

Mr. FISHER. When they were asked about that in Moscow, they said they were not really quite as enthusiastic as they felt their initial statements had been, and they said they realized this treaty might prevent it. They did agree to a change in the amendment clause, which has been the original parties plus two-thirds. We proposed original parties, including a majority of all signatories, which this committee well knows is quite rare in treaties.

Amending a treaty is probably all the parties, or at the most liberal, two-thirds.

They said, "Why are you proposing such a change?"

We said "We all know we may get to a point where excavation by nuclear weapons is feasible, and we want to make it very simple."

We don't think we could get away with the three original parties, and nobody else, because it made it look too cosy. It was written to have an amendment of the three original parties including a majority of all the parties, not a majority of the others, but counting the three in the majority to make up the majority. This is probably the most liberal amendment clause of any treaty that has ever been put before the Senate. That is the reason for it.

Mr. FRASER. Could you put into the record a statement that would deal with the question of the use of nuclear weapons in Vietnam vis-a-vis this treaty?

Mr. FISHER. We can, sir. We have an opinion of the Legal Adviser of the Department of State who is more authorized than I to deliver such an opinion. Not with specific reference to Vietnam, but in reference to whatever state of war exists.

Mr. FRASER. At least enough of a discussion so that it would fit the problem of Vietnam. I don't believe we are in a state of war in Vietnam—the United States.

Mr. FISHER. I will certainly submit something for the record. I think it is better to do it from the Legal Adviser than have a horseback opinion from me.

(The information follows:)

USE OF TACTICAL NUCLEAR WEAPONS IN WARFARE

The following opinion of the Legal Adviser of the Department of State concludes that the limited test ban treaty imposes no limitation on the use of nuclear weapons in war. This opinion was submitted to the Senate during its consideration of the treaty.

The opinion also concludes that the treaty makes no distinction between tactical and strategic weapons; it imposes no limitation upon the use of either in time of war.

On the basis of this opinion and other statements, the Senate Foreign Relations Committee concluded that "the treaty in no way impairs the authority and discretion of the Commander in Chief in time of crisis to employ whatever weapons he judges the situation may require, in accordance with our constitutional processes." (Senate Executive Report No. 3, 88th Cong., 1st sess., p. 6, 1963.)

Among the statements on this subject which the committee heard was the following colloquy:

"Senator STENNIS. Under the term 'nuclear explosion,' in the treaty, would that language prohibit the use of tactical nuclear weapons in what we call limited wars or limited conflicts outside the United States without invoking the 3 months' notice?"

"Secretary RUSK. No, sir. It does not inhibit in any way the actual use of nuclear weapons for military purposes. It inhibits the testing and the explosions in effect in peacetime."