Subtitle G—Antarctic Science and Conservation Modernization

SEC. 10671. ANTARCTIC NONGOVERNMENTAL ACTIVITY PREPAREDNESS.

(a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) for over half a century, scientific investigation and environmental protection has been the principal activity of the Federal Government and United States citizens in Antarctica;

(B) the National Science Foundation funds and manages the United States Antarctic Program, the national program of scientific research in Antarctica, together with associated logistical support activities, infrastructure, as well as broad environmental stewardship responsibilities in Antarctica;
(C) land- and ship-borne tourism in Antarctica, including tourism that United States-based companies organize or originate, continues to increase at a significant rate;

(D) achievement of the United States Antarctic Program scientific objectives requires the full commitment of the operational and logistics capabilities of the Program;

(E) longstanding United States policy regarding private nongovernmental expeditions to Antarctica has been not to offer support or other services to private expeditions in Antarctica, and, instead to encourage complete operational and financial self-sufficiency on the part of nongovernmental expeditions to Antarctica;

(F) in limited emergency situations the United States may attempt, at its discretion and in accordance with international law and humanitarian principles, the rescue of private individuals provided that no unacceptable risks are posed to United States personnel and the rescue can be accomplished by the United States within locally available means;

(G) increased tourism and other nongovernmental activities could result in addi-
tional health and safety, search and rescue, medical care and evacuation costs. These costs could increase the financial burden on the United States Antarctic Program, increase the risks to the safety of those involved in search and rescue, and jeopardize scientific objectives through the diversion of resources; and

(H) in recognition of the growing potential for additional costs to be imposed on national Antarctic programs, the Antarctic Treaty Consultative Parties, including the United States, adopted Measure 4 (2004), “Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area”, which, after it takes effect, will require the Parties to impose operational and financial self-sufficiency requirements on nongovernmental persons organizing expeditions to Antarctica organized in or proceeding from their country.

(2) PURPOSE.—The purpose of this section is to implement Measure 4 (2004), “Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area”.

(b) DEFINITIONS.—For the purposes of this section:
(1) **ANTARCTICA.**—The term “Antarctica” means the area south of 60 degrees south latitude.

(2) **DIRECTOR.**—The term “Director” means the Director of the National Science Foundation.

(3) **EXPEDITION.**—

   (A) **IN GENERAL.**—The term “expedition” means an activity undertaken by one or more nongovernmental persons organized within or proceeding from the United States to or within Antarctica for which advance notification is required under paragraph 5 of Article VII of the Antarctic Treaty.

   (B) **EXCLUSION.**—The term “expedition” does not include fishing activities or the operation of fishing vessels.

(4) **PERSON.**—The term “person” has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

(c) **OBLIGATION OF PERSONS ORGANIZING EXPEDITIONS TO PREPARE CONTINGENCY PLANS AND OBTAIN INSURANCE.**—
(1) IN GENERAL.—A person organizing an expedition shall—

(A) prepare and establish appropriate contingency plans and sufficient arrangements for health and safety, search and rescue, medical care and evacuation of persons engaged in an expedition;

(B) obtain adequate insurance or other financial arrangements to cover all costs associated with search and rescue and medical care and possible evacuation of any persons engaged in an expedition; and

(C) establish or obtain the contingency plans, arrangements and insurance or other financial arrangements referred to in this subparagraph prior to the date on which an expedition commences.

(2) EXPRESS WRITTEN AGREEMENT.—In establishing or obtaining contingency plans under paragraph (1), a person shall not rely on support from national Antarctic programs or other agencies of governments conducting research or other activities in Antarctica without their express written agreement.

(d) CERTIFICATION OF COMPLIANCE.—
(1) IN GENERAL.—Persons organizing expeditions shall submit to the Director a written certification that confirms its compliance with the requirements of subsection (c), including a statement that all such plans, arrangements and insurance or other financial arrangements meet all applicable international and domestic legal and regulatory requirements as well as clearly established industry standards.

(2) VIOLATION.—

(A) ACKNOWLEDGMENT.—Any certification submitted pursuant to paragraph (1) shall contain an acknowledgment that any knowing and willful false statement made in such certification is punishable under section 1001 of title 18, United States Code, by fine or imprisonment of not more than 5 years, or both.

(B) CRIMINAL PROSECUTION.—The Director may refer potential violations of section 1001 of such title to the Department of Justice for criminal prosecution, as appropriate.

(e) COSTS AND ADMINISTRATIVE FEES.—

(1) IN GENERAL.—If a person organizing an expedition receives any services covered by this sub-
section from any department, agency, or instrumentality of the Federal Government, or contractors working in support of such entities, absent an express written agreement for such services with the National Science Foundation, the Director may assess the costs, direct and indirect, of any such services incurred by the National Science Foundation, its contractors, or other department, agency, or instrumentality of the Federal Government, including all reasonable attorney’s fees and costs associated with the collection of such sums.

(2) RECOVERY OF COSTS.—The Director may request the Attorney General to initiate a civil action for the recovery of such costs.

(3) COLLECTION AND DISTRIBUTION.—The National Science Foundation—

(A) is authorized to retain all monies collected pursuant to this paragraph; and

(B) shall distribute such monies to any department, agency, or instrumentality of the Federal Government to the extent non-reimbursed costs were actually incurred by those entities and such monies shall remain available for expenditure, without further appropriation, until expended.
(4) **Administrative Fees.**—

(A) **Authority.**—Beginning in fiscal year 2021 and thereafter, the Director may establish, modify, charge, and collect administrative fees for the administration of the requirements of this subsection.

(B) **Retention.**—The National Science Foundation is authorized to retain all monies collected pursuant to this paragraph and such monies shall remain available for expenditure, without further appropriation, until expended.

(f) **Foreign Expeditions.**—

(1) **In general.**—Except as provided under paragraph (2), a person organizing an expedition shall not be required to comply with the provisions of this subsection if the Secretary of State determines at any time, in writing, that another Party to the Antarctic Treaty has jurisdiction over that expedition and is exercising its authority with regard to that expedition.

(2) **Exception.**—To the extent the National Science Foundation, its contractors, or other department, agency, or instrumentality of the Federal Government incurs direct or indirect costs relating to services covered by this subsection for an expedition,
such costs remain recoverable against persons subject to the jurisdiction of the United States pursuant to subsection (e).

(g) CIVIL PENALTIES.—

(1) ASSESSMENT OF PENALTIES.—

(A) LIABILITY.—A person organizing an expedition that the Director determines, after notice and an opportunity for a hearing, to have failed to comply with the requirements of this subsection, or its implementing regulations, shall be liable to the United States for a civil penalty.

(i) AMOUNT.—The amount of the civil penalty shall not exceed $10,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $25,000 for each violation.

(ii) SEPARATE OFFENSE.—Each day an expedition remains in Antarctica without complying with the requirements of this subsection shall constitute a separate offense for penalty purposes.
(iii) **Written Notice.**—The amount of any civil penalty shall be assessed by the Director by written notice.

(iv) **Discretion.**—Any civil penalty assessed under this subparagraph may be remitted or mitigated by the Director.

(2) **Hearings.**—

(A) **In General.**—Hearings for the assessment of civil penalties under paragraph (1) shall be conducted in accordance with section 554 of title 5, United States Code.

(B) **Subpoenas and Oaths.**—For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

(C) **Witnesses.**—Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(D) **Court Order.**—In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subparagraph, the district court of the United States for any district
in which such person is found, resides, or trans-
acts business, upon application by the United
States and after notice to such person, shall
have jurisdiction to issue an order requiring
such person to appear and give testimony be-
fore the Director or to appear and produce doc-
uments before the Director, or both, and any
failure to obey such order of the court may be
punished by such court as a contempt thereof.

(3) REVIEW.—

(A) IN GENERAL.—Upon the failure of any
person against whom a civil penalty is assessed
under paragraph (1) to pay such penalty, the
Director may request the Attorney General to
institute a civil action in a district court of the
United States for any district in which such
person is found, resides, or transacts business
to collect the penalty and such court shall have
jurisdiction to hear and decide any such action.

(B) COURT PROCEEDING.—The court shall
hear the action described under subparagraph
(A) on the record made before the Director and
shall sustain the decision of the Director if it is
supported by substantial evidence on the record
considered as a whole.
(4) Penalties under other laws.—The assessment of a civil penalty under paragraph (1) for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

(h) Regulations.—The Director may prescribe such regulations as may be appropriate to implement and enforce the provisions of this subsection.

(i) Effective date.—This subsection shall take effect 180 days after the date of enactment of this Act.

SEC. 10672. ANTARCTIC ENVIRONMENTAL LIABILITY.

(a) Purpose.—The purpose of this subsection is to implement Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, “Liability Arising From Environmental Emergencies”.

(b) Implementing Amendments.—The Antarctic Conservation Act of 1978 (16 U.S.C. 2401 et seq.) is amended—

(1) in section 3—

(A) by striking “and” at the end of paragraph (22);

(B) by striking the period at the end of paragraph (23) and inserting a semicolon; and

(C) by adding at the end the following:
“(24) the term ‘Annex VI’ means Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, Liability Arising From Environmental Emergencies;

“(25) the term ‘environmental emergency’ means any event that occurs after the entry into force of Annex VI, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;

“(26) the term ‘nongovernmental operator’ means any operator other than a governmental operator or a contractor or subcontractor acting on behalf of any governmental operator;

“(27) the term ‘operator’ means any person who organizes activities (including tourist activities) in the United States to be carried out in Antarctica, and any person who organizes activities (including tourist activities) in a country other than the United States to be carried out in Antarctica if such person has its principal place of business or habitual place of residence in the United States, or is incorporated in the United States, except that the term operator does not include—

“(A) an individual who is an employee, contractor, subcontractor, or agent of, or who is
in the service of, a person who organizes activities to be carried out in Antarctica;

“(B) a contractor or subcontractor acting on behalf of any governmental operator; or

“(C) any person who organizes only fishing activities to be carried out in Antarctica;

“(28) the term ‘reasonable’, as applied to ‘preventative measures’ and ‘response action’, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including—

“(A) risks to the Antarctic environment, and the rate of its natural recovery;

“(B) risks to human life and safety; and

“(C) technological and economic feasibility;

and

“(29) the term ‘response action’ means reasonable measures taken after an environmental emergency has occurred to avoid, minimize or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact, except that for purposes of this Act, the definition of ‘response’ contained in section 101(25) of the Comprehensive En-
environmental Response, Compensation, and Liability Act (42 U.S.C. 9601(25)) shall not apply.”;

(2) by inserting after section 4A the following:

“SEC. 4B. PREVENTATIVE MEASURES.

“(a) IN GENERAL.—Operators shall undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.

“(b) PREVENTATIVE MEASURES.—Such reasonable preventative measures may include—

“(1) specialized structures or equipment incorporated into the design and construction of facilities and means of transportation;

“(2) specialized procedures incorporated into the operation or maintenance of facilities and means of transportation; and

“(3) specialized training of personnel.

“SEC. 4C. CONTINGENCY PLANS.

“(a) IN GENERAL.—Operators shall—

“(1) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and

“(2) cooperate in the formulation and implementation of such contingency plans.
“(b) CONTINGENCY PLANS.—Such contingency plans shall include, when appropriate, the following components:

“(1) procedures for conducting an assessment of the nature of the incident;

“(2) notification procedures;

“(3) identification and mobilization of resources;

“(4) response plans;

“(5) training;

“(6) recordkeeping; and

“(7) demobilization.

“SEC. 4D. RESPONSE ACTION.

“An operator shall take prompt and effective response action to environmental emergencies arising from the activities of that operator.”;

(3) by inserting after section 6 the following:

“SEC. 6A. LIABILITY OF NONGOVERNMENTAL OPERATORS.

“(a) LIABILITY.—Whenever, on the basis of information available to it, a Government of a State Party to Annex VI, other than the United States—

“(1) finds that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from that operator’s activities, as required by section 4D; and
“(2) takes a response action to that environmental emergency, such Government may bring a civil action against that operator to recover the costs of such response action in an appropriate district court in accordance with section 11.

Any such operator found to have violated the requirements of section 4D shall be liable to pay to that Government the costs of the response action taken by such Government.

“(b) Failure To Comply.—Failure of a Government to comply with the provisions of Article 5, paragraph 3, 4, or 5 of Annex VI shall not be a defense to liability under this section.

“(c) Strict Liability.—Liability pursuant to subsections (a), (e), (i), and (j) shall be strict.

“(d) Joint Liability.—When an environmental emergency arises from the activities of two or more nongovernmental operators, they shall be jointly and severally liable under subsection (a), (i), or (j), except that an operator which establishes that only part of the environmental emergency resulted from its activities shall be liable in respect of that part only.

“(e) Claims.—Any nongovernmental operator may seek contribution from any other nongovernmental operator that is liable or potentially liable under section 2406
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of this title. Such claims shall be brought in accordance
with this section and the Federal Rules of Civil Procedure,
and shall be governed by Federal law. In resolving con-
tribution claims, the court may allocate response costs
among liable parties using such equitable factors as the
court determines are appropriate. Nothing in this sub-
section shall diminish the right of any person to bring an
action for contribution in the absence of a civil action
under subsection (a), (i), or (j).

“(f) Period in Which Actions May Be Brought.—

“(1) Response Period.—An action under sub-
section (a) or (i) must be commenced within three
years of the commencement of the response action or
within three years of the date on which the Govern-
ment bringing the action knew or ought reasonably
to have known the identity of the nongovernmental
operator, whichever is later. In no event shall an ac-
tion against a nongovernmental operator be com-
menced later than 15 years after the commencement
of the response action.

“(2) Cost Recovery Period.—An action
under subsection (e) for contribution toward costs
incurred pursuant to subsection (a) or (i) must be
commenced within three years of the date of judg-
ment in any action under subsection (a) or (i) for recovery of such response costs or in the absence of such an action, within three years of the date that the person seeking contribution knew or ought reasonably to have known the identity of the nongovernmental operator.

“(3) COST CONTRIBUTION PERIOD.—An action under subsection (e) for contribution toward response costs assessed pursuant to subsection (j) must be commenced within three years of the date of the assessment or within three years of the date of any judgment under subsection (j)(7), whichever is later.

“(g) LIABILITY COST LIMIT.—

“(1) Except as provided in paragraph (2), the maximum amount for which each nongovernmental operator may be liable for the costs of response actions under subsection (a), (i), or (j), in respect of each environmental emergency, shall be as follows:

“(A) For an environmental emergency arising from an event involving a ship—

“(i) one million SDR for a ship with a tonnage not exceeding 2,000 tons; and
“(ii) for a ship with a tonnage in excess of 2,000 tons, the following amount in addition to that referred to in clause (i):

“(I) For each ton from 2,001 to 30,000 tons, 400 SDR.

“(II) For each ton from 30,001 to 70,000 tons, 300 SDR.

“(III) For each ton in excess of 70,000 tons, 200 SDR.

“(B) For an environmental emergency arising from an event which does not involve a ship, 3,000,000 SDR.

“(2) Notwithstanding the paragraph (1), liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

“(3) For the purposes of this subsection—

“(A) ‘ship’ means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;
“(B) ‘SDR’ means the Special Drawing Rights as defined by the International Monetary Fund; and

“(C) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

“(h) INSURANCE REQUIREMENT.—Nongovernmental operators shall maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this section up to the limits set forth in subsection (g).

“(i) CIVIL ACTION.—Whenever, on the basis of information available to it, a department, agency, or other instrumentality of the United States (i) finds that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from its activities, as required by section 4D, and (ii) takes a response action to that environmental emergency, such department, agency, or other instrumentality may request the Attorney General to bring a civil action to recover the costs of such response action in an appropriate district court in accordance with section 11 of this title. Any such operator found to have violated the require-
ments of section 4D shall be liable to the United States for the costs of the response action taken by said department, agency, or instrumentality. The department, agency, or other instrumentality of the United States that takes a response action under this subsection, or section 9(a), is authorized to retain, in its budget, the monies collected pursuant to this subsection. Such monies shall remain available for expenditure, without further appropriation, until expended by that department, agency, or other instrumentality.

“(j) NOTIFICATION.—Upon notice that a nongovernmental operator has failed to take prompt and effective response action to an environmental emergency arising from its activities, as required by section 4D, and no response action was taken by any Party to the Protocol, the following procedures shall be followed:

“(1) The Director, after notice and opportunity for a hearing in accordance with paragraph (2), shall assess the cost of the response action that should have been taken and may assess the reasonable costs incurred by the United States under this subsection to determine that cost. The Director is authorized to promulgate regulations to implement this subsection.
“(2) Hearings for the assessment of the costs under paragraph (1) shall be conducted in accordance with section 554 of title 5, United States Code. For the purposes of conducting any such hearing, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Director or to appear and produce documents before the Director and any failure to obey such order of the court may be punished by such court as a contempt thereof.

“(3) Response action costs assessed pursuant to this section shall reflect, as much as possible, the costs of the response action that should have been taken and the maximum recovery amount of those
costs shall be as set forth in subsection (g). Further, the assessment of response action costs pursuant to this section shall not be deemed to preclude the assessment of additional civil or criminal penalties for violations of any other provision of this chapter or any other law.

“(4) At the request of the Director, and with the concurrence of the Secretary of the Department in which the Coast Guard is operating, the Commandant of the Coast Guard shall—

“(A) render, on a non-reimbursable basis, such assistance that the Director may require, necessary to assess the cost of response action that should have been taken in the case of an environmental emergency caused by the operator’s ship-based activities, including any determination concerning the underlying response activity; and

“(B) conduct, on a non-reimbursable basis, an investigation or an evidentiary hearing, necessary to assess the cost of the response action that should have been taken in the case of an environmental emergency caused by the operator’s ship-based activities, including any determination concerning the underlying response
activity and to submit to the Director proposed
findings of fact and recommendations for adjud-
dication by the Director.

“(5) With regard to any investigation or evi-
dentiary hearing conducted pursuant to paragraph
(4), the Director is authorized to delegate, to the
Commandant, the authority, set forth in paragraph
(2), to issue subpoenas and administer oaths, and to
pay fees and mileage. In case of contumacy or re-

fusal to obey a subpoena served upon any person
pursuant to this paragraph, the district court of the
United States for any district in which such person
is found, resides, or transacts business, upon appli-
cation by the United States and after notice to such
person, shall have jurisdiction to issue an order re-
quiring such person to appear and give testimony
before the agency head or to appear and produce
documents before the agency head, and any failure
to obey such order of the court may be punished by
such court as a contempt thereof.

“(6) The Director shall not commence an ad-
ministrative proceeding in accordance with para-
graphs (1) and (2) of this section later than 15
years after the United States Government becomes
aware of the environmental emergency.
“(7) Upon the failure of any operator against whom costs have been assessed under this section to pay such costs, the Director may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the costs and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Director pursuant to this section and shall sustain the Director’s decision if it is supported by substantial evidence on the record considered as a whole.

“(k) EXCEPTION.—A nongovernmental operator shall not be liable pursuant to subsection (a), (e), (i), or (j) if it proves that the environmental emergency was caused by—

“(1) an act or omission necessary to protect human life or safety;

“(2) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures were taken that are designed to reduce the risk of envi-
ronmental emergencies and their potential adverse impact;

“(3) an act of terrorism by some other person or entity; or

“(4) an act of belligerency by some other person or entity against the activities of the operator.

“(l) FEES.—Any monetary recovery under subsections (a), (i), and (j) shall, in addition, include all reasonable attorney’s fees and costs.

“(m) ARTICLE 12 FUND.—An amount equal to the amount recovered pursuant to subsection (l) for the cost of the response action that should have been taken shall be forwarded to the fund established pursuant to Article 12 of Annex VI.

“(n) EXPENDITURE.—To the extent the department, agency, or other instrumentality of the United States retains monies collected pursuant to this section, such entity is authorized to retain, in its budget, the monies collected pursuant to this section. Such monies shall remain available for expenditure, without further appropriation, until expended by that department, agency, or other instrumentality of the United States.”;

(4) in section 6—

(A) in subsection (a)—
(i) by striking “Annex II and Annex V” and inserting “Annex II, Annex V, and Annex VI”; and

(ii) by striking “including sections 4(b)(2), (3), (4) and (5)” and inserting “including section 3, section 4(b)(2), (3), (4) and (5), section 4D and section 6A”; and

(B) in subsection (b), by striking “to implement Annex IV to the Protocol and the provisions of this Act which implement that Annex” and inserting “to implement Annex IV and ship-based matters under Annex VI to the Protocol and the provisions of this Act which implement these Annexes”;

(5) in section 9(a), by adding “other than a Federal department, agency, or instrumentality” after “person”; and

(6) in section 11—

(A) by striking the section heading and inserting “JURISDICTION OF FEDERAL COURTS; VENUE, REVIEW OF REGULATIONS; SERVICE OF PROCESS”;

(B) by inserting “(a) U.S. DISTRICT COURTS.—” before “The district courts of the
United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter or of any regulation prescribed, or permit issued, under this chapter.”; and

(C) by adding the following subsections at the end of the section:

“(b) JURISDICTION.—An action by any Government of a State Party to Annex VI, including the United States, against any person subject to legal action under this chapter may be brought only in a district court in a jurisdiction where such person is located or resides or is doing business. A claim for contribution by a nongovernmental operator under section 2406(e) of this title may be brought in any district in which the defendant resides, may be found, or has his principal office.

“(c) LIMITATION.—In any action brought under section 2406 of this title, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.”.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect upon the entry
1 into force of Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty.