CHAPTER - 3

THE ANTARCTIC TREATY SYSTEM: AN APPRAISAL

Antarctica is widely acknowledged as a continent of Peace and cooperation. This has been possible because of a remarkable legal instrument that brought a multi-state management regime to the Antarctic Region, known as the Antarctic Treaty. The Treaty has brought forty-two countries with diverse political and economic systems on the same platform. The countries have continued to cooperate, despite their economic and political differences, in maintaining peace in the continent.

EVOLUTION OF THE ANTARCTIC TREATY

After the end of the Second World War, Antarctica could have become a possible source of conflict. Some of the factors that could have been responsible for this conflict are discussed below:

1. Territorial claims

"From 1908 to 1943, the United Kingdom, New Zealand, France, Australia, Norway, Chile and Argentina, in that order, laid claim to 85 per cent of Antarctica".¹ These claims were based on a combination of various legal supports including discovery, exploration,

Figure 12

Territorial claims in Antarctica

Source: Triggs (1986) p. xi
effective occupation, principles of continuity, sector theory etc. (figure-12). The claims of all these states, except Norway, resemble pie-shaped slices. They generally follow the longitudinal coordinates from the South Pole up to near 60°S latitude where they terminate. A brief survey of the claimant states and their nature of claims is as follows:

\[ \text{i) Argentina} \]

Argentina defines 25°W to 74°W and south of 60°S as Antartida Argentina. This includes the Antarctic continent as well as such islands like South Orkneys. The total extent of the claimed territory is 550,000 square miles. The Argentine sovereignty over the territory is based on deep-rooted historical rights; its geographical local; the geological continuity of its land with the Antarctic territories; the climatological influences which the continent has over the territories of Argentina; and on the basis of rights of first occupation.

\[ \text{ii) Australia} \]

Australian Antarctic Territory is claimed as 45°E - 160°E South of 60°S, excluding Adelie Land at 136°E - 142°E. The total area of the claimed territory is 2.4 million square miles. The Australian claim to sovereignty over the Antarctic territory is based on discovery and exploration by British and Australian navigators, and subsequent continuous occupation, administration and control.
III) Chile

Territorio Chileno Antártico defined as $53^0W - 90^0W$ to the South pole. The northern boundary has not been announced. The total extent of the territory is 500,000 square miles. The basis of claim is

a) geographical proximity,

b) geological continuity,

c) climatic impact, and

d) sector theory.

IV) France

France claims Adelie land defined as $136^0E - 142^0E$ south of $60^0S$. The total area covered by it is 150,000 square miles. The basis of sovereignty over the island is historical as well as permanent occupation. Adelie land was discovered in 1840 by French Navigator Dumont d'Urville.

V) New Zealand

The New Zealand's Ross Dependency is defined as $160^0E - 150^0W$ South of $60^0S$ latitude covering an area of 175,000 square miles. New Zealand's claim is based on the:

a) territorial rights in the Ross Sea area,

b) exploration, and

c) acts of occupation.
VI) Norway

The Norwegian territorial claims is between $20^\circ$ W and $25^\circ$W. This region is known as Queen Maud Land. However, neither the northern nor the southern limit was defined. Norway's basis of claim is the geographical exploration and work done by them in this region.

VII) United Kingdom

The British Antarctic Territory is defined as $20^\circ$ W- $80^\circ$W south of $60^\circ$S latitude. It includes the mainland sector centred on Graham Land plus the South Orkneys and South Shetlands Islands. The total extent of this territory is 700,000 square miles. The basis of claim in this territory is the acts of discovery and exploration and subsequent occupation.

In this way, the seven states have advanced formal territorial claims to Antarctica along with the adjacent islands. However, "no claimant state to date has formerly declared permanent zones of maritime jurisdiction as such, offshore their respective Antarctic claims". These continental claims are notable for their distance from the mother countries and inability to demonstrate convincingly through permanent settlement accomplishment of effective occupation on a credible basis. The sovereign authority of these claimant states

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may be regarded internationally as shaky in legal substance and symbolic in political foundation.

Occasionally, positive assertions of national sovereignty have been marked by efforts to deny the title of others. It can be seen in the overlapping nature of Argentinean, British and Chilean claims. Within the Antarctic sector, "lying between 20°W and 90°W, there arose an overlap of Anglo - Argentine claims for 40° (25°W-74°W), of Anglo - Chilean claims for 27° (53°W - 80°W) and of Argentine - Chilean claims for 21° (25°W - 74°N)". This also includes the three island groups of this region - the South Orkneys, the South Shetlands and the South Sandwich groups. "Thus, only 5° of the British territory and 10° of the Chilean territory remain undisputed and the whole of Argentine territory is in dispute."

The South Shetlands, South Orkneys and South Sandwich islands are all devoid of historically indigenous populations. They hence would be considered as "long distance territorial possessions." Argentina and Chile claim these islands on the basis of geographical proximity whereas the claims of Great Britain is on the basis of historical and political ties to these islands.

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4 Ibid. p. 123
Another dimension of the territorial claims is that there were other states that had played a very important role in the discovery of the continent but did not claim any territorial right. But they also did not recognise the legality of the claims of the seven above-mentioned states. Two important states who did not claim any territorial rights were the United States of America (USA) and the erstwhile Union of
Soviet Socialist Republic (USSR)\(^5\). In "the case of the United States, whose claim could have been based on the exploration of Palmer in 1818, of Wilkes in 1840 and remarkable series of expeditions after 1929. Then, the USSR could have taken advantage of the first circumnavigation of Antarctica by Admiral Bellingshausen between 1819 and 1821."\(^6\) Other states like Japan and Germany had also planned to assert a claim in 1939. However, they were "compelled by their defeat at the end of the second World War, to relinquish any de facto or de jure claim (San Francisco Treaty of 8 September 1951).\(^7\)

2. The Unclaimed Antarctica

Another reason for dispute in this region was that a sector of Antarctica was not claimed by any nation. "About one fifth of the Antarctic continent at present is not claimed by any state as sovereign territory".\(^8\) This area lies between 90\(^0\) West and 150\(^0\) West latitude. This unclaimed sector of Antarctic represents a political anomaly that is unique in modern times. In fact, it is the largest piece of territory on earth with is unclaimed. While this sector has been primarily explored, and there has been the site of at least two scientific stations, no state has formally put forward a claim to sovereignty. Thus, it can be


\(^7\) Ibid. p. 18

\(^8\) Joyner, n.2, p. 89
concluded that no coastal sovereignty exists presently in the unclaimed sector. In this way, this region falls under the condition of *terra nullius*, that is, land which is owned by no one and perforce is available to claim by anyone.

3. The cold War

One of the developments of the post second World War was the cold war. The world was divided into two power groups under the leadership of the then existing super powers. "There was a fear of the extension of the cold war to the Antarctic area which needed to be dispelled". The development of blue-water navy and long range weapons of mass destruction after the second World War had also increased the chances of conflict in this region. Geostrategically, there was a possibility of Antarctica being used as a nodal point for global military operations at the time of protracted East-West conflict during the cold war period. Further, there was "a concern that Antarctica would be used as a launch site for atomic weapons which would threaten the entire southern Hemisphere."10

In addition to it, the attainment of independence by most of the southern African countries have also led to the chances of renewed claims and counter claims in the region.

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Thus the reason for disputes have existed. But it was only the difficulties of access to Antarctica and the moderation of the governments involved which prevented an escalation of the situation. Initiatives to call for a conference of 'interested' states can be traced from 1947. First, it was Argentina and then the United States in 1948 who called for such conferences. However, the only outcome was the reaction of the states that had not been approached because they did not have a claim to sovereignty. "Thus, Belgium in 1948 and 1949 and the USSR in 1950 notified the governments that had been sounded out regarding participation in the unrealised conference that they did not make claims to sovereignty over parts of Antarctica but that they did affirm their right to participate in any international forum that concerned the political question of the continent."\(^{11}\)

Some countries also made a demand to include the issue of Antarctica under the preview of the United Nations. India was one of the first countries to make such demand. "In 1956 and 1958 Arthur S. Lall, Indian permanent representative to the UN proposed including the question of Antarctica on the professional agenda of the UN General Assembly to secure the agreement of all nations that the area be used for the welfare of the whole world".\(^{12}\) However, India later withdrew this proposal.\(^{13}\) Interestingly, the initiative which led to decisive action for cooperation in the region was taken in the scientific

\(^{11}\) Essen, n. 6 p. 18


\(^{13}\) Essen n. 6, p. 10
circles and not in the political circle. In 1950, the mixed Commission on the Ionosphere recommended the organisation of an international polar year for 1957-58. This suggestion was taken up by the International Council of Scientific Union which developed it into an International Geophysical Year (IGY).

THE INTERNATIONAL GEOPHYSICAL YEAR (IGY) 1957-58

The International Council of Scientific Union outlined the priority areas of the International Geophysical Year (1957-58) as the Arctic, the tropics, outer-space and Antarctica. It was believed that the research in Antarctic would help in understanding the impact of the huge ice mass on the environmental dynamics especially the global weather, ocean circulation as well as the nature of the *Aurora Australis*¹⁴.

"Despite the Antarctic sovereignty disputes and the cold war permeating the globe, the planning and implementation of the IGY were quite uniquely successful efforts at the level of international co-operation."¹⁵ Coordinated research programmes were initiated among the scientists from the 12 countries. These countries included the seven claimant nations which were Argentina, Australia, France New Zealand, Norway, Chile and United Kingdom as well as five non-claimant nations which were United States, USSR, Belgium, Japan and

South Africa. "The results of their works were to be freely shared and integrated into global studies of natural phenomena and processes".\textsuperscript{16} Nearly 50 stations were set up by these countries in the different parts of Antarctica. However, "four salient spots in the centre of the continent received special attention, and scientific stations in each of them were set up. The first was the Geographic South Pole where the geographic meridian converge. The second, the Magnetic Pole, where the magnetic needle points and the magnetic meridian converge. The third was the "Geomagnetic South Pole", where the Magnetic Pole would theoretically be found, if the magnetism of the globe were uniform, and the fourth was the pole of Relative Inaccessibility, the point farthest removed from the entire continental coast, and one of the last blank spaces left on our planet."\textsuperscript{17}

The United States volunteered to set-up a station at the Geographic South Pole. Whereas, USSR agreed to establish two stations, one at the Geomagnetic Pole and the other at the Pole of Inaccessibility.

"The IGY activities made significant contribution to man's scientific knowledge. Valuable new data were collected from extensive meteorological and seismic observations, studies of upper atmospheric physics and magnetic measurements. Cores obtained
from drilling into continental ice-sheet added much to the glaciological knowledge of the Antarctic".  

The achievements of the IGY was a landmark because it not only succeeded "in making major contributions to world science but also in by-passing territorial conflicts in Antarctica."  

The IGY programme effectively by-passed the whole question of claims by proceeding under a "gentleman's agreement" that all activities were to be considered non-political and of no value in making claims and that the scientific information or knowledge gained was to be shared by all nations."  

In this way, the success of the IGY provided a foundation for a comprehensive treaty of cooperation in the Antarctica region. This resulted in the signing of the Antarctica Treaty (by the twelve participating nations) on December 1, 1959.

THE ANTARCTIC TREATY

"The success of IGY and the possibility of future confrontation over Antarctica led to the establishment of an informal group, in June, 1958, to pave the way for a Treaty conference."  

The initiative was taken by the United States. In May 1958, United States President Eisenhower invited the interested states to negotiate a treaty aimed at settling the problems politically, in order to avoid any possibility of international disagreement or serious dispute. These interested

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18 Ibid. p. 87  
19 Kimball, n. 1, p.16  
20 Chaturvedi, n.15 p.89
states included the seven states who claimed sovereignty and the other five states who were either already active in Antarctica or on the point of engaging in scientific research. The latter included the United States, the erstwhile USSR, Belgium, Japan and South Africa.

The major concerns for these interested states were to find a formula for peaceful use of Antarctica, its non-militarization, proper supervision and the continuation of the scientific co-operation that had begun during the International Geographical Year. They also felt the need of the moderation in the exercise of the rights claimed by the various states and the usefulness of carrying out negotiations outside the United Nations among the interested states.

“Last but not the least was the desire of those who participated in IGY to restrict the entry of others to Antarctica as it was obvious that its resources would soon attract others who, when unable to make territorial claims, would resort to bring it to the UN forum for justice. They pre-empted such efforts and more or less insulated themselves so as to keep the club exclusive.”

The invitation contained the assurance that the states would not have to give up either their fundamental historical rights or their claims to sovereignty. It also clarified that no basis of a right could be acquired nor any claim made while the Treaty was in force. Further, it was understood that an eventual Treaty would only be concluded

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21 Rosh, n.10, p. 127
22 Puri, n.9, p. 67
through the unanimous agreement of the states taking part in negotiations. In this way, all the participating nations would thus have a kind of veto right.

"The essence of the Treaty lies in its preamble which embodies two major objectives: (a) peaceful use of Antarctica and (b) Scientific cooperation. All the other provisions stem from these two cardinal principles which operationalise the Treaty."23

The Article I of the Treaty makes it explicit that Antarctic should be set aside for peaceful purpose only. It forbids "any measure of military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as testing of any type of weapon."24 This article was not subjected to any debate over its principle. However, Argentina did propose an amendment prohibiting nuclear explosions for peaceful purpose which was not mentioned in this article. It was included separately in Article V.

The Article II is concerned with the freedom of scientific research. It seeks continuation of the same kind of international cooperation as was experienced during the IGY.25 This article was approved by all the consultative Parties except Argentina. It demanded replacing "cooperation" (which means participation in a common

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23 Chaturvedi, n.l5, p. 93
24 Article I of the Antarctic Treaty, See Appendix I
25 Article II of the Antarctic Treaty, See Appendix I
effort) with "collaboration" (which indicates autonomous work in the company of others).26

Article III aims at further strengthening of the principle of international scientific cooperation as provided in the Article II. The member countries agreed to exchange information regarding plans for scientific programmes in Antarctica as well as the scientific observations and results from Antarctica. It also concerns with the exchange of scientific personnel between expeditions and stations to the greatest extent feasible and practicable.27

One of the most significant provisions of the Antarctic Treaty is contained in the Article IV. This article tries to address the territorial dispute in the Antarctic region. A compromise was arrived at to stabilise the position of the Parties concerning the legal status of Antarctica for the duration of the Treaty.

The article provides that no acts undertaken during the duration of the Treaty should constitute a basis for asserting, supporting or denying a claim to territorial sovereignty of the continent. Neither new claims nor the enlargement of an existing claim may be asserted while the Treaty remains in effect. Also, nothing contained in the Treaty should be interpreted as a renunciation or denunciation or diminution by any Party of previously asserted rights, claims or basis of claim to territory in Antarctica.28 So, the claimant states can retain their claims

26 Essen, n.6, p. 21
27 Article III of the Antarctic Treaty, See Appendix I
28 Article IV of the Antarctic Treaty, See Appendix I
and non claimant states can continue to dispute their legitimacy. In this way, the Antarctic Treaty shelves the sovereignty problems and diminishes the possibility of disputes arising between Parties. Article IV also played a crucial role in the development of other international agreements on Antarctic management. By including references to Article IV, and by using formulations which leave room for different interpretations, the positions of the Contracting Parties to the Treaty on the issue of sovereignty were respected. Therefore, Article IV may be considered as the backbone of the Antarctic Treaty and the other legal instruments that form part of the ATS.  

Article V of the Treaty can be seen as the continuation of the Article I of the Treaty. It prohibits nuclear explosions in the continent, even for peaceful purpose. It was under the insistence of Argentina and Australia that a separate article was incorporated explicitly to ban such explosion.

In the event of the conclusion of international agreement concerning the use of nuclear waste disposal, in which all consultative Parties are signatory, then, the rules established under such agreement shall apply in Antarctica.  

Article VI defines the area of application of the Treaty. It includes south of 60° South latitude including all ice selves. However, the article excludes the high seas. It permits the international community

30 Article V(2) of the Antarctica Treaty, See Appendix I
to enjoy the freedom of high seas in this area according to international law."31 "It was also understood without specific mention in that text, that the area was to include the air space, with the exception of the air space over the high seas."32

One of the drawbacks of this article is that it does not define the high seas in the region which becomes important considering the fact that, unlike any other region of the world, this region does not have a recognized territorial sovereignty.

The Treaty provides a formula of inspection in Article VII. This article aims to verify compliance with Article 1, of the Treaty. According to the article, each contracting party shall have the right to designate observers to carry out inspections. These observers should be the nationals of the Contracting Parties which designate them. The information about the appointment of the observers and the termination of their appointment should be communicated to every other Contracting Party. The observers are given complete freedom of access at any time to any or all areas of Antarctica, which includes all stations, installations and equipments, within those areas, and all ships and aircrafts at points of discharging or embarking cargoes or personnel in Antarctica. The article also permits aerial observation by the Contracting Party. Each Contracting Party is also obliged to inform in advance about the expeditions in Antarctica, stations in Antarctica

31 Article VI of the Antarctica Treaty, See Appendix I
32 Essen, n.6, p. 22
occupied by its nationals and any military personnel or equipment intended to be introduced by it into Antarctica. This provision was the first in which the USA and the then existing USSR agreed on an inspection system to assure against unauthorised military activity.34

Related to the issue of inspection was the question of jurisdiction and immunity of the observers. This was addressed in the Article VIII of the Treaty. According to the article, the observers contemplated in the Article VII and the scientific personnel involved in exchanges under sub-paragraph 1(b) of Article III of the Treaty, would have to answer only before the jurisdiction of the states of which they were nationals. All other disputes relating to the exercise of jurisdiction would be submitted to consultation between the interested Parties with a view to reaching a mutually acceptable solution.35 However, this article "intentionally does not speak of immunity, in order to avoid that use of this word (as it would) be considered as recognition of sovereignty".36

A vital decision-making formula is embodied in Article IX. It says that the measures recommended by meetings would become effective when approved by all the Contracting Parties, entitled to participate in the meetings. The adoption of the principle of unanimity grants a veto to every party except those acceding to the Treaty

33 Antarctica VII of the Antarctica Treaty, See Appendix I
34 Puri, n.9, p. 71
35 Article VII of the Antarctic Treaty See Appendix I
36 Essen, n.6, p. 23
without becoming "active" on Antarctica. Besides the twelve original signatories, a state which has become a party to the Treaty by accession would be entitled to participate in the meetings during such time as "it demonstrates its interests in Antarctica by conducting substantial scientific research activity, there, such as the establishment of a scientific station or the dispatch of a scientific expedition". A number of consultative meetings have been held since 1961 when the Treaty came into force and proposals have been accepted relating to such matters as flora and fauna, historic monuments, safeguarding the environment and exchange of information.

"Article IX of the Antarctic Treaty established by implication, three categories of Treaty Parties. First, the original signatories to the Treaty who will always be members of the consultative meetings regardless of their activities in Antarctica. Second, those acceding to the Treaty and demonstrating their interest in the region by conducting substantial research in the areas will participate in the meetings during such times as they are active in the region." Third category of states are those who have acceded to the Treaty but have not carried out substantial research in the region. They cannot demand representation in the Consultative Meetings though they may attend them as observers. However, even in the first two categories, there is

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37 Article IX of the Antarctic Treaty, See Appendix I
38 Puri, n.9, p. 74
difference in the right to participate in the Consultative Meetings. The original twelve members continue to be the Party of the Treaty, even though they cease to take active interest in the region. This is not so for the Parties in the second category which includes India. Further, the Treaty, does not define what constituted substantial scientific research. Some experts believe that all-year station can be taken as 'substantial' while others believe that a summer station with active involvement in research activities would be sufficient.39

Article X contains an undertaking to make appropriate efforts, consistent with the charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles and purposes of the Treaty.40

The Treaty provides for disputes settlement in Article XI. If a dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the Treaty, the Contracting Parties are required to solve it by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice. Failing this, and in each case, with the consent of all Parties to the dispute, the issue can be referred for settlement to the International Court of Justice. If there is a failure to reach agreement on reference to the court, the Parties are enjoined to continue 'to seek to resolve' the compulsory jurisdiction of the

40 Article X of the Antarctic Treaty, Sec. Appendix 1
International Court of Justice. However, this provision has been criticised as weak, permissive, and add little if anything, to the present opportunities and obligations of the nations involved.

The Treaty is of indefinite duration but it is provided in the Treaty that it might be amended at any time by the unanimous agreement of the Parties qualified to participate in the Consultative Meetings. According to the Article XII of the Treaty an amendment or modification enters into force when all such Parties give notice that they have ratified it. Parties not entitled to participate in the meetings are required to accept the amendment within a period of two years failing which they would be deemed to have withdrawn from the Treaty. The discrimination was made because it was felt that an acceding state, not enjoying the consultative status for not showing sufficient interest in Antarctica should not have the right to veto an amendment.

There is a provision for calling a review conference for which a request may be made by any consultative party thirty years after the entry into force of the Treaty. Though the request for review conference can come only from a Consultative Party, the right to participate in such conference belongs to all acceding states - with or without Consultative status. Amendments approved at the review conference by a majority of those represented, including a majority of

41 Article XI of the Antarctic Treaty, See Appendix I
42 Article XII (1a) of the Antarctic Treaty, See Appendix I
43 Article XII (2a) of the Antarctic Treaty, See Appendix I
Consultative Parties would enter into force when ratified by all Consultative Parties. If the amendment approved at the review conference does not enter into force within two years, any party may after the exportation of these two years period, give notice of withdrawal from the Treaty, such withdrawal being effective two years after the receipt of such notice.\textsuperscript{44}

"The Antarctic Treaty was due for a review after 23 June 1991. None of the consultative Parties has requested for a review conference so far and probably will not. When none of them does so, it is presumed that the status quo regime continues."\textsuperscript{45} Articles XIII and Article XIV of the Treaty deal with ratification and other related issues.

The Antarctic Treaty can be considered as a landmark since it has been largely successful in peaceful accommodation of differences. The Treaty by no means settled all the problems relating to Antarctica, nor did it attempt to do so. But, it represented a significant advance in bringing international order to an area where none existed. It preserved the spirit of cooperation that marked the IGY, by introducing at least a small breakthrough in disarmament relationship and in offering some prospects of useful experience in the detailed processes of international inspection. By pledging a vast continent to peaceful purposes, the Treaty certainly made a real contribution to the world peace. The principle of the freedom of research has been boosted. The

\textsuperscript{44} \textsuperscript{44} Article XII (2c) of the Antarctic Treaty, See Appendix I
\textsuperscript{45} Puri. n.9. p. 78
international inspection system was unique of its own time. The mechanism for periodic consultation among the signatories including the super power was no mean achievement of the time. The importance of the Antarctic Treaty can be judged by the fact that it was considered a direct precursor of the Space Treaty, 1967. It also inspired the Nuclear Test Ban Treaty of 1963.

Based on the Article IX of the Antarctic Treaty a number of measures have been adopted from time to time in furtherance of the principles and objectives of the Treaty. Some of the important measures adopted are discussed below.

THE AGREED MEASURES

The Agreed Measures preamble stressed the need to protect, study and promote the rational use of the flora and fauna by considering the Treaty area as 'a Special Conservation Area'. The measures were provided in fourteen articles. The first article defined the 'special Conservation Area' as the same area to which the Antarctic Treaty is applicable, which was the area south of 60° South latitude including all ice-shelves. The second paragraph preserves the high seas rights within the Treaty area.46

The instrument was designed to protect native birds, mammals and plant life on the continent. It aimed to provide safeguard against the introduction of non-indigenous species, prevent water pollution

46 Articles 1-2 of the Agreed Measures
near the coast and ice shelves and preserves the unique character of
the natural ecological system. Though the Agreed Measures were
adopted in 1964 but could only become effective when enacted in
national legislation by the Parties. However, this ratification process
among the Parties was very slow. By 1972 only eight Parties had
accepted the relevant recommendations. The Agreed Measures did not
take general effect until 1983, when they became a binding obligation.

"The Agreed measures were a step forward within the Antarctic
Treaty System, albeit in a narrow sense, since there was no attempt to
deal with the problem through an international agreement open to all
states. However, Article X of the Agreed Measures referred to outsiders
and to the need for everyone active in Antarctica to abide by the
measures."47

THE SEALING CONVENTION

The convention on the conservation of Antarctic Seals was the
next development. The agreement was finalised at a special conference
held in London in 1972. However, the convention came into effect only
in March 1978. The Sealing Convention establishes a series of
safeguards, including a permissible catch, restrictions on killing and
capture, the designation of protected species, and determination of
closed season and seal reserves.48 These provisions were to be
reinforced by the development and exchange of information, with

47 Puri. n.9. p. 83
the help of Scientific Committee on Antarctic Research (SCAR), on matters regarding stocks and ecological system. Article 1 makes it clear that the Convention, 'applies to the seas south of 60° South Latitude'. It seems that the objective is to restrict sealing rights on the high seas, which presumably includes seals on or under pack ice floating on the high seas. "But it does not allocate national catches and the enforcement is left to flag (sealing) states. There is no regular meeting of the Parties but a review of operations is held after every five years."\(^{49}\) Since no commercial sealing operations is taking place at present, this convention performs a preventive rather than regulatory role.\(^{50}\)

THE LIVING MARINE RESOURCE CONVENTION

The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) was the third step in this field. CCAMLR was concluded in 1980 against a background of unregulated fishing in 1970s, which led to depletion of stock and mass protests by the environment conservationist. It entered into force in 1982. This convention was applicable "not only to the region south of 60°S but also extended northwards to the Antarctic Convergence."\(^{51}\) It aims to preserve all marine resources including fish, crustaceans (like Krill),

\(^{48}\) Article 3-5 of the Sealing Convention
\(^{49}\) Puri, n. 9, p. 84
\(^{50}\) Beck, n. 3, p. 221
creatures on the continental shelf (such as molluscs) and birds. CCAMLR is based on ecosystem conservation approach. It reflects the need to maintain the ecological balance between harvested species and dependent predators. The key to this balance is Krill that performs a crucial role in Antarctic food chain.

One of the most controversial issue in the CCAMLR was regarding the demarcation of boundary for the convention. The United States, favouring a strict conservation regime based on an ecosystem standard, advocated a biological definition capable of adjustment in the light of new scientific evidence. Other delegations "preferred fixed coordinates while the major fishing states like Japan and erstwhile USSR opposed the ecosystem standard proposed by United States." 52 In addition, Argentina's anxiety to protect its interest in the Drake Passage fostered attempts to push the boundary away from national territory. The most serious problem arose from French Government's determination to exclude its possessions in the Kerguelen and Crozet islands, which are located north of 60° south latitude but within the Antarctic Convergence. The final negotiating text of CCAMLR incorporated a formula based upon coordinates approach and a northward extension above 60° south capable of accommodating diverse national interest. According to the Article 1 of the Convention, it is applicable to the Antarctic living marine resources of areas south of


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Figure 14
Antarctic Convergence Zone

Source Prescott (1985, p.31)
60° South latitude and the Antarctic Convergence that formed a part of the Antarctic marine ecosystem. The Antarctic Convergence zone was defined by a line joining the following points along parallels of latitude and meridians of longitude: 50°S,0°; 50S,30°E; 45°S,30°E; 45°S,80°E; 55°S,80°E; 55°S,150°E; 60°S,150°E; 60°S,50°W; 50°S,50°W; 50°S,0°.53 (Figure-14)

Thus, the northward extension means that CCAMLR's area of coverage goes beyond the area under Antarctic Treaty in order to create an effective ecosystem based conservation regime without prejudice to coastal state jurisdiction in the region. However, "soon it was realised that the conservation principles of CCAMLR would not suffice, a comprehensive convention was needed for protecting the Antarctic environment."54

MINERALS REGIME

To minimise adverse environmental impacts from the possible future mineral activities in the Antarctic region, in 1988 the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA) was signed. The CRAMRA comprised of four principal organs. They were:-

i. The special meeting of all states parties: It would be a forum in which all the Parties to the regime could

53 Article 1of the Convention on the Conservation of Antarctic Marine Living Resources, See Appendix 1
54 Puri,n.9,p.85
participate. It would be the chief decision making organ in which non-Consultative Party members would also have some voice.

ii. The Antarctic mineral resources commission: It was to be the executive agency for deciding whether or not to open an area in the Antarctic for mineral development.

iii. Regulatory committees: Each area would have a regulatory committee, responsible for overseeing any exploration and exploitation activities.

iv. Scientific technical environment advisory committee: It was supposed to draft assessments and make recommendations to the commission on environmental consequences of development activities.

Despite the institutional framework proposed under CRAMRA, there was disagreement among the Consultative parties on the issue of mining in the Antarctic itself. A year later France and Australia blocked the entry into force of this Convention. Both states expressed the view that Antarctica should not be open for commercial mining. As a follow-up to this development, in 1990 the Consultative Parties began negotiations to establish a binding environmental protection regime for Antarctic.
INDIA AND THE ANTARCTIC TREATY

In order to realise India’s scientific, political and economic objectives in the Antarctic region, India had two policy options. "One was to challenge the existing Antarctic Treaty and the system derived therefrom, and work for its replacement by some other form of regime. The alternative was to join the Treaty, enter the consultative group and play the game according to the rules of the Treaty, as an 'insider'."55

The first option was impractical and could have led to conflict and discord. India considered it "unrealistic and counter productive to think of a new regime in the present situation. Any attempt to undermine the Antarctic Treaty system could lead to international discord and instability as well as the revival of conflicting territorial and other claims. If countries were to act outside a recognised legal framework, co-operative relations in the area might breakdown, seriously jeopardising the demilitarised status of the continent, hampering scientific investigation and adversely affecting the rational management of the resources of the region."56 Moreover, India’s scientific and economic interests could be achieved only when Antarctica remains peaceful, and open to all.

Considering all these factors, India opted for the second option and acceded to Antarctic Treaty in August 1983, after the third expedition had returned to India in March that year. This was a

55 Chaturvedi, n.15,p.167
remarkable diplomatic achievement as it came India’s way in just three years, from only three expeditions: 1980 - 1983. The achievement was made possible by India’s scientists who could prove that they have carried out “substantial scientific activity”, a primary requirement for membership in the Antarctic Treaty System.\(^{57}\)

India’s decision to join the Antarctic Treaty System proved to be a step in the right direction. Antarctic Treaty can be credited for sustaining peaceful international cooperation in the region.

ANTARCTIC TREATY SYSTEM: AN EVALUATION

The Antarctic Treaty has a number of strengths, which make it one of the successful Treaties of the world. According to Keith Suter the Treaty has eight main strengths.\(^{58}\) First, it was drafted at a very difficult time in international relations because of the cold war.

Second, the Treaty is the first international agreement, which being a treaty establishing a demilitarised zone, contained by implication provisions to ensure that no nuclear weapons should be introduced into that area.

Third, most of the Antarctic is claimed by seven countries, which are Australia, Norway, Argentina, Chile, the UK, New Zealand and France. About one fifth of the total area of the continent is still

\(^{56}\) “India”, in Secretary General’s Report: Views of States, vol.2, P.87

\(^{57}\) The Antarctic Treaty, Article IX (1)

\(^{58}\) Keith Suter, Antarctica: Private Property or Public Heritage? (Leichhardt:1991), pp.20-22
unclaimed. Further, the claims are disputed. Other nations emphasise that they recognise no claims at all. The Treaty has sidestepped this problem by Article IV's statement on freezing the claims issue.

Fourth, the Treaty has also avoided embarrassing political divisions over the claims since all the claimant states have agreed to disagree over this issue. Further, under the Treaty the claimant states can retain their claims and non-claimant states can continue to dispute their legitimacy. In this way, the Treaty shelves the sovereignty problems and diminishes the possibility of disputes arising between different countries.

Fifth, the Treaty is unusual in that it has created some international machinery. "Many nations are willing to accept international obligations (via treaties), yet want to reserve for themselves the obligation of ensuring that they keep their obligations. This concern is derived from a reluctance by all nations to have any international interference in their domestic affairs. This Treaty, by its consultative arrangements and mutual obligations, has created a limited international system of enforcement."59

Sixth, the Treaty has succeeded in fulfilling its original aims. It has been successful in accommodating countries with different and even hostile stand. Inclusion of South Africa, which had been subject to widespread criticism because of its racial policies and many communist

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59 ibid, p.22
countries like erstwhile Soviet Union, Poland and erstwhile East Germany during the period of cold war, is its example.

Seventh, the Treaty has provided a firm foundation for flexible growth. The twelve original signatories have been joined by 32 other nations. The 45 nations constitute more than 80 per cent of the world’s population. They represent a variety of the world’s political and economic systems. The consensus in the decision-making system has worked without much hindrance. It aimed for and achieved the highest common area of agreement on matters requiring urgent decisions, while not excluding subsequent developments to fill in the gaps.

Finally, the Treaty is a showpiece of international law in operation. This Treaty is self-enforcing. It is in each nation’s interest not to violate it, because the gains in respecting the Treaty’s provisions far outweigh the gains that might result from each nation attempting to militarise its own zone.

However, the Antarctic Treaty System is not without its share of criticisms. The most serious criticism of the system is its apparent inability to effectively enforce international adherence to its provisions, a shortcoming that is especially evident in the area of environmental safeguards. The problem lies mainly in three areas:

1. The lack of timely approval of Treaty recommendations by the Contracting Parties;

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60 Final Report of the XXIVth ATCM (2001)
61 Suter, n.58 p.22
(2) inconsistent compliance with recommendations that are approved; and
(3) lack of enforcement mechanism, especially against countries that are not signatory Parties.

Similarly, the Antarctic Treaty System does not provide for a centralised review mechanism or regulatory authority to monitor environmentally harmful activities. The 1983 French airstrip construction controversy at Point Geologic illustrates the problem. In undertaking this project, the French government not only disregarded the detrimental impact it would have on the Antarctic environment but also blatantly ignored its own domestic environmental policy.

The Antarctic Treaty System is criticised as an un-representative "rich man's club". However this criticism does not stand considering the fact that many developing countries are Parties to the Treaty and some of them are even Consultative Members. On the whole, the Treaty Parties represent between 70% and 80% of the world's population, and can hardly be called unrepresentative. Further, the Treaty has the objective of regulating human activity without ever prohibiting any or really limiting them. Thus, this fragile continent still remains vulnerable.

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62 Purī, n. 9, p. 92