provide logistics support as needed for the National Science Foundation program.

That is their official position.

As a result of that determination, there is a decision made that the total cost of the operation should be brought together in the budget of one agency, the Foundation, and that we should reimburse all other agency costs attributable to the Antarctica program. In earlier years we got a heavy subsidy, essentially free service from the Navy.

Now when you look at that situation as it develops—periodically the Commander of the Naval Support Force, Antarctica, and the NSF and one or more of the civilian contractors reexamines the operation to see if we should be doing this with military personnel or civilian—more and more of the decisions made have been that it is more cost effective to move to a civilian contract.

The one area where this will not happen is the area that makes our program more effective than those of other countries.

In the area of air transportation, which is the biggest part of the Navy operation, we see no clear demonstration that we could do this more effectively with civilian contractors.

Mr. EILBERG. Thank you for your contribution.

We will have legislation for you before too long.

Next is Mr. James H. Michel, assistant legal advisor, Department of State.

TESTIMONY OF JAMES H. MICHEL, ASSISTANT LEGAL ADVISOR, DEPARTMENT OF STATE

Mr. MICHEL. I am pleased to have the opportunity to appear before the subcommittee and express the Department of State's support for H.R. 763 and H.R. 6148, bills to extend the jurisdiction of the United States District Court over offenses committed without the United States.

Ambassador Robert C. Brewster had intended to be here to testify on HR. 6148, but he is out of the country today.

Mr. EILBERG. We will make his statement, without objection, a part of the record.

[The prepared statement of Robert C. Brewster follows:]

STATEMENT OF ROBERT C. BREWSTER, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Mr. Chairman and members of the committee: My name is Robert Brewster, Deputy Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

I appreciate the opportunity to appear before you today in connection with H.R. 6148, "a bill to amend Title 18 of the U.S. Code to discourage certain criminal conduct in Antarctica by U.S. nationals and certain foreign nationals and to clarify the application of the U.S. criminal code to such conduct." H.R. 6148 by adding a new section, section 16, to Title 18 of the United States Code would extend federal criminal law relating to the special maritime and territorial jurisdiction of the United States to Antarctica. The bill covers acts and omissions of U.S. nationals and, in limited instances, foreign nationals. The legislation would also add a new section 3062 to Title 18, permitting the President to authorize any member of a United States expedition in Antarctica to perform various law enforcement functions to implement the provisions of the new section 16.

Bills dealing with this subject were introduced in the 93rd and 94th Congresses, but were not acted upon. Also, by letter of June 8, 1977, the Department of State transmitted an Administration bill which we developed jointly with the National Science Foundation with the concurrence of the Department of Defense. We believe that the Administration proposal, H.R. 7842, and H.R. 6148 are substantially similar and that the differences between them are basically matters of form and style, details which we would be happy to discuss further on the staff level. Accordingly, we support enactment of either H.R. 6148 or the Administration bill.

We believe that such legislation is needed to fill a gap which currently exists in our criminal legislation regarding criminal offenses committed in Antarctica. United States military personnel in Antarctica are adequately covered by the United States Uniform Code of Military Justice, but there is a gap in the coverage of our criminal legislation with respect to civilians. This is becoming increasingly significant as more and more civilians are taking part in the United States Antarctic program. Moreover, increasing tourist activity in Antarctica involves a significant number of United States citizens, and some foreign nationals visit U.S. stations in the course of visits to Antarctica.

The United States has not made, and does not recognize territorial claims by any state in Antarctica. Accordingly, we believe that no state may assert criminal jurisdiction over persons committing crimes in Antarctica on the basis of territorial sovereignty. We believe, however, that, apart from relying on the territorial principle, United States legislation could, consistently with international law, prescribe law for crimes committed by United States citizens in Antarctica or by non-U.S. citizens in Antarctica who are either accompanying a United States expedition or committing crimes against United States citizens or United States Government property. We also believe that United States courts can try such persons alleged to have committed the crimes prescribed. But in the case of a foreign national, we believe it desirable to refrain, as both H.R. 6148 and the Administration bill have done, from criminal prosecution if the country of his or her nationality asserts jurisdiction before trial has begun.

We believe that this proposed legislation is needed to assure that United States citizens committing crimes in Antarctica will be prosecuted, while providing them with due process of law and other protections to which they are entitled under the United States Constitution. We also believe that it will be a deterrent to possible criminal conduct in Antarctica and will thus serve to protect members of American expeditions.

From the foreign affairs standpoint, such legislation will give assurance to the other Parties to the Antarctic Treaty that prosecution can and will take place in cases where their nationals are the victims of criminal actions by our citizens. This, in turn, will strengthen the United States position in resisting possible attempts by other Antarctic states to exercise jurisdiction over United States citizens committing a crime within territory claimed by that state. Such an attempt could undermine our position with respect to non-recognition of territorial claims. On this point, I should point out that the largest U.S. base in Antarctica, McMurdo Station, is in a sector of the continent claimed by New Zealand.

In conclusion, may I reiterate the Department of State's support of H.R. 6148 and our hope that legislation such as this be enacted soon in order to fill this very real gap with respect to potential criminal conduct in Antarctica.

We appreciate the Committee's interest in this subject and hope that these comments will be of assistance to the Committee in its current consideration of this proposed legislation.

Thank you.

Mr. MICHEL. I will also offer a prepared statement of my own on H.R. 763 for the record.

Mr. EILBERG. Your statement will be made part of the record, without objection. Please summarize.

[The prepared statement of James Michel follows:]

STATEMENT OF JAMES H. MICHEL, ASSISTANT LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chairman, members of the committee: Thank you for this opportunity to comment on H.R. 763, a bill to subject certain United States nationals or citizens to the jurisdiction of United States courts for crimes committed outside the United States and to provide for apprehension, restraint, removal and delivery of such persons. H.R. 763 is similar to bills introduced in previous sessions of the Congress which the Department of State believes will fill a significant jurisdictional gap in existing law.

While the exercise of extra-territorial jurisdiction on occasion can create foreign relations problems, H.R. 763 is a very limited assertion of such jurisdiction which operates within internationally accepted jurisdictional standards. We foresee no adverse foreign policy consequences from its enactment.

The bill provides for jurisdiction over United States citizens or nationals who commit certain kinds of offenses and who have specific links to our armed forces. The persons covered must be members of the armed forces, persons serving with the armed forces, or employed by such forces, or accompanying such forces. The offenses must have been committed while engaged in performance of official duties, or committed within armed forces installations or a military unit's area of operations in the field, or committed against another person with one of the same links to the armed forces. The offense must also be one which would be a Federal offense if it had been committed within the special maritime and territorial jurisdiction of the United States.

The Department of State believes that it would be useful to provide a forum in which Americans who are overseas in connection with the deployment of U.S. forces and who have committed serious criminal offenses while abroad can be brought to trial in peacetime. The line of Supreme Court cases beginning with *Kinsella* v. *Singleton*, 361 U.S. 234 (1960), *Grisham* v. *Hagan*, 361 U.S. 278 (1960), and *McElroy* v. *Gugliardo*, 301 U.S. 281 (1960) has declared unconstitutional the trial of such persons by court martial. In many cases offenses committed by American civilians abroad can be tried in foreign courts. However, in some cases where a foreign court has jurisdiction, trial in that court is unlikely. Moreover, in cases where the accused has left the territory where the offense occurred, existing law in many cases provides no means for bringing him to trial.

We believe it should be clearly understood that the purpose of this proposed legislation is to provide a forum in cases that would not otherwise be tried, and not to provide an alternative forum to try cases which, under the present circumstances, would be tried by the courts of the host country. We would not anticipate renegotiating existing status of forces arrangements to give the United States a primary right to exercise jurisdiction through such trials in the United States.

Insofar as persons who were not subject to United States jurisdiction at the time of their actions are concerned, we do not understand that H.R. 763 is intended to, or should, apply retroactively.

With respect to the enforcement measures, in addition to jurisdiction, which H.R. 763 would provide, the Department of State believes these to be necessary. These are the authorities to issue warrants for arrest; to apprehend without warrant in certain circumstances; to remove to the United States for trial; to deliver to foreign officials for trial on local charges; and to provide for counsel and other procedural protections.

Of particular significance are the authorities to apprehend an American and deliver him to foreign officials for trial. In the absence of such authorities, an American accused of crime in a host country may have to spend extended periods

in the custody of foreign authorities under uncomfortable, or worse, conditions. On a number of occasions host governments have been prepared to leave an accused American in our custody if we could assure his being turned over at the time of trial. Up to now we have no authority to give such an assurance, so we could not offer this alternative. There are, of course, tremendous pressures on United States authorities to make promises, but we have not been able to allow them to do so.

Finally, the Department of State believes that proposed section 990 on applicability of treaties is necessary to preserve rights and obligations under existing international treaties and agreements (such as status of forces agreements) as well as accepted rules under customary international law (for example, customary international law on diplomatic privileges and immunities).

Mr. MICHEL. The territorial principle is the basis most often relied on by the United States to apply the law, but certain existing statutes rely on other bases, such as the nationality of the accused.

There appears to be no doubt that under the Constitution, Congress can legislate to proscribe offenses occurring outside the United States, as proposed in the two bills before the subcommittee. It would be a strained argument that the Enumeration of Powers in Article I, Section 8 of the Constitution somehow diminishes the power of the United States so that it has less jurisdictional capacity than do other sovereign states.

Where there is a sovereign state having jurisdiction over the territory where the offense occurs, that territorial sovereign will ordinarily have a primary interest. However, another state may have another interest in asserting a concurrent jurisdiction, so it can try offenses which are of direct interest to it, and where the territorial sovereign does not exercise jurisdiction.

Although seven countries have made territorial claims in Antarctica, the United States has not recognized such claims. At the same time, the United States has not made a claim itself though all basic historic rights in Antarctica have been consistently reserved. There are many U.S. civilians present in that continent at any one time in connection with U.S. expeditions and tourism. In these circumstances, we believe the United States should have the ability to prosecute U.S. nationals who commit serious offenses, as well as foreign nationals who commit similar offenses against U.S. property or persons, or who are part of a U.S. expedition. The proposed legislation is in conformity with Article VIII of the Antarctic Treaty regarding the status of designated observers and scientific personnel and their staffs.

With respect to offenses committed by U.S. nationals or members of the Armed Forces not subject to court-martial jurisdiction, or who are accompanying the Armed Forces abroad or employed by them, we think the United States should be able to prosecute in the case of serious offenses where no other state would exercise jurisdiction, as has been the subject of previous testimony.

Court-martial jurisdiction over civilians in peacetime has been limited by Supreme Court decisions. The bills before the subcommittee would fill two significant gaps in U.S. jurisdiction. They will apply to activities in which the United States has a legitimate interest, that is, the conduct of its nationals, protection of its citizens and property, and the safe guarding of its property and overseas installations.

From a foreign policy standpoint, we believe the bills would have a beneficial effect. With respect to H.R. 6148, enactment would assure other parties to the treaty of our intent to prosecute under our laws, crimes which might be committed against their nationals.

In the absence of this legislation there might be no state with the ability to try the alleged offender or a U.S. national might be prosecuted by a claimant state, with resulting prejudice to the U.S. position with respect to claims in Antarctica.

With respect to H.R. 763, the bill would provide jurisdiction that would complement yet not compete with, that of foreign countries.

We think this is beneficial from a foreign policy standpoint as well, in that the bill could reduce pressure on host governments to prosecute cases such as those cited by Congressman Bennett, where only U.S. citizens were involved, and where the host country would prefer to leave the matter to us.

Although the subject of extraterritorial jurisdiction is dealt with more broadly in S. 1437, we believe action on the two limited measures before this subcommittee is desirable. These bills, would affect two situations where existing gaps may be a problem. They would provide authority for necessary procedures in the two situations here involved, and there is no comparable procedural provisions in S. 1437.

For this reason we support enactment of the bills before the subcommittee.

That summarizes my statement, sir.

Mr. EILBERG. Have there been prosecutions in foreign courts under special laws enacted by other countries subsequent to signing the Antarctica Treaty?

Mr. MICHEL. I am unaware of prosecutions under special laws. There are foreign countries who have broader nationality jurisdiction in their regular criminal code. And, of course, the claimant states consider their claimed sectors of Antarctica as national territory, so it's conceivable that a foreign national could have been tried by his country of nationality with respect to some act occurring in Antarctica without any need for special legislation. To date Congress has not enacted legislation extending U.S. criminal jurisdiction in Antarctica. Hence we have the bill now before you.

Mr. EILBERG. Do you know if any U.S. citizens have been prosecuted in any foreign court for any instances occurring in which the foreign government has declined or refused to assert jurisdiction over the U.S. citizen, where there has been apparent violation of their laws?

Mr. MICHEL. With respect to Antarctica, I'm unaware of any such situation.

Mr. EILBERG. Would we protest the assertion of jurisdiction over a U.S. citizen by a foreign government, for example New Zealand, where such jurisdiction is predicted on a foreign claim that we do not recognize?

Mr. MICHEL. Since the U.S. does not recognize claims of territorial sovereignty in Antarctica, we would object to any exercise of jurisdiction in Antarctica based on a territorial claim. In this regard, the Antarctica Treaty, and specifically article IV of that treaty, prohibits any party from making any new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica. However, as mentioned previously seven states had made territorial claims in Antarctica prior to signature of the Antarctic Treaty. All seven are parties to the treaty.

Mr. EILBERG. It would be useful, and without objection, the Antarctic Treaty will be made part of the record at this point.

[The treaty referred to follows:]

MULTILATERAL

Antarctic Treaty

Signed at Washington December 1, 1959;
Ratification advised by the Senate of the United States of America August 10, 1960;
Ratified by the President of the United States of America August 18, 1960;
Ratification of the United States of America deposited at Washington August 18, 1960;
Proclaimed by the President of the United States of America June 23, 1961;
Entered into force June 23, 1961.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Antarctic Treaty was signed at Washington on December 1, 1959 by the respective plenipotentiaries of the United States of America, Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, and the United Kingdom of Great Britain and Northern Ireland;

WHEREAS the text of the said Treaty, in the English, French, Russian, and Spanish languages, is word for word as follows:

THE ANTARCTIC TREATY

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognizing that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;[1]

Have agreed as follows:

ARTICLE I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

ARTICLE II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty.

[1] TS 993; 59 Stat. 1031.

ARTICLE III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

(a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

(b) scientific personnel shall be exchanged in Antarctica between expeditions and stations;

(c) scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

ARTICLE IV

1. Nothing contained in the present Treaty shall be interpreted as:

(a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

(b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

(c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

ARTICLE V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

ARTICLE VI

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

ARTICLE VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

(a) all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;

(b) all stations in Antarctica occupied by its nationals; and

(c) any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

ARTICLE VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1(b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting

Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

ARTICLE IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

(a) use of Antarctica for peaceful purposes only;
(b) facilitation of scientific research in Antarctica;
(c) facilitation of international scientific cooperation in Antarctica;
(d) facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;
(e) questions relating to the exercise of jurisdiction in Antarctica;
(f) preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty

whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

ARTICLE X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

ARTICLE XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

ARTICLE XII

1. (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

(b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1(a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2. (a) If after the expiration of thirty years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

(b) Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

(c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1(a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depositary Government.

ARTICLE XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary Government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XIV

The present Treaty, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

dichos Estados y para los Estados que hayan depositado sus instrumentos de adhesión. En lo sucesivo, el Tratado entrará en vigencia para cualquier Estado adherente una vez que deposite su instrumento de adhesión.

6. El presente Tratado será registrado por el Gobierno depositario conforme al Artículo 102 de la Carta de las Naciones Unidas.

ARTICULO XIV

El presente Tratado, hecho en los idiomas inglés, francés, ruso y español, siendo cada uno de estos textos igualmente auténtico, será depositado en los Archivos del Gobierno de los Estados Unidos de América, el que enviará copias debidamente certificadas del mismo a los Gobiernos de los Estados signatarios y de los adherentes.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorized, have signed the present Treaty.

DONE at Washington this first day of December, one thousand nine hundred and fifty-nine.

EN FOI DE QUOI, les Plénipotentiaires soussignés, dûment autorisés, ont apposé leur signature au présent Traité.

FAIT à Washington le premier décembre mille neuf cent cinquante-neuf.

В УДОСТОВЕРЕНИЕ ЧЕГО Полномочные представители, должным образом на то уполномоченные, подписали настоящий Договор.

СОВЕРШЕНО в городе Вашингтоне, декабря первого дня тысяча девятьсот пятьдесят девятого года.

EN TESTIMONIO DE LO CUAL, los infrascritos Plenipotenciarios, debidamente autorizados, suscriben el presente Tratado.

HECHO en Washington, el primer día del mes de diciembre de mil novecientos cincuenta y nueve.

FOR ARGENTINA:
POUR L'ARGENTINE:
ЗА АРГЕНТИНУ:
POR LA ARGENTINA:

ADOLFO SCILINGO

F BELLO

FOR AUSTRALIA:
POUR L'AUSTRALIE:
ЗА АВСТРАЛИЮ:
POR AUSTRALIA:

HOWARD BEALE.

FOR BELGIUM:
POUR LA BELGIQUE:
ЗА БЕЛЬГИЮ:
POR BELGICA:

OBERT DE THIEUSIES

FOR CHILE:
POUR LE CHILI:
ЗА ЧИЛИ:
POR CHILE:

MARCIAL MORA M

E GAJARDO V

JULIO ESCUDERO.

FOR THE FRENCH REPUBLIC:
POUR LA REPUBLIQUE FRANCAISE:
ЗА ФРАНЦУЗСКУЮ РЕСПУБЛИКУ:
POR LA REPUBLICA FRANCESA:

PIERRE CHARPENTIER

FOR JAPAN:
POUR LE JAPON:
ЗА ЯПОНИЮ:
POR JAPON:

KOICHIRO ASAKAI

T. SHIMODA

FOR NEW ZEALAND:
POUR LA NOUVELLE-ZELANDE:
ЗА НОВУЮ ЗЕЛАНДИЮ:
POR NUEVA ZELANDIA:

G D L WHITE

FOR NORWAY
POUR LA NORVEGE:
ЗА НОРВЕГИЮ:
POR NORUEGA:

PAUL KOHT

FOR THE UNION OF SOUTH AFRICA:
POUR L'UNION SUD-AFRICAINE:
ЗА ЮЖНО-АФРИКАНСКИЙ СОЮЗ:
POR LA UNION DEL AFRICA DEL SUR:

WENTZEL C. DU PLESSIS.

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:
POUR L'UNION DES REPUBLIQUES SOCIALISTES SOVIETIQUES:
ЗА СОЮЗ СОВЕТСКИХ СОЦИАЛИСТИЧЕСКИХ РЕСПУБЛИК:
POR LA UNION DE REPUBLICAS SOCIALISTAS SOVIENTICAS:

V. Kuznetsov. [1]

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:
POUR LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD:
ЗА СОЕДИНЕННОЕ КОРОЛЕСТВО ВЕЛИКОБРИТАНИИ И СЕВЕРНОЙ ИРЛАНДИИ:
POR EL REINO UNIDO DE GRAN BRETANA E IRLANDA DEL NORTE:

HAROLD CACCIA.

FOR THE UNITED STATES OF AMERICA:
POUR LES ETATS-UNIS D'AMERIQUE:
ЗА СОЕДИНЕННЫЕ ШТАТЫ АМЕРИКИ:
POR LOS ESTADOS UNIDOS DE AMERICA:

HERMAN PHLEGER.

PAUL C. DANIELS

[1] V. Kuznetsov.

I CERTIFY THAT the foregoing is a true copy of the Antarctic Treaty signed at Washington on December 1, 1959 in the English, French, Russian, and Spanish languages, the signed original of which is deposited in the archives of the Government of the United States of America.

IN TESTIMONY WHEREOF, I, CHRISTIAN A. HERTER, Secretary of State of the United States of America, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this second day of December, 1959.

[SEAL]

CHRISTIAN A. HERTER
Secretary of State

By

BARBARA HARTMAN
Authentication Officer
Department of State

WHEREAS the Senate of the United States of America by their resolution of August 10, 1960, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said Treaty;

WHEREAS the said Treaty was duly ratified by the President of the United States of America on August 18, 1960, in pursuance of the aforesaid advice and consent of the Senate;

WHEREAS it is provided in Article XIII of the said Treaty that upon the deposit of instruments of ratification by all the signatory States, the said Treaty shall enter into force for those States and for States which have deposited instruments of accession;

WHEREAS instruments of ratification were deposited with the Government of the United States of America on May 31, 1960 by the United Kingdom of Great Britain and Northern Ireland; on June 21, 1960 by the Union of South Africa; on July 26, 1960 by Belgium; on August 4, 1960 by Japan; on August 18, 1960 by the United States of America; on August 24, 1960 by Norway; on September 16, 1960 by the French Republic; on November 1, 1960 by New Zealand; on November 2, 1960 by the Union of Soviet Socialist Republics; and on June 23, 1961 by Argentina, Australia, and Chile; and an instrument of accession was deposited with the Government of the United States of America on June 8, 1961 by the Polish People's Republic;

AND WHEREAS, pursuant to the aforesaid provision of Article XIII of the said Treaty, the Treaty entered into force on June 23, 1961;

NOW, THEREFORE, be it known that I, John F. Kennedy, President of the United States of America, do hereby proclaim and make public the Antarctic Treaty to the end that the same and every article and clause thereof shall be observed and fulfilled with good faith, on and after June 23, 1961 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have caused the Seal of the United States of America to be hereunto affixed.

DONE at the city of Washington this twenty-third day of June in the year of our Lord one thousand nine hundred sixty-one
[SEAL] and of the Independence of the United States of America the one hundred eighty-fifth.

JOHN F KENNEDY

By the President:
DEAN RUSK
Secretary of State

Mr. EILBERG. Does the application of U.S. criminal law imply in any respect that the United States is asserting a territorial claim?

Mr. MICHEL. No, Mr. Chairman. I would like to be clear in that point. The United States does not assert a territorial claim, does not recognize territorial claims asserted by others, and sees nothing in the proposed legislation that could be argued to constitute an assertion of a territorial claim.

Mr. EILBERG. In order to avoid any apparent territorial claim by enacting this legislation, it should be made clear in the legislation itself, or perhaps in the legislative history that U.S. jurisdiction is based on a constitutionally enumerated power of Congress, or on the nationality principle.

Do you agree?

Mr. MICHEL. There could be technical problems in a prosecution later if a specific principle were asserted as the legislative jurisdiction base. A court might think that one of the other principles that might be relevant would be the proper one.

I should think it would be preferable to reiterate in the legislative history that the legislation is in no way intended to constitute a territorial claim.

Mr. EILBERG. The Antarctic legislation, and I realize we are taking advantage of your general information, does not specifically define who is authorized to arrest, detain, and remove the offender, and instead leaves this matter to the discretionary authority of the President.

Wouldn't it be preferable for the legislation itself to designate or authorize certain U.S. officials to perform these functions? Shouldn't specific procedures and criteria be contained in the legislation with regard to the arrest, detention, and delivery of U.S. citizens?

Mr. MICHEL. I think the flexibility contemplated by the legislation is a consequence of the flexibility of the situation at any one time within Antarctica. The population there fluctuates considerably from a low, I believe, of 60 that was mentioned, up to several thousand at other times, and there might or might not be a person specified in the legislation available to perform these functions.

Also, over time—and it has taken a long time to reach this point in the legislative process—it is possible that the composition of the persons physically present in Antarctica could change, as it has already changed from a primarily military to a primarily civilian composition.

For those reasons, there seem to be advantages, I believe, in leaving these details to regulations rather than specifying them in the legislation.

Mr. EILBERG. If we join the two bills into one, we have a problem, don't we?

Mr. MICHEL. I don't think so, sir, because the other bill, H.R. 763, also—I'm sorry it does not contemplate regulations in the same way that H.R. 6148 does.

But it deals with a different situation in which we are talking about installations that are in existence and operations within foreign countries. Usually, it is going to apply where there is an established U.S. presence.

I think the factual situations are distinguishable.

Mr. EILBERG. As a result of the problems experienced by an abuse of Americans and tried in Mexico; some scholars have suggested that Congress should attempt to apply Federal criminal law to American citizens anywhere in the world. The reason given for such an approach is that the American people would prefer to see their fellow countrymen tried at home, rather than in a foreign country which does not provide adequate due process safeguards.

What type of reaction would we receive from those foreign countries if we were to assert such extraterritorial jurisdiction?

Mr. MICHEL. There are considerable practical difficulties with a sweeping proposal to try all U.S. nationals in the United States for offenses they might commit in foreign countries.

You mentioned those yourself in this afternoon's hearing, as have several of the previous witnesses.

The basic deficiency in the line of argument, as I see it, is that the assertion of jurisdiction by the United States could not effectively deprive the territorial sovereign of jurisdiction.

We would gain only a concurrent jurisdiction, which we could exercise only when the territorial soverign was prepared to relinquish its own jurisdiction. I don't think the problem of Americans, who are in foreign jails because they have committed crimes in which the territorial soverign has had a significant interest of its own in wanting to prosecute, would be satisfactorily solved by assertion of U.S. jurisdiction.

There is in S. 1437, the proposed revision of the criminal code, a section—section 204—on extraterritorial jurisdiction which would be more selective in prescribing extraterritorial jurisdiction where the victim of the offense is a U.S. official or public servant, where the nature of the offense is one in which the United States would have a governmental interest, such as treason, sabotage against the United States, counterfeiting of U.S. currency and so forth.

Mr. EILBERG. What about the case where there is no victim, such as drug abuse?

Mr. MICHEL. That is not covered by the proposed revision unless the offense consists of the manufacture or distribution of drugs for import into the United States.

The broad assertion of jurisdiction over all U.S. nationals seems to me to have a number of practical problems, and just would not be a complete solution to the fact that foreign states will continue to have jurisdiction.

Mr. EILBERG. Yet this power is apparently clear under international law, is it not?

Mr. MICHEL. There could be limitations, depending on the nature of the offense. By and large, there is no serious difficulty with a state legislating criminal jurisdiction over its own nationals for offenses they commit in foreign countries.

Mr. EILBERG. Would it be reasonable for the U.S. to declare conduct in a foreign country a crime where it is an offense under U.S. law, although it is not a crime under the laws of the foreign country in which the offense was committed?

Mr. MICHEL. There are statutes that do that. The espionage laws have extraterritorial effect, and are crimes against the United States

Government. I would think, certainly, that there are some other crimes where there may be concurrent jurisdiction even though there would be no counterpart in foreign law.

Mr. EILBERG. From that, I assume that other acts could be made crimes, other than espionage?

Mr. MICHEL. Yes; where the governmental interest is the distinguishing characteristic, as in the espionage laws. The main bar to exercising broader jurisdiction over U.S. citizens generally is a practical one, rather than a constitutional or national law problem.

Mr. EILBERG. Thank you very much, Mr. Michel.

The hearing is now adjourned.

[Whereupon, at 4 p.m., the hearing was adjourned.]

APPENDIX

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., July 22, 1977.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, House of Representatives, Washington, D.C.

DEAR MR. EILBERG: During my testimony yesterday on H.R. 763, I summarized data relating to serious offenses committed by Department of Defense civilians overseas, which were contained in our annual compilation of statistics on the exercise of criminal jurisdiction by foreign tribunals over United States personnel. The statistics furnished were for the reporting period 1 December 1974–30 November 1975. I promised to furnish the Committee a copy of the compilation for the current reporting period, 1 December 1975–30 November 1976, as soon as it became available.

Upon returning to my office from the hearing, I inquired as to the availability of that current report, and discovered that it had, in fact, already been published. Apparently, through an oversight, it had not been distributed to me at the time of publication. A copy of the report is enclosed.

With respect to offenses committed by civilian employees and dependents, the current report discloses that 293 civilian employees and dependents were charged during the reporting period with serious offenses (exclusive of drug abuse offenses). Eighty-two of those cases were released to the United States Government for appropriate disposition and were not tried by foreign authorities. I have requested the Department of the Army to examine the files of these 293 cases to determine which of them would have been subject to H.R. 763 had that bill been law during the reporting period. I will advise you of the results of that analysis as soon as it has been completed.

On a related point, I advised the Committee during the hearing that 17 civilian employees and dependents were currently serving sentences in foreign jails. That information was based upon a separate report covering the quarter which ended 28 February 1977. I have also now received the quarterly report for the period ending 31 May 1977. The number of civilians in foreign jails as of that date is 20.

Sincerely yours,

BENJAMIN FORMAN,
Assistant General Counsel, International Affairs.

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., August 22, 1977.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter supplements my letter of July 22, 1977 relating to my testimony on July 21, 1977 on H.R. 763.

Appended as enclosure 1 to this letter is the statistical analysis you requested of the major offenses subject to foreign criminal jurisdiction which would have been subject to United States jurisdiction during the most recent reporting period had H.R. 763 been in effect.

I was also asked by Mr. Harris for available data as to how many civilians were court-martialed during the period 1947 through 1960. That data is set forth in enclosure 2 to this letter. I have been advised by the Navy and the Air Force that their data retrieval in this connection was hindered by inadequate record information.

Sincerely yours,

BENJAMIN FORMAN,
Assistant General Counsel, International Affairs.

Enclosures.

	Total number of cases	Within jurisdiction scope of H.R. 763 for the period December 1975 to November 1976		
		Army	Navy	Air Force
Offense:				
(a) Murder	4	2	1	1
(b) Rape	3	0	0	1
(c) Manslaughter/negligent homicide	15	4	0	1
(d) Arson	3	0	0	0
(e) Robbery/larceny	195	2	5	2
(f) Burglary	10	0	0	0
(g) Aggravated assault	14	1	0	1
(h) Simple assault	39	0	4	6
Total	283	9	10	12

	Army			Navy			Air Force		
	GCM	Sp. CM	SCM	GCM	Sp. CM	SCM	GCM	Sp. CM	SCM
Year:									
1947	74								
1948	95								
1949	55								
1950	19	46	691						
1951	27	25	226						
1952	13	57	234						
1953	30	32	257	5	6	25			
1954	22	34	374	1	7	27			
1955	13	17	137	2	4	4	21		
1956	15	13	102	1		2	5		
1957	8	15	42	1		3			
1958	5	5	13	1					
1959	4		24						
1960		1							

DEPARTMENT OF DEFENSE STATISTICS ON THE EXERCISE OF

CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER

UNITED STATES PERSONNEL

1 DECEMBER 1974 - 30 NOVEMBER 1975

THESE STATISTICS FOR THE THREE SERVICES HAVE BEEN COMPILED BY THE OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE ARMY AS EXECUTIVE AGENT FOR THE DEPARTMENT OF DEFENSE.

REPORTS CONTROL SYMBOL DD-[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (ANALYSIS)

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975 AREA: WORLD

	ARMY	NAVY	AIR FORCE	ALL SERVICES
TOTAL NUMBER OF CASES SUBJECT TO PRIMARY OR EXCLUSIVE FOREIGN JURISDICTION				
ALL:	41,344	2,555	8,889	52,788
MILITARY:	39,169	2,419	7,847	49,435
CIVILIANS & DEPENDENTS:	2,175	136	1,042	3,353
NUMBER OF PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY:	16,214	1,008	2,965	21,087
PRIMARY FOREIGN CONCURRENT JURISDICTION CASES AS TO WHICH A WAIVER OF LOCAL JURISDICTION WAS OBTAINED (MILITARY ONLY):	15,550 (95.9%)	452 (22.7%)	1,291 (43.5%)	17,293 (82.0%)
CIVILIANS AND DEPENDENTS RELEASED TO THE U.S. FOR DISPOSITION:	422 (19.4%)	28 (20.6%)	176 (16.9%)	626 (18.7%)
FINAL DISPOSITIONS OF CASES BY LOCAL AUTHORITIES (MAY INCLUDE CASES PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	23,672	1,809	6,770	32,291
CHARGES DROPPED:	1,704	604	578	2,886
ACQUITTALS:	80	36	150	268
CONVICTIONS:	21,888	1,167	6,042	29,097
TOTAL FINAL RESULTS OF TRIALS (MAY INCLUDE RESULTS OF TRIALS & APPEALS PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	21,969	1,205	6,192	29,365
SERIOUS CASES*:	191 (.9%)	63 (5.2%)	117 (1.9%)	371 (1.3%)
BREAKDOWN OF FINAL RESULTS				
NUMBER OF ACQUITTALS:	80 (.4%)	38 (3.2%)	150 (2.4%)	268 (.9%)
NUMBER OF UNSUSPENDED SENTENCES TO CONFINEMENT:	142 (.6%)	79 (6.6%)	75 (1.2%)	296 (1.0%)
NUMBER OF SUSPENDED SENTENCES TO CONFINEMENT:	68 (.3%)	65 (5.4%)	69 (1.1%)	202 (.7%)
NUMBER OF SENTENCES TO FINE, REPRIMAND, ETC., ONLY:	21,678 (98.7%)	1,023 (84.9%)	5,898 (95.3%)	28,599 (97.4%)

*MURDER, RAPE, MANSLAUGHTER, ARSON, LARCENY AND RELATED OFFENSES, BURGLARY AND RELATED OFFENSES, FORGERY AND RELATED OFFENSES, AND AGGRAVATED ASSAULT.

WORLD

REPORTS CONTROL SYMBOL [illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975

AREA: WORLD
SERVICE: ARMY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD												FINAL DISPOSITION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			2				39	15	26		2	3		1				22		
RAPE		1					272	239	33	1		6	1		6			19		
MANSLAUGHTER AND NEGLIGENT HOMICIDE		4	2				97	72	19	4	2	6	3		2			16	3	3
ARSON	3		6			2	21	21	3		4			3				1		1
ROBBERY, LARCENY & RELATED OFFENSES		5	108		3	36	1538	1477	62	2	70	23		22	2			60	2	20
BURGLARY AND RELATED OFFENSES			4			1	92	87	1		3							1		3
FORGERY AND RELATED OFFENSES		1	6			3	83	72	1	1	3	1		1	1					1
AGGRAVATED ASSAULT		2	4			1	585	559	26	2	3	4			3			22		3
SIMPLE ASSAULT		5	20		1		1239	1197	42	4	23	13	4	10	2			28		8
DRUG ABUSE		8	37		1	4	3379	3222	157	5	33	35		18	15		1	94	2	7
OFFENSES AGAINST ECONOMIC CONTROL LAWS	12	4	84				405	351	21	4	54			32	1			16	2	25
TRAFFIC OFFENSES 5/	22820	1112	728	1523	121	228	5371	5217	21451	969	590	1340	66	49	41		3	19981	930	435
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	2	2	18	1		4	2103	1969	120	2	14	10	1	7				103	1	7
OTHER	118	7	29	34	2	12	479	474	90	5	17	13	3	8	3			65	2	10
TOTAL	22955	1149	1026	1559	131	291	16214	15550	23361	1018	735	1455	98	151	76		4	20453	942	823

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE.
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE.
3/ FOR MIL COLUMN H, MIL LESS B MIL PLUS C LESS D. FOR CIV OR DEP COLUMNS H, CIV OR A DEP LESS B CIV OR B DEP RESPECTIVELY.
4/ INCLUDES ALL CASES FINALLY ADJUDICATED (IE, ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED). INCLUDES CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING REPORTING PERIOD.
5/ INCLUDES OFFENSES INVOLVING DRIVING AND OPERATION OF MOTOR VEHICLES.

WORLD

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS
OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1954 – 30 NOVEMBER 1955

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN (H) OF PRECEDING PAGE																	
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K											
							MILITARY				CIVILIAN				SPECIFIED			
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YR	3 TO 5 YR	OVER 5 YEARS (ITEMIZE)
MURDER																		
RAPE																		
MANSLAUGHTER AND NEGLIGENT HOMICIDE	4	3	1															
ARSON			1	1														
ROBBERY, LARCENY & RELATED OFFENSES	25	2	15													2		
BURGLARY AND RELATED OFFENSES	1																	
FORGERY AND RELATED OFFENSES																		
AGGRAVATED ASSAULT	17		4	4														
SIMPLE ASSAULT	24		2	1														
DRUG ABUSE	42	1														2		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	12	3	24													1		
TRAFFIC OFFENSES*	1553	165	92	18														
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	109	1	2	2														
OTHER	71		1	1			1		4			1				1		
TOTAL	1859	175	142	26		1	1		4			1			1	5	1	

*INCLUDING DRUNKEN AND RECKLESS DRIVING AND LEAVING THE SCENE OF AN ACCIDENT

AFRD

REPORTS CONTROL SYMBOL DD-SD(A)[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975 AREA: WORLD SERVICE: NAVY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD												FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN "A" CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER							9		9									3		
RAPE		1					29	2	27	1		32								
MANSLAUGHTER AND NEGLIGENT HOMICIDE		2	2				30	3	27	2	2	9	2					5		2
ARSON							5	4	1			1								
ROBBERY, LARCENY & RELATED OFFENSES		1	1				107	37	70	1	1	34	1	1	2			33		
BURGLARY AND RELATED OFFENSES		1	4				15	8	7	1	4				1		2	6		
FORGERY AND RELATED OFFENSES							41		41			42		1						
AGGRAVATED ASSAULT		2	2				54	2	52	2	2	34	2	1				9		
SIMPLE ASSAULT	3	3	2		1		161	21	143	2	2	82	1		4			37	1	
DRUG ABUSE	4	4	8			2	443	202	245	4	6	94		4	9		1	113	4	1
OFFENSES AGAINST ECONOMIC CONTROL LAWS	38	10	2	1	1		52	4	85	9	2	1						79	9	1
TRAFFIC OFFENSES 5/	438	40	48	60	7	17	600	130	848	33	29	109	4	1	8	5		653	20	21
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	1	5		1			341	34	307	5		125	3		4			150		
OTHER	27			3			21	5	40			20			2			20		
TOTAL	511	69	67	65	9	19	1909	462	1902	69	48	503	13	6	30	5	3	1108	34	25

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE

2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE

3/ FOR MIL COLUMNS A, MIL LESS B, MIL PLUS C LESS D. FOR CIV OR DEP, COLUMNS A, CIV OR A, DEP LESS B, CIV OR B, DEP, RESPECTIVELY

4/ INCLUDES ALL CASES FINALLY ADJUDICATED, I.E., ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED, INCLUDING CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING CURRENT PERIOD

5/ INCLUDES DRIVING AND MOTOR VEHICLE OR FLYING AND AIRCRAFT OFFENSES

WORLD

REPORTS CONTROL SYMBOL DD-C [illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1974 - 30 [illegible]

[illegible] WORLD

SENTENCES IMPOSED IN CASES REPORTED IN COLUMN [illegible] OF PRECEDING PAGE

TYPE OF OFFENSE	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K											
							MILITARY				CIVILIAN				DEPENDENT			
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)
MURDER										2 (2 LIFE								
RAPE																		
MANSLAUGHTER AND NEGLIGENT HOMICIDE	2			2														
ARSON																		
ROBBERY, LARCENY & RELATED OFFENSES	21			2			3	4	2	1 (1)								
BURGLARY AND RELATED OFFENSES	9						1											
FORGERY AND RELATED OFFENSES																		
AGGRAVATED ASSAULT	9			2				1										
SIMPLE ASSAULT	35	1		4			1											
DRUG ABUSE	23			25	2		3	4	4	4 (3,6,6,6		2						
OFFENSES AGAINST ECONOMIC CONTROL LAWS	79	9	1															
TRAFFIC OFFENSES *	637	20	2	15	1		1											
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	143			5			1											
OTHER	19						1											
TOTAL	971	30	3	56	3		12	9	6	7		2						

* INCLUDES DRUNKEN AND [illegible] DRIVING AND FLEEING SCENE OF ACCIDENT

WORLD

REPORTS CONTROL SYMBOL DD-P&L(A)[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975 AREA: WORLD SERVICE: AIR FORCE

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD												FINAL DISPOSITION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP	MIL	MIL	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER							3	3										2		
RAPE							17	6	11			13			1			1	1	
MANSLAUGHTER AND NEGLIGENT HOMICIDE		3	2				27	10	17	3	2	6		1				13	1	3
ARSON			2				3	1	2		2			1	1		1	1		
ROBBERY, LARCENY & RELATED OFFENSES		2	85		1	46	102	52	50	1	39	3		12	8		4	38		13
BURGLARY AND RELATED OFFENSES			8			2	3	1	2		6							2		4
FORGERY AND RELATED OFFENSES			1				11	9	2		1			1	2		1			
AGGRAVATED ASSAULT			9			7	31	13	18		2	3			4			12		4
SIMPLE ASSAULT	9	1	17			3	179	62	125	1	14	96	1	5	8			25	1	3
DRUG ABUSE		3	45			22	674	270	404	3	23	70		9	53		4	279	4	14
OFFENSES AGAINST ECONOMIC CONTROL LAWS	21	4	10	11		2	64	38	36	4	8	1		3	2			30	3	4
TRAFFIC OFFENSES 5/	4815	348	452	596	10	80	1574	718	5075	338	372	187	4	19	40	1	1	4822	334	348
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC	2	1	8	2			94	63	31	1	8	22	1	2	3		1	13		5
OTHER	36	9	32	13		3	183	45	161	9	29	24	7	17	13		2	54	2	6
TOTAL	4882	371	671	622	11	165	2955	1291	5934	360	573	435	13	70	135	1	14	5292	346	404

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE.
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE.
3/ FOR MIL COLUMN: A. MIL LESS B. MIL PLUS C LESS D. FOR CIV OR DEP, COLUMN A: CIV OR A. DEP LESS B. CIV OR B. DEP RESPECTIVELY.
4/ INCLUDES ALL CASES FINALLY ADJUDICATED, i.e. ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED, INCLUDING CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING CURRENT PERIOD.
5/ INCLUDING DRUNKENNESS AND DISORDERLY CONDUCT WHERE APPROPRIATE.

WORLD

CONTINUED

1 OF 3

REPORTS CONTROL SYMBOL DD-C[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 [illegible] 1974 – 30 [illegible]

[illegible] AREA

[illegible] OF U.S. ARMY FOR [illegible]

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN "I" OF PRECEDING PAGE																				
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K														
							MILITARY				CIVILIAN				DEPENDENT						
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			
MURDER										1 (10)											
RAPE								1				1									
MANSLAUGHTER AND NEGLIGENT HOMICIDE	9	1	4	2				2								1					
ARSON				1																	
ROBBERY, LARCENY & RELATED OFFENSES	35		12	1			1	1								1					
BURGLARY AND RELATED OFFENCES	1		4				1														
FORGERY AND RELATED OFFENSES																					
AGGRAVATED ASSAULT	9		1	1		2	2									1					
SIMPLE ASSAULT	23		9	2			2														
DRUG ABUSE	1[illegible]	1	8	12			2	2	4		1	1					3		2 (10, 10)		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	29	3	1				1														
TRAFFIC OFFENSES *	4[illegible]	2[illegible]	[illegible]	7			4														
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	5		2	4																	
OTHER	50	2	1				2			1 (5)											
TOTAL	5[illegible]64	341	493	34	2	3	15	21	4	2	1	2				2	4		2		

* INCLUDES DRUNK AND RECKLESS DRIVING AND FLEEING SCENE OF ACCIDENT

WORLD

REPORTS CONTROL SYMBOL: DD SD(A)703

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (ANALYSIS)

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975 AREA: NATO

	ARMY	NAVY	AIR FORCE	ALL SERVICES
TOTAL NUMBER OF CASES SUBJECT TO PRIMARY OR EXCLUSIVE FOREIGN JURISDICTION				
ALL:	37,495	728	6,474	44,697
MILITARY:	35,849	687	5,871	42,407
CIVILIANS & DEPENDENTS:	1,646	41	603	2,290
NUMBER OF PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY:	13,685	355	1,832	15,872
PRIMARY FOREIGN CONCURRENT JURISDICTION CASES AS TO WHICH A WAIVER OF LOCAL JURISDICTION WAS OBTAINED (MILITARY ONLY):	13,459 (98.3%)	167 (47.0%)	859 (46.9%)	14,485 (91.3%)
CIVILIANS AND DEPENDENTS RELEASED TO THE U.S. FOR DISPOSITION:	350 (21.3%)	1 (2.4%)	102 (16.9%)	453 (19.8%)
FINAL DISPOSITIONS OF CASES BY LOCAL AUTHORITIES (MAY INCLUDE CASES PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	22,061	375	4,879	27,315
CHARGES DROPPED:	1,533	14	144	1,691
ACQUITTALS:	24	29	71	124
CONVICTIONS:	20,504	332	4,664	25,500
TOTAL FINAL RESULTS OF TRIALS (MAY INCLUDE RESULTS OF TRIALS & APPEALS PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	20,528	361	4,735	25,624
SERIOUS CASES*:	123 (.6%)	24 (6.6%)	99 (2.1%)	246 (1.0%)
BREAKDOWN OF FINAL RESULTS				
NUMBER OF ACQUITTALS:	24 (.1%)	29 (8.0%)	71 (1.5%)	124 (.5%)
NUMBER OF UNSUSPENDED SENTENCES TO CONFINEMENT:	85 (.4%)	31 (8.6%)	35 (.7%)	151 (.6%)
NUMBER OF SUSPENDED SENTENCES TO CONFINEMENT:	31 (.2%)	13 (3.6%)	17 (.4%)	61 (.2%)
NUMBER OF SENTENCES TO FINE, REPRIMAND, ETC., ONLY:	20,388 (99.3%)	288 (79.8%)	4,612 (97.4%)	25,288 (98.7%)

*MURDER, RAPE, MANSLAUGHTER, ARSON, LARCENY AND RELATED OFFENSES, BURGLARY AND RELATED OFFENSES, FORGERY AND RELATED OFFENSES, AND AGGRAVATED ASSAULT.

NATO

REPORTS CONTROL SYMBOL CSCSA-70

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 - 30 NOVEMBER 1975

AREA: NATO
SERVICE: ARMY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2 C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3 E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			2				37	13	24		2	3		1				16		
RAPE							235	219	16			1			4			15		
MANSLAUGHTER AND NEGLIGENT HOMICIDE		3	2				78	68	10	3	2	4	2					9	2	2
ARSON	3		5			2	19	19	3		3			3						
ROBBERY, LARCENY & RELATED OFFENSES		2	86			21	1426	1385	41	2	65	18		17	1			38	2	20
BURGLARY AND RELATED OFFENSES			4			1	91	91			3									3
FORGERY AND RELATED OFFENSES		1	5			2	82	81	1	1	3	1		1	1					1
AGGRAVATED ASSAULT		2	3			1	482	477	5	2	2	2			3			4		2
SIMPLE ASSAULT		2	9		1		735	728	7	1	9	2	1	5	1			7		4
DRUG ABUSE		5	30			3	3480	3442	38	5	27	9		14	2			17	2	5
OFFENSES AGAINST ECONOMIC CONTROL LAWS	1	1	7				348	340	8	1	7							4	1	7
TRAFFIC OFFENSES 5	22111	876	567	1522	99	205	4350	4236	20643	777	362	1323	62	40	8		1	19282	710	318
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	2	1	11	1		3	1850	1838	13	1	8	7	1	3				3		5
OTHER	47	3	19	33	1	11	471	460	25	2	8	6	1	6	3			21	1	3
TOTAL	22164	896	750	1556	101	249	13685	13489	25834	795	501	1376	67	90	23		1	19416	719	370

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE
3/ FOR MIL, COLUMNS A, MIL LESS B, MIL PLUS C LESS D. FOR CIV OR DEP, COLUMNS A, CIV OR A, DEP LESS B, CIV OR B, DEP, RESPECTIVELY
4/ INCLUDES ALL CASES FINALLY ADJUDICATED, I.E., ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED, INCLUDING CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING CURRENT PERIOD

NATO

REPORTS CONTROL SYMBOL [illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1974 [illegible]

[illegible] NATO
SERVICES: ARMY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN "H" OF PRECEDING PAGE																			
	FINE, REPRIMAND, ETC., ONLY			CONFINEMENT SUSPENDED			CONFINEMENT NOT SUSPENDED													
							MILITARY					CIVILIAN				DEPENDENT				
	I			J			K					K				K				
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)		UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	
MURDER								[illegible]	5	[illegible]										
RAPE				3			[illegible]	[illegible]	[illegible]								1			
MANSLAUGHTER AND NEGLIGENT HOMICIDE	2	[illegible]	1	[illegible]				1	1	1(10)										
ARSON									[illegible]											
ROBBERY, LARCENY & RELATED OFFENSES	10	2	15	3		2	[illegible]	[illegible]	6	1(5)							2	1		
BURGLARY AND RELATED OFFENSES			3																	
FORGERY AND RELATED OFFENSES						1														
AGGRAVATED ASSAULT	1		2	1				2												
SIMPLE ASSAULT	3		4	1			3													
DRUG ABUSE	3	1	1			2	2	2	2	1(10)							2			
OFFENSES AGAINST ECONOMIC CONTROL LAWS	1	1	7						3											
TRAFFIC OFFENSES *	19272	716	[illegible]	9			1	1												
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	1		5	2																
OTHER	20		3						1				1							
TOTAL	19315	716	993	24	[illegible]	[illegible]	3	3	2	1			1				4	1		

* INCLUDES DRUNKEN AND RECKLESS DRIVING AND FLEEING SCENE OF ACCIDENT

NATO

REPORTS CONTROL SYMBOL DD-SD-A 778

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975

AREA: NATO
SERVICE: NAVY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN "A" CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER							2		2									3		
RAPE		1								1										
MANSLAUGHTER AND NEGLIGENT HOMICIDE			1				16	1	15		1							2		1
ARSON																				
ROBBERY, LARCENY & RELATED OFFENSES		1	1				35	14	21	1	1	3		1	1			10		
BURGLARY AND RELATED OFFENSES		1	4				5	1	4	1	4				1		2	3		
FORGERY AND RELATED OFFENSES																				
AGGRAVATED ASSAULT			1				10		10		1	1						1		
SIMPLE ASSAULT			1				17	1	16		1				3			6		
DRUG ABUSE	4	1	3				203	136	71	1	3			2	4		1	30	1	1
OFFENSES AGAINST ECONOMIC CONTROL LAWS	6			1			6	2	9									6		
TRAFFIC OFFENSES 5	314	14	11	25		1	8	2	295	14	10	1	1		7	5		242	8	4
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC		1					49	7	42	1		3			3			9		
OTHER	8			2			4	3	7			2			2			5		
TOTAL	332	19	22	28		1	355	167	492	19	21	10	1	3	21	5	3	317	9	6

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE
3/ FOR MIL, COLUMNS A, MIL LESS B, MIL PLUS C LESS D. FOR CIV OR DEP, COLUMNS A, CIV OR A, DEP LESS B, CIV OR B, DEP, RESPECTIVELY
4/ INCLUDES ALL CASES FINALLY ADJUDICATED, I.E., ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED, INCLUDING CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING CURRENT PERIOD
5/ INCLUDES CRIMES AND RESULTS OF TRAFFIC ACCIDENTS

NATO

REPORTS CONTROL SYMBOL DD-[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1974 - 30 [illegible]

AREA: NATO

SERVICE: NAVY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																		
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K												
							MILITARY				CIVILIAN				DEPENDENT				
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	
MURDER								1		2(2, LIFE)									
RAPE																			
MANSLAUGHTER AND NEGLIGENT HOMICIDE			1	1				1											
ARSON																			
ROBBERY, LARCENY & RELATED OFFENSES	5						1	4											
BURGLARY AND RELATED OFFENSES	2							1											
FORGERY AND RELATED OFFENSES																			
AGGRAVATED ASSAULT				1															
SIMPLE ASSAULT	5						1												
DRUG ABUSE	13		1			1	5	9	3			1							
OFFENSES AGAINST ECONOMIC CONTROL LAWS	6																		
TRAFFIC OFFENSES *	234	8	3	6		1	2												
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	6			3															
OTHER	5																		
TOTAL	276	8	4	11		2	9	16	3	2		1							

* INCLUDING DRUNKEN AND RECKLESS DRIVING AND FLEEING SCENE OF ACCIDENT

REPORTS CONTROL SYMBOL DD SD A1705

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975

AREA: NATO
SERVICE: AIR FORCE

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD: EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD 4/: CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION H		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER							1	1										1		
RAPE							5	5											1	
MANSLAUGHTER AND NEGLIGENT HOMICIDE		1	1				13	4	9	1	1	1						6		3
ARSON			2				1	1			2						1			
ROBBERY, LARCENY & RELATED OFFENSES		1	46			11	70	24	46	1	35			11	8		3	38		13
BURGLARY AND RELATED OFFENSES			4				3	1	2		4							2		4
FORGERY AND RELATED OFFENSES							10	8	2						2					
AGGRAVATED ASSAULT			5			7	22	6	16		2	1			3			12		2
SIMPLE ASSAULT			2				25	18	7		2	4						5	1	2
DRUG ABUSE		2	17			3	322	121	201	2	14	6		7	30			156	3	9
OFFENSES AGAINST ECONOMIC CONTROL LAWS	10	2	1				25	6	29	2	1				2			23	2	
TRAFFIC OFFENSES 5/	4001	209	292	593	5	74	1247	604	4051	204	218	105	1	6	17		1	3919	204	210
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC	2	1	6	2			46	42	4	1	6		1				1	7		5
OTHER	26	2	5	13		2	42	18	37	2	3	1			3			31	2	3
TOTAL	4039	218	385	608	5	87	1832	859	4404	213	288	118	2	24	65		6	4200	213	251

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE
3/ FOR MIL, COLUMNS A, MIL LESS B, MIL PLUS C LESS D. FOR CIV OR DEP, COLUMNS A, CIV OR A, DEP LESS B, CIV OR B, DEP, RESPECTIVELY
4/ INCLUDES ALL CASES FINALLY ADJUDICATED (i.e., ALL APPELLATE RIGHTS EXHAUSTED OR EXPIRED) INCLUDING CASES PENDING TRIAL OR APPEAL AT END OF PREVIOUS REPORTING PERIOD AND FINALLY ADJUDICATED DURING CURRENT PERIOD
5/ [illegible]

NATO

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1974 – 30 NOVEMBER 1975 — AREAS: NATO, SPECIFIED AIR FORCE

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN "H" OF PRECEDING PAGE																				
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K														
							MILITARY					CIVILIAN				DEPENDENT					
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)		UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)		
MURDER																					
RAPE												1									
MANSLAUGHTER AND NEGLIGENT HOMICIDE	3		1	2													1				
ARSON																					
ROBBERY, LARCENY & RELATED OFFENSES	35		12	1												1					
BURGLARY AND RELATED OFFENSES	1		4				1														
FORGERY AND RELATED OFFENSES																					
AGGRAVATED ASSAULT	9		1	1		1	2														
SIMPLE ASSAULT	4		2	1			1														
DRUG ABUSE	119	1	6	3			1		1			1	1				1		1(10)		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	22	2					1														
TRAFFIC OFFENSES *	3313	204	216	4			2														
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	4		5	2																	
OTHER	23	2	3	1			1			1(6)											
TOTAL	4156	209	249	14	1	2	4	12	1	1		1	2			1	2		1		

* INCLUDING DRUNKEN AND RECKLESS DRIVING AND FLEEING SCENE OF ACCIDENT

NATO

DEPARTMENT OF DEFENSE STATISTICS ON THE EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

1 DECEMBER 1975 - 30 NOVEMBER 1976

THESE STATISTICS FOR THE THREE SERVICES HAVE BEEN COMPILED BY THE OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE ARMY AS EXECUTIVE AGENT FOR THE DEPARTMENT OF DEFENSE

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (ANALYSIS)

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976 AREA: WORLD

	ARMY	NAVY	AIR FORCE	ALL SERVICES
TOTAL NUMBER OF CASES SUBJECT TO PRIMARY OR EXCLUSIVE FOREIGN JURISDICTION				
ALL:	38,159	2,611	11,652	
MILITARY:	35,129	2,449	10,140	
CIVILIANS & DEPENDENTS:	3,030	163	1,512	
NUMBER OF PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY:	13,650	1,844	2,923	
PRIMARY FOREIGN CONCURRENT JURISDICTION CASES AS TO WHICH A WAIVER OF LOCAL JURISDICTION WAS OBTAINED (MILITARY ONLY):	13,467 (97.2%)	557 (30.2%)	1,503 (51.4%)	
CIVILIANS AND DEPENDENTS RELEASED TO THE U.S. FOR DISPOSITION:	427 (14.1%)	49 (30.1%)	177 (11.7%)	
FINAL DISPOSITIONS OF CASES BY LOCAL AUTHORITIES (MAY INCLUDE CASES PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	22,941	1,632	9,498	
CHARGES DROPPED:	1,331	621	501	
ACQUITTALS:	208	70	153	
CONVICTIONS:	21,402	941	8,844	
TOTAL FINAL RESULTS OF TRIALS (MAY INCLUDE RESULTS OF TRIALS & APPEALS PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	21,610	1,011	8,997	
SERIOUS CASES*:	183 (.8%)	62 (6.1%)	89 (1.0%)	
BREAKDOWN OF FINAL RESULTS				
NUMBER OF ACQUITTALS:	208 (1.0%)	70 (6.9%)	153 (1.7%)	
NUMBER OF UNSUSPENDED SENTENCES TO CONFINEMENT:	82 (.4%)	35 (3.5%)	37 (.4%)	
NUMBER OF SUSPENDED SENTENCES TO CONFINEMENT:	74 (.3%)	87 (8.6%)	66 (.7%)	
NUMBER OF SENTENCES TO FINE, REPRIMAND, ETC., ONLY:	21,246 (98.3%)	819 (81.0%)	8,741 (97.2%)	

*MURDER, RAPE, MANSLAUGHTER, ARSON, LARCENY AND RELATED OFFENSES, BURGLARY AND RELATED OFFENSES, FORGERY AND RELATED OFFENSES, AND AGGRAVATED ASSAULT

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1975 – 30 NOVEMBER 1976 — AREA: WORLD — SERVICE: ARMY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISPOSITION BY FOREIGN TRIBUNALS DURING PERIOD 4					
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN "A" CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			2				15	11	4		2	3			1		1
RAPE							221	189	32			25			4		
MANSLAUGHTER AND NEGLIGENT HOMICIDE		5	4				86	67	19	5	4	3			3		
ARSON	1	1	1			1	21	20	2	1		1	1				
ROBBERY, LARCENY & RELATED OFFENSES		1	117		1	32	1160	1118	42		85	4		13	6		
BURGLARY AND RELATED OFFENSES			2				81	81			2						
FORGERY AND RELATED OFFENSES			1				195	195			1						
AGGRAVATED ASSAULT		2	6				480	458	22	2	6	5		1		1	
SIMPLE ASSAULT		2	23			3	1160	1127	33	2	20	6	2	8	1		
DRUG ABUSE		7	51		1	11	3206	3093	113	6	40	27	2	14	5		
OFFENSES AGAINST ECONOMIC CONTROL LAWS		7	39			4	335	326	9	7	35	2	1	25			
TRAFFIC OFFENSES 5/	21081	1839	969	1335	105	250	4700	4607	19869	1734	619	1047	76	42	151	21	4
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	112	1	25	3		13	1759	1751	117	1	12	9		1	1		
OTHER	85	4	21	37		6	431	424	55	4	15	7	2	4	2		1
TOTAL	21279	1869	1161	1345	107	320	13350	13467	20317	1762	841	1139	84	108	174	21	6

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE

2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE

3/ FOR [illegible] A MIL LESS B MIL PLUS C LESS D FOR CIV OR DEP, COLUMNS A CIV OR A DEP LESS B CIV OR B DEP, RESPECTIVELY

REPORTS CON. / C.

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 197[illegible] AREA: WORLD
SERVICE: ARMY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																		DEPE
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K												
							MILITARY					CIVILIAN							
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)		UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)				
MURDER						1		1	4	B(12,13,8,7,8,10,11,8)									
RAPE				10				5	9	3(5,7,5)									
MANSLAUGHTER AND NEGLIGENT HOMICIDE	2	2	1	9				2										1	
ARSON																			
ROBBERY, LARCENY & RELATED OFFENSES	11		54	13				5	4									2	
BURGLARY AND RELATED OFFENSES			2																
FORGERY AND RELATED OFFENSES																			
AGGRAVATED ASSAULT	11	2				1													
SIMPLE ASSAULT	22		13	2			1												
DRUG ABUSE	38		5	20		5	7	10	5	3(7,5,6)			3					2	3
OFFENSES AGAINST ECONOMIC CONTROL LAWS	9	6	10																
TRAFFIC OFFENSES *	18682	1624	562	10		1	4												
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	109	1	9																
OTHER	49	1	8	2															
TOTAL	18933	1636	677	66		8	12	23	22	14			3					4	4

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976

REPORTS CONTROL SYMBOL
AREA: WORLD
SERVICE: NAVY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF FOREIGN CASES DURING PERIOD					
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			1				4		4		1	2					
RAPE		1					32		32	1		25					
MANSLAUGHTER AND NEGLIGENT HOMICIDE		2					17		17	2		8	1				
ARSON							4	2	2			1					
ROBBERY, LARCENY & RELATED OFFENSES	1		11	1		5	129	45	84		6	35			2		
BURGLARY AND RELATED OFFENSES			3				9	4	5		3						
FORGERY AND RELATED OFFENSES							6		6			3	1				
AGGRAVATED ASSAULT		3					30	2	28	3		13	1		1		
SIMPLE ASSAULT	1	2	1				170	29	143	2	1	93		1	3		
DRUG ABUSE	10	8	15	5	4	6	446	202	249	4	9	91		2	21		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	59		5	32			75	1	101		5	67		2			
TRAFFIC OFFENSES 5/	417	30	65	128	6	24	585	165	709	24	41	106	4	3	16	1	6
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	69	3	5				273	84	258	3	5	121	1	2	3	1	
OTHER	47	4	4	2	1	3	64	24	85	3	1	35	2	1		1	
TOTAL	604	53	110	168	11	38	1844	557	1723	42	72	600	10	11	32	3	

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE
2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF [illegible]
3/ FOR MIL COLUMNS A MIL LESS B MIL PLUS C LESS D FOR CIV OR DEP COLUMNS A CIV OR A DEP LESS B CIV OR B DEP, RESPECTIVELY

REPORTS CONTROL

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1975 – 30 NOVEMBER 1976

AREA: WORLD
SERVICE: NAVY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																				
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K														
							MILITARY						CIVILIAN								
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)					
MURDER										2(24,18)											
RAPE				1				1	1					1							
MANSLAUGHTER AND NEGLIGENT HOMICIDE				1	1			1													
ARSON																					
ROBBERY, LARCENY & RELATED OFFENSES	15		3	12			1		1	1(6)											
BURGLARY AND RELATED OFFENSES	2						1														
FORGERY AND RELATED OFFENSES																					
AGGRAVATED ASSAULT	4	2		3			1														
SIMPLE ASSAULT	28	2		3			1														
DRUG ABUSE	56	1	1	36	0	2	7	6		3(6,6,6)					1						
OFFENSES AGAINST ECONOMIC CONTROL LAWS	2*		1																		
TRAFFIC OFFENSES **	484	19	25	11		2	4						1								
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	105	1	1	9																	
OTHER	42	2		3																	
TOTAL	761	27	31	70	1	4	15	8	2	6			1	1	1						

REPORTS CONTROL SYMBOL

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1975 – 30 NOVEMBER 1976

AREA: WORLD

SERVICE: AIR FORCE

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD					
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			1								1			1			
RAPE		1	1			1	12	3	9	1		7			4		
MANSLAUGHTER AND NEGLIGENT HOMICIDE		2	2			1	24	6	18	2	1	7	1		2		
ARSON			1				8	8			1		1	2			
ROBBERY, LARCENY & RELATED OFFENSES		1	65			33	76	48	28	1	32	1		10	3		5
BURGLARY AND RELATED OFFENSES			5				3	2	1		5			1			
FORGERY AND RELATED OFFENSES	5						11	7	9			3					
AGGRAVATED ASSAULT			3				20	4	16		3	4		1	2		
SIMPLE ASSAULT			11			5	130	53	77		6	56		4	10		
DRUG ABUSE			48			21	580	316	264		27	46		2	53		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	5	2	10				54	45	14	2	10			3	2		
TRAFFIC OFFENSES 5	7178	642	651	548	5	100	1772	950	7452	637	551	167	7	16	19		
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	6	4	6	4		4	76	45	33	4	2	7	2		2		
OTHER	23	6	50	6		7	157	16	158	6	43	95	3	52	10		
TOTAL	7217	658	954	558	5	172	2923	1503	8079	653	682	395	14	92	37		

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE.

2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE.

3/ FOR MIL, COLUMNS A (MIL LESS B MIL PLUS C LESS D. FOR CIV OR DEP, COLUMNS A (CIV OR A (DEP LESS B CIV OR B (DEP, RESPECTIVELY.

REPORTS CONTROL

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976

AREA: WORLD
SERVICE: AIR FORCE

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																				
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K														
							MILITARY						CIVILIAN								
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS
ORDER																					
RAPE				1																	
MANSLAUGHTER AND NEGLIGENT HOMICIDE	6	2		5				1													
ARSON																					
ROBBERY, LARCENY & RELATED OFFENSES	17	1	11	4				1											3		
BURGLARY AND RELATED OFFENSES	1		4																		
FORGERY AND RELATED OFFENSES	3																				
AGGRAVATED ASSAULT	6		1	1		1	2														
SIMPLE ASSAULT	16		10	2		1	5	1													
DRUG ABUSE	136		8	33		7	5	13	3										1		
OFFENSES AGAINST ECONOMIC CONTROL LAWS	13	3	7																		
TRAFFIC OFFENSES *	7275	626	533	8																	
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	13		1				1														
OTHER	33		13	3				1													
TOTAL	7521	632	596	57		9	13	17	3										4		

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (ANALYSIS)

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976 AREA: NATO

	ARMY	NAVY	AIR FORCE	[illegible]
TOTAL NUMBER OF CASES SUBJECT TO PRIMARY OR EXCLUSIVE FOREIGN JURISDICTION				
ALL:	34,574	760	9,062	44 [illegible]
MILITARY:	32,152	735	8,051	
CIVILIANS & DEPENDENTS:	2,422	25	1,011	3 458
NUMBER OF PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY:	11,686	458	1,687	[illegible]
PRIMARY FOREIGN CONCURRENT JURISDICTION CASES AS TO WHICH A WAIVER OF LOCAL JURISDICTION WAS OBTAINED (MILITARY ONLY):	11,483 (98.3%)	186 (40.6%)	866 (51.3%)	12 [illegible]
CIVILIANS AND DEPENDENTS RELEASED TO THE U.S. FOR DISPOSITION:	352 (14.5%)	10 (40.0%)	110 (10.9%)	[illegible]
FINAL DISPOSITIONS OF CASES BY LOCAL AUTHORITIES (MAY INCLUDE CASES PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	21,414	427	7,536	[illegible]
CHARGES DROPPED:	1,201	29	86	[illegible]
ACQUITTALS:	158	35	70	[illegible]
CONVICTIONS:	20,055	363	7,380	[illegible]
TOTAL FINAL RESULTS OF TRIALS (MAY INCLUDE RESULTS OF TRIALS & APPEALS PENDING FROM PREVIOUS REPORTING PERIOD)				
TOTAL NUMBER:	20,213	398	7,450	[illegible]
SERIOUS CASES*:	138 (.7%)	23 (5.8%)	78 (1.0%)	
BREAKDOWN OF FINAL RESULTS				
NUMBER OF ACQUITTALS:	158 (.8%)	35 (8.8%)	70 (.9%)	[illegible]
NUMBER OF UNSUSPENDED SENTENCES TO CONFINEMENT:	75 (.4%)	12 (3.0%)	20 (.3%)	[illegible]
NUMBER OF SUSPENDED SENTENCES TO CONFINEMENT:	49 (.2%)	36 (9.0%)	27 (.4%)	[illegible]
NUMBER OF SENTENCES TO FINE, REPRIMAND, ETC., ONLY:	19,931 (98.6%)	315 (79.1%)	7,333 (98.4%)	[illegible]

*MURDER, RAPE, MANSLAUGHTER, ARSON, LARCENY AND RELATED OFFENSES, BURGLARY AND RELATED OFFENSES, FORGERY AND RELATED OFFENSES, AND AGGRAVATED ASSAULT

REPORTS CONTROL SYMBOL DD-[illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976

AREA: NATO

SERVICE: ARMY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF CASES BY FOREIGN TRIBUNALS DURING PERIOD								
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			FINAL CONVICTION		
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER			2				15	11	4		2	3			1					
RAPE							197	177	20			13			3					
MANSLAUGHTER AND NEGLIGENT HOMICIDE		1	3				59	46	13	1	3	3			1					
ARSON	1	1					10	10	1	1		1	1							
ROBBERY, LARCENY & RELATED OFFENSES		1	101		1	21	1068	1042	26		80	3		10	6					
BURGLARY AND RELATED OFFENSES			2				81	81			2									
FORGERY AND RELATED OFFENSES			1				195	195			1									
AGGRAVATED ASSAULT		1	1				361	351	10	1	1	4				1				
SIMPLE ASSAULT			10			3	671	663	8		7	1		2	1					
DRUG ABUSE		5	31		1	4	2901	2838	63	4	27	23		5	4					
OFFENSES AGAINST ECONOMIC CONTROL LAWS		6	8			1	270	269	1	6	7	2								
TRAFFIC OFFENSES 5/	20400	1548	664	1304	94	212	3831	3787	19140	1454	452	1045	48	30	69	24	3	[illegible]	[illegible]	[illegible]
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	14	1	20	3		10	1598	1590	19	1	10	3			1					
OTHER	51	3	12	37		5	429	423	20	3	7		1	3	2		1			
TOTAL	20466	1567	955	1344	96	256	11686	11483	19325	1471	599	1101	50	50	28	25	5			

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE

2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST S

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976

AREA: NATO
SERVICE: ARMY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																				
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K														
							MILITARY						CIVILIAN								
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)
MURDER						1		1	4	8(12,13,8,7,8,10,11,8)											
RAPE				3				4	9	3(5,7,5)											
MANSLAUGHTER AND NEGLIGENT HOMICIDE	2		1	5				2												1	
ARSON																					
ROBBERY, LARCENY & RELATED OFFENSES	1		54	11				5	4										2		
BURGLARY AND RELATED OFFENSES			2																		
FORGERY AND RELATED OFFENSES																					
AGGRAVATED ASSAULT		1	1																		
SIMPLE ASSAULT	2		5	2			1														
DRUG ABUSE	3		5	11		4	3	10	5	2(5,6)				3					2	2	
OFFENSES AGAINST ECONOMIC CONTROL LAWS	1	5	7																		
TRAFFIC OFFENSES *	17992	1382	419	9		1	4														
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	17	1	8																		
OTHER	20	1	1	2																	
TOTAL	18038	1390	503	43		6	8	22	22	13				3					4	3	

REPORTS CONTROL SYMBOL [illegible]

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976 AREA: NATO SERVICE: NAVY

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISTRIBUTION OF CASES BY FOREIGN AUTHORITIES DURING PERIOD					
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			TOTAL ACQUITTAL G		CONVICTIONS
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP
MURDER							1		1								
RAPE		1								1							
MANSLAUGHTER AND NEGLIGENT HOMICIDE							3		3						1		
ARSON																	
ROBBERY, LARCENY & RELATED OFFENSES	1		3	1		1	26	8	18		2				2		
BURGLARY AND RELATED OFFENSES			3				1		1		3						
FORGERY AND RELATED OFFENSES																	
AGGRAVATED ASSAULT							8	1	7						1		
SIMPLE ASSAULT							22	5	17								
DRUG ABUSE		1			1		181	91	90			9			17		49
OFFENSES AGAINST ECONOMIC CONTROL LAWS	54			32			1		23			9					
TRAFFIC OFFENSES	191	3	13	16	1	6	92	6	261	2	7	3			9	1	
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.							100	55	45			2			4		
OTHER	31		1	2		1	23	20	32			6					
TOTAL	277	5	20	51	2	8	456	186	498	3	12	29			34	1	49

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE.

3/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST [illegible]

[illegible] FOR MIL, COLUMNS A, MIL, LESS B, MIL PLUS C LESS D FOR CIV AND DEP, COLUMNS A, CIV OR A, DEP LESS B, CIV OR B, DEP, RESPECTIVELY.

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

REPORTS CONT [illegible]

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 19[illegible]

AREA: NATO
SERVICE: NAVY

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN "H" OF PRECEDING PAGE																							
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K																	
							MILITARY						CIVILIAN											
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO [illegible] YRS	[illegible]		
MURDER										1(24)														
RAPE														1										
MANSLAUGHTER AND NEGLIGENT HOMICIDE				1																				
ARSON																								
ROBBERY, LARCENY & RELATED OFFENSES	1		2	9			1																	
BURGLARY AND RELATED OFFENSES																								
FORGERY AND RELATED OFFENSES																								
AGGRAVATED [illegible]SAULT				3																				
SIMPLE ASSAULT	10			2																				
DRUG ABUSE	40	1		2			2	1																
OFFENSES AGAINST ECONOMIC CONTROL LAWS	14																							
TRAFFIC OFFENSES *	196	1	3	9		1	4						1						1					
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	20			9																				
OTHER	27																							
TOTAL	308	2	5	35		1	7	1		1			1	1					1					

REPORTS CONTROL

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

AREA: NATO

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976 SERVICE: AIR FORCE

TYPE OF OFFENSE	TOTAL CASES SUBJECT TO FOREIGN JURISDICTION ARISING DURING PERIOD											FINAL DISPOSITION BY FOREIGN TRIBUNALS DURING PERIOD						FINAL
	EXCLUSIVE FOREIGN JURISDICTION CASES 1/ A			COLUMN 'A' CASES RELEASED TO THE U.S. FOR DISPOSITION B			PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY 2/ C	WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED D	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD 3/ E			CHARGES DROPPED F			FINAL ACQUITTAL G			
	MIL	CIV	DEP	MIL	CIV	DEP			MIL	CIV	DEP	MIL	CIV	DEP	MIL	CIV	DEP	
MURDER																		
RAPE		1					5	3	2	1		1						
MANSLAUGHTER AND NEGLIGENT HOMICIDE		2	2			1	16	5	11	2	1	1	1		2			
ARSON			1				7	7			1			1				
ROBBERY, LARCENY & RELATED OFFENSES		1	41			9	56	34	24	1	32			10	3		4	
BURGLARY AND RELATED OFFENSES			5				3	2	1		5			1				4
FORGERY AND RELATED OFFENSES	5						7	7	5									
AGGRAVATED ASSAULT			3				15	3	12		3	1		1	1			
SIMPLE ASSAULT			4				17	15	2		4	1		1				
DRUG ABUSE			20			1	362	188	174		19	2		1	19		2	
OFFENSES AGAINST ECONOMIC CONTROL LAWS	5		1				13	8	10		1				2			
TRAFFIC OFFENSES 5/	6328	499	421	529	4	89	1125	555	6369	495	332	43	3	8	33		1	
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	5		5	4		4	40	27	14		1							
OTHER	21		5	5		2	19	12	23		3			10	3			
TOTAL	6364	503	508	538	4	106	1687	866	6647	499	402	49	4	33	60		7	

1/ INCLUDES ALL CASES INVOLVING U.S. PERSONNEL WHICH WERE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE HOST STATE

2/ EXCLUDES CASES SUBJECT TO U.S. PRIMARY OR EXCLUSIVE JURISDICTION AND CASES SUBJECT TO EXCLUSIVE JURISDICTION OF THE HOST STATE

3/ FOR ALL COLUMNS A, MIL, SEE B, MIL, PLUS E, SEE D, FOR CIV OR DEP, COLUMNS A, CIV OR A, DEP, SEE B, CIV OR B, DEP, SEE D, CIV OR DEP, RESPECTIVELY.

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL (CONTINUED)

REPORTING [illegible]

PERIOD: 1 DECEMBER 1975 - 30 NOVEMBER 1976

AREA: NATO

SERVICE: AIR FORCE

TYPE OF OFFENSE	SENTENCES IMPOSED IN CASES REPORTED IN COLUMN 'H' OF PRECEDING PAGE																							
	FINE, REPRIMAND, ETC., ONLY I			CONFINEMENT SUSPENDED J			CONFINEMENT NOT SUSPENDED K																	
							MILITARY						CIVILIAN						DEPENDENT					
	MIL	CIV	DEP	MIL	CIV	DEP	UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)			UNDER 1 YR	1 TO 3 YRS	3 TO 5 YRS	OVER 5 YEARS (ITEMIZE)		
MURDER																								
RAPE				1																				
MANSLAUGHTER AND NEGLIGENT HOMICIDE	5	1		3																				
ARSON																								
ROBBERY, LARCENY & RELATED OFFENSES	17	1	11	4				1											3					
BURGLARY AND RELATED OFFENSES	1		4																					
FORGERY AND RELATED OFFENSES	5																							
AGGRAVATED ASSAULT	6		1	1		1	2																	
SIMPLE ASSAULT			3																					
DRUG ABUSE	130		7	7		5	2	9	2															
OFFENSES AGAINST ECONOMIC CONTROL LAWS	9		1																					
TRAFFIC OFFENSES *	5284	491	320	4																				
DISORDERLY CONDUCT, DRUNKENNESS, BREACH OF PEACE, ETC.	12		1				1																	
OTHER	20		3	1																				
TOTAL	6489	493	351	21		6	5	10	2										3					

Control of Criminal Conduct in Antarctica

(By Richard B. Bilder)*

The continent of Antarctica presently enjoys a unique experience: the absence of serious crime. However, Professor Bilder urges that the presence of numerous Americans in Antarctica, including several hundred civilians who may not be covered by the present laws applicable to military personnel or to acts within the special maritime and territorial jurisdiction of the United States under Section 7 of Title 18 of the United States Code, seems to call for legislation to control possible serious criminal conduct by such civilians. After setting out the practical context of the problems, the author explores the existing legal situation, the relevant domestic and international legal considerations (including questions of territorial claims and the Antarctic Treaty), and the pros and cons of possible remedial legislation. He concludes with a proposed draft of an amendment to title 18 which would permit the United States to prosecute and punish serious crimes by American nationals, and perhaps certain nationals, in Antarctic.

He said there were no laws in the Antarctic, just the law of the mind and the body. "But that's anarchy," I said. "You can't make your own laws, even in the Antarctic." "That's what you think,' he said. He was absolutely mad.**

In the past decade, man has become firmly entrenched on the Antarctic continent. Eleven nations now maintain some thirty permanent stations in Antarctica, with a total summer population of about two thousand persons and a winter population of nearly seven hundred.[1] In contrast to the popular image evoked by the early expeditions of Scott, Amundsen, Shackleton, and Byrd,[2] modern Antarctic exploration is a complex and large-scale enterprise employing the most up-to-date technology. The howl of sled dogs has given way to the roar of airplanes and traxcavators, Hershey bars have replaced pemmican, and a nuclear reactor looks down on the lonely hut from which Scott began his tragic journey to the Pole. While the Antarctic remains a land of danger, challenge and desolate beauty, the slow encroachment of civilization is no longer in doubt.

The largest of these various national programs in Antarctica is that of the United States, which presently operates five year-round stations on the continent supporting a summer population of well over a thousand persons and a winter population of about three hundred. All indications are that this United States Antarctic program will continue for the foreseeable future.

The scope and apparent permanence of this United States commitment in Antarctica suggest the need for inquiry into the question of control of criminal conduct in that area. As yet this problem is only hypothetical; there has to date been no incident of serious criminal conduct on the part of either United States military or civilian personnel on the continent.[3] However, in view of the recent expansion of United States activities there, certain questions deserve examination: To what extent are Americans and foreign nationals participating in the United States program in Antarctica presently subject to either United States or foreign law with respect to conduct normally punishable as criminal? If they are not now subject to such law, what measures, if any, are desirable to deal with

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*Associate Professor of Law, University of Wisconsin Law School, B.A., 1949, Williams College; LLB., 1956, Harvard Law School. Formerly with the Office of the Legal Adviser, Department of State. The author wishes to express his gratitude to the Department of State, the United States Navy and the National Science Foundation for arranging his visit to Antarctica in October 1964. However, the views herein expressed are, of course, solely the author's own.

**Benjamin, Quick, Before it Melts 46 (1964).

[1] Information supplied by Office of Antarctic Programs, National Science Foundation. Antarctic seasons are the reverse of those in the Northern Hemisphere. The summer operating season begins about October 1 (when aircraft can first begin regular flights from New Zealand to McMurdo Station) and ends about March 1 (when temperatures become too cold for aircraft to operate and the ice pack begins to form).

[2] For descriptions of pre-World War II Antarctic exploration, see Byrd, Alone (1938); Byrd, Discovery (1935); Lansing, Endurance (1959); Scott's Last Expedition; The Journals of Captain R. F. Scott (1957); Shackleton, South (192). On more recent Antarctic exploration, see, e.g., Ronne, Antarctic Conquest (1949); Siple, 90° South (1959). For an interesting brief description of a visit to present-day Antarctica, see Moorehead, Reporter at Large, New Yorker, June 27, 1964, p. 39.

[3] While detailed information is not available, there are indications that minor disciplinary problems and intra-station frictions among personnel have occasionally arisen. However, I am not aware of any cases of physical violence or of the attempted imposition of sanctions in such situations.

the situation? What practical and legal factors, domestic and international, bear on the shaping of such measures? Can a particular solution be suggested?

The problem of control of criminal conduct in such a remote and desolate region has, of course, an intriguing character in itself. However, an analysis of this situation may be of interest for other reasons as well. First, it illustrates some of the complex considerations which enter into the rational adjustment of international jurisdictional conflicts. Second, it indicates how international law may shape and limit domestic legislation. Finally, it may suggest possible solutions to analogous problems men may someday face in the exploration of outer space.[4]

THE ANTARCTIC CONTEXT

A realistic analysis of the problem of control of criminal conduct in Antarctica requires some understanding of the practical context—the unique Antarctic environment and history; the nature, organization and scope of United States Antarctic activities; and the structure of the American Antarctic community.

Some History: The Antarctic Treaty[5]

Antarctica is a land of superlatives. It is the coldest, windiest, driest, highest most remote, and most barren and lifeless of all the continents. Ice averaging a mile in thickness covers more than ninety-five percent of its area, and temperatures of almost 127 degrees below zero as well as winds of over 200 miles per hour have been recorded. Despite its huge extent, equal to the size of the United States and Europe combined, the very existence of Antarctica as a continent was not definitely established until the 1820's. It was 1899 before men first wintered-over on Antarctic shores, and 1911 before Amundsen (and, shortly thereafter, Scott) first reached the South Pole; men would not again set foot on the Pole until 1956. Only in the 1930's, with expeditions such as those of Byrd and Ellsworth, was there the beginning of systematic and extensive scientific exploration of the region.

While there was considerable interest in Antarctica just following World War II, the major turning point in Antarctic scientific exporation came with the organization by the International Council of Scientific Unions of the International Geophysical Year, which ran from July 1957 to December 1958 and included as a principal objective the comprehensive and coordinated accumulation of knowledge about the region.[6] In accordance with the IGY program, by late 1957 twelve countries had established over sixty stations on or near the continent and over five thousand scientific and supporting personnel were involved in a broad and diversified study of its secrets. The success of the IGY, coupled with an appreciation of the scientific work yet to be done, led most of these countries, includ-

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[4] The analogy between legal problems in Antarctica and outer space has frequently been noted. See, e.g., Jessup & Taubenfeld, Controls for Outer Space and the Antarctic Analogy (1959). This analogy is strengthened by paragraph 3 of the United Nations *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*, U.N. Gen. Ass. Off. Rec. 18th Sess., Supp. No. 15, at 15 (A/5515) (1962), which states that: "Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."

The problem of jurisdiction over crimes committed on spacecraft, artificial satellites and celestial bodies has already evoked considerable comment. See particularly the comprehensive and interesting discussion in McDougal, Lasswell & Vlasic, Law and Public Order in Space 695–704 (1963). See also U.N. Gen. Ass. Off. Rec., *supra*, para. 7, which states in part: "The state on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and any personnel thereon, while in outer space." A recent moot court case argued at the April 1965 meeting of the American Society of International Law in Washington, D.C., involved a hypothetical murder on the Moon of an English astronaut by an American astronaut.

[5] On Antarctica and its history, see Debenham, Antarctica (1961); Lewis, a Continent for Science: The Antarctic Adventure (1965); Sullivan, Quest for a Continent (1957). For good briefer discussions, see U.S. Antarctic Projects Officer, Introduction to Antarctica (1964); Taubenfeld, *A Treaty for Antarctica*, 1960–1964 Int'l. Conp. 243 (1961); *President's Special Report on United States Policy and International Cooperation in Antarctica*, H.R. Doc. No. 358, 88th Cong., 2d Sess. (1964) [hereinafter cited as *President's Special Report*].

[6] On the IGY, see Eklund & Beckman, Antarctica: Polar Research and Discovery During IGY (1963); Sullivan, *Assault on the Unknown* (1961); *Hearings on the International Geophysical Year: The Arctic and Antarctic, House Comm. on Interstate and Foreign Commerce*, 85th Cong., 2d Sess. (1958). Good briefer discussions include Baldwin, *The Dependence of Science on Law and Government—The International Geophysical Year—A Case Study*, 1964 Wis. L.Rev. 78; Sullivan, *The International Geophysical Year*, 1959 Int'l Cong. 257.

ing the United States, to decide to continue their Antarctic programs after the end of the IGY.[7]

A troublesome and complex aspect of recent Antarctic history has been the problem of territorial claims.[8] By 1956 seven nations had formally made claims to particular areas[9]—despite the inhospitable character of the continent; its questionable economic, political, or strategic value;[10] the absence until very recently of anything resembling permanent settlements; and the doubtful validity of any international legal basis for the assertion of claims to sovereignty in Antarctic circumstances.[11] These separate claims covered in aggregate about eighty percent of Antarctica.[12] However, the resulting legal situation was chaotic. For example, the claims of Chile, Argentina and the United Kingdom to the Antarctic Peninsula and various sub-Antarctic islands were overlapping and conflicting.[13] Some states recognized the claims of certain claimants while vigorously denying the claims of others.[14] The United States, despite extensive exploration and other activities in Antarctica, had both refrained from making any formal territorial claim itself and refused to recognize the validity of

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[7] On recent United States activities, see U.S. Navy, Task Force 43, Report on Operation Deepfreeze 65; the bimonthly *Antarctic Journal of the United States*, which in January 1966 replaced the National Science Foundation's monthly *Antarctic Report* and the *U.S. Antarctic Project Officer Bulletin* (issued 10 times a year); and the 1960, 1961, 1964 and 1965 hearings on Antarctica held by the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs. An excellent source of information on the activities of foreign countries is the *Polar Record*, a journal published by the Scott Polar Research Institute, Cambridge, England.

[8] For general discussions of the claims problem, see Christie, The Antarctic Problem (1951); Jessup & Taubenfeld, op. cit. supra note 4, pt. II; Hanessian, *Antarctica: Current National Interests and Legal Realities*, 1958 Proceedings Am. Soc'y Int'l L. 145; Hayton, *The "American" Antarctic*, 50 Am. J. Int'l L. 583 (1956); Waldock, *Disputed Sovereignty in the Falkland Island Dependencies*, 25 Brit. Yb. Int'l L. 311 (1948); Comment, *Claims to Sovereignty in Antarctica*, 28 So. Cal. L. Rev. 386 (1955).

[9] These include Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom. South Africa claims certain sub-Antarctic islands. See generally Hayton, National Interests in Antarctica (1959); Dater, *Sovereignty in Antarctica*, in appendix to Gould, the Polar Regions in Their Relations to Human Affairs 36–54 (1958). Certain of the statements of claim are collected in 46 U.S. Naval War College, International Law Documents 1948–49, at 217–45 (1950), and 10 Polar Record 163 (1960). Brief discussions of each country's claim are set forth in the opening statements of various delegates to the Antarctic Conference printed in *The Conference on Antarctica, Washington, October 15–December 1, 1959*, Dept. State Pub. 7060 (1960).

[10] To date, no commercially significant deposits of minerals have been found, and even if such were discovered, costs of exploitation and transportation might well be insuperable. Other suggested economic uses of the continent, such as for refueling points for trans-south polar flights, giant cold-storage warehouses or tourism, seem little related to need or practicality. Antarctic missile or submarine bases would violate the Antarctic Treaty, and moreover, would be prohibitively expensive, easily detected, and of marginal additional strategic use given the potentialities of modern weapons systems. However, the continent does offer promise as a base for exploitation of the teeming biological resources of the Antarctic Ocean, which constitutes one of the world's richest potential sources of food supplies.

[11] Concerning the legal issues raised by Antarctic claims, see I Hackworth, Digest of International Law 449–77 (1940); Hayton, *Polar Problems and International Law*, 52 Am. J. Int'l L. 746 (1958); Simsarian, *The Acquisition of Legal Title to Terra Nullius*, 53 Pol. Sci. Q. 111 (1938); references cited note 8 supra.

International law has generally required that priority of discovery and exploitation be followed by "effective occupation" in order to confer sovereignty over previously unclaimed territory. See opinion of Judge Huber in The Island of Palmas (United States v. Netherlands), in Scott, Hague Court Reports 83 (Perm. Ct. Arb. 1932), 2 U.N. Rep. Int'l Arb. Awards 829 (1949). However, there are indications that little in the way of "effective occupation" is required in the case of uninhabited, inhospitable areas. See The Clipperton Island Arbitration, France-Mexico 1931, translated in 26 Am. J. Int'l L. 390 (1932); Legal Status of Eastern Greenland, P.C.I.J., ser. A/B, No. 53 (1933).

[12] The 20 percent of Antarctica thus far unclaimed lies between 90° and 150° west longitude, and comprises principally Marie Byrd Land as to which there is tacit recognition of United States priority.

[13] In 1947–1948 naval encounters between British and Argentine warships resulting from such disputes were only narrowly averted. For diplomatic exchanges illustrating this continuing controversy, see, e.g., 5 Polar Record 228–40 (1948); 6 *id.* at 413–18 (1952); 7 *id.* at 212–26 (1954). The United Kingdom attempted to bring these claims disputes before the International Court of Justice, but its application was dismissed for failure of Chile and Argentina to consent to the court's jurisdiction. Antarctica Cases, [1955] I.C.J. Rep. 12, 15.

[14] The United Kingdom, Australia, New Zealand, France and Norway appear mutually to recognize each others' claims. See, e.g., Hayton, op. cit. supra note 9; Comment, 28 So. Cal. L. Rev. 386, 390 (1955) (giving references). However, as to United Kingdom nonrecognition of Chilean and Argentinean claims, and vice versa, see note 13 *supra*.

any claims made by other countries[15] Other states, including the Soviet Union, took a position similar to that of the United States.[16]

The success of the IGY made particularly apparent the need for establishing some legal arrangement which would provide a stable and reasonable environment for the continuation of scientific activities on the continent. Discussions between the United States and the eleven other governments then engaged in substantial IGY Antarctic activities led to a formal meeting of the twelve governments[17] at the International Conference on Antarctica, held in Washington in late 1959.[18] This exceptionally well-prepared conference produced the text of the Antarctic Treaty, which was signed on December 1, 1959, and entered into force on June 23, 1961, upon ratification by all twelve of the governments attending the Conference.[19]

Of the treaty's many interesting provisions,[20] those concerning territorial claims and jurisdiction have particular relevance for this discussion.

The treaty does not attempt a final solution of the claims problem. Instead it attempts to set the problem aside, at least temporarily, by freezing existing positions and establishing a moratorium on new claims while the treaty is in force. Article IV provides:

> 1. Nothing contained in the present Treaty shall be interpreted as:
>
> (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
>
> (b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
>
> (c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.
>
> 2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

Similarly, the treaty deliberately leaves the question of personal jurisdiction for the most part unresolved. It provides a limitation of jurisdiction solely with respect to observers carrying on inspections under the treaty, and to exchange scientists and members of their staffs (hereafter referred to collectively as "privileged" foreign nationals), who are to be subject only to the jurisdiction of the country of which they are nationals. As to jurisdictional conflicts involving

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[15] However, the United States has expressly reserved its right to make a territorial claim. See U.S. Invitation to Twelve Nation Antarctic Conference, May 2, 1958, reprinted in *President's Special Report* at 23. For the evolution and various statements of the United States position, see 1 Hackworth, op. cit. supra note 11; 2 Whiteman, Digest of International Law 1232–63 (1963).

[16] For the Soviet position, see Statement of the U.S.S.R. Delegate to the Antarctic Conference, printed in *The Conference on Antarctica, supra* note 9; Toma, *Soviet Attitude Towards the Acquisition of Territorial Sovereignty in the Antarctic,* 50 Am. J. Int'l L. 611 (1956).

[17] Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the Soviet Union, the United Kingdom, and the United States.

[18] The public conference documents are set out in *The Conference on Antarctica, supra* note 9.

[19] The United States ratified on August 18, 1960. For text see The Antarctic Treaty, December 1, 1959 [1962] 12 U.S.T. & O.I.A. 794, T.I.A.S. No. 4780, also reprinted in the *President's Special Report* at 26, and in 41 Dept. State Bull. 911, 914–17 (1959). For United States legislative history, see *Hearings Before the Senate Committee on Foreign Relations on Ex. B.* 86th Cong., 2d Sess. (1960); S. Exetc. Rep. No. 10, 86th Cong., 2d Sess. (1960); 106 Cong. Rec. 15914–17, 15974–89, 16044–69, 16090–114 (1960) (Senate debates).

[20] The tretaty is binding on the parties for at least 30 years. It is applicable to the area south of 60° south latitude, including all ice shelves; however, rights under international law respecting the high seas are not affected. *Inter alia,* military activities of any nature, nuclear explosions, and the disposal of radioactive wastes are prohibited in the treaty area, but military personnel and equipment may be used for scientific research or any other peaceful use. To ensure observance of these provisions, any party may at any time unilaterally carry out inspections or aerial surveillance anywhere in the treaty area. Provision is made for scientific cooperation and exchange of scientists and information, for periodic meetings of parties, and for accession to the treaty by other states. Three countries have thus far acceded: Poland (June 8, 1961), Czechoslovakia (June 14, 1962), and Denmark (May 20, 1965).

Good brief discussions of the treaty and its background are found in Hanessian, *The Antarctic Treaty 1959,* 9 Int'l & Comp. L.Q. 436 (1960); Hayton, *The Antarctic Settlement of 1959,* 54 Am. J. Intl. L. 349 (1960); Taubenfeld, *supra* note 5.

"non-privileged" foreign nationals, the sole obligation of the parties is to consult together with a view to reaching a mutually acceptable solution.[21] Article VIII provides:

> 1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1(b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.
>
> 2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

In addition, article IX(1) mentions "measures regarding . . . (e) questions relating to the exercise of jurisdiction in Antarctica" as one of the measures appropriate to discussion by the periodic Consultative Meetings of the Contracting Parties. However, to date there has been no comprehensive discussion or recommendation concerning this subject.

United States Activities in Antarctica[22]

The United States program in Antarctica is now in its tenth year and involves expenditures of about twenty-eight million dollars per annum.[23] Responsibility for implementation of the program is divided principally between the National Science Foundation and the United States Navy.[24] In addition, the Department of State has responsibility for certain international aspects of the program and provides for interagency coordination within the government. Other government agencies participate as their special interest and expertise require.

The National Science Foundation, an independent government agency, is responsible for all United States scientific activities in Antarctica, collectively referred to as the United States Antarctic Research Program.[25] The Foundation implements this program principally through the extension of grants to American universities and scientific institutions, the transfer of funds to other governmental agencies (such as the Weather Bureau and Bureau of Standards), and contractual arrangements with certain private concerns, providing for the carry-

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[21] There is reason to believe that certain countries at the Antarctic Conference, including the United States, were prepared to support a provision establishing exclusive jurisdiction by each state over all its own nationals. However, certain claimant countries were concerned that such a provision might impair the status of their territorial claims, and the more limited provision resulted.

[22] For a statement of present United States policy, see Sisco, *The United States Program in Antarctica*, 1 Antarctic J. of the United States 1 (1966). An excellent history of the organization and development of the United States program is set forth in Dater, *Organizational Development of the United States Antarctic Program, 1954–1965*, 1 Antarctic J. of the United States 5 (1966). For a detailed description of current activities and research, see *Plans and Events of the 1965–66 Summer Season*, 1 Antarctic J. of the United States 5 (1966).

[23] About eight million dollars is contributed by the National Science Foundation and the remainder by the Navy. Since 1954 the United States has expended $285–300 million on its Antarctic program.

[24] The basic instrument defining functions is Bureau of the Budget Circular No. A–51 of August 3, 1960 on "Planning and Conduct of the United States Program in Antarctica," reprinted in *Hearings Before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs*, 87th Cong., 1st Sess., Ser. 11, at 17–18 (1961). This circular has been slightly modified by the President's statement of February 19, 1961, abolishing the Operations Coordinating Board, and by the establishment in April 1965 by the Acting Secretary of State of the Antarctic Policy Group. This group, composed of the Assistant Secretary of State for International Organization Affairs, the Assistant Secretary of Defense for International Security Affairs, and the Director of the National Science Foundation, acts as a formal high-level coordinating structure within the executive branch. See *Hearings Before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs*, 89th Cong., 1st Sess., Ser. 6, at 34 (1965). An informal Interagency Coordinating Committee on Antarctic functions as a working-level means of coordination. There have been proposals in Congress, opposed by government agencies concerned, for establishment of a "Richard E. Byrd Antarctic Commission" to oversee United States activities. See various hearings referred to in note 7 *supra*.

[25] The Foundation's Office of Antarctic Programs carries operating responsibility. It maintains close liaison with the Committee on Polar Research of the nongovernmental National Academy of Sciences, which in turn is represented on the Scientific Committee on Antarctic Research of the nongovernmental International Council of Scientific Unions.

ing out of specific research projects in Antarctica as proposed by these institutions and agencies. The Foundation also promotes arrangements for the exchange of scientists between the United States and other Antarctic treaty parties maintaining stations or expeditions in Antarctica.

The Navy bears responsibility for the planning and implementation of logistic operations in support of the research program, including the construction, operation and maintenance of United States Antarctic stations and the transport of United States personnel, supplies and equipment. This Navy aspect of the program has become known as "Operation Deepfreeze," and is carried out by the Commander, United States Naval Support Force Antarctica, who acts as Senior United States Representative in Antarctica.[26]

How many people are involved?[27] During the 1964–1965 season approximately 1,300 persons were present on the continent at some time or other in connection with the American program. As might be expected, the summer population far exceeded that in winter. The peak American population in the summer of 1964–1965 was about 1,150; the winter population was 290.

The relative number of military personnel to civilians is significant to the problem of control of criminal conduct. While United States activities in Antarctica are wholly peaceful and scientific in purpose, the size and complexity of the Navy's logistic task has resulted in a large preponderence of military personnel. Of the 1,150 persons participating in the United States program in Antarctica during 1964–1965 summer season, some 900 were military and about 250 civilian. Of 289 persons wintering-over at United States stations during the 1964–1965 winter season, 251 were military and only 38 civilian. Thus, military personnel typically make up more than seventy-five per cent of the United States party.

While most of the United States party are American nationals, a few are not. Of course, almost all United States military personnel are Americans. However, of about 250 civilians in Antarctica under auspices of this program during the 1964–1965 summer season, about 30 were foreign nationals.[28] In addition, of some 100 civilians visiting United States Antarctic stations for brief periods during the 1964 summer season as special visitor, about half were foreign nationals. On the other hand, only one of the 38 civilians wintering-over in United States stations in 1965 winter season was a foreign national—in that case, a Soviet exchange scientist. Most of these foreign nationals were nationals of countries also parties to the Antractic Treaty.[29] Such foreign nationals either on the continent under United States auspices or physically present at United States stations or on United States field parties will, for brevity, hereafter be referred to as "accompanying" foreign nationals.

Some American scientists participate in foreign programs. Thus, during the 1964–1965 summer season eight Americans spent a substantial part of the period at foreign stations or with foreign field parties.[30] During the following winter, one American scientist wintered-over at the Soviet Union's Mirnyy station.

In recent years, all members of the United States Antarctic party have been

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[26] On recent Navy activities, see U.S. Navy, Task Force 45, Report on Operation Deepfreeze 65.

[27] The statistics used in this Article are derived from U.S. Navy, Task Force 43, Report on Operation Deepfreeze 65, and from information furnished by the National Science Foundation's Office of Antarctic Programs. While winter figures are presumably accurate, summer figures are only approximate. Also, the summer figures do not include about 35 civilian scientists (including several women) and 48 crew members of the U.S.N.S. *Eltanin*, an Antarctic (multi-discipline) research vessel operated for the Foundation by the Military Sea Transportation Service. The number of United States personnel in Antarctic and the military-civilian ratio have remained relatively stable over the last ten years.

[28] Again, this figure must be regarded as only approximate. For example, certain scientists receiving grants through United States institutions may be permanent or temporary resident aliens.

[29] Foreign scientists from treaty countries may technically fall into the category of "exchange scientists," and thus be exempt under the treaty from United States jurisdiction. In fact, while certain exchanges (United States-Soviet exchanges, for example) are handled on a formal reciprocal basis, most are not, thus raising a question in this regard. During the 1965–1966 summer session, scientists from Belgium, Chile, Norway, Japan, Germany, and the Soviet Union, and nonscientific representatives from Argentina, Australia, Belgium, Chile, Japan, South Africa, and the United Kingdom will accompany the United States expedition.

[30] During the 1965–1966 summer season, United States scientists joined the expeditions of Argentina, Australia, Chile, Japan, South Africa, and the Soviet Union, and a United States nonscientific representative accompanied the Belgian expedition.

present under official auspices; there have been no private expenditures or tourists [31] Moreover, all United States personnel on the continent have been male.

Where do these Americans and accompanying foreign nationals live in Antarctica? The main extra-continental staging point for United States Antarctic activities is a major facility established at Christchurch, New Zealand, under agreement with that country.[32] On the continent itself, members of the United States party are for the most part based at one of five United States stations: McMurdo Station, located on Ross Island (and, associated with it, Williams Air Field, built on the Ross Ice Shelf), the largest station and principal continental staging point; Byrd Station, constructed under the ice in Marie Byrd Land; Amundsen-Scott South Pole Station, at the Pole itself; Palmer Station, newly constructed near the tip of the Antarctic Peninsula; and Plateau Station, presently under construction in Queen Maud Land on the Polar Plateau.[33] In the summer season, Hallett Station and two small meterological stations are also manned. Another station, Eights Station in Ellsworth Land, was recently closed. The permanent stations are generally well equipped and provide surprisingly comfortable living conditions.

While some of these stations are located in the as yet unclaimed sector of Antarctica, others are in claimed areas. Thus, McMurdo Station is within territory claimed by New Zealand, and Palmer Station is in an area claimed separately by the United Kingdom, Chile and Argentina. Also, American field parties frequently operate in areas of Antarctica claimed by other countries.

In the summer season, there is a constant flow of men and supplies between Christchurch and McMurdo Station, and between the stations and field parties within Antarctica, and personnel are frequently away from the stations on scientific field parties or support missions. During the long night of the Antarctic winter, however, personnel rarely leave the immediate station area, and the stations, isolated from each other and the outside world, must be wholly self-sufficient. No ships can penetrate the ice pack in these months, and only one emergency flight has thus far successfully been made from New Zealand to the continent during this period.

At each Antarctic station, there is a military or naval officer-in-charge who is in command of all military personnel and has responsibility for providing support to scientific personnel and their operations. The officer-in-charge is also gen-

[31] An exception was the privately-sponsored Finn Ronne Antarctic Expedition of 1947–1948 (which included two wives of expedition members). In January 1966 a private tourist party sponsored by the Argentine government visited the Antarctic peninsula travelling aboard an Argentine naval transport. Almost all the tourists were United States citizens, and most were women.

[32] Agreement on Operations in Antarctica, Dec. 24, 1958 [1959] 9 U.S.T. & O.I.A. 1502, T.I.A.S. No. 4151, extended October 18, 1960 [1961] 11 U.S.T. & O.I.A. 2205, T.I.A.S. No. 4591.

[33] The relative size of the stations and distribution of United States personnel is indicated in the following tables, which are adapted from statistics presented in U.S. Navy, Task Force 43, Report on Operation Deepfreeze 65, at 102. Navy figures do not give a military-civilian breakdown for the summer season. During the 1965 summer season, Hallett Station was in the process of being closed down for year-round operations and Palmer Station was not yet in operation. Eights Station was closed down in November 1965 and Plateau Station is presently in process of construction.

[See the following table:]

U.S. PERSONNEL IN ANTARCTICA

Station	Austral summer 1965							
	McMurdo	Byrd	Pole	Hallett	Eights	Small stations	In field	Total
Average	758	66	38	25	15	8	31	941
High	961	110	71	62	27	13	61	

	Austral winter 1965						
	McMurdo	Byrd	Pole	Eights	Palmer	Mirnyy (U.S.S.R.)	Total
Military	208	19	14	6	4		251
Civilian	[1] 12	9	7	5	5	1	39
Total	220	28	21	11	9	1	290

[1] Includes 1 Soviet exchange scientist.

erally responsible for maintaining the safety, health, order and morale of the station. In addition, the National Science Foundation appoints, from among the senior scientific personnel present, a station scientific leader who exercises authority over the station scientific program and personnel. The officer-in-charge and station scientific leader are generally coequal in status, except in emergencies, when the former assumes full authority.

What of the future? It seems likely that the United States will continue to maintain a substantial Antarctic program at about the present level for some time to come. Prospects for useful scientific study are far from exhausted.[34] Moreover, general policy considerations might support continuation of such a program at least so long as other nations, including the Soviet Union, remain active in this area. On the other hand, since the present level of personnel is adequate to the scientific work to be done, there is little reason to expect that the number of Americans in Antarctica will substantially increase in the near future. However, while the size of the American Antarctic community is unlikely to change dramatically, its composition might. Thus, any transfer of Antarctic logistic support functions from military to civilian agencies or private contractors could produce a significant increase in the numbers and proportion of the civilian population. Moreover, as the safety and comfort of Antarctic life increase, it is not impossible as a long-term prospect that women, or even families, may eventually become part of the Antarctic scene.

THE PRESENT LEGAL SITUATION

If a member of the United States party were to commit in Antarctica some act which would normally be considered criminal if committed in the United States or some other civilized region, what law would apply? Since there has as yet been no occasion to test this question, neither experience nor specific precedent offer guidance. Let us examine the various possibilities.

Applicability of United States Law

Where can one look for United States law possibly applicable to criminal conduct in Antarctica? The laws of the several states would hardly be construed to extend to that region,[35] so such law, if it exists, must be federal law. Moreover, since there is no federal common law of crimes,[36] the source must be found in federal statutes.[37] However, there is no federal statute specifically addressed to criminal conduct in Antarctica. Therefore, if criminal acts in Antarctica are in fact proscribed by United States law, it must be because some broader federal criminal statute, not in terms covering crimes in Antarctica, can be construed to embrace such conduct.

In examining various federal statutes to test their possible applicability to conduct in Antarctica, certain principles should be kept in mind. First, the application of the statute to conduct in Antarctica must be constitutional. Congress has no express general authority either to enact criminal law or to control conduct of Americans or, even more clearly, foreigners abroad. Consequently, authority to control conduct in Antarctica, if it exists, must be justified as a reasonable exercise of some other power granted Congress by the Constitution, read, perhaps, with the "necessary and proper" clause.[38] Moreover, the statute

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[34] For discussion of Antarctic scientific activities, see Gould, *Antarctica—Continent of International Science,* 150 Science 1775 (1965). The topic is also explored in various articles appearing in the September 1962 issue of *Scientific America.* See generally references cited in notes 5 and 6 *supra.*

[35] State criminal statutes are normally construed as applicable only within state boundaries, except where the statute clearly indicates otherwise. See *People* v. *Buffum,* 40 Cal. 2d, 709, 715, 256 P. 2d 317, 320 (1953). See generally Harvard Research in International Law, *Jurisdiction With Respect to Crime,* 29 Am. J. Int'l L. Spec. Supp. 435, 466, 470–71, 473, 485 (1935) [hereinafter cited as *Harvard Research in International Law*]. As to possible constitutional limits on state power to punish extraterritorial crime, see *Hartford Acc. & Indem. Co.* v. *Delta & Pine Land Co.,* 292 U.S. 143 (1934); *Home Ins. Co.* v. *Dick,* 281 U.S. 397 (1930); Note, 1957 Wis. L. Rev. 164. See also statements that power to punish crimes committed on the high seas has been delegated to the federal government, *Crapo* v. *Kelly,* 83 U.S. (16 Wall.) 610, 623 (1872) (dictum); *McDonald* v. *Mallory,* 77 N.Y. 546, 553 (1879) (dictum). *Contra, Skirlotes* v. *Florida,* 313 U.S. 69 (1941), indicating that a state may apply its criminal law to conduct of its own citizens on the high seas.

[36] *United States* v. *Hudson,* 11 U.S. (7 Cranch) 32 (1812); *United States* v. *Hall,* 98 U.S. 343 (1878) (by implication).

[37] See *Viereck* v. *United States,* 318 U.S. 236, 241 (1943); *United States* v. *Flores,* 289 U.S. 137, 151 (1955); *Jones* v. *United States,* 137 U.S. 202, 211 (1890); *United States* v. *Britton,* 108 U.S. 199, 206 (1885).

[38] *Cf. United States* v. *Olassio,* 313 U.S. 299 (1941); *United States* v. *Hall,* 98 U.S. 343 (1878).

must, as so applied, meet "due process" requirements by giving clear notice of such applicability to persons potentially covered.[39] Normally this principle has been invoked only with respect to ambiguities in the substantive description of the offense. However, it is arguably relevant also where there is ambiguity respecting the place in which such conduct is prohibited.[40]

Second, statutes expressly applicable solely to conduct within "the United States," its "territories," its "possessions" or "areas subject to its jurisdiction" could not be applied to Antarctica without raising serious problems under the Antarctic Treaty. As previously indicated, the United States has never asserted any territorial claim in Antarctica, and article IV(2) of the treaty would appear to bar it from now doing so. The application to Antarctica of statutes so framed might imply such a claim.[41]

Finally, even where the locus of application of a federal criminal statute is not expressly so limited, it will ordinarily be construed as applying only to conduct within the United States.[42] The courts have said that they will apply such a statute to extraterritorial conduct only when Congress has made it apparent that the statute should have such effect.[43]

American Military Personnel

Regardless of the possible applicability of other federal statutes to American nationals in Antarctica, American military personnel in Antarctica are in any event clearly subject to United States law by reason of the provisions of the Uniform Code of Military Justice.[44] The code is by its terms applicable, *inter alia*, to all "members of a regular component of the armed forces," [45] and it "applies in all places." [46] It provides a comprehensive body of criminal and disciplinary law capable of fully regulating the conduct of military personnel in Antarctica and of subjecting violators to punishment.[47]

Interesting practical problems might nevertheless arise due to unique Antarctic conditions. Thus, in the case of serious offenses by military personnel, court-martial on the continent itself might be impracticable, and the most reasonable procedure might be to remove the offender to New Zealand, Hawaii, or the continental United States for trial. However, if the offense were committed by a member of a wintering-over party, removal would be impossible until the station was relieved in the Antarctic spring.

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[39] See, e.g., *United States* v. *Harriss*, 347 US. 612, 617 (1954); *Lanzetta* v. *New Jersey*, 303 U.S. 451, 453 (1939); *United States* v. *Resnick*, 299 U.S. 207, 209–10 (1936); *McBoyle* v. *United States*, 283 U.S. 25 (1951); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 94–96 (1820) (by implication).

[40] The fact that the crime was *malum in se* might diminish the weight given such considerations. However, I have found little direct authority on this complicated question. In *United States* v. *Cordova*, 89 F. Supp. 298, 302 (E.D.N.Y. 1950), which involved such a question of locus, the court, paraphrasing Justice Holmes in the *McBoyle* case, *supra* note 39, stated: "It is, of course, ridiculous to suppose . . . that any criminal considers the text of the law before he murders or steals. At the same time it is important that a rule of conduct must be considered in the light of the 'picture' it evokes in the common mind." For another suggestion that the rule of strict construction applies to the place of commission as well as the elements of a crime, see the dissenting opinion of Mr. Justice Gray in *United States* v. *Rodgers*, 150 U.S. 249, 278–79 (1893).

[41] The position of the executive that the United States does not exercise sovereignty in Antarctica would appear binding on the courts. See *Jones* v. *United States*, 137 U.S. 202, 211 (1890); *Williams* v. *Suffolk Ins. Co.*, 38 U.S. (13 Pet.) 415, 420 (1839); *United States* v. *Shiroma*, 123 F. Supp. 145 (D. Hawaii 1954); *Kuwahara* v. *Acheson*, 96 F. Supp. 38, 40 (S.D. Cal. 1951). But see *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377, 380 (1948).

As to what constitutes "the United States," its "territories," "possessions," or "areas subject to its jurisdiction," see, e.g., *United States* v. *Spelar*, 338 U.S. 217 (1949); *Vermilya-Brown Co.* v. *Connell*, *supra*. See generally Green, *Applicability of American Law to Overseas Areas Controlled by the United States*, 68 Harv. L. Rev. 781 (1955). 18 U.S.C. § 5 (1964) defines the term "United States" as used in that title in a territorial sense as including "all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone."

[42] See, e.g., *Steele* v. *Bulova Watch Co.*, 344 U.S. 280, 288 (1952); *Foley Bros.* v. *Filardo*, 356 U.S. 281, 285 (1949); *Blackmer* v. *United States*, 284 U.S. 421, 437 (1932); *United States* v. *Bowman*, 260 U.S. 94, 98 (1922); *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 357 (1909); Restatement, Foreign Relations Law of the United States § 38 (Tent. Draft 1962) [hereinafter cited as Restatement, Foreign Relations Law].

[43] See, e.g., *Blackmer* v. *United States*, *supra* note 42; *United States* v. *Bowman*, *supra* note 42. But cf. *Vermilya-Brown* v. *Connell*, 335 U.S. 377, 381 (1948).

[44] 10 U.S.C. §§ 801–940 (1964).

[45] 10 U.S.C. § 802 (1964).

[46] 10 U.S.C. § 805 (1964); see *Thompson* v. *Willingham*, 217 F. Supp. 901, 903 (M.D. Pa. 1962).

[47] Punitive articles of the code are set forth in subchapter X (arts. 77–134), 10 U.S.C. §§ 877–934 (1964). Provisions on apprehension and restraint are set forth in subchapter II (arts. 7–14), 10 U.S.C. §§ 807–14 (1964). Provisions respecting nonjudicial punishment and courts-martial are contained in subchapters III–IX (arts. 15–76), 10 U.S.C. §§ 815–76 (1964).

Special problems might also arise where a member of the armed forces allegedly committing an offense while at a foreign station or on a foreign field party was held in foreign custody. Presumably United States military authorities would request the foreign authorities to surrender the offender in order to permit trial by United States court-martial. However, while foreign governments might accede to such requests in practice as a matter of comity, their obligation to do so under any existing extradition agreements would appear doubtful.[48] Typically, such extradition agreements require both that the offense for which extradition is sought be committed "within the territory" or "within the jurisdiction" of the requesting state and that the offender be found "within the territory" of the requested state.[49] While the United States might conceivably argue a broad meaning of "jurisdiction" as encompassing the extraterritorial jurisdiction established over its military personnel by the Uniform Code,[50] it is difficult to see how the United States could maintain either that the offense occurred within its territory or that the offender was found in another state's territory. Such an assertion would clearly be inconsistent with the United States position neither claiming Antarctic territory itself nor recognizing such claims by other states.

American Civilians

With respect to American civilians in Antarctica, the situation is more complex. Under our federal system, the main burden of control of criminal conduct within the United States is carried by state law, and the federal government has for the most part legislated in this area only interstitially and with respect to matters of particular federal concern. Moreover, a number of statutes which might otherwise have bearing on Antarctic conduct are expressly limited in coverage to conduct within the United States or areas subject to its jurisdiction.[51] Even statutes not having such express territorial limitations would, under the rule previously noted, normally be construed as having only such territorial application.[52] However, several categories of federal criminal statutes are clearly intended to have extraterritorial application and bear closer examination as of possible relevance: the Uniform Code of Military Justice itself; the group of statutes concerning crimes in "the special maritime and territorial jurisdiction of the United States"; and a variety of miscellaneous criminal statutes applicable to particular types of criminal conduct outside the United States.

The Uniform Code of Military Justice.—The possibility that the code might be applicable to American civilians in Antarctica arises from the language of paragraphs (11) and (12) of article 2 of the code which purport to embrace within its coverage, respectively, "persons serving with, employed by, or accompanying the armed services outside the United States" and "persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States."[53] However, even apart from the difficulty of construing the language of either of these paragraphs to cover the special factual and legal situation of American civilians in Antarctica,[54] it is virtually certain that the code could not constitutionally be so applied. A line of recent Supreme Court decisions involving

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[48] In the absence of an extradition treaty a state has no obligation to surrender fugitive offenders to another state. *Factor* v. *Laubenheimer,* 290 U.S. 276, 287 (1933); *United States* v. *Rauscher,* 119 U.S. 407, 411–12 (1886); *Ex parte* McCabe, 46 Fed. 363, 370–73 (W.D. Tex. 1891); *Chandler* v. *United States,* 171 F. 2d 921, 935 (1st Cir. 1948) (dictum), cert. denied, 336 U.S. 918 (1949). However, the United States has on occasion obtained extradition of a fugitive as an act of comity. See *United States* v. *Insull,* 8 F. Supp. 310 (N.D. Ill. 1934); 4 Hackworth, op. cit., supra note 11, at 11–12.

[49] See, for a recent example, articles I and IV of United States-Swedish Extradition Convention of 1961, T.I.A.S. No. 5496. See also *Terlinden* v. *Ames,* 184 U.S. 270, 289 (1902); *In re* Taylor, 118 Fed. 196 (D. Mass. 1902).

[50] However, an Attorney General's opinion of 1873 construed the words "committed within the jurisdiction" in the 1852 United States-Prussian Extradition Treaty as referring only to locality. 14 Ops. Att'y Gen. 281 (1875).

[51] See, for instance, the list of civil and criminal statutes having express territorial limitation set out in *Vermilya-Brown Co.* v. *Connell,* 335 U.S. 377, 386–87 n. 12 (1948), and in Mr. Justice Jackson's dissent, id. at 398–401 nn. 10 and 11.

[52] See note 42 *supra.*

[53] 10 U.S.C. §§ 202(11),(12) (1964).

[54] Thus, as regards article 2(11), in view of the scientific purpose of the United States program and the Navy's purely supporting role, only a few civilian technicians in Antarctica have any direct contractual relation with the military forces. As regards article 2(12), while the Navy has certain operational support functions with respect to United States Antarctic stations, they are not formally under the control of the Secretary of the Navy. Moreover, any United States policy formally considering its Antarctic stations as being under Navy control and as reserved or required by the United States might raise difficulties under both the demilitarization and claim moratorium provisions of the Antarctic Treaty.

attempted courts-martial of American civilian employees and dependents accompanying United States military forces at United States bases abroad has held that such American civilians, wherever they may be, cannot, at least in peacetime, be subjected to United States military court-martial so as to deprive them of the right to trial by jury and other procedural rights guaranteed by the Constitution.[55] The effect of these decisions has been to nullify substantially, if not strike down completely, paragraph (11), and probably also paragraph (12), of article 2.[56] American civilians in Antarctica have a more tenuous relation with the military than the civilians involved in these cases, and the arguments for non-applicability of the code to their situation would consequently be even stronger.

The Special Maritime and Territorial Jurisdiction.—The problem of control of criminal conduct in special areas or situations such as Antarctica is not unique in American experience. From the earliest days of the Republic, Congress has had to deal with analogous problems. One obvious case involves the regulation of conduct in United States territories and possessions, and Congress has usually enacted special legislation for each such area.[57] (Of particular relevance for present purposes, however, are such special situations as American ships in interstate or foreign waters, or on the high seas; federal lands "enclaves") within the several states, either reserved upon grant of statehood or subsequently acquired by purchase or cession; guano islands appertaining to the United States; and, most recently, American aircraft over interstate or foreign waters, or over the high seas. To deal with the control of criminal conduct in this latter group of situations, Congress has gradually evolved what is in effect a special and limited criminal code, applicable to major crimes within the so-called "special maritime and territorial jurisdiction of the United States."

This statutory scheme may be briefly described. Section 7 of Title 18 of the United States Code[58] defines the "special maritime and territorial jurisdiction of the United States" as follows:

> The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:
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> (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
>
> (2) Any vessel registered, licensed, or enrolled under the laws of the

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[55] *McElroy* v. *United States ex rel. Guagliardo*, 361 U.S. 281 (1960); *Grisham* v. *Hagan*, 361 U.S. 278 (1960); *Kinsella* v. *United States ex rel.* Singleton, 361 U.S. 234 (1960); *Reid* v. *Covert*, 354 U.S. 1 (1957); cf. *Toth* v. *Quarles*, 350 U.S. 11 (1955). For discussion of these cases, see, e.g., Everett, *Military Jurisdiction Over Civilians*, 1960 Duke L.J. 366; Note, *Criminal Jurisdiction Over Civilians Accompanying American Armed Forces Overseas*, 71 Harv. L. Rev. 712 (1958); 46 Va. L. Rev. 576 (1960). These decisions do not reach "petty offenses," although the armed services have apparently refrained from trying civilians for such offenses. Military base commanders have limited disciplinary and exclusionary powers as regards civilians on military bases, see *Cafeteria Workers* v. *McElroy*, 367 U.S. 886 (1961), but this principle would not seem applicable to Antarctic stations, which are not military reservations.

[56] While the cases involved only articles 2(11) and 3(a) of the code, the reasoning would seem to cover article 2(12) as well.

[57] U.S. Const. art. IV, § 3 specifically empowers Congress to make rules and regulations respecting United States territory. For an example of such legislation, see the Organic Act of Guam. 48 U.S.C. § 1421 (1964).

Several such statutes furnish suggestive analogies with regard to the Antarctic problem. For example, the provision establishing criminal jurisdiction over the guano islands reads:

> All acts done, and offenses or crimes committed, on any island, rock or key mentioned in section 1411 of this title [guano islands appertaining to the United States], by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant ship or vessel belonging to the United States; and shall be punished according to the laws of the United States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended to such island, rocks and keys.

48 U.S.C. §1417 (1964). This provision was upheld in *Jones* v. *United States*, 137 U.S. 202 (1890). Also of interest is 48 U.S.C. § 644a (1964), extending the jurisdiction of the District Court for the District of Hawaii, *inter alia*, to Canton and Enderbury Islands (which are held in "condominium" with the United Kingdom), with a proviso that such extension should not be construed as prejudicial to the United Kingdom's claim to the islands, and extending the laws of the United States relating to civil acts or criminal offenses consummated or committed on the high seas on board a vessel belonging to the United States to acts or offenses on the two islands. Cf. *Yandell* v. *Transocean Air Lines*, 253 F. 2d 622 (9th Cir. 1957).

[58] 18 U.S.C. § 7 (1964).

United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

(4) Any island, rock, or key containing deposits of gauno, which may, at the discretion of the President, be considered as appertaining to the United States.

(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

Other sections of title 18 provide that certain types of conduct, when committed within the "special jurisdiction" as so defined, shall constitute federal crimes. The conduct thus proscribed is arson, assault, maiming, embezzlement and theft, receiving stolen property, false pretenses, murder, manslaughter, attempts to commit murder or manslaughter, malicious mischief, rape, and robbery.[59] Other federal statutes vest the United States district courts with jurisdiction over all offenses against the United States,[60] and provide that, as regards venue, the trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or district shall be in the district where the offender is arrested or first brought.[61]

The provisions of title 18 relating to the special maritime and territorial jurisdiction are intended to provide at least a minimal framework of legal control over conduct in the areas and situations covered. If Antarctica, or even United States stations on the continent, can be considered as within this special jurisdiction, American civilians (and American military personnel and probably foreign nationals as well) are subject to United States law with respect to most serious offenses they may there commit.

At least one type of situation clearly falls within the special jurisdiction—criminal conduct occurring either on board American naval or other vessels on the waters off the Antarctic continent or on board American military or civil aircraft over such waters. Paragraphs (1) and (5) of section 7 of title 18 are by their terms applicable in such cases.[62] In fact, since the United States does not recognize any territorial claims in Antarctica, it would presumably also not recognize the existence of any "territorial waters," and the "high seas" might consequently be considered to extend to the very shores of the continent.[63] In any case, the admiralty jurisdiction of the United States has been held to extend even to American ships within foreign territorial waters.[64]

An interesting problem is posed by the fact that in many areas of Antarctica permanent ice shelves extend out for considerable distances from the continent and, in winter, the Antarctic Ocean may be covered for hundreds of miles from

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[59] 18 U.S.C. §§ 81, 113, 114, 661, 662, 1025, 1111(b), 1112(b), 1113, 1363, 2031, and 2111 (1964).

[60] 18 U.S.C. § 3231 (1964).

[61] 18 U.S.C. § 3238 (1964).

[62] Neither the Constitution nor statutes define the phrase "admiralty and maritime jurisdiction" as used in article III, § 2. See generally United States v. Flores 289 U.S. 137 (1933); United States v. Rodgers, 150 U.S. 249 (1893). The phrase "out of the jurisdiction of any particular state" means only the states of the United States and not foreign governments. Wynne v. United States, 217 U.S. 234 (1910).

[63] Thus, the Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, T.I.A.S. No. 5639, defines the territorial sea as an extension of land territory over which some state has sovereignty. Article I of that convention provides: "The sovereignty of a state extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea." Conversely, article I of the Convention on the High Seas, April 29, 1958 [1963] 13 U.S.T. & O.I.A. 2312, T.I.A.S. No. 5200, provides: "The term 'high seas' means all parts of the sea that are not included in the territorial sea or in the internal waters of a State."

[64] United States v. Flores, 289 U.S. 137 (1933); United States v. Rodgers, 150 U.S. 249 (1893). However, the admiralty and maritime jurisdiction cannot be extended over land. Jones v. United States, 137 U.S. 202, 211 (1890).

shore and ice shelves by vast fields of pack ice. Would American stations or field parties on such ice, or aircraft over it be covered by paragraphs (1) and (5) of section 7? It would seem reasonable to construe pack ice, which melts and breaks out to sea in the spring, as "high seas" within the meaning of the statute. Its physical state is temporary and it occupies areas normally part of the high seas. Moreover, it is clearly not subject to territorial claim by any state, and no particular territorial jurisdiction is applicable.[65] Consequently, it would appear within the rationale and purpose of the concept of the special jurisdiction.[66] On the other hand, the permanent ice shelves are physically and functionally an extension of the continental ice cover, and there seems little reason to view them differently from the continent itself as far as application of the statute is concerned. In fact, Article VI of the Antarctic Treaty implicitly treats these ice shelves as part of the continent rather than the "high seas": it provides that the treaty "shall apply to the area South of 60° South Latitude, including all ice shelves . . . ," but that the treaty shall not affect any rights under international law regarding the "high seas" within this area. Moreover, scientific studies suggest that large portions of the Antarctic "continent," including those areas in which many United States activities are conducted, may in effect be permanent ice shelves covering land areas otherwise below sea level. To make application of section 7 turn on such distinctions would seem impractical.

What of the Antarctic continent (and permanent ice shelves) itself? The only provision of section 7 which might arguably apply is the first clause of paragraph (3) which includes within the special jurisdiction "any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof." However, the applicability of this language to the Antarctic situation appears doubtful for several reasons.

First, any executive or judicial characterization of United States Antarctic stations, or, a fortiori, broader areas of Antarctica, as "reserved or acquired for the use of the United States" or under its "exclusive or concurrent jurisdiction" could be argued to be inconsistent with the United States position refraining from claiming territory in the Antarctic, and might well both raise problems under article IV(2) of the treaty and cause friction with other Antarctic Treaty parties. It is unlikely, for example, that New Zealand would agree that McMurdo Station, which is within territory New Zealand claims, is "reserved or acquired for the use of the United States" and its "exclusive or concurrent jurisdiction." Nor would the United Kingdom, Chile, or Argentina be likely to welcome such a characterization of Palmer Station, which is within an area each of them claims.[67] Courts might weigh such considerations heavily in construing this paragraph.[68]

Second, the legislative history of paragraph (3) and its statutory predecessors indicates that the intent of Congress in enacting that provision was solely to cover the special problem of federal enclaves and other federal areas within the several states, pursuant to authority granted in this respect by article I,

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[65] The Harvard Research in International Law, at 585–86, comments: "It is extremely doubtful whether . . . ice fields or ice floes can be regarded as territory or subject to territorial authority." See generally Colombos, International Law of the Sea 118 (5th rev. ed. 1962); International Law Comm'n, Report on the Regime of the Territorial Sea 20 (1952), in 2 International Law Comm'n Yearbook 1952, at 32, suggesting that the limits of the territorial sea are not affected by whether or not is is frozen.

[66] See United States v. Holmes, 18 U.S. (5 Wheat.) 412 (1820), indicating that whether the offender is on or in the sea may be irrelevant to application of the statute.

[67] As to the political consequences of a holding that United States Antarctic stations are within United States jurisdiction, compare the State Department letter quoted by Mr. Justice Jackson in his dissent in Vermilly-Brown Co. v. Connell, 335 U.S. 377 (1948):

> Any holding that the bases obtained from the Government of Great Britain on 99 years leases are "possessions" of the United States in a political sense would not in the Department's view be calculated to improve our relations with that Government. Moreover, such a holding might very well be detrimental to our relations with other foreign countries in which military bases are now held or in which they might in the future be sought.

Id. at 402 n. 12 (dissenting opinion).

[68] In The Charming Betsy, 6 U.S. (2 Cranch) 64, 117–18 (1804), Mr. Chief Justice Marshall stated "[A]n act of congress ought never to be construed to violate the law of nations' if any other possible construction . . ." Accord, Lauritzen v. Larsen, 345 U.S. 571, 578 (1953); Sandberg v. McDonald, 248 U.S. 185, 195 (1918); Macleod v. United States, 229 U.S. 416, 434 (1913); cf. The Nereide, 13 U.S. (9 Cranch) 388, 423 (1815). See also Cook v. United States, 288, U.S. 102 (1933), holding that United States courts could not acquire jurisdiction by a treaty violation.

section 8, clause 17 of the Constitution.[69] The paragraph has in practice only been applied to such areas.[70] Moreover, the other paragraphs of section 7 suggest that where Congress intended to cover special situations outside the United States, it did so expressly.

Third, even if paragraph (3) could as a technical matter be construed to cover the Antarctic situation, a problem of "due process" might remain. Would this language fairly serve to put persons in Antarctica on notice that the criminal provisions of the special jurisdiction were applicable to Antarctic conduct?[71]

Finally, the above arguments suggest that at most paragraph (3) could be construed as applicable only to United States stations themselves; it could not be construed as applicable throughout Antarctica. Thus, even assuming the most liberal construction of paragraph (3) and hence the ambit of the special jurisdiction, its reach in Antarctica would still be limited.

The 1950 case of *United States* v. *Cordova*,[72] involving an assault by a passenger on a United States flag aircraft on other passengers while in flight over the Atlantic Ocean between San Juan, Puerto Rico and New York, suggests that the federal courts may construe the provisions of the special jurisdiction quite narrowly. Section 7, as enacted in 1948, included only the first four of its present five paragraphs; that is, there was no express coverage of aircraft over the high seas. Despite a finding that the accused had in fact committed the assault, the court in *Cordova* arrested judgment for want of jurisdiction, holding that the offense was neither committed on board an American "vessel" nor on the "high seas" within the meaning of section 7 as it then read.[73] This decision led directly to a 1952 amendment of section 7 which added present paragraph (5).[74]

Miscellaneous Statutes. There are a surprising number of miscellaneous federal statutes either expressly or by implication applicable to Americans, and sometimes foreign nationals as well, outside the United States. For example, treason, espionage, fraud against the government, counterfeiting, perjury, and

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[69] 18 U.S.C. § 7 (1964) was based on Act of June 11, 1940, ch. 323, 54 Stat. 304, amending Act of March 4, 1909, ch. 321, § 272, 35 Stat. 1142. The provision that has become paragraph (3) was originally § 3 of the Act of April 30, 1790, 1 Stat. 112, punishing murder and manslaughter committed "within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and executive jurisdiction of the United States." Before 1940, the predecessor of the present § 7 still referred to "exclusive jurisdiction." However, by the Act of June 11, 1940, 54 Stat. 304, Congress amended the section to read "exclusive or concurrent jurisdiction" to meet certain issues raised by the further development of doctrine concerning jurisdiction over Federal enclaves within the States. The reviser's note to the 1948 revision indicates that, while the term "special maritime and territorial jurisdiction" was substituted for the previous words "the crimes and offenses defined in sections 451–468 of this title shall be punished as herein prescribed," the extent of the special jurisdiction as originally enacted was carefully preserved. See generally Hart & Wechsler, The Federal Courts and the Federal System 1090 (1953). Note also that the Assimilative Crimes Act, 18 U.S.C. § 13 (1964), which is clearly intended to apply only to such Federal enclaves, in terms extends to "any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title."

[70] See, e.g., Bowen v. Johnston, 306 U.S. 19 (1939); James v. Dravo Contracting Co., 302 U.S. 134 (1937); Note, Federal Areas: The Confusion of a Jurisdictional-Geographical Dichotomy, 101 U. Pa. L. Rev. 124 (1952).

[71] See notes 39 & 40 supra.

[72] 89 F. Supp. 298 (E.D.N.Y. 1950).

[73] Jury was waived in the case. See generally Brown, Jurisdiction of United States Courts Over Crimes in Aircraft, 15 Stan. L. Rev. 45 (1962); Hilbert, Jurisdiction in High Seas Criminal Cases, 18 J. Air L. & Com. 427 (1951); 19 J. Air L. & Co. 25 (1952) (criticizing decision); Note, 36 Cornell L.Q. 374 (1951).

For another instance of narrow construction, see United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818), where the Supreme Court, speaking through Mr. Chief Justice Marshall, held that Federal courts had no jurisdiction to try an indictment for murder committed on a United States naval vessel in Boston Harbor under either § 8 of the Crimes Act of 1790, which granted federal courts jurisdiction over murder on any "river, haven, basin, or bay out of the jurisdiction of any particular state," or § 12 of the act, which granted jurisdiction over murder "within any fort, arsenal, dock-yard, magazine, or in any other place . . . under the sole and exclusive jurisdiction of the United States." *Cf.* United States v. Tully, 140 Fed. 899 (C.C.D. Mont. 1905). Compare United States v. Wiltberger, 18 U.S. (5 Wheat.) 76 (1820), where the Court, again through Mr. Chief Justice Marshall, held that Federal courts had no jurisdiction to try an indictment for manslaughter committed on an American merchant ship while 30 miles up the River Tigris in China under § 12 of the Crimes Act of 1790, which gave Federal courts jurisdiction over manslaughter when committed on "the high seas," despite the fact that § 8 of the act presumably gave the Federal courts jurisdiction over murder in the circumstances involved. But see United States v. Rodgers, 150 U.S. 249 (1893), where the Court held that the Great Lakes were to be deemed "high seas" within the meaning of a statutory predecessor to the present 18 U.S.C. § 7 (1964).

[74] Act of July 12, 1952, ch. 695, 66 Stat. 589. For committee reports on the bill, see S. Rep. No. 1155, 82d Cong., 2d Sess. (1952); H.R. Rep. No. 2257, 82d Cong., 2d Sess. (1952).

draft and income-tax evasion are punishable even where the conduct occurs outside the United States, presumably even in Antarctica.[75] However, while these statutes cover a variety of offenses, they leave many other types of offenses uncovered—particularly those of most practical significance as respects the order of the American community in Antarctica. Consequently, they are of little potential significance with respect to the practical problem of control of conduct on the Antarctic continent.

Summary as to American Civilians.—In sum, United States criminal law appears to be applicable to American civilians on board ships or on aircraft over Antarctic seas, and probably also to such civilians while on non-permanent Antarctic pack ice. On the other hand, it appears highly doubtful that American civilians on the Antarctic continent itself are covered by present United States law with respect to general criminal conduct.

Such legal ambiguity obviously complicates the practical problem of dealing with any offenses that might occur on the continent. Thus, if a serious offense such as homicide, assault and battery, theft, or arson were committed, the military officer-in-charge or station scientific leader concerned might reasonably wish to take steps to apprehend and, where necessary, restrain the alleged civilian offender and arrange for his prompt removal from Antarctica to New Zealand, Hawaii, or the continental United States. However, since such conduct may not be technically criminal, not being covered by any United States law, there may be no basis for either official or citizen's arrest.[76] An American citizen outside the United States territory remains protected by the Constitution from deprivation of liberty by United States governmental authorities without due process of law.[77] Moreover restraint and removal in such circumstances might constitute possible grounds for a tort action for assault, false imprisonment, or false arrest.[78] Interesting problems might arise as to what tort law would be applicable to such action.[79]

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[75] See, e.g., 18 U.S.C. § 2381 (1964) (treason "within the United States or elsewhere"); 18 U.S.C. § 953 (1964) (private correspondence with a foreign government by any citizens "wherever he may be"). Under the principle of United States v. Bowman, 260 U.S. 94 (1922), statutes may be given extraterritorial application when intended to protect important governmental interests. This would probably result in such construction of a great many Federal statutes controlling such conduct, e.g., bribery and graft of government officials, 18 U.S.C. §§ 201–23 (1964), offenses involving coins and currency, 18 U.S.C. §§ 331, 332 & 336 (1964), and conspiracy to defraud the United States, 18 U.S.C. §§ 371–72 (1964).

[76] The Federal statutes respecting arrest are 18 U.S.C. §§ 3041–43 & 3053 (1964). As to both official and citizen's arrest, see e.g., United States v. Coplon, 185 F. 2d 629 (2d Cir. 1950); United States v. Guller, 101, F. Supp. 176 (E.D. Pa. 1951).

[77] The most definitive statement of this principle is in Reid v. Covert, 354 U.S. 1, 3 (1957), w ere the Court said: "At the beginning we reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights."

[78] See, for example, the court's suggestion that an action for false imprisonment might lie under analogous circumstances in United States ex rel. Voigt v. Toombs, 67 F. 2d 744, 745 (5th Cir. 1933). However, whether a court or jury would award more than nominal damages in such a case seems questionable. See also Hart & Wechsler, op. cit. supra note 69, at 1215.

The Federal Tort Claims Act specifically excludes "any claim arising out of assault, battery, false imprisonment, [or] false arrest . . . ." 28 U.S.C. § 2680(h) (1964). In any event, the act is not applicable to "any claim arising in a foreign country," 28 U.S.C. § 2680(k) (1964), and Antarctica would seem to be a "foreign country" for these purposes. See United States v. Spelar, 338 U.S. 217 (1949), stating that the act is geared to the sovereignty of the United States. However, the exercise of sovereignty is not the only criterion applied by the courts. See, e.g., Burns v. United States, 240 F. 2d 720 (4th Cir. 1957); Callas v. United States, 253 F. 2d 838, 842 (2d Cir. 1958) (concurring opinion). For the problem which might arise were the act, which applies the lex loci delicti, to be applicable in Antarctia, see note 79 infra.

See also Villareal v. Hammond, 74 F. 2d 505 (5th Cir. 1934), suggesting the possibility of a prosecution for kidnapping under such circumstances. However, just as United States criminal law appears not to cover the offense itself, it might not cover measures taken to deal with the offender.

[79] It seems probable that United States courts would apply the law of the forum to such cases. Of course, United States courts will normally apply the law of the place where the tort occurs. See Slater v. Mexican Nat'l R.R., 194 U.S. 120 (1904); Lauritzen v. Larsen, 345 U.S. 571, 583–84 (1953) (dictum); Goodrich, Conflict of Laws § 92 (1964); Restatement, Conflict of Laws §§ 377–78 (1934). However, there are suggestions that where the place has not local law, as in Antarctica, the law of the forum should be applied. See Cuba R.R. v. Crosby, 222 U.S. 473, 478 (1912); American Banana Co. v. United Fruit Co., 213 U.S. 347, 355–56 (1909); cf. Dicey, Conflict of Laws 939 (7th ed. 1958). Judge Frank in Walton v. Arabian Am. Oil Co., 233 F. 2d 541, 545 (2d. Cir. 1956), suggested that in such a case courts might apply the substantive law of the country most closely connected to the parties and their conduct. Cf. Babcock v. Jackson, 12 N.Y. 2d 473, 191 N.E. 2d 279, 240 N.Y. S. 2d 743 (1963) (on the evolving "center of gravity" or "grouping of contacts" doctrine), 63 Colum. L. Rev. 1212 Restatement (Second), Conflict of Laws § 779(1), (1958); Morris, The Proper Law of a Tort, 64 Harv. L. Rev. 881, 888 (1951); Note, 52 Va. L. Rev. 802 (1966).

Analogous situations arise in the absence of proof of foreign law, where the forum

As in the case of military offenders, there would also be a problem as to the applicability of extradiction agreements to secure custody of American civilians committing crimes while at foreign stations or on foreign field parties. However, an extradition request to a foreign government in a case involving an American civilian would raise not only the previously noted problems of territorial locus of the offense and the offender, but also the question whether such conduct in fact constituted a crime under United States law—normally a *sine quo non* of application of such extradition agreements.[80]

Foreign Nationals

The problems which arise respecting the question of applicability of United States criminal law to American civilians on the Antarctic continent occur in an even more acute form as regards the applicability of that law to foreign nationals.

It will be recalled that, regardless of the question of such applicability of United States law to foreign nationals generally, privileged foreign nationals cannot be subjected to United States law without violation of Article VIII (1) of the Antarctic Treaty. This provision would appear self-executing under the treaty clause of the Constitution.[81]

As to non-privileged foreign nationals, they would at most be subject to United States law only in situations where American civilians themselves would be so covered. Thus, non-privileged foreign nationals who are members of the United States military service,[82] on board American ships or aircraft on the high seas,[83] or violating one of the various miscellaneous statutes applicable without limitation as to locus of the offense or nationality of the offender,[84] would appear covered by United States law just as are American nationals. However, it is most unlikely that courts would permit court-martial of friendly foreign civilian nationals while forbidding such trial of American nationals,[85] and the problems inherent in application of section 7 to conduct on the continent are in no way

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will usually apply its own law. See Leary v. Gledhill, 8 N.J. 260, A. 2d 725 (1951). But see Philip v. Marcl, 261 F. 2d 945 (9th Cir. 1958).

Another possible analogy is the situation regarding torts committed on board vessels on the high seas, where the applicable law is normally the law of the flag state. See Lauritzen v. Larsen, supra; Restatement, Conflict of Laws § 406 (1934); Colombos, op. cit. supra note 65, at 284. The law of the forum is also normally applied to maritime collisions on the high seas. See the Scotland, 105 U.S. 24, 29–40 (1881). See generally Comment, 41 Sornell L.Q. 243 (1956).

[80] For instance, the United States-New Zealand extradition agreements require that the offense be one punishable under the requesting state's laws and subject to its "jurisdiction," and that the offender be present in the territory of the requested state. These agreements are a composite of parts of several extradition agreements between the United States and the United Kingdom which have been made applicable to the United States and New Zealand: Treaty of August 9, 1842, art. X, 8 Stat. 572, T.S. No. 119; Treaty of July 12, 1889, 26 Stat. 1508, T.S. No. 139; Treaty of December 13, 1900, 32 Stat. 1864, T.S. No. 391; Treaty of April 12, 1905, 34 Stat. 2903, T.S. No. 458.

Involuntary removal of a civilian offender through New Zealand might raise certain problems, including whether such removal came within the Agreement on Antarctic Operations, which permits "transit of United States personnel . . . through New Zealand." Conceivably, an offender might seek release from detention through the New Zealand courts. United States authorities could not make an arrest in New Zealand without that government's consent. See I Hackwood, Digest of International Law 624–28 (1940); 2 id. at 309–13. If New Zealand gave such consent, 18 U.S.C. § 3042 (1964) would permit such arrest.

[81] U.S. Const. art. VI, § 2; see e.g., Bacardi Corp. v. Domenech, 311 U.S. 150, 161 (1940); Sei Fujii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952); Restatement, Foreign Relations Law § 157; Evans, Self-Executing Treaties in the United States of America, 30 Brit. Yb. Int'l L. 178 (1953).

[82] The Uniform Code is applicable to all "members" of a regular component, and makes no distinction as to nationality. Application to foreign nationals who are such "members" would not appear to raise any international legal problem. See Restatement, Foreign Relations Law § 31(b); Harvard Research in International Law, Draft Convention, art. 6(a), at 440.

[83] See, e.g., Lauritzen v. Larsen, 345 U.S. 571, 586 (1953); In re Ross, 140 U.S. 453, 472 (1891).

[84] See, e.g., Rocha v. United States, 288 F.2d 545 (9th Cir. 1961); Note, 45 Calif. L. Rev. 199 (1957).

[85] Although the theory of the Reid v. Cobert line of cases does not seem directly applicable to aliens overseas, at least certain constitutional protections are available to non-enemy aliens in the United States. See Russian Volunteer Fleet v. United States, 282 U.S. 481 (1931) Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). The situation as to aliens overseas is more doubtful. Although American citizens abroad are guaranteed their constitutional rights, see Best v. United States, 184 F.2d. 131 (1st Cir. 1950), nonresident enemy aliens have been denied the protection of the fifth amendment, Johnson v. Eisentrager, 339 U.S. 763 (1950). But cf. Home Ins. Co. v. Dick, 281 U.S. 397, 411 (1930) (dictum). In the so-called "Insular Cases" the Supreme Court has distinguished between fundamental and artificial rights, shielding only the former from invasion. See e.g. Balzac v. Puerto Rico, 258 U.S. 298, 312 (1922); Downes v. Bidwell, 182 U.S. 244, (1901). See also Rassmussen v. United States, 197 U.S. 516 (1905).

diminished by the fact that foreign rather than American nationals are involved. In fact, as a practical matter, courts would probably adopt a particularly narrow construction of such statutes with respect to their possible application to foreign nationals in Antarctica, since difficult problems of both international law and foreign relations might otherwise be raised.[86]

This again, as in the case of American civilians, suggests thorny practical problems if a foreign national with the United States party committed a serious offense. In particular, there would appear no basis for either forcibly transporting such a foreign offender to the United States or for requiring his extradition by a foreign government having custody.

THE APPLICABILITY OF FOREIGN LAW [87]

If United States criminal law has only very limited applicability to criminal conduct by American civilians and foreign nationals on the Antarctic continent, what of foreign law? To what extent does foreign criminal legislation, and at least the possibility of prosecution in foreign courts, potentially fill this legal vacuum?

Relevant Foreign Law

In contrast to the United States, the seven countries claiming territory in Antarctica (the United Kingdom,[88] Australia,[89] New Zealand,[90] France,[91] Norway,[92] Chile,[93] and Argentina,[94]), and also South Africa,[95] have either specifically enacted legislation governing criminal conduct in Antarctica or appear to consider their domestic criminal legislation applicable to areas they claim.

The situation differs considerably among these countries as respects both the specificity of legislation involved and the theory of jurisdiction asserted. Thus, the United Kingdom, New Zealand, Australia and South Africa have enacted statutes specifically addressed to the Antarctic situation. On the other hand, France and Argentina have not enacted special legislation, but treat claimed areas as part of their metropolitan territories and thus subject to their domestic law. As to coverage, French, Argentinian and Norwegian law are apparently applicable to conduct by any one within the areas these countries claim. South Africa, however, has enacted legislation applicable solely to its own nationals wherever they may be in Antarctica. The British Commonwealth countries have generally adopted a mixed system, applying their law both to any persons within areas they claim, and also to their own nationals in other parts of Antarctica. Finally, while most

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[86] See Lauritzen v. Larsen, 345 U.S. 571 (1953), where the Court quoted with approval a statement that "if any construction otherwise be possible, an Act will not be constructed as applying to foreigners in respect to acts done by them outside the dominions of the sovereign power enacting." Id. at 578; accord, The Apollon, 22 U.S. (9 Wheat.) 362, 370 (1824); United States v. Baker, 136 F. Supp. 546 (S.D.N.Y. 1955); see cases cited note 68 supra.

[87] While I have tried where possible to examine or obtain copies of applicable statutes, in some cases secondary sources have been relied on, in particular the collection of Antarctic statutes in 46 U.S. Naval War College, International Law Documents 1948–49, at 217–45 (1949); texts printed at various times in the Polar Record; Hanessian, National Activities and Interests in Antarctica—Part II; The Claimant Nations, 2 American Univ. Field Staff Reps., Polar area ser., No. 6 (1962). I wish to express my thanks to several foreign governments who have supplied applicable legislation.

[88] British Antarctic Territory Order in Council, Stat. Instr., 1962, No. 400, and British Antarctic Treaty Order in Council, Stat. Instr., 1962, No. 401, reprinted in 11 Polar Record 306–13 (1962). The Falkland Islands Application of Enactments Ordinance, 1954 (which applies to the British Antarctic Territory) makes applicable to the Territory certain United Kingdom acts relating to criminal law. The Application of Enactments (Amendment) Regulations 1963 made by the High Commissioner amended this ordinance in certain respects. Article II of the British Antarctic Territory Order in Council, 1962 provides for the making of such regulations by the High Commissioner of the Territory. Applicable regulations are set forth in various issues of the Falkland Islands Gazette and British Antarctic Territory Gazette.

[89] Australian Antarctic Territory Act 1954, Act No. 42 of 1954, reprinted in 7 Polar Record 425 (1955); Antarctic Treaty Act 1960, Act No. 48 of 1960 (Australia), reprinted in 11 Polar Record 302 (1962).

[90] Antarctic Act 1960, Act No. 47 of 1960 (New Zealand), reprinted in 11 Polar Record 303 (1962).

[91] Law of August 6, 1955, [1955] Journal Officiel 7079 (Fr.), cited in Hanessian, *supra* note 87, at 14 n.15.

[92] Law of Feb. 27, 1930, No. 3, Norges Lover 1682–1963 & 1247–48 (1964), as amended, Law of June 2, 1960, No. 17, Norges Lover 1847–48.

[93] Statute of the Chilean Antarctic Territory, Congreso Nacional Ley No. 11, 846, June 17, 1955, 78 Diaro Oficial 1321 (June 21, 1955); Ministerio de Ralaciones Exteriores, Decreto Supremo No. 298, July 17, 1956, 79 Diaro Oficial 1922–23 (Oct. 3, 1956).

[94] Law of Feb. 28, 1957, Boletin Oficial (March 19, 1957), reprinted in 9 Polar Record 52 (1958).

[95] South African Citizens in Antarctica Act, Act No. 55 of 1962, promulgated by Government Notice No. 826 in 4 Gazette Extraordinary, No. 249 (May 25, 1962). The text is reprinted in 11 Polar Record 318 (1962).

countries simply apply all or certain of their domestic laws to the Antarctic situation without providing for detailed administration, a few countries, such as the United Kingdom, have established special administrative structures with respect to claimed territories.

The New Zealand Antarctica Act of 1960 provides an illustration of highly developed legislation of a mixed character and is of particular interest since McMurdo Station, by far the largest United States station, lies within territory claimed by that country. Moreover, both Australian and United Kingdom legislation are in many respects similar to that of New Zealand. The act generally makes New Zealand criminal law and court jurisdiction applicable to (1) all persons in the Antarctic territory claimed by New Zealand (the "Ross Dependency"), (2) New Zealand citizens or residents in other parts of Antarctica not within the jurisdiction of any other country, and (3) New Zealand citizens in parts of Antarctica within the jurisdiction of other countries while such persons are functioning as observers or scientists or members of their staffs within the meaning of the Antarctic Treaty. However, the act expres ly prohibits the exercise of jurisdiction by New Zealand courts over non-New Zealand nationals functioning as observers or exchange scientists or members of their staffs, except where the country of which the person concerned is a national waives immunity. Moreover, the special consent of the Attorney General of New Zealand is required before proceedings are instituted for the trial and punishment of persons (a) who are not New Zealand citizens or residents and who are charged with having committed a crime in the Ross Dependency, (b) who are New Zealand citizens or residents and are charged with having committed a crime in the Ross Dependency on a ship or aircraft not of New Zealand nationality, or (c) who are New Zealand citizens and residents and are charged with having committed a crime in any part of Antarctica other than the Ross Dependency and other than on board a New Zealand ship or aircraft.

The South African Citizens in Antarctica Act, 1962 is noteworthy since South Africa, like the United States, is not a claimant power and has restricted the reach of the statute to South African citizens alone. The heart of this brief statute is section 2 which provides:

> (1) The law from time to time in force in the Republic shall apply to any South African citizen while he is in Antarctica.
>
> (2) For the purposes of the administration of justice, and in general for the application of the laws of the Republic, Antarctica shall be deemed to be situated within the magisterial district of Pretoria.

As an example of less complex legislation, the Norwegian Law of February 27, 1930 provides simply that certain territories, including Queen Maud Land in the Antarctic, are placed under Norwegian sovereignty as dependencies, and that Norwegian civil and penal law and its system of justice shall apply to such dependencies.

It may be noted that, in addition to these countries which have actually addressed themselves to the problem of control of conduct in Antarctica, a number of countries generally consider at least certain of their criminal laws as applicable to extraterritorial conduct of their own nationals wherever they may be, presumably even in Antarctica. This is apparently so, for instance, as regards the Soviet Union,[96] and Japan,[97] both treaty parties, and also as regards various other countries[98] which, while not treaty parties, may have nationals present in Antarctica.

Does this broad application of foreign law in Antarctica close the gap left by the apparent absence of United States controlling criminal conduct in the American Antarctic community? Thus, since every Antarctic claimant state makes its laws applicable to all persons in the area it claims, eighty per cent of Antarctica is ostensibly subject to territorial law, even with respect to crimes committed by Americans or accompanying foreign nationals in these claimed territories. And,

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[96] See Principles of Criminal Legislation of the U.S.S.R. and the Union Republics art. 5 (1958).

[97] See Japanese Penal Code art 5. The United Kingdom courts may punish homicide committed abroad. See Regina v. Azzopardi, 1 Car. & K. 203, 174 Eng. Rep. 776 (1843); Regina v. Page, [1954] 1 Q.B. 170. See also Code of D'Instruction Criminelle art. 5, § 1 (Fr. Dalloz 1953); Delaume, Jurisdiction Over Crimes Committed Abroad: French and American Law, 21 Geo. Wash. L. Rev. 173 (1952). For a view that Belgian law might be applicable, see Roggen, La Position Juridique des Belges en Antarctique, Aile et Roue (June 1960).

[98] See, e.g., German Penal Code § 3; Greek Code of Penal Procedure § 3; Indian Penal Code § 4. See generally the various statutes cited as in force in 1935 in Harvard Research in International Law 523–35.

since a number of countries apply their criminal laws to their own nationals even outside their national territory, many accompanying foreign nationals at United States stations or with United States field parties may in any event be subject to their own national laws as respects their criminal conduct. However, closer examination suggests that this appearance is illusory, and that foreign law does not furnish an effective solution to the problem.

American Nationals

In practice, it is very doubtful that foreign law could have any meaningful application to American nationals in Antarctica. First, since the United States does not recognize the validity of territorial claims by other countries in Antarctica, it is highly unlikely that it would recognize attempts by such countries to assert jurisdiction over American nationals on the grounds that offenses occurred within their claimed territories. In the course of hearings on the Antarctic Treaty before the Senate Foreign Relations Committee, Mr. Phleger, Head of the United States Delegation and Chairman of the Antarctic Conference, commented specifically on this point stating:

> By virtue of recognizing that there is no sovereignty over Antarctica we retain jurisdiction over our citizens who go down there and we would deny the right of the other claimants to try that citizen.[99]

If a foreign government had custody of an American in such circumstances the United States would almost certainly demand his release.[100] If a foreign government requested extradition of an American in such circumstances, it would almost certainly be refused.[101]

Second, even if the above-mentioned problem did not exist, foreign law would still have only limited application. Foreign law would in any event not be applicable to Americans within the twenty per cent of Antarctica as yet unclaimed—an area in which several United States stations are located and substantial United States activities are carried on. Moreover, foreign law could not, consistently with the treaty, be applied to privileged American observers or exchange scientists.

Finally, even if foreign law were in theory applicable to criminal conduct by Americans in Antarctica, foreign countries would in most cases probably not seek to invoke their jurisdiction. Except where a foreign country's own national was a victim of criminal conduct by an American national, that country would have little interest in prosecuting crimes involving American nationals.

Foreign Nationals

As regards the possible applicability of foreign law to accompanying foreign nationals, many of these same considerations would be relevant. However, while the United States would probably avoid taking any action or position which might be construed as recognizing the validity of either foreign territorial claims or foreign assertions of jurisdiction based on such claims, as by delivering or extraditing an accused, its interest in the matter would obviously be less than if an American national were involved. Thus, it is unlikely that the United States would make an issue of assertion of jurisdiction by a foreign state over one of that state's own nationals, even if the individual were a member of the

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[99] Hearings Before the Senate Committee on Foreign Relations on Ex. B, 86th Cong., 2d Sess. 62 (1960). Mr. Phleger stated further, in reply to a question from Senator Aiken: "If we send a scientist or an inspector into the section claimed by Chile, he can't be arrested by Chile. Our jurisdiction applies to him no matter where he is in Antarctica but if there should be a mining engineer who went down into the sector claimed by Chile and he got into some trouble, Chile would claim that its laws governed.

"We claim that Chile's laws did not govern because we do not recognize Chile's claim, and there would then be an international controversy as to who had jurisdiction over the individual."

Ibid. Quite complex jurisdictional situations could obviously be hypothesized, such as a murder by an American reporter (nonprivileged under the treaty) of a German national while both were on a French expedition in that part of the Antarctic Peninsula claimed by the United Kingdom, Chile and Agentina.

[100] In fact, 22 U.S.C. § 1732 (1964) purports to require the President to take measures to secure the release of American citizens unjustly deprived of their liberty by foreign governments.

[101] As to the probable inapplicability of extradition treaties in such situations, see notes 48–19 supra. Extradition by the United States is governed by 18 U.S.C. §§ 3181–95 (1964), especially 18 U.S.C. §§ 3181 & 3184 (1964). There is no authority under United States law for the executive to surrender fugitives to a foreign state in the absence of an applicable extradition treaty. Valentine v. United States ex rel. Neidecker, 299 U.S. 5, 8–9 (1936); Argento v. Horn, 241 F.2d 258, 259 (6th Cir. 1957); Ramos v. Diaz, 179 F. Supp. 459 (S.D. Fla. 1959), and the United States has always refused to do so, see 4 Hackworth, op. cit. supra note 80, at 113–16. In any case, under certain extradition treaties, such as the treaty with France, neither party is required to surrender its own nationals. See Valentine v. United States ex rel. Neidecker, supra.

United States party. Again, even if a foreign country attempted to assert jurisdiction over a national of some third state accompanying the American party, the United States might take the view that the accused's own country rather than the United States should assume the burden of protest and protection.[102]

LEGISLATIVE OPTIONS

If American civilians in Antarctica (and also at least some accompanying foreign nationals) are not presently covered by any criminal law, should something be done about it? Before attempting to answer this question, we should have some idea what *might* be done—the possible remedies and range of options available and the way these are affected or limited by domestic and international law.

Domestic Legal Considerations

The simplest and most obvious way of attempting to fill this legal vacuum is through legislation.[103] In examining possible legislative measures, it may first be noted that such legislation would not appear to raise any inherent constitutional problems. While there is no express authority in the Constitution for legislation of the particular nature, such authority seems readily implied. Thus, assuming Congress is acting constitutionally in providing for a United States Antarctic Research Program and financing the establishment of American expeditions and stations in Antarctica (whether such authority be based on the foreign relations, defense, or general welfare power, or some theory of "resulting" or "inherent"

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[102] See Restatement, Foreign Relations Law § 175. In the Panevezys-Saldutiskis Ry. Case (Estonia v. Lithuania), P.C.I.J., ser. A/B, No. 76 (1939), the court noted that the state's right to ensure in the person of its nationals respect for the rules of international law is necessarily limited to intervention on behalf of its own nationals.

> Where the injury was done to the national of some other State, no claim to which such injury may give rise falls within the scope of the diplomatic protection which a State is entitled to afford nor can it give rise to a claim which that State is entitled to espouse.

Id. at 16.

[103] However, certain nonlegislative measures might be helpful in controlling minor offenses and breaches of discipline. One interesting possibility is a broader use by the National Science Foundation and the United States Navy of contractual agreements as a means of regulating civilian conduct. Foundation grant instruments now require only that personnel of grantee institutions familiarize themselves with the provisions of the Antarctic Treaty and "undertake" to abide by certain general rules of conduct regarding conservation and protection of historical monuments. Enclosure D to Model Grant Instrument on "Further Understandings for Field Activities." But conceivably, express agreement on the part of civilians to comply with specified rules of conduct might be made a condition of such grants, and more generally, of any employment, participation in the United States program, or government-sponsored visits to Antarctica. Such agreements might provide for particular remedies on the part of the government in the event of breach, ranging from deductions in pay or restrictions of government-accorded privileges to immediate termination of grants or employment and removal from the Antarctic. They might even provide for adjudication of disputes as to compliance and fixing of appropriate non-penal remedies by an arbitral board of government and civilian personnel in Antarctica. As a more limited technique, the securing of advance agreements to leave the Antarctic on government request or even possible waivers of rights of action in the event of involuntary removal might reduce the risk of civil liability in the event removal became necessary. As to the possible effect of consent in avoiding tort liability, see, e.g., Prosser, Torts § 18, at 102 (3d ed. 1964); Restatement, Torts § 892 (1939).

The possible use of agreements for this purpose has fairly narrow limits. Thus, such agreements could not confer criminal jurisdiction over Antarctic offenses on federal courts. See Thomas v. Board of Trustees, 95 U.S. 207, 211 (1904); Barkman v. Sanford, 162 F. 2d 592 (5th Cir. 1947). Nor could such agreements confer subject matter jurisdiction over offenses by civilians on a court-martial. See Ver Mehren v. Sirmyer, 36 F. 2d 876 (8th Cir. 1929). But cf. Johnson v. Sayre, 158 U.S. 109 (1895); Ex parte Reed, 100 U.S. 13 (1879), where agreements to serve in the Navy as paymaster clerks were held to confer jurisdiction upon military tribunals. Mr. Justice Clark has suggested that this technique be used in regard to other civilian specialists accompanying the armed forces. McElroy v. Guagliardo, 361 U.S. 281, 288 (1960).

The Reid v. Covert line of cases, supra note 55, seems to reach the question of court-martial subject matter jurisdiction as such, and the problem could probably not be cured by the securing of advance waivers of rights to trial by jury. See also Mr. Justice Black's comment in Reid v. Covert, 354 U.S. 1 (1957), expressing doubt as to the substantive application of military law to civilians apart from the question of denial or constitutional protection. Id. at 38–39. It is relevant to note that while an individual may waive constitutional benefits intended for his protection, see e.g., Zap v. United States, 328 U.S. 624 (1946); Barkman v. Sanford, supra, the waiver must be made intelligently and normally in the course of a particular proceeding, see Adams v. United States ex rel. McCann, 317 U.S. 269 (1942). But see Zap v. United States, supra, where the waiver was prior to prosecution.

Moreover, it must be recognized that such attemps to establish detailed regulation by contractual agreement might prove unpopular with civilian scientists and create more problems than they would solve.

power[104]), it would appear that Congress may also appropriately provide for regulation of the conduct of Americans thus present in Antarctica as "necessary and proper" for the effectiveness of such a program. Moreover, since the Antarctic Treaty implicitly assumes the exercise of jurisdiction by each party over at least its own observers and exchange scientists, Antarctic legislation might also be based on the treaty power.[105] Finally, as we have seen, there is no constitutional problem per se in the extraterritorial application of federal criminal law to Americans abroad; while courts will normally construe criminal legislation as territorial, they will give effect to congressional intent that it apply to conduct without as well as within the United States.[106]

With respect to the scope and form of such legislation, the range of choice is very broad. As to scope, Congress could, for example, depending on its view of the problem, either enact a comprehensive code of criminal law spelling out in detail substantive and procedural rules for the control of every conceivable type of conduct by Americans in Antarctica, or it could alternatively limit such legislation to a simple prohibition of a very few of the most serious offenses. As to form, Antarctic legislation could be drafted to stand completely on its own, or, alternatively, it could expand or incorporate by reference already existing analogous legislation. For example, the statute could itself spell out in detail the offenses covered, together with relevant procedural provisions; or it could be in the form of an amendment to section 7 of title 18, expanding the definition of the special maritime and territorial jurisdiction so as to make those provisions applicable to conduct by Americans in Antarctica; or it could assimilate or incorporate by reference all or some of the substantive criminal provisions of the District of Columbia Code,[107] the Uniform Code of Military Justice, or the special maritime and territorial jurisdiction, making such provisions applicable to conduct in Antarctica.[108] Each of these forms has its own advantages and disadvantages in terms of simplicity, clarity, ease of reference, and economy of drafting.

A special problem with which the legislation would have to deal is how and where Antarctic offenses would be tried. Under the *Reid v. Covert*[109] line of decisions, the possibility of trial of United States civilians in Antarctica by court-martial seems clearly out, and prosecution of Antarctic offenses would appear to require a civil (possibly a constitutional[110]) court. However, as to the venue of trial of such extraterritorial crimes, the Constitution establishes no specific requirement; it provides only that, "when not committed within any State, the Trial shall be at such Place or Places as the Congress by Law have directed."[111] Thus, in theory, trial of Antarctic offenses might be held outside the United

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[104] See the statement in United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936) that "the power to acquire territory by discovery and occupation . . . , none of which is expressly affirmed by the Constitution, nevertheless exist(s) as inherently inseparable from the concept of nationality."

[105] U.S. Const. art. VI, cl. 2; see e.g., Missouri v. Holland 252 U.S. 416 (1920) Neely v. Henkel, 180 U.S. 109, 121 (1901). In re Ross 140 U.S. 453 (1891); Baldwin v. Franks 120 U.S. 678, 683 (1887).

[106] See notes 42 and 43 supra and accompanying text.

[107] For an analogous use of the D.C. Code, see Manual for Courts-Martial, United States Army, 1928, at 188–89 and Manual for Courts-Martial, United States Army, 1949, at 257, which included certain crimes specified in the District of Columbia Code as crimes or offenses punishable under Article of War 96.

[108] Assimilative or referential legislation has been frequently utilized and upheld. See, for the leading example, the Assimilative Crimes Act, 18 U.S.C. § 13 (1964), which provides: Whoever within or upon any of the places now existing or hereafter reserves or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by an enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Prosecutions under the act are to enforce Federal law, not the law of the States, which is simply incorporated by reference. United States v. Sharpnack, 355 U.S. 286 (1958). The act does not assimilate crimes based on statutes which are contrary to Federal policy. Nash v. Air Terminal Servs. Inc., 85 F. Supp. 545, 548 (E.D. Va. 1949). Upholding the act's constitutionality, see United States v. Sharpnack, supra; cf. Panama R.R. v. Johnston, 264 U.S. 375 (1924). See also Howard v. Commissioners, 344 U.S. 624 (1953).

[109] 354 U.S. 1 (1957); see note 55 supra.

[110] For a suggestion that the Constitution may require trial by an article III judge (i.e., one appointed for life upon Senate confirmation), see Toth v. Quarles, 350 U.S. 11, 16 (1955).

[111] U.S. Const. art. III, § 2.

States, even in Antarctica.[112] Obviously, trial outside the United States, particularly in Antarctica, would pose extremely difficult practical and policy problems and this is not a realistic alternative. In practice, Congress has almost always provided for the trial of extraterritorial crimes in the United States itself, either in the district where the offender is found or into which he is first brought.[113] Of course, even trial in the United States of such Antarctic offenses would pose many difficulties, including the administrative burden and cost of investigation, the securing of evidence, the cost and difficulty of securing attendance at trial of American witnesses, and the lack of subpoena power over foreign witnesses.[114] Consequently, in practice, only serious Antarctic offenses might justify prosecution.

A further problem arises from the absence of regular law enforcement officers in Antarctica, authorized to apprehend, detain and remove offenders. Complex statutory and common-law rules govern the privilege of official and citizen's arrest, and it has been previously suggested that in the absence of such privileges, individuals imposing such restraint may be exposed to possible tort liability.[115] It would be possible, of course, to provide detailed statutory rules covering this problem, perhaps vesting authority to make such arrests in designated military officers or civilian officials in Antarctica.[116] Whether the circumstances would justify such legislation seems doubtful; Congress has not, for instance, seen fit to provide detailed procedural rules as regards offenses within the special maritime and territorial jurisdiction. It may be noted that even an invalid arrest or removal will not deprive a federal court of jurisdiction over an offender once he is within the United States.[117]

INTERNATIONAL LEGAL CONSIDERATIONS

Domestic legal considerations alone, however, do not fully define the options legally open to the United States in dealing with criminal conduct in Antarctica. It is desirable also that any legislation enacted not be inconsistent with either customary international law or United States treaty obligations. While legislation violating international law would be valid as a matter of domestic legal obligation,[118] it would obviously embarrass foreign relations and run counter to

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[112] Congress has sole power to prescribe the place of trial for offenses committed outside the United States. Jones v. United States, 137 U.S. 202, 211 (1890). Congress also has power to establish legislative courts other than article III courts. National Mut. Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582 (1949); Ex parte Bakelite Corp., 279 U.S. 438, 451 (1929). The original withdrawn opinion in Kinsella v. Krueger, 351 U.S. 470 (1956), rev'd, 354 U.S. 1 (1957), was based on the concept that Congress could establish such tribunals (i.e., courts-martial) to try American civilians abroad.

As to the no longer existing United States consular and other extraterritorial courts, see, e.g., In re Ross, 140 U.S. 453 (1891); Reid v. Covert, 354 U.S. 1, 54–64 (1957) (Frankfurter, J., concurring); 2 Hackworth, op. cit. supra note 80, at 493–621.

[113] 18 U.S.C. § 3238 (1964). For a discussion of this provision, see Chandler v. United States, 171 F.2d 921, 931–33 (1st Cir. 1948), cert. denied, 336 U.S. 918 (1949).

[114] For discussion of problems of overseas trials, see e.g., Kinsella v. Krueger, 351 U.S. 470, 479–80 n.12 (1956), rev'd, 354 U.S. 1 (1957); Reid v. Covert, 354 U.S. 1, 76 n.12 (1957) (Harlan, J., dissenting). 28 U.S.C. § 1783 (1964) provides for the issuance of subpoenas to American citizens or residents in foreign countries, and under 28 U.S.C. § 1784 (1964) such persons may be punished for contempt for nonappearance. See Blackmer v. United States, 284 U.S. 421 (1932). However, nonresident aliens cannot be compelled to respond to a subpoena. See United States v. Best, 76 F. Supp. 138, 139 (D. Mass. 1948). Under the sixth amendment, depositions probably could not be used in a criminal prosecution. See Dowdell v. United States, 221 U.S. 325, 330 (1911). Members of the armed services are presently exempt from jury service by statute. 28 U.S.C. § 1862(1) (1964).

[115] See notes 76, 78–79 supra.

[116] For example, legislation might authorize such persons to apprehend civilians where there was probable cause to believe an offense had been committed and the person apprehended had committed it, and to remove such person to the United States after a preliminary hearing by a senior United States Naval officer or an authorized National Science Foundation official.

[117] Once the accused is before the court, neither its jurisdiction nor the right to put him on trial for the offense charged is impaired by the manner in which he is brought into the jurisdiction, whether by kidnaping, illegal arrest, abduction, or irregular extradition proceedings. Frisbie v. Collins, 342 U.S. 512, 545 (1952); Pettibone v. Nichols, 203 U.S. 192 (1906); Mahon v. Justice, 127 U.S. 700 (1888); Ker v. Illinois, 119 U.S. 436 (1886); United States v. Insull, 8 F. Supp. 310 (N.D. Ill. 1934); cf. Stamphill v. Johnston, 136 F. 2d 291 (9th Cir. 1943). As to seizures in possible violation of international law, see Ker v. Illinois, supra; United States v. Sobell, 244 F. 2d 520 (2d Cir. 1957); Dickinson, Jurisdiction Following Seizure of Arrest in Violation of International Law, 28 Am. J. Int'l. L. 231 (1934); Garcia-Mora, Criminal Jurisdiction of a State Over Fugitives Brought From a Foreign Country by Force or Fraud, 32 Ind. L.J. 427 (1957); Silving, In re Eichman, 55 Am. J. Int'l L. 307 (1961). But see 1 Hackworth, op. cit. supra note 80, at 624.

[118] See Restatement, Foreign Relations Law § 148. But cf. note 68 supra.

United States policy of encouraging observance of and respect for international law. Moreover, where such violative legislation threatened or caused injury to foreign governments or their nationals, there might be a basis for international complaint.[119] Thus, it is necessary to ask whether international law places any limitations upon United States freedom of action in this regard.

With respect to treaty obligations, the Antarctic Treaty, as we have seen, imposes such limitations in two respects. First, article IV of the treaty precludes the United States from enacting legislation asserting criminal jurisdiction in Antarctica on a territorial basis; that is, any United States legislation controlling criminal conduct in Antarctica must rest on some theory of jurisdiction other than a theory that the acts in question occurred within territory under the sovereignty or jurisdiction of the United States. Second, article VIII(I) of the treaty prohibits the United States from enacting legislation, on any basis whatsoever, covering foreign observers, exchange scientists or members of their staffs; such privileged foreign nationals are subject only to their own state's jurisdiction.

On the other hand, the Antarctic Treaty suggests that the United States otherwise has broad latitude as regards the exercise of jurisdiction in Antarctica. Thus, by providing that observers and exchange scientists shall be subject only to the jurisdiction of their own state, article VIII(I) of the treaty implicitly authorizes each party state to exercise jurisdiction over its own privileged nationals. Indeed, this paragraph may be argued to constitute more generally a recognition of the right of states to assert jurisdiction over even their own nonprivileged nationals in Antarctica, although in this case such jurisdiction is not necessarily exclusive. Finally, articles VIII(2) and IX(I)(e) expressly recognize that the treaty, except with respect to privileged nationals, leaves unresolved all questions of Antarctic jurisdiction.[120]

However, the fact that the Antarctic Treaty does not itself provide more than limited restraints on the exercise of jurisdiction in Antarctica does not necessarily mean that states are otherwise free to do exactly as they wish. International customary law may also be relevant to this question and may conceivably impose further restrictions.

There have in fact been numerous attempts by various states, national and international courts, and scholars to formulate precise international legal bases upon which states may legitimately exercise jurisdiction to prescribe crimes.[121] These attempts have been only partially successful. States have frequently differed both as to the validity and scope of particular proposed principles and, more especially, as to their applicability to specific fact situations. Moreover, new situations not easily fitted within traditional doctrine have continually developed, and state practice has consequently reflected a considerable measure of jurisdictional flexibility. Nevertheless, asserted jurisdictional principles have become a frequently invoked measure of international legal right and United States legislative policy must take them into account.

Briefly, and neglecting numerous qualifications, there has been a broad measure of agreement among states as to the validity of at least four broad international jurisdictional "principles":

(1) The "territorial principle," under which a state may exercise jurisdiction with respect to conduct by either its own or foreign nationals occurring or having substantial effects within its territory;[122]

(2) the "nationality principle," under which a state may exercise jurisdiction with respect to conduct by its own nationals wherever they may be, even outside of its territory;[123]

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[119] See Restatement, Foreign Relations Law §§ 168 & 169.

[120] See note 99 supra.

[121] A leading effort to formulate such principles of international criminal jurisdiction is the Harvard Research in International Law, which suggests a draft convention on this subject. Id. at 439–42. Professor Dickinson's comments as reporter on this project are particularly useful. The Restatement, Foreign Relations Law, pt. I (Jurisdiction), adopts a framework similar to that of the Harvard Research. For other examples, see McDougal, Lasswell & Vlasic, Law and Public Order in Space 646–748 (1963); Sarkar, The Proper Law of Crime in International Law, 11 Int'l & Comp. L.Q. 446 (1962).

[122] See Restatement, Foreign Relations Law §§ 17 & 18; Harvard Research in International Law, Draft Convention, art. 3, at 439. For United States cases recognizing this principle, see, e.g., American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909); Schooner Exch. v. McFaddon, 11 U.S. (7 Cranch) 116 (1812). See generally Berge, Criminal Jurisdiction and the Territorial Principle, 30 Mich. L. Rev. 238 (1931).

[123] See Restatement, Foreign Relations Law § 30; Harvard Research in International Law, Draft Convention, art. 5, at 440. For United States cases recognizing this principle, see, e.g., Skiriotes v. Florida, 313 U.S. 69, 73 (1941); Cook v. Tait, 265 U.S. 47 (1924); United States v. Bowman, 260 U.S. 94, 98 (1922); The Apollon, 22 U.S. (9 Wheat.) 362, 370 (1824); Yenkichi Ito v. United States, 64 F.2d 73, 75 (9th Cir. 1933).

(3) the "protective principle," under which a state may exercise jurisdiction with respect to conduct which substantially affects certain important state interests, such as its security, property, or the integrity of its governmental processes, even when committed outside of its territory by a foreign national; [124]

(4) the "universality principle," under which a state may exercise jurisdiction with respect to certain specific, universally condemned conduct, principally war crimes and piracy, even when committed outside of its territory by foreign nationals, and even without any particular connection of the conduct with that state.[125]

There has also been general acceptance of the principle that a state may appropriately exercise jurisdiction over vessels or aircraft of its registry, which have been generally treated as either part of the "territory" of the flag state, or, more recently, as possessing its "nationality." [126]

It is relevant to note that arguments have also been made for the existence of a "passive personality principle," under which a state may exercise jurisdiction with respect to any conduct which substantially affects the persons or property of its citizens, wherever they may be, even when such conduct occurs outside its territory and is committed by a foreign national. While a few states have supported such a principle,[127] a larger number, including the United States,[128] have at one time or another expressly rejected it, and the decision of the Permanent Court of International Justice in the *Case of the S.S. "Lotus"* [129] has cast strong doubts on its validity.

These principles have been generally regarded as bases of concurrent rather than exclusive jurisdiction; that is, more than one state, each properly acting under different principles, may appropriately prescribe rules governing the same conduct.[130] Obviously, conflicts may arise among states having concurrent jurisdiction as to which state should actually try and punish the offender. However, as yet, customary international law provides no firm rules to resolve such conflicts, although in practice priority is often accorded to the state asserting territorial jurisdiction.[131]

If these principles were to be considered the sole bases upon which the United States could legitimately exercise criminal jurisdiction in Antarctica, certain conclusions would emerge. On the one hand, legislation governing criminal con-

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[124] See Restatement, Foreign Relations Law § 33; Harvard Research in International Law, Draft Convention, arts. 7 & 8. For United State cases recognizing this principle, see, e.g., United States v. Bowman, supra note 123; Skirlotes v. Florida, supra note 123 at 73–74; United States v. Rodriguez, 182 F. Supp. 479 (S.D. Cal. 1960), aff'd sub nom. Rocha v. United States, 288 F.2d 545 (9th Cir. 1961). See generally Garcia-Mora, Criminal Jurisdiction Over Foreigners for Treason and Offenses Against the Safety of the State Committed Upon Foreign Territory, 19 U. Pitt. L. Rev. 567 (1958).

[125] See Restatement, Foreign Relations Law § 34; Harvard Research in International Law, Draft Convention, arts. 9 & 10, at 440–41. There have been suggestions that this principle be extended to slavery and genocide.

[126] See Restatement, Foreign Relations Law § 31; Harvard Research in International Law, Draft Convention, art. 4, at 439–40. For United States cases recognizing this principle, see, e.g., Lauritzen v. Larsen, 345 U.S. 571, 584–86 (1953); United States v. Flores, 289 U.S. 137 (1933); Cunard S.S. Co. v. Mellon, 262 U.S. 100, 123 (1923); Wildenhus's Case, 120 U.S. 1, 12 (1887). See also Colombos, International Law of the Sea 261–64 (5th ed. 1962).

[127] This principle was reflected in art. 6 of the Turkish Penal Code involved in the "Lotus" Case, P.C.I.J., ser. A, No. 10 (1927), and in art. 186 of the Mexican Penal Code involved in the Cutting case referred to in note 128 infra. See also German Criminal Code § 4.

[128] In the Cutting case, the United States strongly protested an attempt by Mexico to assert jurisdiction over an American citizen for an alleged libel of a Mexican citizen published in the United States. The case elicited Moore's Report on Extraterritorial Crime and the Cutting Case, [1887] Foreign Rel. U.S. 757 (1888), strongly attacking the "passive personality principle." See 2 Moore, International Law 231-42 (1906). Both the Restatement, Foreign Relations Law § 30(2) and the Harvard Research in International Law 589, in general reject the "passive personality principle."

[129] P.C.I.J., ser. A, No. 10 (1927). The "Lotus" Case involved an attempt by Turkey to prosecute a French watch officer on a French ship which collided with and sank a Turkish vessel on the high seas off the coast of Turkey, with the consequent death of Turkish nationals. France argued that such an assertion of jurisdiction violated international law. The court, by a 7-to-5 decision, held that Turkey could assert jurisdiction in the case, since at least the "effects" of the French national's acts were upon the Turkish vessel, which was within Turkish jurisdiction. A number of judges, including Judge Moore of the United States, indicated strong disapproval of the concept of passive personality as a basis for jurisdiction.

[130] See Restatement, Foreign Relations Law § 105.

[131] In particular situations involving significant problems of concurrent jurisdiction, the countries concerned may, of course, establish priorities by international agreement. See, e.g., the NATO Status of Forces Agreement, June 19, 1951 [1955] 4 U.S.T. & O.I.A. 1792, T.I.A.S. No. 2846, and the 1963 ICAO Convention on Offenses and Certain Other Act Committed on Board Aircraft, American Soc'y of International Law, 2 International Legal Materials 1042 (1963).

duct of American nationals in Antarctica would be clearly consistent with international law as an application of the "nationality principle." The international legality of such legislation would be supported also, as has been seen, by both the provisions of Article VIII(1) of the Antarctic Treaty and the practice of a number of other states which have already applied their laws to their own nationals in Antarctica. On the other hand, any United States legislation covering criminal conduct by non-privileged foreign nationals in Antarctica would not appear justified by any of these principles and would therefore arguably be inconsistent with international law. Thus, since Antactica is not United States territory, the "territorial principle" would not be applicable. Moreover, neither the "protective" nor "universality" principles could properly be invoked to cover those ordinary types of crimes with which such legislation would have to deal. Finally, while the "passive personality principle" might in theory justify at least limited jurisdiction over foreigners whose conduct affected Americans or their property in Antactica, this principle is not generally accepted and has in the past been specifically rejected by the United States.

However, neither international law nor common-sense judgment appear to require that the problem of possible legislative coverage of non-privileged foreign nationals in Antarctica be disposed of in so mechanical a way. The Antarctic situation is unique and a number of arguments can be made suggesting that United States jurisiction over non-privileged accompanying foreign nationals may be both legally and practically justified under these special circumstances.

First, in terms of the common-sense considerations which lie behind allocations of jurisdictional competence in international law, it is eminently reasonable that countries maintaining Antarctic expeditions be permitted to exercise jurisdiction over such non-privileged accompanying foreign nationals. The United States has an obvious and legitimate interest in controlling conduct by accompanying foreign nationals, since their misconduct may directly affect the discipline, safety and morals of its party and the success of its Antarctic program. Moreover, there is a close and direct relation between the United States and such foreign nationals, most of whom have voluntarily accepted United States sponsorship and support of their presence in Antarctica. Again, where offenses are committed by foreign nationals accompanying the American party, the United States may alone be in a practical position to apprehend the offender, gather evidence, secure testimony, and successfully prosecute the crime. If such offenses are to be prosecuted and punished at all, the United States has the most incentive and is in the best position to do so.

Second, so-called traditional jurisdictional principles have been derived from experiences and situations not relevant to Antarctica—in particular, the assumption of an omnipresent territorial jurisdiction capable of and interested in regulating the conduct in question. Since most conduct occurs within some state's territory, and is always by some state's national, both the "territorial" and "nationality" principles are usually potentially applicable. Thus, there is little pressure in ordinary situations for recognizing still other bases of jurisdiction, and good reason to try to avoid the complications such additional bases may introduce. In Antarctica, however, there is no generally-recognized territorial jurisdiction to rely on, and the state otherwise most affected by the conduct is not the state of nationality but rather the state whose party the foreign national is accompanying. Consequently, the arguments for a restrictive approach to other less usual bases of jurisdiction are weakened. In particular, the sort of considerations which have in the past led to rejection of subsidiary bases such as the "passive personality principle" have less force in Antarctic circumstances and are counterbalanced by various factors suggesting the reasonableness of the exercise of such jurisdiction.[132]

Third, the situation of a state's Antarctic station or field party is closely analogous to the situation of a ship on or an aircraft over the high seas—situations in which international law has traditionally recognized the legitimacy of the flag state's exercise of jurisdiction over foreign nationals on board. Just as in the case of a vessel on the high seas, the fortunes of all personnel at an Antarc-

[132] It is interesting to note that the Harvard Research in International Law, citing supporting authorities, suggests the exceptional application of the "passive personality principle" in terra nullius: The present Convention excludes the theory of passive personality. . . . Here, however, in the absence of any territorial authority, it would seem clear that the State which is injured directly or through its nationals has at least as vital an interest as the State of which the accused is a national, and that the former State, if it has lawful custody of the accused, should be competent to prosecute and punish on the principle of universality without limitation. *Id.* at 589.

tic station or field party are bound together in a common enterprise controlled by the state sponsoring the expedition; the station or party is present in a vast area over which no state has recognized sovereignty; control of conduct is highly important; and only the state sponsoring the expedition may be in a practical position to control this conduct and apprehend and punish offenders. In such situations, the reasonableness of permitting the state maintaining the enterprise to control the conduct of all engaged in it seems apparent. Nor is the recognition of the legitimacy of jurisdiction over foreign nationals on national vessels the only relevant analogy. As we have seen, the "protective principle" recognizes the legitimate concern of states in controlling even extraterritorial conduct of foreign nationals which affects special state interests, and the "universality principle" recognizes the legitimate interests of all states in punishing certain crimes which may otherwise go unpunished because of failure or inability of territorial or national authorities to do so. Recognition of some type of "enterprise jurisdiction" in Antarctica would accord with both such interests.

Finally, international law appears more hospitable to evolving jurisdictional doctrines than a listing of accepted jurisdictional principles would suggest. For example, the opinion of the Permanent Court of International Justice in the *"Lotus"* case suggests that a state need not affirmatively justify a particular exercise of jurisdiction under some jurisdictional rubric; the burden is rather on a state attacking the legality of such jurisdiction to show that such action violates a principle of international law.[133] Innovation does not mean illegality and room is left for development. Such reasonable innovations in state practice, acquired in by other states concerned, is itself a vital dynamic factor in the growth of customary international law. There is, in fact, a growing awareness of the need to approach jurisdictional problems less mechanically and more in terms of a rational adjustment and accommodation of the totality of practical considerations and national interests involved.[134] Such a flexible approach is clearly necessary if international law is to play a meaningful role in resolving the unique and difficult problems of our times.

Summing up, international law appears to place no restriction on United States legislation covering American nationals in Antarctica. Moreover, while the Antarctica Treaty prevents such legislation from covering foreign observers and exchange scientists accompanying the American party, it is arguable that international law does not prohibit the United States from asserting jurisdiction over other non-privileged accompanying foreign nationals. Of course, if it were considered desirable that United States legislation in fact apply to such foreign nationals, something less than a "primary" jurisdictional right could be asserted. For instance, such legislation could establish a solely "residual" jurisdiction,

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[133] Thus, the Permanent Court stated: It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law. Such a view would only be tenable if international law contained a general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, and if, as an exception to this general prohibition, it allowed States to do so in certain specific cases. But this is certainly not the case under international law as it stands at present. Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objection or complaints on the part of other States; . . . In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.

It follows from the foregoing that the contention of the French Government to the effect that Turkey must in each case be able to cite a rule of international law authorizing her to exercise jurisdiction, is opposed to the generally accepted international law . . . . P.C.I.J., ser. A. No. 10, at 19 (1927). But see Lauterpacht, The Development of International Law by the International Court 362–67 (1958). See generally id. at 359–93.

[134] As to judicial recognition of this view, see Romero v. International Terminal Operating Co., 358 U.S. 354, 381–84 (1959); Lauritzen v. Larsen, 345 U.S. 571, 582–593 (1953). But cf. McCulloch v. Sociedad Nacional de Marineros, 372 U.S. 10 (1963). For scholarly comment see, e.g., Falk, The Role of Domestic Courts in the International Legal Order 21–63 (1964); Jessup, Transnational Law 35–71 (1956); Katzenbach, Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law, 65 Yale L.J. 1087, 1140–47 (1956); McDougal & Burke, Crisis in the Law of the Sea; Community Perspectives Versus National Egoism, 67 Yale L.J. 539, 570–73 (1958); Sarkar, supra note 121, at 466–70.

applicable only in situations where the state of nationality was itself unwilling or unable to prosecute the offender.[135]

One final problem deserves mention. Assuming that international law permits the United States to exercise jurisdiction over Americans in Antarctica, does it impose any positive obligation that the United States in fact do so? It is arguable that Article VIII(1) of the Antarctic Treaty assumes that states will assert jurisdiction over at least their own observers and exchange scientists, since other states are expressed prohibited from asserting such jurisdiction. This raises the question whether a state whose national was the victim of criminal conduct by an American observer or exchange scientist, or even a non-privileged American civilian in Antarctica, could bring an international claim in the event the United States failed to prosecute or punish the offender. A particularly difficult situation in this respect might arise were a non-privileged American civilian to kill a foreign national in an area of Antarctica claimed by that foreign national's state. As we have seen, there is a serious question whether the United States could itself prosecute the offender; on the other hand, it would probably not wish to recognize the foreign state's territorial jurisdiction over the offense. Should it do neither, however, and the offender go unpunished, the foreign state might feel justified in international complaints.[136] It is arguable that the absence of United States law permitting prosecution and punishment in such a case would not constitute a valid excuse,[137] especially where such lack of applicable law is the result not of any fundamental constitutional bar but rather of legislative inaction.

A POLICY ASSESSMENT

Domestic and international law thus appear to permit fairly broad discretion in the preparation of United States legislation controlling criminal conduct in Antarctica. Our next problem is whether such legislation is in fact desirable.

While a close question of judgment is involved, on balance the arguments for Antarctic criminal legislation appear to outweigh those against. Despite the fact that serious criminal conduct has not thus far occurred in Antarctica, the continued absence of such conduct cannot be counted upon. It is true that a number of factors are operative which reduce the likelihood of crime among the American party. All civilians and many military personnel are volunteers; all persons wintering-over are carefully screened; factors often associated with criminal conduct, such as money, drunkenness and women, play little part in Antarctic life: the likelihood of an offender escaping detection and apprehension is small; morale is generally high; and civilian scientists are of a class having a low incidence

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[135] The Harvard Research in International Law, Draft Convention, specifically suggests such a principle in its article 10, which reads: A State has jurisdiction with respect to any crime committed outside its territory by an alien, other than the crimes mentioned in Articles 6, 7, 8, and 9, as follows:

(a) When committed in a place not subject to its authority but subject to the authority of another State, if the act or omission which constitutes the crime is also an offence by the law of the place where it was committed, if surrender of the alien for prosecution has been offered to such other State or States and the offer remains unaccepted, and if prosecution is not barred by lapse of time under the law of the place where the crime was committed. The penalty imposed shall in no case be more severe than the penalty prescribed for the same act or omission by the law of the place where the crime was committed.

(b) When committed in a place not subject to the authority of any State, if the act or omission which constitutes the crime is also an offense by the law of a State of which the alien is a national, if surrender of the alien for prosecution has been offered to the State or States of which he is a national and the offer remains unaccepted, and if prosecution is not barred by lapse of time under the law of a State of which the alien is a national. The penalty imposed shall in no case be more severe than the penalty prescribed for the same act or omission by the law of a State of which the alien is a national.

(c) When committed in a place not subject to the authority of any State, if the crime was committed to the injury of the State assuming jurisdiction, or of one of its nationals, or of a corporation or juristic person having its national character.

Id. at 440–41. While Professor Dickinson's comment on this article noted that it was "distinctly subsidiary and one which will be rarely invoked," id. at 573, he went on to suggest that paragraph (b) might possibly be particularly applicable in Antarctica, id. at 585.

[136] Cf. Restatement, Foreign Relations Law § 187; Janes (United States v. Mexico), [1926–1927] Opinions of Comm'rs Under the Convention Concluded September 8, 1923, Between the United States and Mexico 108 (1927) [hereinafter cited as Opinions of Comm'rs]; De Galvan (Mexico v. United States), [1926–1927] Opinions of Comm'rs 254 (1927).

[137] See, e.g., Shufeldt (United States v. Guatemala), 3 U.S. Dep't of Arbitration Ser. 851, 876 (1932) Art. 13, International Law Comm'n, Declaration on Rights and Duties of States, U.N. Gen. Ass. Off. Rec. 8th Sess., Supp. No .10, at 8–9 (A/925) (1949), 4 Am. J. Int'l L. Supp. 13 (1950); Letter From the Secretary of State to the Minister in Mexico, [1887] Foreign Rel. U.S. 751, 752 (1888).

of criminal conduct and especially sensitive to the risk to reputation and career which misconduct might entail. On the other hand, over time, at least occasional incidents of criminal conduct seem almost certain to occur. The number of persons now present on the continent is substantial; Antarctic life subjects individuals to unique strains and pressures; screening techniques are fallible and incapable of detecting with certainty potential offenders; and, as has been seen, the deterrent influence of criminal law may itself be lacking. Legislation may help to deter possible criminal conduct. More significantly, only legislation will permit the orderly handling of such incidents as do occur.

Of course, even if criminal incidents occur, they are likely to be infrequent and, as previously pointed out, the procedural and practical difficulties involved might make prosecution of any but the most serious crimes unlikely. However, the desirability of legislation in this area cannot be measured solely by the number of crimes expected or possible difficulties of prosecution. The existence of a situation in which even occasional crimes can be committed without fear of punishment is offensive to civilized concepts of justice and an undesirable gap in the fabric of law ordering the human community. Congress has seemingly recognized this principle by, for example, including crimes committed on certain guano islands within the special maritime and territorial jurisdiction established by section 7. If only one murder in Antarctica were to go untried and unpunished for absence of law, public opinion might still be critical of the Administration and Congress for failing to anticipate and provide for such an eventuality. Moreover, legislation covering criminal conduct by American civilians in Antarctica would remove a basic discrimination as between such civilians and their military companions in Antarctica who are now subject to United States criminal law by virtue of the Uniform Code.

As to the possible international impact of such legislation, there seems no reason why sensible, carefully-drawn United States legislation in this area should stir up now-dormant Antarctic jurisdictional issues or otherwise give rise to international controversy. Insofar as such legislation would cover only American nationals it is consistent, as we have seen, with the Antarctic Treaty, customary international law, and the practice of many other Antarctic Treaty countries. Such legislation might even forestall possible international problems by fulfilling an implicit responsibility on the part of the United States to control its own nationals on the continent, particularly those exempt under the treaty from the exercise of foreign jurisdiction. In particular, ability to exercise such jurisdiction would strengthen the position of the United States in resisting possible attempts by some other Antarctic state to exercise jurisdiction over an American committing a crime within territory claimed by that state, especially if the crime were against one of that state's nationals. Moreover, such legislation, by placing the United States in a legal position similar to that of other Antarctic Treaty parties, might facilitate the eventual working out by the parties of suitable arrangements to handle jurisdictional disputes.

Finally, it may be argued against such legislation that the Antarctic problem should not be dealt with apart from the related but much more important problem of control of conduct of American civilian dependents and employees at American bases overseas, who, under the *Reid* v. *Covert* line of decisions, are also not presently subject to United States law.[133] However, the two problems are distinguishable and there seems little need to link their solutions. First, the Antarctic situation is conceptually more compelling, since no criminal law whatsoever may be applicable to American civilians in Antarctica. In contrast, in the case of American civilians at American bases abroad, the jurisdiction of the territorial host state is always potentially available to deal with serious offenses. Second, the limited scope of the Antarctic problem makes it simpler of solution, since American civilians in Antarctica are numbered at most in the hundreds and the

[133] On the problem of jurisdiction over civilians at American overseas bases, see generally the testimony of Benjamin Forman, Assistant General Counsel of the Department of Defense, in Hearings Before a Subcommittee of the Senate Committee on Armed Services on Operation of Article VII of the N.A.T.O. Status of Forces Agreement, 86th Cong., 2d Sess. 1–11 (1960). For a recent proposal to cover such civilians, see S. 2015, 88th Cong., 1st Sess. (1963), submitted by Senator Ervin, which would amend title 10 of the United States Code to provide that any citizen, national, or other person owing allegiance to the United States who commits any one of certain listed offenses in violation of the Uniform Code of Military Justice while serving with, employed by, or accompanying the armed forces outside the United States, will be subject to trial in the United States district courts. However, while the Department of Defense still has the matter under study, it has expressed the view that there is no present need for such legislation. Hearings Before a Subcommittee of the Senate Committee on Armed Services on Sess. 14–16 (1963).

practical likelihood of crime is small. In contrast, American civilians at bases abroad are numbered in the tens of thousands and a substantial number of crimes occur each year.[139] Third, United States legislation establishing jurisdiction over American civilians in Antarctica is less likely to offend the sensibilities of foreign nations that such legislation establishing jurisdiction over Americans within such foreign countries' metropolitan territories. For all of these reasons, Congress might find Antarctic criminal legislation less difficult and controversial than legislation dealing with criminal conduct at foreign bases.

In short, while the likelihood of an Antarctic crime wave is clearly remote, the difficulties an embarrassment which even a single serious incident could occasion appear to justify at least minimal legislation to permit its orderly handling. Obviously the problem does not justify a major legislative effort. On the other hand, if simple and relatively non-controversial legislation can provide a ready solution, it is difficult to see why this should not be done. At worst such legislation might prove unnecessary. At best it could anticipate and provide a means for dealing with otherwise troublesome problems.

One further question deserves discussion. Should such legislation be applicable solely to Americans in Antarctica or should it also cover non-privileged accompanying foreign nationals?

It has been suggested above that the United States could appropriately exercise jurisdiction over such foreign nationals in Antarctica despite the fact that such an assertion might not fit within the precise ambit of traditional jurisdictional principles. It may be argued that, if this is so, such jurisdiction should in fact be asserted; that the same considerations which support coverage of American nationals—deterrence of criminal conduct, protection of members of the American party, orderly handling of criminal incidents, and assurance of punishment of offenders—indicate coverage of foreign nationals as well.

Other considerations, however, suggest that legislation applicable to foreign nationals might raise more problems than it would solve. First, such coverage of foreign nationals would in practice have only extremely limited potential application; privileged foreign observers and exchange scientists would of course be exempt, and there are only a handful of other non-privileged accompanying foreign nationals with the United States party, some of whom might in any case already be adequately covered as to conduct in Antartica by their own national law. Second, however reasonable the arguments for the international legality of the assertion of jurisdiction by the United States over accompanying foreign nationals in Antarctica, the question is not free from doubt and a contrary case can obviously be made; this might complicate and jeopardize enactment of the legislation and its acceptability to other Antarctic Treaty countries. Third, assertion of such jurisdiction would necessarily be a two-way street requiring recognition by the United States of similar assertion of juridiction by other countries over non-privileged American nationals; this might also make congressional enactment of the legislation more difficult. Finally, failure of the United States to control the conduct of accompanying foreign nationals would probably not be subject to international criticism or give rise to international complaint.

If legislation covering foreign as well as American nationals were nevertheless considered desirable by the Administration and Congress, it might be politic expressly to restrict the potential exercise of United States jurisdiction over such foreign nationals to situations in which the foreign national's own state had not asserted jurisdiction over the offense. Such an assertion of solely "residual" jurisdiction would encourage other states to control their own nationals' conduct, strengthen the legal and moral basis for such United States coverage of foreign nationals, and reduce the likelihood of unwarranted expansion by other states of the principle thus asserted by the United States. It would, however, permit the United States to exercise jurisdiction in the most urgent cases where the offender might otherwise go unpunished.

A LEGISLATIVE PROPOSAL

We are thus brought to our final problem. What should Antarctic criminal legislation look like?

Certain criteria may be suggested. First, such legislation should preferably

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[139] In contrast with the situation in Antarctica, during the six months' period October 1964–March 1965 here was a total of 4,275 offenses committed by civilian employees and dependents associated with United States military forces overseas. Of these, 3,354 were traffic offenses and 921 other offenses, 1,178 of these cases were subject to foreign jurisdiction which, however, was exercised in only 222 cases. *Ibid.*

be simple; the problem does not justify lengthy or complex treatment. Second, it need cover only the most serious crimes; less serious offenses might not justify the trouble and expense of prosecution and can possibly be dealt with by non-criminal sanctions. Third, it may not be necessary to attempt to cover the many procedural problems involved, such as apprehension, detention and removal of offenders; once offenses are covered by criminal law, these matters can hopefully be handled satisfactorily on an *ad hoc* basis. Fourth, it should conform insofar as possible to existing domestic and international legal precedents so as to minimize any sense of innovation or departure from established jurisdictional norms. Finally, legislation should be cast in a form avoiding any appearance of being based on a territorial theory of jurisdiction, thus avoiding questions under the Antarctic Treaty.

Legislation based on the already existing provisions of Title 18 of the United States Code relating to the "special maritime and territorial jurisdiction of the United States" [140] would appear well-tailored to meet these criteria. In particular, it would permit utilization of an established body of substantive law which Congress has already pronounced necessary, reasonable and sufficient in closely analogous situations.

Legislation based on the special jurisdiction could be drafted in either of two ways. First, it could be in the form of an amendment to section 7 itself, simply adding a paragraph including Antarctica within the definition of the special jurisdiction, but expressly limiting such jurisdiction to acts or omissions of Americans in that area.[141] Such legislation would find recent precedent in the 1952 amendment of section 7 which included American aircraft over the high seas within the special jurisdiction.[142] Or, alternatively, it could be cast in the form of a separate provision of title 18 assimilating the provisions respecting the special jurisdiction to Americans in Antarctica.[143] While there is little substantive difference between these two forms, the latter, setting forth Antarctic jurisdiction in a separate provision and using the device of assimilation, appears to have certain advantages. It is less capable of misconstruction by other countries as an assertion of territorial jurisiction than would be amendment to section 7 itself, which bears the heading "special maritime and *territorial jurisdiction*," and it more closely follows the legislation of other Antarctic countries.

While, as previously indicated, such legislation might preferably be applicable only to Americans in Antarctica, it would be relatively simple from a drafting standpoint to cover non-privileged accompanying foreign nationals as well, with such added jurisdiction perhaps best limited to residual situations.

A bill of this type applicable solely to American nationals, with bracketed portions indicating those additions which would be necessary to cover also non-privileged accompanying foreign nationals, might provide as follows: [144]

A BILL To amend Title 18 of the United States Code to define and control certain criminal conduct by United States nationals [and certain foreign nationals] in Antarctica

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That Chapter 1 of Part I of Title 18 of the United States Code, entitled "Crimes an Criminal Procedure," as amended, be further amended by adding a new section 16 as follows:

"SEC. 16. *Offenses by United States Nationals [and Certain Foreign Nationals] in Antarctica.*

Any act or omission by a national of the United States within the area south of sixty degrees South Latitude, [or by a foreign national present in such area

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[140] See text accompanying note 58–61, supra.

[141] Such a paragraph might provide, for instance: (6) For the purpose of determining the places in which provisions of this title are applicable to nationals of the United States, the area south of sixty degrees South Latitude: Provided, that nothing herein contained shall be construed as an assertion of territorial jurisdiction over or claim to such area in contravention of any treaty or international agreement concerning Antarctica to which the United States is or may become a party.

[142] See note 74 supra.

[143] This form would be analogous to that used in the Assimilative Crimes Act, discussed in note 108 supra, and the statutes respecting the "guano islands" and Canton and Enderbury Islands, see note 57 supra.

[144] A technical amendment to the index of ch. I of title 18 would also be required, but is here omitted.

under the sponsorship of the United States Antarctic Research Program,] which would be an offense under this Title if engaged in within the special maritime and territorial jurisdiction of the United States shall constitute a like offense, shall render such person liable to the same penalties, and shall be tried in the same court and district as if it had been engaged in within the special maritime and territorial jurisdiction of the United States. [; Provided, however, that this section shall not be applicable to exchange scientists or observers or members of their staffs performing functions under the provisions of the Antarctic Treaty, and shall not otherwise be applicable to any foreign national with respect to any act or omission as to which the state of which he is a national has asserted jurisiction.]"

United States Court of Appeals, Ninth Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

DONALD EUGENE BANKS, DEFENDANT-APPELLANT

No. 76-1374

July 19, 1976

Defendant, a civilian, was convicted before the United States District Court for the Western District of Washington, William J. Lindberg, Senior District Judge, of possession of heroin with intent to distribute, and he appealed. The Court of Appeals, Choy, Circuit Judge, held that when their actions are based on probable cause, military personnel may arrest and detain civilians for on-base violations of civil law and may also conduct reasonable searches based on a valid warrant, that base commander qualified as neutral and detached magistrate for purpose of determining probable cause, and that reliability of informer was sufficiently established.

Affirmed.

1. Armed Services—3

Posse Comitatus Act, which was enacted during reconstruction period to eliminate direct active use of federal troops by civil authorities, does nos prohibit military personnel from acting upon on-base violations committed by civilians. 18 U.S.C.A. § 1385.

2. Armed Services—28

When their actions are based on probable cause, military personnel are authorized by statute to arrest and detain civilians for on-base violations of civil law and may also conduct reasonable searches based on a valid warrant. 10 U.S.C.A. § 809(e); 18 U.S.C.A. § 1382.

3. Armed Services—28

Power to maintain order, security and discipline on military reservations is necessary to military operations.

4. Searches and Seizures—3.4

Where nothing in record suggested that base commandor participated in any way in investigation or prosecution of defendant, a civilian, but was approached only after investigators had obtained statement from informer and had tried without success to call in civil law enforcement authorities, base commander qualified as neutral and detached magistrate for purpose of determining probable cause for issuance of search warrant.

5. Searches and Seizures—3.6

Detailed eyewitness report of crime is self-corroborating; it supplies its own indicia of reliability.

6. Drugs and Narcotics—188

Where air force sergeant, who was untested, named, nonprofessional informer, voluntarily gave statement implicating defendant in sale of heroin to military personnel, told investigators that he had recently seen defendant on base in possession of fluffy white powder in a zip-lock bag which defendant said was heroin and reported further that defendant had offered to sell him heroin, that defendant would be in certain location cutting heroin and would remain on base until payday to sell heroin to military personnel, details of sergeant's statement were sufficient to establish reliability of information and his credibility, and fact that he was under investigation was immaterial.

Irwin H. Schwartz, Federal Public Defender (argued), of Seattle, Wash., for defendant-appellant.

James R. Moore, Asst. U.S. Atty. (argued), Seattle, Wash., for plaintiff-appellee.

OPINION

Before ELY and CHOY, Circuit Judges and ORRICK,* District Judge.

CHOY, Circuit Judge:

Donald Banks, a civilian, appeals his criminal conviction by challenging the actions of military investigators in searching and arresting him for violation of "civil" (non-military) laws while he was on McChord Air Force Base. We affirm.

Facts

Banks and three airmen were arrested by Air Force investigators in August of 1975 in a barracks room on the McChord base. The arrest followed a search, made pursuant to a warrant for the search of the room and the persons found there issued by the base commander. The search turned up heroin on Banks and in the room. Probable cause for the warrant was based on the affidavit of an Air Force investigator setting forth a voluntary statement given him by a Sergeant Haynes.

After being given the *Miranda* warnings, Banks signed a confession implicating himself and the three airmen. His motion to suppress his confession and the evidence seized from his person was denied. On stipulated facts, preserving the suppression issue, the district court convicted Banks of possession of heroin with intent to distribute.

Issues

Banks contends that the military has no power to search and arrest civilians for civil offenses. In the alternative, he challenges the sufficiency of the search warrant.

Military Authority to Search and Arrest Civilians

Banks argues that the military's police power is limited to only those persons subject to military law. *See* 10 U.S.C. § 807. He insists that using the military to enforce the civil laws is prohibited by the Posse Comitatus Act.

[1] The Posse Comitatus Act, 18 U.S.C. § 1385,[1] was enacted during the Reconstruction Period to eliminate the direct active use of Federal troops by civil law authorities. *See United States* v. *Red Feather*, 392 F.Supp. 916 (D.S.Dak. 1975). In each case relied upon by Banks, the Act's prohibition was applied only to the off-base use of military personnel by civilian authorities. *See Red Feather, supra*, and *United States* v. *Walden*, 490 F.2d 372 (4th Cir.) *cert. denied*, 416 U.S. 983, 94 S.Ct. 2385, 40 L.Ed.2d 760 (1974). We hold the Act does not prohibit military personnel from acting upon on-base violations committed by civilians.

[2, 3] When their actions are based on probable cause, military personnel are authorized by statute to arrest and detain civilians for on-base violations of civil

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*Honorable William H. Orrick, Jr., United States District Judge, Northern District of California, sitting by designation.

[1] 18 U.S.C. § 1385 provides:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both."

law, see 10 U.S.C. § 809(e) and 18 U.S.C. § 1382;[2] also, they may conduct reasonable searches based on a valid warrant. *United States* v. *Rogers*, 388 F.Supp. 298 (E.D.Va. 1975); *see also United States* v. *Burrow*, 396 F.Supp. 390 (D.Md.1975). The power to maintain order, security, and discipline on a military reservation is necessary to military operations *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, 81 S.Ct 1743, 6 L.Ed.2d 1230 (1961).[3] Thus, Banks was properly searched and detained.

Sufficient of the Search Warrant

Banks asserts that the search warrant was deficient in two respects. First, he argues, a commander of a military reservation is not a neutral and detached magistrate required under the fourth amendment. He relies on *Coolidge* v. *New Hampshire*, 403 U.S. 433, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971), and *Saylor* v. *United States*, 374 F.2d 894, 179 Ct.Cl. 151 (1967).

[4] The position of the commanding officer in the instant case, however, is unlike that of the attorney general in *Coolidge* and the deputy commander in *Saylor*, who were actively in charge of the investigations when they authorized the warrants. Nothing in the record suggests the base commander here participated in any way in the investigation or prosecution of Banks. He was approached only after the investigators had obtained Sergeant Haynes' statement and had tried, without success to call in civil law enforcement authorities. He qualifies as a neutral and detached magistrate for the purpose of determining probable cause. *United States* v. *Rogers*, 388 F.Supp. 298.

Air Force Regulation 125-3, Ch. 6, §§ 6-2.(a) provides in part: "Title 18 United States Code, Section 1382, authorizes the detention of civilians for on-base offenses. Since they are not subject to the UCMJ, civilians usually are turned over to civil authorities." Administrative interpretations are entitled to great deference. *Udall* v. *Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965).

(E.D.Va.1975); *see also Wallis* v. *O'Kier*, 491 F.2d 1323 (10th Cir.), cert. denied, 419 U.S. 901, 95 S.Ct. 185, 42 L.Ed.2d 147 (1974).[4]

Secondly, Banks attacks the affidavit supporting the finding of probable cause as failing to establish the reliability of the informer as required by *Aguilar* v. *Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and *Spinelli* v. *United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969).[5]

Sergeant Haynes was an untested, named, non-professional informer. He voluntarily gave a statement to McChord investigators implicating Banks in the sale of heroin to military personnel. Haynes told the investigators that he had recently seen Banks on the base in possession of a fluffy white powder in a zip-lock bag which Banks said was heroin. He reported, further, that Banks has offered to sell him heroin and that Banks had told him he, Banks, would be in Barracks 1152, Room 301 cutting heroin and remain on the base till pay day to sell it to military personnel.

[5,6] A detailed eyewitness report of a crime is self-corroborating; it supplies its own indicia of reliability. *United States* v. *Mahler*, 442 F.2d 1172, 1174 (9th

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[2] 10 U.S.C. § 809 (Art. 9. Imposition of Restraint, UCMJ) provides in part:
"(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified."
18 U.S.C. § 1382 provides:
"Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal yard, station, or installation, for any purpose prohibited by law or lawful regulation;

* * * * * * *

"Shall be fined not more than $500 or imprisoned not more than six months, or both."

[3] We decline to decide the search and arrest issues solely on the basis that McChord is a "closed" military reservation. There is authority for the proposition that a civilian is subject to search and arrest by military authorities without probable cause or his consent on a "closed" military base. See *United States* v. *Vaughn*, 475 F.2d 1262, 1264 (10th Cir. 1973) and *United States* v. *Grisby*, 335 F.2d 652, 655 (4th Cir. 1964). We need not reach this issue because the search and arrest involved here were reasonable under ordinary fourth amendment standards.

[4] Although Wallis involved military personnel as the object of the search, it stands for the principle that a base commander may properly issue a search warrant, consistent with the fourth amendment.

[5] The Government argues that the Aguilar-Spinelli test applies only to (unidentified) professional informers relying on *United States* v. *Darensbourg*, 520 F.2d 985, 988 (5th Cir.), modified, 524 F.2d 233 (1975) and *United States* v. *Burke*, 517 F.2d 377, 380 (2d Cir. 1975). It is unnecessary to reach this issue in that the affidavit satisfies the Aguilar-Spinelli test.

Cir.), *cert. denied*, 404 U.S. 993, 92 S.Ct. 541, 30 L.Ed.2d 545 (1971) and *United States* v. *Sellaro*, 514 F.2d 114, 124 (8th Cir. 1973), *cert. denied*, 421 U.S. 1013, 95 S.Ct. 2419, 44 L.Ed.2d 681 (1975). That Sergeant Haynes, the informant, was under investigation because he was suspected of being involved in drug traffic is immaterial here. The details of his statement supported an inference as to the reliability of his information and his credibility. *See Spinelli, supra*, 393 U.S. at 417, 89 S.Ct. 584.

Affirmed.

DEPARTMENT OF DEFENSE RESPONSE RE *U.S.* V. *Banks*

The opinion of the Court of Appeals for the 9th Circuit addresses two issues: (1) whether the Posse Comitatus Act, 18 U.S.C. § 1385, prohibits military personnel from arresting and detaining civilians for on-base violations of federal civil law; and (2) whether the search warrant was deficient. With respect to the first of these issues, the Court held that the Posse Comitatus Act does not preclude restraint of a civilian to the extent necessary to carry out a legitimate military purpose. There is no indication in the Court's opinion that the defendant contended that, apart from the Posse Comitatus Act, the arrest was unlawful in any other respect. Further, there is no indication in the opinion that the arrest was other than a temporary restraint pending expeditious transfer to appropriate civil authority.

In the circumstances, the Department of Defense does not regard the Banks case as modifying the general propositions that: (1) federal law enforcement officers do not have federal authority to make arrests without warrant unless Congress has specifically provided such authority; (2) where there is no applicable federal statute delineating the arrest authority of a particular federal officer, the law of the place governs the validity of an arrest by him; and (3) in the absence of a statute limiting a federal officer's power to arrest without warrant, he has the same arrest powers as a private citizen. Compare *Alexander* v. *United States*, 390 F. 2d 101 (5th Cir. 1968) with *United States* v. *Chapman*, 420 F. 2d 925 (5th Cir. 1969). Cf. *Ward* v. *United States*, 316 F. 2d 113 (9th Cir. 1963).

Unlike, for example, U.S. marshals (18 U.S.C. § 3053), agents of the FBI (18 U.S.C. § 3052), secret service agents (18 U.S.C. § 3056), postal inspectors (18 U.SC. § 3061), and special policemen of the General Services Administration (40 US.C. § 318), military police are not vested by federal statute with the powers of local peace officers. Accordingly, their authority to make "arrests"—as distinguished from temporary restraint—of civilians on-base, even to carry out a legitimate military purpose such as maintaining the order and security of the installation, is circumscribed by the scope of the "citizen's arrest" authorization granted by the law of the locality.

In any event, it is clear that the ruling in the *Banks* case provides no precedent with respect to off-base offenses or to confinement for the purposes of trial by foreign authorities.

U.S. ANTARCTIC RESEARCH PROGRAM, FISCAL YEAR 1978, BUDGET ESTIMATE TO THE CONGRESS

U.S. ANTARCTIC PROGRAM ACTIVITY SUMMARY

Fiscal year 1978 program total $47,475,000

SUMMARY OF OBLIGATIONS BY SUBACTIVITY

Page	Subactivity	Actual, fiscal year 1976	Budget request, fiscal year 1977	Current plan, fiscal year 1977	Estimate, fiscal year 1978	Difference, fiscal years 1978–77
D–I	U.S. Antarctic research program	$4,308,496	$5,100,000	$5,550,000 [1]	$6,475,000	$925,000
D–II	Operation support program	26,276,796	39,900,000	39,775,000 [2]	41,000,000	1,225,000
	LC–130 aircraft procurement	[3] 18,000,000	0	0	0	0
	Total	48,585,292	45,000,000	45,325,000	47,475,000	2,150,000

[1] These funds will support scientific activities in Antarctica during the September 1978 to March 1979 austral summer field season.

[2] These funds will provide support for the research activities to be conducted in Antarctica during the October 1977 to March 1978 austral summer field season.

[3] For 2 LC–130R aircraft for which funds were appropriated by Public Law 94–116.

PROGRAM ACTIVITY GOALS AND DESCRIPTION

Within the context of the Antarctic Treaty, the U.S. Antarctic Program supports national goals to: maintain the Treaty to insure that the continent will continue to be used for peaceful purposes only, foster cooperative research to contribute to the solution of regional and worldwide problems, protect the environment, and insure equitable and wise use of living and nonliving resources.

The United States has a reputation for leadership in antarctic affairs and has extensive rights, based on exploration, discovery and presence in that area.

The antarctic area is of further interest to the United States because it:

Has a major influence on world weather and climate;

Contains potentially valuable minerals and petroleum;

Is the world's richest area in marine protein production;

Has other features of unique scientific and practical interest; and

Provides an excellent environment for international cooperation through the Antarctic Treaty.

The National Science Foundation has been assigned overall management responsibility for planning, funding, and implementing the national program in Antarctica. The Foundation's responsibilities for the overall program in Antarctica are in accordance with Office of Management and Budget Circular A-51 (revised).

The U.S. Antarctic Research Program subactivity supports a multidisciplinary research program on the Antarctic continent and in the adjacent oceans. The research is focused to increase scientific knowledge through environmental and resource-related programs. The research is conducted at four antarctic stations, from remote temporary field sites, and aboard two research ships. Remote sensing techniques, using satellites, aircraft, rockets, balloons, and unmanned stations, are utilized in the conduct of the research. Cooperative research programs with scientists of other nations are commonplace.

The Operations Support Program subactivity provides for the direct support of science activities and the maintenance of an effective U.S. presence in Antarctica.

The National Science Foundation is designated as the single source of funding and management for the U.S. Antarctic Program. The Department of Defense and the Department of Transportation provide operational support on a cost reimbursable basis. The Foundation also contracts for support services when it is cost effective.

CHANGES BETWEEN FISCAL YEAR 1977 BUDGET REQUEST AND FISCAL YEAR 1977 CURRENT PLAN

The total amount of the fiscal year 1977 Current Plan is $325,000 more than the fiscal year 1977 Budget Request of $45,000,000. This is a net amount resulting from a $475,000 increase for funding of the 1976 military pay raise, and a $150,000 decrease to repay a Transition Quarter reprogramming action. During the fiscal year 1976–fiscal year 1977 Transition Quarter there was an urgent requirement to fund a safety-related modification to the LC–130 aircraft before the October deployment for the 1976–1977 field season in Antarctica. The amount of $150,000 of Transition Quarter funds was reprogrammed from another Foundation program (the atmospheric sciences subactivity) and restored to that program with fiscal year 1977 funds.

The current fiscal year 1977 plan for the U.S. Antarctic Research Program Subactivity is $450,000 more than the budget request. There was a need to augment Information and Advisory Services by $200,000 to cover the cost of an environmental impact statement for U.S. activities in the Antarctic and $250,000 for the Antarctic program's share of increased information and advisory costs associated with polar research activities. These increases were covered by offsetting decreases in the logistic support costs—mainly for icebreakers.

The current fiscal year 1977 plan for the Operations Support subactivity is $39,775,000, $125,000 below the requested amount of $39,900,000. This decrease results from a combination of actions: (1) the decrease of $450,000 in support cost allowed use of these funds in the research program, (2) a decrease of $150,000 to cover part of the costs of safety modification made to the LC–130R aircraft during the Transition Quarter, and (3) an increase of $475,000 for military pay increase which is included in the military pay supplemental appropriation request for fiscal year 1977.

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COORDINATION AND RELATIONSHIP TO OTHER FEDERAL EFFORTS

NSF coordinates all Federal Activities in the Antarctic. NSF also funds individuals and groups of investigators from Federal agencies, educational institutions, and private companies submitting meritorious proposals for field research or analysis of data.

Policy guidance for U.S. activities is provided by the Antarctic Policy Group, chaired by the State Department. Coordination of research goals and objectives at the national level is carried out mainly through the Polar Research Board, National Academy of Sciences.

CHANGES IN BUDGET STRUCTURE

For fiscal year 1978 the former budget subactivity U.S. Antarctic Research Program has been redesignated to the U.S. Antarctic Program and changed to a budget activity with two subactivities, namely, the U.S. Antarctic Research Program and the Operations Support Program. This was done to isolate the Antarctic Program from the more traditional NSF-supported research and science education programs. One determination resulting from the recent, comprehensive interagency review of the U.S. Antarctic Program was that the budgetary requests for the Antarctic should not compete with other NSF budgetary requests nor should funds provided for the Antarctic program be used for other NSF programs. This is also in accordance with the recommendations of the House Science and Technology Committee.

EVALUATION

A major part of the staff effort in the NSF Division of Polar Programs (DPP) is devoted to the evaluation of the many, varied, and complex aspects of the program.

The dominant objective is the conduct of an effective multidisciplinary basic research program to take advantage of the unique research opportunities which exist on or near the Antarctic continent. In the development of a science program for Antarctica the ever present severe environmental, logistic, and operational constraints are major factors. Intensive and continuous evaluations, planning and coordination takes place between the DPP scientific and operations support staff, and among DPP and the supporting Navy and Coast Guard staffs and the civilian contractors.

Input to the science program planning is received from the scientific community in the form of proposals, the peer reviews of proposals, from the Polar Research Board of the National Academy of Sciences, international organizations such as the Scientific Committee on Antarctic Research (SCAR), and through various workshops and symposia.

Both the science and support activities in Antarctic are monitored through periodic reports from all stations and major field activities. During the Antarctic field season at least three DPP staff members are present to monitor or observe ongoing activities.

Joint NSF, Navy, and contractor evaluation and planning meetings are held several times each year. These meetings have proved to be a most effective management tool.

U.S. Antarctic research program subactivity---------- $6,475,000

SUMMARY OF OBLIGATIONS BY PROGRAM ELEMENT

Program element	Actual, fiscal year 1976	Budget request, fiscal year 1977	Current plan, fiscal year 1977	Estimate, fiscal year 1978	Difference, fiscal year 1978–77
Environmental research	$3,570,396	$3,625,000	$3,340,000	$4,145,000	$805,000
Mineral and marine resources research	281,400	1,275,000	1,560,000	1,830,000	270,000
Information and advisory services	456,700	200,000	650,000	500,000	−150,000
Total	4,308,496	5,100,000	5,550,000	6,475,000	925,000

PROGRAM SUBACTIVITY OBJECTIVES AND DESCRIPTION

This program is composed of Environmental Research and Mineral and Marine Resources Research, to support research in several scientific disciplines, often with participation by scientists from other nations. To enable adequate advance planning for operations in the field, the funds requested here will support scientific activities in Antarctica during the September 1978 to March 1979 austral summer field season.

The Environmental Research program element will support:

Glaciological research on the Antarctic ice sheet and adjacent floating ice shelves to develop new knowledge concerning their physical structure and stability and their changes in space and time.

Micrometeorological and other special and standard surface and upper air observations in coastal regions near McMurdo and Palmer Stations and inland at the South Pole Station.

Solar-terrestrial physics at Siple Station in support of the International Magnetospheric Study, using surface, balloon, and rocket-borne instrumentation to collect data. The high altitude probes using rockets will be flown in cooperation with NASA and NOAA.

Completion of a circumantarctic oceanographic survey in cooperation with the Argentine Antarctic Institute and continuation of physical and chemical investigations of the oceans near Antarctica using icebreakers and other ships as platforms.

Biomedical and psychological studies at South Pole and McMurdo Stations.

Biological investigation of terrestrial and freshwater ecosystems.

The Mineral and Marine Resources program element will support:

Analysis of drill cores from the Ross Ice Shelf Project, the Dry Valley Drilling Project, and the deep sea.

Geological and glaciological investigations in the Transantarctic Mountains, the Defek Intrusion area, northern Victoria Land, the Scotia Arc and Antarctic Peninsula area, and the Ellsworth Mountains.

Studies of primary productivity, swarming habits, the distribution of krill, and the life cycle of the Antarctic cod using icebreakers or other ships, and the facilities at Palmer and McMurdo Stations.

The Information and Advisory Services program element will continue support of curatorial centers for sorting and distributing natural history specimens and ice and ocean bottom cores. Publication of research plans and results of U.S. program activities will continue, an Antarctic bibliography will be maintained, and Soviet polar literature will be translated and published. Support will continue for U.S. participation in the Scientific Committee on Antarctic Research of the International Council of Scientific Unions.

SIGNIFICANT RECENT ACHIEVEMENTS

Results from the Dry Valley Drilling Project (DVDP) revealed a complicated groundwater system in the Antarctic permafrost, possibly connecting the saline lakes in the dry valleys with subglacial lakes in the East Antarctic Sheet.

A study of the glacial geology of the West Antarctic Ice Sheet has shown that it is unstable and is retreating rapidly. Evidence from the geologic record reveals that it has always been unstable, advancing and retreating catastrophically every 100,000 years. Retreat seems to be associated with each interglacial episode. This has implications for long-range climate change studies.

Current meter measurement throughout the winter in the Weddell Sea have for the first time defined seasonal variations in Antarctic bottom water flow patterns, and allow a better determination of the rate of overturning of the deep water masses. These changes affect the marine food chain and the weather as far away as the Northern Temperate Zone.

Very low frequency wave propagation and charged particle precipitation in the upper atmosphere were found to be causally related as a result of measurements at Siple Station, Roberval, Canada, and Earth orbiting satellite observations. The capability to artificially stimulate charged particle precipitation from ground based antenna arrays could lead to man-made changes in the magnetosphere and ionosphere which have implications for radio communications.

From electric field measurements made in 1976 in a cooperative U.S.-U.S.S.R. study at Vostok, Antarctica, evidence was obtained that the interplanetary medium may control the Earth's clear weather electric field. If this is confirmed,

it has many important implications for coupling between solar terrestial phenomena and atmospheric dynamics in the lower troposphere.

Glaciological research in the southeast corner of the Ross Ice Shelf has revealed an apparent thickening with time of the ice shelf in this region. This suggests a reversal of the trend toward collapse of the ice sheet that geological evidence suggested has been underway for the past 6,000 years. The status of this ice sheet warrants further careful study as its disappearance could raise the sea level by 18 meters.

Results of medical investigations of isolated populations on the prevalence, scarcity, and duration of respiratory illness appear to disprove an earlier hypothesis that such groups are especially susceptible to respiratory illness.

MAJOR RESEARCH QUESTIONS

Many questions about the Antarctic remain unanswered.

Environmental research

What are the climatic implications of carbon dioxide, ozone, fluorocarbon levels? Is the Earth's climate changing?

How does solar energy proceed from the Sun across the magnetospheric boundary and become accelerated to the observed energy levels? How does this energy affect our upper and lower atmospheres and our communication and navigation capabilities?

What is the origin of the cold Antarctic bottom waters that affect ocean temperature and fisheries in the northern hemisphere?

How does Antarctica affect non-Antarctic weather?

What does the presence of contaminants in Antarctic glacial ice indicate about past atmospheric pollution?

What are the energetic requirements of vertebrates/invertebrates under low-temperature conditions?

What is the biochemical adaptation in forms living under super-cooled water conditions?

What is the interrelationship in geological history, paleoenvironment, and paleontology between the DVDP cores and deep-sea cores taken in the Ross Sea?

Is the West Antarctic Ice Cap collapsing and if so what would be the world-wide effects?

What is the correlation between satellite photographs of Antarctic and conventional mapping?

Mineral and marine resources research

What are the thickness and other dimensions and characteristics of the Dufek Intrusion?

What is the mineral-resource potential of the Dufek Intrusion?

Do the comparative geology, structure, and tectonic history—of the Antarctic Peninsula and the Pacific coasts of Antarctica and the Andes Mountains of southern South America—indicate areas of mineral-resources potential in Antarctica?

What is the mineral-resource potential of the deep-sea areas, particularly in copper, nickel, iron, and manganese?

How will commercial exploitation of krill affect the marine ecosystem?

What conservation principles are needed for rational use of the marine resources?

How will the introduction of new species affect vertebrate and invertebrate populations?

How can satellite systems be used to monitor krill and other animal populations, and to observe and forecast sea ice phenomena?

EXPLANATION OF FISCAL YEAR 1978 INCREASES AND DECREASES

Environmental Research (an increase of $805,000 to $4,145,000). The level of effort will increase in all the major areas of research. A second hole will be drilled through the Ross Ice Shelf, laboratory analysis will be done on ice cores obtained in earlier drilling, and glaciological research will be extended to unstudied areas on the continent. Upper atmosphere researchers will, in cooperation with NASA, use rocket-borne instruments to obtain data from the pasmapause regions of the magnetosphere in support of the International Magnetospheric Study. Meteorological research will be extended in the coastal regions. Ocean research, in addition to completion of the circumantarctic survey, will be expanded in the Weddell Sea area.

Mineral and Marine Resources Research (an increase of $270,000 to $1,830,000). This is a net increase resulting from a decrease for the Dry Valley Drilling Project and increases in other Earth sciences and in marine biology. The increase for Earth sciences will support a new, large geological project in northern Victoria Land, plus planning and background field research for the Dufek Intrusion Drilling Project. The increase for marine biology will provide for studies of krill and fisheries.

Information and Advisory Services (a decrease of $150,000, to $500,000). The decrease is due mainly to the one-time fiscal year 1977 funding of contract development of an environmental impact statement on the totality of U.S. activities in Antarctica.

U.S. ANTARCTIC PROGRAM RESEARCH PROGRAM SUBACTIVITY

	Estimate		
	Fiscal year 1976	Fiscal year 1977	Fiscal year 1978
Number of awards and average size:			
Number of awards [1]	[2] 106	111	130
Total dollar amount	$4,308,496	$5,500,000	$6,475,000
Average dollar per award	$40,646	$50,000	$50,000
Average award duration	12mo	12mo	12mo
Percentage distribution of awards by performer:			
Universities and colleges	79.7	79.0	79.3
Industry	1.3	1.0	.7
Federal laboratories	14.1	15.0	15.0
Other	4.9	5.0	5.0
Manpower and other factors:			
Number of scientist man-years supported [3]	49	66	77
Cost of scientists supported	$830,000	$1,120,000	$1,300,000
Number of graduate students supported	96	130	150
Cost of graduate students supported	$365,000	$495,000	$580,000
Other manpower costs	$936,000	$1,200,000	$1,400,000
Investment costs:			
Construction	0	0	0
Nonexpendable equipment [4]	$171,000	$220,000	$260,000
Other cost [5]	$1,209,496	$1,515,000	$1,765,000
Indirect costs	$797,000	$1,000,000	$1,170,000
Total	$4,308,496	$5,550,000	$6,475,000

[1] Includes, in fiscal year 1976, 11 split-funded awards, i.e., U.S. Antarctic research program funds included as part o an award by another NSF program.
[2] Includes 6 awards over $100,000 and 15 awards $10,000 or less.
[3] Number of scientist man-years is low because Antartic research is a seasonal effort. Few researchers are supported year round.
[4] Equipment purchased by grantee institutions using grant funds. Most equipment in use in Antarctica is purchased by the naval support force or the civilian contractors.
[5] Includes domestic travel, expendable supplies, and computer services at the grantee's institutions, information, advisory, and curatorial services and cartographic activities.

Operations support program subactivity $41,000,000

SUMMARY OF OBLIGATIONS BY PROGRAM ELEMENT

Program element	Actual, fiscal year 1976	Budget request, fiscal year 1977	Current plan, fiscal year 1977	Estimate, fiscal year 1978	Difference, fiscal year 1978—77
Direct science support	$4,130,000	NA	$6,034,000	$6,870,000	$836,000
Base level support	22,146,796	NA	33,741,000	34,130,000	389,000
Total	26,276,796	39,900,000	39,775,000	41,000,000	1,225,000

PROGRAM SUBACTIVITY OBJECTIVES DESCRIPTION

The objectives of the subactivity are to provide the support facilities and services required for the conduct of antarctic research in the most cost effective manner consistent with safety, reliability, and the maintenance of an effective U.S. presence in Antarctica.

It has been determined, after a comprehensive interagency review that, *inter alia*, efficient administration of the U.S. program in Antarctica required a single

source of funding and management. Since science serves as the primary expression of U.S. interest in Antarctica, the National Science Foundation was designated to serve in a single management capacity.

The location, climate, and the absence of development in Antarctica require that all forms of support and services needed to conduct research must be imported. The provision of such support and services is grouped, for central management purposes, in the Operations Support Program subactivity. By contrast, in the case of the Arctic Research Program and most other Foundation programs, the full costs of the conduct of a research project are included in the grants to academic institutions, and such institutions arrange with commercial firms for the support services required.

The support services in this subactivity are provided primarily by the Departments of Defense and Transportation on a cost reimbursable basis. Certain elements are also provided by civilian contractors and foreign agencies. The primary support force is provided by the U.S. Navy which operates the main logistic supply complex in support of field work and the inland stations. The largest single subelement of Navy support is the aircraft squadron which operates six LC–130 ski-equipped Hercules aircraft as well as the helicopters which provide local support of the McMurdo area. NSF reimburses the Navy for the personnel and other costs for these services on a year-round basis. The Department of Transportation provides icebreaker support on a reimbursable basis. The largest part of these support services provides the Antarctica program with the "Base Level Support," which makes the science program possible.

The program element "Direct Sciences Support" includes estimates of those costs which directly support science activity and would not be needed if the U.S. were to merely maintain a "presence" in Antarctica. Within this element are such activities as operation of the research ships, transportation of science personnel and equipment, and special support related to scientific work at the stations and in the field programs.

SIGNIFICANT RECENT ACHIEVEMENTS

During the 1975–1976 Antarctic field season two damaged LC–130 ski-equipped aircraft at Dome "C," 630 nautical miles from McMurdo Station, were repaired and returned to use. During the filed Season 1976–1977 a third more severely damaged LC–130 was repaired and flown from Dome "C".

Through joint planning and evaluation efforts on the part of the Naval Support Force and the civilian contractor, it has been possible to improve procurement of equipment and supplies by using, to best advantage, the unique procurement capabilities of each support element at an overall savings in costs.

EXPLANATION OF FISCAL YEAR 1978 INCREASES AND DECREASES

The overall increase for the budget subactivity is less than 3 percent and most of it is in the program element Direct Science Support.

The program element Direct Science Support is increased by $836,000. The detail by cost element is shown in the following table.

ESTIMATES OF DIRECT SCIENCE SUPPORT

Cost elements	Fiscal year— 1976	1977	1978
Contractor support, equipment, and operations	$2,300,000	$2,500,000	$2,570,000
Islas Orcadas (research ship)	[1] 350,000	1,000,000	1,100,000
Hero (research ship)	700,000	965,000	990,000
Icebreaker support	0	229,000	490,000
LC–130 aircraft support	40,000	450,000	750,000
Transportation of scientific personnel	210,000	295,000	335,000
Helicopter support	220,000	225,000	250,000
Transportation of scientific cargo	160,000	180,000	175,000
Palmer Station science equipment	80,000	100,000	110,000
Subsistence costs for civilian personnel	70,000	90,000	100,000
Total	4,130,000	6,034,000	6,870,000

[1] Funding for ½ year only.

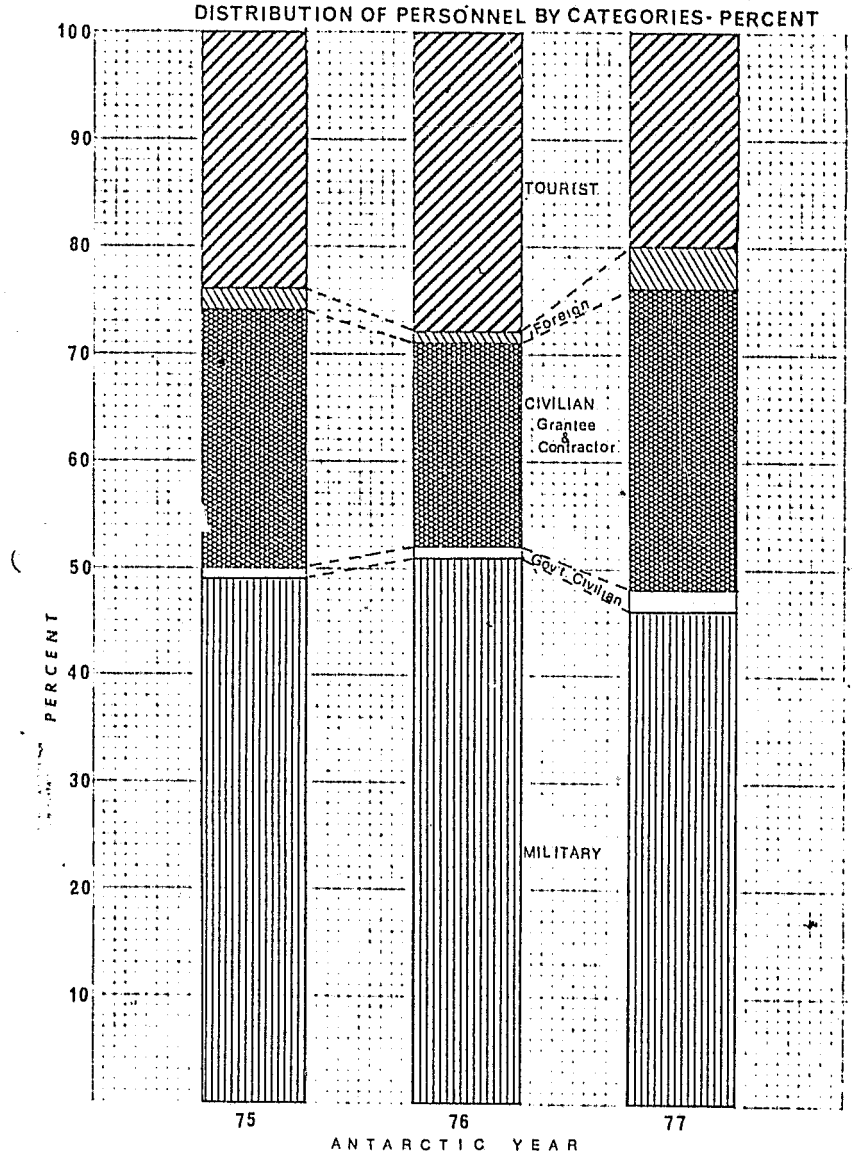
The increase reflects the added costs of supporting an expanded science program (see the U.S. Antarctic Research Program subactivity) and anticipated increased costs for goods and services. The major increase for LC–130 airfract support is because more aircraft time will be available for science support upon completion of aircraft recovery operations, plus the availability of the two additional aircraft now under procurement. The icebreaker costs will increase when the present *Wind* class icebreakers are replaced by the new and more powerful *Star* class icebreakers.

For the program element Base Level Support the increase ($389,000) is a net increase resulting mainly from nonrecurring fiscal year 1977 construction procurements for Siple Station and Williams Field and increases in the reimbursable costs for Navy and Coast Guard support. The major increases for Navy support are for initiation of LC–130 aircraft service life extension modifications and inflationary cost increases, mostly in military personnel costs. The Coast Guard increase is needed for deployment of the new *Star* class icebreaker to Antarctia.

OPERATIONS SUPPORT PROGRAM SUBACTIVITY

	Estimate		
	Fiscal year 1976	Fiscal year 1977	Fiscal year 1978
Naval support force, Antarctica [1]	$22,088,000	$30,125,000	$31,861,000
Contract support	3,663,193	[2] 7,613,000	6,565,000
Government of Argentina	[3] 350,000	1,000,000	1,100,000
U.S. Coast Guard	[4]	850,000	1,254,000
Other DOD costs	113,000	120,000	150,000
British Antarctic survey [5]	62,603	67,000	70,000
Total [6]	26,276,796	39,775,000	41,000,000
Military personnel	9,135,000	10,569,000	11,057,000
Aircraft operations	[7] 3,318,000	5,502,000	5,720,000
Intercontinental airlift	1,998,000	2,352,000	2,243,000
Intercontinental sealift [8]	561,000	[9] 1,220,000	1,350,000
Ground fuel and power	1,125,000	1,422,000	1,251,000
Aircraft recovery and repair	545,000	[10]	0
Other costs [11]	5,406,000	9,060,000	10,240,000
Total	22,088,000	30,125,000	31,861,000

[1] Cost breakout, naval support force.
[2] Reflects increased construction activities related to replacement of Siple Station and relocation and rehabilitation of facilities at the Williams Field aircraft skiway near McMurdo.
[3] Only partial year funding was provided in fiscal year 1976.
[4] Icebreaker support was not a reimbursable cost in fiscal year 1976.
[5] For resupply of Palmer Station.
[6] An additional $18,000,000 was obligated in fiscal year 1976 for the procurement of 2 LC–130 ski-equipped aircraft.
[7] Several LC–130 aircraft were in a nonflyable status during major parts of fiscal year 1976.
[8] Does not include costs for fuel tanker. Fuel transportation costs are part of fuel costs.
[9] The increase includes costs to ice strengthen a replacement cargo ship plus the fiscal year 1977 budget base transfer of berth term (commercial) shipping costs from Navy to NSF.
[10] Estimate for completion of repairs of LC–130 No. 319 will not be known until aircraft recovered and returned to U.S. repair facility. When known, funds will have to be reprogramed.
[11] Includes vehicular equipment repair parts, communication, consumable supplies, personnel travel, packing, and stevedoring, etc.


DISTRIBUTION OF PERSONNEL BY CATEGORIES- PERCENT
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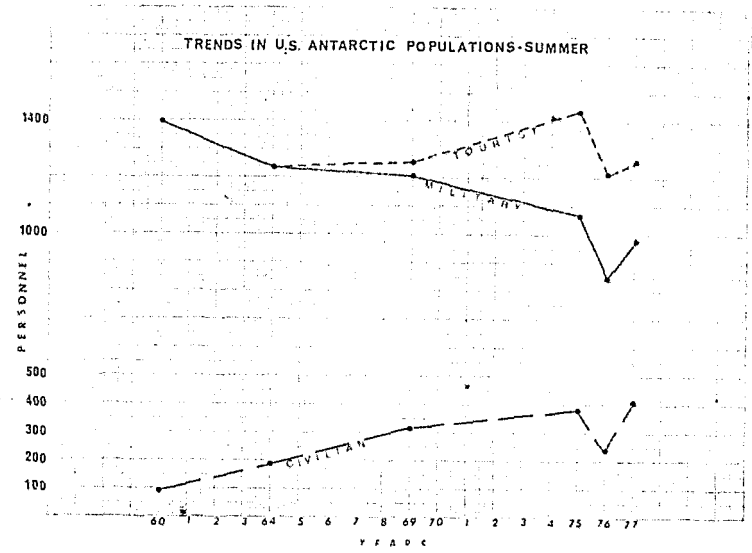
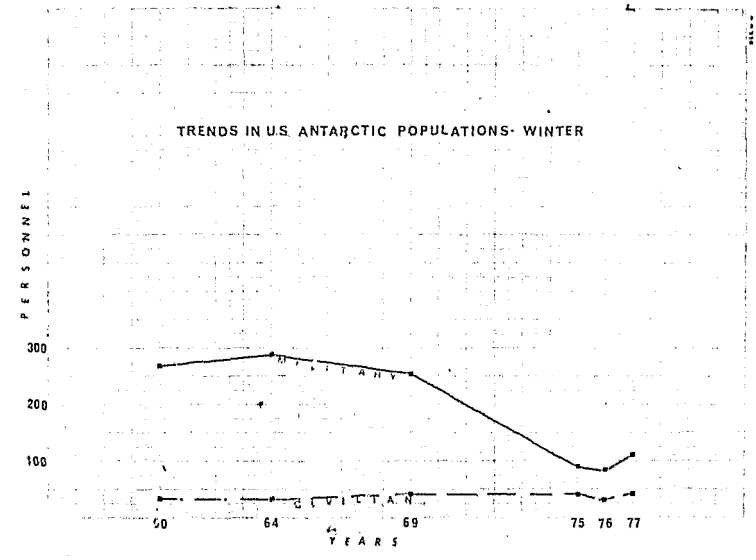
PERCENT
TOURIST
Foreign
CIVILIAN
Grantee
&
Contractor
Gov't Civilian
MILITARY
75
76
77
ANTARCTIC YEAR





Antarctica at a Glance

Physical.—Antarctica, the continent lying concentrically about the South Pole, has an area of 5.5 million square miles; it is larger than the United States and Mexico put together. Ninety-eight percent of its area is covered by ice that has an average thickness of over a mile. At its thickest, the ice is 2.8 miles deep, it has a volume of 7.2 million cubic miles.

Antarctica is the coldest continent. The world's lowest temperature, minus 126.9°F., was recorded at Vostok (see map). The average coldest month temperature in the interior is minus 94°F. Excluding the Antarctic Peninsula, whose climate is relatively mild, the highest known temperature is 40° F., recorded at Casey. Winds at the coast sometimes exceed 200 miles per hour.

Much of Antarctica is a desert. Annual precipitation at the South Pole is less than 3 inches (water equivalent), making it drier than some tropical deserts. Yet the antarctic ice and snow, the results of accumulation over millions of years, hold 90 percent of the world's fresh water.

Historical.—The ancient Greeks postulated a large land mass in the south to "balance" continents in the north. Cook inferred (but did not see) a continent in 1772. Bransfield (Britain), Palmer (U.S.A.) and Bellingshausen (Russia) discovered the continent in 1820–1821. Amundsen (Norway) and Scott (England) reached the South Pole in 1911 and 1912. Byrd (U.S.A.) brought large-scale mechanized exploration, including airplanes, in 1928. Twelve nations built more than 60 research stations for the International Geophysical Year, 1957–1958. Ten nations now occupy 30 year-round stations. Some 2,000 persons summer in Antarctica, and about 250 winter there. There is no indigenous human population.

Political.—Seven nations claimed portions of Antarctica in the first half of the 20th century. Three of the claims overlap. The United States and the Soviet Union have made no claims and do not recognize the claims of others. In 1961 the Antarctic Treaty was ratified by 12 nations—including the Soviet Union, the United States, and the seven claimants. Since then, 7 other nations have acceded to the treaty. The treaty limits the continent to peaceful uses, freezes the claims, promotes international cooperation in scientific investigation, prohibits nuclear explosions and dumping of nuclear waste, and permits parties to inspect one another's facilities at will.

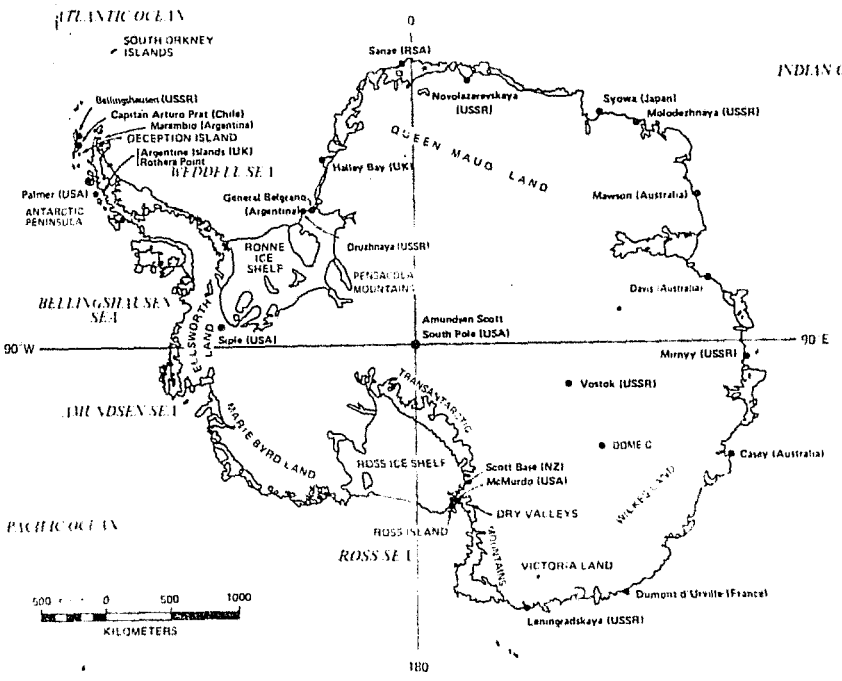
United States Antarctic Research Program.—United States has maintained a continuous program of research in Antartica since the international Geophysical Year. U.S. objectives are to maintain the Antarctic Treaty; to foster cooperative international research for the solution of worldwide and regional problems, including environmental monitoring and prediction and assessment of resources; and to protect the environment and insure the wise and equitable use of living and nonliving resources.

Four year-round U.S. stations are in operation: McMurdo, on Ross Island, the logistics hub; Amundsen-Scott South Pole, rebuilt as a geodesic dome in 1975; Siple, in Ellsworth Land; and Palmer on Anvers Island by the Antarctic Peninsula.

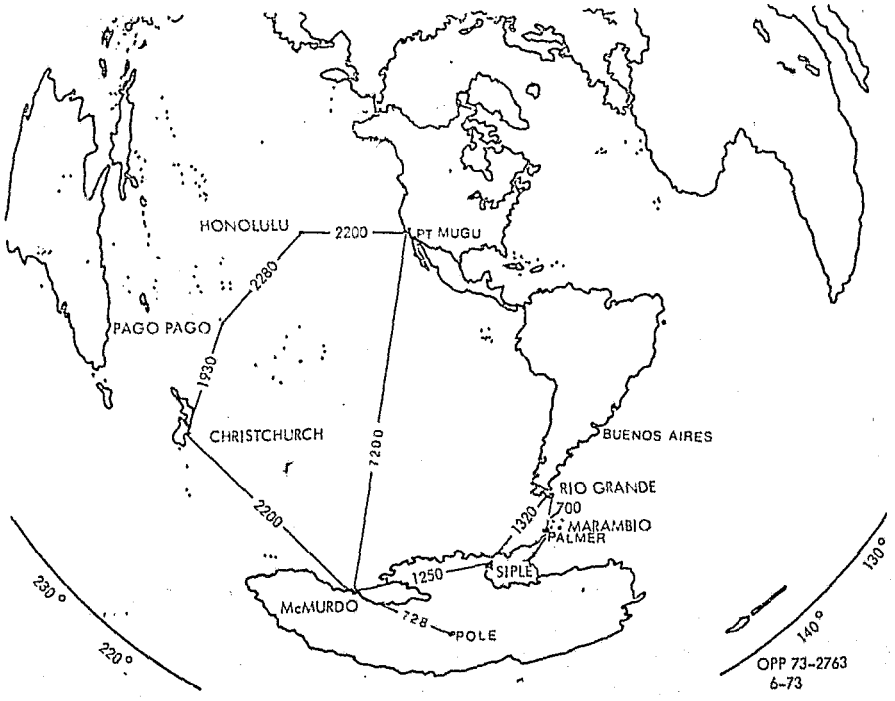
The National Science Foundation funds and manages the U.S. program. With a budget of about $45 million a year, it grants funds to university and other scientists to perform research, it reimburses the Navy and the Coast Guard for logistics and support services, and it retains a contractor to operate three stations and the research ship *Hero*.

Further reading.—All the well-known explorers produced fascinating diaries or books that have been widely printed. Two anthologies containing excerpts from some of these works are *Antarctic Conquest*, edited by Walker Chapman, and *Antarctica*, edited by Charles Neider. Recent general books include *This is Antarctica* by H. G. R. King. *Quest for a Continent*, by Walter Sullivan, describes the U.S. IGY effort and previous activities. Other books include *A Continent for Science*, by R. S. Lewis, *Research in the Antarctica*, edited L. O. Quam, and *Frozen Future: A Prophetic Report from Antarctica*, edited by Richard S. Lewis and Philip M. Smith.

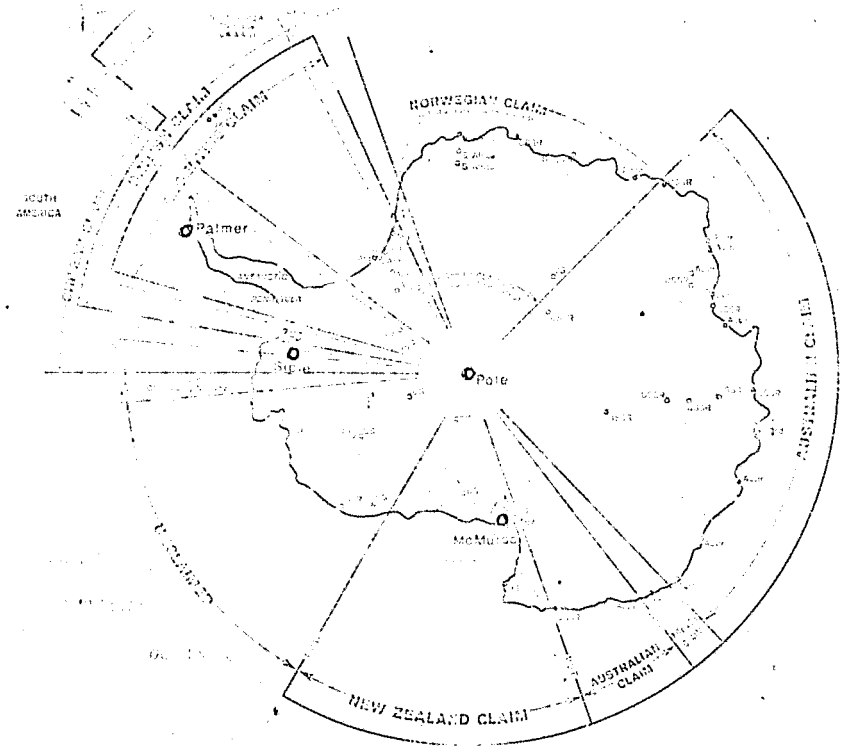
Further information.—Current information on the U.S. Antarctic program is published in *Antarctic Journal of the United States* (U.S. Government Printing Office). The hardbound *Antarctic Bibliography* (Government Printing Office) and companion *Current Antarctic Literature* (published monthly) list the world Antarctic literature. For further information, contact the Polar Information Service, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone 202-632-4076.



ANTARCTICA: selected stations and physical features.



ANTARCTIC DISTANCES


Palmer
Pole
McMurdo
NEW ZEALAND CLAIM
AUSTRALIAN CLAIM

AUSTRALIA

Australian Antarctic Territory Act, 1954-1973; 1 Acts Austl. 519 (1974).

ACTS OF THE AUSTRALIAN PARLIAMENT 1901-1973

Prefixed by

THE CONSTITUTION AS ALTERED TO 31 DECEMBER 1973

CONSTITUTION ALTERATION ACTS

STATUTE OF WESTMINSTER ADOPTION ACT 1942

Volume 1

AUSTRALIAN GOVERNMENT PUBLISHING SERVICE
CANBERRA 1974

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AUSTRALIAN ANTARCTIC TERRITORY ACT 1954-1973

TABLE OF PROVISIONS

AUSTRALIAN ANTARCTIC TERRITORY ACT 1954-1973

An Act to provide for the Government of the Australian Antarctic Territory.

Preamble.

WHEREAS the Australian Antarctic Territory was, by the *Australian Antarctic Territory Acceptance Act* 1933, accepted by the Commonwealth as a Territory under the authority of the Commonwealth:

AND WHEREAS the Australian Antarctic Territory has been governed by the Commonwealth under the provisions of that Act:

AND WHEREAS it is desirable to make other provision for the government of the Australian Antarctic Territory:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Australian Antarctic Territory Act* 1954-1973.[1]

Short title amended: No. 32, 1918, s. 2.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.[1]

Repeal.

3. Section three of the *Australian Antarctic Territory Acceptance Act* 1933 is repealed.

Definitions.

4. In this Act, unless the contrary intention appears—

"Ordinance" means an Ordinance made under this Act;

"the Territory" means the Australian Antarctic Territory which was accepted by the Commonwealth by the *Australian Antarctic Territory Acceptance Act* 1933, that is to say, that part of the territory in the Antarctic seas which comprises all the islands and territories, other than Adèlie Land, situated south of the sixtieth degree south latitude and lying between the one hundred and sixtieth degree east longitude and the forty-fifth degree east longitude.

Existing laws to cease to be in force.

5. The laws in force in the Territory immediately before the commencement of this Act (not being laws of the Commonwealth in force in the Territory) shall, upon the commencement of this Act, cease to be in force.

Laws of Australian Capital Territory to be in force.

6. (1) Subject to this Act, the laws in force from time to time in the Australian Capital Territory (including the principles and rules of common law and equity so in force) are, by virtue of this section, so far as they are applicable to the Territory and are not inconsistent with an Ordinance, in force in the Territory as if the Territory formed part of the Australian Capital Territory.

(2) The last preceding sub-section does not extend to a law in force in the Australian Capital Territory, being an Act or a provision of an Act so in force, other than—

(a) sections six and nine of the *Seat of Government Acceptance Act* 1909-1938; and

(b) sections three, four and twelve C of the *Seat of Government (Administration) Act* 1910-1947 and the Schedule to that Act.

Exercise of powers and performance of functions under adopted laws.

7. (1) Subject to the next succeeding sub-section, where, by a law of the Australian Capital Territory in force in the Territory by virtue of the last preceding section, a power or function is vested in a person or authority (not being a court), that power or function is, in relation to the Territory, vested in, and may be exercised or performed by, that person or authority.

(2) The Governor-General may direct that a power or function vested in a person or authority (not being a court) by a law of the Australian Capital Territory in force in the Territory by virtue of the last preceding section shall, in relation to the Territory, be vested in, and may be exercised or performed by, such other person or authority as the Governor-General specifies.

Application of Commonwealth Acts.

8. (1) An Act or a provision of an Act (whether passed before or after the commencement of this Act) is not, except as otherwise provided by that Act or by another Act, in force as such in the Territory, unless expressed to extend to the Territory.

(2) An Ordinance shall not be made so as to affect the application of its own force in, or in relation to, the Territory of an Act or a provision of an Act.

Ordinance may amend or repeal adopted laws.

9. A law in force in the Territory by virtue of section six of this Act may be amended or repealed by an Ordinance or by a law made under an Ordinance.

Supreme Court of Australian Capital Territory to have jurisdiction in Territory.

10. (1) The Supreme Court of the Australian Capital Territory has jurisdiction in and in relation to the Territory, and the *Australian Capital Territory Supreme Court Act* 1933-1950 and the practice and procedure of that Supreme Court for the time being in force apply in the Territory as if the Territory formed part of the Australian Capital Territory.

Sub-section (1) amended by No. 35, 1957, s. 2.

Added by No. 35, 1957, s. 2.

(2) For the purposes of the last preceding sub-section, a reference in the *Australian Capital Territory Supreme Court Act* 1933-1957 to an Ordinance shall be deemed to be a reference to an Ordinance in force under this Act.

Ordinances.

11. (1) The Governor-General may make Ordinances for the peace, order and good government of the Territory.

(2) Notice of the making of an Ordinance shall be published in the *Gazette*, and an Ordinance shall, unless the contrary intention appears in the Ordinance, come into operation on the date of publication of the notice.

Tabling of Ordinances in Parliament.

12. (1) An Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance, and, if it is not so laid before each House of the Parliament, shall be void and of no effect.

Substituted by No. 20, 1963, s. 2.

(2) If either House of the Parliament, in pursuance of a motion of which notice has been given within fifteen sitting days after an Ordinance has been laid before that House, passes a resolution disallowing the Ordinance or a part of the Ordinance, the Ordinance or part so disallowed shall thereupon cease to have effect.

Substituted by No. 20, 1963, s. 2.

(3) If, at the expiration of fifteen sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament, being notice given within fifteen sitting days after the Ordinance has been laid before that House—

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the Ordinance or part, as the case may be, specified in the motion shall thereupon be deemed to have been disallowed.

Inserted by No. 20, 1963, s. 2.

(3A) If, before the expiration of fifteen sitting days after notice of a motion to disallow an Ordinance or part of an Ordinance has been given in a House of the Parliament—

(a) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry or prorogation, as the case may be—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the Ordinance shall, for the purposes of the last two preceding sub-sections, be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

(4) Where an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance has the same effect as a repeal of the Ordinance or part of the Ordinance, as the case may be, except that, if a provision of the Ordinance or part of the Ordinance amended or repealed a law in force immediately before that provision came into operation, the disallowance revives the previous law from and including the date of the disallowance as if the disallowed provision had not been made.

(5) If an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, and an Ordinance containing a provision being the same in substance as a provision so disallowed, or deemed to have been disallowed, is made within six months after the date of the disallowance, that provision is void and of no effect, unless—

(a) in the case of an Ordinance, or part of an Ordinance, disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or

(b) in the case of an Ordinance, or part of an Ordinance, deemed to have been disallowed—the House of the Parliament in which notice to disallow that Ordinance or part was given approves, by resolution, the making of a provision the same in substance as the provision deemed to have been disallowed.

Grant of pardon, remission, &c.

Added by No. 35, 1957, s. 3.

13. (1) The Governor-General, acting with the advice of the Minister, by warrant under his hand, may grant to a person convicted by a court exercising criminal jurisdiction in the Territory a pardon, either free or conditional, or a remission or commutation of sentence, or a respite, for such period as he thinks fit, of the execution of sentence, and may remit any fine, penalty or forfeiture imposed or incurred under a law in force in the Territory.

(2) Where an offence has been committed in the Territory, or where an offence has been committed outside the Territory for which the offender may be tried in the Territory, the Governor-General, acting with the advice of the Minister, by warrant under his hand, may grant a pardon to any accomplice who gives evidence that leads to the conviction of the principal offender or any of the principal offenders. Amended by No. 216, 1973, s. 3.

NOTE

1. The *Australian Antarctic Territory Act* 1954-1973 comprises the *Australian Antarctic Territory Act* 1954 as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
Australian Antarctic Territory Act 1954	No. 42, 1954	1 Nov 1954	1 Nov 1954
Australian Antarctic Territory Act 1957	No. 35, 1957	7 June 1957	5 July 1957
Australian Antarctic Territory Act 1963	No. 20, 1963	28 May 1963	25 June 1963
Statute Law Revision Act 1973	No. 216, 1973	19 Dec 1973	31 Dec 1973

GREAT BRITAIN

The British Antarctic Territory Order in Council, 1962; Stat. Inst. 1962, No. 400.

STATUTORY INSTRUMENTS

1962

Part I

Published by Authority

LONDON: HER MAJESTY'S STATIONERY OFFICE

1962

STATUTORY INSTRUMENTS

1962 No. 400

SOUTH ATLANTIC TERRITORIES

The British Antarctic Territory Order in Council, 1962

Made - - - - 26*th February*, 1962
Laid before Parliament 2*nd March*, 1962
Coming into Operation 3*rd March*, 1962

At the Court at Buckingham Palace, the 26th day of February, 1962

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), the Colonial Boundaries Act, 1895(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1.—(1) This Order may be cited as the British Antarctic Territory Order in Council, 1962.

(2) This Order shall come into operation on the third day of March, 1962, and shall be published in the Falkland Islands Government Gazette.

Interpretation.

2.—(1) In this Order—

"the British Antarctic Territory" means all islands and territories whatsoever between the 20th degree of west longitude and the 80th degree of west longitude which are situated south of the 60th parallel of south latitude;

"the Territory" means the British Antarctic Territory.

(2) The Interpretation Act, 1889(c), shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

British Antarctic Territory to be a separate colony.

3. On the day of the commencement of this Order all the islands and territories whatsoever which were immediately before such commencement comprised in the Dependencies of the Colony of the Falkland Islands as defined in the Letters Patent dated the 21st day of July, 1908(d), and the 28th day of March, 1917(e), and are situated south of the 60th parallel of south latitude between the 20th degree of west longitude and the 80th degree of west longitude shall form a separate colony which shall be known as the British Antarctic Territory.

Establishment of office of High Commissioner.

4. There shall be a High Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 58 & 59 Vict. c. 34.
(c) 52 & 53 Vict. c. 63. (d) Rev. VII, p. 583. (e) Rev. VII, p. 585.

Powers and duties of High Commissioner.

5. The High Commissioner shall have such powers and duties as are conferred upon him by or under this Order or any other law, and such other powers and duties as Her Majesty may from time to time be pleased to assign to him, and, subject to the provisions of this Order and any other law by which any such powers or duties are conferred, shall do or execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Oaths to be taken by High Commissioner.

6. A person appointed to hold the office of High Commissioner shall, before entering upon the duties of that office, take and subscribe the oath of allegiance and an oath for the due execution of his office in the form set out in the Schedule to this Order.

Discharge of High Commissioner's functions during vacancy, etc.

7.—(1) Whenever the office of High Commissioner is vacant or the High Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of High Commissioner under this section he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to the office of High Commissioner.

(3) For the purposes of this section—

(*a*) the High Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the duties of his office, during his passage from any part of the Territory to another or to any other British territory south of the 50th parallel of south latitude, or while he is in any part of the last mentioned territory; and

(*b*) the High Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of High Commissioner's functions by deputy.

8.—(1) The High Commissioner may, by Instrument under the Public Seal of the Territory, authorize a fit and proper person to discharge for and on behalf of the High Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of High Commissioner as may be specified in that Instrument.

(2) The powers and authority of the High Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of High Commissioner as the High Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the High Commissioner by Instrument under the Public Seal.

Public Seal.

9. There shall be a Public Seal for the Territory. The High Commisioner shall keep and use the Public Seal for sealing all things whatsoever that shall pass the said Seal.

Constitution of offices.

10. The High Commissioner, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Territory, make appointments to any such office and terminate any such appointment.

Power to make Regulations.

11.—(1) The High Commissioner may, by Regulations, make laws for the peace, order and good government of the Territory.

(2) Any Regulation made by the High Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any Regulation has been disallowed by Her Majesty, the High Commissioner shall cause notice of such disallowance to be published in such manner and at such place or places in the Territory as he may direct.

(4) Every Regulation disallowed shall cease to have effect as soon as notice of disallowance is published, and thereupon any enactment amended or repealed by, or in pursuance of, the Regulation disallowed shall have effect as if the Regulation had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.

12. The High Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

(*a*) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions; or

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence; or

(*c*) substitute a less severe form of punishment for any punishment imposed on that person for any offence; or

(*d*) remit the whole or any part of any punishment imposed on that person for any offence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Existing laws.

13.—(1) Subject to the provisions of this section, the existing laws shall continue to have effect in the Territory after the commencement of this Order and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The provisions of subsection (1) of this section shall be without prejudice to any powers conferred upon the High Commissioner by section 11 of this Order.

(3) For the purposes of this section "existing laws" means all Ordinances, Laws, rules, regulations, orders and other instruments having the effect of law in the Territory immediately before the commencement of this Order.

Establishment of courts.

14.—(1) The High Commissioner may, by Regulations made under this Order, establish such courts of justice in and for the Territory as he may think fit and may make such provisions as he may think

fit respecting the jurisdiction and powers of any such court, the proceedings in any such court, the enforcement and execution of the judgments, decrees, orders and sentences of any such court given or made in the exercise of such jurisdiction and powers, and respecting appeals therefrom.

(2) A court established under this section shall sit in such place or places in the Territory as the High Commissioner may appoint:

Provided that it may also sit in such place or places within any other British territory south of the 50th parallel of south latitude as the High Commissioner, acting with the concurrence of the Governor of such territory, may appoint, in which case it may exercise its jurisdiction and powers in like manner as if it were sitting within the Territory.

(3) The High Commissioner may constitute all such judgeships and other offices as he may consider necessary for the purposes of this section and may make appointments to any office so established, and any person so appointed, unless otherwise provided by law, shall hold his office during Her Majesty's pleasure.

Amendment of section 1 (1) of the Falkland Islands (Legislative Council) Order in Council, 1948.

15. Subsection (1) of section 1 of the Falkland Islands (Legislative Council) Order in Council, 1948(a), shall be amended by the deletion therefrom of the definition of "the Dependencies" and the substitution therefor of the following definition:

"the Dependencies" means all islands and territories whatsoever between the 20th degree of west longitude and the 50th degree of west longitude which are situated between the 50th parallel of south latitude and the 60th parallel of south latitude; and all islands and territories whatsoever between the 50th degree of west longitude and the 80th degree of west longitude which are situated between the 58th parallel of south latitude and the 60th parallel of south latitude.".

W. G. Agnew.

SCHEDULE Section 6.

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF HIGH COMMISSIONER

I, DO SWEAR (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of High Commissioner of the British Antarctic Territory.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order makes provision for the constitution into a new colony under the name of the British Antarctic Territory of part of the Dependencies of the colony of the Falkland Islands and for the administration of the new colony.

(a) S.I. 1948/2573 (Rev. VII, p. 591: 1948 I, p. 1018).

STATUTORY INSTRUMENTS

1962 No. 401

SOUTH ATLANTIC TERRITORIES

The Antarctic Treaty Order in Council, 1962

Made - - - -	*26th February*, 1962
Laid before Parliament	*2nd March*, 1962
Coming into Operation	*3rd March*, 1962

At the Court at Buckingham Palace, the 26th day of February, 1962

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act, 1890(a), the British Settlements Acts, 1887 and 1945(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and commencement.

1.—(1) This Order may be cited as the Antarctic Treaty Order in Council, 1962.

(2) This Order shall come into operation on the same day as the British Antarctic Territory Order in Council, 1962(c), and shall be published in the Falkland Islands Government Gazette.

Interpretation.

2.—(1) In this Order—

"Antarctica" means the area south of the 60th parallel of south latitude, including all ice shelves, but does not include the high seas within that area;

"the British Antarctic Territory" means all islands and territories between the 20th degree of west longitude and the 80th degree of west longitude which are situated south of the 60th parallel of south latitude;

"Court" means a court established under section 14 of the British Antarctic Territory Order in Council, 1962;

"exchanged scientist" means a scientist exchanged under paragraph 1 (*b*) of Article III of the Treaty;

"the High Commissioner" means the High Commissioner appointed under section 4 of the British Antarctic Territory Order in Council, 1962, and includes any person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of that office;

"observer" means an observer designated under paragraph 1 of Article VII of the Treaty;

(a) 53 & 54 Vict. c. 37. (b) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6, c. 7.
(c) S.I. 1962/400 (1962 I. p. 356).

"the Territory" means the British Antarctic Territory as defined in this Order;

"the Treaty" means the Antarctic Treaty set out in the Schedule to this Order.

(2) The Interpretation Act, 1889(a), shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

Jurisdiction not to be exercised by courts of Territory over observers, etc. of other contracting parties in certain cases.

3.—(1) Jurisdiction shall not be exercised by any court of the Territory over any person to whom this section applies in respect of any act done or omitted to be done by him while he is in any part of Antarctica for the purpose of exercising his functions.

(2) This section applies to any person who is an observer or an exchanged scientist or a member of the staff accompanying any observer or exchanged scientist and who is a national of any Contracting Party to the Treaty other than the United Kingdom.

Criminal jurisdiction over United Kingdom observers, etc. conferred on courts of Territory in certain cases.

4.—(1) Subject to the provisions of this section, where any person does or omits to do any act to which this section applies and that act or omission would, if it occurred in the Territory, be an offence under the law for the time being in force in the Territory, he shall be liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in the Territory; and the courts of the Territory shall have jurisdiction accordingly.

(2) Proceedings for the trial and punishment of a person who is charged with an offence by virtue of the foregoing provisions of this section shall not be instituted in any court of the Territory except with the consent of the High Commissioner and on his certificate that the institution of such proceedings is, in his opinion, expedient.

(3) The High Commissioner, with the consent of a Secretary of State, may make such regulations as appear to him to be necessary or expedient in order to provide—

(a) for the arrest in any part of Antarctica to which this section applies of any person suspected of having committed an offence with respect to which the courts of the Territory have jurisdiction by virtue of the provisions of this section; and

(b) for the conveyance in custody of any person so arrested to a convenient place in the Territory, or, where any court of the Territory having jurisdiction to enquire into a charge in respect of the offence which such person is suspected of having committed may exercise such jurisdiction when sitting in such other British territory as is mentioned in the proviso to subsection (2) of section 14 of the British Antarctic Territory Order in Council, 1962, to a convenient place in such territory for the purpose of being charged with that offence; and

(c) for the taking of possession of and conveyance to a convenient place as aforesaid of any article that is situate in any part of

(a) 52 & 53 Vict. c. 63.

Antarctica to which this section applies and that may constitute evidence regarding the commission of an offence with respect to which the courts of the Territory have jurisdiction by virtue of the provisions of this section, and for securing the attendance before any such court of any person in any such part of Antarctica who may be able to give evidence regarding the commission of such an offence.

(4) This section applies to any act done or omitted to be done by a citizen of the United Kingdom and Colonies or a British protected person, who is an observer or an exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in any part of Antarctica to which this section applies for the purpose of exercising his functions; and the parts of Antarctica to which this section applies are parts of Antarctica other than the Territory, the Australian Antarctic Territory and the Ross Dependency of New Zealand.

Inspection of Territory by observers.

5.—(1) All parts of the Territory and all stations, installations and equipment therein, and all ships and aircraft at points of discharging or embarking cargoes or personnel in those parts of the Territory shall be open at all times to inspection by any observers; and any person impeding or hindering any such observer in the exercise of his right of inspection shall be guilty of an offence.

(2) Subject to the provisions of section 3 of this Order, proceedings in respect of an offence under this section shall be taken before the competent court of the Territory and any person who is convicted of such an offence shall be liable to a fine not exceeding fifty pounds.

Exemption from certain laws of the Territory may be granted to observers.

6.—(1) Without prejudice to subsection (1) of the last foregoing section, the High Commissioner may, by order, grant exemption from the provisions of any enactment or instrument made thereunder in force in the Territory to observers and exchanged scientists and members of the staffs accompanying any such persons to such extent as appears to him to be necessary or expedient in order to facilitate access by such persons to any part of Antarctica for the purpose of exercising their functions or the exercise of their functions in any part of the Territory within Antarctica.

(2) The power to grant exemptions conferred by the preceding subsection shall be construed as including power to grant exemptions in respect of baggage, instruments or other goods accompanying or intended for the use of any such persons as are referred to in that subsection.

Revocation of Antarctic Order in Council, 1961.

7. The Antarctic Treaty Order in Council, 1961(a), is hereby revoked without prejudice to anything lawfully done thereunder.

W. G. Agnew.

(a) S.I. 1961/570 (1961 I, p. 1250).

Antartica Act 1960, 1960 N.Z. Stat. No. 47, as amended by 1970 N.Z. Stat. No. 34.

SCHEDULE—*continued*

ARTICLE III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

(a) Information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;

(b) Scientific personnel shall be exchanged in Antarctica between expeditions and stations;

(c) Scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialised Agencies of the United Nations and other international organisations having a scientific or technical interest in Antarctica.

ARTICLE IV

1. Nothing contained in the present Treaty shall be interpreted as:

(a) A renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

(b) A renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

(c) Prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

ARTICLE V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

ARTICLE VI

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

SCHEDULE—*continued*

ARTICLE VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

(a) All expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organised in or proceeding from its territory;

(b) All stations in Antarctica occupied by its nationals; and

(c) Any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.

ARTICLE VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1 (b) of Article III of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1 (e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

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SCHEDULE—*continued*

ARTICLE IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within two months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

(a) Use of Antarctica for peaceful purposes only;
(b) Facilitation of scientific research in Antarctica;
(c) Facilitation of international scientific cooperation in Antarctica;
(d) Facilitation of the exercise of the rights of inspection provided for in Article VII of the Treaty;
(e) Questions relating to the exercise of jurisdiction in Antarctica;
(f) Preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

ARTICLE X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

ARTICLE XI

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

SCHEDULE—*continued*

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

ARTICLE XII

1. (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

(b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1 (a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2. (a) If after the expiration of thirty years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.

(b) Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

(c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1 (a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect two years after the receipt of the notice by the depositary Government.

ARTICLE XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may

SCHEDULE—*continued*

be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary Government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XIV

The present Treaty, done in the English, French, Russian, and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

In witness whereof, the undersigned Plenipotentiaries, duly authorised, have signed the present Treaty.

Done at Washington this first day of December, one thousand nine hundred and fifty-nine.

[*Here follow the signatures.*]

THE STATUTES OF NEW ZEALAND 1970

Acts passed in the Nineteenth Year of the Reign of Her Majesty

QUEEN ELIZABETH II

and the

FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

(12 March to 3 December 1970)

And Reprinted Acts

[IN THREE VOLUMES]

VOLUME 1

PUBLIC ACTS Nos. 1 — 153

HIS EXCELLENCY
SIR ARTHUR ESPIE PORRITT, BARONET,
GOVERNOR-GENERAL

WELLINGTON, NEW ZEALAND: Printed under the authority of the New Zealand Government, by A. R. SHEARER, Government Printer—1971

ANALYSIS

1970, No. 34

An Act to amend the Antarctica Act 1960

[*29 October 1970*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Antarctica Amendment Act 1970, and shall be read together with and deemed part of the Antarctica Act 1960 (hereinafter referred to as the principal Act).

2. Regulations for conservation of Antarctic fauna and flora—The principal Act is hereby amended by inserting, after section 6, the following section:

"6A. (1) The Governor-General may from time to time, by Order in Council, make regulations for the purpose of giving effect to the agreed measures for the conservation of Antarctic fauna and flora set out in the Second Schedule to this Act (being measures recommended pursuant to Article IX (1) of the Treaty for approval by the Contracting Parties, as heretofore amended) and to any amendment of those agreed measures that may hereafter be made pursuant to the said Article IX or to Article XIV of those agreed measures.

"(2) Without limiting the generality of subsection (1) of this section, any regulations made for the purposes of that subsection may prohibit, except as permitted by or under the regulations,—

"(a) The wilful killing, injuring, molesting, or taking of any native mammal or native bird, or any attempt at any such act, in any part of Antarctica:

"(b) The gathering of any native plant within a specially protected area:

"(c) The driving of any vehicle, or the movement of any aircraft on the ground (whether it is being mechanically propelled or not), within a specially protected area:

"(d) The bringing into any part of Antarctica of any animal or plant of a species that is not indigenous to Antarctica.

"(3) Any regulations made for the purposes of this section may—

"(a) Designate as a specially protected species any species of mammal or bird which is for the time being specified in Annex A to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty:

"(b) Designate (whether by reference to a map or otherwise) as a specially protected area any area which is for the time being specified in Annex B to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty.

"(4) Any regulations under this section may be made to apply—

"(a) To any New Zealand citizen or any person ordinarily resident in New Zealand:

"(b) To any person who is for the time being the owner or master or a member of the crew of a New Zealand ship or the pilot in command or a member of the crew of a New Zealand aircraft:

"(c) Subject to such exceptions and modifications as may be specified in the regulations, to any person who is for the time being a member of any expedition organised in New Zealand:

"(d) In the Ross Dependency, to any person who is not a national of any Contracting Party to the Treaty.

"(5) Any regulations under this section may be made to extend and apply to the high seas within Antarctica.

"(6) Any regulations under this section may—

"(a) Provide for the issue of permits, for any of the purposes of the regulations, by any person who is the holder for the time being of any specified office or appointment in New Zealand or Antarctica:

"(b) Prescribe, or authorise any such person to prescribe, conditions subject to which such permits may be issued:

"(c) Authorise any such person, subject to such conditions and limitations (if any) as may be prescribed in the regulations, to delegate to any other person all or any of his powers under the regulations:

"(d) Exempt from any of the provisions of the regulations the holder of any permit issued by any Contracting Party to the Treaty:

"(e) Make such other provision as may be contemplated by or necessary to give full effect to the said agreed measures.

"(7) Any regulations under this section may prescribe, in respect of the contravention of or non-compliance with any of their provisions, penalties, on the summary conviction of any offender, not exceeding in any case imprisonment for a term of 3 months or a fine of $500, or both.

"(8) If at any time the agreed measures set out in the Second Schedule to this Act are amended pursuant to Article IX (4) of the Treaty or to Article XIV of the said agreed measures, the Governor-General may by Order in Council amend the Second Schedule to this Act for the purpose of giving effect to the amendment."

3. New Second Schedule added to principal Act—The principal Act is hereby further amended—

(a) By omitting from the definition of the term "Treaty", in subsection (1) of section 2, the word "Schedule", and substituting the words "First Schedule":

(b) By omitting from the Schedule the heading "Schedule", and substituting the following headings:

"SCHEDULES

"FIRST SCHEDULE":

(c) By adding the new Second Schedule set out in the Schedule to this Act.

Section 3 (c)

SCHEDULE

NEW SECOND SCHEDULE ADDED TO PRINCIPAL ACT

"SECOND SCHEDULE
AGREED MEASURES FOR THE CONSERVATION OF ANTARCTIC FAUNA AND FLORA

PREAMBLE

The Governments participating in the Third Consultative Meeting under Article IX of the Antarctic Treaty,

Desiring to implement the principles and purposes of the Antarctic Treaty;

Recognising the scientific importance of the study of Antarctic fauna and flora, their adaptation to their rigorous environment, and their interrelationship with that environment;

Considering the unique nature of these fauna and flora, their circumpolar range, and particularly their defencelessness and susceptibility to extermination;

Desiring by further international collaboration within the framework of the Antarctic Treaty to promote and achieve the objectives of protection, scientific study, and rational use of these fauna and flora; and

Having particular regard to the conservation principles developed by the Scientific Committee on Antarctic Research (SCAR) of the International Council of Scientific Unions;

Hereby consider the Treaty Area as a Special Conservation Area and have agreed on the following measures:

ARTICLE I

1. These Agreed Measures shall apply to the same area to which the Antarctic Treaty is applicable (hereinafter referred to as the Treaty Area) namely the area south of 60° South Latitude, including all ice shelves.

2. However, nothing in these Agreed Measures shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within the Treaty Area, or restrict the implementation of the provisions of the Antarctic Treaty with respect to inspection.

3. The Annexes to these Agreed Measures shall form an integral part thereof, and all references to the Agreed Measures shall be considered to include the Annexes.

ARTICLE II

For the purposes of these Agreed Measures:

(*a*) "Native mammal" means any member, at any stage of its life cycle, of any species belonging to the Class Mammalia indigenous to the Antarctic or occurring there through natural agencies of dispersal, excepting whales.

(*b*) "Native bird" means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic or occurring there through natural agencies of dispersal.

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

(*c*) "Native plant" means any kind of vegetation at any stage of its life cycle (including seeds), indigenous to the Antarctic or occurring there through natural agencies of dispersal.

(*d*) "Appropriate authority" means any person authorised by a Participating Government to issue permits under these Agreed Measures. The functions of an authorised person will be carried out within the framework of the Antarctic Treaty. They will be carried out exclusively in accordance with scientific principles and will have as their sole purpose the effective protection of Antarctic fauna and flora in accordance with these Agreed Measures.

(*e*) "Permit" means a formal permission in writing issued by an appropriate authority as defined at paragraph (*d*) above.

(*f*) "Participating Government" means any Government for which these Agreed Measures have become effective in accordance with Article XIII of these Agreed Measures.

ARTICLE III

Each Participating Government shall take appropriate action to carry out these Agreed Measures.

ARTICLE IV

The Participating Governments shall prepare and circulate to members of expeditions and stations information to ensure understanding and observance of the provisions of these Agreed Measures, setting forth in particular prohibited activities, and providing lists of specially protected species and specially protected areas.

ARTICLE V

The provisions of these Agreed Measures shall not apply in cases of extreme emergency involving possible loss of human life or involving the safety of ships or aircraft.

ARTICLE VI

1. Each Participating Government shall prohibit within the Treaty Area the killing, wounding, capturing or molesting of any native mammal or native bird, or any attempt at any such act, except in accordance with a permit.

2. Such permits shall be drawn in terms as specific as possible and issued only for the following purposes:

(*a*) to provide indispensable food for men or dogs in the Treaty Area in limited quantities, and in conformity with the purposes and principles of these Agreed Measures;

(*b*) to provide specimens for scientific study or scientific information;

(*c*) to provide specimens for museums, zoological gardens, or other educational or cultural institutions or uses.

3. Permits for Specially Protected Areas shall be issued only in accordance with the provisions of Article VIII.

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

4. Participating Governments shall limit the issue of such permits so as to ensure as far as possible that:

(*a*) no more native mammals or birds are killed or taken in any year than can normally be replaced by natural reproduction in the following breeding season;

(*b*) the variety of species and the balance of the natural ecological systems existing within the Treaty Area are maintained.

5. The species of native mammals and birds listed in Annex A of these Measures shall be designated "Specially Protected Species", and shall be accorded special protection by Participating Governments.

6. A Participating Government shall not authorise an appropriate authority to issue a permit with respect to a Specially Protected Species except in accordance with paragraph 7 of this Article.

7. A permit may be issued under this Article with respect to a Specially Protected Species, provided that:

(*a*) it is issued for a compelling scientific purpose, and

(*b*) the actions permitted thereunder will not jeopardise the existing natural ecological system or the survival of that species.

ARTICLE VII

1. Each Participating Government shall take appropriate measures to minimise harmful interference within the Treaty Area with the normal living conditions of any native mammal or bird, or any attempt at such harmful interference, except as permitted under Article VI.

2. The following acts and activities shall be considered as harmful interference:

(*a*) allowing dogs to run free,

(*b*) flying helicopters or other aircraft in a manner which would unnecessarily disturb bird and seal concentrations, or landing close to such concentrations (e.g. within 200 m),

(*c*) driving vehicles unnecessarily close to concentrations of birds and seals (e.g. within 200 m),

(*d*) use of explosives close to concentrations of birds and seals,

(*e*) discharge of firearms close to bird and seal concentrations (e.g. within 300 m),

(*f*) any disturbance of bird and seal colonies during the breeding period by persistent attention from persons on foot.

However, the above activities, with the exception of those mentioned in (*a*) and (*e*), may be permitted to the minimum extent necessary for the establishment, supply and operation of stations.

3. Each Participating Government shall take all reasonable steps towards the alleviation of pollution of the waters adjacent to the coast and ice shelves.

ARTICLE VIII

1. The areas of outstanding scientific interest listed in Annex B shall be designated "Specially Protected Areas" and shall be accorded special protection by the Participating Governments in order to preserve their unique natural ecological system.

CONTINUED

2 OF 3

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

2. In addition to the prohibitions and measures of protection dealt with in other Articles of these Agreed Measures, the Participating Governments shall in Specially Protected Areas further prohibit:

(*a*) the collection of any native plant, except in accordance with a permit;

(*b*) the driving of any vehicle.

3. A permit issued under Article VI shall not have effect within a Specially Protected Area except in accordance with paragraph 4 of the present Article.

4. A permit shall have effect within a Specially Protected Area provided that:

(*a*) it was issued for a compelling scientific purpose which cannot be served elsewhere; and

(*b*) the actions permitted thereunder will not jeopardise the natural ecological system existing in that Area.

ARTICLE IX

1. Each Participating Government shall prohibit the bringing into the Treaty Area of any species of animal or plant not indigenous to that Area, except in accordance with a permit.

2. Permits under paragraph 1 of this Article shall be drawn in terms as specific as possible and shall be issued to allow the importation only of the animals and plants listed in Annex C. When any such animal or plant might cause harmful interference with the natural system if left unsupervised within the Treaty Area, such permits shall require that it be kept under controlled conditions and, after it has served its purpose, it shall be removed from the Treaty Area or destroyed.

3. Nothing in paragraphs 1 and 2 of this Article shall apply to the importation of food into the Treaty Area so long as animals and plants used for this purpose are kept under controlled conditions.

4. Each Participating Government undertakes to ensure that all reasonable precautions shall be taken to prevent the accidental introduction of parasites and diseases into the Treaty Area. In particular, the precautions listed in Annex D shall be taken.

ARTICLE X

Each Participating Government undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in the Treaty Area contrary to the principles or purposes of these Agreed Measures.

ARTICLE XI

Each Participating Government whose expeditions use ships sailing under flags of nationalities other than its own shall, as far as feasible, arrange with the owners of such ships that the crews of these ships observe these Agreed Measures.

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

ARTICLE XII

1. The Participating Governments may make such arrangements as may be necessary for the discussion of such matters as:

(*a*) the collection and exchange of records (including records of permits) and statistics concerning the numbers of each species of native mammal and bird killed or captured annually in the Treaty Area;

(*b*) the obtaining and exchange of information as to the status of native mammals and birds in the Treaty Area, and the extent to which any species needs protection;

(*c*) the number of native animals or birds which should be permitted to be harvested for food, scientific study, or other uses in the various regions;

(*d*) the establishment of a common form in which this information shall be submitted by Participating Governments in accordance with paragraph 2 of this Article.

2. Each Participating Government shall inform the other Governments in writing before the end of November of each year of the steps taken and information collected in the preceding period of 1st July to 30th June relating to the implementation of these Agreed Measures. Governments exchanging information under paragraph 5 of Article VII of the Antarctic Treaty may at the same time transmit the information relating to the implementation of these Agreed Measures.

ARTICLE XIII

1. After the receipt by the Government designated in Recommendation I–XIV (5) of notification of approval by all Governments whose representatives are entitled to participate in meetings provided for under Article IX of the Antarctic Treaty, these Agreed Measures shall become effective for those Governments.

2. Thereafter any other Contracting Party to the Antarctic Treaty may, in consonance with the purposes of Recommendation III–VII, accept these Agreed Measures by notifying the designated Government of its intention to apply the Agreed Measures and to be bound by them. The Agreed Measures shall become effective with regard to such Governments on the date of receipt of such notification.

3. The designated Government shall inform the Governments referred to in paragraph 1 of this Article of each notification of approval, the effective date of these Agreed Measures and of each notification of acceptance. The designated Government shall also inform any Government which has accepted these Agreed Measures of each subsequent notification of acceptance.

ARTICLE XIV

1. These Agreed Measures may be amended at any time by unanimous agreement of the Governments whose Representatives are entitled to participate in meetings under Article IX of the Antarctic Treaty.

2. The Annexes, in particular, may be amended as necessary through diplomatic channels.

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

3. An amendment proposed through diplomatic channels shall be submitted in writing to the designated Government which shall communicate it to the Governments referred to in paragraph 1 of the present Article for approval; at the same time, it shall be communicated to the other Participating Governments.

4. Any amendment shall become effective on the date on which notifications of approval have been received by the designated Government and from all of the Governments referred to in paragraph 1 of this Article.

5. The designated Government shall notify those same Governments of the date of receipt of each approval communicated to it and the date on which the amendment will become effective for them.

6. Such amendment shall become effective on that same date for all other Participating Governments, except those which before the expiry of two months after that date notify the designated Government that they do not accept it.

ANNEXES TO THESE AGREED MEASURES

ANNEX A

Specially protected species

Species recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. All species of the genus *Arctocephalus*, Fur Seals.
2. *Ommatophoca rossi*, Ross Seal.

ANNEX B

Specially protected areas

Areas recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. Taylor Rookery, Mac. Robertson Land. Lat. 67° 26′S, long. 60° 50′ E.
2. Rookery Islands, Holme Bay. Lat. 67° 37′ S, long. 62° 33′ E.
3. Ardery Island and Odbert Island, Budd Coast. Lat. 65° 22′ S, long. 110° 28′ E, and lat. 66° 22′ S, long. 110° 33′ E.
4. Sabrina Island, Balleny Islands. Lat. 66° 54′ S, long. 163° 20′ E.
5. Beaufort Island, Ross Sea. Lat. 76° 58′ S, long. 167° 03′ E.
6. Cape Crozier, Ross Island. Lat. 77° 32′ S, long. 169° 19′ E.
7. Cape Hallett, Victoria Land. Lat. 72° 18′ S, long. 170° 19′ E.
8. Dion Islands, Marguerite Bay, Antarctic Peninsula. Lat. 67° 52′ S, long. 68° 43′ W.
9. Green Island, Berthelot Islands, Antarctic Peninsula. Lat. 65° 19′ S, long. 64° 10′ W.
10. Byers Peninsula, Livingston Island, South Shetland Islands. Lat. 62° 38′ S, long. 61° 05′ W.
11. Cape Shirreff, Livingston Island, South Shetland Islands. Lat. 62° 28′ S, long. 60° 48′ W.

SCHEDULE—*continued*

"SECOND SCHEDULE—*continued*

12. Fildes Peninsula, King George Island, South Shetland Islands. Lat. 62° 11′ S, long. 58° 52′ W.
13. Moe Island, South Orkney Islands. Lat. 60° 45′ S, long. 45° 41′ W.
14. Lynch Island, South Orkney Islands. Lat 60° 40′S, long. 45° 38′ W.
15. Southern Powell Island and adjacent islands, South Orkney Islands. Lat. 60° 45′S, long. 45° 02′ W.

ANNEX C

Importation of animals and plants

The following animals and plants may be imported into the Treaty Area in accordance with permits issued under Article IX (2) of these Agreed Measures:

(*a*) sledge dogs,
(*b*) domestic animals and plants,
(*c*) laboratory animals and plants.

ANNEX D

Precautions to prevent accidental introduction of parasites and diseases into the Treaty Area

The following precautions shall be taken:

1. *Dogs:* All dogs imported into the Treaty Area shall be inoculated against the following diseases:

(*a*) distemper;
(*b*) contagious canine hepatitis;
(*c*) rabies;
(*d*) leptospirosis (*L. canicola* and *L. icterohaemorrhagicae*).

Each dog shall be inoculated at least two months before the time of its arrival in the Treaty Area.

2. *Poultry:* Notwithstanding the provisions of Article IX (3) of these Agreed Measures, no living poultry shall be brought into the Treaty Area after 1st July, 1966."

This Act is administered in the Ministry of Foreign Affairs.

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