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The Antarctic Treaty System: Resource Development, Environmental Protection or Disintegration?

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ABSTRACT. The Antarctic Treaty System has successfully managed Antarctica and the surrounding Southern Ocean since 1961 despite the existence of conflicting sovereignty claims and calls from the Third World for greater international participation in the continent's management. The spectre of unregulated mining activities in Antarctica caused the parties to the Antarctic Treaty to negotiate the Convention for the Regulation of Antarctic Mineral Resource Activities in 1988. However, the entry into force of the convention is now being challenged by Australia and France, who propose a prohibition on mining in Antarctica and favour the negotiation of a comprehensive environmental protection regime for the Antarctic. The development of a world park in Antarctica has been mooted since 1972, and during the 1980s various international environmental organizations gave enthusiastic support to the concept. A meeting of the Antarctic Treaty Consultative Parties in 1989 resolved to further discuss in 1990 the implementation of comprehensive environmental protection measures in Antarctica. While 1990 may be a pivotal year in the current debate over the environmental future of Antarctica, 1991 is potentially more significant, as the Antarctic Treaty will then become eligible for a comprehensive review. This raises the prospect of substantial changes to the Antarctic regime.

Key words: Antarctica, international law, minerals regime, comprehensive environmental protection, world park

RÉSUMÉ. Le Traité Antarctique a assuré la gestion de l'Antarctique et du Bassin antarctique environnant depuis 1961 malgré l'existence de revendications territoriales conflictuelles et des appels du tiers-monde pour une plus grande participation internationale dans la gestion du continent. La perspective d'une exploitation minière non réglementée dans l'Antarctique amena les parties impliquées dans le Traité Antarctique à négocier en 1988 la Convention concernant la réglementation des activités de mise en valeur des ressources minérales en Antarctique. L'Australie et la France sont cependant en train de contester l'application de la Convention: elles proposent d'interdire l'exploitation minière dans l'Antarctique et penchent en faveur d'une négociation visant à établir un régime global de protection de l'environnement en Antarctique. Dès 1972, on a parlé de la création d'un parc mondial dans l'Antarctique, et, durant les années 80, plusieurs organismes environnementaux internationaux ont soutenu ce projet avec enthousiasme. En 1989, les différentes parties du comité consultatif du Traité Antarctique se sont réunies et ont résolu de poursuivre la discussion en 1990 sur la mise en vigueur de mesures globales de protection de l'environnement en Antarctique. Tandis que 1990 pourrait bien être une année pivot dans le débat actuel sur l'avenir de l'environnement dans l'Antarctique, 1991 pourrait être encore plus importante, vu que c'est l'année où le Traité Antarctique pourra être soumis à une révision dans le détail. Cette possibilité soulève l'éventualité de changements d'importance dans le régime gouvernant l'Antarctique.

Mots clés: Antarctique, droit international, régime gouvernant l'exploitation des ressources minérales, protection de l'environnement, parc mondial

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INTRODUCTION

The Antarctic Treaty system (ATS) was dominated for much of the 1980s by negotiations for the development of a minerals regime. Despite considerable pressure from states outside the ATS and from the United Nations, the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA, 1988) was successfully negotiated and opened for signature in 1988. At no time during the six years of negotiations for the minerals regime had there been serious dissent among the parties to the ATS about the urgent need to negotiate such a regime before any mining activity commenced in Antarctica. However, with the conclusion of CRAMRA and its opening for signature came the first hint that a rift was about to develop within the ATS. After much public and political debate, the Australian Government announced on 22 May 1989 its intention to not sign CRAMRA. It sought instead to permanently prohibit mining in Antarctica and to this end commenced a worldwide campaign to implement a comprehensive environmental protection regime for the Antarctic. The decision by France to also reject CRAMRA and support the Australian initiative showed that concern for the future of the Antarctic environment was fast becoming a major political issue within the ATS and that CRAMRA was under threat from a radically different regime option.

The Fifteenth Antarctic Treaty Consultative Meeting (ATCM) was also held in Paris in 1989. At these meetings the Antarctic Treaty Consultative Parties (ATCPs), a group made up of the original signatories to the treaty and other states who have over time demonstrated a substantial scientific interest in the continent, have implemented "recommendations" and created the mechanism for the negotiation of supplementary conventions to deal with matters of environmental concern, such as the protection of scientific sites and the control of mineral activities. At ATCM XV considerable debate took place over whether the ATS should continue to support CRAMRA or instead give formal consideration to the implementation of a comprehensive environmental protection regime, as proposed by Australia and France, or even to consider the claims of certain non-governmental organizations (NGOs) that Antarctica be declared a "world park." At the conclusion of the meeting a number of recommendations were agreed upon, with Recommendations XV-1 and XV-2 scheduling special meetings to be held during 1990 in an effort to resolve the debate that had developed over the merits of CRAMRA and the proposed environmental protection regime.

Following the events of 1989, it is obvious that as the 30-year-old ATS enters the 1990s serious divisions exist among the treaty parties that could conceivably cause the disintegration of the regime, which has so successfully governed Antarctica since 1961. Whether a mining regime such as CRAMRA should be adopted or an environmental protection regime prohibiting mining should be implemented is a debate in which no middle ground exists. When this debate is viewed

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against the possibility of a comprehensive review of the ATS in 1991, it is clear that the Antarctic regime is facing a serious challenge to its existence. This paper will detail the development of both alternative regimes and then assess the prospects for the future.

THE ATS AND MINERAL RESOURCES

The 1959 Antarctic Treaty (Antarctic Treaty, 1959) was originally signed and ratified by Australia, Argentina, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the United Kingdom, the United States, and the USSR (Appendix 1). It came about as a consequence of proposals put forward by the United States for the internationalization of Antarctica, partly prompted by the Cold War, and eventually realized after the 1957-58 International Geophysical Year, when a commitment emerged to ensure that Antarctica remain a non-nuclear and demilitarized continent where scientific goals and not territorial conquests could be achieved (Hayton, 1960).

Since it came into force in 1961, a further 27 states have become parties to the treaty, and of the total 39 state parties, 25 presently hold consultative party status (Appendix 1). An ATCM is held every two years, during which the ATCPs discuss matters of concern that have arisen from the implementation of the treaty. Recommendations are agreed upon at these meetings in an effort to rectify these concerns and often their impact is to implement a new code of conduct for Antarctic activities. As laid down by Article IX of the treaty, these recommendations can deal with the peaceful use of Antarctica, scientific research, the exercise of jurisdiction and preservation and conservation of living resources. Article VI gives the treaty an application to not only the Antarctic continent, but all islands, seas and ice shelves that lie within the area south of 60° South latitude, excepting the high seas.

One of the unique features of the treaty is the way it dealt with sovereignty in Antarctica. At the time the treaty came into force, Australia, Argentina, Chile, France, New Zealand, Norway and the United Kingdom all had territorial claims to part of the Antarctic continent. The United States and the USSR have continually refused to acknowledge the validity of these seven territorial claims, which can partly be attributed to their own latent territorial claims never formally asserted (Auburn, 1982). Despite the existence of these claims, Article IV of the treaty has the effect of freezing these claims for the duration of the treaty so as to in effect defuse the sovereignty issue. Many commentators believe this factor has been the key to the success of the ATS during its 30-year history, allowing it to survive even the 1982 Falklands War between Argentina and the United Kingdom (Triggs, 1986).

Yet while the issue of sovereignty was successfully dealt with in the treaty, and demilitarization of the continent was guaranteed by Articles I and V, the potential exploitation of mineral resources was a matter not adequately addressed by the new regime. One explanation for the failure of the Antarctic Treaty to adequately deal with this issue is that at the time of its negotiation there was little prospect of commercial mining activity taking place on the continent. While the 1957-58 International Geophysical Year gave a much needed focus and boost to geological surveys and research on the continent, resulting in the discovery of numerous mineral deposits, it was generally considered that the concentrations in these deposits were not large enough to be commercially exploitable (Wright and Williams, 1974). Factors such as high exploration costs, the expense of large-scale mining operations in the harsh Antarctic environment, the high transportation costs to warm-water ports, and the need to have very large deposits to make extraction commercially viable all contributed to a general skepticism as to whether commercial mining in Antarctica would ever take place (Potter, 1969). However, the discovery in 1973 by the *Glomar Challenger* of ethane and methane gas in the Ross Sea area, the first major evidence that a commercially exploitable petroleum resource might exist in the Antarctic, was the catalyst for the ATS to recognize that commercial mining in Antarctica could eventually become a reality (Mitchell and Kimball, 1979). This development in the 1970s, plus the advances in polar mining technology flowing from the Alaskan oil fields, forced the ATS to take anticipatory action and negotiate an Antarctic minerals regime before unregulated mining actually commenced. However, despite these developments there was little change in opinion during the 1980s that the reserves that did exist were small in size and when combined with the problems and costs associated with the exploitation of minerals reserves in the Antarctic made mineral activities in Antarctica commercially unviable (Tessensohn, 1986; Larminie, 1987).

The Negotiation of an Antarctic Minerals Regime

The first formal proposal put forward within the ATS for the negotiation of an Antarctic minerals regime was made at ATCM VI during 1970. However, it was not until ATCM IX, in 1977, that the ATCPs dealt with the matter by way of a recommendation. In response to a report prepared by a Working Group of Experts on Exploration and Exploitation of Antarctic Minerals, Recommendation IX-1 was adopted to deal with Antarctic mineral resources (Bush, 1982). The recommendation, calling for the eventual creation of an Antarctic minerals regime, imposed a moratorium on Antarctic mining. In particular, it provided that "pending the timely adoption of agreed solutions pertaining to exploration and exploitation of mineral resources, no activity shall be conducted to explore or exploit such resources" (Bush, 1982:345). A further four years passed before guidelines were laid down for the actual negotiation of the new minerals regime, the delay partly due to negotiations over the Convention for the Conservation of Antarctic Marine Living Resources only having concluded in 1980 (CCAMLR, 1980). Recommendation XI-1, approved at ATCM XI in 1981, reaffirmed the commitment of ATCPs to the early conclusion of a regime for Antarctic mineral resources and laid down the principles upon which such a regime should be based. These included the requirement that ATCPs should continue to play an active and responsible role in dealing with the question of Antarctic mineral resources, that the Antarctic Treaty be maintained in its entirety, that protection of the unique Antarctic environment and of its dependent ecosystems should be a basic consideration, that the interests of all mankind in Antarctica should not be prejudiced by the regime, and that the provisions of Article IV of the Antarctic Treaty dealing with sovereignty should not be affected by the regime (Bush, 1982). A Special Consultative Meeting was convened to negotiate the new regime and the first meeting was held in Wellington in June 1982 (Auburn, 1982).

CRAMRA

The formal minerals negotiations commenced in Wellington during 1982 and did not conclude until June 1988, during which time 12 sessions of the Special Consultative Meeting were held. The negotiations quickly became centred around a draft minerals regime proposed by a New Zealand official, Christopher Beeby, with the so-called "Beeby I" to "Beeby VII" drafts forming the basis for the eventual convention (Beck, 1989a).

CRAMRA is based on the premise that "Antarctica remains closed to mineral resource activities except when the regime decides to identify an area for exploration and development in the light of relevant information and advice, most notably that concerning possible environmental impacts" (Beck, 1989a:19-20). Prospecting, exploration and development of Antarctic mineral resources are regulated, with each activity required to meet a higher standard of environmental care. The Antarctic Mineral Resources Commission is the primary institution created by CRAMRA. The commission has 24 specific functions assigned to it by Article 21, with other functions assigned to it throughout the convention. The commission is given the initial responsibility of determining whether an area is to be opened up for possible exploration and development. Under Article 41 the commission is to ensure that an area being identified for minerals activity is a coherent unit for the purposes of resource management, and it may specify which mineral resources can be explored for and developed, as well as imposing general guidelines relating to the operational requirements for exploration and development in an area (Joyner, 1988).

Despite the significant power of the commission, the Regulatory Committee, established by Article 29, has the ultimate power to accept or reject the development of mineral activity within a specified area. The committee, with a membership of 10, including the state or states asserting claims in the area under consideration, can also approve "management schemes" for areas being developed and monitor exploration and development activities taking place (Joyner, 1988). Article 3 specifically prohibits Antarctic mineral resource activities from being conducted outside of the controls established by CRAMRA, with further provisions in Article 7 detailing the obligations of each party to comply with and to encourage other states to comply with the objectives and principles of the convention (Beck, 1989a). In an important concession to the claims of environmentalists, Article 8 of CRAMRA establishes a liability regime for damage "to the Antarctic environment or dependent or associated ecosystems" resulting from mineral resource activity (Burmester, 1989).

Will CRAMRA Enter into Force?

Given the stance taken by Australia and France in 1989 and the February 1990 announcement of Prime Minister G. Palmer "to set aside consideration of the ratification of CRAMRA by New Zealand," it is worthwhile considering whether the convention will ever come into force (Palmer, 1990:1). The convention was open for signature in Wellington for twelve months from 25 November 1988. At the end of this period only 19 states had signed (Appendix 1). Entry into force of the convention depends on the requirements of Article 62 being met. The article lays down a detailed formula and requires: 1) that 16 of the ATCPs that participated at the final session of the Fourth Special ATCM become a party; 2) that this number includes all the states necessary to constitute all the institutions of the convention; 3) that the institutions are established in every area of Antarctica; and, 4) that the number include 5 developing countries and 11 developed countries.

Given then the present attitude of Australia, France and New Zealand towards CRAMRA, will the requirements of Article 62 ever be met? As to the first requirement, at the conclusion of the Fourth Special ATCM in June 1988 at Wellington there were 20 ATCPs, so the refusal of 3 to become parties to CRAMRA can not affect this requirement. Likewise, the fourth requirement that a mix of developing and developed ATCPs become parties to CRAMRA is not affected, there being enough remaining ATCPs to still meet this part of the formula. The second requirement can also be fulfilled with respect to the Antarctic Mineral Resources Commission, the Scientific Technical and Environmental Advisory Committee and the Special Meeting of Members without the participation of Australia, France or New Zealand. However, difficulty does exist with the composition of the Regulatory Committee (Blay and Tsamenyi, 1989). Under Article 29, this committee must be composed of 10 members, of which one or more must be the states that assert rights or claims in an area identified for minerals activity. Consequently, without Australian, French or New Zealand participation in CRAMRA it would seem that the Regulatory Committee could not undertake consideration of any resources activity in the Australian Antarctic Territory (Australia), Adelie Land (France) or the Ross Dependency (New Zealand). This would also seem to result in the third requirement not being met.

While the formula laid down in Article 62 would seem to ensure that, following the Australian and French rejection of CRAMRA and the New Zealand decision to set aside ratification, entry into force is now impossible, an argument has been made that it still may be possible for CRAMRA to enter into force (Blay and Tsamenyi, 1989). If this were to occur and a group of determined states sought to implement CRAMRA without Australian, French and New Zealand participation, then it would be a test of international law as to whether the convention effectively came into force. Whether this stage will ever be reached, though, may very much depend on events in 1990.

AN ANTARCTIC WORLD PARK REGIME

Given that the Antarctic Treaty was negotiated to ensure the continuation of scientific research in a demilitarized continent free of the threats of the Cold War and sovereignty disputes, there was little emphasis in the treaty on the protection of the Antarctic environment. This does not mean to imply that the ATCPs totally ignored this issue: conservation in Antarctica was raised at ATCM I in 1961 when the British delegation called for the recognition of Antarctica as a "nature reserve," while the Soviet delegation suggested in 1964 that Antarctica be declared an "international wild life reserve" (Myhre, 1986). An early response by the ATS to concerns about the preservation of the Antarctic environment was the 1964 Agreed Measures for the Conservation of Antarctic Fauna and Flora, whereby special protective regimes were implemented for Sites of Special Scientific Interest, Specially Protected Areas and Sites of

Historic Interest (Bush, 1982). More recently, the ATS has reacted to concern about the exploitation of Antarctic living resources through the 1972 Convention for the Conservation of Antarctic Seals (CCAS) and CCAMLR, which was finalized in 1980 (CCAS, 1972; CCAMLR, 1980).

The Emergence of the World Park Concept

The first call for Antarctica to be declared a world park came at the 1972 Second World Conference on National Parks held at Grand Teton National Park in the United States. The conference, sponsored by the International Union for the Conservation of Nature and Natural Resources (IUCN), "unanimously recommended that the Antarctic continent and its surrounding seas be established as the first World Park, under the auspices of the United Nations" (Barnes, 1982:244). Notes of this conference were forwarded to the ATCPs, with New Zealand taking particular interest in the concept.

In 1975 New Zealand took to ATCM VIII in Oslo a proposal for the establishment of an Antarctic world park. While the proposal won support from Chile, it was never formally placed upon the agenda and there is no reference to the New Zealand initiative in the official report of the meeting (Rothwell, 1990). The IUCN, however, continued to pursue the concept of a world park and at the 1982 World National Parks Congress held in Bali succeeded in having a motion approved stating that "the concept of a world park and other appropriate designations should be developed more urgently" for Antarctica (Mosley, 1984:320). Since the early 1980s though, IUCN's role in the world park debate has diminished as other high-profile environmental groups developed the concept further and gained support from several influential ATCPs (Kimball, 1988).

NGOs and the World Park Option

The Australian Conservation Foundation (ACF), Greenpeace and the Antarctic and Southern Ocean Coalition (ASOC) have become increasingly influential in Antarctic affairs during the past decade. Initially active in the negotiations for CCAMLR because of their concern about the impact of commercial fishing in the Southern Ocean and the effect this would have upon the Antarctic ecosystem, they played a significant role in the negotiation of CRAMRA. During much of this time many NGOs were calling for stricter environmental measures to be implemented in Antarctica and some advocated the world park option. Geoff Mosley, of ACF, was particularly responsible for developing the world park debate. He has argued that Antarctica is the "last great wilderness" on the planet and as such should be permanently protected. While acknowledging the possibility of implementing a comprehensive protection regime for the Antarctic environment through the ATS or even the 1972 UNESCO World Heritage Convention, Mosley has consistently argued that only through a world park designation could permanent environmental protection be achieved. For Mosley, a world park in Antarctica would mean the priority maintenance of Antarctica's wilderness condition, the zoning of special areas with strict management plans for use as scientific bases or transport and communication purposes, the prohibition of all mineral activities, and the creation of an authority or agency to coordinate these activities (Mosley, 1986).

Greenpeace and ASOC have also played a prominent role in the world park debate. Greenpeace's Antarctic policy calls for the complete protection of Antarctic wildlife, that the protection of the wilderness values of the Antarctic should be paramount, that Antarctica remain a zone of limited scientific activity, with cooperation among scientists of all nations, and that it also be a zone of peace free from all military activities (Greenpeace, 1986). Mineral activities are totally incompatible with Greenpeace Antarctic policy. Greenpeace has also argued for the establishment of an Antarctic Environmental Protection Agency to ensure that ". . . all scientific, logistical and tourist activities undertaken in the Antarctic are examined and managed according to a consistent set of standards, and to provide for uniform enforcement of rules, regulations and measures" (Greenpeace, 1986:10).

ASOC sees the world park proposal as a means "to ensure that the natural environment of the Antarctic is forever protected" (ASOC, 1989:3). It acknowledges that this policy could be achieved by various means, of which one would be the negotiation of a conservation convention through the ATS. The principles upon which the new regime would be based are that the Antarctic be an area where wilderness values are paramount and that there be comprehensive conservation of flora, fauna and the environment; that the Antarctic be an area of limited scientific research, encouraging cooperation among scientists of all nations; and that it also be an area of peace, free of nuclear and other weapons and all military activities (ASOC, 1989:3). To attain these goals ASOC argues that it would be necessary for a new legal regime in the form of an Antarctic Conservation Convention to be negotiated.

The NGOs are therefore in agreement that an Antarctic world park would involve the prohibition of mining activities and the continuation of current activities on the continent consistent with the attainment of peaceful scientific goals. Comprehensive environmental protection measures would be put in place by a coordinating agency and the most effective method to achieve these aims within the current ATS would be by way of a convention (Rothwell, 1990).

Australian Policy in 1989

When CRAMRA opened for signature in late 1988 a debate commenced in Australia as to whether the government should be a party to the convention. The matter was formally considered by the government on various occasions in April and May 1989, during which time it became known that Prime Minister R.J. Hawke was opposed to mining and would fight to protect the "unique Antarctic environment" (Seccombe, 1989:8). The pressure upon the government to not sign CRAMRA increased in early May, when the opposition called for a convention to prohibit mining in Antarctica and the Senate also gave notice that it was opposed to CRAMRA. Given the opposition within Australia towards CRAMRA, it came as no surprise when on 22 May the prime minister announced that Australia would not sign CRAMRA and instead commence a campaign to "pursue the urgent negotiation of a comprehensive environmental protection convention within the framework of the Antarctic Treaty system" (Hawke *et al.*, 1989:1).

The prime minister took the opportunity during an overseas tour in June 1989 to win support for the Australian

proposal. However, only the French Government expressed total support. During this tour details were outlined on Australia's conception of the proposed conservation regime. In a speech to the National Press Club in Washington, the prime minister argued for the negotiation of an Antarctic Environment Protection Convention, which would contain:

> An agreement to protect Antarctica's environment and ecosystems, fully respect its wilderness qualities, respect its significance for regional and global environments, and protect its scientific value; A ban on mining; In regard to other activities, arrangements which will let us assess the impact of proposed Antarctic activities or facilities; A means of determining whether sufficient knowledge exists to enable adequate impact assessment; Agreement not to undertake activities where there is insufficient knowledge to judge whether they are environmentally sound; And criteria and standards to enable those judgments to be made [Hawke, 1989a:259].

During a return visit to Australia by French Prime Minister Rocard, it was announced on 18 August that Australia and France had reached agreement on an initiative to promote the protection of the Antarctic environment. In a joint statement, Prime Ministers Hawke and Rocard gave notice of the intention to submit the Australian/French proposal to ATCM XV at Paris, "with a view to holding a special meeting of the consultative parties in 1990 in order to draw up and adopt a convention along these lines" (Hawke and Rocard, 1989:445).

THE 1989 PARIS ATCM

The most important debate in 1989 concerning the joint Australian/French proposal for an environmental protection regime in Antarctica took place at ATCM XV in Paris. Not only did Australia and France go to Paris with proposals for strengthening environmental measures within the ATS, but a number of other ATCPs, such as Chile (Antarctic Treaty, 1989e), New Zealand (Antarctic Treaty, 1989d) and Sweden (Antarctic Treaty, 1989f) also prepared working papers for discussion.

Once ATCM XV opened, the agenda was quickly dominated by concerns among the ATCPs over whether CRAMRA was still a legitimate regime worthy of support or if the proposals for strengthened environmental protection in Antarctica now meant that priority should be given to the negotiation of such a new regime. However, despite general agreement over the need to ensure protection of the Antarctic environment, there was disagreement over whether a series of recommendations would be adequate to achieve this goal or whether, as proposed by Australia and France, a comprehensive convention to declare Antarctica a wilderness reserve was necessary (Antarctic Treaty, 1989c:2). The Australian/French proposal, though not expressly providing for the prohibition of all minerals activities in Antarctica, argued that: "Throughout the Antarctic, human activities having an impact on the environment shall be regulated or, where agreed as necessary, prohibited" (Antarctic Treaty, 1989c:2). The meeting was therefore faced with whether it would accept the proposals put forward in the various working papers and the consequential impact this may have upon the basic assumption upon which CRAMRA was negotiated — that Antarctic minerals activities would eventually take place — or instead adopt a piecemeal approach to solving environmental problems in Antarctica by way of further appropriate recommendations.

Eventually, after considerable debate, it was decided that further consideration be given to the various working papers on protection of the Antarctic environment, while also continuing to work towards the implementation of CRAMRA. Accordingly, two recommendations were approved. Recommendation XV-1 provided for a "Special Antarctic Treaty Consultative Meeting to be held in 1990 to explore and discuss all proposals relating to the comprehensive protection of the Antarctic environment and its dependent and associated ecosystems" (Antarctic Treaty, 1989a). CRAMRA was considered in Recommendation XV-2, which called for a meeting be held during 1990 "to explore and discuss all proposals relating to Article 8(7)" of CRAMRA (Antarctic Treaty, 1989b).

Recommendation XV-1

Recommendation XV-1 is a significant step in the eventual implementation of a proposed environmental protection regime. In the past, a Special ATCM has been used as a forum to negotiate supplementary conventions such as CCAMLR and CRAMRA, so this recommendation puts in place the mechanism for the eventual creation of a convention to implement the Australian/French proposal. The recommendation lays down the requirements of the perceived comprehensive regime for the protection of the Antarctic environment, noting the importance of reviewing the operation of the already existing measures and determining how they could be strengthened, the need to state legal obligations with greater precision, the importance of establishing procedures to assess the impact of human activities on the Antarctic environment and determining what institutional arrangements are necessary to ensure the "maintenance, integration, consistency and comprehensiveness of the system of protection of the Antarctic environment and its dependent and associated ecosystems" (Antarctic Treaty, 1989a).

While the recommendation makes no express reference to Antarctica being declared a wilderness reserve or a world park, there is certainly an underlying theme that present environmental protection measures are inadequate and that a stronger regime needs to be put in place. It is also significant that the recommendation contemplates the development of such a comprehensive environmental protection regime within the current structure of the ATS, unlike the New Zealand proposal of 1975, which contemplated the internationalization of Antarctic administration.

Recommendation XV-2

Recommendation XV-2 calls for a special meeting to be held in 1990 to consider all proposals relating to Article 8(7) of CRAMRA. Article 8 generally deals with the liability of Antarctic minerals resource operators for any damage that may occur to the Antarctic environment or dependent or associated ecosystems as a consequence of those operations. Strict liability is imposed upon these operators, with exceptions made only in case of natural disasters, armed conflict or acts of terrorism (Burmester, 1989). The provisions of Article 8(7) in particular provide for further rules and procedures to be elaborated through an additional Protocol to CRAMRA. It is anticipated that these provisions may contain limits on liability in certain situations, procedures

for claims to be made against an operator, and measures to respond to environmental damage in cases where an operator is unable to act. While the recommendation is certainly an attempt to ensure that CRAMRA is a more environmentally responsive regime, it is based on the assumption that CRAMRA will eventually come into force.

ANTARCTICA AND THE THIRD WORLD

In what is considered to be a watershed in Antarctic politics, Malaysian Prime Minister Mahathir bin Mohammad, in a 1982 speech to the United Nations General Assembly, questioned the legitimacy of the ATS and suggested that it be replaced by a new regime that would allow the resource potential of the continent to benefit all states and not just those select few parties to the Antarctic Treaty. He claimed that Antarctica did not

> . . . legally belong to the discoverers, just as the colonial territories do not belong to the colonial powers. Like the seas and the sea-bed, these uninhabited lands belong to the international community. The countries now claiming them must give them up so that the United Nations can administer these lands or the present occupants can act as trustees for the nations of the world [Mahathir, 1982].

This speech, coming soon after the conclusion of the Third United Nations Conference on the Law of the Sea, which had recognized the applicability of the "common heritage of mankind" to the deep seabed, was the catalyst for considerable international debate about the status and international acceptability of the ATS (United Nations, 1984). Antarctica has been considered at both committee and General Assembly levels at the United Nations since the Mahathir speech, with debate very much being between the Third World and ATCPs (Beck, 1989b). Yet while the criticisms of Malaysia and other Third World states were taken seriously within United Nations' forums, there is little evidence that the ATS has responded to these claims. Though Third World states are eligible to accede to the Antarctic Treaty, many are incapable of mounting scientific expeditions to Antarctica in order to become eligible for ATCP status. Hence, as non-consultative parties, they are unable to participate in the negotiation and implementation of recommendations at an ATCM and in reality they have little more than observer status. Some concessions were granted to Third World claims for greater participation in Antarctic affairs in both the Preamble and Article 6 of CRAMRA where reference is made to the role of developing countries. Article 62 also specifically provides that five developing countries that have consultative party status must become parties to CRAMRA before the convention will enter into force. Yet apart from these concessions, there are few incentives for Third World and developing states to benefit from the minerals regime.

Despite the apparent failure of the Third World to win significant concessions allowing them easier access to participate in an ATCM or benefit from CRAMRA, it would be unwise to completely dismiss Third World concerns as irrelevant in the current debate. To date very few Asian, Islamic or black African states have taken up the opportunity to become parties to the ATS. However, if they do, then certain of the ATCPs could come under increasing pressure to articulate Third World policies within the ATS. A refusal to recognize the interest of the Third World in the current debate could result in a refusal by the Third World to recognize the new regime, whether it be CRAMRA, a world park, or an environmental protection regime. Given the technological advances made by some Islamic and Southeast Asian states during the past decade and the possibility of technology used in arctic mining operations being exported to these states, it is possible to conceive that disenchanted Third World states could attempt to commence mining activities in Antarctica irrespective of any ATS regime in place. To ensure that the regime emerging from the current debate is respected in the future, it may well be necessary to give considerably more weight to Third World opinion than ATCPs have done in the past.

A 1991 REVIEW CONFERENCE?

While Recommendations XV-1 and XV-2 would seem to indicate that 1990 will be a critical year for the ATS, a possibility exists that an Antarctic Treaty Review Conference may be held in 1991 or any time thereafter. In 1991 the Antarctic Treaty will have been in force for thirty years, and this is the trigger for the provisions in Article XII (2) of the Antarctic Treaty to become operative. Article XII (2a) provides that any consultative party may, after the treaty has been in force for thirty years, call for a review conference, such a conference to be held as soon as practicable. Articles XII (2b) and (2c) go on to provide a formula for amending the treaty, with the significant feature being that if any of the amendments to the treaty adopted at the review conference have not entered into force within two years, then any contracting party to the treaty may withdraw. It should therefore be made clear that the procedure established under Article XII(2) does not ensure self-destruction of the treaty, but rather a review process that gives member states unhappy with the amended treaty an option to withdraw.

What is the possibility of a consultative party calling for a review conference? It would seem that at present there is little prospect of a review being called for in 1991. There has been continued harmony among the ATCPs ever since the ATS was created, and the criticism they have faced in the United Nations for the past eight years has probably united them even further to ensure the continued success of the ATS. Despite the apparent failure of CRAMRA, Australia and France have been careful to state that they will not "sign" the convention, while New Zealand has "set aside" for the time being any consideration of ratification. This still leaves open the possibility that all three ATCPs could become full parties to CRAMRA in the future if in the case of Australia and France they were to accede or to accept the convention or if New Zealand were to ratify CRAMRA. It is still possible therefore that the requirements of Article 62 could be met.

So while it may seem that the present debate within the ATS on whether CRAMRA or an environmental protection regime is the best option to follow, the Australian, French and New Zealand positions on CRAMRA are not irreversible and it is possible that the minerals regime can still come into effect if an alternative environmental protection regime is not agreed upon. The position of the newer ATCPs is also such that they have more to gain from continued participation in the ATS than by operating outside of it. Article XII(2) provides a method for withdrawal from the treaty and not dissolution, so that a disgruntled party to the treaty may withdraw without necessarily bringing down the whole treaty

system. It can therefore be argued that the essential unity within the ATS and the benefits of membership are such to ensure that no consultative party would call a review conference in 1991 unless it was in an effort to use the forum of the review conference to conclusively debate and decide upon the CRAMRA or environmental protection regime options (Blay *et al.*, 1989).

CONCLUSIONS

The events of 1989 have undoubtedly left some scars within the ATS that will take considerable time to heal. Despite assurances that their commitment is genuine (Hawke, 1989b), the sudden decision to abandon CRAMRA in favour of a more environmentally sensitive view of Antarctic management has left some states suspicious of the real motives behind the Australian and French policy reversal. Were the decisions by these two governments to support an environmental protection regime a reaction to the significant political power now generated by the so-called "Green" parties in both countries, or is this a real and genuine attempt to implement a bold new conservation regime for a complete continent the like of which has never been seen before?

The working papers dealing with the Antarctic environment presented at ATCM XV and the decision of New Zealand to also abandon CRAMRA, which alone must signify that international support for CRAMRA is fading given the important role played by New Zealand in the negotiation of the convention, must go some way to answering concerns about Australian and French bona fides. The present debate also differs significantly from that tentatively initiated by New Zealand in 1975. There has been no suggestion on this occasion that the new regime would result in the "internationalization" of the continent, so that administration would be turned over to a body such as the United Nations and all sovereignty claims would be disregarded. Instead all the proposals that have been made, both at ATCM XV and by NGOs, contemplate a regime operating within the ATS and continuing to acknowledge the existence of sovereignty claims.

Without CRAMRA in place, mining in Antarctica remains unregulated. Recommendation IX-1 imposed a moratorium on Antarctic mining till the "timely adoption" of a minerals regime. The ATS is therefore faced with the fundamental decision of whether minerals activity will or will not take place in Antarctica. If this is answered in the negative and CRAMRA is totally abandoned, then a second decision must be made on whether a comprehensive environmental protection regime is to be implemented by way of a new convention or whether Antarctic environmental issues will continue to be dealt with by recommendations and specific conventions that deal with particular issues. Beyond this debate looms 1991 and the prospect of the ATS dissolving. Antarctica needs a stable regime such as that provided by the Antarctic Treaty during the last thirty years for it to continue to be a place of peace where wilderness and not man reigns supreme. It is hoped that during the debate over a comprehensive Antarctic environmental protection regime irreparable damage will not be done to the basis that has created such a stable legal and political environment for the past thirty years.

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APPENDIX 1. CONTRACTING PARTIES TO THE ANTARCTIC TREATY

Below are listed in chronological order the dates of ratification by the original signatories of the Antarctic Treaty, the dates of accession or succession by other states, and the dates on which consultative party status was granted. Details are also given on whether the parties to the Antarctic Treaty have signed CRAMRA.

Key: OS = original signatory, S = signatory, CP = consultative party, AS = acceding state, * = claimant state.

	Antarctic Treaty		CRAMRA
United Kingdom*	31/05/1960	OS/CP	S
South Africa	21/06/1960	OS/CP	S
Belgium	26/07/1960	OS/CP	
Japan	04/08/1960	OS/CP	S
United States of America	18/08/1960	OS/CP	S
Norway*	24/08/1960	OS/CP	S
France*	16/09/1960	OS/CP	
New Zealand*	01/11/1960	OS/CP	S
Soviet Union	02/11/1960	OS/CP	S
Poland	08/06/1961	AS/CP(29/07/1977)	S
Argentina*	23/06/1961	OS/CP	S
Australia*	23/06/1961	OS/CP	
Chile*	23/06/1961	OS/CP	S
Czechoslovakia	14/06/1962	AS	S
Denmark	20/05/1965	AS	S
Netherlands	30/03/1967	AS	
Romania	15/09/1971	AS	
German Dem. Rep.	19/11/1974	AS/CP(05/10/1987)	S
Brazil	16/05/1975	AS/CP(12/09/1983)	S
Bulgaria	11/09/1978	AS	
Fed. Rep. of Germany	05/02/1979	AS/CP(03/03/1981)	
Uruguay	11/01/1980	AS/CP(07/10/1985)	S
Papua New Guinea	16/03/1981	AS	
Italy	18/03/1981	AS/CP(05/10/1987)	
Peru	10/04/1981	AS/CP(10/10/1989)	
Spain	31/03/1982	AS/CP(21/09/1988)	
People's Rep. of China	08/06/1983	AS/CP(07/10/1985)	S
India	19/08/1983	AS/CP(12/09/1983)	
Hungary	27/01/1984	AS	
Sweden	24/04/1984	AS/CP(21/09/1988)	S
Finland	15/05/1984	AS/CP(10/10/1989	S
Cuba	16/08/1984	AS	
Rep. of Korea	28/11/1986	AS/CP(10/10/1989)	S
Greece	08/01/1987	AS	
Dem. Peoples Rep. of Korea	21/01/1987	AS	
Austria	25/08/1987	AS	
Ecuador	15/09/1987	AS	
Canada	04/05/1988	AS	
Colombia	31/01/1989	AS	

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