Chapter 2

U.S. Involvement in Antarctica and the Origin of the Minerals Convention

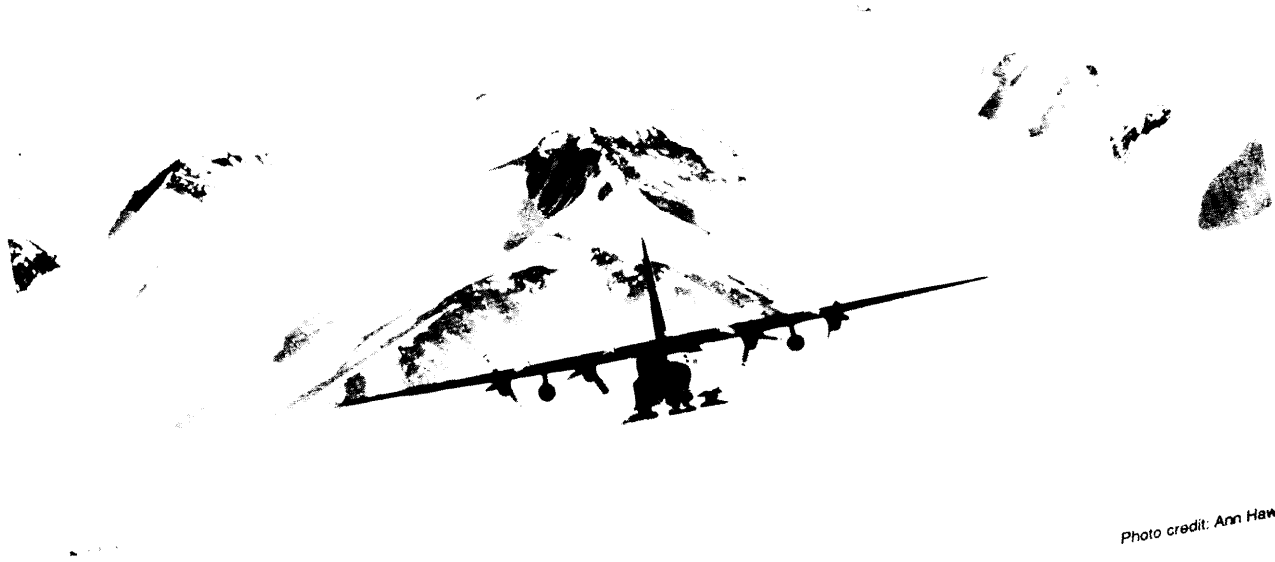

Photo credit: Ann Hawthorne

LC-130 at Beardmore South Camp

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SUMMARY

The United States has a long history as a leader in Antarctic exploration and research. It has also influenced the development of the Antarctic Treaty System, The 1959 Antarctic Treaty is largely a product of U.S. efforts.

U.S. interests in Antarctica can be grouped into four categories: geopolitical and strategic, environmental, scientific, and economic. The paramount geopolitical and strategic interest of the United States is to maintain Antarctica as an area of peace and cooperation. Environmental and scientific interests are driven by the desire to preserve the unique ecological systems of the continent, study the relationship of Antarctica to the global environment, and use Antarctica as a laboratory for the study of natural processes. Economic interests are future oriented. It is uncertain whether hydrocarbons or other minerals, if discovered, would be economically recoverable. However, the United States shares with other consumers and importers of hydrocarbons and minerals an interest in assuring nondiscriminatory access to Antarctic resources.

The vehicle through which the United States has pursued these interests is the Antarctic Treaty System (ATS). The Antarctic Treaty System includes the Antarctic Treaty, recommendations adopted by consensus at consultative meetings, and separate conventions adopted at special consultative meetings. The ATS establishes a framework within which those nations making claims to parts of Antarctica and those, such as the United States, which neither recognize such claims nor assert ones of their own, can cooperate without prejudice to their legal positions. The ATS serves U.S. interests in stability, free access to all of Antarctica, participation in regulation of Antarctic activities for environmental and other purposes, and avoidance of conflict with the Soviet Union or others.

The Antarctic Treaty Consultative Parties (ATCPs) formally decided in 1981 to negotiate an agreement governing exploitation of Antarctic minerals. Several reasons contributed to this decision:

First, the Antarctic Treaty itself is silent about mineral resource activities since, in 1959, there was no pressing need to address them and the negotiators understood the practical difficulty of achieving a more comprehensive agreement,

Second, by enabling scientists unhindered access to ail parts of the continent, what was virtually *terra incognita* in 1959 was better known by the early 1980s, Occurrences of many minerals have been identified in Antarctica that, if found in large enough and rich enough deposits in relatively ice-free areas, would attract commercial interest.

Third, technology to exploit resources has improved significantly since the Antarctic Treaty was negotiated. Oil companies are venturing into offshore areas in the Arctic and mining companies. are operating in high latitude areas of Alaska, Canada, Sweden, and the Soviet Union. While some new technology will still have to be developed, technology is no longer a decisive limiting factor in Antarctic development.

Fourth, as early as 1969 commercial enterprises expressed some interest in prospecting in Antarctica. The Antarctic Treaty Consultative Parties realized that permitting such activities without an agreed regulatory system could upset the stability of the Antarctic Treaty.

Fifth, ATCPs perceived that they would be much more likely to reach an agreement before any major discoveries were made. The maintenance of political stability must therefore be viewed as a primary, although not exclusive, reason for negotiation of the Minerals Convention.

A factor which spurred ATCPs to complete negotiations that were already underway was the increasing interest of the United Nations in Antarctica. ATCPs have long held that by virtue of the existence of claims and bases for claims and of a long history of successful administration of Antarctica, they possess special rights and responsibilities there. They have resisted any attempts to consider Antarctic issues in the United Nations.

The cornerstone of the ATS, the Antarctic Treaty, runs indefinitely. However, any of the Consultative Parties may call for a conference to review operation of the Treaty once 30 years after its entry into force have elapsed, i.e., beginning in 1991. This date is probably not as significant as some have suggested, but perceptions are important. Having a minerals regime in place before 1991 would be strong evidence that the ATCPs are capable of dealing with problems as they arise.

INTRODUCTION

Although negotiated as a separate treaty, the Convention on the Regulation of Antarctic Mineral Resource Activities does not stand alone. It is the most recent of a series of agreements concerning conduct of activities in Antarctica. To understand why the Convention was negotiated and why it took the form it did-and, therefore, the consequences of accepting or rejecting the Minerals Convention—it is necessary to know something about creation of the Antarctic Treaty in 1959 and of the evolution of the Antarctic Treaty System (ATS).

The United States has played a major role in development of both the ATS and the Minerals Convention. This chapter examines the history of U.S. involvement in Antarctica and summarizes U.S. Antarctic interests. It also reviews the Antarctic Treaty and elements of the Treaty System, Finally, it discusses why the Minerals Convention was negotiated and the relationship between the Antarctic Treaty signatories and the United Nations. Chapter 3 describes and evaluates provisions of the Minerals Convention.

HISTORY OF U.S. INVOLVEMENT IN ANTARCTICA

There is evidence that an American sealer, Captain Nathaniel B. Palmer of Stonington, CT, may have been the first to sight the continent of Antarctica in November 1820, although both Great Britain and the Soviet Union claim similar honors. This is of some significance not only for nationalistic pride, but also since, historically, discovery has sometimes been an element in establishing sovereign rights.

Initial mention of the continent goes back to the ancient Greeks who postulated that a great southern land mass existed to ''balance" the continents in the north. The Maoris of New Zealand also have vague legends of a white kind somewhere to the south, Maps produced in 16th century Europe depict an Antarctic continent, Terra Australis Re, which bears a strong resemblance to Antarctica on modem maps, yet historical records indicate the continent was not yet discovered.[2]

Documented Antarctic history begins with the voyages of Captain James Cook of the British Navy. Captain Cook sailed completely around the continent between 1772 and 1775. His two ships probed south at several points, but each time were turned back by heavy pack ice without sighting land. He did observe birds that he believed came from land further south. One significant accomplishment of Captain Cook's in the Antarctic region was his discovery of South Georgia Island in the South Atlantic. Here he reported seeing fur seals, an observation which soon served as a magnet drawing American and British seal hunters further south.

It seems likely that seal hunters were the first to actually sight Antarctica. However, since they frequently kept their discoveries secret to protect their hunting areas, there are no existing records of the discovery of Antarctica before 1820. On January 30th of that year, a British ship under Captain Edward Bransfield reported sighting what may have been the mainland or what may have been an island off the coast of the Antarctic Peninsula. During the same year two Russian ships under the command of Admiral Thaddeus Bellingshausen sighted at several places what might have been land or might have been icebergs frozen in the pack ice, Bellingshausen would make no claim until he was sure. Finally, on January 28, 1821, he saw a mountainous coast that he named Alexander I Land. Alexander I Land has since been shown to be a large island separated from the continent.

Meanwhile, on November 18, 1820, the American Captain Nathaniel B. Palmer sighted the continent near the tip of the Antarctic Peninsula. On February 7, 1821, another American, Captain John Davis, sent

[1]Hereinafter referred to as the ''~er~s Convention,'' or, more simply, as the ''Convention. '

[2]J.G Weihaupt, "Historic Cartographic Evidence for Holocene Changes in the Antarctic Ice Cover, " *Eos*, vol. 65, No. 35, Aug. 28, 1984, pp. 493-501.

a boatload of men to look for seals on the shore of what is now called Hughes Bay on the continent itself. Captain Davis wrote in his logbook, ‘‘I think this Southern Land to be a Continent. ”3 He was right, but it took nearly 20 years before enough sightings had been made along the coast to be sure. The proof largely came from an expedition in 1838-42 led by Lieutenant Charles Wilkes of the U.S. Navy, who sighted land at numerous points along the coast over a distance of 1,500 miles. This was the first Antarctic expedition sponsored by the U.S. Government. The existence of a continent-sized land mass was firmly established by the early 1840’s as two other expeditions (British under James Ross, and French under Dumont d’Urville) added their sightings of land at several other points around the coast of Antarctica.

Following the discovery period, there was little activity in Antarctica for the next 50 years. Interest renewed by the end of the century, spurred by new methods of whaling, scientific curiosity, and the spirit of adventure. The first expedition to winter over in the Antarctic was a Belgian expedition who spent the winter of 1898 aboard its ship which had inadvertently become frozen in the ice pack. The next year a British expedition spent the winter in a hut on land near the western entrance to the Ross Sea. These two expeditions began what has become known as the heroic period of Antarctic exploration during which the United States was relatively inactive in Antarctica.

In rapid succession followed the British National Antarctic Expedition under Captain Robert Scott (1901 04), the German Antarctic Expedition (1901-03), the Swedish Antarctic Expedition (1901-03), the Scottish National Antarctic Expedition (1902-04), the French Antarctic Expedition (1903-04), the British Antarctic Expedition (1907-09), the Second French Antarctic Expedition (1908- 10), the Amundsen expedition (1910-12), the second Scott expedition (1910-1 3), the Japanese expedition (191 1-1 2), a second German expedition (1911-12), the Australian Antarctic Expedition (191 1-14), and the British Imperial Trans-Antarctic Expedition (1914-16). Nearly all of these had some assistance from their governments, although contributions from scientific societies and wealthy industrialists were also important. Curiously, two of the earliest nations to explore Antarctica, Russia and the United States, were relatively inactive in Antarctica at this time. Tsarist Russia was preoccupied with wars, revolution, and an Arctic sea route to Siberia; the United States was preoccupied with the insular possessions it had acquired from Spain, Alaskan gold, and Arctic exploration. Increasing numbers of whalers were active in Antarctica during this time. Many of them investigated places not previously seen and mapped harbors and other features. In 1905-06, the Norwegians sent the frost factory ship to Antarctic waters, freeing whalers from the need for land stations. The remains of several whaling stations can still be seen on South Georgia Island.

The heroic period reached its climax in 1911 and 1912 when the South Pole was reached. The first to arrive was the Norwegian explorer, Roald Amundsen, and his party, followed a month later by Captain Robert Scott and four other Englishmen. Scott and his party perished on their return. When their remains were recovered a year later, they were found to have with them 30 pounds of rocks, gathered for their scientific value. World War I brought an end to the “heroic age” of Antarctic exploration.

The United States returned to Antarctica following World War I, and with that return came the modem era. The war had given rise to aviation, and aviation brought the United States to the forefront of Antarctic exploration, a position it retains to the present day. Airplanes were not the first machines in Antarctica. The heroic age had been served by the steamship, and tractors had been tried experimentally on the land. But the new generation of Antarctic explorers were aviators in search of exploits, as much as explorers eager to seize novel tools for geographic discovery.[4]

Between the heroic age and the International Geophysical Year (IGY) in 1957-58, the United States dominated Antarctic exploration. The leading figure of this effort was Admiral Richard E. Byrd. The Byrd expedition of 1928-30 was the first of a series of Antarctic expeditions in which Byrd and others, on behalf of the United States, saw, mapped, and claimed more land than expeditions of any other

[3]U.S. Antarctic Projects Officer, *Introduction to Antarctica*, January 1961, p. 12.

[4]S.J. Pyne, *The Ice, A Journey to Antarctica* (New York, NY: Ballantine Books, 1986), p. 96.

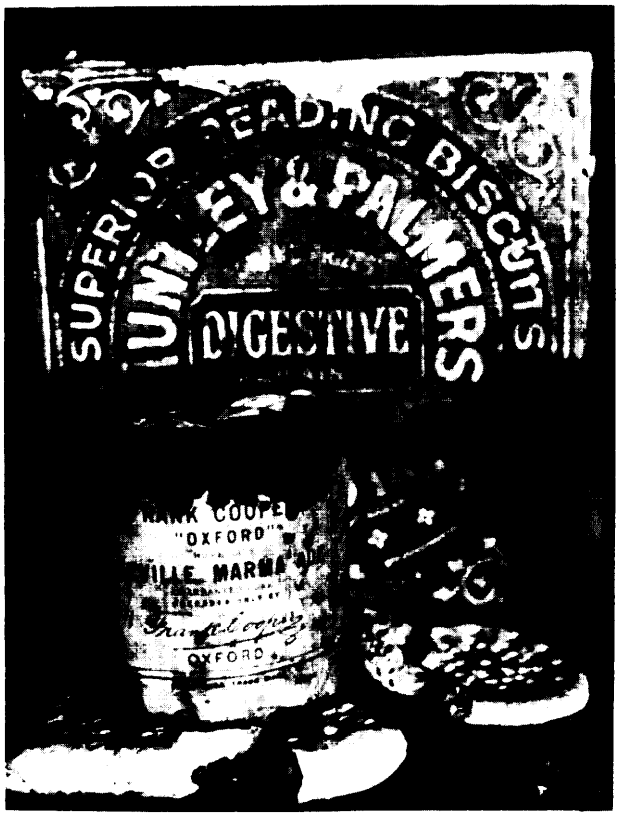


Photo credit. Steve Zimmer

Biscuits and marmalade, frozen for 75 years, inside Robert Scott's hut at Hut Point on Ross Island. The hut is preserved as a site of historic significance.

nation.[5] During this expedition Byrd and three companions became the first to fly over the South Pole, This expedition also made significant overland journeys and established that the continent was bisected by a single mountain range, now called the Transantarctic Mountains. Byrd led his second Antarctic expedition in 1933-35; his third, with the U.S. Antarctic Service, in 1939-41; his fourth, with the Antarctic Developments Project of the U.S. Navy, in 1946-48; and his last, as honorary chief of Operation Deep Freeze (which supported the American contribution to the IGY), in 1954-58.

Through Byrd's efforts an American presence was firmly reestablished in Antarctica, and a generation of explorers and scientists gained polar experience who would staff future American expeditions. By the time of the IGY, the United States had seen and established a basis of claim (although a U.S. claim has never officially been made) for 80 percent of Antarctica.[6] This area overlaps the claims of all of the other claimants and is symbolically reflected in the continuous U.S. occupation of a station at the South Pole. In addition, through the use of aircraft and the Pole station as an inland refueling site, the United States has maintained the capability to reach any point on the continent. The United States has sponsored more scientific research in Antarctica than has any other nation.

Another American Antarctic explorer to capture the imagination of the public was Lincoln Ellsworth. Ellsworth's ambition was to fly across the continent of Antarctica. In 1935, he succeeded in flying the length of the Antarctic Peninsula but was forced to land 16 miles short of his goal. Ellsworth and his pilot walked the rest of the way to Little America, Byrd's earlier base on the Ross Sea.

World War II brought a temporary halt to American activity in Antarctica. Following the war, despite emerging as a global power, the United States did not carry out its pre-war plan to establish permanent stations in Antarctica. Instead, the next American Antarctic activity was to mount a massive expedition in 1946-47 given the code name Operation Highjump. This expedition, involving 13 ships, 4,700 servicemen, and 51 scientists and observers was under the effective command of Rear Admiral R.H. Cruzen, although Admiral Byrd was Officer in Charge. Operation Highjump was the largest assault ever mounted in Antarctica. Participants in the expedition discovered more of Antarctica than all previous expeditions combined. The following year the U.S. Navy carried out a second expedition, called Operation Windmill. One of its major purposes was to relate aerial pictures taken the previous year to precise ground points so the areas discovered by Operation Highjump could be mapped accurately.

In 1950, a group of American and British scientists suggested a global International Geophysical Year during 1957-58 to correspond to a predicted period of unusual sunspot activity. The proposal was presented to the International Council of Scientific

[5]D. Shapley, *The Seventh Continent, Antarctica in a Resource Age* (Washington, DC: Resources for the Future, 1985), p. 34.

[6]Ibid., p. 62.

Unions (ICSU), which endorsed it in 1951. The 18-month IGY, which began on July 1, 1957, was the first world wide scientific effort to involve Antarctica. Previous cooperative efforts, the First and Second Polar Years (1882-83 and 1932-33) had stressed the Arctic. Now, however, advances in logistics and technology that had grown out of World War 11 made feasible geophysical studies in Antarctica. Consequently, Antarctica was a major element in the IGY.

Despite conflicting territorial claims in Antarctica and East-West tensions during the 1950s, the international cooperation achieved in Antarctica proved that scientific research could transcend political differences. The International Geophysical Year opend the "age of science" in Antarctica, which legacy continues.[7] A dozen nations participated in Antarctic studies, establishing 50 stations there. Today, there are 22 nations with substantial research programs in Antarctica. The International Geophysical Year activities in Antarctica made significant contributions to a number of fields, including upper atmospheric physics, glaciology, meteorology, and studies of the Earth's magnetic field. Seismic data were gathered and overland traverses were made by the United States, Soviet Union, Great Britain, and France. These countries obtained a wealth of information on ice temperature, density, and thickness; on surface elevations; and on magnetic and gravity fields, The United States established a station at the South Pole, which it has occupied year-round ever since. **By virtue of its technology, long history of Antarctic exploration, mapping, its extensive scientific research, and basis for a huge potential claim, the United States had become a dominant power in Antarctic matters.**

By the time the IGY was drawing to a close at the end of 1958, scientists and diplomats believed that the program in Antarctica was too valuable to terminate and that the international cooperation achieved during this period should be maintained. This common desire by the diplomats and scientists, particularly those of the United States, led to the conclusion of the Antarctic Treaty in 1959.

EVOLUTION OF THE ANTARCTIC TREATY SYSTEM

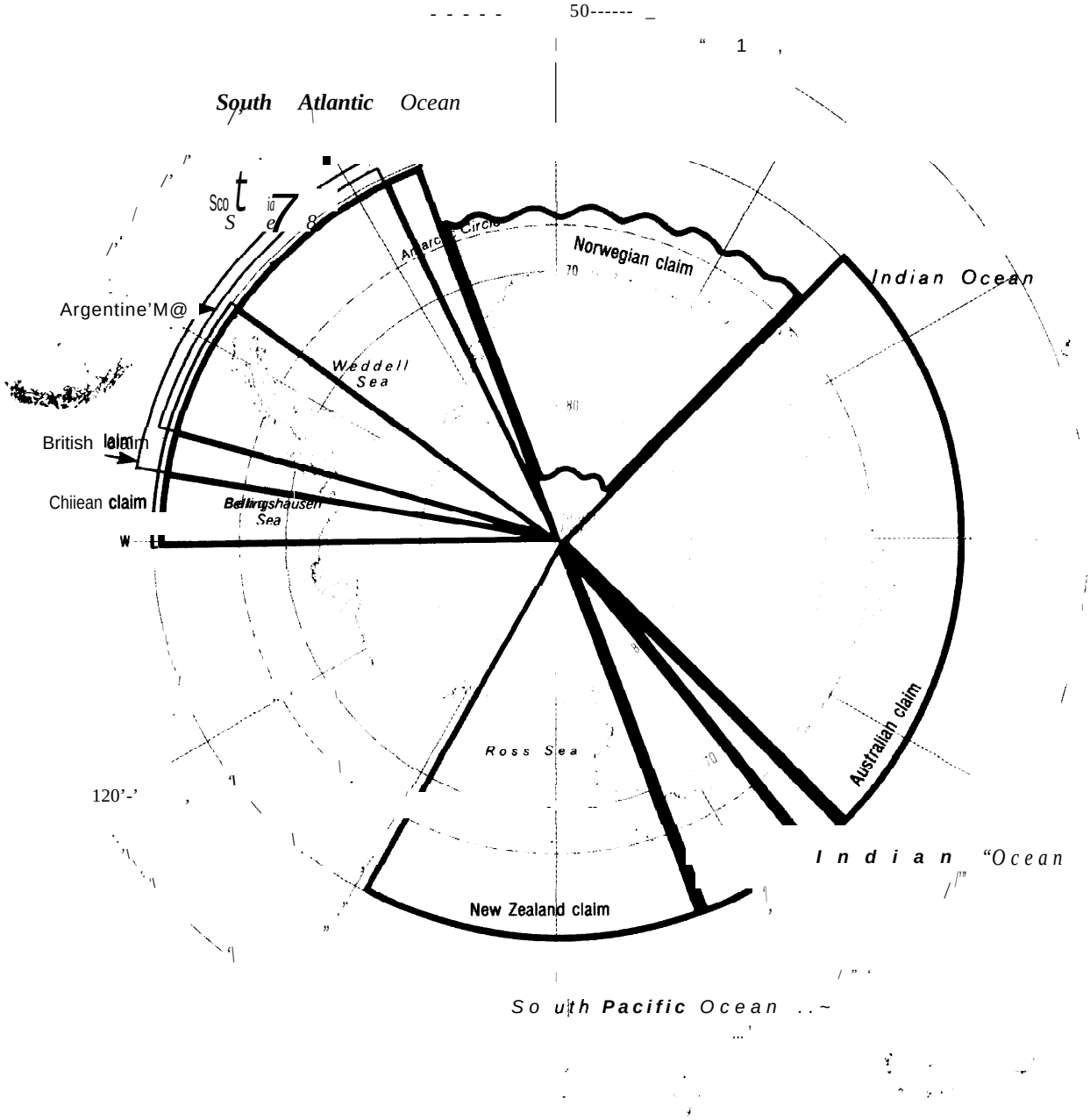
Seven countries claimed sovereignty over territory in Antarctica in the first half of the 20th century (figure 2-l). These countries are Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom. Several criteria, doctrines, or principles have been put forward as a basis of establishing territorial claims. One is discovery, which is the basis for the British claim to the Antarctic Peninsula and the France's claim in East Antarctica. The more common criterion is the sector principle, which is based on the concept of continuity or proximity under which some northern coastal nations claim offshore islands by extending boundaries from the ends of their main landmass toward the North Pole. Arctic islands, however, are nearby and geologically continuous with their respective landmasses of Asia and North America, whereas vast distances separate southern countries from their claims in Antarctica. Australia, New Zealand, Argentina, and Chile have invoked sector claims based on contiguity with Antarctica and sectoral extensions from their coasts. Another criterion is continuous occupation, also invoked by Argentina who has operated a weather station on Laurie Island since 1904. Norway also bases its claim to two islands and a coastal region on early occupation and use of the areas by its whaling captains.

The United Kingdom was the frost country to claim territory in Antarctica. It did so in 1908 by claiming a sector reaching to the Pole south of the Falkland Islands including the South Sandwich Islands, South Georgia, South Shetland, and South Orkney Islands, and the Antarctic Peninsula. This claim was further refined in 1917 to avoid inadvertently claiming part of the Chilean and Argentine mainland. New Zealand was the next claimant in 1923, soon followed by France in 1924 (France's original claim was to the coastal area but was enlarged to include a sector to the Pole in 1938), Australia in 1933, Norway in 1939, Chile in 1940, and Argentina in 1943.

All announced claimants except Norway have claimed wedge-shaped sectors terminating at the South Pole. Norway has claimed the coastal area

[7]Ibid., p. 16.

Figure 2-l—Antarctic Territorial Claims



Seven claims have been made to parts of Antarctica. The claims of Argentina, Chile, and the United Kingdom overlap in the Artarctic Peninsula area. One section of West Antarctica has never been claimed.

SOURCE: U.S. Government, 1989.

between 20° W. and 45° E., but has left the northern and southern boundaries of its claim vague, apparently to avoid undercutting its claim in the Arctic. The claims of three of the countries, Argentina, Chile, and the United Kingdom, overlap and conflict in the area of the Antarctic Peninsula, which is south of Cape Horn. Territorial claims in Antarctica have not received general recognition by the international community. Mutual recognition of claims has been limited to Australia, France, New Zealand, Norway, and the United Kingdom. Although Chile and Argentina do not recognize each other's claims, in 1941 they issued a joint declaration stating that the only countries with sovereignty over the Antarctic Peninsula are Chile and Argentina. **The United States and the Soviet Union have made no territorial claims in Antarctica and do not recognize the claims of others.** However, both have ''reserved" their ''rights" to assert claims in the continent. By not recognizing other claims and by placing one of its IGY stations in the middle of the large unclaimed sector and another at the South Pole where six claims converge, the United States became a strong moderating influence on the claims issue during the IGY. The Soviet Union provided an additional moderating influence by seeking a stake in the region rather than a specific territorial claim and by insisting on being part of any political solution.

The International Geophysical Year successfully submerged the issue of the territorial status of Antarctica to avoid political controversies that might be detrimental to scientific cooperation. Earlier, in 1948, the United States had proposed a solution to territorial claims in Antarctica through governance by a claimant condominium (which the United States would join by announcing a claim), but the proposal drew slight interest from only two of the claimants. In 1956, India presented a trusteeship proposal before the United Nations, but the proposal was unsuccessful. By then, the United States had abandoned the decision to announce a claim and was seeking a cooperative agreement along the lines of a plan by Julio Escudero Guzman of Chile (the Escudero proposal), who proposed a moratorium on the Antarctic sovereignty dispute while concentrating on scientific research.

It became clear to the 12 nations involved in Antarctic research that there would be a significant benefit if the work begun during IGY could be continued. On May 2, 1958, the United States proposed to the other participants, Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, the Soviet Union, the Union of South Africa, and the United Kingdom, that they should join ''in a treaty designed to preserve the continent as an international laboratory for scientific research and insure that it be used only for peaceful purposes. ' Preliminary talks in Washington were stalled by Chilean and Argentine reluctance to agree to international control and by Soviet objections to the existing Antarctic claims of other nations. A treaty was negotiated and signed on December 1, 1959. The United Kingdom became the first nation to ratify the Antarctic Treaty on May 31, 1960. United States ratification followed on August 18, 1960, and the treaty entered into force on June 23, 1961. The entire text of the Treaty, which contains only 14 articles, is presented in appendix C.

The Antarctic Treaty transformed a region beset by international rivalry to one characterized by peace and cooperation. Short, simple in its language, and deliberately lacking institutions, the Treaty has significantly diffused actual and potential disputes. The Treaty is administered through regular consultative meetings of all ATCPs, hosted by each participating nation in turn. The Treaty dealt with the most difficult question, sovereignty and nonrecognition of claims, in a simple and pragmatic manner. Article 4 provides that nothing in the Treaty shall be interpreted as a renunciation or diminution of a claim or basis for a claim and that no acts taking place while the Treaty is in force shall constitute a basis for supporting an existing claim or for establishing a new one. Any other attempt to resolve this issue, by opting for one solution or another, would likely have led to no solution at all and probably to continued rivalry.[9] Yet it is on the basis of this agreement that disputes about sovereignty have

[8] U.S. Congress, House Committee on Foreign Relations, Subcommittee on National Security Policy and Scientific Developments, *The Political Legacy of the International Geophysical Year*, Committee Print by Harold Bullis, Congressional Research Service, 1973, p. 57.

[9] F.O. Vicuna, "Antarctic Conflict and International Cooperation," *Antarctic Treaty System: An Assessment* (Washington, DC: National Academy Press, 1986), p. 61.

Photo credit : Ann Hawthorn

Geodesic dome at the U.S. South Pole Station. The U.S. base is located at the convergence of the Antarctic claims.

come to be controlled. This same pragmatic approach also made possible the successful conclusion of the Antarctic Minerals Convention.

The original Parties to the Treaty were the 12 nations that were active in conducting research in the Antarctic during the International Geophysical Year of 1957-58 (table 2-l). They have the right to attend meetings provided for in article IX of the Treaty (consultative meetings) and are accordingly known as Consultative Parties. In addition, the Antarctic Treaty provides for other states who have acceded to the Treaty and have demonstrated significant scientific activity in Antarctica to become Consultative Parties. Ten additional countries have become Consultative Parties by this process. Only **Consultative Parties may participate in decisionmaking.**

On the basis of Treaty provisions and through consultative meetings a growing complex of arrangements for regulating activities of states in Antarctica has evolved. This complex of arrangements is known as the Antarctic Treaty System (ATS). It includes recommendations adopted at consultative meetings and separate conventions adopted at special consultative meetings. States party to the Treaty must give appropriate effect to the conventions and measures adopted pursuant to them. There have been nearly 150 agreed recommendations to governments since 1961. These cover a wide spectrum of activities in Antarctica including the following:

. cooperation in meteorology and in the exchange of meteorological data;

Table 2-l—Antarctic Treaty Nations
(In chronological order by year of accession)

Consultative nations	Acceding nations
Original Treaty members (1959):	Poland (1961)[b]
Argentina	Czechoslovakia (1962)
Australia	Denmark (1965)
Belgium	The Netherlands (1967)
Chile	Romania (1971)
France	German Democratic Republic (1974)b
Japan	Brazil (1975)b
New Zealand	Bulgaria (1978)
Norway	Federal Republic of Germany (1979)b
South Africa	Uruguay (1980)b
Soviet Union	Papua New Guinea (1981)
United Kingdom	Itaiy (1981)[b]
United States	Peru (1981)
	Spain (1982)[b]
	People's Republic of China (1983)b
titer cosultative nations:	India (1983)[b]
Poland (1977)	Hungary (1984)
Federal Repubiic of Germany (1981)	Finiand (1984)
	Sweden (1984)b
Brazii (1 983)	Cuba (1984)
India (1983)	Republic of Korea (1 986)
Peopie's Repubiic of China (1985)	Democratic People's Republic of Korea (1987)
Uruguay (1985)	Greece (1987)
German Democratic Republic (1987)	Austria (1987)
	Ecuador (1987)
Itaiy (1987)	Canada (1988)
Spain (1988)	Colombia (1 989)
Sweden (1988)	

ah Of M I, 1888.
[b]Now consultative parties.

SOURCE: National Science Foundation, *Antarctic Journal of the United States*, vol. XXIII, No 4, December 1988, p 8; March 1989, p. 6.

- cooperation in telecommunications, including procedures for communicating among stations in Antarctica;
- cooperation in air transport and logistics;
- control of tourism, including development of guidance for visitors to Antarctica;
- a recommended code of conduct for stations in Antarctica and recommendations for developing procedures to assess impacts of operations; and
- the preservation of historical sites;

In addition, consultative meeting recommendations have led to the negotiation of separate agreements and conventions. In 1964 the parties to the Antarctic Treaty adopted the **Agreed Measures for the Conservation of Antarctic Fauna and Flora. The** original measures were supplemented in 1972 and 1985. As the Agreement now stands, its provisions:

- Forbid the killing, wounding, capturing, or molesting of native mammals or birds without a special permit.
- Oblige treaty members to minimize harmful interference with Antarctic living conditions and to alleviate pollution of nearshore waters.
- Protect biological communities within **Specially Protected Areas (SPAS)** where research, plant and animal collection, and vehicular access are denied. There are now 17 SPAS. Another 28 sites have been protected for research purposes through their designation as **Sites of Special Scientific Interest (SSSIs).** It is also likely that additional areas will be specially designated in the future for tourism and or multiple uses so that the impacts on these areas can be better controlled.
- Prevent the importation of nonindigenous species. Any such species must be issued a permit and kept under controlled conditions, removed from Antarctica, or destroyed.
- Encourage the alleviation of water pollution.

The United States ratified these measures in 1978 through passage of the **Antarctic Conservation Act** (Public Law 95-541). In accordance with this law, the Director of the National Science Foundation prescribes regulations, designates protected areas, and issues permits for actions that would otherwise be prohibited.

After some limited harvesting of seals in 1964, the 14 parties to the Antarctic Treaty drew up the **Convention for the Conservation of Antarctic Seals,** which was signed in 1972 and entered into force in 1978. The Convention totally protects the fur, elephant, and Ross seals from exploitation; prohibits the taking of seals that are in the water, except in limited numbers for scientific purposes; and sets annual quotas, seasons, and capture zones for crabeater, leopard, and Weddell seals. [10] Enforcement of the agreed-upon conservation measures depends entirely on the self-policing policies of the signatory nations.

[10] D.B. Siniff, "Living Resources: Seals, *Oceanus*, vol. 31, No. 2, Summer 1988, pp. 71-74

The **Convention on the Conservation of Antarctic Marine Living Resources** (CCAMLR) was developed in the 1970s in response to heavy fishing and the consequent depletion of fish stocks. It entered into force in 1982 for all water within. **about** 1,000 miles of Antarctica.[11][12] The United States ratified this convention in 1984 through passage of the **Antarctic Marine Living Resources Convention Act** (Public Law 98-623). This convention encourages the study, management, and conservation of living resources within Antarctica's overall marine ecosystem, rather than focusing on individual species of commercial importance. Here again, each of the 23 nations signing the treaty is responsible for unilateral implementation of its provisions and any agreed-upon conservation measures.

Since its very beginning, the Antarctic Treaty System has been science oriented. The scientific community was instrumental in bringing the negotiators together to conclude the Treaty itself. A nongovernmental body, SCAR (Scientific Committee on Antarctic Research), that had been formed to coordinate IGY scientific activities in Antarctica, was made a permanent committee of the International Council of Scientific Unions even before the Treaty entered into force. The Scientific Committee on Antarctic Research continues to be an important vehicle through which scientists formulate and coordinate their research activities in Antarctica. Equally important, SCAR serves as a scientific advisory body to Consultative Parties. Recently, at the initiative of the United States, the Managers of National Antarctic Programs (MNAP) established itself as a new and separate organization to work in conjunction with SCAR. The Scientific Committee on Antarctic Research continues to frame research that is international in scope and MNAP considers the means of coordinating the implementation of meritorious projects. The Managers of National Antarctic Programs also reviews air safety, waste management, and other technological areas.

The system that has evolved under the Antarctic Treaty is both simple and pragmatic, which is also largely why it has been flexible and innovative in responding to challenges. In contrast to most other collective international undertakings, the Antarctic Treaty System has created new institutions and techniques only when necessary. This decentralized, evolutionary approach has permitted the institutions themselves to be tailored to the function they were designed to perform.[13] This functionally-oriented system demonstrates how Consultative Parties deal with new challenges, such as those generated by resource issues. Indeed, **the emergence of both living and mineral resource issues has been a major impetus to the evolution of the system and may well be the key to its future.**[14]

UNITED STATES ANTARCTIC INTERESTS

The first comprehensive statement of U.S. interests in Antarctica was issued by the National Security Council (NSC) in 1948, 11 years before conclusion of the Antarctic Treaty.[15] The National Security Council stated that:

- Antarctica shall be used for peaceful purposes only and shall not constitute a source of international discord;
- U.S. rights and interests throughout Antarctica must be protected;
- freedom of exploration and scientific research should be guaranteed;
- there should be free access to develop natural resources;
- activities in Antarctica should be guided by established nonpreferential rules; and
- sound orderly administration of the area should be established.

U.S. interests in Antarctica have evolved since 1948, but they have been characterized much more by continuity than by change. When in 1965 Harlan

[11] K. Sherman and A.F. Ryan, "Antarctic Marine Living Resources, " *Oceanus*, vol. 31, No. 2, Summer 1988, pp. 59-63.

[12] Signatory nations to CCAMLR include the principal fishing countries of the world, including Japan with 13 percent of the world's catch, the Soviet Union with 12 percent, China with 8 percent, and Chile and the United States with 6 percent each.

[13] R.T. Scully, * 'The Evolution of the Antarctic Treaty System—The Institutional Perspective, *Antarctic Treaty System An Assessment (* Washington, DC. National Academy Press, 1986), p. 405.

[14] Ibid., p. 406.

[15] Office of Management and Budget, ' 'The U.S. Antarctic Program, ' a report to the Committees on Appropriation of the U.S. Senate and House of Representatives, May 1983, app. A.

Cleveland, then Assistant Secretary of State for International Organization Affairs, articulated U.S. objectives, they were much the same as in 1948. Important new elements in 1965 were the U.S. support for the Antarctic Treaty—the vehicle which established an orderly administration for Antarctica-and the U.S. objective of making a special effort 'to preserve Antarctic animal and plant life. ' [16]

Five years later President Nixon noted that U.S. interests consisted of maintaining the Antarctic Treaty and ensuring that Antarctica will continue to be used only for peaceful purposes and shall not become an area or object of international discord. U.S. interests would focus on fostering cooperative scientific research for the solution of worldwide and regional problems, including environmental monitoring and prediction and assessment of resources; and protecting the Antarctic environment and developing appropriate measures to ensure the equitable and wise use of living and nonliving resources.[17] Although this reformulation gives greater emphasis to U.S. environmental interests in Antarctica, the list is similar to those of 1948 and 1965, and remains essentially the same as of 1989.

U.S. interests in Antarctica can be grouped into four different categories: geopolitical and strategic, environmental, scientific, and economic.

Geopolitical and Strategic Interests

Since conclusion of the Antarctic Treaty in 1959, relations among states active in Antarctica have been relatively stable. This stability has been maintained despite the existence of fundamental legal and political differences regarding the status of Antarctica and the rights of states and private parties to conduct activities in Antarctica. Three basic political facts about Antarctica are central:

1. seven states have made territorial claims over parts of Antarctica, and some claims overlap;
2. the United States, the Soviet Union, and other nonclaimants do not recognize those claims, and assert a right (subject to their treaty obligations) for themselves and their nationals to conduct activities anywhere in Antarctica without being subject to the consent or control of a foreign government; and
3. the United States and the Soviet Union each believe that they have a basis for making a claim over Antarctica.

These facts give rise to two potential sources of conflict:

1. conflict between existing or future territorial claimants where claims overlap; and
2. conflict between territorial claimants and states that do not recognize the territorial claims.

The broader issue of potential conflict between rival blocs for military superiority in Antarctica looms in the background.

The Antarctic Treaty represents an attempt to minimize existing sources of conflict, avoid new sources of conflict, provide a framework for cooperation in the common interest, and address conflicts that may arise. It achieves this by demilitarizing Antarctica, opening all Antarctic areas and stations to inspection, providing for freedom of scientific research, preserving claimant and nonclaimant positions, and establishing a system for consultation and regulation of activities by the states concerned for scientific, environmental, and other purposes. It does not resolve the underlying differences regarding territorial claims but, in essence, attempts to sidestep them. Thus far, the Antarctic Treaty and related agreements that now comprise the Antarctic Treaty System have furthered U.S. interests in avoiding or minimizing conflict in Antarctica, and it is in the interest of the United States to continue to support these agreements. [18]

The greatest potential challenge to the system derives from the territorial claims. It would be naive to expect that the territorial claimants would long accept the compromise embodied in the Antarctic Treaty if they thought perfection of their territorial

[16]U.S. Congress, Subcommittee on Territorial and Insular Affairs, Committee on Interior and Insular Affairs, *Antarctic Report 1965*, Hearings, H. Rep. 89th Cong., 1st sess., *1965*, p. 30.

[17]Office of the White House Press Secretary, October 13, 1970, ''U.S. Antarctic policy, '' Hearing, Subcommittee on Oceans and International Environment, Committee on Foreign Relations, U.S. Senate, 94th Cong., 1st sess., May 15, 1975, p. 30.

[18]J.D. Negroponte, ''The Success of the Antarctic Treaty, ' U.S. Department of State, Bureau of Public Affairs, Washington, DC, current policy No. 937, April 1987.

claims could be achieved at an acceptable price. Argentina and Chile, in particular, are subject to strong nationalistic pressures on the issue. A challenge for U.S. policy is to avoid encouraging perceptions abroad that U.S. opposition to foreign territorial claims is weakening.

Another potential threat to the stability of the system is posed by increasing interest in Antarctic minerals. This has revived the question of sovereignty and spurred interest in Antarctica by the United Nations General Assembly. The Antarctic Treaty System has succeeded in part because it limits participation in decisions to states that conduct significant levels of activity there. All Antarctic Treaty decisions are made by consensus, and key Minerals Convention decisions would be made by consensus. In general, the larger a decisionmaking group becomes, the more difficult consensus is to achieve. However, even as ATCPs worry about dilution of influence as participation grows, they have encouraged participation in the ATS as the only legitimate regime for Antarctica.

In general, U.S. political and strategic interests, particularly with respect to any system governing Antarctic mineral resources, would be promoted by seeking to:

- **maximize U.S. influence with respect to decisions regarding any aspect of Antarctica;**
- **maximize the influence of states substantially affected by the decisions being taken;**
- **avoid steps that could raise the expectations of the territorial claimants regarding special influence over their claimed areas; and**
- **discourage demands for global participation in decisionmaking.**

Environmental Interests

The Antarctic environment is unique and largely unspoiled: Antarctica supports unique wildlife; its ice comprises most of the world's fresh water; marine mammals and birds migrate there from great distances to feed on abundant krill and fish. However, much remains to be learned about Antarctic ecosystems and about the relationship of the Antarctic environment to the global environment,

Interest in preserving wilderness suggests no minerals activities at all should be allowed in the areas to be preserved. Careful study of potential environmental impacts and requirements is needed to minimize the impacts of minerals-related activities.

Environmental values are *potentially* at risk by any resource development allowed in Antarctica. Preservation of a vast wilderness on an increasingly settled and developed planet has esthetic, scientific, and moral value itself. Minerals development brings with it—as a trade-off against the benefits of the processed materials-infrastructure that has some unavoidable environmental impacts. Some mining techniques could alter the landscape for long periods. A significant oil spill from a rig or tanker could destroy many creatures and despoil significant areas for a long period of time given the slow rate of decomposition in frigid climates. Risks of accident in such a harsh climate are higher than in more amenable areas.

In general, these environmental interests suggest that the United States should:

- **maximize the incentives to observe sound environmental practices;**
- **maximize research and the disclosure of data about Antarctica; and**
- **with respect to the system governing Antarctic mineral resources, avoid direct or indirect incentives (e.g., the absence of taxes or royalties) that might make Antarctica more attractive for development than other parts of the world.**

Scientific Interests

Given its location and characteristics, and because it is largely uninhabited by man, Antarctica is a unique laboratory for scientific research. The information gained directly by scientists, and indirectly from others conducting activities in Antarctica, can greatly enhance knowledge not only about Antarctica but about natural processes and phenomena in general. Experience also demonstrates that new knowledge, no matter how remote from practical use it may seem at the time, can become the basis for significant practical developments in the future.

The availability of knowledge is maximized if minimum restrictions are placed on the conduct of scientific research, and if public release of data and information by scientists and others, including those engaged in resource activities, is encouraged. At the same time, the unique value of Antarctica as a pristine natural laboratory (e.g., for research on global climate change) is maximized if human activity that might significantly alter that environment is restricted.

In general, these interests parallel and reinforce environmental interests and have many formal expressions within the ATS. They also suggest the following objectives with respect to the system governing Antarctic mineral resources:

- **minimize interference with scientific research;**
- **maximize controls on minerals activity that may diminish scientific values; and**
- **maximize the incentives for disclosing data and information about Antarctica at all stages of minerals development.**

Economic Interests

It is not clear if or when extraction of Antarctic oil and gas or other mineral resources, if discovered, would prove attractive to investors. This depends in large measure on prices for the commodity, alternative sources of supply, and the value of a given resource deposit in comparison to the substantial investments required and risks posed by an extremely harsh and remote physical environment.

The United States shares with other consumers and importers of hydrocarbons and minerals an interest in assuring that Antarctic resources are available for extraction in response to market forces in order to meet world demand at minimum prices. The United States also has an economic, and to some extent political and strategic, interest in the diversity and security of its sources of supply of important commodities so as to avoid concentrated dependence on foreign sources subject to political or military disruption or manipulation. This interest generally points in the same direction as the consumer interest, although it may introduce a preference for greater involvement by American or allied companies.

In addition, the United States has an interest in maximizing the opportunities for productive economic activity by its nationals. This interest generally is advanced if extraction and processing of Antarctic mineral resources generates American employment and revenues directly or indirectly through utilization of American products and services.

The United States also has an interest in minimizing the costs of administering any system of governance for Antarctic mineral development. To the extent those costs are not passed onto miners, the American taxpayer will bear a share of those costs. To the extent the costs are passed on to miners, investment may be discouraged.

In general, these economic interests suggest the following objectives for the United States with respect to the system governing Antarctic mineral resources:

- **facilitate investment in response to market forces by establishing necessary ground rules, ensuring predictability and security of investment, and otherwise minimizing the restraints on investors;**
- **minimize the influence of governments or organizations hostile to the economic interests of United States over the resource regime;**
- **maximize the opportunity for investment by American companies; and**
- **minimize the cost of the system of governance.**

The present ATS serves U.S. interests in political stability, access to all of Antarctica now and in the future, participation in the regulation of Antarctic activities for environmental and other purposes, and avoidance of conflict with the Soviet Union or others. Moreover, the United States has been a leader throughout the development of the Antarctic Treaty System. The Antarctic Treaty itself is in large measure a U.S. proposal, and the United States has long pursued its interests in part through a policy of ‘‘active and influential presence’ on the continent. Continued U.S. participation in the ATS will help ensure a continued leadership role for the United States.

There is inevitably some tension among the different political, economic, scientific, and environmental interests of the United States in Antarctica. The Antarctic Minerals Convention, discussed in some detail in the next chapter, reflects judgments about the balance among conflicting U.S. interests, between the interests of the United States and other states involved in the negotiation, and about the relative priority to be accorded those interests,

WHY THE CONVENTION? WHY NOW?

Though historically there was little perceived need for rules concerning mineral resource exploitation in Antarctica, by the 1970s a combination of scientific, technological, and political factors began to change the Antarctic Treaty Parties' perception of the need for rules governing mineral resource development.

The sticky issue of the territorial claims was sidestepped in 1959 in order to reach a limited but still important agreement. The compromise, enshrined in article IV of the Antarctic Treaty, provided the glue which held the Treaty together and enabled the Parties to continue unhindered scientific research throughout Antarctica, prevent the continent's militarization, prohibit the use of Antarctica for disposal of nuclear waste, and, in general, promote cooperative activities.

By enabling scientists unhindered access to all parts of the continent, what was virtually *terra incognita* in 1959 was better known by the early 1980s. To be sure, scientists still have only "scratched the surface' of the 2 percent of the continent that is exposed, but they know that Antarctica is geologically similar to other continents under the ice. It contains occurrences of many minerals that, if found in large enough and rich enough deposits in relatively ice-free areas, would attract commercial interest. Scientists have also discovered that Antarctica was once a part of a supercontinent that has long since broken apart, now known as Gondwana or Gondwanaland.

Although there is evidence that Antarctica's continental shelves may contain oil and gas, no commercial drilling has been done, and whether any large hydrocarbon deposits exist is unknown. Commercial interest has also been dampened by the extremely difficult operating conditions that would be faced by producers in Antarctica. Nevertheless, many experts believe that if large deposits are found in Antarctica, they may one day be exploited.

Technology to exploit resources has improved significantly since the Antarctic Treaty was negotiated. For instance, technology has evolved for exploiting offshore oil—a resource that might be of particular interest if found in sufficient quantities in Antarctica (see app. A). Oil companies are venturing into ever deeper water in search for new prospects and into seasonally ice-covered areas of the Arctic and sub-Arctic. [19] Moreover, mining companies are already operating several mines in high latitude arctic areas of Alaska, Canada, Sweden, and the Soviet Union under conditions similar in some ways to those that would be found in some parts of Antarctica, notably the Antarctic Peninsula (see app. B). In some cases, for instance, in the case of a high-grade gold deposit in the Antarctic Peninsula, technology may already be available to profitably develop a high-grade resource. In most instances, at least some if not a significant amount of technology will still need to be developed before exploitation may proceed (particularly in environmentally sound terms and with regard to safety and economics). Nevertheless, technology developments are no longer seen to be a limiting factor.

As early as 1969 at least three inquiries were received by ATCP governments from companies interested in geophysical prospecting in Antarctica. [20] While prospecting does not normally require a legal system for protecting investments in a particular site, it does raise questions of the legal right to prospect and of environmental regulation. In theory, any territorial claimant might regard its existing domestic mining laws as applicable to its Antarctic territory. Yet, if it purported to regulate prospecting based on its territorial claim, it could provoke a dispute over the legal status of Antarctica.

[19] U.S. Congress, Office of Technology Assessment, *Oil and Gas Technologies for the Arctic and Deepwater*, OTA-O-270 (Washington, DC: U.S. Government Printing Office, May 1985).

[20] F.M. Auburn, *Antarctic Law and Politics* (Bloomington, IN: Indiana University Press, 1982), p. 243.

Similarly, if a nonclaimant purported to regulate prospecting in a claimed area, it could provoke a dispute. Thus, not only were no common and agreed procedures in effect at the time for issuing permits for prospecting activities, but the countries approached by commercial firms understood that if they issued permits unilaterally, they could upset the stability of the Antarctic Treaty.

In 1973 the price of oil rose dramatically, an event which further stimulated interest in Antarctica's resources by commercial firms and by ATCP governments. [21] Sometime in early 1975, for example, Texas Geophysical Instruments applied to the U.S. State Department for a permit to prospect in the Ross and Weddell Seas .[22] The permit was not issued.

Over the years the "claimants" and "nonclaimants' alike had developed a strong stake in the preservation of the Antarctic Treaty, which despite its shortcomings, has enabled unhindered scientific research and has kept Antarctica peaceful and demilitarized, The Antarctic Treaty Consultative Parties and other parties to the Antarctic Treaty were aware of new developments in science and technology and thus of the increased probability that at least a few potentially valuable deposits would possibly be discovered in the ice-free areas of Antarctica. Outside the ATCP group, some environmentalists expressed the hope that no resource development activities would ever be allowed in Antarctica. These groups argued that the mere existence of a minerals regime would unduly promote resource development there. Thus, in establishing a regulatory system, no matter how stringent its elements, legal uncertainty is removed, making it easier for potential developers to **risk** undertaking minerals activities. Few ATCPs were willing to consider banning all resource activities in Antarctica. They were convinced, however, that if no minerals agreement existed, disputes could arise over minerals. They feared that a major discovery in the absence of a regime would encourage a developer to proceed, subject only to its national laws or those of a territorial claimant.[23] Further, they perceived that they would be much more likely to reach an agreement before any major discoveries were made. The maintenance of political tranquility must therefore be viewed as a primary, although not exclusive, reason for negotiation of the Minerals Convention.

The Antarctic Treaty Consultative Parties began to respond to the gradual increase in interest about the resource potential of Antarctica by 1970. Initially, only informal discussions were held. The minerals issue first appeared on an ATCP meeting agenda at their seventh official meeting in 1972. At this time ATCPs agreed to initiate a study of the effects of mineral exploitation and to discuss this subject in more detail at the next regular ATCP meeting in 1975. During the interim, scientists aboard the *Glomur Challenger* discovered traces of natural gas near Antarctica,[24] OPEC (the Organization of Petroleum Exporting Countries) established its oil embargo, and the Soviet Union established a research base near the Dufek Mass if 'to prospect for minerals over a 5-year period. '[25] Also. a very rough estimate by the U.S. Geological Survey of the ''in place" oil and gas resources of Antarctica appeared in the press, for the first time making official figures of Antarctica's resource potential available.[26] The estimate, although based on virtually no data and since discredited, took on a life of its own and fueled speculation that Antarctica could be a significant new source of much-needed oil.

At the 1975 Consultative Party meeting, the ATCPs resolved to hold a special preparatory meeting on the sensitive minerals issue and directed the Scientific Committee on Antarctic Research to prepare a report on the environmental impact of minerals development,[27] The Special meeting, held

[21] Shapley, op. cit., footnote 5, p. 124.

[22] U.S. Congress, Subcommittee on Oceans and International Environment, Committee on Foreign Relations, ' 'U.S. Antarctic Policy,' Hearing, U.S. Senate, 94th Cong., 1st sess., May 15, 1975, p. 18.

[23] L.A. Kimball, *The Antarctic Minerals Convention*, Special Report of the International Institute for Environment and Development--North America, July 1988, p. 27.

[24] However, as pointed out in ch. 4, this likely has no significance with regard to the formation of petroleum.

[25] Auburn, op. cit., footnote 20, p. 80.

[26] Auburn, op. cit., footnote 20* p. 245.

[27] The report is known as the EAMREA report, for Environmental Impact Assessment of Mineral Resource Exploration and Exploitation in Antarctica. It was edited and published in 1979 by SCAR as "Possible Environmental Effects of Mineral Exploration and Exploitation in Antarctica. "

in Paris in 1976, made it clear that the ATCPs had many differences about how to handle the minerals issue. One important result, however, was an informal moratorium on exploration and exploitation pending a timely solution to the problem. **A formal recommendation urging voluntary restraint while progress is made toward an agreed minerals regime was adopted by the ATCPs at the ninth Consultative Party meeting in London in 1977.**

Increasing attention was given to the minerals issue at the ninth and tenth Consultative Party meetings in 1977 and 1979, and recommendations concerning minerals were adopted at both meetings. Nevertheless, the development of a regime to regulate nonliving resources took a back seat to the question of living resources during this period. The Antarctic Treaty Consultative Parties tackled living resources first because some fishing and harvesting of krill was already occurring in Antarctica and increased unregulated exploitation-potentially enough to jeopardize some species-was expected. Also, living resources were judged by many to be a far easier issue with which to deal than nonliving resources, and successful negotiation of a living resources agreement might smooth the way for more difficult minerals negotiations.

A formal decision to negotiate a minerals regime for Antarctica was made at the eleventh ATCP meeting in Buenos Aires in July, 1981. Specifically, Recommendation XI- 1, which evolved from recommendations made at the previous two meetings, recommended that ''a regime on Antarctic mineral resources should be concluded as a matter of urgency. " The Recommendation endorsed the convening of a special consultative meeting (subsequently termed the Fourth Special Antarctic Treaty Consultative Meeting), and it established principles by which the new regime would be governed. The Antarctic Treaty Consultative Parties agreed that:

1. the Consultative Parties should continue to play an active and responsible role in dealing with the question of Antarctic mineral resources;
2. the Antarctic Treaty must be maintained in its entirety;
3. protection of the unique Antarctic environment and of its dependent ecosystems should be a basic consideration;
4. the Consultative Parties, in dealing with the question of mineral resources in Antarctica, should not prejudice the interests of all mankind in Antarctica; and
5. the provisions of article IV of the Antarctic Treaty should not be affected by the regime.[28]

Principles 2 and 5, in particular, express the ATCP's desire that the new convention be an integral part of the Antarctic Treaty System, that it in effect strengthen the System by filling a significant gap in the collection of agreements governing Antarctica, Principle 5 recognizes the sensitivity of the claims issue, but also expresses the desire and willingness of ATCPs to negotiate a minerals regime that sidesteps the issue—just as was done in the living resources agreement. Principle 4 denotes in essence that the ATCPs consider that only those states with significant interests in Antarctica-the ATCPs themselves-should be involved in negotiating the new regime (but that they intend to ''bear in mind" the interests of other countries). And principle 5 reveals one of the important reasons for negotiating. These basic principles are restated in a slightly different form in the preamble to the Minerals Convention.

THE ATCPs AND THE UNITED NATIONS

The Antarctic Treaty Consultative Parties do not view Antarctica as being similar to other uninhabited regions of the world-e. g., the seabeds beyond the limits of national jurisdiction-that may be susceptible to international management or control. **Because of the existence of claims and bases for claims and of the long history of successful administration of Antarctica, ATCPs have long held that they possess special rights and responsibilities there.** Some developing countries not party to the Antarctic Treaty actively dispute the view that a relatively small group of countries have earned the right to decide what is in the interests of the entire international community, what the ''entry fee' will be for Consultative Party status, or generally how Antarctica will be regulated. The Antarctic Treaty Consultative Parties have therefore vigorously resisted U.N. attempts to increase its influence in

[28] Recommendation XI-1, Antarctic Mineral Resources, paragraph 5.

Antarctica. The ATCPs contend that the Antarctic Treaty meets all criteria for a regional agreement under chapter VIII, article 52 of the United Nations charter and is thus consistent with the principles and purposes of the United Nations. In the early 1970s representatives of several developing countries tried to include Antarctica in the Law of the Sea discussions and to designate it, along with the deep seabeds, as part of the "common heritage of mankind, The ATCPs, including Chile and Argentina, the two original developing-country consultative parties, resisted these attempts.[29]

In the wake of the ATCPs decision to start negotiating a minerals regime for the continent and as the Law of the Sea negotiations were winding down at the end of 1982, the interest of U.N. members in Antarctica grew. The question of Antarctica was first placed on the U.N. General Assembly agenda in 1983, subsequent to a speech in which the Malaysian Prime Minister argued that the ''uninhabited lands' of Antarctica did not belong to the colonial powers claiming them and that it was time to negotiate a new international agreement for the continent.[30]

The Antarctic Treaty Consultative Parties have continued to resist any attempt to consider Antarctic issues in a broader forum. Each year, however, the question of Antarctica is considered in the U.N. General Assembly. Most recently, the General Assembly expressed "its conviction that any minerals regime on Antarctica, in order to be of benefit to all mankind, should be negotiated with the *full* participation of all members of the international community, ' and further expressed 'its deep regret that the Antarctic Treaty Consultative Parties have proceeded with negotiations and adopted [the Minerals Convention], '[31]

A global negotiation would challenge the underlying premise of the Antarctic Treaty, namely that decisionmaking should be limited to states with substantial scientific activities in Antarctica. Antarctic Treaty Consultative Parties perceive that this challenge could threaten the stability achieved by the Antarctic Treaty System. In part, the decision to complete an Antarctic Minerals Convention now, within the framework of the Antarctic Treaty System, represents an attempt to preempt efforts to deal with the question in the United Nations or some other multilateral forum.

Although ATCPs have been steadfastly unwilling to negotiate a new, more fully international agreement for Antarctica under the auspices of the United Nations, they have taken some steps to respond to U.N. concerns. They have, for instance, made information about their deliberations more available, enlarged the role of observers, and expanded relations with international organizations having scientific and technical interests in Antarctica. Over time, also, more countries have acceded to the Antarctic Treaty. Although the number of countries is still in the minority, 39 nations have now acceded, 22 of which are now also Consultative Parties. **With the addition of China and India, more than three-fourths of the world's population is represented. Moreover, virtually all countries with direct and substantial interests in Antarctica have acceded to the Antarctic Treaty and related agreements.** If the Minerals Convention is not ratified, U.N. efforts to establish an alternative regime could be given renewed impetus.

Concern about U.N. efforts to supplant the ATS was an additional reason for ATCPs to complete negotiations for a minerals convention. One final reason relates to the provision of the Antarctic Treaty that enables any of the Consultative Parties to call for a conference of all Parties to review operation of the Treaty beginning 30 years after its entry into force, that is, any time after June 23, 1991.32 The 1991 date is probably not as significant as some authors have suggested. Consultations among ATCPs are already extensive, occurring now at the biennial Consultative Meetings, at meetings of the Living Resources Convention, at meetings of the Scientific Committee on Antarctic Research, etc., as well as during negotiations of the Minerals Convention itself. Hence, ATCPs regularly review operation of the Treaty. Moreover, the possibility for amending the Antarctic Treaty at the review conference, as

[29] Shapley, op. cit., footnote 5 , p. 222.

[30] Shapley, op.cit., footnote 5, p. 218"

[31] United Nations General Assembly, 43d sess., "Quesuon of Antarctica, ' A/RES/43/83, Agenda Item 70, Jan. 26, 1989.

[32] Antarctic Treaty, art. 12(2a).

suggested in article 12, can already be done at any time, and the process by which the Treaty could be amended in the review conference is the same as the process by which the Treaty is generally amended. **It will be as procedurally difficult to modify the Treaty in 1991, or thereafter, as it is now.**[33] Nevertheless, perceptions are important, and having a minerals regime in place before 1991 would be strong additional evidence that ATCPs are capable of dealing with problems as they arise. And, having just dealt with one of the most difficult issues threatening the stability of the Treaty System, ATCPs would be free to turn their attention to other important upcoming Antarctic matters.

[33]Shapley, op. cit., footnote 5, p. 231"