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Antarctica

Much Ado About Nothing?

Antarctica is a no-man’s land. The seventh continent is so removed from what we euphemistically call “civilization” that the majority of the global community may read of it only in the pages of a geography text or in the technical language of scientific journals. Due to its geographic station and the complete lack of east-west tension there, Antarctica does not enjoy the status accorded to such regions as the Middle East or Central America, but it is a land that raises some vexing and important questions. Among these are: Who owns the continent? Who has the right to explore it and exploit its resources? What is the role of international law there?

Since the Antarctic Treaty came into force in 1961, the signatory states have cooperated in the region and international conflicts have not been allowed to intrude. In Antarctica, politics has indeed made for “strange bedfellows”; included among the major treaty states are the United States, the Soviet Union, the United Kingdom, Argentina and Chile. Yet, Antarctica remains an oasis of stability in spite of the fall of east-west detente, the Falkland/Malvinas Conflict and until recently, a simmering dispute between Chile and Argentina over rights in the Beagle Channel.

Recently, however, both external and internal challenges have surfaced which threaten the viability of the Antarctic Treaty system. In November 1983, several less-developed countries, which heretofore had shown scant interest in the region, began an effort to democratize the Antarctic governing system so as to ensure an equitable distribution of its potential wealth.

Within the Antarctic regime, there is little challenge to the status quo; what they have works and works well. Theirs, however, is a family whose outward appearances belie the internecine squabbles taking place within. Seven of the treaty states have long standing claims to the Antarctic which are not recognized by the other signatories. This, in turn, is complicated by the fact that claims by the United Kingdom, Chile and Argentina overlap and are entangled in a mesh of international legal issues and national sensitivities. Even so, one must not discount their ability to close ranks when threatened; disagreements notwithstanding, families do have a habit of pulling together when times get tough.

To many the Antarctic issues may seem peripheral to the mainstream concerns of statesmen; it is not a “life or death” question. However, tensions have already begun to surface, and they are just the “tip of the iceberg”. The Antarctic question is a witch’s brew of nationalism, legal questions, strategic concerns and differing perspectives on fairness. As the sources of many non-renewable resources continue to dwindle, competition over Antarctica will intensify. The pivotal question is whether the Antarctic regime will be flexible enough to accommodate these demands, or will collapse under their pressures.

While the ancient Greeks postulated the existence of Antarctica, the continent itself was not discovered until 1820—although by whom remains a matter of contention between the United States, the United Kingdom and the Soviet Union. Scientific exploration of the region began in the mid-1830’s and received a major boost by the Sixth International Geophysical Congress, which, in 1895, proclaimed Antarctic exploration to be the “greatest...still to be undertaken.” Its call was answered by a rash of expeditions to the continent, culminating in 1912, when Norwegian and British explorers nearly simultaneously reached the South Pole.

Sustained interest in the region, however, was not initiated until the International Geophysical Year (IGY) in 1957-58. The scientific expeditions associated with the IGY were planned and conducted by a dozen nations and made significant contributions to scientific knowledge. More importantly, the work involved complete international cooperation, including data sharing and the exchange of personnel.

With the termination of the IGY there was concern that the cooperation established, which was deemed essential for future scientific endeavors, should con-
tinue. Upon the initiative of the United States, the twelve nations which had participated in the IGY (the United States, the Soviet Union, the United Kingdom, Argentina, Belgium, Chile, Norway, Japan, South Africa, France, New Zealand, and Australia) concluded the Antarctic Treaty of 1959. Their purpose was to provide a legal framework for the ongoing conduct of peaceful scientific research and to protect the continent's nearly pristine environment.

In pursuance of these objectives, the Treaty banned all military activities as well as prohibiting nuclear explosions and the disposal of radioactive waste on the continent. In addition, it afforded free access to Antarctica for scientific purposes and called for the free exchange of data and personnel. The Treaty literally froze all existing territorial claims to the continent (which had been previously made by seven of the contracting parties) until 1991, at which time the treaty may be reviewed.

In achieving its stated objectives, the Antarctic Treaty (which came into force in 1961) has been a remarkable success, even in the eyes of many of its critics. It remains the most stable, albeit limited, arms control convention in force and its successful operation has been unimpeded by external tensions. Major international research efforts in meteorology, oceanography and biology have been conducted under its auspices and, thus far, thirty-four permanent research stations have been established on the continent. In addition, several conservation measures have been adopted. These include the Convention on Antarctic Marine Living Resources, which provides for a commission to regulate the exploitation of the region's bountiful species of fin fish and krill. This is particularly important in that krill, a shrimp-like crustacean, which is considered by many experts to be the world's largest source of protein, is already being harvested by the Soviet Union and Japan.

For all of its success, however, the Treaty, as Antarctica specialist Christopher Joyner has noted, "failed to deal in any substantive manner with issues regarding resource exploitation, management or ownership." Attempts to rectify this omission lie at the heart of the present concerns over Antarctica. The international challenges to the Treaty system have arisen, in particular, over the continent's potentially valuable mineral resources. Currently the major signatories are negotiating for rights to regulate the development of Antarctic resources.

At this time the existence of hard mineral resources in Antarctica is largely speculative. The existence of chromium, cobalt, copper, graphite, gold and platinum, as well as other precious metals, are based upon the findings of "occurrences"--very small amounts which may or may not be significant.

Due to several factors, not the least of which is that ninety-eight percent of the continent is covered by ice, there is, according to a recent Foreign Affairs article, "no serious likelihood that any of these will be exploited in the near future." Most of the interest has therefore been focused on potential oil and natural gas reserves. Although the existence of commercially recoverable quantities has not been proven, several studies are optimistic in this regard. In 1974, the U.S. Geological Survey estimated reserves of one-hundred fifteen trillion cubic feet of natural gas within the continental shelf of West Antarctica. (For comparison, recoverable oil in Alaska is estimated at ten billion barrels.) More recently, several countries and transnational corporations have conducted seismic studies--some with "encouraging commercial results."

Nonetheless, the impediments to successful oil and gas development are formidable: the continental shelves of the Antarctic are approximately twice as deep as the global norm; icebergs will pose a continuing threat to drill ships; and finally, the season for drilling is considered to be uniquely short. Even so, the anticipation of riches is putting the Treaty system under "more...severe stress than ever before."

The overriding question is whether the major signatory powers can ensure that the Antarctic--as stipulated in the Treaty--"shall not become the object of international discord."

The Antarctic question is a witch's brew of nationalism, legal questions, strategic concerns and differing perspectives on fairness.

In November 1983, several members of the Non-Aligned movement of less-developed states broached the subject of Antarctica before the General Assembly of the United Nations. Previously these states had shown little interest in the continent. The situation changed with the beginning of negotiations among the major Treaty states aimed at the creation of a regime to regulate the exploitation of mineral resources. The lesser developed states, indignant over the selective and exclusive nature of these deliberations, have launched an offensive against the underlying premises of the Antarctic system.

The root of this emerging issue is Article IX of the Antarctic Treaty. According to this provision, a state may achieve "consultative status"--through which accrues the right to attend consultative meetings at which policy decisions regarding the continent are made--only if it accedes to the Treaty and, most significantly, demonstrates "its interest in Antarctica by conducting substantial scientific research activity there."

Of course, just what "significant scientific research activity" means is not self-evident. In the past, the sixteen Consultative Parties (the twelve original signatories and Poland, West Germany, Brazil and India) have restrictively interpreted this provision as generally requiring the establishment of a permanent research station--a condition beyond the means of most less developed states. And the situation has been further aggravated by the secretive nature of the Consultative meetings, which has raised the suspicion and ire of those states not privy to these proceedings.

The issue is now in a state of temporary limbo. A resolution adopted at the General Assembly, at the behest of Malaysia, Antigua Barbuda, simply requests the Secretary General of the United Nations to "prepare a comprehensive...study on all aspects of the Antarctica Treaty system and other relevant factors." However, when this report emerges, the battle lines will have been drawn for a debate which could determine the fate of Antarctica and have untold consequences for the future of North-South relations.

The position of the Third World is clear and its objectives are twofold. According to Malaysia's Permanent Representative to the UN, "the world of 1959...is different from that of 1983." There is a growing and "ineluctable demand" by the Third World which comprises a majority in the UN, for greater involvement in international decision making. No longer can a handful of countries arrogate unto themselves the prerogative of representing humanity in matters of common concern when the majority of humanity are not directly involved.

In addition, most less developed states subscribe to the principle that the Antarc-
### Antarctic Treaty (summary of basic provisions)

**ARTICLE I.** Antarctica shall be used for peaceful purposes only. All military measures, including weapons testing, are prohibited. Military personnel and equipment may be used, however, for scientific purposes.

**ARTICLE II.** Freedom of scientific investigation and cooperation shall continue.

**ARTICLE III.** Scientific program plans, personnel, observations and results shall be freely exchanged.

**ARTICLE IV.** The treaty does not recognize, dispute, or establish territorial claims. No new claims shall be asserted while the treaty is in force.

**ARTICLE V.** Nuclear explosions and disposal of radioactive wastes are prohibited.

**ARTICLE VI.** All land and ice shelves below 60° South Latitude are included, but high seas are covered under international law.

**ARTICLE VII.** Treaty-state observers have free access—including aerial observation—to any area and may inspect all stations, installations, and equipment. Advance notice of all activities and of the introduction of military personnel must be given.

**ARTICLE VIII.** Observers under Article VII and scientific personnel under Article III are under the jurisdiction of their own states.

**ARTICLE IX.** Treaty states shall meet periodically to exchange information and take measures to further treaty objectives, including the preservation and conservation of living resources. These consultative meetings shall be open to contracting parties that conduct substantial scientific research in the area.

**ARTICLE X.** Treaty states will discourage activities by any country in Antarctica that are contrary to the treaty.

**ARTICLE XI.** Disputes are to be settled peacefully by the parties concerned or, ultimately, by the International Court of Justice.

**ARTICLE XII.** After the expiration of 30 years from the date the treaty enters into force, any member state may request a conference to review the operation of the treaty.

**ARTICLE XIII.** The treaty is subject to ratification by signatory states and is open for accession by any state that is a member of the UN or is invited by all the member states.

**ARTICLE XIV.** The United States is the repository of the treaty and is responsible for providing certified copies to signatories and acceding states.

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**M**uch of the contemporary writing on Antarctica is focused on the drama which is presently unfolding in the United Nations over the continent’s regime and governing Treaty. While it is critical to understand the motives of the less developed states, it behooves us to recognize that there are other concerns calling for attention. The question of overlapping territorial claims of Chile, the United Kingdom and Argentina is one such complex concern.

The basis of much of the uncertainty over these overlapping claims is rooted in tensions between Spain and Portugal in the fifteenth century during the height of their colonial experience. Conflict between these two states over their acquisitions in South America eventually required papal mediation. What resulted was the famous (or infamous) Treaty of Tordesillas of 1494. Pope Alexander IV drew a line from the Arctic to the Antarctic at a distance of three-hundred seventy leagues (1,175 miles) west of the Cape Verde Island, dividing the New World between the two Iberian powers: Spain controlled everything to the west of the demarcation, while Portugal maintained its fleet in the east.

The status quo established by the treaty broke down three-hundred years later when, among other Latin American states, Argentina and Chile achieved their independence. In a climate of uncertainty over their territorial borders, both states asserted claims to the Beagle Channel and Antarctica on the basis of a tenet of international law called “uti posseditis juris.” Translated, this principle means “as you now possess, so shall you continue to possess.” At the time, both states felt (and continue to feel) that Spain’s former colonial territories, as sanctioned by the Treaty of Tordesillas, had been bequeathed to them upon their independence. It is doubtful, however, that Spain was in a position to consign vast parcels of land it did not control, and probably didn’t know even existed, to Chile and Argentina. While most Western legal scholars regard uti posseditis as an anomaly peculiar to Latin America, Argentina and Chile continue to recognize it as the basis of their claims.

Both states have taken additional steps to bolster their claims. Most importantly, Argentina and Chile employ the “sector principle” whereby borderlines are extended from each state’s territory and made to converge on the South Pole thereby creating pie-shaped wedges of national territory on the Antarctic. It is crucial to understand that the sectors of the two Latin American states and the United Kingdom are all drawn from adjacent or overlapping territories — specifically the Beagle Channel and the Falkland/Malvinas Dependencies. Since the sector principle is not based on any international legal precepts, however, it affords no specific
guidelines for adjusting these conflicting claims.

Argentina is very proud of its Antarctic territory. School children are taught at an early age that over four-hundred thousand square miles of Antarctica is **sovereign Argentine territory**, a part of the “fatherland.” Incredible as it may seem, some of these children may even have a cousin or two attending kindergarten classes in Antarctica! The Argentines have birthed children in their sector, opened a post office and performed several marriage ceremonies there. To the outside observer, this may seem eccentric, almost facetious behavior, but the Argentines take it quite seriously. And so do Chile and the United Kingdom, the two powers who have the most to lose.

The United Kingdom and Chile have both had serious problems with Argentina, either over their Antarctic claims or regions adjacent to those claims. The problems involve legal questions of sovereignty, but have been elevated to an emotional frenzy, making rational discussion of the law all but impossible.

Chile’s bone of contention with Argentina involves a century old dispute over the Beagle Channel waterway, south of Tierra del Fuego. This dispute is centered on three islands which are within the channel, and which lie adjacent to the Antarctic. Chilean control over the islands would put it in direct proximity to Argentina’s Antarctic claim, placing Chile in an even stronger position to lay claim to the Argentinean Antarctic territory. On occasion, tensions over this issue have reached crisis proportions; in 1978 war was averted only by Vatican mediation.

The sovereign claim of the United Kingdom to Antarctica is predicated on discovery and exploration. Among all the signatories to the Antarctic Treaty, the U.K. has the longest Antarctic “experience.” The historical record indicates that they were the first to set foot in the region (1675) and the first to conduct extensive explorations of the Antarctic land mass. Neither Argentina nor Chile asserted a claim until the 1940’s, and it is noteworthy that both willingly made remittances to the United Kingdom for use of shore and harbor facilities in the region.

It would appear that the United Kingdom, by historical right, has the most valid claim to the disputed territory since they discovered and explored it. However, there is a loophole in international law called “effective occupation” which warns that discovered territory must be occupied in order for sovereign title to be valid. **Discovery is not enough, one must take possession.** The British did not assert a sovereign claim until 1908 -- two hundred and thirty-three years after they set foot in the region. Argentina and Chile, to their credit, made known their presence in Antarctica soon after they asserted a claim.

It is critical to understand that Argentina and the United Kingdom have had a long history of tension and violence in the Antarctic region. The Falkland Malvinas conflict is regarded by both as being inseparable from the larger Antarctic question. The 1982 war did not mark the first time that warships and gunfire were introduced into the region. In 1948, both states sent warships to the northern peninsula of Antarctica, an action which ended peacefully, and in 1952 the Argentines fired machine-guns over the heads of a British landing party in Hope Bay. As for the Falkland Malvinas, they lie within both the British and Argentine sector of Antarctica. Since tensions over the islands are still high, they introduce an element of potential violence into the region.

The United Kingdom, Argentina and Chile have descended into an abyss deepened by hypernationalism from which they are going to have considerable difficulty extricating themselves. The Falkland Malvinas and, to a lesser extent, the Beagle Channel, may seem peripheral to the larger Antarctic question, but their presence is a complication that the regime does not need. Although the Beagle Channel dispute appears to have been resolved, the Falkland Malvinas is a slow-burning fuse which threatens to introduce into the region precisely what all the signatories want to avoid: great power confrontation, be it direct or through proxy. If the primary goal of the Treaty parties is to ensure an atmosphere of peace in the region, they must be prepared to address all questions which may even remotely threaten that peace. The treaty works well, but this is no guarantee against the proclivity of governments to put national interest above the common good. This is normal; nations are like people -- they do not always deport themselves with the rationality inherent in most legal discourse. Argentina, Chile and the United Kingdom are three of many states who have allowed abstract notions of pride and emotion get in the way of reason. In short, they think with their heart; and in affairs of the heart, rationality be damned.

In short the issues identified in the course of this essay involve complex legal questions, divergent notions of equity, nationalism and geopolitical considerations. While it is analytically convenient to separate the external and internal “challenges” to the Antarctic regime, each, in fact, interacts with the other, potentially complicating the resolution of either one.

What is to be done? First, consultative meetings should not be conducted in secret and information concerning the proceedings of these meetings should be widely disseminated. This would serve to alleviate the suspicions of those states, especially of the Third World, which do not participate in the governing of Antarctica. In addition, the governing process should be reconstituted along the lines of the United Nations Security Council. Membership in such a governing body would be restricted to no more than twenty states. The five states with the longest and most sustained interest in the region -- the United States, the Soviet Union, the United Kingdom, Chile and Argentina -- would be granted permanent membership (although without any veto power), while the remaining seats would be occupied on a rotational basis amongst the other Consultative parties. Finally, the standards for attaining Consultative status should be lowered; the necessity of establishing a permanent research station on the continent is too restrictive and potentially diverts scarce development funds from Third World countries.

However, any solution along these lines presupposes that the issue of conflicting territorial claims to the Antarctic will not be reignited when the Treaty comes up for review in 1991. This seems like a not unreasonable assumption to make. The Antarctic regime has promoted the interests of all signatory states by guaranteeing unlimited access to the continent for peaceful purposes. Moreover, as long as the United States and the Soviet Union -- two states which have not staked any claims
—continue to act with restraint, it seems likely that the territorial claims to Antarctica can at least be kept in abeyance. The greatest threat to the Antarctic regime is posed by conflict outside the continent. To date the signatory states have managed to isolate the region from international discord; the regime has survived the most tense moments of the Cold War as well as the eruption of fighting between Argentina and Britain over the Falklands/Malvinas. Nonetheless, the intrusion of outside conflict remains an unpredictable variable and one which will remain a constant danger to the Antarctic Treaty.

Thus, this is a critical juncture in the history of the Antarctic regime. Any solution to the challenges which confront it will necessarily be time-consuming and will involve difficult compromises. Upon the outcome of this process depends the future of Antarctica. One can only hope that this process will approximate the perfection of the constitution and government of Rome, and not the decline and fall of the Empire.

*As of October 4, 1984, the Beagle Channel Dispute between Chile and Argentina is reported as being settled. (New York Times 10/5/84, p. A-5). What effects this may have on the claims of either states cannot be measured since the agreement has not been ratified.

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The Design

"...never in this world will a man live well in his body save dying—and not know himself dying; yet that is the design..."

William Carlos Williams

Paterson, Book I

1.

My father tried a garden.

In a plot, ten by three,

with vines trapped and overlapping,

he grew tomatoes, squash, cucumbers, horseradish, and beans.

What amazed him though, for he swore he did not plant it, was the pumpkin, small as a fist, clinging to the chain link fence.

2.

He thought it good to save things, so he did. The cellar was cluttered with boxes and bureaus and uneven shelves, all filled with things he seemed to think he'd need some day: old calendars, hot water bottles, sinkers, pickle jars, and pictures of the Saints.

When he spoke, it was usually about money, or baseball, or pills.

The pills he took made him worse, but he didn't know what else to do.

He wondered, rarely spoke, about the pain.

Pain was the Yankees, the bums, and he watched them, without expression, each time he had the chance.

Chance was what he half-expected would bring him money, but it never did.

Only bills came.

3.

The last words he spoke as he lay on the floor, his brain filling with blood, were a tired, garbled plea:

Take my hand.

Then the ambulance men lifted him as if they had rehearsed it.

- Chuck Ozug

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