

December 29, 1986

## ANTARCTICA SHOULD REMAIN OFF LIMITS TO UNITED NATIONS MEDDLING

### INTRODUCTION

With a surface area covered by ice and a population composed largely of penguins and scientists, the vast undeveloped continent of Antarctica would seem an unlikely focus of international political controversy. Yet a small group of nations, spurred largely by Antarctica's future resource potential, recently has been trying to direct the United Nations' attention to Antarctica. Their goal: to apply to Antarctica the principle of the "common heritage of mankind," the controversial theoretical basis for the U.N. Law of the Sea Convention, and thereby pave the way for establishing a U.N.-sponsored Antarctic regulatory regime.

Such a step could endanger Antarctica's environment seriously and would damage prospects for the rational future exploitation of Antarctica's potential mineral wealth; it also would sabotage effectively the 1959 Antarctic Treaty, which raises the ironic prospect of the United Nations undermining one of the most successful achievements of postwar multilateral diplomacy.

The so-called Question of Antarctica was revived at the U.N. in September 1982, when Malaysian Prime Minister Dr. Mahathir bin Mohamed called for a "new international agreement"<sup>1</sup> on Antarctica before the U.N. General Assembly. Since then, both the Organization of African

---

1. As quoted in Deborah Shapley, The Seventh Continent: Antarctica in a Resource Age (Washington, D.C.: Resources for the Future, Inc., 1985), p. 218.

Unity and the Non-Aligned Movement in essence have declared the continent "the common heritage of mankind,"<sup>2</sup> using rhetoric typical of other New International Economic Order manifestoes of the Group of 77, the umbrella group now comprising some 130 developing countries. To complicate the issue, the "consensus" procedure governing previous U.N. discussions of Antarctica has broken down while many members of the Group of 77 continue to urge the expulsion of South Africa from the Treaty system. Some U.N. Secretariat officials, moreover, have been attempting to exacerbate potential jurisdictional conflicts between the U.N. Law of the Sea Convention and the Antarctic Treaty, while international environmental groups such as Greenpeace bitterly have attacked drafts of an Antarctic minerals regime being negotiated by the Antarctic Treaty Consultative Parties,<sup>3</sup> an attack in which the U.N. General Assembly recently joined.

These developments are particularly disturbing given the successes of the 1959 Antarctic Treaty in furthering "the purposes and principles embedded in the Charter of the United Nations."<sup>4</sup> Sidestepping the delicate question of national sovereignty over Antarctica, the Treaty has demilitarized and denuclearized the continent, promoted international scientific research and environmental conservation, and served as a model for sustained international cooperation. Parties to the Treaty likewise have negotiated separate but related conventions and agreements on environmental matters and soon will complete a regime to regulate future minerals exploitation.

The Treaty also is notable for its openness: any U.N. member state can accede to it freely, and any member state which demonstrates a scientific interest in the continent can become a consultative, or voting, party. Furthermore, though the U.S., USSR, and such prominent developing countries as India and Brazil are all consultative parties, the consensus decision-making procedure within the Treaty has isolated Antarctica from the East-West and North-South ideological conflicts that dominate the United Nations and other international organizations.

Recently, largely in response to criticisms levied against the Treaty at the U.N., the Treaty parties have taken new steps to assure that the Treaty and its operations are as accessible as possible.

---

2. See "Text of Paragraphs on Antarctica in the Non-Aligned Movement Meeting Communique," 1983, Paragraph XVIII: 87; and OAU Council of Ministers Resolutions, Addis Ababa, Ethiopia, 1985.

3. See, for example, "Antarctic Minerals Regime, Beeby's Slick Solution," *Eco*, vol. 23, no. 1, 1983.

4. Antarctic Treaty, "The Treaty," operative paragraph 5.

These include allowing nonvoting parties to participate in meetings and negotiations, keeping the relevant U.N. officials and agencies informed of Antarctic developments, and releasing documents from previous meetings.

These and other benefits of the present Treaty System are widely recognized; even the 1984 report of U.N. Secretary-General Javier Perez de Cuellar on Antarctica tacitly supports keeping the Treaty in force. Yet attacks on the Treaty persist, as the issue lingers on the U.N. agenda. Some veteran U.N. diplomats recall that the process leading to the Third U.N. Conference on the Law of the Sea similarly began with a U.N. report on the issue, which led to the establishment in 1967 of the so-called Seabed Committee. Many feel that a U.N. "Committee on Antarctica," in the words of a West German U.N. diplomat, "would become a slicing machine which would slowly cut the [Antarctic] Treaty to shreds...."<sup>5</sup> Nonetheless, efforts to establish such a committee continue.

To prevent the shredding of the Antarctic Treaty, the United States and other Treaty parties should tell the Secretary-General that further use of scarce U.N. resources to consider this issue would be wasteful and counterproductive. In particular, the U.S. should pursue the two-track policy of 1) introducing a resolution at the upcoming October 1987 meeting of the Antarctic Treaty Consultative Parties (tentatively set for Rio de Janeiro) stating that further U.N. consideration of Antarctica would be inappropriate and continuing to support the nonparticipation of Consultative Parties in all U.N. votes and inquiries on the subject, and 2) urging those developing countries concerned about the continent to follow the examples of India, China, and Brazil and accede to the Treaty. Furthermore, when the 100th Congress convenes next month, it should pass a resolution restating U.S. support for the Antarctic Treaty System and recommending that the United Nations take no further action on the subject.

#### THE ANTARCTIC TREATY SYSTEM: HISTORY AND EVOLUTION

Writes George Washington University political scientist Christopher Joyner: "Antarctica...is a white desert. It is the highest, windiest, coldest, driest, most lifeless of the continents."<sup>6</sup> With average temperatures on all parts of the continent well below freezing, Antarctica is as forbidding as it is

---

5. As quoted in Louis Wizenizer, "Small Nations Protect Bigger-Power Claims to Antarctica's Riches," Christian Science Monitor, November 19, 1984.

6. Christopher C. Joyner, International Studies Notes of the International Studies Association, Volume 11, No. 3, Spring 1985, p. 1.

expansive. Nonetheless, before the conclusion of the Antarctic Treaty in 1959, the continent was the subject of political rivalries and legal battles; at one point, in fact, a party of Argentines fired warning shots above the heads of a British expedition.

Central to these conflicts was the question of national sovereignty over various parts of the continent. Australia, Argentina, Chile, France, Norway, New Zealand, and the United Kingdom all claimed, and continue to claim, sections of Antarctica as their own territory. Some claims overlap. Both the U.S. and the USSR, meanwhile, reserve the right to make such claims in the future. Although the legal basis for such national claims is in some cases rather exotic--Argentina, for example, bases its claim on a 1493 Papal Bull--the governments concerned continue to stand by them.

The maintenance of these claims and the current attacks on the Treaty System are dictated largely by perceptions of Antarctica's scientific, strategic, and economic significance. The continent's value as an "international laboratory," its primary role since 1959, is unquestionable: Antarctic science has made significant contributions to fields as diverse as meteorology, marine biology, and plate tectonics.<sup>7</sup> Many scientists and diplomats believe that scientific research will continue to be the most valuable human activity on the continent for the foreseeable future.

Antarctica's strategic value is likewise immediately apparent, as the continent covers nearly one-tenth of the earth's surface and dominates the South Polar region. As Joyner notes, "the geostrategic import of this region could assume an even greater criticality for transoceanic shipping: the passageway between the tip of South America and the Antarctic peninsula provides the most logical alternative route for maritime vessels should the Panama Canal for some reason be closed or otherwise unavailable."<sup>8</sup> Should any nation establish military bases on Antarctica or use it for nuclear testing or deployment, the global balance of power would be affected, perhaps dramatically. Recognition of this contributed substantially to the conclusion of the Antarctic Treaty, which keeps the continent demilitarized.

It is Antarctica's economic potential, though, that figures most prominently in debates about the future of the Treaty System. Some of this potential is already being realized: a number of nations operate fisheries in Antarctic waters, harvesting primarily krill, a small

---

7. See, for example, William F. Budd, "The Antarctic Treaty as a Scientific Mechanism (Post-IGY)--Contributions of Antarctic Scientific Research," in Antarctic Treaty System: An Assessment (Washington, D.C.: National Academy Press, 1986).

8. Joyner, op. cit., p. 2.

protein-rich crustacean that swarms in large quantities in circumpolar waters.

Most international attention, though, has centered on possible development of Antarctica's mineral and hydrocarbon deposits. The world has speculated about the extent of these deposits since Amundsen's and Scott's 1911-1912 race to the South Pole. It is now reasonably clear that oil and gas exist on and around the continent, as do elements of iron, copper, lead, molybdenum, manganese, uranium, and chromium.

Thus far, however, the brutal Antarctic climate and the lack of significant scientific data have precluded large-scale prospecting. Furthermore, there seems to be a consensus among scientific experts and geologists that, as University of Southern California professor James A. Zumberge states, "no mineral deposits likely to be of economic value in the foreseeable future are known in Antarctica. This statement is not to say that Antarctica has no mineral resources, but rather, if they exist, they have no economic significance today or in the near term future." Even so, the Antarctic Treaty Consultative Parties want to take no chances and thus are nearing completion of an Antarctic minerals accord to insure that, if there is minerals exploitation, it will be rationally and carefully managed.

Political, economic, strategic, and environmental concerns prompted the negotiation and signing of the current Antarctic Treaty. By the middle of the 1950s, tensions between claimant nations were mounting. Example: Great Britain tried three times in that decade to take Chile and Argentina to the World Court over competing claims. India and New Zealand, meanwhile, were suggesting that the United Nations take up the issue, with a view toward "internationalizing" the continent, a step most claimant nations vehemently oppose. Ultimately, as Antarctic expert Deborah Shapley notes, NATO and Latin American nations, worried by Moscow's launch of the satellite Sputnik, concluded that only a treaty could forestall a possible Soviet military presence on the continent. As a result, the U.S. in 1958 invited the twelve nations participating in the 1957-1958 International Geophysical Year, which had established bases and transportation facilities on the continent, to Washington. The participants included Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, USSR, Great Britain, and the U.S.

Signed in 1959, the Treaty is based in large part on a 1948 draft by Chilean diplomat Jose Escudero Guzman. It is accurately

---

9. In Antarctic Treaty System: An Assessment, op. cit., p. 272.

characterized by Deborah Shapley as a "massive compromise among historic Antarctic rivals--and an unfinished political deal."<sup>10</sup> The principal features of the Treaty are its provisions for demilitarization, freedom of scientific investigation, denuclearization and the noninfringement of powers' claims. The Treaty's provisions for demilitarization are particularly notable: Article I bans all military measures and weapons testing, while Article V explicitly prohibits nuclear explosions and radioactive waste deposits on Antarctica. Article IV of the Treaty, the crux of the "political deal," states that "nothing contained in the present Treaty" can be interpreted as a renunciation of any claim to Antarctic territory, nor as a "diminution" of such a claim. Similarly, Article IV states that the Treaty cannot be interpreted as "prejudicing the position of any Contracting Party" toward any other claims, nor can subsequent "acts and activities" enlarge or diminish existing claims, or serve as a basis for any new claim.

The Treaty thus leaves the legal status of Antarctic territorial claims in a position of carefully calculated ambiguity. The major benefit of this is that, by freezing the status quo with respect to territorial claims without prejudicing any state's position, the Treaty allows all nations concerned to cooperate in the more constructive tasks of scientific research and environmental conservation. As Canadian environmental specialist E. Fred Roots observes: "...from the beginnings of discussion leading toward the Antarctic Treaty, science, international cooperation and maintenance of the peace were inextricably linked."<sup>11</sup>

The benefits of this linkage have been numerous and far-reaching. Freedom of scientific investigation and the international exchange of scientific information on Antarctica, mandated under Articles II and III of the Treaty, have led to impressive gains in understanding of the Antarctic environment. The growth of Antarctic scientific programs, moreover, has led to the development of institutional machinery within the Treaty System to process and examine the results of scientific research under the guidance of the Scientific Committee on Antarctic Research, an independent professional body composed of representatives of Antarctic Treaty Consultative Party states.

The Treaty parties also have shown remarkable concern and flexibility in managing the fragile Antarctic environment. Major conservation measures taken by the Antarctic Treaty Consultative Parties include the Agreed Measures for the Conservation of Antarctic Flora and Fauna (1964), the Convention for the Conservation of

---

10. Deborah Shapley, *op. cit.*, p. 91.

11. In Antarctic Treaty System: An Assessment, *op. cit.*, p. 184.

Antarctic Seals (1972), and the Convention for the Conservation of Antarctic Marine Living Resources (1982). Many areas of the continent likewise have been designated as "Sites of Special Scientific Interest" or "Specially Protected Areas." Certain other pioneering recommendations have made the first criterion to be applied to a new activity whether or not it will have an adverse effect on the environment--not whether it is profitable or in the interests of one or more governments.

None of these achievements would have been possible, however, without the Treaty's provisions for demilitarization of the continent. These are reinforced by the most sweeping provisions for on-site inspection and verification contained in any post-World War II treaty, including free access to any area or installation on demand, aerial inspection rights, and advance notification of any activities on the continent. Yuri M. Rybakov, a Soviet jurist and diplomat, notes: "The totality of the provisions of Articles I and V, prohibiting in particular any measures of a military nature and any nuclear explosions, bestow on Antarctica a status not only of a demilitarized area of the globe, but, for the first time in history, of a zone free from nuclear weapons."<sup>12</sup>

#### OBJECTIONS TO THE TREATY SYSTEM

Those nations currently attacking the Treaty System make a series of distinct but related objections to the Antarctica status quo. Among them:

- 1) Antarctica and its resources, such as the seabed beyond national jurisdiction and outer space, should properly be considered the "common heritage of mankind."

Many international legal scholars argue that there is not much legal basis for this position. University of Wisconsin law professor Richard Bilder, for example, maintains that "there is as yet no coherent and generally recognized 'international law of common spaces'--particularly one that could persuasively be argued to be jus cogens or superior to all other international rules, thus overriding the Antarctic Treaty or other arrangements."<sup>13</sup>

---

12. Ibid., p. 36.

13. Richard Bilder, "The Present Legal and Political Situation" in Jonathan Charney, ed., The New Nationalism and the Use of the Common Spaces (Totowa, New Jersey: Allanheld, Osmun), p. 184.

For those nations claiming parts of Antarctica, moreover, the continent is definitely not "beyond national jurisdiction," as the seriousness with which these claims are taken makes clear. In Argentina, explains American University professor Jack Child, "Argentines are taught from early childhood that their nation consists of three interlinked parts: mainland, Antarctic and insular Argentina. To accept anything less than all three parts is to betray a sacred trust to the fatherland...."<sup>14</sup> Similarly, Australia's Antarctic claim has been incorporated into national legislation and is vigorously maintained by the Australian government.

Even some nations that supported the concept of the "common heritage of mankind" in the context of the Law of the Sea emphatically reject its application to Antarctica. Example: L. F. Macedo de Soares Guimaraes, a Brazilian diplomat, stated at an Antarctic Conference that though "...Brazil has been a champion of the concept of the common heritage of mankind applied to the seabed beyond national jurisdiction,...it is not a concept to be applied automatically to any area not traditionally subject to national jurisdiction. For instance, it should not be applied to Antarctica."<sup>15</sup>

2) The Antarctic Treaty is an exclusive club of nations determined to exploit Antarctic mineral resources, to the detriment of other nations' interests and the Antarctic environment.

The Antarctic Treaty is in fact a multilateral treaty to which any U.N. member state can accede. States party to the Treaty, moreover, are very representative of the international community, both ideologically and geographically. In fact, over 80 percent of the world's population is represented by Antarctic Treaty parties. To be sure, the Treaty Consultative Parties have been negotiating a regime to regulate future mineral exploitation on the continent. They are doing so, however, mainly out of foresight, to avoid an uncontrolled scramble for resources in the future. Economic gain is no near-term incentive for such a regime, for virtually all Antarctic experts agree that such exploitation is simply not feasible in the foreseeable future.

The general outline of this minerals regime, moreover, makes it clear that future commercial activity will be closely and extensively regulated. As New Zealand diplomat Chris Beeby, a principal author of the draft, explains with reference to the Convention on the Conservation of Antarctic Marine Living Resources: "The basic

---

14. In International Studies Notes, op. cit., p. 24.

15. In Antarctic Treaty System: An Assessment, op. cit., p. 342.



proposition underlying the CCAMLR--that activity is permitted until restrained--will be reversed: the only mineral resource activities that would confer title on the operator and might confer economic benefit will be prohibited unless specifically authorized."<sup>16</sup>

3) The United Nations could manage the continent and keep the peace better than the present system.

There is little if any justification for this view, given the well-documented and now broadly recognized difficulties the United Nations continues to have in managing its own affairs. How can the U.N. meet the challenges posed by a huge and complex ecosystem when it is unable to perform efficiently the tasks already assigned to it by its member states?

Nor does the U.N.'s specific record in either environmental affairs or peacekeeping support this contention. The U.N. Environment Program, for instance, has suffered from a politicized decision-making process in which the perceived needs of the impoverished are made into agenda items for transnational action.<sup>17</sup>

The U.N. likewise has been of limited effectiveness in keeping the peace and has played almost no role in preventing or settling the roughly 140 conflicts that have taken place since World War II. In some cases, in fact, the U.N. has exacerbated regional tensions by providing aid and support to terrorist organizations, particularly in the Middle East and southern Africa, and by "globalizing" these tensions within the fora of the General Assembly and Security Council.

More generally, it is clear that the "limited multilateral" approach is more effective in the international management of territories than the universalist approach exemplified by the U.N. Explains Vanderbilt University law professor Jonathan Charney: "Unless there is a substantial change in the international political picture, the maximum opportunity for creative development of international law and institutions will be found within the context of negotiations between limited numbers of nations which have identified, specific, and direct interests in the item under negotiation."<sup>18</sup>

---

16. Ibid., p. 279.

17. See George P. Smith, II, "The U.N. and the Environment" in Burton Yale Pines, ed., A World Without A U.N. (Washington, D.C.: The Heritage Foundation, 1984).

18. The New Nationalism..., op. cit., p. 231.

4) There are serious and irreconcilable conflicts between the Antarctic Treaty and the U.N. Law of the Sea Convention.

The Antarctic Treaty applies to the area south of 60 degrees latitude. This area includes part of the South Polar Sea and the deep seabed beneath it. Hence there is some jurisdictional overlap between the two agreements. The Treaty Parties have repeatedly emphasized, however, that the Antarctic minerals regime will apply only to Antarctica itself and its continental shelf. The parties even passed a resolution declaring that there will be no encroachment on the deep seabed. As New Zealand's Beeby states: "The regime is likely, in fact, to contain an all-embracing provision requiring the commission to cooperate with all interested international organizations, and, more specifically, to develop a cooperative working relationship with any international organization having competence in mineral resources in areas adjacent to those covered by the regime."<sup>19</sup>

5) The Antarctic Treaty Consultative Parties consistently have ignored and refused to cooperate with the U.N.

Despite their understandable misgivings about U.N. involvement in Antarctica, the Antarctic Treaty Consultative Parties always have acknowledged the legitimate interests of the United Nations. The Antarctic Treaty itself specifically states that the Treaty should further "the purposes and principles in the Charter of the United Nations" and declares that "every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica."

This statement was reinforced at the first Consultative Parties meeting in 1961, which passed a resolution obligating the Parties to establish such working relations. Subsequently, links have been forged with a number of organizations. Points out Richard Woolcott, Australia's permanent representative to the U.N.: "Although existing links are not highly formalized, practical working relations have already been developed with U.N. family organizations, such as the World Meteorological Organization (WMO), the International Telecommunications Union (ITU), the Food and Agriculture Organization (FAO), the United Nations Environment Program (UNEP), and the Intergovernmental Oceanographic Organization (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO)...."<sup>20</sup>

---

19. In Antarctic Treaty System: An Assessment, op. cit., p. 281.

20. Ibid., p. 380.

The Food and Agriculture Organization, for example, has observer status at the Convention on the Conservation of Antarctic Marine Living Resources, while the Antarctic Treaty Consultative Parties have committed themselves to keeping the Secretary-General of the United Nations informed of Antarctic developments and now do so on a regular basis.

## CONCLUSION

The Antarctic Treaty is by any measure one of the most successful international agreements of the post-World War II era. It has maintained the peace on a continent that was formerly a center of conflict. In so doing, it has made possible significant achievements in science and environmental conservation.

The current attacks on the Treaty System at the United Nations and persistent suggestions of the Treaty's "illegitimacy" are based on a series of ideological assumptions which the United States rightly has rejected, and which cannot in any event be applied to the continent. Jose Sorzano, a former American Deputy Permanent Representative to the United Nations, counsels that "...it appears Malaysia seeks consensus and compromise only to raise an issue that cannot be negotiated or compromised."<sup>21</sup> Unfortunately, the ideological attacks on the system can be expected to continue for as long as the rhetoric of the New International Economic Order remains the language of the United Nations and for as long as politicization, rather than creative institution-building and realistic development, is the U.N.'s stock in trade.

The U.S. and its Antarctic Treaty partners thus should encourage other states to accede to the Treaty, while pressing for the removal of the issue from the U.N.'s agenda--before the threats to the Treaty System grow even more serious than they already are.

Thomas E.L. Dewey  
Policy Analyst

---

21. Ibid., p. 419.