AUSTRALIA AND THE ANTARCTIC TREATY SYSTEM.*

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Since late 1982 there has been an increasing international focus on Antarctica, particularly on resource issues. This interest has been encouraged mainly by Malaysia within the Non-Aligned Movement and in the United Nations. The purpose of this article is to outline the broad structure of the present Antarctic Treaty system and Australian policy interests in the Antarctic region.

Background

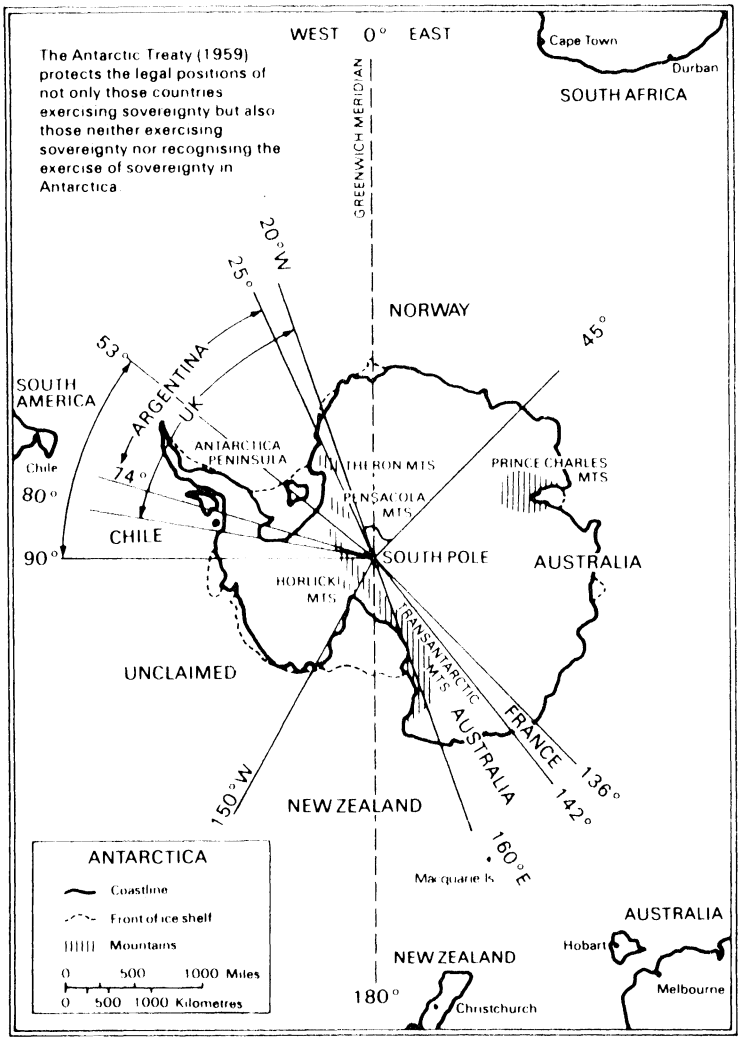
Australia has long been interested in Antarctica and has played a significant part in its exploration and in scientific work conducted there. The history of human activity in and around Antarctica is unlike that of any other continent because of its inhospitable climate and lack of population. Since the eighteenth century, progressively more detailed discoveries have been made in the Antarctic by both government-sponsored and private expeditions, whose purposes included exploration, scientific discovery, whaling and sealing, as well as annexation of territory. Early unco-ordinated activities gradually gave way to more elaborate expeditions, sponsored by governments and supported by permanent stations on the continent. That interest and work culminated in the International Geophysical Year (IGY) (1957–58) when the 12 nations then involved in Antarctica agreed that their political and legal differences should be put aside in the interests of carrying out scientific research in peaceful and close co-operation.

Sovereignty

Flowing from their historical involvement and activity in the area, seven states — Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom — claim sovereignty over parts of Antarctica. The extent of the claims is shown on the map of Antarctica on page 91. Australia's Antarctic Territory covers some six million square kilometres — about the combined size of Western Australia, Northern Territory and Queensland — and comprises about three-sevenths of the Antarctic continent. Australia's sovereignty rests upon discovery and formal taking of possession by British expeditions, and then a continuous display of Australian occupation and administration after passage of the Australian Antarctic Acceptance Act of 1933. The Australian Antarctic Territory lies between 45 degrees east and 160 degrees east and is divided into two areas by the wedge of Adelie Land, claimed by France. To the east of the Australian Antarctic Territory (AAT) is the New Zealand territory, the Ross Dependency. To the west is the Norwegian territory of Queen Maud Land and further west is the British Antarctic Territory, which the claims of Chile and Argentina partly overlap. No other country has made claims to Antarctic Territory and (apart from Australia, France, New Zealand and UK, which mutually recognise each other's claims) no other country recognises any claims to Antarctica. The United States and the Soviet Union, however, assert that they have a basis to make claims, though neither has expressed any firm intention to do so. There is a segment of the continent which remains unclaimed.

The Antarctic Treaty was signed in 1959 by the 12 nations which had maintained stations in Antarctica during the International Geophysical Year of 1957-58. The Treaty entered into force in 1961. It evolved directly from the spirit of co-operation which marked the IGY activity in Antarctica. Its roots, however, go back into East-West tensions of the late 1940s and 1950s, taken with the evidence of tensions resulting from overlapping Antarctic claims in the late 1940s. The Treaty is the main international instrument regulating the activities of states in Antarctica. The original signatories to it were Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, USSR, United Kingdom, and United States. Membership of the Treaty has, however, expanded. Bulgaria, Brazil, China, Czechoslovakia, Denmark, Federal Republic of Germany, German Democratic Republic, India, Italy, Netherlands,

* [This article is reprinted from Australian Foreign Affairs Record, February 1984 at pages 90-98.]



Papua New Guinea, Peru, Poland, Romania, Spain and Uruguay have all acceded to the Treaty.

The 12 original signatories are known as Consultative Parties because they are entitled under the Treaty to attend Antarctic Treaty Consultative Meetings (ATCMs), held approximately every two years. Any other acceding state which is engaged in substantial scientific research in Antarctica may also participate in Consultative Meetings. Four states currently fall into this category (Brazil and India since 1983, Federal Republic of Germany since 1981, and Poland since 1977), and any other states which engage in substantial scientific research can also be expected to become Consultative Parties in due course.

The Treaty stipulates that Antarctica should 'forever' . . . be used exclusively for peaceful purposes', and 'not become the scene or object of international discord'. Nuclear explosions and disposal of radioactive wastes are prohibited, as are 'any measures of a military nature'. The Treaty guarantees freedom of scientific research throughout the continent, thus formalising the free access to the continent which epitomised the IGY. All this was made acceptable to the claimant states by having the Treaty provide (in Article IV) that nothing contained in it shall be interpreted as 'a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty'. Article IV equally protects the position of the non-

meet annually in Hobart, and their Secretariat has been established in Hobart, the first international body of its kind in Australia. After early meetings concerned primarily with the administrative and procedural arrangements for the establishment of the Commission and the CCAMLR Secretariat, arrangements have been set in train for the provision of data for the future work of the Scientific Committee and CCAMLR Data Group.

It is hoped that the Convention and its Commission will continue to involve all countries with an interest in, or conducting activity with regard to, Antarctic marine living resources. The members of the Commission to date are Australia, Argentina, Chile, European Communities, France, FRG, GDR, Japan, New Zealand, Norway, South Africa, USSR, United Kingdom and USA. Belgium and Poland have signed but have yet to ratify the Convention. A number of other countries have indicated interest in joining the Convention, including Brazil, Finland, India, Spain and Sweden.

Australia had a number of major interests to protect during negotiation of the Antarctic Marine Living Resources Convention. It was concerned to ensure a holistic approach to the conservation of the marine ecosystem and to establish a strong conservation standard with which all harvesting activities should conform. The Convention achieves this by providing that the whole marine area south of the Antarctic convergence is to be treated as a single ecosystem and by the inclusion of clear conservation principles to be implemented by the Commission.

Another basic Australian concern was to ensure the continued protection of Australian sovereignty over the AAT and of its rights in relation to the marine area around the AAT and the other Australian territories (Heard Island and McDonald Islands) falling within the Convention's area of application. Satisfactory legal protection in this regard is provided in Article IV of the Convention which, like Article IV of the Antarctic Treaty, achieves a non-prejudicial balance between the legal positions of both claimant and non-claimant states. Opportunities for possible future Australian participation in Southern Ocean fisheries are also preserved in that there is nothing in the Convention which would preclude Australian fishermen from operating in any part of the Southern Ocean should they wish to do so at any future time, so long as they comply with the conservation principles established by the Convention.

Mineral resources

Estimates of Antarctic mineral and hydrocarbon resources are speculative, being based largely on geological hypothesis and analogy with adjacent continents. The existence of onshore resources in commercially exploitable quantities has not been established. Deposits of coal and iron ore and indications of other minerals have been found, but the low quality of the ores and their inaccessibility rule out mining in any near future. Land-based deposits would need to be either potentially extremely valuable or unusually large to attract commercial investment in Antarctica.

There may be somewhat greater potential for off-shore hydrocarbon exploitation. Research has confirmed the presence of large sedimentary basins, particularly in the Ross and Weddell Seas. Shallow drilling has revealed the presence of hydrocarbons in the Ross Sea continental shelf. There would, however, need to be a considerable amount of exploration before it could be determined whether oil was present in commercial quantities. Moreover, the technology to cope with the conditions of weather, ice and water depth necessary to develop any oil deposits which might be present in Antarctica would need to be developed.

Another non-living resource which has been given considerable attention is the iceberg. Its potential as a source of fresh water has stimulated a number of largely theoretical studies, which have focused on the mechanisms of towing large icebergs. By contrast, little progress has been made on possible methods of recovering water from

the iceberg when it reaches its destination. If iceberg harvesting were feasible, it might be desirable to develop a regime to regulate such activities. However, as icebergs are a renewable and mobile resource in plentiful supply, their harvesting would raise different, interesting legal problems.

Although the Antarctic Treaty does not deal specifically with non living resources, the Consultative Parties have recognised the importance of dealing with the question in advance of any exploitation taking place. At the Ninth Consultative Meeting, held in London in 1977, the Consultative parties adopted Recommendation IX-1 which urged 'their nationals and other states to refrain from all exploration and exploitation of Antarctic mineral resources while making progress towards the timely adoption of an agreed regime concerning Antarctic mineral resource activities'. The same Recommendation urged that protection of the unique Antarctic environment should be a basic consideration and that 'the Consultative Parties, in dealing with the question of mineral resources in Antarctica, should not prejudice the interests of all mankind in Antarctica'.

Informal discussions between the Consultative Parties on the possible nature of an Antarctic minerals regime began as early as 1970, but it was not until the Eleventh Consultative Meeting in Buenos Aires in 1981 that it was recommended that 'A regime on Antarctic mineral resources should be concluded as a matter of urgency' (Recommendation XI-1). Four sessions of a Special Consultative Meeting have been held since June 1982 to develop a minerals regime; however, the negotiations are still at an early stage.

Although the Consultative Parties have agreed on certain principles of a minerals regime (that the protection of the Antarctic environment should be a basic consideration, that it should be within the framework of the Antarctic Treaty, and that the interests of both claimants and non-claimants, as well as of the world community at large, should be accommodated within it) a large number of practical matters remain to be negotiated. These include such aspects as the area over which the regime should apply, the activities which should be covered, the principles of environmental safeguards to apply, the question of participation in a regime, the institutional mechanisms and decision-making procedures which would need to be established, the terms and conditions for resource activities, the relationship between the regime and the Antarctic Treaty, and the relationship of the regime with other international bodies.

The Consultative Parties do not underestimate the difficulties which will be involved in attempting to reconcile the differing interests of countries concerned about Antarctica. Accommodations will need to be made between the interests of claimant and non-claimant states, between the Consultative Parties as a whole and other states, between pro-conservation and pro-development interest groups, and between industrialized countries and developing states who have increasingly taken an interest in developments in the Antarctic and in the negotiations for a minerals regime. The divergent economic and management perceptions of Eastern European and Western Consultative Parties will also need to be bridged.

It is thus clear that issues of mineral resource exploitation pose questions of a different order from those covered in the Antarctic Treaty of 1959, since the right to exploit resources is traditionally an integral part of the concept of national sovereignty. Mineral resources are non-renewable; and the intrinsic nature of mineral exploration and extraction activity brings to the forefront the issue of jurisdiction. The complex political and legal questions that were involved in Antarctic marine living resource discussions arise therefore even more acutely in the context of Antarctic mineral issues.

Accordingly, it is clear that any long-term solution to the questions raised cannot be reached solely by application of provisions similar to Article IV of the Antarctic Treaty, which preserves the positions on sovereignty of both the claimant and non-claimant states. Australia and the other claimants will be looking for a role in a regime commensurate with their sovereign status, while at the same time preserving the rights of all parties to the regime to participate in projects throughout Antarctica.

A regime for Antarctic minerals must also be consistent with the overriding responsibilities which the Antarctic Treaty parties have assumed for the protection of the Antarctic environment. Australia supports the maintenance of an effective moratorium on the exploration and exploitation of Antarctic mineral resources, while progress is made

towards the adoption of an agreed regime concerning Antarctic mineral resource activities. We consider it essential that during that time further study of the environmental implications and of protective measures take place. Further, in common with all Consultative Parties, we are seeking to establish a regime which will gain international acceptance as fair and reasonable, thus strengthening the Antarctic Treaty system of which the regime would be a part.

Growing international interest in Antarctica

The need for any minerals regime to be acceptable internationally is particularly important in the light of growing interest in Antarctica from outside the Treaty countries.

The issue of Antarctica and the Treaty system was raised by the Malaysian Prime Minister, Dr Mahathir, during his speech in the general debate at the United Nations General Assembly in September 1982, and again by the Malaysian delegation at the summit conference of the Non-Aligned Movement in New Delhi in March 1983. In August 1983, at the initiative of Malaysia and of Antigua and Barbuda, an item on Antarctica was inscribed in the agenda of the thirty eighth session of the United Nations General Assembly. This item was referred for consideration to the First Committee of the General Assembly, which produced by consensus a draft resolution on Antarctica that was subsequently adopted, by consensus also, in the General Assembly on 15 December 1983.

The resolution on Antarctica adopted by the General Assembly requested the Secretary General to 'prepare a comprehensive, factual and objective study of all aspects of Antarctica, taking fully into account the Antarctic Treaty system and other relevant factors'. In preparing the study, the Secretary-General was requested to seek the views of all Member States, and all States with interests in Antarctica were asked to co-operate with the Secretary General in this endeavour. The Secretary General was asked to report on this item to the thirty-ninth session of the General Assembly in 1984.

During the debate on Antarctica a number of developing countries criticized the Antarctic Treaty as being anachronistic, exclusive and secretive, spoke strongly against the maintenance of territorial claims in the region (claiming that they were a potential source of international instability), and argued that the Antarctic should be declared to be the common heritage of mankind. A number of states were critical of the minerals negotiations, arguing that the speed with which they were being conducted engendered suspicion. Others, particularly African states, spoke negatively of South Africa's membership of the Antarctic Treaty.

In response to these arguments, the Antarctic Treaty partners pointed out that the Antarctic Treaty system was an evolving and flexible system which was open for membership by any state with an interest in Antarctica. Non-Consultative Parties can now participate in Consultative Meetings as observers. The Treaty system is a unique example of international co-operation that had provided viable and flexible mechanisms for dealing with the special problems associated with the Antarctic continent. Among the important achievements of the Antarctic Treaty system have been the successful exclusion of military activity, as well as nuclear explosions, from the Antarctic Treaty area, the implementation of environmental safeguards for any exploration and exploitation of Antarctic resources, and the development of measures which have guaranteed freedom of access to Antarctica and co-operation in scientific research there among countries of diverse social, political and economic backgrounds.

In response to the request that the Antarctic should be declared to be the common heritage of mankind, the Treaty partners pointed to the existence of sovereignty and sovereign rights over parts of the continent and its adjacent off-shore areas, which meant that Antarctica was not an area which could fall within the common heritage concept developed for outer space and the deep seabed beyond national jurisdiction. In addition the Treaty partners doubted that, in the present international climate, a better regime for the Antarctic could be negotiated without introducing serious uncertainty and instability into a region of hitherto unparalleled harmony. Rather than attempt to institute a new regime for the Antarctic, the Treaty powers urged all states which had an interest there to join the present Antarctic Treaty system and contribute to its ongoing development.

A World Park?

In addition to increased interest in Antarctica from developing countries, there have been a number of calls from conservationist groups for the Antarctic to be declared a World Park. The International Union for Conservation of Nature and Natural Resources passed a resolution at its 1981 General Assembly which recommended that such a World Park be established and urged that no minerals regime be brought into operation until such time as 'full consideration has been given to protecting the Antarctic environment completely from minerals activities and the environmental risks have been fully ascertained and safeguards developed to avoid adverse environmental effects'.

Discussion has revealed a number of problems in the proposal to declare Antarctica to be a World Park, not least of which is the uncertainty about the precise content and implications of that concept. A complete ban would be, in some respects, as inequitable, in terms of balancing legitimate but competing interests, as a minerals regime that allows all development proposals to go ahead without any environmental safeguards. There is a range of interests to be accommodated in Antarctica which include not only potential mining interests and environmental interests, but also scientific research, wildlife conservation, fishing and recreational or tourist interests. Any viable plan to manage the Antarctic region would need to balance equitably all these potential uses of Antarctica.

The Australian authorities therefore believe that it would be premature to raise any World Park concept in the Antarctic Treaty forum until there is an agreed, precise and feasible meaning of that concept which recognises the practical realities of Antarctica. Nonetheless Australia is committed to ensure the greatest practical protection of the Antarctic environment and it will pursue this goal through measures drawn up directly under the Antarctic Treaty, as well as through resource negotiations as described above.

Australian policy interests in Antarctica

Australian policy towards Antarctica is based on the premise that the region is an important one for Australia strategically, scientifically, environmentally, and possibly in the long run in terms of its resources. Australia has a history of involvement in Antarctica and a range of interests and potential interests to protect. Australia has maintained an appropriate level of activity there, and, as one of the 12 original signatories of the Antarctic Treaty, has played a prominent role in international discussions of Antarctic issues.

In consequence of those discussions, the Australian authorities are strong supporters of the Antarctic Treaty system, which they see as the best and most effective means of meeting Australian policy interests in Antarctica within a framework which has achieved wide success. These policy interests in turn may be broadly summarised as follows:

- to preserve our sovereignty over the Australian Antarctic Territory (AAT), including our sovereign rights over the adjacent offshore areas;
- to maintain Antarctica free from strategic and/or political confrontation;
- to protect the Antarctic environment, having regard both to its special qualities and its effects on our region;
- to take advantage of the special opportunities Antarctica offers for scientific research;
- to be informed about and able to influence developments in a region geographically proximate to Australia; and
- to derive any reasonable economic benefits from the living and non-living resources of the Antarctic.

With respect to Antarctic resources we seek solutions within the Antarctic Treaty framework to problems associated with the exploration and exploitation of Antarctic living and non-living resources. We believe the solution found for Antarctic marine living resources in the Convention concluded in May 1980 demonstrates that the Antarctic Treaty Consultative Parties are capable of resolving issues in a balanced and rational way for the benefit of all peoples using the Antarctic Treaty system.

While the search for solutions to resource issues remains the primary focus of the medium-term future, it is the future of the Antarctic Treaty itself that is the broader issue. The main achievements of the Treaty have been to keep the Antarctic free of the tensions which have often beset the world community in the past 25 years, to retain the co-operation of the major world powers in excluding all military activity and all nuclear explosions from the region south of 60 degrees South, the promotion of international co-operation in scientific research, and the setting aside of potential disputes over territorial claims. These are no mean achievements. All Consultative Parties, whatever their differences over other issues, agree that the Treaty remains the best way of protecting both Antarctica itself and their interests in the region. However, in order to continue the successful operation of the Treaty system, Consultative Parties recognise that the system cannot be static, but must adapt to changing circumstances.