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The Antarctica Mineral Resources Convention: Developments from the October 1986 Tokyo Meeting of the Antarctic Treaty Consultative Parties

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DEVELOPMENT

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INTRODUCTION

Antarctica, geographically isolated at the southern pole, is a continent cloaked in uniqueness, both physically and legally. Due to the continuing depletion of world mineral resources, interest in Antarctica as a potential resource production area has increased. Currently, the thirty-two Antarctica Treaty members are developing a legal order to control future resource exploration in this region. Antarctica Treaty members are intent on keeping the new regime within the existing Antarctica Treaty system. Thus far, drafts for the regime have been introduced as the "Chairman's Informal Personal Reports" in order to assist parties in establishing the final convention.

This development will outline the proposed legal regime for Antarctica and briefly discuss this region's resource potential. The main part of this article will analyze the relevant language of the latest draft proposal in order to understand how the proposed convention will operate. Finally, important issues that should be considered in subsequent drafts will be identified. It is important to understand the mechanics of the Convention since it will be the future governing body authorizing and monitoring all resource activities in Antarctica.

I. ANTARCTIC RESOURCES

Geological investigations comprise much of the scientific work done in Antarctica. These studies have thus far been conducted under the guise of "pure" scientific investigation with no proprietary rights to the gathered information by private resource companies. Geologists have indicated that Antarctica may contain substantial offshore petroleum resources and onshore mineral deposits.[1]

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1. Geophysical surveys in West Antarctica suggest the presence of several kilometer thick sedimentary units beneath the ice sheets and continental shelves. A Deep Sea Drilling Project drill hole in the Ross Sea in 1973 detected small amounts of methane and ethane. An area of additional interest for offshore oil potential is the Weddell Sea *See generally,*

No deposits have been discovered thus far, but occurrences of base metals, chromium, cobalt, uranium, gold, and platinum have been found throughout much of Antarctica.[2] Several logistical problems are anticipated for mineral ventures in Antarctica: 1) only two percent of the continent is not covered by ice and the portion that is covered may be buried by up to two kilometers of ice; 2) harsh weather conditions persist over the entire continent; 3) icebergs and their scouring effects would severely hinder offshore oil exploration, drilling, and production; and 4) the anticipated high cost of operation and the current state of technology places Antarctic resources, as a viable mineral source, far into the future.

Nevertheless, efforts to develop an Antarctic regime continue in the anticipation that resources will be produced in the near future. The regime will provide an administrative body to oversee the regulation and operation of resource activities.

II. THE ANTARCTIC REGIME

Antarctica[3] is currently under the administration of the Antarctic Treaty Consultative Parties (ATCPs).[4] The treaty evolved from the International Geophysical Year (1959) and essentially established Antarctica as a scientific laboratory. Under the terms of the Treaty, all members of the United Nations may accede to it's provisions.[5] Once a state has acceded to the treaty, it may reach consultative status by conducting substantial scientific research in Antarctica.[6] Consultative parties (ATCPs) are the only states entitled to make policy decisions for Antarctica. There are currently eighteen ATCPs and fourteen non-consultative parties (NCP).[7] Seven countries have also claimed territorial sovereignty over

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Mineral Resources of Antarctica, 705 U.S. GEOLOGICAL SURVEY CIRCULAR (1974); *Petroleum and Mineral Resources of Antarctica*, 909 U.S. GEOLOGICAL SURVEY CIRCULAR (J.Brehendt ed. 1983).

2. Mineral potential of onland areas is based upon geologic plate reconstruction models. The supercontinent of Gondwanaland, composed of South America, Southern Africa, Antarctica, and Australia broke up approximately 180 million years ago. Similar geologic structures in South America, South Africa, and Australia are projected into Antarctica. Included in these structures are rocks containing base metals, precious metals, and diamonds. Coal is also a potential resources. *Petroleum and Mineral Resources of Antarctica*, 909 U.S. GEOLOGICAL SURVEY CIRCULAR 29 (J. Brehendt ed. 1983).

3. *See generally*, F. AUBURN, ANTARCTICA LAW AND POLITICS (1982); P. QUIGG, A POLE APART: THE EMERGING ISSUE OF ANTARCTICA (1983).

4. Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71.

5. *Id.* art. XIII, para. 1.

6. *Id.* art. IX, para. 1-2.

7. Antarctic Treaty Consultative Parties (ATCPs) include:

Claimants	*Non-Claimants*	
Argentina	Belgium	South Africa
Australia	Brazil	USA
Chile	W. Germany	Uruguay
France	India	
New Zealand	Japan	

portions of Antarctica.[8] Article IV of the Treaty holds these claims in abeyance, neither recognizing nor condemning the claims.

The Treaty applies to the lands, waters and ice shelves south of 60 degrees South Latitude[9] and states that such lands shall be used for peaceful purposes only.[10] Military operations are expressly forbidden,[11] as are nuclear explosions and the disposal of nuclear waste.[12] ATCPs are also allowed inspection rights to all of Antarctica.[13] Besides demilitarization and scientific cooperation, a third goal of the ATCPs is to protect the environment and ecosystem of Antarctica.[14] No explicit language expresses this goal, however, subsequent agreements in the Treaty system seek to protect the Antarctic environment.[15] In 1964, the ATCPs unanimously accepted the Agreed Measures for the Conservation of Antarctic Flora and Fauna.[16] Marine life is protected through the Convention on the Conservation of Antarctic Seals[17] and the Convention on the Conservation of Antarctic Marine Living Resources.[18]

There has always been an interest in the mineral potential of Antarctica, but there is no provision in the Treaty for mineral management, exploration or exploitation. The following factors explain the more recent interest in mineral resources:[19] 1) the new interest in the international

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Norway	China	
United Kingdom	Poland	

Antarctic Treaty Non-Consultative Parties (NCPs)

Bulgaria	E. Germany	Italy
Cuba	Hungary	Romania
Netherlands	Spain	Czechoslovakia
Peru	Finland	Sweden
Denmark	Papua	New Guinea

8. *Id.*; These claims are based on such traditional theories as 1) the sector principle, 2) propinquity, 3) *uti possidetis*, and 4) effective occupation. *See generally*, Conforti, *Territorial Claims in Antarctica: A Modern Way to Deal With an Old Problem*, 19 CORNELL INT'L L.J. 249 (1986); Parriott, *Territorial Claims in Antarctica: Will the United States be Left Out in the Cold?*, 22 STAN. J. INT'L L. 67 (1986).

9. *See supra* note 4, art. VI.

10. *Id.*, art. I, para. 1.

11. *Id.*, art. I, para. 1-2.

12. *Id.*, art. V, para. 1.

13. *Id.*, art. VII, para. 3.

14. Barcelo, *The International Legal Regime of Antarctica*, 19 CORNELL INT'L L.J. 155, 157 (1986).

15. Joyner, *Protection of the Environment: Rethinking the Problems and Prospects*, 19 CORNELL INT'L L.J. 259, 265 (1986).

16. Agreed Measures for the Conservation of Antarctic Flora and Fauna, June 2-13, 1964, 17 U.S.T. 996, 998, T.I.A.S.No. 6058, *modified in* 24 U.S.T. 1802, T.I.A.S. No. 7692 (1973).

17.Convention on the Conservation of Antarctic Seals, June 1, 1972, 27 U.S.T. 441, T.I.A.S. No. 8826 (*entered into force* Mar. 11, 1978).

18. Conservation of Antarctic Marine Living Resources, May 20, 1980, 80 Stat. 271, T.I.A.S. No. 10240 (*entered into force* Apr. 7, 1982).

19. Francioni, *Legal Aspects of Mineral Exploitation in Antarctica*, 19 CORNELL INT'L L.J. 163, 164 (1986).

law of common resources, such as the ocean floor[20] and space;[21] 2) the global concern for secure petroleum supplies following the 1973 oil shock; and 3) the perception of Antarctica as a strategic region in the event of global armed conflict. The Prime Minister of Malaysia urged the United Nations to focus its attention on Antarctica as another area belonging to the international community.[22] Issues discussed have included territorial claims of sovereignty, adequacy of the Treaty regime, and a proposed international management of Antarctica.[23] Currently, the central issue before the General Assembly is whether a mineral regime is lawful under international law.[24] The U.N interest in the Antarctica question has spurred the ATCPs to intensify efforts to conclude a mineral regime within the Treaty structure.

III. MINERAL REGIME

Work on a mineral regime for Antarctica began in 1973 with the Nansen Foundation.[25] Since then, numerous meetings between the ATCPs have taken place. In July 1983, the chairman of the meeting in Bonn, Christopher Beeby of New Zealand, introduced an "informal personal proposal" which became known as the "Beeby Draft." In the May 1984 Tokyo Minerals Meeting, a revised version, "Beeby II," was released.[26] The latest version, "Beeby III", was submitted to the October 1986 meeting of Consultative Parties in Tokyo.[27] These drafts are important because they serve as a working paper that guides the "Contact Groups" and discussion groups toward a final statement.

It is the ATCPs desire to remain involved in any future mineral scheme and thus, they argue that any regime should be rooted in the Antarctic Treaty system.[28] Two opposing views regarding the legitimacy of a proposed regime are that it would violate the Treaty because such activities are not "pure" science, or that a regime is compatible with the

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20. United States Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc A/CONF. 62/122, *reprinted in* 21 I.L.M. 1261 (1982).

21. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, *opened for signature* Dec. 10, 1979, U.N. Doc. A/34/664, *reprinted in* 18 I.L.M. 1434 (1979)(*entered into force* July 11, 1984)(hereinafter cited as Moon Treaty); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205.

22. Hayashi, *The Antarctica Question in the United Nations*, 19 CORNELL INT'L L.J. 275 (1986).

23. *Id.* at 279.

24. *Supra* note 19, at 170.

25. *Supra* note 19, at 165.

26. *The Antarctic Mineral Resources Regime: Beeby Draft II, reprinted in* Greenpeace Int'l., *The Future of the Antarctic: Background for a Third U.N. Debate* (Appendix 9) (Nov. 25, 1985).

27. Antarctic Mineral Resources Convention: Beeby III, Sept. 19, 1986 (on file at the offices of the *Denver Journal of International Law and Policy*).

28. *Supra* note 19, at 165.

treaty based on the "peaceful purpose" clause.[29]

In past regime proposals, two issues were of great concern; those dealing with territorial claims and the environment. Territorial claims should neither be condemned nor confirmed in the regime, in accordance with Article IV of the Treaty, nor should the issuance of prospecting rights give a state the foundation for future territorial claims. Additionally, environment safeguards should be established in the spirit of the Treaty.

Two approaches have been suggested in establishing a mineral regime.[30] The ATCPs argue that the regime should be a part of the Antarctic Treaty and any decision-making should remain with the ATCPs. The other view, advocated by less developed countries (LDCs), follows the "common heritage of mankind"[31] doctrine adopted by the Law of the Sea Convention,[32] whereby all activities are guaranteed to be for the benefit of all mankind. The common heritage principle is relatively new, not being expressed in 1959 at the time of the Antarctic Treaty, but later embodied in the Law of the Sea and the Moon Treaty.[33]

Thus far, the members to the Antarctic Treaty have been the principle actors in forming a mineral regime, as witnessed by the Beeby drafts. All versions call for an institutional body to oversee mineral activities. There are two models for an institutional structure retaining jurisdiction: 1) all parties to the regime will be represented, or 2) the "closed shop" approach.[34] Beeby II followed the former model affording Commission status to "each Party to the regime which participated in the meeting at which the regime was adopted."[35] However, the current draft has moved more towards the closed shop model. Beeby III now stipulates that Commission membership is extended to those parties that are ATCPs or become ATCPs.[36]

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29. *Id.* at 166.

30. *See supra* note 19, at 169.

31. For an excellent discussion of the Common Heritage of Mankind doctrine written by Professor Christopher Joyner, *see* Comment, *Legal Implications of the Concept of the Common Heritage of Mankind*, 35 INT'L & COMP. L.Q. 190 (1986).

32. *See supra* note 20.

33. *See supra* note 21. The primary theme is that resources found in *res communis omnium* should be used in such a way as to benefit all mankind. This principle would preclude a state from asserting territorial claims to those areas in which mineral activities are conducted. Additionally, due regard for the environment can be inferred. Another area of contention is the allocation of captured rents from mineral exploitation. The common heritage principle would allocate a portion of the revenues for the benefit of the international community.

34. *Id.* at 182.

35. *See supra* note 26, art. X.

36. *See supra* note 27, art. 19.

IV. THE BEEBY III DRAFT

Beeby III is now regarded as a "convention,"[37] becoming part of the Antarctic Treaty family. Beeby III also recognizes "the special responsibility" of the ATCPs to "ensure that any activities in Antarctica are consistent with the Treaty"[38] The convention should be consistent with Article IV of the Treaty concerning claimed territorial rights. Protection of the environment should be a "basic consideration" in decisions on possible mineral activities, and regulation of resources is to be in "the interests of the international community as a whole." Concerning who may explore for minerals in Antarctica, the preamble states: "[P]articipation in Antarctic mineral resources should be open to all states which have an interest in such activities and subscribe to a regime governing them and that the special situation of developing countries party to the regime should be taken into account."[39]

Mineral resource activities are defined as those associated with prospecting, exploration, or development of mineral resources, exclusive of pure scientific work. Prospecting is the broad reconnaissance scale geological, geochemical, and geophysical investigations. Exploration is the identification, evaluation, and delineation of prospect targets. Development means those activities associated with exploitation of a delineated deposit.[40]

A central theme is that the Convention be an integral part of the Antarctic Treaty system. Its objective is the establishment of means for: 1) assessing environmental impact; 2) determining whether activities are acceptable; 3) governing the conduct of activities; and 4) ensuring strict conformance to the Convention.[41] In addition, the Parties acknowledge the need to: 1) protect the environment; 2) respect scientific and aesthetic values; 3) ensure safe operations; 4) follow "orderly mining practices and act in an economically rational manner;" 5) promote fair opportunities for all parties; and 6) "take into account" the interests of the international community as a whole.[42] Only those activities conducted within the Convention will be allowed in Antarctica.[43]

No decision will be made without assessing the impact to the environment, including harm to 1) the air, water, and atmospheric quality; 2) terrestrial and marine life; and 3) the scientific, historic, or aesthetic significance.[44] No activity will take place unless the technology exists to monitor key environmental parameters and to effectively respond to acci-

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37. *Id.*, preamble.
38. *Id.*
39. *Id.*
40. *Id.*, art. 1.
41. *Id.*, art. 2, para. 1.
42. *Id.*, art. 2, para. 3.
43. *Id.*, art. 3.
44. *Id.*, art. 4, para. 2.

dents. Environmental judgments are to consider the cumulative effects of mineral activity, alone or in combination with other legitimate activities.[45]

The Convention applies to resource activities on the continent and areas south of sixty degrees south latitude including ice shelves, continental shelves, or other offshore areas not inclusive of the deep sea bed.[46]

Mineral activities may be conducted by a Party to the Convention, agency of a Party, natural person, juridical person, or joint venture of the foregoing.[47] Each operator will have a link with a Party, either through nationality or the location of the central management and control in the territory of a Party.[48]

The Convention calls for international participation by ATCPs and other LDC Parties. Anyone can participate as long as they are a party to the Convention. The Commission is responsible for detecting any activities being conducted by non-parties. Article IV of the Treaty is not affected. Therefore, mineral activities will not constitute a basis for asserting, supporting, or denying a claim of territorial sovereignty.[49] Activities will be consistent with the Agreed Measures for the Conservation of Antarctic Fauna and Flora,[50] Convention on the Conservation of Antarctic Marine Living Resources,[51] and the Convention For the Conservation of Antarctic Seals.[52] Stations, installations, and equipment relating to mineral activities will also be subject to inspection rights under the Treaty.[53] Mineral activities will be prohibited in Specially Protected Areas or in a Site of Special Scientific Interest.[54]

Internal institutional bodies are established to carry out the provisions of the Convention. Activities of the various institutions will be financed through fees on permits and levies on operators.[55] The central institutional body will be the Antarctic Minerals Resources Commission (Commission).[56] Membership is extended to each Party which was an ATCP at the adoption of the Convention, any other Party that reaches ATCP status, or any Party which has applied for an exploration permit that has an approved management scheme.[57] Each member will be represented by one representative. Non-Commission members and relevant international organizations may have observer status in the Commission.

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45. *Id.*, art. 4, para. 5.
46. *Id.*, art. 5.
47. *Id.*, art. 6, para. 1.
48. *Id.*, art. 6, para. 2.
49. *Id.*, art. 7; art. 9, para. 2, art. II.
50. *See supra* note 16.
51. *See supra* note 18.
52. *See supra* note 17.
53. *See supra* note 13.
54. *See supra* note 27, art. 14.
55. *Id.*, art. 34.
56. *Id.*, art. 19, para. 1.
57. *Id.*, art. 19, para. 2.

Functions of the Commission are to: 1) determine whether to identify an area for exploration and development; 2) facilitate information exchange for environmental assessment; 3) designate excluded areas; 4) adopt safe and effective measures for prospecting, exploration, development, and environmental protection; 5) adopt administrative measures; and 6) review operations with a view to safeguarding the "environment in the interests of all mankind."[58] In exercising its functions, the Commission will take "account" of advice from the Advisory Committee. Decisions on "matters of substance" will be made by a two-thirds majority of present, voting members. Other decisions will be by simple majority.[59]

Parties also agree to maintain a Scientific, Technical and Environmental Advisory Committee (Advisory Committee). Membership is open to any Party to the Convention and observer status will be granted to any Party to the Antarctic Treaty. Additionally, relevant international organizations, including non-governmental, will also be afforded observer status.[60] The Advisory Committee is free to seek the advice of other scientists and experts. It will also receive the views of organizations interested in the considered issues.

The Advisory Committee's function is to advise the Commission and Regulatory Committees by providing a forum for information collection, exchange, and evaluation. As such, it is to recommend research projects, advise Parties on available information and training programs and make recommendations for prohibited areas. Further, it can provide the Commission with advice on areas for exploration, development, and boundary modifications, recommend environmental protection measures and effective exploration and development techniques, and monitor mineral activities.[61]

The parties also agree to establish a Special Meeting of States Parties (Special Meeting) in relation to the identification of areas for exploration and development.[62] Membership is open to all Parties to the Convention. Observer status is afforded to any Antarctic Treaty party and international organization entitled to observer status for Commission and Advisory Committee meetings.[63]

There will be a separate Regulatory Committee for each area the Commission identifies for mineral activity. Membership will consist of the member of the commission (if any) asserting territorial sovereignty over the identified area, the two members of the Commission which maintained the largest presence when the Antarctic Treaty came into force, and additional members of the Commission including four members asserting territorial claims in Antarctica and four other members not assert-

58. *Id.*, art. 22, para. 1.
59. *Id.*, art. 23.
60. *Id.*, art. 24, para. 2-3.
61. *Id.*, art. 26.
62. *Id.*, art. 28, para. 1.
63. *Id.*, art. 28, para. 2-3.

ing territorial claims. In selecting members, the Chairman of the Commission will ensure equitable representation of LDC members.[64] If the Party applying for an exploration permit is not a member of the Regulatory Committee, that Party will become a member for consideration of that application.[65] Any Party to the Convention may attend a Regulatory Committee meeting as an observer.

Functions of each Regulatory Committee will be to identify specific blocks, consider applications for exploration permits, draft and approve management schemes, and monitor, review, and revise activities in accordance with management schemes.[66]

Prospecting in Antarctica requires no specific authorization, nor will it confer any right or title to resources to the operator. Prospecting need only comply with the objectives and principles of the Convention.[67] Nine months before an operator begins prospecting, the Sponsoring State must notify the Commission and specify the general area of prospecting,and the mineral resources sought. Included in the notice should be the methods, programs, and support facilities to be used, possible environmental impact, and the duration of prospecting. The link between the operator and the Sponsoring State must also be specified.[68]

Any Party may request the Commission to identify an area for possible exploration and development. The notification must include a precise location of the area with a description of the physical and environmental conditions, and specification of the resource sought. A description of methods to be employed, and an assessment of potential environmental impacts of exploration and development must also be stated.[69]

After receipt of the request notification by the Commission, the Advisory Committee will convey its view to the Commission. The Special Meeting then considers whether a determination by the Commission to identify an area is in accordance with the Convention.[70] The Commission, "taking full account" of the views of the Advisory Committee and Special Meeting, then determines whether such an identification would be consistent with the Convention indicating which part of the area is covered, what resource is concerned, and the participation of Parties in the venture.[71] If there is a consensus of members, the Commission will identify the area as consistent with the Convention.

After a positive determination, a Regulatory Committee will convene to identify specific blocks and establish appropriate application fees.[72] Af-

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64. *Id.*, art. 29, para. 2.
65. *Id.*, art. 29, para. 5.
66. *Id.*, art. 31.
67. *Id.*, art. 35, para. 1-3.
68. *Id.*, art. 35, para. 6.
69. *Id.*, art. 37.
70. *Id.*, art. 38.
71. *Id.*, art. 39, para. 1.
72. *Id.*, art. 41.

ter the Regulatory Committee has acted, any Party may enter an exploration permit application, either on its behalf or for a sponsored operator. This application will: 1) identify the resource; 2) detail methods, equipment, and support facilities; 3) assess environmental impacts including measures to be used in event of an accident; 4) describe safety measures; and 5) specify the duration of the permit. In the event an operator other than a Party is involved, the application will describe the operator including its financial resources and technical expertise.[73]

If the Regulatory Committee is not satisfied with the link between an operator and Sponsoring Party, the application is canceled.[74] In the event of multiple applications for the same block, the Parties will be directed by the Regulatory Committee to resolve the competition amongst themselves. Failing that, the Regulatory Committee will resolve the issue giving priority to the application with the broadest participation amongst the Parties, with an emphasis given to LDCs.[75] The application is then referred to the Advisory Committee which will identify environmental risks and concerns. If the Advisory Committee finds an "unacceptable risk," the Regulatory Committee may either reject the application or refer it to the Commission, which can authorize the Regulatory Committee to proceed with the application.[76] If the Advisory Committee finds no unacceptable risks, the Regulatory Committee proceeds with the preparation of a management scheme. A management scheme prescribes terms and conditions relating to: 1) the law applicable to the operator; 2) inspection and enforcement of the scheme, 3) financial obligations, including levies, taxes, and royalties.; 4) technical and safety specifications; 5) depletion policy; 6) exploration time limits and diligence requirements; 7) accident contingency plans; 8) liability, bonding, and insurance; and 9) decommissioning requirements.[77] A simple majority of the Regulatory Committee is needed to approve the draft management scheme whereby the scheme is authorized and a permit is issued.[78]

An operator with a valid exploration permit has the exclusive right to explore and develop (subject to Articles 50 and 51) mineral resources in the permitted block.[79] These activities will be monitored by the Advisory Committee and Regulatory Committee for compliance with the management scheme.[80]

Following successful exploration activities, a Sponsoring State may submit an application for a development permit. The application will

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73. *Id.*, art. 42.
74. *Id.*, art. 43, para. 2.
75. *Id.*, art. 43, para. 3.
76. *Id.*, art. 43, para. 8.
77. *Id.*, art, 45.
78. *Id.*, art, 46.
79. *Id.*, art, 48.
80. *Id.*, art, 49.

contain updated information and proposed modifications to the scheme.[81] The Advisory Committee reviews the application to determine whether there are any significant modifications or new environmental considerations. A report is submitted to the Regulatory Committee to consider for any new guidelines. It is then up to the Regulatory Committee to authorize the development permit.[82]

V. EVALUATION OF THE DRAFT

In its present form, the Convention rejects the proposal of placing Antarctic resources under the Common Heritage of Mankind doctrine. Language alluding to the "interests of the international community as a whole"[83] and safeguarding the environment "in the interests of all mankind"[84] may sound suspiciously like that of the common heritage doctrine, but it only echoes language used in the Antarctic Treaty, which does not support the common heritage concept.[85] Mineral activities would be conducted within the Treaty family. Only members of the "Club" will be allowed to explore for resources.

The current draft seeks to reach a more equitable position for the various conflicting interests. Claimant states with territorial claims are not to be recognized nor rejected, although the language establishing Regulatory Committees explicitly recognized that states do indeed have claims. Because these states claim territorial sovereignty over sections of Antarctica, they assert that they should have a central role in revenue sharing and inspection control, and a veto over activities in "their" areas. These are issues the draft rejects. The only recognition a claimant state is afforded is a position on the Regulatory Committee concerning activities in "their" area.

Less developed countries have lobbied for a larger presence in Antarctica. Whether it is the lure of anticipated shared revenue or just political maneuvering that has brought about this attention, the fact remains that LDCs want an insured involvement in any regime established for Antarctic resources. Other points advocated by LDCs are mandatory joint ventures and a sharing of technology, positions the ATCPs are against.

Environmental protection is a basic concern in any mineral activity due to the unique nature of the Antarctic environment. Environmental interest groups have advocated mandatory impact assessments on all phases of activity, stronger inspection provisions, and an internal policing body.[86] No institutional body is established by Beeby III, however, con-

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81. *Id.*, art, 50.

82. *Id.*, art, 51.

83. *See supra* note 37.

84. *See supra* note 58.

85. The language is quite similar to that used in the preamble to the Treaty where "it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes."

86. For a discussion concerning a proposed Antarctic Environmental Protection

sideration of the environment is stated in the objectives and principles of the Convention, and provided for at the prospecting, area identification, exploration application, and permitting stages. Other unresolved issues involve deciding which Party is to be responsible for environmental protection compliance. Mining states would favor the Sponsoring State, but claimant states also want to exercise their alleged jurisdiction.

The Regulatory Committees retain the most control over all aspects of mineral activities. Regulatory Committees approve the management schemes and issue the exploration and development permits. The Commission would not have the power to cancel management schemes at either the exploration or development stages. The only place the Commission has real power is in identifying an area. A consensus is needed to approve identification. States favoring mining would rather have approval by a "majority", but states favoring strict control prefer "consensus." NCP are effectively removed from decision-making at this stage and any subsequent stage. The Special Meeting of States Parties, which largely accommodates NCP, is only a "strong" advisor to the Commission, with no real power. Advisory Committees are also relegated to an advisory position only, with no real power. However, this body may be prone to political influences as it is the only place that NCP have a role, or an opportunity for input in exploration and development activities.

The composition of Regulatory Committees has posed national problems. The United States and U.S.S.R. are guaranteed seats on every Regulatory Committee since they are the two countries having the largest position in Antarctica at the signing of the Treaty. LDCs wanted a guaranteed seat on each Committee, but now they are considered for a seat as non-claimants. Additionally, criticism of Regulatory Committees also centers on the fact that each committee oversees only one area, leading to different guidelines and a breakdown in uniformity.

The mechanism for resolving multiple exploration permit applications has been changed. Beeby III took the position that in the case of competing bids, first in time would have priority. LDCs wanted more involvement, and hence, the current version whereby broad international participation and LDC involvement would give priority. Other states had advocated an approach that would have taken recognition of financial soundness, technological expertise, and environmental protection measures.

The only opportunity for institutions other than the Regulatory Committees to review or even override the Regulatory Committee is at the exploration application stage. This check only applies to the permit application; no such check exists on management schemes. In Beeby III, it is the sole responsibility of the Regulatory Committee. Management schemes are not required to go to the Advisory Committee for comment. In the permitting stage, once an operator obtains an exploration permit,

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Agency, *see*, Joyner, *supra* note 15, at 270.

it is virtually assured the right to proceed to development. Development permitting is also the sole responsibility of the Regulatory Committee with no Commission involvement.

As yet, no proposals have been introduced for dispute settlement. Neither is there specific language concerning the responsibility and liability of parties engaged in mineral activities. It is expected that these issues will be addressed in the next draft.

The ATCPs have gone far to ensure that mineral activities in Antarctica will be conducted with due regard for the environment and the established legal order. It is hoped that the final version will further delineate these principles and provide a manageable system for all future mineral activities Maybe even more importantly, the formulation of the Convention will test the cohesiveness of the Treaty System, which will ultimately determine the future stability of the Antarctic Regime.

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