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Antarctica is the only continent on which all military activities, including tests and troop maneuvers, are formally prohibited. These extraordinary conditions effectively denote a regional zone of nonmilitarization which extends northward to encompass all circumpolar islands, ice formations, and ocean space south of 60° south latitude.[1] Consequently, not only has the continent of Antarctica—representing 10 percent (14.3 million square kilometers) of the earth's land surface—been formally declared by national governments to be an internationally nonmilitarized zone; so, too, have some 27.3 million square kilometers of circumpolar seas in the Southern Ocean been set aside as a neutralized peace preserve.[2] This condition of nonmilitarization in the Antarctic has prevailed for nearly three decades, sustained and upheld by uniform state practice.[3]

This study has three main objectives. First, it reviews the traditional geostrategic stakes associated with the Antarctic to evaluate why governments were convinced that nonmilitarization of the region was desirable and how denial of military ambitions has served mutual national interests. Second, it examines those provisions of the Antarctic Treaty that nourish nonmilitarization in order to clarify how nonmilitarization has been legally stipulated and operationally maintained. Third, it discusses the factors that have significantly contributed to making these nonmilitarization provisions function so effectively in order to extract particular lessons from the treaty's successful experience—lessons relevant for international law in general and arms control and disarmament measures in particular. The analysis concludes by addressing certain political and legal challenges which

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could unsettle the present legal regime that supports the nonmilitarization of the Antarctic.

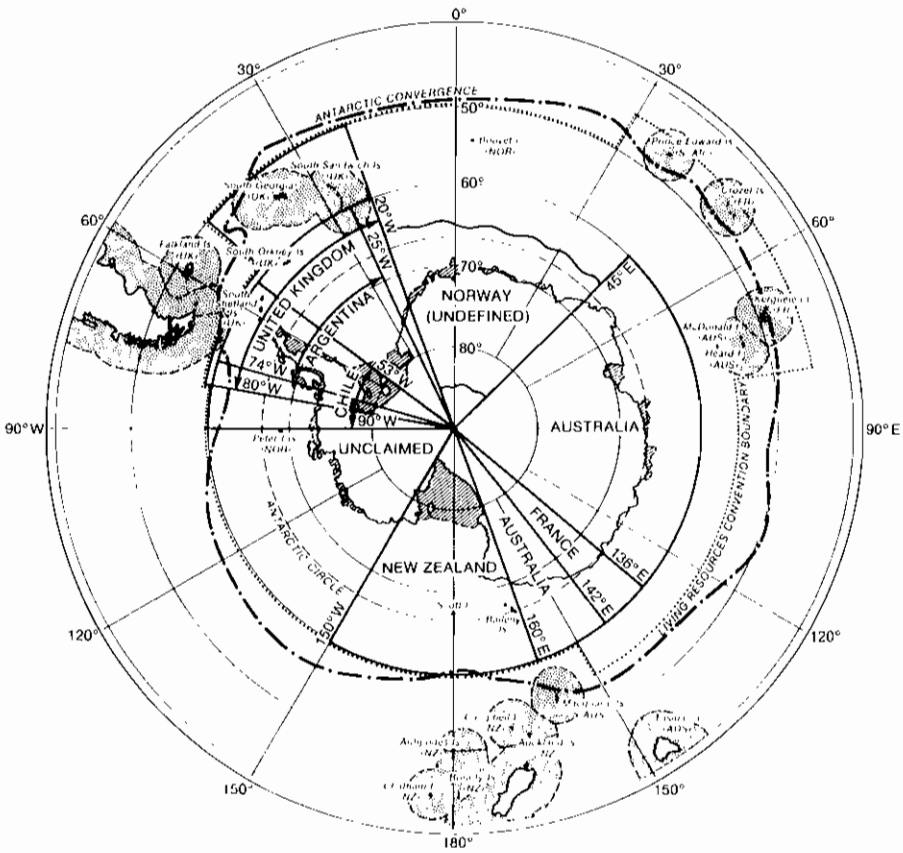
Strategic Considerations in the Antarctic

For most states, the geopolitical and strategic value of the Antarctic has been nugatory or of only marginal significance. For certain governments, however, the Antarctic has been given prominent consideration in national security and foreign policy calculations as a result of three particular issues.

First, the southern seas have been regarded as important for transoceanic shipping. Particularly salient has been concern for preserving free transit through the Drake Passage, the main sea-lane separating Tierra del Fuego from the Antarctic Peninsula.[4] The crucial geostrategic value of this waterway can be highlighted by imagining a scenario wherein the Panama Canal is either closed or access through it is denied to all transoceanic commerce.[5] This concern surfaced as a prominent geopolitical theme during World Wars I and II.[6] More recently concern rose again during and after various Suez Canal crises beginning in 1956. Thus, safeguarding the high seas right of free passage through northern Antarctic waters has traditionally received high priority from Latin American states, especially Argentina and Chile.[7] In addition, the United Kingdom, which makes historical claims to islands in the region,[8] and the United States, whose vessels exercise extensive transoceanic transit throughout the Western Hemisphere,[9] have regarded unimpeded access through the Drake Passage as an important freedom of international maritime navigation.

A second issue pertains to the national claims situation in Antarctica and the fact that three of these claims substantially overlap. Seven states have asserted claims of national sovereignty to portions of the continent: the United Kingdom in 1908 and 1917;[10] New Zealand in 1923;[11] France in 1924;[12] Australia in 1933;[13] Norway in 1939;[14] Chile in 1940[15] and Argentina in 1946.[16] Significantly, however, no nonclaimant government has ever acknowledged the lawful permissibility of these seven states to make claims in Antarctica or given formal recognition to the validity of these purported sovereign titles. Importantly, the claims asserted by Chile (south of 60° south latitude at longitudes 90° to 53° west) and Argentina (south of 60° south latitude at longitudes 74° to 25° west) severely encroach upon each other; and the Chilean and Argentinian claims are overlapped in large part by the United Kingdom's claim (particularly the portion running south of 50° south latitude at longitudes 80° to 20° west).[17] The fact that the Chilean, Argentine and British claims overrun and conflict with each other has historically underscored not only the legal complexity and political sensitivity of the situation but also the latent potential for confrontation in the Southern Ocean region.[18]

Antarctica: Claims and Jurisdictions in the Southern Ocean



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200 Nautical Mile Zones

Ice Shelves

Christopher C. Joyner
Woods Hole Oceanographic Institution, 1987

The third issue concerns traditional anxieties over geopolitical rivalries in the region. Both Argentina and Chile have shared long-standing security apprehensions over their exposed southern flanks,[19] which contributed early on to their respective decisions to assert territorial claims to parts of Antarctica.[20] Historically, Antarctica has been regarded by Latin geopoliticians as a dagger pointed at their soft national underbellies. Certainly, this consideration figured prominently in the historical antagonisms between Argentina and Chile,[21] and more particularly, recently fueled these two governments' protracted dispute over legal rights to three islands in the Beagle Channel.[22] Likewise, since the 1830s, Argentina and the United Kingdom have experienced strained diplomatic relations regarding rightful jurisdiction over the Falkland/Malvinas Islands.[23] This tense relationship has been exacerbated by conflicting jurisdictional claims over several other island groups in the region, including South Georgia, the South Orkneys, and the South Shetlands.[24] These disputed claims to the continent, coupled with unresolved competing jurisdictions over sub-Antarctic islands, undercut opportunities for securing political stability in the region until the late 1950s.

During the 1950s, heightened Soviet interest and activity in the Antarctic prompted concern in the United States over the geostrategic designs motivating Soviet involvement there.[25] Growing out of cold war anxieties, speculation in the United States centered on Antarctica's geostrategic value and what the implications would be if U.S.-Soviet rivalry were to spill over to the region. Walter Sullivan, writing in *Foreign Affairs* in 1957, well expressed these concerns when he opined that Antarctica ". . . is a continent of such mighty dimensions that, even though largely ice-covered, it cannot be ignored. Its vastness provides a sanctuary from which aircraft could dominate the waters that, apart from the vulnerable Panama and Suez Canals, provide the only ready links between the Atlantic and Indian Oceans."[26] Sullivan went on to assert that: "The chief strategic interest of nations down under, such as Australia, is to deny Antarctica to a hostile power. The first military force to get ashore there would have a great advantage, for there are extremely few harbors. Almost the entire coast is made inaccessible, first by the offshore pack ice, and then by uniform ice cliffs that mark the margins of the continental ice sheet where it has slipped off the continent and become waterborne. There are virtually no invasion beaches."[27] In retrospect, the most ominous strategic consideration perceived at that time concerned Antarctica's potential use as a launching site for intercontinental ballistic missiles. As Sullivan posited, "It has also been suggested that, once ballistic missiles have sufficient range to reach any part of our planet, Antarctica would provide an advantageous base from which to launch thermonuclear weapons. Mobile launching sites would be hard to locate in that vast continent, yet a considerable part of the retaliatory power of the nation attacked might have

to be devoted to destroying these sites at very little cost to the attacker. Even with manned nuclear airplanes, Antarctica might offer advantages as an air base over more populous areas."[28]

Throughout the 1950s, the United States and the Soviet Union increasingly turned their attention to the poles. This activity was viewed with concern on both sides; it appeared as though East-West rivalry, with all its political tensions, might come to dominate the situation in the Antarctic. This development obviously would complicate the already complex geopolitical problems associated with sovereignty disputes and overlapping claims. More disturbing, it was feared that rivalry between the United States and the Soviet Union over the south pole could precipitate an arms race in the Antarctic, leading ultimately to implanting or testing nuclear weapons there.[29]

The Antarctic Treaty and Nonmilitarization

These geostrategic concerns, particularly the new active role by the Soviet Union, made interested Western governments increasingly aware that international accommodation was necessary if cold war tensions were to be averted from the cold continent. It was the gratifying experience of the International Geophysical Year (IGY) (1957-58) that supplied the vehicle for that accommodation and laid the diplomatic foundation for negotiations that culminated in the Antarctic Treaty of 1959.[30]

From the outset of preliminary treaty negotiations in 1958, insuring that Antarctica would be used for peaceful purposes only was considered a priority objective. It was a prominent feature of the United States' note of invitation to convene these discussions,[31] and it gained significance with the explicit inclusion of the Soviet Union in the negotiation process.[32] The principal lesson gleaned from the IGY experience was clear: Political accommodation in Antarctic affairs was possible, notwithstanding conflicting national interests and the geostrategic stakes perceived to be at risk. The establishment and preservation of a nonmilitarized zone was deemed essential for promoting successful scientific cooperation in the region.[33] To the credit of the negotiators who constructed the substantive diplomatic framework for the treaty, an acceptable agreement was produced that has worked remarkably well over three decades.[34] Treaty membership has grown from 12 in 1959—called the original Antarctic Treaty Consultative Parties (ATCPs)—to 39 parties in 1989; and the treaty has expanded into a multifaceted systemic arrangement comprised of several ancillary agreements dealing with issues unaddressed in the Antarctic Treaty.[35] The twin pivots on which this treaty system turns are the nonmilitarization of the continent and its dedication to peaceful uses only.

In the treaty preamble's first paragraph, this objective is clearly articulated: ". . . Antarctica shall continue forever to be used exclusively for peaceful

purposes and shall not become the scene or object of international discord."[36] This general security-oriented goal has become an overriding consideration of national interest for the treaty parties—one which subsequently has prompted them to cooperate on potentially destabilizing matters, such as legal complications arising from sovereignty claims and issues regarding access to natural resources.[37] For example, the preamble of the 1980 Convention on the Conservation of Antarctic Marine Living Resources specifically reaffirms the parties' belief that, "[I]t is in the interest of all mankind to preserve the waters surrounding the Antarctic continent for peaceful purposes only and to prevent their becoming the scene or object of international discord."[38]

The Antarctic Treaty is a nonarmament agreement. Three provisions directly relate to nonmilitarization of the region. Article I dedicates the Antarctic area exclusively to peaceful purposes. It flatly directs that "Antarctica shall be used for peaceful purposes only." Article I goes on to assert the prohibition of "any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons."[39] This provision seeks to preclude militarization of the Antarctic area. A caveat, however, is applicable to actions undertaken for individual or collective self-defense, arising from some situation in the Western Hemisphere, which could intrude into the area covered by the treaty—that is, south of 60° south latitude.[40] Provision for self-defense clearly is permissible under Article 51 of the United Nations Charter,[41] a guarantee specifically preserved throughout the security zone created in 1947 by the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty).[42] In fact, the United States, Chile, and Argentina affixed declarations to this effect when they signed the Antarctic Treaty in 1959.[43] This caveat aside, the Antarctic Treaty goes on to list as an initial reason for convening Consultative Party Meetings the perceived need to discuss measures pertaining to the "use of Antarctica for peaceful purposes only."[44] This statement unmistakably complements and underscores the fundamental intention of Article I.

The second nonmilitarization provision establishes the Antarctic as a nuclear weapon-free zone. Article V bans nuclear explosions for any purpose and forbids the dumping of radioactive waste materials there. In terse language, Article V asserts that, "Any nuclear explosions in Antarctica and the disposal there of radioactive wastes shall be prohibited."[45] Nonmilitary, atmospheric and subterranean nuclear tests are all forbidden, although the ban does not extend to the *use* of radioactive materials in Antarctica.[46] Parties to the Convention on Marine Living Resources are likewise committed to nonmilitarization and nonnuclearization. Article III of that instrument provides in full that, "Contracting Parties, whether or not they are Parties to the Antarctic Treaty, agree that they will not engage in any activities in the Antarctic Treaty area contrary to the principles and purposes of the

Treaty, and that, in their relations with each other, they are bound by the obligations contained in Articles I and V of the Antarctic Treaty."[47]

The third treaty provision promoting nonmilitarization in the Antarctic is Article VII, which stipulates the right of each Antarctic Treaty Consultative Party to appoint observers who may carry out unannounced, on-site inspections. This stipulation was inserted into the treaty to monitor compliance with Articles I and V. It seeks to insure that the Antarctic region is used exclusively for peaceful purposes, in the absence of nuclear explosions or radioactive waste disposal. As Article VII declares, "All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated. . . ."[48] Further, the inspection provision applies to facilities and equipment used for land-based development and commercial activities, for example, those associated with minerals exploitation;[49] and it affirms the specific right of unlimited aerial inspection,[50] which reinforces an earlier stipulation that guarantees to each observer "freedom of access at any time to any or all areas of Antarctica."[51] The direct inference may be drawn that unlimited aerial inspection likewise carries with it the right of access for scientific purposes, similar to the "open skies" policy adopted in the late 1950s by the United States.[52]

In addition, Article VII sets out requirements for notification and exchange of information regarding expeditions to the continent, stations to be established there, and military personnel or equipment to be "introduced" by a party into Antarctica.[53] This provision is intended to support the nonmilitarization objectives of the regime: Information exchange has occurred on a wide range of subjects, including some which might be construed to have military relevance (e.g., activities relating to logistics problems, the use and applications of nuclear equipment, and telecommunication operations). By keeping treaty parties apprised, governments have been reassured about the nonmilitary intent of these activities.

The Antarctic Treaty contains provisions for peaceful settlement of disputes. Article XI calls upon contracting parties to "consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice."[54] Should resolution of a dispute through these means prove elusive, Article XI goes on to suggest that the dispute should be referred to the International Court of Justice for settlement, pending consent of all parties to the dispute.[55] During the 28 years since the Antarctic Treaty entered into force, no major dispute has occurred among the treaty's Consultative Parties to warrant invocation of these dispute settlement

procedures. That is a record of achievement that few, if indeed any, international arms control and disarmament agreements can claim to equal.

The Antarctic Treaty unequivocally mandates that the Antarctic remain free from any activities of a military character. Moreover, nuclear weapons are banned from the region, and rights for unlimited, unannounced on-site inspections are guaranteed to maintain this nonmilitarized condition. That these overriding security objectives have been sustained for three decades makes the Antarctic Treaty a conspicuous success in curbing military and geopolitical ambitions in the region. More accurately, this treaty stands out as the most successful regional arms control agreement negotiated in the post-World War II era.

Nonmilitarization in the Antarctic: Practice and Performance

Nonmilitarization involves a process designed to minimize chances of conflict and armed hostilities among states, and its value as a policy lies in the behavior of states. As nonmilitarization is consistently practiced by some governments, this in turn encourages like-minded performance by other governments.[56] When states abide by set policies of nonmilitarization, they perforce contribute to bolstering the confidence of other states that this regional policy really works. Multilateral confidence in the situation thus generates greater adherence to the policy's effectiveness throughout the area.

National security remains a primary, permanent national interest for all governments. As a result, states often adopt exclusive strategies designed to attain geostrategic advantage in order to improve and strengthen their national security position.[57] In the Antarctic, the converse policy is being pursued towards the same end. Unilateral security strategies have been transformed into a collective functional strategy. The fundamental purpose of that strategy is to promote mutual security through the common policy of not engaging in military activities of any kind, on or around the Antarctic continent.[58]

Nonmilitarization in the Antarctic thus emerges as a process organized around the goal of maintaining military balance in the region—a balance premised on the absence of military activity there. In realpolitik terms, nonmilitarization in the Antarctic establishes a balance of power among the Antarctic Treaty parties in general and the 12 original members (the ATCPs) in particular. No state has a preponderance of military power over any other in the region. All activities there are equally nonmilitarized. They represent no military threat to any other party, or nonparty for that matter. The balancing agent in this situation is the absence of any military activity. The disturber of that equilibrium would be the introduction of some military activity.[59]

The Antarctic Treaty supplies the specific framework within which arms control, deterrence, geostrategic preferences, and regulation on use of force in the south polar region have been effected. To preserve nonmilitarization in the Antarctic, the process must be performed continuously as a collective effort by all involved parties. Responsibility rests with governments themselves to guarantee, monitor, and practice nonmilitarization within the region. The Antarctic Treaty promotes trustworthy conduct and attitudes by making the behavior of members predictable, and it provides diplomatic opportunities and policy intercourse from which the parties benefit. What results from the treaty relationship is the evolution of institutionalized trust.[60]

Nonmilitarization reserves the Antarctic for "peaceful purposes only."[61] It should not be inferred, however, that states have wholly renounced the use of force in the region. They have not. As noted earlier, the legal right to use force in the Antarctic is still preserved for all states through Article 51 of the United Nations Charter; moreover, for parties in the Western Hemisphere, this right is further sanctioned by the Rio Pact of 1947.[62] Likewise, ambiguity exists regarding the use of nuclear devices in the region. Although Article V of the Antarctic Treaty clearly prohibits nuclear explosive devices, its implications remain vague with regard to the operation of nuclear-armed surface vessels and submarines in the region south of 60° south latitude.[63] In view of recent diplomatic problems involving the United States, New Zealand and Japan over port visitation rights of vessels possibly armed with nuclear weapons, similar difficulties among these ATCP states could occur in Antarctic waters.[64]

Successful operation of the Antarctic Treaty remains dependent upon the political will of governments in general and the ATCP states in particular to work towards that end. Should that political will erode, the nonmilitarized character of the Antarctic would likely weaken. State practice thus far has demonstrated that sustained political will can effect nonmilitarization, that governments are capable of pursuing such policies, and that significant rewards can be reaped for all parties in the process. The task is to keep this policy commitment on course.

Nonmilitarization in the Antarctic is not maintained exclusively through enforcement measures or verification devices. Rather, its efficacy rests largely in "multilateral symbiotic deterrence." If one party fails to adhere to the nonmilitarization policy—i.e., should a government decide to engage in some unauthorized militarized activity in the region—then it is possible that other parties will act in like fashion.[65] Nonmilitarization functions in the Antarctic because it embodies the quality of universal constructive deterrence in which nonmilitary presence for all is viewed as more desirable than any military presence for one, some or many. The treaty serves as the legal vehicle through which that process is performed.

The key to the process of nonmilitarization lies in the mutual relations of the parties. The essential principle is stability. As one commentator well put it, "The Antarctic Treaty presupposes that through the development of cooperation and peaceful purposes demilitarization will be stabilized, and while its provisions are not 'mandatory,' they offer a framework and guidelines that the parties have adopted to ensure order and security on the continent."[66]

The Antarctic Treaty is a preventive treaty, designed to discourage activities which might produce conflict. Thus it contains several features that engender confidence-building: scientific exchange and nonmilitary cooperation are given preference over rivalry and competition;[67] a specifically defined neutralized zone is set out for the region;[68] free access and open inspection is granted to all facilities of all governments there;[69] and particular provisions are supplied for dispute settlement if the need should ever arise.[70] These features promote trust and confidence among the parties in the operation of the treaty.

Much of the success in preserving nonmilitarization in the Antarctic can be attributed to communications among the Antarctic Treaty Consultative Parties. These governments have been able to communicate effectively and forthrightly with each other on Antarctic matters such that their exchanges "meet the high standards of reliability and trustworthiness, as well as timeliness and completeness."[71] This self-sustaining trust and confidence among those governments further clarifies their policy expectations vis-à-vis each other. In this way, international law is made operational.

One factor encouraging legal compliance has been the very limited attraction that the region presents for ballistic missile use. The emphasis on land-based intercontinental ballistic missiles, submarine launched missiles, and outer space trajectories has diverted the military attention of the United States and the Soviet Union away from the Antarctic.[72] It seems unlikely that other governments will be enthusiastic about allocating any of their scarce military resources to the Antarctic. Little strategic advantage would be gained, at the high risk of causing international tension and instability in the region. Restraint in rivalry among the ATCPs remains the key to the preservation of the nonmilitarization process in the Antarctic.

The treaty is not alone in promoting nonmilitarization of the Antarctic region. Other international arms control instruments hold direct legal relevance for the Antarctic because of their universal global application. The Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water[73] mandates that parties prohibit any nuclear explosion at any place under their jurisdiction or control, "in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas."[74] The last reference obviously encompasses the Antarctic/Southern Ocean region. The 1971 Treaty on the Prohibition of the

Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction in the Seabed and Ocean Floor and in the Subsoil[75] also applies to Antarctic ocean space. As provided for in Article I, states party to this instrument "undertake not to emplant or emplace on the seabed and ocean floor and in the subsoil thereof beyond the limit of a seabed zone . . . any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons."[76] This treaty, coupled with the Nuclear Test Ban Treaty, neatly complements the prohibitions contained in Article V of the Antarctic Treaty for the ocean space south of 60° south latitude.

Two other international conventions contribute to nonmilitarization in the Antarctic. In the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction,[77] Article IV stipulates in relevant part that "Each State Party . . . shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of [microbial or other] agents, toxins, weapons, equipment and means of delivery . . . , within the territory of such State, under its jurisdiction or under its control anywhere."[78] The notion of "anywhere" obviously renders the convention applicable to the Antarctic; consequently, it would pertain to appropriate state activities there. Similarly, the 1977 Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques[79] forbids parties from undertaking military or other hostile environmental techniques against any other party. As mandated in Article IV, each party is charged with the responsibility of taking measures to prohibit and prevent violations of this convention, ". . . anywhere under its jurisdiction or control."[80] Once again, designation of the area of application as "anywhere" makes it unmistakable that Antarctica and its circumpolar waters are drawn within the legal jurisdictional ambit of this multilateral accord.

Despite the broad scope of these four international instruments, it should be pointed out that not all parties to the Antarctic Treaty, nor even all the ATCP governments for that matter, have signed or ratified these agreements.[81] One might consequently conclude that these states would not be bound by their provisions. This might hold true, save for one overriding fact: To violate these provisions would in effect violate the peaceful uses only and nonmilitarization provisions of the Antarctic Treaty, to which all parties are formally obligated. These four arms control conventions thus serve to reinforce the Antarctic Treaty's general obligation to practice nonmilitarization in the region, rather than to create any new legal duties specifically attendant to the conventions.

Multilateral adherence to nonmilitarization in the Antarctic is motivated by one overwhelming objective: to preserve public order, because that public order best serves the national interests of those states. As a community's lawmaking actions attain substantial formality, uniformity, and stability, those actions become institutionalized.[82] So it has been in the case of nonmilitarization in the Antarctic and the patterns of expectations that have developed since 1959. It is the Antarctic Treaty that has supplied the legal structure for the ATCPs to assimilate those patterns of expectations.

The temptation may be to conclude, therefore, that consistent state practice regarding nonmilitarization of Antarctica and its circumpolar waters has evolved sufficiently to consider that condition *jus cogens*. That is, preservation of the Antarctic as a nuclear weapon-free zone of peace has acquired, through persistent state practice, the status of a peremptory norm for the region, undergirded by an international treaty to that effect.[83] This position suggests that even should the Antarctic Treaty one day disappear, the nonmilitarized, neutralized, zone-of-peace status for the Antarctic has become so firmly established in state practice that governments would still be obligated to observe that norm in their activities in the region. Such a peremptory norm would have contemporary applicability as well because under *jus cogens*, all states would be bound (even those not party to the treaty) legally to abide by the nonmilitarization prescription. Such a situation would undoubtedly support greater legal order among states and contribute to strengthening opportunities for international cooperation.

The logic of these presumptions notwithstanding, to conclude that the nonmilitarized status of the Antarctic has attained the legal threshold of *jus cogens* is premature. For *jus cogens* to be acquired, universal recognition of the desirability of that particular norm must be evident. The fact that sovereign claims persist to portions of Antarctica indicates that nonmilitarization might be compromised by claimant states to sustain or defend their titles to those continental lands. Thus, should the Antarctic Treaty System collapse, one might reasonably predict that the claimant states would hasten to shore up and protect their claims, and even resort to military means if necessary. For overlapping claimants especially, military activities in the wake of the treaty's collapse cannot be discounted, given pre-treaty periods of tensions among those states.[84] In short, strict application of *jus cogens* to the Antarctic falls short because of political complications arising from the disputed claims situation on the continent.

As a status quo nonmilitarized region, Antarctica presently offers no reason for states to compete there militarily. However, if governments perceive their national security interests in the Antarctic to be at risk or consider military actions taken in their own self-defense to be required, the nonmilitarized situation would become vulnerable to breakdown. Should the future produce more intensified political ideologies, more competitive economic ambitions,

and more exaggerated disparities in international military capabilities, the preservation of the Antarctic as a nonmilitarized zone dedicated to peaceful purposes will likely require a greater share of statesmen's attention, with more complications in the way of success.

Challenges to Nonmilitarization in the Antarctic

While nonmilitarization has worked effectively in the Antarctic for nearly 30 years, the prospects for its successful future operation must be viewed with realism. A noteworthy legacy of past accomplishment does not ensure success in coming years. There are at least five potential challenges to the present Antarctic Treaty System, each of which might upset the balance of nonmilitarization in the region.

The first challenge is that the Antarctic Treaty might collapse or founder on its own accord. Two specific possibilities come to mind. First, in Article XII of the treaty there is a provision for the convening of a special review conference in 1991 or thereafter[85] if any one of the Antarctic Treaty Consultative Parties, including the 10 new entrants since 1961,[86] decides that a treaty review should be conducted. If such a review conference were to meet, it could open the door to disagreement over suggestions to amend or modify the treaty—disagreements which might become aggravated into open cleavages, resulting in the deterioration of ATCP unity and consensus. Should this happen, some dissatisfied ATCP state might then pursue military activities in the Antarctic. However, the prevailing opinion among ATCPs is that such developments are unlikely.

The second possibility for treaty breakdown stems from the disruptive potential of competing economic interests in the Antarctic, especially fallout from the recently completed Antarctic Minerals negotiations. In 1982, the ATCPs began negotiations to design a special regime to administer and regulate the prospecting, exploration and exploitation of mineral resources in the Antarctic area.[87] During 10 special negotiating sessions, several draft texts were produced by the chairman of the special minerals meetings, Sir Christopher Beeby of New Zealand.[88] These negotiations culminated on 2 June 1988 with adoption by the ATCPs of the Convention on the Regulation of Antarctic Mineral Resource Activities.[89] Promulgation of this treaty, however, neither resolved all problems associated with minerals activities in Antarctica nor fully satisfied all interests of the participants.

Certain issues of contention during the negotiations left residues of resentment. One division occurred between claimant and nonclaimant states. The claimant states (Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom) espouse sovereign rights to portions of the continent and wanted special considerations for their "territorial rights" included in the new minerals regime. Conversely, nonclaimant states, who

do not recognize the legal validity of these claims, refused to grant any special rights because to do so would have tacitly acknowledged the claims themselves.[90] While claimant states do receive special voting designation in the Convention, they are guaranteed neither taxes nor royalties for mineral activities conducted in their claimed sectors. A second major schism developed between the industrialized and the developing states. The latter—including Brazil, India, the People's Republic of China and Uruguay—wanted to secure concessionary privileges and special opportunities (e.g., rights of technology transfer and mandatory participation in joint venture arrangements) in light of their less developed economic conditions.[91] The industrialized states—the United States, France, West Germany, the United Kingdom and Japan—rejected concessions of this type. As a result, the Minerals Convention stops short of giving developing ATCPs concessionary rights or privileges in the new exploration and development regime.

Recent developments have produced serious strains among the ATCPs over the future of a minerals regime on the continent. On 23 May 1989, Australian Prime Minister Bob Hawke effectively vetoed the possibility of the Antarctic Mineral Convention's entry into force by officially announcing refusal to sign the accord. For the minerals agreement to enter into force, all seven Antarctic claimant states would have to ratify it. Without Australia's participation, that essential prerequisite could not be fulfilled. (France subsequently joined Australia in refusing to sign the minerals treaty.) Important also is that the Hawke government simultaneously announced its commitment to promote an Environmental Protection Convention creating an Antarctic Wilderness Park, with prohibitions on all mining activities, including oil drilling.[92]

What Australia's recent pro-environmentalist initiative means for the political future of the Antarctic Treaty system is as yet unclear, but fundamental questions have arisen: What will happen to the consensus-based treaty system now that Australia and France have decided that the Antarctic Minerals Convention is contrary to their national interests? What strains and pressures might be imposed upon the treaty system should certain ATCPs now decide that failure to secure an agreed upon minerals convention invites their pursuit of Antarctic minerals activities unilaterally, outside the legal ambit of the Antarctic Treaty? While this scenario does not yet appear in the offing, clearly if it were to occur, the results would hardly bode well for the stability of the treaty system or for the prospects of maintaining the nonmilitarized character of the region. Failure to secure entry into force of the Antarctic minerals regime in 1989 may be gratifying to environmentalists, but it does not ipso facto mean the demise of the Antarctic Treaty system. This development, however, might signal the rise of disruptive economic competition among ATCPs for Antarctic mineral resources in the future, as well as the breakdown of trust and cooperation among those governments responsible for maintaining nonmilitarization in the Antarctic.

The third major challenge to the Antarctic Treaty System is the possibility that ATCP rivalries elsewhere might spill over into the Antarctic region. Clearly, the most serious threat of this occurring in recent years was the Falklands/Malvinas War in 1982, involving Argentina and the United Kingdom,[93] but other rivalries also exist which provoke important concern between ATCP states. There has been the historical friction between Argentina and Chile, a large part of which may be attributed to disputes over their borders, especially in the Beagle Channel area of Tierra del Fuego.[94] Certain political-ideological competition also exists between the Soviet Union and the People's Republic of China,[95] Brazil and Argentina,[96] and of course, between the United States and the Soviet Union.[97] Still, the governments involved remain plainly convinced that, for the foreseeable future, their interests are best served by preserving the nonmilitarized situation provided by the Antarctic Treaty. If any competitive forays are to be made against rivals, it appears that they will be pursued in other international arenas, under other circumstances.

A fourth broad challenge to the contemporary Antarctic Treaty System lies in the possible application of the "Common Heritage of Mankind" concept to Antarctica and the movement since 1983 in the United Nations General Assembly aimed towards attaining this end.[98] The implications of this seem clear enough: Were Antarctica to be accepted by the international community as part of the "common heritage," the ATCPs would lose substantial legal justification for securing their accessibility to both living and nonliving resources in the region. Under such a regime, these resources would become the patrimony of all peoples, immune from national or corporate appropriation, with any revenues derived from their exploitation being allocated to enhance the developmental ambitions of the "New International Economic Order."[99]

During discussions of the Antarctic question since 1983 at the United Nations, two new issues have entered the debate which complicate the political situation between ATCPs and nonparties to the treaty. First, there is the apartheid conundrum, which concerns whether the present white minority government of South Africa should continue to play a viable role as a member of the Consultative Party group.[100] Second, there is the criticism of alleged iniquity—or a two-tiered, undemocratic system—in the treaty structure itself. This criticism alleges that decision-making power resides in a select group (the ATCPs), and that the other 16 members to the treaty (the acceding states, or nonconsultative parties) have little real influence and at best are only permitted to participate in ATCP meetings as observers.[101] While these disparities are real and important, particularly to the states most affected by their political ramifications, the question remains whether radical alteration of the Antarctic Treaty System, with its proven legacy of successful nonmilitarization, is worth the risk of possible disruption and disintegration.

Should the system collapse, it might precipitate a land grab on the continent by those states who possess the requisite technology to do so. Such a development would find very few in the international community capable of sharing in the rewards.[102]

Political realism suggests that changes within the Antarctic Treaty System will have to come from the membership itself, in particular from the ATCPs.[103] External pressure from the United Nations, given the experience of General Assembly sessions since 1984, seems more likely to produce resentment among the ATCPs towards that body than to foster any political or legal improvements in Antarctic affairs.[104]

Finally, there is the possibility that some government might decide to engage in military-related activities in the Antarctic. Recent reports from New Zealand have alleged that military activities may be associated with operational uses of certain countries' Antarctic stations, and these could constitute violations of at least the spirit if not the letter of the nonmilitarization provisions of the treaty.[105] These allegations remain speculative, unsubstantiated, and may very well be politically motivated in their own right; but if it were conclusively proven that some ATCP state had consciously violated the treaty's nonmilitarization provisions, that revelation would surely impugn the credibility of that government's Antarctic policies in the future. Very likely, it would also produce reverberations throughout the entire treaty system. Such a development would be unfortunate indeed, and it might even encourage destabilizing rivalries to emerge within the region.[106]

The geopolitical realities of the current Antarctic Treaty System are clear. The regime governing activities in the Antarctic is lawful and binding upon those states who have subscribed to it. The Consultative Parties to the treaty include the superpowers, all the acknowledged nuclear weapon states, and all the permanent members of the United Nations Security Council. Moreover, these 22 states represent the population of nearly three-quarters of all mankind.

For almost 30 years the Antarctic Treaty System has functioned exceedingly well as an institutional framework for preserving peace and stability, fostering scientific cooperation, and promoting standards for environmental preservation and conservation. It has well served the international community's general interests by responsibly accommodating geopolitical concerns in the south polar region and by preserving the condition of nonmilitarization and peaceful uses only of the Antarctic and the Southern Ocean. The Antarctic Treaty is the preeminent international legal instrument embodying the twin processes of nonmilitarization and peaceful uses only. As such, the treaty stands as an exemplar for international cooperation and constructive diplomacy, particularly for promoting the reduction of military activities on a regional basis.

Notes

1. As provided for in Article VI of the Antarctic Treaty, done 1 December 1959, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71 (entered into force 23 June 1961). See note 3. Rather than "demilitarization," the term "nonmilitarization" is used in this study because Antarctica never has been actually militarized. That is, the continent never has been the site for military bases, armies, or major armed engagements. While shooting incidents occurred in the late 1940s and early 1950s, those were isolated episodes, not military clashes. See David W. Haron, "Antarctic Claims," *Foreign Affairs*, no. 32, 1954, pp. 661-667. This tension led to a tripartite naval declaration by Argentina, Chile and the United Kingdom in early 1949 not to send warships south of 60° south latitude during the 1948-49 Antarctic season. Significantly, this agreement has been renewed annually. See Marjorie Whiteman, *Digest of International Law*, v. 2 (Washington, D.C.: U.S. Govt. Print. Off., 1963), p. 1238.

2. This figure was computed by subtracting the sum of Antarctica's land area and the area of ocean space within 60° south latitude from the total area of the earth's surface.

3. Deborah Shapley, "Pax Antarctica," *Bulletin of the Atomic Scientists*, June-July 1984, pp. 30-34.

4. Christopher C. Joyner, "Security Issues and the Law of the Sea: The Southern Ocean," *Ocean Development and International Law*, no. 15, 1985, pp. 171, 179.

5. See James L. Busey, *Political Aspects of the Panama Canal: The Problem of Location* (Tucson: Univ. of Arizona Press, 1974).

6. See generally Walter La Feber, *The Panama Canal: The Crises in Historical Perspective* (New York: Oxford Univ. Press, 1978).

7. Raul Rey Balmaceda, "Otra cuestion de Limites con Chile?" *Estrategia*, no. 69, 1981, p. 106; and Jorge Atencio, *Que es la Geopolitica?* (Buenos Aires, 1965), p. 339.

8. See generally Julius Goebel, *The Struggle for the Falkland Islands* (New Haven: Yale Univ. Press, 1927).

9. See Walter D. Jacobs, *The Panama Canal: Its Role in Hemispheric Security* (New York: American Emergency Committee on the Panama Canal, 1968).

10. British letters patent, appointing the Governor of the Colony of the Falkland Islands to be Governor of South Georgia, the South Orkneys, the South Shetlands, the Sandwich Islands, and Graham's Land, and providing for the Government thereof as Dependencies of the Colony—Westminster, 21 July 1908, reprinted in *British Foreign and State Papers*, v. 101, 1909, p. 76; British letters patent, passed under the Great Seal of the United Kingdom, providing for the further Definition and Administration of certain Islands and Territories as Dependencies of the Colony of the Falkland Islands—Westminster, 28 March 1917, reprinted in *British Foreign and State Papers*, v. 101, 1919, p. 19. In 1962, the United Kingdom divided their original claim into two separate territories. The area south of 60° south latitude was designated the British Antarctic Territory, and the remainder above the Antarctic Treaty area retained the original designation of the Falkland Islands Dependency.

11. British Order in Council providing for the Government of the Ross Dependency—London, 30 July 1923, reprinted in *British Foreign and State Papers*, v. 117, 1923, p. 91.

12. Decree Attaching French Antarctic Territories to the Government General Antarctic, Paris, 21 November 1924, reprinted in U.S. Naval War College, no. 46, *International Law Documents (1948-49)*, pp. 229-230.

13. Order in Council Placing Certain Territory in the Antarctic Seas under the Authority of the Commonwealth of Australia—7 February 1933, reprinted in U.S. Naval War College, no. 46, *International Law Documents (1948-49)*, p. 236.

14. National Sovereignty in the Antarctic (proclamation of King Haakon of Norway, 14 January 1939), reprinted in *American Journal of International Law*, no. 40, Supplement, 1940, p. 83.

15. Decree No. 1747 Declaring the Limits of the Chilean Antarctic Territory, reprinted in U.S. Naval War College, no. 46, *International Law Documents (1948-49)*, p. 224.

16. Argentine Note to the United Kingdom concerning the Issue of British Stamps for the Falkland (Malvinas) Islands and Dependencies, Showing as British, Territory Claimed by Argentina, 16 June 1946, reprinted in U.S. Naval War College, no. 46 *International Law Documents (1948-49)*, pp. 222-223.

17. See map in text. In connection with the claims situation, it should also be noted that one-fifth of the continent remains unclaimed, that Australia's sector is divided by the French claim, and that Norway's claim has no defined terminal demarcations. As mentioned earlier in the text, the area covered by the Antarctic Treaty extends to 60° south latitude (solid line). The Living Resources Convention (mentioned later in the text) applies to the area inside the Antarctic Convergence as defined in Article I of the treaty (dotted line), which corresponds to the area of the natural Antarctic Convergence (dot-dash line). (The natural Antarctic Convergence is a shifting natural boundary formed by the cold waters around the continent and the warmer waters to the north.) The 200-nautical-mile zones extending seaward from islands and South America (dotted areas) indicate states' declared fishing or economic jurisdictions.

18. In 1947, 1951, and 1953, Great Britain formally suggested to Argentina and Chile that they submit this disputed claims situation to the International Court of Justice, but the latter refused. In May 1955, the British Government submitted a unilateral application to the Court, but Argentina and Chile refused to accept the Court's jurisdiction in the matter. See Antarctica Cases (*United Kingdom v. Argentina*) (*United Kingdom v. Chile*) 1956 International Court of Justice Pleadings, pp. 11, ff.

19. Jack Child, *Geopolitics and Conflict in South America: Quarrels Among Neighbors* (New York: Praeger, 1985), pp. 45-47, 82-84; and Jorge A. Fraga, "El Mar y La Antartida en la Geopolitica Argentina," *Revista de la Escuela Guerra Nacional*, February 1979, pp. 36-40, 46-47.

20. On Argentina, see generally Fernando A. Milia, *La Atlantartida: Un Espacio Geopalitico* (Buenos Aires, 1978). For Chile, see generally Oscar Pinochet de la Barra, *La Antartida Chilena*, 4th ed. (Santiago, 1976).

21. Child, pp. 77-85.

22. Andres Ruggieri, "Canal de Beagle. Algunas Reflexiones sobre el Laudo Austral," *Estrategia*, March 1977, pp. 48-61; Siego Villalobos, *El Beagle: Historia de una Controversia* (Santiago, 1979).

23. See generally Raphael Perl, *The Falkland Islands Dispute in International Law and Politics* (New York: Oceana, 1983).

24. Child, pp. 122-130; Milia, p. 250.

25. This concern about the Soviet Union's intentions for Antarctica was expressed as early as 1948 by the U.S. Department of State. See "Paper Prepared by the Policy Planning Staff, 9 June 1948," in U.S. Department of State, *Foreign Relations of the United States 1948*, v. 1, part 2 (Washington, D.C.: Congressional Information Service, 1980), pp. 977-987.

26. Walter Sullivan, "Antarctica in a Two-Power World," *Foreign Affairs*, no. 36, 1957, p. 162.

27. *Ibid.*, p. 163.

28. *Ibid.*

29. *Ibid.*

30. For insightful treatment of the IGY, see Walter Sullivan, *Assault on the Unknown: The International Geophysical Year* (New York: McGraw Hill, 1961). The announced intention of the Soviet Union to remain in the Antarctic after the conclusion of the IGY increased anxiety among the claimant states both for the potential superpower competition in the region and for the undermining of their own positions on territorial claims that would ensue.

31. For the background, see John Hanessian, "The Antarctic Treaty of 1959," *International and Comparative Law Quarterly*, no. 9, 1960, pp. 432-468.

32. For elaboration of this point, see Christopher C. Joyner, "Cooperative Diplomacy: The Case of Antarctica," in Nish Jamgotch, ed., *U.S.-Soviet Cooperation: An Untold Story* (New York: Praeger, 1989), pp. 39-61.

33. Paul C. Daniels, "The Antarctic Treaty," in Richard S. Lewis and Philip M. Smith, eds., *Frozen Future: A Prophetic Report from Antarctica*, (New York: Quadrangle Books, 1973), pp. 38-39.

34. For a revealing discussion of the preliminary proceedings (May 1958-June 1959), see Peter J. Beck, "Preparatory Meetings for the Antarctic Treaty, 1958-59," *Polar Record*, no. 22, 1985, pp. 653-661. The official record of the conference proceedings is contained in U.S. Department of State, *Conference on Antarctica* (Washington, D.C.: U.S. Govt. Print. Off., 1960).

35. This arrangement is often referred to as the Antarctic Treaty System (ATS). In early 1989, 22 states comprised the Antarctic Treaty Consultative Parties (ATCPs), the core decision-making group of the regime. The original 12 members of the ATCP group included Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, Soviet Union, United Kingdom and the United States. Since 1959, 10 other states have been granted ATCP status: Poland (1977), Federal Republic of Germany (1981), Brazil (1983), India (1983), People's Republic of China (1985), Uruguay (1985), Italy (1987), German Democratic Republic (1987), Spain (1988) and Sweden (1988). As part of the ATS, ATCPs have passed by consensus 160 recommendations which serve as guidelines for policy within the Antarctic Treaty area. Seventeen other states (the nonconsultative parties) have acceded to the treaty: Austria, Bulgaria, Canada, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, Greece, Hungary, South Korea, North Korea, Netherlands, Papua New Guinea, Peru, and Rumania. Supplementing the 1959 treaty, the ATS includes other instruments which have been negotiated to fill certain needs as they have become apparent. These include: The 1964 Agreed Measures for the Conservation of Antarctic Fauna and Flora, done 2-13 June 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); F. M. Auburn, *Antarctic Law & Politics* (Bloomington: Indiana Univ. Press, 1982) pp. 270-273; The 1972 Convention for the Conservation of Antarctic Seals, done 1 June 1972, 27 U.S.T. 441, T.I.A.S. No. 8826 (entered into force 11 March 1978); The 1980 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), done 20 May 1980, 80 Stat. 271, T.I.A.S. No. 10240 (entered into force 7 April 1982). For discussion, see Ronald Frank, "The Convention on the Conservation of Antarctic Marine Living Resources," *Ocean Development & International Law*, no. 13, 1983, pp. 293-328; and most recently, the Convention on the Regulation of Antarctic Mineral Resource Activities, done at Wellington 2 June 1988,

opened for signature 25 November 1988, Doc. AMR/SCM/88/78 (2 June 1988), reprinted in *International Legal Materials*, July 1988, pp. 859-900. For discussion, see Christopher C. Joyner, "The 1988 Antarctic Minerals Convention," *Marine Policy Reports*, no. 1, 1989, pp. 81-98; Christopher C. Joyner, "The Evolving Antarctic Minerals Regime," *Ocean Development and International Law*, no. 19, 1988, pp. 73-95; and Christopher C. Joyner & Peter Lipperman, "Conflicting Jurisdictions in the Southern Ocean: The Case of an Antarctic Minerals Regime," *Virginia Journal of International Law*, Fall, 1986, pp. 1-39. In addition to these instruments, the Scientific Committee on Antarctic Research (SCAR), established under the International Council of Scientific Unions, serves the ATS in an important scientific advisory capacity. For a recent treatment, see generally Polar Research Board, *Antarctic Treaty System: An Assessment, Proceedings of a Workshop Held at Beardmore South Field Camp, Antarctica* (Washington, D.C.: National Academy Press, 1986).

36. Antarctic Treaty, preamble.

37. See generally Joyner, "Cooperative Diplomacy."

38. Antarctic Living Resources Convention, preamble.

39. Antarctic Treaty, Article I (1).

40. Antarctic Treaty, Article VI.

41. Article 51 provides in relevant part that: "[N]othing in the present Charter shall impair the inherent right of self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security." United Nations Charter, Article 51.

42. Inter-American Treaty of Reciprocal Assistance, done 2 September 1947, 62 Stat. 1681, T.I.A.S. No. 1838, 21 U.N.T.S. 77.

43. "Declaration Concerning the Inter-American Treaty of Reciprocal Assistance Made by Argentina, Chile and the United States in Signing the Antarctic Treaty," in Whiteman, p. 1238.

44. Antarctic Treaty, Article IX, paragraph (a).

45. Antarctic Treaty, Article V.

46. The United States operated a nuclear power plant at its McMurdo station from 1962-1972, but it has since been dismantled and removed. Central Intelligence Agency, *Polar Regions Atlas* (Washington, D.C.: CIA, 1978), p. 48.

47. Antarctic Living Resources Convention, Article III.

48. Antarctic Treaty, Article VII, paragraph 3.

49. *Ibid.*, paragraph 5. Inspection opportunities have also been included for mineral resource activities. As provided for in the recent Antarctic Minerals Convention, "All stations, installations and equipment, in the Antarctic Treaty area, relating to Antarctic mineral resource activities, as well as ships and aircraft supporting such activities at points of discharging or embarking cargoes or personnel at such stations and installations, shall be open at all times to inspection by observers designated under Article VII of the Antarctic Treaty for purposes of that Treaty." Antarctic Minerals Convention, Article 12.

50. Antarctic Treaty, Article VII, paragraph 4.

51. Antarctic Treaty, Article VII, paragraph 2.

52. The "Open Skies" policy, advocating the free and open collection of information, originated under the Eisenhower administration and was initially designed to promote arms control verification through aerial surveillance. It evolved in tandem with nondiscriminatory data policies developed for U.S. earth satellite experimentation during the 1957-58 International Geophysical Year. *U.S. Department of State Bulletin*, no. 37, 1957, p. 673.

53. Antarctic Treaty, Article VII, paragraph 5.

54. *Ibid.*, Article XI, paragraph 1.

55. *Ibid.*, paragraph 2.

56. This process is largely dependent upon successful confidence-building among the parties. See Ralph M. Goldman, *Arms Control and Peacekeeping: Feeling Safe in this World* (New York: Random House, 1982), pp. 105-134.

57. In this respect, perception of geopolitical advantages is a key consideration. According to some experts, "Although the threat to a nation's security is influenced by the capabilities and intentions of potential enemies, it is the perception of the threat that causes policy responses. . . . The degree of accuracy with which we can determine the level of threat will, in turn, determine how closely perceptions can match reality, as well as the optimality of the response." Daniel J. Kaufman et al., eds., *U.S. National Security: A Framework for Analysis* (Lexington, Mass.: D. C. Heath, 1985), p. 8.

58. This situation in effect entails a collective security strategy of mutual nonmilitarization.

59. See notes 104 and 105.

60. See the discussion in Goldman, pp. 114-124.

61. Antarctic Treaty, Article I.

62. See note 42.

63. Since the circumpolar Southern Ocean is properly regarded as part of the high seas, provisions in the Antarctic Treaty cannot intrude upon those freedoms, among which is included the freedom of navigation for vessels powered by nuclear energy. Indeed, the treaty specifically preserves this freedom as it asserts in full: "The provisions of the present Treaty shall apply to the area south of 60° south latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area." Antarctic Treaty, Article VI.

64. See *New York Times*, 12 August 1986, sec. I, p. 10, col. 1; *New York Times*, 25 August 1986, sec. I, p. 3, col. 3.

65. In this scenario, introduction of military means into the Antarctic by one ATCP state could prompt the breakdown of institutionalized trust and precipitate a scramble by other ATCPs to balance the military equation. Taken to the logical extreme, the cascading effects of this situation could easily lead to total collapse of nonmilitarization in the region.

66. Harry Almond, "Demilitarization and Arms Control: Antarctica," *Case Western Journal of International Law*, no. 17, 1985, p. 232 (footnote omitted).

67. These conditions are specifically provided for in Articles I, II, and III of the Antarctic Treaty.

68. That is, the area south of 60° south latitude, inclusive of all lands, seas and ice formations.

69. As provided for in Article VII of the Antarctic Treaty. See the text at notes 48-53.

70. As provided for in Article XI of the Antarctic Treaty. See notes 54-55.

71. Almond, p. 238.

72. Antarctica is generally regarded as being of minimal strategic significance. Peter Beck has even asserted that Articles I, V, and VII of the Antarctic Treaty have "transformed the continent into a strategic irrelevance . . . and a strategic non-fact." Peter J. Beck, *The International Politics of Antarctica* (Cambridge: Cambridge Univ. Press, 1985), p. 87.

73. Done 5 August 1963, entered into force 10 October 1963, 14 U.S.T. 1313, T.I.A.S. No. 5433. 480 U.N.T.S. 43.

74. *Ibid.*, Article I, paragraph 1.1.

75. Done 11 February 1971, entered into force 18 May 1972, 23 U.S.T. 701, T.I.A.S. No. 7337.

76. *Ibid.*, Article I.

77. Done 10 April 1972, entered into force 26 March 1975, 26 U.S.T. 583, T.I.A.S. No. 8062.

78. *Ibid.*, Article IV.

79. Done 18 May 1977, entered into force 5 October 1978. 31 U.S.T. 333, T.I.A.S. No. 9614.

80. *Ibid.*, Article IV.

81. Among the states that are party to the Antarctic Treaty, the following are *not* parties to these arms control accords: For the Nuclear Test Ban Treaty—People's Republic of China, Cuba, France, and North Korea. U.S. Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 1989* (Washington, D.C.: U.S. Govt. Print. Off., 1989), p. 347. For the Seabeds Treaty—People's Republic of China, Chile, France, Papua New Guinea, Peru, North Korea, and Uruguay, *Ibid.*, pp. 367-368. For the Biological Weapons Treaty—Chile, *Ibid.*, pp. 284-285. For the ENMOD Treaty—Chile, People's Republic of China, France, Peru, South Africa, and Uruguay, *Ibid.*, pp. 301-302.

82. See generally Myres McDougal and F. Feliciano, *Law and Minimum World Public Order* (New Haven: Yale Univ. Press, 1961).

83. On this application of *jus cogens*, see Christos L. Rozakis, *The Concept of* Jus Cogens *in the Law of Treaties* (Amsterdam: Elsevier, 1976).

84. See the sources cited in note 1.

85. Article XII provides in relevant part: "If after the expiration of thirty years from the date of entry into force of the present Treaty [i.e., in 1991], any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty." Antarctic Treaty, Article XII, paragraph 2(a).

86. That is, Poland, the Federal Republic of Germany, India, Brazil, People's Republic of China, Uruguay, Italy, Germany Democratic Republic, Spain, and Sweden. See note 35. As this article goes to press, at the XV Antarctic Treaty Consultative Party Meeting scheduled for Paris in October 1989, five states reportedly have applied for ATCP status: Netherlands, Peru, South Korea, Ecuador, and Finland. Of the five, South Korea and the Netherlands appear the most likely to qualify as ATCPs.

87. Christopher C. Joyner, "The Evolving Antarctic Minerals Regime," in Christopher C. Joyner and Sudhir Chopra, eds., *The Antarctic Legal Regime* (The Hague: Martinus Nijhoff, 1988), pp. 129-159 and sources cited in note 35.

88. For early drafts of the Beeby texts, see "The Antarctic Minerals Regime: The Beeby Draft," reprinted in Greenpeace International, *The Future of the Antarctic: Background for a U.N. Debate*, Appendix

8, 1983 and "Beeby Draft II," reprinted in Greenpeace International, *The Future of the Antarctic: Background for a 2nd U.N. Debate*, Appendix 8, 1984. "Beeby III," though not published, was entitled "MR 17 REVISION II Annex to Chairman's Informal Personal Report Antarctic Minerals Convention: Draft Articles," September, 1986. Compare "Antarctic Mineral Resources: Chairman's Informal Personal Report: MR/17 Rev. III (1987)."

89. Convention on the Regulation of Antarctic Mineral Resource Activities, done 2 June 1988, Doc. AMR/SCM/88/78 (2 June 1988), reprinted in *International Legal Materials*, July 1988, pp. 859-900. See Joyner, "1988 Antarctic Minerals Convention," pp. 81-98.

90. The Antarctica Project, "Status of Antarctic Minerals Negotiations," Antarctica Briefing, no. 13, 30 June 1987, pp. 3-5.

91. *Ibid.*

92. Australia's motivations for withdrawing support from the minerals convention were several. For one, recent oil spills in Antarctica (the *Bahia Paraiso* in January 1989) and in Alaska (the *Exxon Valdez* in March 1989) underscored the high environmental risks associated with minerals and oil exploitation in frigid climes. The rise of independent environmental political parties also demonstrated unexpected clout in May elections held earlier in the Australian state of Tasmania, enough to control the balance of power in that local parliament. Third, increasing publicity about ozone depletion in the Antarctic has heightened health warnings and concern about skin cancer in Australia. Nonetheless, environmental motives were not alone in prompting the Hawke government to redirect its policy. Clearly, as indicated by Australia's treasurer, Paul Keating, strong motivation stemmed from the fact that such a minerals regime would perforce undermine Australia's sovereignty claims to the continent and deny Australia royalties from minerals extracted in its claimed territory. See David Scott, "Australia Advocates 'Wilderness' Status for Antarctica," *Christian Science Monitor*, 24 May 1989; Paul Brown, Australia vetoes Antarctic mining," *Guardian*, 25 May 1989; and Robert Cockburn and Andrew Morgan, "Australia blocks Antarctic mining operation," *The Times*, 23 May 1989.

93. See Christopher C. Joyner, "Anglo-Argentine Rivalry after the Falklands: On the Road to Antarctica?" in Alberto R. Coll and Anthony C. Arend, eds., *The Falklands War: Lessons for Strategy, Diplomacy, and International Law* (Boston: Allen & Unwin, 1985), pp. 189-211.

94. See sources cited in note 22.

95. See generally Herbert J. Ellison, ed., *The Sino-Soviet Conflict: A Global Perspective* (Seattle: Univ. of Washington Press, 1982) and Richard Soloman, ed., *The China Factor: Sino-Soviet Relations and the Global Scene* (Englewood Cliffs, N.J.: Prentice Hall, 1981).

96. Child, pp. 98-105.

97. See, e.g., Adam Ulam, *The Rivals: America and Russia since World War II* (New York: Viking, 1971) and Raymond Gartoff, *Detente and Confrontation: American-Soviet Relations From Nixon to Reagan* (Washington, D.C.: Brookings Institution, 1985).

98. Kimball, pp. 1-4 and Peter J. Beck, "The Antarctic Treaty System after 25 Years," *The World Today*, November 1986, pp. 196-199.

99. "Remarks by Christopher C. Joyner," in American Society of International Law, 1985 *Proceedings of the 79th Meeting*, 1987, pp. 62-67. Also see Christopher C. Joyner, "The Evolving Antarctic Regime," *American Journal of International Law*, July 1989, pp. 605, 622-626.

100. Ambassador Jacobs of Antigua and Barbuda pointedly summed up this view during the First Committee debate on Antarctica in 1983 when he averred: "Most unacceptable for us, however, is the fact that the racist regime of South Africa is one of the original Antarctic Treaty Consultative Parties. The international community has condemned the racist policies of South Africa. South Africa has been forced to vacate its seat in the United Nations. Every decent and respectable organization has shunned South Africa like the plague. Why was South Africa allowed to participate with the other Consultative Parties? ". . . .We condemn those who give acceptability to South Africa in this regard, and we demand its immediate expulsion from membership in the Consultative Group." U.N. General Assembly, 38th Session, *Official Records*, First Committee, 42nd Meeting, U.N. Doc. A/C.1/38/PV.42, 29 December 1983, p. 7. (Statement of Ambassador Jacobs).

101. See U.N. General Assembly, *Question of Antarctica; Study Requested under General Assembly Resolution 38/77, Report of the Secretary-General, PART TWO, Views of States*, v. III, U.N. Doc. A/39/583 (Part II), 9 November 1984 (Statement of Pakistan), p. 35.

102. See generally M.J. Peterson, "Antarctica: The Last Great Land Rush on Earth," *International Organization*, Summer, 1980, pp. 377-403.

103. Nongovernmental organizations have enjoyed some success in promoting change in the Antarctic Treaty process. See Lee Kimball, "The Role of Non-Governmental Organizations in Antarctic Affairs," in Joyner and Chopra, *The Antarctic Legal Regime*, pp. 33-63.

104. See Richard Woolcott, "The Legitimacy of the UN to Challenge International Treaties," in Rudiger Wolfrum, ed., *The Antarctic Challenge III: Conflicting Interests, Cooperation, Environmental Protection,*

Economic Development (Berlin: Drucker Pub., 1988), forthcoming; and *Report of the Secretary General: Views of States* (Australia), pp. 88-91.

105. These allegations are aimed at the United States and assert that U.S. Antarctic stations are being used for certain military improprieties, among them the following: testing low-frequency radio transmissions for submarine navigation; research into geomagnetic forces affecting missile guidance; low-temperature basic military training; and computer testing of military facilities during Operation Deep Freeze. See Pat Florence and Matthew O'Hallaron, "Operation Deep Freeze: Militarizing the Frozen South," *Direct Action—Newspaper of the Socialist Workers Party and Resistance* (New Zealand), 11 February 1987; and "Deep Freeze Role 'Proven Military,'" *New Zealand Herald*, 19 January 1987.

106. See the sources cited in notes 92-96.

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