

March 15, 1967

CONGRESSIONAL RECORD — SENATE

S 3863

great respect for the distinguished majority leader, who read the letter. I want to say for one Senator, the Senator from Florida, that he does not agree at all with the statement in that letter that the assurances given in prior letters are now stronger than the expression of the hope contained in the understanding of the distinguished Senator from Maine, because there is nothing in the former letters, there is nothing in the expressions made to the Senator from Florida—and he has conferred with the representatives of the Department of State—or by any manner or means, that they do not intend to open consulate establishments with the Soviet people until after the cessation of the Vietnam conflict. They say they do not have any present proposal. They say they will take up subsequent proposals with the committee headed by the distinguished Senator from Arkansas [Mr. FULBRIGHT]. But they make no statement at all—of a hope or anticipation or commitment—that they will not open negotiations with the Soviet Union for the purpose of establishing consulates until the Vietnam conflict comes to an end.

I see no reason in the world why a Member of the Senate should not have the right to express a hope, an intention, an understanding, just as much as the Secretary of State or anyone else. Certainly this Senator claims the right and he thinks every other Senator should have that right.

The Senator from Florida agrees fully with the hope expressed in this understanding—and it is not a binding expression at all, but with the hope expressed—that there will be no commitment made, no negotiations opened looking to the opening of consulates in this country by the Soviet Union and in their country by us until the conflict between the free world and a large part of the Communist world comes to an end. That is the least we can say.

I voted against the reservations which went further, but I hope, in view of the popular feeling of the people in this matter, and in view of what I think is in the heart of every Senator, there will be no move toward further opening of consulates until the Vietnam conflict comes to an end. That is what the Senator from Maine says in her understanding, which I shall certainly support.

I thank the Senator from Maine for yielding to me.

Mr. FULBRIGHT. I yield 3 minutes to the Senator from Kentucky.

Mr. COOPER. Mr. President, it is always difficult to be in opposition to the distinguished Senator from Maine.

I share with everyone else in this body great respect for her patriotism, her ability, and her integrity. But her proposed understanding, like the proposed reservations that were offered by the distinguished Senator from South Dakota [Mr. MUNDT] and the distinguished Senator from Nebraska [Mr. CURTIS], place a heavy burden on all of us. All of us are deeply concerned about the war in Vietnam. But the proposals place us somewhat in the light of public opinion, as if we were not concerned, and as if in some way, by our opposition, we were actually encouraging conditions which

would continue the war longer. If their adoption would shorten the war, I would support them, but we know their adoption would not shorten the war.

But I address my opposition to the understanding for two reasons: one is that the Senate, by voting down the reservation offered by the Senator from South Dakota, similar in its purpose to the understanding, has expressed its conviction that this convention offers benefit to the United States, even though the war in Vietnam is in progress. It is logical to say that if we had believed otherwise, we should have voted for the reservation of the Senator from South Dakota.

A legal question arises. Legal questions are not always interesting, but the effect of this understanding must be considered. It may be thought that only a proposed labeled reservation affects the operation of a convention.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. COOPER. I ask for 2 additional minutes.

Mr. FULBRIGHT. I yield the Senator from Kentucky 3 more minutes.

Mr. COOPER. But under international law this is not correct. A memorandum of the Committee on Foreign Relations prepared at the time the nuclear test ban treaty was adopted, pointed out that the use of the terms "reservation" or "understanding" is not definitive and controlling; that the real question is whether or not the proposal changes the contractual obligations of the parties, or changes, inhibits or limits the application of the convention.

Mr. President, I ask unanimous consent that a memorandum prepared by the staff of the Foreign Relations Committee on the treaty-making process be inserted in the RECORD at the conclusion of my remarks.

(See exhibit 1.)

The PRESIDING OFFICER. There being no objection, it was so ordered.

Mr. COOPER. Mr. President, the purpose of entering into the convention is to make it operative. I do not say that the President could not ignore the understanding but in effect I think it would inhibit him from doing so until the end of the war in Vietnam. It would be a limitation upon the convention itself.

So I return to my original statement, that if we believe that there is something wrong about ratifying this convention, then we should vote it down. If, with our concern about the Vietnamese war—and we are concerned about it, as we all know—we believe that this convention stands in the way of a resolution of that conflict, we should have voted for the Mundt reservation.

But if we believe that this convention offers benefit to the United States and would have no adverse effect on the war, then we should vote down these reservations and understandings.

COMMITTEE ON FOREIGN RELATIONS STAFF
MEMORANDUM ON THE ROLE OF THE SENATE
IN THE TREATY-MAKING PROCESS

Article II, section 2, clause 2, of the U.S. Constitution states that the President "shall have power, by and with the advice and consent of the Senate, to make treaties,

provided two-thirds of the Senators present concur."

In performing this function, the Senate has several options. Normally, the procedure for unconditional approval of a treaty is by adoption of a resolution of advice and consent to ratification which, in the case of the Nuclear Test Ban Treaty, would read as follows:

"Be it resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty banning nuclear weapon tests in the atmosphere, in outer space, and underwater, which was signed at Moscow on August 5, 1963, on behalf of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics."

The Senate may, however, reject a treaty in toto, or stipulate conditions in the form of amendments, reservations, understandings, declarations, statements, interpretations, or statements in committee reports. For example, the Statute of the International Atomic Energy Agency was approved subject to an "interpretation and understanding." In that case, so that no uncertainty would exist as to whether the United States might be obligated by some future amendment that the Senate saw fit to reject, the resolution of ratification was approved "subject to the interpretation and understanding, which is hereby made a part and condition of the resolution of ratification, that (1) any amendment to the statute shall be submitted to the Senate for its advice and consent, as in the case of the statute itself, and (2) the United States will not remain a member of the Agency in the event of an amendment to the statute being adopted to which the Senate by a formal vote shall refuse its advice and consent."

This "interpretation and understanding" in no way affected the international obligation of the United States. It was, however, made a part of the operating instrument of ratification and Presidential proclamation and circulated to the other parties to the treaty with the following statement: "The Government of the United States of America considers that the above statement and understanding pertains solely to U.S. constitutional procedures and is of purely domestic character."

The Senate also approved the NATO Status-of-Forces Agreement subject to an "understanding." Article III of that agreement provided that under certain conditions members of a military force were to be exempt from passport and visa regulations, from immigration inspection, and from regulations on the registration and control of aliens. The effect of article III on U.S. immigration laws was not entirely clear, and in order to remove all doubt about the matter and to make sure that the United States could take appropriate measures to protect its security, the following language was made part of the resolution of ratification:

"It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the agreement, that nothing in the agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States."

This "understanding" was also included in the instrument of ratification and the Presidential proclamation which was circulated to the other parties to the agreement. Here again, however, it had no effect on the international obligation of the United States.

Another, and perhaps better known case involves the so-called Connally reservation

to the compulsory jurisdiction clause of the Statute of the International Court of Justice. In that instance the Senate gave its advice and consent to the deposit by the President of a declaration under paragraph 2 of article 36 of the statute—the so-called optional clause. By accepting the optional clause, the United States agreed that in certain types of legal disputes it would recognize the compulsory jurisdiction of the International Court of Justice. However, in accepting that jurisdiction, the Senate stated that it did not apply to matters essentially within the domestic jurisdiction of the United States as determined by the United States. For technical reasons the Connally reservation is not viewed by all international lawyers as a true reservation; in fact, it was communicated to other parties and the obligation of other parties with respect to the United States is no greater than that assumed by the United States.

As a practical matter, if the Senate attaches a reservation to its resolution of advice and consent, the inference is that the contractual relationship is being changed. However, if the Senate uses language of understanding, the implication (but not necessarily the fact) is that the contractual arrangement is not being changed.

Irrespective of what term is used to describe a condition imposed on a treaty, however, the view of the U.S. Government is that the content or effect of the statement is of prime importance. If, despite the designation, the executive branch believes that the condition has the actual character and effect of a reservation, it would be so treated and thus would open the treaty to further negotiations. In this connection, the following extracts from a Department of State memorandum on the subject of "Depositary Practice in Relation to Reservations" which was submitted to the United Nations last year are relevant:

"It is understood by the U.S. Government that the term 'reservation' means according to general international usage, a formal declaration by a state, when signing, ratifying, or adhering to a treaty, which modifies or limits the substantive effect of one or more of the treaty provisions as between the reserving state and each of the other states parties to the treaty. A true reservation is a statement asserting specific conditions of a character which (if the reserving state becomes a party to the treaty) effectively qualify or modify the application of the treaty in the relations between the reserving state and other states parties to the treaty. If the statement does not effectually change in some way, either by expanding or diminishing the treaty provisions, the application of the treaty between the reserving state and other states parties thereto, then it is questionable whether it is a true reservation even though it may be designated a 'reservation.' The terms 'understanding,' 'declaration,' or 'statement' may be used to designate a statement which may or may not be a true reservation. More properly, 'understanding' is used to designate a statement when it is not intended to modify or limit any of the provisions of the treaty in its international operation, but is intended merely to clarify or explain or to deal with some matter incidental to the operation of the treaty in a manner other than a substantive reservation. Sometimes an understanding is no more than a statement of policies or principles or perhaps an indication of internal procedures for carrying out provisions of the treaty. The terms 'declaration' and 'statement' when used as the descriptive terms are used most often when it is considered essential or desirable to give notice of certain matters of policy or principle, but without any intention of derogating in any way from the substantive rights or obligations as stipulated in the

treaty. As a general rule, it is considered necessary in the case of any instrument of ratification, adherence, or acceptance embodying any of the above-mentioned types of statement, that the other state or states concerned be notified thereof and be given an opportunity to comment. If the statement is designated a 'reservation' but is not a true reservation, the notification to the other state or states may be accompanied by an explanatory statement designed to emphasize the fact that no actual modification or limitation of the treaty provisions is intended.

"The U.S. Government as depositary does not, as a rule, consider it appropriate for reservations to be set forth merely in a letter or note accompanying an instrument of ratification, acceptance, adherence, or accession. If the instrument is to be qualified by a reservation, it is considered that the reservation should be embodied in the instrument itself. A declaration, understanding, or other statement not constituting an actual reservation may, of course, be set forth in an accompanying letter or note, the text thereof then being notified to interested states at the same time they are notified regarding the deposit of the formal instrument."

"One of the most authoritative statements on reservations appears in Charles Cheney Hyde's book, 'International Law,' Hyde states (vol. II, p. 1435): 'A reservation to a treaty is a formal statement made by a prospective party for the purpose of creating a different relationship between that party and the other parties or prospective parties than would result should the reserving state accept the arrangement without having made such a statement. A more interpretative declaration made by a prospective party without such a design, and with a view merely to accentuate a common understanding, is not regarded as a reservation, unless another party or prospective party deems it to be productive of a different relationship between the state issuing the declaration and the other parties or prospective parties than would result were the declaration not made. In a word, whether an interpretative statement is to be regarded as a reservation and dealt with as such depends in practice upon the place which the states to which it is addressed are disposed to assign to it.'"

AMENDMENTS

A distinction should be made between an amendment and a reservation. The difference between the two is that an amendment, if it is accepted by the President and the other party or parties to the treaty, changes it for all parties, whereas a reservation limits only the obligation of the United States under the treaty, although a reservation may, in fact, be of such significance as to lead other parties to file similar reservations, to seek renegotiation of the treaty, or, indeed, to refuse to proceed with ratification.

To put it another way, the distinctions between the two "are not in the essential objects sought, but in the form taken by the qualified assent and in the notice or action called for from the other party to the agreement. As the contrast is ordinarily drawn, an amendment to a treaty is a textual change in the instrument itself by way of an addition, alteration, or excision; it makes a part of the identical contract to which the two governments are to give their assent in the exchange of ratifications. A reservation, on the other hand, is an interpretation or construction placed upon some portion of the instrument by the Senate, to indicate the understanding with which the United States enters into the agreement as to the obligations which this country is to assume." (Haynes, "The Senate of the United States," vol. II, pp. 617-18.)

SUMMARY

In summary, therefore, and in order of importance so far as the effect on other parties is concerned, the Senate might take the following steps to make its views known or to qualify its consent to ratification of a treaty:

1. The Senate may advise and consent to ratification, but make its views known in the committee report. This would have no more legal effect on the treaty than other negotiating background or than legislative history has on public laws.

2. The Senate may include in its resolution language expressing its understanding or interpretation. So long as this language does not substantively affect the terms or international obligations of the treaty, or relates solely to domestic matters, there would be no legal effect on the treaty. Under existing practice, however, the Executive would communicate such understandings or interpretations to the other parties for such reaction as they may take.

3. The Senate may include in its resolution language expressing its reservation. Normally reservation language would involve some change in the international obligations of the treaty and might affect its terms in such a significant manner as to require the Executive to communicate the terms of the reservation to other parties to the treaty, thus enabling them to take such action as they felt appropriate, including reservations of their own or even refusal to proceed with the treaty.

4. Finally, the Senate may amend the terms of the treaty itself. In this instance, there would be no question but that the treaty would need to be renegotiated.

Committee procedure

The Committee on Foreign Relations transacts business by a majority vote of a legal quorum (currently nine members). Once a legal quorum is established, it is presumed to be present, and thereafter oral or written proxies are valid for the purposes of voting. This procedure applies with respect to any treaty reservations or amendments considered by the committee. However, on the final question as to whether the committee shall agree to report favorably a particular resolution of ratification, an actual physical quorum of nine members must be present.

Senate procedure

The act of ratification for the United States is a Presidential act, but it may not be forthcoming unless the Senate has consented to it by the required two-thirds of the Senators present (which signifies two-thirds of a quorum), otherwise the consent rendered would not be that of the Senate as organized under the Constitution to do business (art. I, sec. 5, clause 1).

Insofar as Senate procedure is concerned, rule XXXVII states that when a treaty is reported from the Committee on Foreign Relations it shall, unless the Senate unanimously otherwise directs, lie 1 day for consideration. Amendments or reservations are subject to approval by a majority vote.

An amendment or reservation may be modified before any action is taken on it. They are not, however, subject to modification after adoption by the Senate. Moreover, an amendment or reservation which is substantially the same as one previously offered and rejected is not in order.

The decisions made must be reduced to the form of a resolution of ratification, with or without amendments or reservations, as the case may be, which must be proposed on a subsequent day, unless by unanimous consent the Senate determines otherwise. After the resolution of ratification is offered, amendments to the text of the treaty or the resolution of ratification are not in order.

On the final question to advise and consent to the ratification in the form agreed to and the concurrence of two-thirds of the Senators

March 15, 1967

CONGRESSIONAL RECORD — SENATE

S 3865

present and voting shall be necessary to determine it in the affirmative; but all other motions and questions upon a treaty shall be decided by a majority vote, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds.

Mr. FULBRIGHT. Mr. President, the following statement has been prepared by the Parliamentarian for guidance of the Senate during consideration of the Nuclear Test Ban Treaty:

"NUCLEAR TEST BAN TREATY"
 "(Procedure Under the Rule)

"The treaty is in the Committee of the Whole and shall be proceeded with by articles. This provision, however, may be waived by unanimous consent, and thus permit an amendment to be offered to any part of the treaty.

"A majority vote is required for adoption of an amendment.

"A motion to table an amendment would be in order.

"Where there is no further debate or action to be taken in the Committee of the Whole, the proceedings are reported by the Presiding Officer to the Senate. If any amendment has been made, the Senate votes on concurrence therein. Further amendments are then in order.

"Reservations are not in order while the treaty is being considered in the Committee of the Whole or in the Senate. They should be offered to the resolution of ratification.

"When there is no further debate or amendment to be proposed, the next step would be the proposal of the resolution of ratification. It cannot, however, be proposed on that day except by unanimous consent. If any amendment has been made to the text of the treaty, it must be incorporated in the resolution of ratification.

"After the resolution of ratification has been proposed, no amendment is in order except by unanimous consent. Reservations, however, are in order at that stage, and not before.

"The vote on the question of agreeing to the resolution of ratification or on a motion to postpone indefinitely requires a two-thirds vote for adoption. All other motions and questions upon a treaty shall be decided by a majority vote."

Mr. FULBRIGHT. Mr. President, will the Senator yield, on the question of the meaning of the word "understanding"?

Mr. COOPER. I yield.

Mr. FULBRIGHT. A committee print entitled "Background Information on the Committee on Foreign Relations," prepared by the committee staff, contained a paragraph which I think may have some bearing on the subject. It is found on page 21 of the document and reads as follows:

The Senate may include in its resolution language expressing its "understanding" or "interpretation." So long as this language does not substantively affect the terms or international obligations of the treaty, or relates solely to domestic matters, there would be no legal effect on the treaty. Under existing practice, however, the executive would communicate such understandings or interpretations to the other parties.

Concerning reservations, it says:

Irrespective of what term is used to describe a condition imposed on a treaty, however, the view of the U.S. Government when it serves as a depositary is that the content or effect of the statement is of prime importance. If, despite the designation, the executive branch believes that the condition has the actual character and effect of a reservation, it would be so treated and thus would open the treaty to further negotiation.

I think this means—and it is somewhat vague, that an understanding would be communicated to the other party one way or another. In this case, we would confront the Russians with the decision of whether to accept the implication contained in the language of this understanding.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. FULBRIGHT. I yield myself 2 additional minutes.

I believe, of course, that the Russians do have an influence in Vietnam, but Vietnam is not directly involved here; and I think the effect of this understanding would be not that it would require renegotiation but that it would give the Soviets an excuse to fall to ratify the treaty.

So I come back to the question asked also by the Senator from Kentucky, do we want the treaty or do we not?

I think it would be very confusing to accept the understanding and then approve the treaty. It would be much more clearcut simply to say, "Table the treaty; this is no time to act on it; wait until the war is over." But the administration believes, and I believe, that this treaty is timely.

It happens that the last case of significance involving a man detained in Russia was that of an Arkansas citizen, a man whose name all Senators have heard, Mr. Wortham. I shall not dwell on the background of the matter; but just last week, I believe, in an unprecedented action, the Soviet Union reduced a sentence of 3 years' imprisonment on appeal and imposed instead a fine of 5,000 rubles.

There is a feeling that the fact that, on appeal, they reduced a sentence of 3 years' imprisonment to a fine of 5,000 rubles, indicated that they are willing, in the midst of a war to make some gesture toward reconciliation. I do not say it is related to this matter, but I would say it indicates a form of mutual, passive, deescalation of the heat in our cold war. I do not think the incident is unworthy of some thought.

The PRESIDING OFFICER. Who yields time?

Mrs. SMITH. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 15 minutes remaining.

Mrs. SMITH. I thank the Chair. I yield myself such time as I may require for my few concluding words.

Mr. President, at the outset of my closing remarks, I acknowledge the very unique distinction I have—both the State Department and the Liberty Lobby are against me. No other Senator can make that statement. [Laughter.]

The opposition to this understanding seems to be based on expressions in letters of the Secretary and Assistant Secretary of State. The two letters of Assistant Secretary Macomber to the majority leader speak only with respect to the proposed reservations to the treaty. Consequently, they do not apply to the understanding amendment to the resolution of ratification.

However, the March 8, 1967, letter of the Secretary of State to the chairman of

the Committee on Foreign Relations groups amendments, reservations, and understandings together and makes no distinction between them. In that letter the Secretary of State charges that even an understanding could result in first, either the Soviet Government refusing to ratify the treaty; or second, the Soviet Government retaliating with its own qualifications or interpretations. His letter to the majority leader merely repeats this theme of opposition.

I fail to see how his charges are applicable to the understanding that I have offered. In the first place, the understanding has no effect whatsoever on the treaty or any of its provisions.

In the second place, the understanding merely expresses a hope of the Senate that peace will have been achieved in Vietnam before a Soviet consulate is opened in the United States.

Why would the Soviet Union find an expression of hope for peace in Vietnam to be offensive when the Soviet Union repeatedly professes its desire for peace in Vietnam and in that expression of desire for peace condemns the United States for not suspending bombing of North Vietnam?

Why would such an expression by the Senate be so offensive to the Soviet Union that it would refuse to ratify the treaty? If there is such a danger as this, then surely this treaty stands on very shaky ground and on a very frail reed.

For if the Soviet Union would use this understanding as a flimsy excuse to refuse to ratify the treaty, then I can only conclude that it is looking for an opportunity to refuse to ratify the treaty. It could just as easily take the excuse that a single Senator spoke or voted against the treaty, much less than that several Senators spoke against and voted against the treaty.

In fact, the Soviet Union could manufacture any excuse that it wanted to fabricate for refusing to ratify this treaty.

Are we to act in this body in such fear of the Soviet Union? Are we to tiptoe so softly that we do not even approve an understanding expressing a hope for peace—a hope that does not even have any effect on the treaty—lest we somehow, however slightly, do something the Soviet Union does not like—even a call for peace?

In the third place, in his letter of March 8, 1967, to the chairman of the Committee on Foreign Relations, the Secretary of State observes that:

As soon as this treaty is ratified and enters into force, the benefits conferred by it will come into operation whether or not any consulates are opened in the Soviet Union or the United States. The Convention does not provide for the opening of consulates. Decisions on any such action are separate from the Convention; . . . there has been no agreement with the Soviet Government in the negotiations on the Consular Convention or otherwise, for the opening of any consulates in either country. We have no present plans for taking such action.

In view of these observations that this treaty does not provide for the opening of consulates, that no agreement exists for the opening of any consulates in

S 3866

CONGRESSIONAL RECORD — SENATE

March 15, 1967

either country, and that there are no present plans for opening any consulates—the understanding that I have offered all the more clearly does not affect the treaty—and negates any argument against the adoption of the understanding I have offered.

As to the second fear that the Secretary of State has raised—that the Soviet Government would be given an opportunity by any adopted understanding to retaliate with its own qualifications or interpretations—I simply do not see how such an argument applies to my proposed understanding which would not be attached to the treaty but only to the resolution of ratification and which would not have any effect on the treaty itself.

The plain truth is that we have no assurance that the Soviet Government will not make its own qualifications or interpretations even if this treaty is ratified.

If the Soviet Government finds this understanding that I have offered to be offensive because it expresses a hope for an end of the fighting in Vietnam before any Russian consulate is established in this country, then I can only conclude that it will be because the Soviet Government finds the plain truth to be offensive—for the plain truth is that it is the Soviet Government that provides the backbone of the materiel and equipment with which the aggressor in Vietnam wages the war and opposes a peaceful end to it.

My only comment on this is, that God forbid, that fear of the Soviet Union in the U.S. Senate has reached the point where we do not have the courage to recognize and proclaim the plain truth and adopt an expression of hope for peace on the basis of the recognition of that plain truth.

Mr. AIKEN. Mr. President, does the Senator from Maine interpret her proposal in any way to be another version of the reservation proposed by the senior Senator from South Dakota?

Mrs. SMITH. Mr. President, the Senator from Maine is very pleased to say that she has no reference to the reservations at all.

It is simply a means for the U.S. Senators to express their own feelings. I am not asking for any reservations. I am not asking for anything to be attached to the treaty.

I simply want to have the world know that we still hope for peace.

Mr. AIKEN. And it is an expression of hope that the war in South Vietnam may come to an end.

Mrs. SMITH. The Senator is correct. Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mrs. SMITH. I yield. Mr. FULBRIGHT. Mr. President, I would join the Senator in accepting a resolution expressing that hope.

I do not think there is any question of interference or of fear here. But the effect of the understanding could well be the same as that of the reservations proposed by the Senator from South Dakota—the effect of killing the treaty.

The question is not interfering with the Soviet Union or fearing the Soviet Union. The question is simply: "Do we want a treaty?"

I do not think we are trying to threaten anybody. I think that if the understanding is designed to prevent ratification, or if it might have the effect of preventing ratification of the treaty, it would mean that the treaty would not come into being and none of its benefits would naturally become effective.

I certainly would join with the Senator in a resolution expressing our hope for an end of the war, but I do not wish to put it in the form of an understanding on this particular treaty because I think the treaty is in our interest. They would both be in our interest, but they ought to be handled separately.

Mrs. SMITH. I can only reply to the distinguished chairman of the Committee on Foreign Relations that it seems to me I have been hearing a great deal for the past few days about any reservation, any amendment, or any understanding affecting the treaty to the extent that the Soviet Union would not sign it.

This is only an expression of hope. It does not require renegotiation of the treaty. It has nothing to do with the treaty.

It simply says to the world: "We are ready for peace. We are trying our best to work with the Soviet Union, but we do not want the world to think that we have given up the hope for peace."

Mr. FULBRIGHT. Mr. President, I yield back the remainder of my time.

Mrs. SMITH. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on the adoption or rejection of the understanding proposed by the Senator from Maine [Mrs. SMITH].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Maryland [Mr. BREWSTER] and the Senator from Connecticut [Mr. DODD] are absent on official business.

I also announce that the Senator from Nevada [Mr. CANNON], the Senator from Idaho [Mr. CHURCH], and the Senator from Louisiana [Mr. LONG] are necessarily absent.

On this vote, the Senator from Connecticut [Mr. DODD] is paired with the Senator from Louisiana [Mr. LONG].

If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Louisiana would vote "nay."

I further announce that, if present and voting, the Senator from Maryland [Mr. BREWSTER] and the Senator from Nevada [Mr. CANNON] would each vote "nay."

Mr. KUCHEL. I announce that the Senator from Massachusetts [Mr. BROOKE] and the Senator from Pennsylvania [Mr. SCOTT] are absent on official business.

The Senator from Illinois [Mr. DIRKSEN] is absent because of illness.

The Senator from Iowa [Mr. HICKENLOOPER], the Senator from New York [Mr. JAVITS] and the Senator from South Carolina [Mr. THURMOND] are detained on official business.

If present and voting, the Senator from Massachusetts [Mr. BROOKE], the Senator from Illinois [Mr. DIRKSEN], and the Senator from Pennsylvania [Mr. SCOTT] would each vote "nay."

On this vote, the Senator from South Carolina [Mr. THURMOND] is paired with the Senator from New York [Mr. JAVITS]. If present and voting, the Senator from South Carolina would vote "yea" and the Senator from New York would vote "nay."

The result was announced—yeas 38, nays 51, as follows:

[No. 63 Ex.]

YEAS—38

Aiken	Fannin	Mundt
Allott	Gruening	Murphy
Andersor.	Hansen	Pearson
Baker	Hartke	Fussell
Bennett	Hill	Smathers
Byrd, Va.	Holland	Smith
Byrd, W. Va.	Hollings	Stennis
Carlson	Hruska	Talmadge
Cotton	Jordan, N.C.	Tower
Curtis	Jordan, Idaho	Williams, Del.
Dominick	McClellan	Yarborough
Eastland	Miller	Young, N. Dak.
Ervin	Montoya	

NAYS—51

Bartlett	Inouye	Morton
Bayh	Jackson	Moss
Bible	Kennedy, Mass.	Muskie
Boggs	Kennedy, N.Y.	Nelson
Burdick	Kuchel	Pastore
Case	Lausche	Pell
Clark	Long, Mo.	Percy
Cooper	Magnuson	Prouty
Ellender	Mansfield	Proxmire
Fong	McCarthy	Randolph
Fulbright	McGee	Ribicoff
Gore	McGovern	Sparkman
Griffin	McIntyre	Spong
Harris	Metcalf	Symington
Hart	Mondale	Tydings
Hatfield	Monroney	Williams, N.J.
Hayden	Morse	Young, Ohio

NOT VOTING—11

Brewster	Dirksen	Long, La.
Brooke	Dodd	Scott
Cannon	Hickenlooper	Thurmond
Church	Javits	

So Mrs. SMITH's executive understanding was rejected.

Mr. MCGOVERN. Mr. President, after considerable thought and careful study, I have decided to vote in favor of the pending Consular Treaty with the Soviet Union.

I am firmly convinced that ratification of this treaty is in the best interests of the United States. Were I not so convinced I would of course, not vote for it. In spite of all the scare talk and the confusion, the treaty is basically designed to provide more legal protection for the 18,000 American citizens visiting Russia annually. I have no doubt but that the treaty will be of more benefit to the U.S. than to Russia. But both countries will benefit from this document which defines the legal ground rules under which their citizens shall be protected when visiting the other country.

The proposed treaty enjoys the strong bipartisan support of the leaders of both major political parties. It has been strongly endorsed by President Johnson and the majority leader of the Senate, Senator MANSFIELD. President Eisenhower, who first proposed the treaty to Soviet officials in 1959, said as recently as February 2, 1967,

I have not changed my belief that such a convention is in our national interest; that it will not impair our national security; that it should enlarge our opportunities to learn more about the Soviet people, and

March 15, 1967

CONGRESSIONAL RECORD — SENATE

S 3867

that it is necessary to assure better protection for the many thousands of Americans who visit the Soviet Union each year.

The treaty now before us was reported favorably by the Foreign Relations Committee by a vote of 15 to 4. It is supported by the able and distinguished minority leader, Senator DRKSEN, by the chairman of the Republican policy committee, Senator HICKENLOOPER, and by the former Republican national chairman, Senator MORRON. In addition, the 1964 Republican presidential candidate, Mr. Goldwater, has said that he supports the convention.

Since the various amendments or reservations would have the affect of killing or confusing the treaty, I have opposed these amendments.

Because of the great amount of public misunderstanding concerning exactly what this treaty contains, I ask unanimous consent that a clear description of its terms, which appears on pages 4 and 5 of the Foreign Relations Committee report, may be printed at this point in my remarks.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

III. PROVISIONS OF THE CONVENTION

A. GENERAL PURPOSES

The convention regulates the consular affairs of each country in the territory of the other and the treatment to be accorded consular officials and employees. The convention covers such matters as the status of a consular establishment, the duties and functions of consular officers, and the rights, privileges, and immunities of the consular personnel of each country stationed in the territory of the other country.

The convention does not itself authorize the opening of consulates or specify the number of consulates which may be opened, but merely provides the legal framework for the activity of accredited consular officers whether attached to an Embassy or to consulates which might be opened as a result of separate negotiations.

B. NOTIFICATION AND ACCESS

The convention follows the pattern of other bilateral consular conventions to which the United States is a party except that the convention (which includes the protocol) contains two distinctive provisions relating to the protection of American citizens:

1. It obliges a receiving state to notify consular officers of a sending state of the arrest or detention of a national of the sending state within 1 to 3 days from the time of arrest or detention depending on conditions of communication.

2. It provides that consular officers of the sending state may visit and communicate with a national of the sending state who is under arrest or detained in custody by the receiving state within 2 to 4 days of the arrest or detention depending on his location and on a continuing basis thereafter.

C. UNRESTRICTED IMMUNITY FROM CRIMINAL PROSECUTION

The convention also states, for the first time in any consular agreement to which the United States is a party, that consular officers and employees of the sending state will be immune from the criminal jurisdiction of the receiving state.

This provision extends to consular officers and personnel the same unrestricted immunity from criminal prosecution that Embassy officers and employees now enjoy. In other consular conventions to which the United States is a party, the immunity granted con-

sular officers and employees has generally been restricted to misdemeanors. The proposed convention extends the immunity to felonies.

D. SAFEGUARDS

The proposed convention contains certain provisions designed to afford protection against abuse of the measures regarding immunity from criminal prosecution. These provisions specify the right of the receiving state to declare consular officers *persona non grata* and consular employees unacceptable. The convention also states that all persons enjoying immunity from criminal jurisdiction are obliged to respect the laws and regulations of the receiving state, including traffic regulations.

The convention also contains a number of measures designed as safeguards against the danger of subversion. If, after ratification of the convention, the United States agrees to the opening of a Soviet consulate in the United States, the officers and employees of the consulate will be subject to the same visa screening and entry controls as officers and employees of the Soviet Embassy in Washington. They will also be subject to the same travel restrictions as those which apply to diplomatic personnel. As has already been noted, the convention also provides that consular officers and employees may be expelled.

E. TERMINATION

The convention may be terminated on 6-month notice by either party.

Mr. MCGOVERN. Mr. President, I also ask unanimous consent that certain carefully prepared materials which I received from Mr. Douglas MacArthur II, of the U.S. Department of State, explaining the proposed convention, may be printed at this point in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
Washington, January 27, 1967.

DEAR SENATOR: There has been a good deal of misunderstanding about the US-Soviet Consular Convention which is now pending before the Senate Foreign Relations Committee. To clear up such misunderstandings, we have issued a statement which I am enclosing in view of the general interest in this important matter.

The statement makes clear that the Consular Convention does not authorize, propose, suggest, provide for, or require the opening of a single United States Consulate in the Soviet Union, or a single Soviet Consulate in the United States. It does not permit the Soviets to send a single extra person to this country, nor does it let us send anyone to the Soviet Union.

What it does do is to provide that we will be notified of arrests of American citizens within one to three days, and allowed to see them within two to four days. As matters now stand, arrested persons can be held incommunicado until the investigation by the Soviet authorities is completed and this can take up to nine months or more. Last year we had 18,000 U.S. citizens visiting the Soviet Union and the number will increase. The Soviets, on the other hand, had only about 900 of their citizens visiting our country. We earnestly believe, therefore, that the balance of advantage in this Convention lies heavily with us and that it will give us the tools we need to protect American citizens traveling in the Soviet Union.

I also attach a more comprehensive but still brief statement on the purposes and effects of the Convention which I hope you will find useful. If you have any further questions about the Consular Convention, please don't hesitate to let me know as I

would be glad to arrange a briefing on this matter for you.

Sincerely,

DOUGLAS MACARTHUR II,
Assistant Secretary for
Congressional Relations.

[Excerpt from State Department press briefing, Jan. 25, 1967]

STATEMENT ON THE UNITED STATES-U.S.S.R. CONSULAR CONVENTION

Following up on Secretary Rusk's testimony on the US-USSR Consular Convention before the Senate Foreign Relations Committee on January 23, I would like to try to clear up a persistent misunderstanding about this agreement. And I might add that this misunderstanding is common among both opponents and supporters of ratification.

The Consular Convention does not authorize, propose, suggest, provide for, or require the opening of a single United States Consulate in the Soviet Union, or a single Soviet Consulate in the United States. It does not permit the Soviets to send a single extra person to this country, nor does it let us send anyone to the Soviet Union.

What it does do is to provide ground rules for the protection of American citizens in the Soviet Union, and Soviet citizens in the United States.

These ground rules, which represent major concessions by the Soviet Government, specify that we will be notified of the arrest of an American citizen within one to three days, and allowed to see him within two to four days. As a matter of routine, we grant these rights not only to Americans, but to all foreigners arrested in the United States. But, in the Soviet Union, even the Soviet citizens enjoy no such rights. They are held incommunicado until the investigation of the crime is completed; and this investigation can take nine months, or more.

These ground rules go into effect the minute the Treaty is ratified, without regard to the separate question of opening consulates. The officers attached to the Consular Section of our Embassy in Moscow will enjoy notification and access rights under this Treaty the moment both parties ratify it. Thus, tying the idea of opening consulates to the idea of approving this Convention confuses the issue. The issue is do we need better tools to help us protect Americans who get into trouble in the USSR. The answer is clearly yes.

THE UNITED STATES-SOVIET CONSULAR CONVENTION

We believe that ratification of the US-USSR Consular Convention is clearly in the national interest and, on balance, more valuable to the United States than to the Soviet Union. This Convention is part of our balanced strategy for peace, aimed at limiting the areas of disagreement in our relations with the USSR while we are resisting communist aggression wherever it occurs.

During the Eisenhower Administration, Secretary of State Christian Herter suggested to Soviet Foreign Minister Gromyko that a bilateral Consular Convention be negotiated and first drafts were exchanged. Negotiations were completed in 1964. President Johnson called for prompt Senate approval of this agreement in both his October 7, 1966 speech in New York and his January 10, 1967 State of the Union message.

This Convention will permit this Government to assist and protect more effectively the 18,000 or more American citizens who annually travel in the USSR. If a citizen of either country is detained or arrested, the Convention requires that the embassy or consulate of that citizen's country be notified within three days and that access to the prisoner by a consular official be granted

S 3868

CONGRESSIONAL RECORD — SENATE

March 15, 1967

within four days. These provisions will come into force when the treaty is ratified.

Without the protection of such an agreement, Americans have frequently been isolated in Soviet prisons for long periods and kept from contact with American Embassy consular officers. One, Newcomb Mott, died in Soviet hands under these circumstances.

The treaty does not provide for the opening of consulates. Approval of the Convention has no bearing on this question, since under the Constitution the President can agree to reciprocal opening of consulates in the U.S. and the USSR at any time.

There are no formal proposals or plans pending for the opening of separate consular offices of either country in the other. If at a later date it was decided to be appropriate to open one outside the respective capitals, it would be the subject of careful negotiation on a strict *quid-pro-quo* basis. Such an office would probably involve 10 to 15 Americans in the Soviet Union, with the Soviets permitted to send the same number here. In accordance with Secretary Rusk's statement before the Senate Foreign Relations Committee, we would plan to consult that body and the state and local officials of the community to be affected, before concluding such an agreement. While, as noted, such an arrangement would be reciprocal, the fact that the Soviet Society is a closed one while the United States is open, and that the U.S. citizen's need for service and protection while travelling in the Soviet Union far outnumber Soviet citizens with like needs in the U.S., indicate that the balance of advantage would be on our side.

This Convention gives full immunity from criminal jurisdiction to consular officers and employees of both countries. We would not send American officials or clerical employees to serve in the USSR without this protection. Since 1946, 31 Americans at our Embassy in Moscow have been expelled by the Soviets, most often on allegations of espionage. Without immunity consular employees could be jailed or suffer even harsher punishment on similar trumped-up charges. Furthermore, action against American consular personnel serving in the Soviet Union without diplomatic immunity could be a temptation to Soviet authorities whenever a Soviet citizen was arrested in this country for espionage. Other governments similarly protect their officials and clerical employees in the USSR, the British and the Japanese recently negotiated consular conventions with the Soviet Union containing immunity provisions modeled after those in the US-USSR agreement.

The opening of one Soviet consulate in the U.S. would not materially affect our internal security. The number of Soviet citizens now enjoying immunity, 452, would be increased by only 10 or 15 persons. We have the right under the treaty to screen the personnel of such an office before agreeing to their assignment. We are also authorized by the treaty to prevent them from traveling to sensitive areas in the country and to expel them if they prove to be undesirable. We could close a Soviet consulate in the U.S. whenever we wished, and we could cancel the Consular Convention on six month's notice.

UNITED STATES-U.S.S.R. CONSULAR CONVENTION—QUESTIONS AND ANSWERS

1. What was the historical origin of the Convention?

When we first established relations with the USSR in 1933 an exchange of letters between President Roosevelt and Soviet Foreign Minister Litvinov stated that it had been agreed that a consular convention would be negotiated "immediately following the establishment of relations between our two countries." Other problems intervened, however, and negotiations were never begun. It was President Eisenhower's proposal at

the 1955 Geneva Summit Conference for "concrete steps" to lower "the barriers which now impede the opportunities of people to travel anywhere in the world" and subsequent relaxation by the Bulganin-Khrushchev regime of tight Stalinist controls which led to greatly increased American travel to the USSR and to the realization that we needed to protect U. S. citizens by negotiating an explicit consular convention with the Soviet Union. At the Camp David talks in 1959, Secretary of State Christian Herter proposed such a treaty to Soviet Foreign Minister Gromyko. Drafts were exchanged in early 1960 but there was little further activity because of subsequent strains in US-Soviet relations until September 1963 when formal negotiations began in Moscow. After 8 months of hard negotiations, the Convention was signed on June 1, 1964 and submitted to the Senate by President Johnson on June 12, 1964.

2. What is the basic purpose of the Convention?

We need this treaty to secure rights for Americans in the Soviet Union that they do not now have. Under present Soviet law Soviet citizens and foreigners alike can be held incommunicado for nine months or more during investigation of a criminal charge. The Consular Convention contains major concessions by the USSR. It specifies that U.S. officials will be notified immediately (within 1-3 days) when an American citizen is arrested or detained in the USSR and it stipulates that these officials will have rights of visitation without delay (within 2-4 days) and on a continuing basis thereafter.

3. Why do we need additional protection for American citizens?

Because increasing numbers of them travel to the Soviet Union and the number which encounters difficulties rises proportionally. Between 1962 and 1966 the number of Americans travelling to the USSR rose by 50% to 18,000, while the number of Soviet travelers remained static at about 900 per year. Since the Convention was signed in 1964, more than 20 arrests or detentions of American citizens in the USSR have come to our attention. In none of these cases have we been notified of the incident or allowed to visit the American within a reasonable period and certainly not within the time limits specified in this treaty. Meanwhile, our own constitutional system and democratic society automatically provide Soviet travelers here with protections similar to those our travelers would obtain from the convention.

Without the protection of such an agreement, Americans have frequently been isolated in Soviet prisons for long periods and kept from contact with American Embassy consular officers. One, Newcomb Mott, died in Soviet hands under these circumstances. During periods of strained US-USSR relations such as the present Soviet treatment of Americans accused of violating their law is likely to be harsher than usual.

4. Does the Convention provide for the opening of new Soviet consulates in the US?

No. It does not authorize, propose, suggest, provide for or require the opening of a single US consulate in the USSR or a single Soviet consulate in the US. It does not permit the Soviets to send a single extra person to this country nor does it let us send anyone to the USSR. What it does do is to provide ground rules for the protection of American citizens in the USSR—ground rules which we badly need.

Under the Constitution, the President's approval is all that is needed to permit foreign governments to establish consulates in the US. Between 1934 and 1948 there were three Soviet consulates in the US and an American consulate in the USSR, though there was no US-USSR consular agreement in force.

5. Why do we grant Soviet consular officers immunity from our criminal jurisdiction?

Because we believe it is vital to have the same protection for American consular officers and clerical employees in the USSR. Since 1946, 31 Americans at our Embassy in Moscow have been expelled by the Soviets, most often on allegations of espionage. Without immunity our consular employees could be jailed or suffer even harsher punishment on similar trumped-up charges. Furthermore, action against American consular personnel serving in the USSR without immunity could be a temptation to Soviet authorities whenever a Soviet citizen is arrested in this country for espionage. Other governments similarly protect their officials and clerical employees in the USSR; the British and the Japanese recently negotiated consular conventions with the Soviet Union containing immunity provisions modeled after those in the US-USSR agreement.

6. Is it right to extend this immunity to clerical employees as well?

We believe that the American secretaries, file clerks and communications and administrative personnel whom we might send to a consulate in the USSR need and deserve the protection of immunity as much if not more than the consular officers. Clerical employees we would send to a consulate in the Soviet Union would often be young women and it would be both unfair and from a security point of view unwise to give them less protection than we give our experienced officers.

Of course, the Soviets would not be allowed to station a staff of Soviet nationals at a consulate in the US larger than the number of Americans we send to the USSR. If we send a staff of 10 to the USSR the Soviets may have a total of ten here.

7. What is the prospect for the reciprocal opening of consular offices?

There are no formal proposals or plans pending for the opening of separate consular offices of either country in the other. If at a later date it was decided to be appropriate to open one outside the respective capitals, it would be the subject of careful negotiation on a strict *quid-pro-quo* basis. Such an office would probably involve 10 to 15 Americans in the Soviet Union, with the Soviets permitted to send the same number here. In accordance with Secretary Rusk's statement before the Senate Foreign Relations Committee, we would plan to consult that body and the state and local officials of the community to be affected, before concluding such an agreement. While, as noted, such an arrangement would be reciprocal, the fact that the Soviet society is a closed one while the United States is open, and that the U.S. citizens need for service and protection while travelling in the Soviet Union far outnumber Soviet citizens with like needs in the U.S., indicate that the balance of advantage would be on our side.

8. If a Soviet consulate were eventually opened would it represent a threat to the security of the US?

The opening of one Soviet consulate in the US would not materially affect our internal security. The number of Soviet citizens now enjoying immunity, 452, would be increased by only 10 or 15 persons. We have the right under the treaty to screen the personnel of such an office before agreeing to their assignment. We are also authorized by the treaty to prevent them from traveling to sensitive areas in the country and to expel them if they prove to be undesirable. We could close a Soviet consulate in the US whenever we wished, and we could cancel the Consular Convention on six month's notice. Both Acting Attorney General Ramsey Clark and FBI Director Hoover have stated that 10 to 15 additional Soviet officials in this country would not place an undue burden on their organizations.

March 15, 1967

CONGRESSIONAL RECORD — SENATE

3369

9. *What effect will the immunity provisions have on our agreements with other countries? Would immunities received by the Soviets be automatically extended under MFN clauses to other countries?*

We have 35 agreements in force with other countries which require us, on the basis of reciprocity, to extend most favored nation treatment to consular officers and occasionally consular employees. A recent survey shows that 27 of these countries have consular offices here with about 577 personnel. Should these countries agree to grant immunity from criminal jurisdiction to the 424 American consular officers and employees stationed there, we would have to extend the same treatment to their people here. All twenty-seven of these countries can be described as either friendly or neutral.

Our Embassies in these 27 countries were asked to estimate whether their host country would ask for most favored nation treatment—and give it to us in return. The replies indicated that at most 11 might make such requests, with 290 officers and employees. Assuming that we eventually decide to open a consulate in the USSR with 15 people, we would permit the opening of a Soviet consulate with 15 people here. In this case a total of 305 foreign consular officers and employees would be affected. This compares with the estimate of 9400 foreign diplomatic officers, members of their families and employees who now enjoy full diplomatic immunity in the US.

10. *What do other countries do about their consular relations with the USSR?*

Prior to the negotiation of the US-USSR convention the Federal Republic of Germany and Austria were the only non-communist countries which had consular treaties with the USSR. Neither of these treaties contained firm guarantees on notification and access similar to those in the US-USSR treaty.

Since 1964 the French, Finns, British, Japanese and Italians have negotiated consular conventions with the USSR. The British and Japanese conventions are modeled after the US treaty both in the guarantees on notification and access and in the immunities provision. Of the non-communist countries, India and Turkey have consulates in the USSR. Italy, Japan and Finland hope to open consulates soon.

11. *What effect does the Convention have on estate and tax matters in the US?*

The estate and tax provisions of this convention are the same as those in other consular conventions which the US has negotiated recently. The United States made no concessions about estates in this Convention. In the negotiations the Soviet Government attempted to obtain wide powers for its consular officials in the settlement of estates of American citizens where a Soviet citizen is a beneficiary, or in the settlement of estates of Soviet citizens who die in the United States. The Soviet Government did not obtain these powers.

The Convention provides that consuls can play a role in the settlement of estates only if permissible under the existing applicable local law. If the Convention is ratified, therefore, the laws of the individual states would continue, as they do now, to govern the extent to which a Soviet consul can play a part in the settlement of an estate.

This convention, like many others to which the US is a party, exempts the consular personnel of the sending state from Federal and State taxes with certain exceptions. Also, property used for a consulate or as residences for consular and diplomatic personnel would be exempt from real estate taxes. This is normal international practice.

12. *In view of the Soviet record of treaty violations, how can you make them observe this one? And what can be done if they don't?*

It is true that, particularly in the Stalin years, the Soviet Union violated a number

of international agreements and treaties. A careful study of serious violations can be found in "Background Information on the Soviet Union in International Relations" prepared by the Department of State in 1961.

Despite its earlier record of repeated violations of international obligations, the Soviet Union is party to a number of multilateral and bilateral agreements which it has not been accused of violating. There may have been infractions of some of these agreements, but the Soviet Government can be said to have generally found it to be in its interest to live up to them. Among the most important of these agreements are the Austrian State Treaty (1955), the Antarctic Treaty (1959) and the Limited Nuclear Test Ban Treaty (1963).

Treaties between sovereign governments are negotiated on the basis of mutual self-interest, not as rewards for good behavior or as evidences of good faith. We believe there are areas where the US and Soviet interests coincide, though these areas must be carefully delineated and explored before arriving at any agreement. The Limited Test Ban Treaty, the Treaty on Outer Space which we have just signed, and the treaty on the non-proliferation of nuclear weapons which is now under discussion are examples of agreements covering such areas. Each of these agreements either has built-in safeguards or is self-enforcing. The consular treaty is no exception—it is carefully drafted to provide full protection against abuse.

Should the Soviet Union violate the terms of this agreement we could suspend it or, with six months notice, terminate it. Should a Soviet consulate be opened in this country and should its personnel violate our laws or the standards of behavior we would expect, we could expel them or close the consulate.

13. *Does the Convention prejudice the position of subject peoples incorporated against their will into the Soviet Union?*

No, it does not. The United States Government has never recognized the forcible annexation of Estonia, Latvia, and Lithuania. Ratification of this convention would in no way change our policy in this respect, nor would any subsequent opening of a consulate or demarcation of a consular district. Recognition of incorporation of states into the Soviet Union would require a positive statement or act by the United States. The convention contains no such statement and provides for no such act. It is United States policy to support the just aspirations of all peoples of the world and to look forward to the day when all will be able to express these aspirations freely. The ratification of this treaty will not change this policy—any more than did the signing of more than 105 other bilateral and multilateral agreements which we have entered into with the U.S.S.R.

Mr. McGOVERN. Finally, Mr. President, I ask unanimous consent that a fine statement in support of the treaty by the American Veterans' Committee, which appears on page 261 of the Senate hearings, may be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON EXECUTIVE D, 88TH CONGRESS, CONSULAR CONVENTION WITH THE SOVIET UNION BY THE AMERICAN VETERANS COMMITTEE

The American Veterans Committee, an organization of veterans of World War I, II, the Korean Conflict, and the Vietnam Conflict, favors the ratification of the consular convention between the United States and the Soviet Union and urges that the Senate give its consent.

We believe that the security of the United States will be enhanced by a normalization of relations in the Soviet Union such as is envisaged by this convention. The world-

ing of machinery for the regular handling of matters affecting American citizens in the Soviet Union, with adequate protection for the American officials involved, appears to us a forward-looking step which follows naturally from the many efforts, public and private, for wider cultural and personal contact between Americans and Russians. Such efforts, particularly at a time of ideological disunity among communist nations, are important in breaking barriers to understanding.

The possible adverse effects to American interests which might be caused by the presence of Soviet consular officers in the United States or by an expansion in the number of Soviet visitors appear well within the capacity of American law enforcement authorities to contain and should not deter prompt ratification.

The years have shown that coexistence with the Union of Soviet Socialist Republics is not only possible, but is also a necessity, if the world is to remain at peace. This must be our modus vivendi for the foreseeable future. Every step should be taken to enhance, improve, and expand the spheres of coexistence whether by more frequent cultural exchanges, increased travel by the United States citizens to the Soviet Union and the satellite countries, expanded trade beyond the Iron Curtain, or others. If we follow this policy and practice, we shall find the areas of agreement becoming wider and the differences, narrower. The inevitable result, where people meet people, is that the government of the Soviet Union will no longer be able to insulate the Russians from the ways of the free world and disregard the yearnings of the Russian citizenry—which we believe to be the same as ours—for a world at peace and for good will to other peoples of the earth.

Respectfully submitted,

ANDREW E. RICE,

Chairman, International Affairs Commission, American Veterans Committee (AVC, Inc.).

Mr. McGOVERN. I believe that these materials indicate accurately and fairly why the Consular Convention ought to be ratified. Not only that, they demonstrate clearly that the balance of advantage in this treaty lies not with the Soviet Union, but with the United States.

Mr. President, I would like to stress several points.

First, this treaty does not provide for the opening of consulates. Whether or not the convention is approved, the President still has the constitutional authority to agree to a reciprocal opening of consulates at any time.

Second, this convention will be of great value to the more than 18,000 Americans citizens who visit the Soviet Union annually. In this regard, I ask unanimous consent to include at this point in my remarks an excellent article by Richard Reston which recently appeared in the Washington Post.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A CONSULAR TREATY FOR SAFER TRAVEL
(By Richard Reston)

Moscow.—On Oct. 31, 1963, a professor from Yale University disappeared while traveling in the Soviet Union. American diplomats in Moscow soon suspected something had gone wrong, but they could not be sure of the whereabouts of Prof. Frederick C. Barghoorn.

Later, the Embassy confirmed its worst suspicions, notably that Barghoorn was in the hands of Soviet authorities for alleged espionage activity. But, still there was no notification from the Soviet Foreign Min-

S3870

CONGRESSIONAL RECORD — SENATE

March 15, 1967

istry of any such detention or arrest. In fact, Barghoorn was held incommunicado for 13 days.

In response to heavy pressure from Washington, the professor was finally released and expelled from the Soviet Union on Nov. 14 of that same year.

The Barghoorn case might have been quite another story if a formal consular treaty between the United States and the Soviet Union had existed at the time. Indeed the events surrounding the Barghoorn incident deal with the heart of the Soviet-American consular convention now under discussion in Washington. That treaty, signed in June, 1964, but never ratified by the U.S. Senate, provides for official notification by either the Soviet Union or the United States within three days of the arrest or detention of one of its nationals.

It further specifies that official diplomatic representatives be given the right to visit and communicate with a detained citizen within four days of detention.

In short, the consular treaty that has stirred such controversy in Washington would provide for a far greater degree of protection for Americans traveling in the Soviet Union. The two countries have not had normal consular relations since 1948. Proper consular relations are becoming increasingly important as the number of Americans coming to this country continues to rise.

For example, it is estimated that some 18,000 U.S. tourists now visit the Soviet Union annually. Most of this travel, averaging between three and five days, comes between May and September, and the American tourist figure may go higher in 1967 as the Soviet Union celebrates the 50th anniversary of the 1917 Bolshevik revolution.

All of these American citizens could need U.S. consular assistance at one time or another. A final consular treaty between the Soviet Union and the United States would spell out the rights, duties and operation procedures of consuls, who look after non-diplomatic transactions of their citizens. It would extend not only general assistance and protection to Americans in the Soviet Union, but would also cover such other areas as notary rights, birth and marriage certificates, wills and travel documents. Proper consular service could provide American nationals with translation help, advice about domestic laws and assistance in personal and professional dealings with the Soviet government.

What is perhaps more important is that a new consular treaty might produce a more business like approach to some lesser Soviet-American transactions.

But the heart of the matter is more extensive protection for Americans in the Soviet Union. Similar conditions would of course apply to a smaller number of Soviet citizens traveling to the United States.

Since the Barghoorn case—perhaps because the consular treaty has been hanging fire since 1964—the Soviet government generally has been better on the question, at least, of official notification in the event of detention or arrest of American citizens. It is not to suggest that the situation is now perfect.

Only last month, two Americans, Ray Buel Wortham, 25, and Craddock Gilmore, 24, were tried in Leningrad for seemingly minor currency violations and the theft of a bronze bear.

The American Embassy in Moscow was able to assist these two almost from the beginning. Gilmore was fined one thousand dol-

lars and released. Wortham, who was sentenced to three years in a labor camp, is now out on bail while his case is appealed to the Supreme Court of the Russian Federation.

If Wortham is finally convicted, there is no assurance that U.S. diplomats will be allowed further contact with him. With a consular treaty in existence, Wortham would have the right of contact with U.S. officials on a "continuing basis."

The point about such a treaty is that it may, if only slightly, diminish the politics of the cold war and, at the same time, provide Americans with a wider legal backdrop for travel in the Soviet Union.

Mr. McGOVERN. Third, the proposed Consular Convention is not a threat to our national security. Assurances have been given on this point by both Secretary of State Rusk and the Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover. In a press conference on February 2, 1967, President Johnson said:

There are presently 452 Soviet officials in the United States that have diplomatic immunity. So if an additional consulate were opened, and if another 10 were added to the 452, Mr. Hoover has assured me that this small increment would raise no problems which the FBI cannot effectively and efficiently deal with.

Fourth, under the terms of the treaty, we have the right to carefully screen consular personnel before agreeing to their assignment in our country. We can prevent them from traveling to sensitive areas within the United States, and can expel them if they prove undesirable. We can close a Soviet consulate in the United States whenever we wish, and we can cancel the Consular Convention on 6 months' notice. All of these safeguards are built into the treaty.

Fifth, this convention presents the United States with an opportunity to further widen the growing gap which exists between the Soviet Union and Communist China, at no real cost to ourselves. Its approval will mark one more step toward the destruction of what used to be a Communist monolith.

Mr. President, for all of these reasons I shall vote to ratify the United States-U.S.S.R. Consular Convention.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. MANSFIELD. Mr. President, it was my understanding, in view of the question raised prior to the presentation of the understanding by the distinguished Senator from Maine [Mrs. SMITH], that there would be no further reservations, understandings, proposals, or whatnots, to cover every possible contingency, before the distinguished Senator from Maine submitted her proposal. No affirmative answer was made—no answer of any kind—when this question was raised before the Senate, so I would assume that the action just finished completes the consideration of the amendments, reservations, and understandings to the convention.

Mr. President, do I correctly understand that under the agreement entered into, the Senate will convene at 9 o'clock tomorrow morning and that the vote on the convention will take place not later than 3 o'clock tomorrow afternoon?

The PRESIDING OFFICER. The Senator is correct.

Mr. MANSFIELD. I would hope that Senators who wish to speak tomorrow would get in touch with either the majority leader or the minority leader, so that we can make certain that every Senator who desires to speak will be given an opportunity to have as much time as he desires.

Mr. KUCHEL. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. KUCHEL. If there are no Senators who desire to consume the entire time from 9 o'clock in the morning until 3 o'clock in the afternoon, am I correct in understanding that the vote may come earlier than 3 o'clock tomorrow?

Mr. MANSFIELD. Yes there is that distinct possibility. It is the intention of the leadership to adjourn from tomorrow at the conclusion of business until noon on Monday.

It is my understanding, in talking with the distinguished chairman of the Committee on Armed Services and the distinguished ranking minority member of that committee, the Senator from Maine, that it is anticipated that tomorrow the \$12.2 billion Vietnam supplemental bill will be reported and brought up on Monday next.

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. MUNDT. Mr. President, inasmuch as the Senator from South Dakota has been charged with parceling out time to those who oppose the treaty, if there are those in opposition who have not contacted me and who wish to speak, both Republican and Democratic Senators, we shall try to parcel the time equitably. Unless I know who wants to speak it will be difficult to make arrangements prior to the time that we shall vote.

Mr. MANSFIELD. I suggested that the time be allocated to the majority leader and the minority leader. I should have said that the time be allocated to the majority leader and the minority leader, or whomever they designate. The time on the majority side will be under the control of the chairman of the committee, the distinguished Senator from Arkansas [Mr. FULBRIGHT].

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. CURTIS. I understand that the vote may come before 3 o'clock tomorrow afternoon.

Mr. MANSFIELD. It is a possibility; and I hope a good one.

Mr. CURTIS. Is there any likelihood that the vote would be before 12 o'clock noon tomorrow?

March 15, 1967

CONGRESSIONAL RECORD — SENATE

S 3871

Mr. MANSFIELD. No.

Mr. CURTIS. I think it would be helpful to Senators to know that.

Mr. MANSFIELD. I give the Senator my assurance that the vote will not occur before noon.

Mr. CURTIS. I thank the Senator.

COMMITTEE MEETINGS DURING
SENATE SESSION TOMORROW

On request of Mr. MANSFIELD, and by unanimous consent, all committees were

permitted to meet during the session of the Senate tomorrow.

ADJOURNMENT UNTIL 9 A.M.
TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the previous order, that the Senate, in executive session, stand in adjournment until 9 o'clock a.m. tomorrow.

The motion was agreed to; and (at

6 o'clock and 15 minutes p.m.) the Senate adjourned until Thursday, March 16, 1967, at 9 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate March 15, 1967:

DISTRICT OF COLUMBIA REDEVELOPMENT
LAND AGENCY

John Joseph Gunther, of the District of Columbia, to be a member of the District of Columbia Redevelopment Land Agency for the term expiring March 3, 1972 (reappointment).