

Appendix 17 -- Report on Mutual Defense Treaty with the Republic of China, U.S. Senate, Committee on Foreign Relations (1955)

Source: *Mutual Defense Treaty with the Republic of China*, Senate, 84th Cong., 1st session., Executive Report No. 2 (Washington, D.C.: U.S. Government Printing Office, 1955), pp. 1, 4, 5-6, 8.

February 8, 1955

The Committee on Foreign Relations, to whom was referred the Mutual Defense Treaty with the Republic of China (Ex. A, 84th Cong., 1st sess.), signed at Washington on December 2, 1954, reports the treaty to the Senate, and recommends that its advice and consent to ratification be given at an early date....

SCOPE OF UNITED STATES COMMITMENT (ART. V)

Article V, which contains the heart of the treaty, is virtually identical with the provisions of article IV of the Philippines and ANZUS Defense Treaties. In the first paragraph, each party recognizes that an armed attack in the West Pacific Area directed against the territories of either of the parties would be dangerous to its won peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.

The basic provision is one which has repeatedly received the committee's attention, and requires little comment.

It embodies the now familiar "Monroe Doctrine formula," encountered in the previous defense pacts, and the concept that any action taken by the United States must be in accordance with our constitutional processes. Put somewhat differently, there is no question of any automatic commitment such as was discussed with respect to the "attack upon one is an attack upon all" concept of the North Atlantic Treaty. The power of the United States Government to act under this treaty remains precisely as it is defined in the Constitution, without impairing either the right of the Congress to declare war, or the authority of the President to act as Commander in Chief and as director of this Nation's foreign relations. The problem was examined in some detail by the committee in its reports on the Southeast Asia Collective Defense Treaty (Ex. Rept. No. 1, 84th Cong.) and the Mutual Defense Treaty with Korea (Ex. Rept. No. 1, 83d Cong.).

The committee considered carefully the wording of article V and the nature of our commitments under that article. In order to clear up any doubt on this point, it was agreed that its report should include the following statement:

It is the understanding of the Senate that the obligations of the parties under article V apply only in the event of external armed attack; and that military operations by either party from the territories held by the Republic of China, shall not be undertaken except by joint agreement.

The understanding reflects an agreement manifested by the Government of the United States and the Government of the Republic of China in an exchange of notes dated December 10,

1954, under which the use of force from the areas specified, must be pursuant to joint agreement, except for emergency actions by way of self- defense.

Finally, in the event of such armed attack as is envisaged by paragraph 1 of article V, the parties agree, in paragraph 2, that all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

The paragraph reflects the position of both signatories as members of the United Nations.

THE TREATY AREA

Article VI defines the treaty area. It declares that, for the purposes of articles II and V, the terms "territorial" and "territories" shall mean – in respect of the Republic of China, Taiwan and the Pescadores; and in respect of the United States of America, the island territories in the west Pacific under its jurisdiction.

The treaty area is thus defined in a limited way and as such does not extend the obligation of the United States to defend any territories other than Formosa and the Pescadores. Embraced within the protection given our own "island territories in the west Pacific" are such groups as the Ryukus (including Okinawa), the trust territories (former Japanese mandated islands) and Guam.

However, article VI expressly contemplates that the obligations of articles II and V of the treaty may be made applicable – to such other territories as may be determined by mutual agreement.

During the hearings, some members of the committee expressed concern lest the words "mutual agreement" be interpreted as permitting an important extension of our treaty commitments without the approval of the Senate. Secretary Dulles assured the committee, however, that as in the case of the Southeast Asia Collective Defense Treaty – an agreement to extend the coverage of the China Defense Treaty to additional territories would in practical terms amount to an amendment of the treaty, and should be submitted to the Senate for its advice and consent.

Nevertheless, the committee, with the aim of avoiding any doubts as to the nature of the "mutual agreement" required, decided to include the following statement in this report:

It is the understanding of the Senate that the "mutual agreement" referred to in article VI, under which the provisions of articles II and V may be made applicable to other territories, shall be construed as requiring the advice and consent of the Senate of the United States.

STATUS OF FORMOSA AND THE PESCADORES

China ceded Formosa and the Pescadores to Japan by the 1895 Treaty of Shimonoseki after the Sino-Japanese War. At the Cairo Conference in 1943, President Roosevelt, Prime Minister Churchill, and Generalissimo Chiang Kai-shek agreed that Formosa and the Pescadores "shall be restored to the Republic of China." At the Potsdam Conference this decision was confirmed in the proclamation defining the terms for Japanese surrender, July 26, 1945. Administrative

control of the island was turned over to the Republic of China subsequent to the Japanese surrender in September 1945.

Formosa became the seat of the National Government of the Republic of China in December 1949. By the peace treaty of September 8, 1951, signed with the United States and other powers, Japan renounced "all right, title, and claim to Formosa and the Pescadores." The treaty did not specify the nation to which such right, title, and claim passed. Although the Republic of China was not a signatory to the treaty it and the parties at the conference expressly recognized that it did not dispose finally of Formosa and the Pescadores. The Republic of China concluded a separate peace treaty with Japan on April 27, 1952, "on the same or substantially the same terms" as specified in article 26 of the Japanese treaty.

At a press conference on December 1, 1954, Secretary of State Dulles was asked whether the treaty recognized the claim of the Republic of China to sovereignty over the mainland. He replied: "It does not deal specifically with that matter one way or another." Later, during a discussion of this question in executive session, he informed the committee that the reference in article V to "the territories of either of the parties" was language carefully chosen to avoid denoting anything one way or another as to their sovereignty.

It is the view of the committee that the coming into force of the present treaty will not modify or affect the existing legal status of Formosa and the Pescadores. The treaty appears to be wholly consistent with all actions taken by the United States in this matter since the end of World War II, and does not introduce any basically new element in our relations with the territories in question. Both by act and by implication we have accepted the Nationalist Government as the lawful authority on Formosa.

To avoid any possibility of misunderstanding on this aspect of the treaty, the committee decided it would be useful to include in this report the following statement:

It is the understanding of the Senate that nothing in the treaty shall be construed as affecting or modifying the legal status or sovereignty of the territories to which it applies.

CONCLUSIONS

Our Government has determined that it is in the national interest that Formosa and the Pescadores be kept in friendly hands, as an important anchor in the defensive chain from the Aleutians to Australia. It is, therefore, of great importance that this policy, which until now has been voluntary and unilateral, be supported by a concrete undertaking to take appropriate action to help defend Formosa and the Pescadores against armed attack. By doing this in terms which cannot be misunderstood, it is hoped that the Communist military regime will be deterred from further attempts to aggrandize its position in the Far East at the expense of the free world. At the same time, the treaty will give further evidence of our intention not to abandon a wartime ally who fought valiantly in a long and exhausting struggle against a common foe. Finally, it is believed that the treaty, by putting the world on notice as to our intention, will contribute to the peace and security of a dangerous and sensitive zone.

For these reasons, the Committee on Foreign Relations urges the Senate to give its advice and consent to the ratification of this treaty.