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Sovereignty, Jurisdiction, and Cooperation

The Antarctic Treaty – Preconditions and Substance.

Abstract	2
Introduction	3
The Sovereignty Questions – Claims and Disputes	3
The Early History: The British Hegemony	3
The Post-War period: New Conflict Patterns, Protagonists and Patterns	4
The Antarctic as an Arena for Scientific Cooperation: The International Geophysical Year	7
The Background	7
The International Geophysical Year (IGY) 1957-58	8
The Process leading up to the Antarctic Treaty	11
The Political Context – and the Research Environment	11
The Treaty Negotiations	13
The Antarctic Treaty – A New Type of International Organization	15
The Political Framework Provisions	15
The Treaty Provisions concerning the Scientific Cooperation	17
The Inspection Clause	19
The Consultation Mechanism	20
The Duration of the Treaty	22
Back to the Future	22
Experience gained and Further Perspectives	22
Sedative or Spur?	27
Lessons for the Arctic?	29
Notes	32
References	34

Abstract:

On the backdrop of the recently completed 4th International Polar Year (2007-09), the forthcoming 50th anniversary of the signing of the Antarctic Treaty presents a useful occasion for exploring and analyzing the consequences of the Polar Year's predecessor - namely, the International Geophysical Year (IGY, 1957-58) - in terms of international politics and the development of international law. The IGY was not only the precursor of a new epoch with regard to the development of new patterns and structures of international cooperation in scientific research, but also a catalyst, as an institutional platform and provider of substance for the eventual establishment of a new creature in international politics and international law – the Antarctic Treaty of 1959. This instrument, which will have its 50th anniversary 1 December 2009, was to have far-reaching consequences. First and foremost, it entailed a de facto settlement of the comprehensive political and legal conflicts resulting from the unsolved questions of sovereignty which prevailed in this part of the world, - in itself a major accomplishment of historic dimensions. But in a wider perspective, it also proved to be an innovative, dynamic and viable framework for the further development of fruitful and continuing international cooperation, providing inspiration for novel models of collaboration in international politics as well as in international law. The present paper explores the questions of how and why the Antarctic Treaty came into being, and how the very preconditions that determined its genesis should also turn out to be decisive with regard to its substantive contents. It also makes a tentative attempt at analyzing the lessons learned from the experience of these past 50 years, including the question of the wider applicability of 'the Antarctic Model', cautiously warning against pushing the possible analogies (with, for instance, the Arctic) too far.

Keywords:

*The Antarctic Treaty * The International Geophysical Year (1957-58) * international politics * international law * development of new cooperation models*

INTRODUCTION:

We have recently witnessed the completion of 4th International Polar Year, which covered the time span from 1 March 2007 to 1 March 2009. The Polar Year was coordinated by the International Council of Scientific Unions (ICSU), and comprised more than a hundred research projects, involving thousands of researchers from some 60 countries. The first Polar Year in 1882-83 involved 12 nations, whereas 40 participated in the second in 1932-33. The third corresponding event took place fifty-one years ago (1957-58), and was called the International Geophysical Year (abbr. IGY). IGY comprised the activities of 67 nations with 60 thousand researchers and technicians. IGY was not only the precursor of a new epoch with regard to the development of international cooperation in scientific research, but also a catalyst, as an institutional platform and provider of substance for the eventual establishment of a new creature in international politics and international law – the Antarctic Treaty of 1959. This instrument, which has its 50th anniversary in 2009, was to have far-reaching consequences, first and foremost insofar as it entailed a de facto settlement of the comprehensive political and legal conflicts resulting from the unsolved questions of sovereignty which prevailed in this part of the world. The present paper explores the questions of how and why the Antarctic Treaty came into being, and how the preconditions that determined its genesis should also be decisive with regard to its substantive contents.

THE SOVEREIGNTY QUESTIONS - CLAIMS AND DISPUTES

The Early History: The British Hegemony

At the threshold to the 20th century, the whole of the Antarctic¹ - i.e. the South Polar continent itself plus adjacent islands and ice-covered waters – was broadly recognized as no-man's land (*terra nullius* in legal terminology), with the possible exception of the South Georgia islands, which "more or less" were considered to belong to the British sphere of interest. Some 40 years later, most (some 85 %) of the continent had been carved up and divided among themselves by seven claimant states. From the very outset, the United Kingdom – on behalf of itself and its Empire (later to become the British Commonwealth) – played a leading rôle. Thus, in 1908 the

United Kingdom laid claim to a sector-shaped part of the West Antarctic (the so-called “Falkland Islands Dependencies”, with boundaries defined in 1917 as between 50° and 80° W.). In 1924 France modestly secured for itself the narrow sector between 136° and 142° E. Meanwhile and subsequently, further British annexations included in 1923 the sector between 160° E. and 150° W., which was placed under the administration of New Zealand, and in 1933 a huge chunk of East Antarctic consisting of two sectors (together covering some 40 % of the whole continent) between viz. 45° and 136° E., and 142° E. and 160° W., which were placed under the administration of Australia.² Norway entered the arena with the annexations in 1928 and 1931 of the tiny islands Bouvet Island and Peter I Island. Having received repeated assurances that the United Kingdom would not object, Norway in 1939 also annexed a sizeable stretch of the Antarctic mainland, later to be given the name Queen Maud Land (although never defined as a sector, it would eventually cover the territory between 20° W. and 45° E.).³

Up until this stage, political developments in the Antarctic – including territorial aspirations – had occurred within an overall setting characterized by obeisance and deference to the British hegemony. “Rule Britannia” and its derivation *Pax Britannica* were tacitly acknowledged as the key defining elements of the Antarctic political reality. By and large, serious political conflicts were avoided. However, in 1939 and 1940, Argentina and Chile entered the race for obtaining a slice of the Antarctic ice-cake, making claims in the West Antarctic to be defined as sectors between viz. 25° and 74° W. (Argentina) and between 53° and 90° W. (Chile). The Argentinian and the Chilean claims both overlapped with parts of the British Falkland Islands Dependencies, as well as being mutually overlapping. Thus were sown the seeds of future conflicts, and more was to come.

The Post-War Period: New Conflict Patterns, Protagonists and Processes⁴

The seven claimants were not the only parties that considered themselves to have stakes in the political and legal status of the continent. There was a widespread opinion that the United States would reserve for itself a preferential claim of priority to the remaining no-man’s sector between 90° and 150° W. in West Antarctic. At the same time, the United States had explicitly reserved itself against recognizing those

annexations which other nations already had made. It was furthermore known that the Soviet Union – which also, like the United States, had recognized none of the claims – maintained the view that it was entitled to have a say in the question of the political and legal status of the Antarctic.

Such was the situation which prevailed at the end of the World War 2 in 1945, and which was to form the backdrop for those processes which eventually should lead up to the signing of the Antarctic Treaty a decade and a half later. It was a backdrop which presented a picture where a small group consisting of seven actors had acted on their own accord on more or less solid ground in terms of international law, casting the rest of the world community in the rôle of more or less passive outsiders and onlookers. It was a picture where a pattern of conflict lines on several levels and in several dimensions could be discerned – first and foremost conflicts between certain of the claimants among themselves; in the next place conflicts between claimants and non-claimants; but also conflicting wishes, goals, and objectives between some of the non-claimants themselves. A particularly uneasy – and sometimes tense - situation prevailed in the West Antarctic, where the mutually overlapping claims led to a prolonged sovereignty dispute. Although the dispute was first and foremost played out on the diplomatic level, it became also manifest in demonstrations of military might, such as naval patrol activities. Thus, in 1952 on one occasion Argentinian forces opened machine-gun fire on a British landing craft at an island claimed by both parties - an incident which illustrates the latent tensions in this area.

Throughout the whole period up to World War 2 the United Kingdom had been the totally dominant power in the political game about the Antarctic. Attempts at challenging the British hegemony had been few, modest, and feeble. This was now definitely an epoch of the past. In developments taking place in the Antarctic after 1945, the United States was destined to play a pivotal rôle.

The principled position of the United States to the sovereignty claims, and the strong American involvement in other activities (above all, with regard to scientific research expeditions) in the Antarctic, lead to persistent speculations concerning American intentions. These were disclosed on 9 August 1948 in the shape of identical notes to the governments of Argentina, Australia, Chile, France, New Zealand, Norway, and

the United Kingdom, i.e. all of the seven states which had made annexation claims on the South Polar continent. Here it was proposed that the claimants should join the United States in creating an internationalized solution for the Antarctic on the basis of a detailed draft agreement on a so-called "multiple condominium". According to the plan, the eight parties should gather together and unite their respective claims, which were to be transferred to a governing body to be established with extensive prerogatives and a substantial measure of independence of the governments of the respective contracting parties. In reality, the plan envisaged the establishment of a "territory-possessing international organization", which should both manage scientific research and make security-political decisions, cooperate with the United Nations, but nevertheless remain independent of the world organization. The proposal got a mixed reception, - the United Kingdom and New Zealand's governments responded obligingly whereas the other parties by and large adopted a rejecting position. Even more negative was reaction of the Soviet Union – which was not a claimant, and had not been consulted, but which felt very much entitled to have a say in the matter. Thus, in a memorandum of 7 June 1950 to the governments of the claimant states and the United States, the Soviet government declared that it *"...could not consider as legal any decision whatsoever concerning the regime of Antarctic, which had been taken without its concurrence"*.

In light of the lack of enthusiasm with which the American condominium proposal had been met, the plan was by-and-by tacitly buried. The question of an international solution for the sovereignty question in the Antarctic was, however, from the middle 1950's raised time and again in leading political circles, notably from the United Kingdom and New Zealand, without resulting in substantive deliberations or any other concrete outcomes. A proposal brought forth by India in February 1956 to put "the Antarctic question" on the agenda for the 11th General Assembly of the United Nations met with vigorous opposition from a number of states, and the proposal was henceforth withdrawn. This was repeated the next two years.

When the change finally occurred – bringing new impetus to the international efforts at finding a solution to "the Antarctic question" – the inspiration and the precipitating factors should come from the structures and processes of scientific cooperation which

were to manifest themselves in connection with the International Geophysical Year (IGY).

THE ANTARCTIC AS AN ARENA FOR SCIENTIFIC COOPERATION: THE INTERNATIONAL GEOPHYSICAL YEAR⁵

The Background

That the Antarctic already at an early stage presented itself as a particularly well suited object for international cooperation on scientific research, comes abundantly clear in the following words that were expressed at an international scientific congress in 1861:⁶

”If, in pleading the cause of Antarctic exploration, I be required to answer first the question of cui bono? which is so apt to be put, I reply, it is enough for me, when contemplating the vast extent of that unknown region, to know that is a part of the surface of our planet, and to remember that the earth was made for man; that all knowledge is profitable; that no discoveries have conferred more honour and glory upon the age in which they were made, or have been more beneficial to the world than geographical discoveries; and that never were nations so well prepared to undertake Antarctic explorations as are those that I now solicit”.

The quote is borrowed from a speech which Commander Matthew Fontaine Maury of the US Navy gave with the purpose of calling for international cooperation in the exploration of the Antarctic. Bringing into mind that the Antarctic Treaty – which expressly prescribes such cooperation – came into force in 1961, Cdr Maury may aptly be said to have been 100 years ahead of his time with his appeal. Nevertheless, some time would come to pass before the acknowledged desirability of international cooperation on scientific research in the Antarctic would manifest itself in tangible, concrete ways. The earliest signs could be discerned in connection with the accomplishment of the First International Polar Year in 1882-83 (mentioned in the **Introduction** to the present paper). The further exploration which took place in the Antarctic through the subsequent three-quarters of a century, was however conducted under unilaterally national auspices, above all as a means in an increasingly keen

competition among participating nations in their endeavours to acquire political rights (e.g. as basis for sovereignty claims) in these parts of the world.

Such a nationalistic motive was also very evident in bringing about the Norwegian "Maudheim"-expedition, which operated in the Norwegian claim Queen Maud Land in 1949-52. (It was stated officially at the time that the purpose of such an expedition would be to strengthen Norway's sovereignty claim). This particular expedition would, nevertheless, be a landmark of pioneering with regard to international cooperation. Because of financial constraints it was not deemed feasible to launch a purely Norwegian expedition, and the "Maudheim" expedition was therefore carried out as a joint Norwegian-British-Swedish venture. Thus the expedition became a precursor for an essentially new epoch, which was to be characterized by international cooperation on scientific research in the Antarctic. Not the least, the experience from the cooperation in the "Maudheim" expedition would have direct importance for the broader international cooperation in the exploration of the Antarctic which took place in the context of the International Geophysical Year (IGY) 1957-58.⁷ How this came about, what was its contents, and which direction it took, will be discussed in the following .

The International Geophysical Year (IGY) 1957-58

The implementation and the accomplishment of the IGY would be the most prominent single event in bringing about the development of the Antarctic pattern – and eventually, the Antarctic "model" - of international cooperation, including the Antarctic Treaty and the further instruments and mechanisms that would be derived from it. This would, specifically, apply both with regard to (1) laying the groundworks and creating the preconditions for making the Treaty a viable proposition (i.e. paving the way); (2) the Treaty's coming into existence (i.e. facilitating the negotiation process); and (3) the substantive contents of the Treaty, - its guiding principles as well as its concrete provisions (i.e. defining the activities).

The IGY was a world-wide arrangement for the collection of scientific data, organized by the International Council of Scientific Unions (ICSU), with financial support from the governments of a number of the participating countries. An important aspect of the IGY was its having been initiated, driven, and conducted by

the scientists themselves – it was thus, in its inception and as a point of departure, not a political project. In this context, special note should be made of the central rôle of ICSU and the special characteristics of this organization.⁸ The membership of ICSU is composed of two categories. One group includes scientific institutions world wide – mainly academies and research councils. The second group includes international associations within specific scientific disciplines, such as geophysics, astronomy, physics, and chemistry. For their part, these associations include scientific representatives from the various research institutions around the world. ICSU has, *inter alia*, served as a mechanism for the implementation of special research programmes which have necessitated a high degree of coordination. The IGY was such a programme. In order to undertake the practical implementation of this ambitious programme the ICSU appointed a special committee, - *Comité Spéciale de l'Année Géophysique Internationale* (abbr. CSAGI). It was recognized that research data from the Antarctic would be of central importance to the overall programme, with the consequence that a substantial number of states saw the merits of participating in the research activities on the South Polar continent.⁹

This was also seen to entail an increased risk for political complications. The IGY planners were no doubt fully aware of the fact that the question of sovereignty and jurisdiction in the Antarctic was subject to international disputes. Several of the states which were to dispatch expeditions to the Antarctic as part of their contributions to the IGY (notably the United States and the Soviet Union), were states that did not recognize those sovereignty claims which had been made in the Antarctic, and that had not themselves made such claims. For the IGY planners it was, therefore - and above all in order to permit full freedom of action for the research personnel operating in the field - imperative to avoid letting the sovereignty issue cause political complications. This was accomplished through an informal understanding between the parties to the effect that nothing that would take place in connection with the IGY would have any bearing on the sovereignty issue in the Antarctic. There was never an *explicit decision* to that effect, but rather – in the true sense of the word – a "gentlemen's agreement" which was reached in the following way: At the first, constituent meeting of CSAGI in Paris 6-10 July 1955, the Frenchman G.R. Laclavère was elected president, and in his introductory statement emphasized the meeting's

technical character and its non-involvement with political problems. The following declaration was thereupon adopted unanimously: "*The Antarctic Conference* (i.e. the CSAGI meeting – Author's note) *entirely endorses M. Laclavère's statement of purposes of the opening session, and specifically his affirmation that the over-all aims of the Conference are entirely scientific*". The principled position which was thus expressed, was to become a guiding rule for the subsequent IGY activities.¹⁰

To be sure, this "gentlemen's agreement" could not be considered binding upon the respective governments, but would nevertheless become an important basis for the actual research cooperation which was initiated under the IGY. Parties succeeded in building up an atmosphere characterized by a spirit of active cooperation, which helped reduce the misgivings of those countries which maintained territorial claims, against letting other nations' expeditions enter into their respective areas of claims.

The IGY lasted from 1 July 1957 to 31 December 1958.¹¹ Twelve nations – Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the Soviet Union, the United Kingdom, and the United States – participated in the Antarctic cooperation programme, operating a total of 44 scientific stations to the south of 60° S. The cooperation consisted mainly in separate and independent contributions from the national research programmes of each individual country to a comprehensive international scientific plan, with CSAGI exercising a certain measure of coordination. The participating nations established their own bases, dispatched their own scientists and produced their own research results, which were forwarded as national contributions to data centres specially dedicated for IGY use.¹² Regular joint international projects could be found within one specific area, insofar as a joint weather central was established where scientists from the various respective countries jointly analyzed and processed meteorological data. By and large the IGY cooperation did not, however, consist of international joint projects in the true and genuine sense, but had basically the character of extensive coordination of the respective separate national projects, which taken together amounted to the total research activities. This coordination included, *inter alia*, allocation of research tasks and a centralized exchange of information. In addition, extensive exchange of scientific personnel took place.¹³

The essential characteristics of the IGY, according to one of the leaders of its implementation,¹⁴ were its uncomplicated organization, its flexibility with regard to address new possibilities, its freedom from political ulterior motives, its appeal to national pride, and the very spirit which set its imprint on the whole venture. The defining elements in the overall picture were few and simple. First and foremost there were the scientifically interesting tasks at hand. Next, there existed already a mechanism for bringing the scientists of the world together in order to embark on a world-embracing effort. In addition, there were three unique factors at play: *First*, even though the IGY was an international undertaking, it was also a number of individual national enterprises, as seen from the viewpoint of each of the respective participating nations. Thus, the IGY could capitalize on the nationalistic currents which to a considerable extent made themselves felt on the part of the respective participants. *Second*, the fact that the IGY was directed and implemented by the scientists themselves – on the national as well as on the international levels – meant that it was largely possible to eliminate or circumvent political considerations and obstacles. If this undertaking had been handled on the level of national governments, difficult political issues would doubtlessly have arisen. *Third*, the IGY became a practical success story (first and foremost in terms of scientific research, but also in terms of communications and logistics) because the planning and the implementation were taken care of by the same people, which ensured a high degree of coordination.

THE PROCESS LEADING UP TO THE ANTARCTIC TREATY

The Political Context – and the Research Environment

One particular factor which formed an important part of the backdrop to the developments which resulted in the IGY – and which also contributed to making the IGY the success that it was - was the danger and the fear that the Antarctic in some way or other should be drawn into the Cold War.¹⁵ This is a point which today may easily be forgotten or played down, but which at the time seemed a very distinct and most undesirable proposition. In 1956-57 the Cold War had reached one of its most frigid phases (key words the Soviet suppression of the Hungary uprising, the East-West confrontation over Berlin, the Suez crisis, the Chinese constant bombardments

of Taiwan, unrest in the Middle East, the US/Soviet race for supremacy in space rockets and military missiles, and above all – the nuclear arms race). For responsible world leaders, sensible crisis management seemed to call for a policy of containment – modestly not aiming at solving the world’s conflicts but somehow to keep them at bay by preventing them from spreading or proliferating into hitherto un-contaminated areas. During this period of international tension the IGY entered the scene as a refreshing and innovative concept that seemed to lend life to the slogan ”peaceful coexistence”. Thus, the IGY was welcomed with world-wide enthusiasm, also far beyond the scientific community. In general, the IGY turned out to yield positive experiences. This was in particular true with regard to the Antarctic component of the overall programme, and it would have far-reaching consequences for the subsequent developments in the Antarctic.

It became clear at an early stage that full utilization of the material investments in bases and technical equipment which the respective countries had made in the Antarctic, would call for continued research activities beyond the short IGY period. It was known already in 1957 that the United States was eagerly in favour of a prolongation of the IGY, and that the Soviets were planning for continued and increased activities. Against this backdrop ICSU already by the end of 1957 appointed a special committee to assess the feasibility of the continuation of the research activities after the end of the IGY. This committee was to be known by its acronym SCAR (initially: the *Special* Committee on Antarctic Research, later amended to the *Scientific* Committee on Antarctic Research), and was composed by scientists from the respective 12 countries. Since its inception this committee has been tasked with coordinating the research efforts of the individual countries in the Antarctic, and as such, has played a continuous and important rôle with regard to the international cooperation on scientific research (and, by extension, with regard to the political developments) in these parts of the world. At the first SCAR meeting in February 1958 it became clear that the participating countries would continue their activities in the Antarctic also after the conclusion of the IGY, some countries even at an expanded scale. Therefore, as an initial step, it was decided that the coordinated Antarctic research programmes would be extended for another one year; the so-called ”Year of International Geophysical Cooperation” (IGC).¹⁶

The Treaty Negotiations

Among the affected parties at the time it was acknowledged in an increasing measure that if the fruitful scientific cooperation was to be continued after the end of the IGY, it would be necessary to keep the political problems separate from the questions that were related to the practical scientific cooperation. Mindful of this, as a point of departure, the United States in the spring of 1958 took the political initiative of inviting the other participating nations to commence negotiations with the explicit aim of reaching *"agreement among themselves on a program to insure the continuation of the fruitful scientific cooperation after the end of the IGY"*.¹⁷ The American initiative led, initially, to a prolonged series of thorough informal discussions between the parties (all told, more than 60 rounds of talks or preparatory meetings were held), leading up to the formal negotiations conducted at the Antarctic Conference that took place in Washington D.C. from 15 October to 1 December 1959. The premises or "terms of reference" as spelled out by the United States, made it clear that the objectives of the negotiations were to draft a treaty with the "following peaceful purposes":

- Freedom to conduct scientific research in the whole of the Antarctic for citizens, organizations, and governments of all countries; and a continuation of the international scientific cooperation "which so successfully takes place under the current International Geophysical Year".
- International agreement to safeguard that the Antarctic should only be used for peaceful purposes.
- Any other peaceful purposes that were not in contravention of the UN Charter.

Thus the United States - ten years after its ill-fated "condominium initiative" – would once more volunteer to play the combined rôle of convenor, scriptwriter, stage manager, mediator, umpire and arbitrator in the political game about the Antarctic. In the process that followed, it was abundantly clear that there was no other country that could – with a modicum of credibility - have taken the driver's seat. By virtue of its resources and capabilities – its physical and technological superiority – as well as by virtue of its dominance in research activities, the United States occupied a leading

position in the Antarctic which no other country could match. But that had also been the case ten years previously.

What was new about the situation in 1958 consisted mainly of the following three circumstances:

First, the IGY had had a confidence-building effect, which in its turn had contributed to creating a significantly more favourable *negotiation climate*.

Second, the IGY had also been instrumental in making the parties acutely aware of a more *urgent need* for reaching a negotiated solution which could secure the continued research cooperation.

Third, the new American proposal was easily perceived as a considerably more *acceptable proposition* to swallow and digest - for claimants and non-claimants alike - than the controversial "condominium initiative".

As the initiator, the United States was in a key position, and could to a considerable extent define the negotiation situation. This, however, did not mean that the Americans could just dictate the end result. The lengthy process with the numerous preparatory meetings brought forth great challenges with regard to accommodating and – when possible – reconciling or combining – the differing and sometimes conflicting demands and positions of the respective negotiating parties. In this process Argentina, Australia, Chile and France displayed the strongest reservations or reluctance on the issue of a possible renunciation of their sovereignty claims. At the opposite wing New Zealand showed readiness to accept a fully international regime. The two remaining claimants – Norway and the United Kingdom – occupied an intermediate position. The non-claimants Belgium, Japan, South Africa, and the Soviet Union were broadly in favour of a greater or lesser degree of internationalization. Norway and South Africa were the only parties which accepted unconditionally the principles which the United States had laid down as the basis for the negotiations.

At the conclusion of the Washington conference on 1 December 1959 the representatives of the 12 participating nations signed the agreement which is known

as the Antarctic Treaty. On 23 June 1961 it went into effect, having been ratified by the governments of all the signatory parties.

The negotiations and the eventual conclusion of the Antarctic Treaty may be described as, above all, a resoundingly triumphant achievement of American statecraft and diplomatic prowess. At the same time, this endeavour could not have been achieved unless the other contracting parties had deemed the outcome to be sufficiently compatible with their own – sometimes divergent – national interests, goals, and objectives. So, one may ask, what were the ultimate considerations and governing factors that made this exploit possible? At an international conference in honour of the 30th anniversary of the Antarctic Treaty system, one person who was said to have been "intimately involved in the drafting of the Antarctic Treaty", maintained that "science in fact was the crucial element that made the treaty possible. Without science there wouldn't have been an Antarctic Treaty".¹⁸ This is a highly likely proposition, but it omits another equally crucial element: The *political urgency* of finding a solution which accommodated their respective national vested interests and corresponding investments, materially and in terms of prestige. For the claimant states in particular, this was (or was perceived as) their window of opportunity to get an honourable deal with each other and with non-claimants, without being seen to succumb to the humiliations of capitulation, given the stakes and the claims that they had already made and which they could not be seen to simply give up. If politics and diplomacy ever deserves the label "the art of the possible", the Antarctic Treaty may be the ultimate evidence that bears out this rather hackneyed maxim.

THE ANTARCTIC TREATY – A NEW TYPE OF INTERNATIONAL ORGANIZATION

The Political Framework Provisions

The geographical area of application of the Antarctic Treaty is defined in its Article VI as "*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*".

As mentioned above, the explicit and primary purpose of the Antarctic Treaty was to facilitate the continuation of the international research cooperation. With this in mind, the Treaty would by necessity also have to address other problems and challenges, above all by introducing provisions which could determine the primary political framework conditions or principal guidelines for those activities that otherwise constitute the Treaty's substantive focal points.

A main principle, which is laid down already in Article I, states that "*Antarctica shall be used for peaceful purposes only*". Thus the Treaty prescribes demilitarization of the whole continent insofar as it prohibits, *inter alia*, "*any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapons*" (Article I, paragraph 1). It states, furthermore, that "*Any nuclear explosions in Antarctica and the disposal there of radioactive waste shall be prohibited*".

The most conspicuous and – in the *political* sense – the most significant of the Treaty's provisions, is obviously Article IV, which has the following, seemingly overly laborious, but thus all the more precise text:

1. *Nothing contained in the present Treaty shall be interpreted as:*
 - (a) *a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;*
 - (b) *a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;*
 - (c) *prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right or of claim or basis of claim to territorial sovereignty in Antarctica.*
2. *No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.*

In its form the Treaty's Article IV has the character of an agreement between the conflicting parties on a "non-solution" of the sovereignty issue, or, to coin a phrase, an agreement to disagree. In real terms, however, the provision entailed a *de facto* settlement of the issue indefinitely. To put it briefly, the problem was set aside, or – to stick with the Antarctic vernacular - "put on ice".

The Treaty Provisions Concerning the Scientific Cooperation

The importance of the political settlement notwithstanding, the main provisions of the Treaty are nevertheless (and obviously, in view of the primary purpose of the Treaty) those that deal with the modalities for the research cooperation. In the Treaty's preamble, this was expressed as follows:

"[the names of the Contracting Parties]...; Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind; ... [etc.]"

Thus, by concluding the Antarctic Treaty the parties confirmed – formally, and on the political level – the practice which had been established and implemented in the International Geophysical Year. The experience and the lessons learnt from the IGY experiment were decisive for the Antarctic Treaty coming into existence, and they were also decisive with regard to its substance (material contents). A number of the Treaty's provisions strived to optimally facilitate the continued functioning of the research cooperation, "as applied during the International Geophysical Year". Thus the Treaty implicitly confirmed the freedom of access and movement which had become the practice during the IGY. More specifically, the following elements from the IGY were elevated into a political programme:

- Exchange of scientific observations and results (Article III).
- Mutual obligation to inform each other of expeditions, stations and activities (Article VII).
- Exchange of scientific personnel (Article III).

It should also be noted that as the Treaty explicitly prescribed continued research cooperation, the functions and tasks performed by SCAR were given political blessing and confirmation, although that body is not mentioned by its name in the Treaty.

Article II of the Treaty stipulates that "*Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty*".

Thus, like the Treaty's preamble, Article II is a general declaration of principles rather than a concrete set of measures. No definition was offered as to what exactly was meant by the expression "as applied during the International Geophysical Year". It may therefore easily be suggested that the Treaty's provisions concerning scientific cooperation were based on a rather hazy understanding of what the cooperation during the IGY was really all about.¹⁹

On the other hand, Article III is more specific, as can be seen from the following rendering *in extenso*:

1. *In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:*

(a) *information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;*

(b) *scientific personnel shall be exchanged in Antarctica between expeditions and stations;*

(c) *scientific observations and results from Antarctica shall be exchanged and made freely available.*

2. *In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.*

The language employed in paragraph 1.(a): *"...to permit maximum economy and efficiency of operations"* may well be an expression of the most important practical rationale for those forms of cooperation which the Treaty seeks to secure, maintain, and continue.

As mentioned earlier, exchange of scientific personnel as well as exchange of scientific observations and results had been practiced during the IGY. The Treaty did not provide any specific guidelines as to how such exchange would subsequently be implemented. Certain supplementary provisions did, however, secure a continued high level of exchange of information, as well as such openness and mutual contact between the parties as were considered to be necessary practical prerequisites for a continued active cooperation in accordance with Articles II and III.

The Inspection Clause

Article VII decrees that each Contracting Party has the right to designate observers to carry out – without any restrictions - inspections of all installations and activities in all areas in the Antarctic. The expressed purpose of this provision was *"to promote the objectives and ensure the observance of the provisions of the present Treaty"*, a purpose which one might assume was primarily meant to safeguard the demilitarization and nuclear prohibition provisions of the Treaty. The installations and activities in question were, however, almost exclusively research-related. The inspection clause must therefore necessarily be considered as an adjunct to the principle of exchange of scientific information. This aspect becomes even more pronounced in paragraph 5 of Article VII, which introduced a virtually all-encompassing obligation to provide information:

5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

(a) all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;

(b) all stations in Antarctica occupied by its nationals; and

(c) *any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present Treaty.*

The relevance for the *scientific cooperation* of the inspection clause and the obligation to provide information must, necessarily, be judged on the background of the prevailing unclear and still controversial issue of the *political status* of the continent, which was only partially addressed by the Antarctic Treaty. As mentioned earlier, a paramount consideration under the IGY had been to pre-empt any political complications, something which was achieved by the successful build-up of a high level of mutual confidence and openness in the relations between the parties.

In the context of the preparations for the IGY, *information* was a key element: By ensuring that the parties got a maximal access to information, a substantial part of the basis for any mutual distrust and suspicion was removed. This in turn reduced the politically motivated misgivings towards an extensive and comprehensive scientific cooperation. In the context of the drafting of the Antarctic Treaty the participants were faced with the same problem when it came to the task of laying the groundworks for a more permanent continuation of the temporary research cooperation regime which had been established during the IGY. Here the Article VII of the Treaty would serve as an important measure to ensure the necessary access to information.

The Consultation Mechanism

The Treaty's probably most important (and, in the view of this author, the most interesting) measure for promoting a continued cooperation on research, is to be found in the *consultation provision* which was laid down in Article IX. The main operative parts are contained in the following excerpts from paragraph 1 of the Article:

Representatives of the Contracting Parties [...] shall meet [...] at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

 (b) *facilitation of scientific research in Antarctica;*

(c) *facilitation of international scientific cooperation in Antarctica; ...[etc.].*

Thus, the Treaty's Article IX also established a *consultative mechanism* at the political level with the explicit mandate of furthering the international scientific cooperation, namely the consultative *meetings* which the parties had committed themselves to conduct on a periodic basis ("at suitable intervals"). These meetings, which eventually would be known by the acronym ATCM (for "Antarctic Treaty Consultative Meetings"), were such an original innovation that the Antarctic Treaty with good reasons would be described as "a new type of international organization".²⁰

An aspect of special interest as regards the scientific cooperation, was the function that the consultative meetings were accorded vis-à-vis SCAR, and the mutual interaction which would thus evolve and deepen between the political and the scientific aspects of the Antarctic cooperation. As described in the preceding sections, the main issues to be considered by the consultative meetings were - from the very outset – more or less linked to the activities which were also on SCAR's agenda. Also from the very beginning it had become the practice of the Parties to the Treaty to include SCAR representatives in their national delegations to the consultative meetings, as these same persons as a rule would also be among the foremost experts of their respective countries on Antarctic matters. Furthermore, whereas no secretariat had been established for the consultative meetings, SCAR at least had in place a rudimentary system for rotating the secretarial responsibilities among its members (as from 1970 replaced by a permanent secretariat at the Scott Polar Institute in Cambridge). In addition, SCAR early on adopted the practice of scheduling its meetings in advance of the consultative meetings, where the same issues were to be discussed. As a consequence of these peculiarities, it routinely fell on SCAR to handle the preparatory work on matters to be dealt with at the consultative meetings, as well as to handle the implementation of decisions taken by the consultative meetings. This particular interaction may – somewhat schematically – be described as a symbiosis, where a non-governmental organization (SCAR)

would perform the secretarial functions for an international governmental organization (ATCM).

The Duration of the Treaty

For many years there was a widespread belief that the duration of the Antarctic Treaty was limited to a 30-year period, whereupon it would expire or – alternatively – would have to be re-negotiated. The basis for this misunderstanding would seem to be found in the Article XII, paragraph 2.(a), where the time limit ”thirty years” after the entry into force of the Treaty is mentioned as one of the preconditions that must be met in the event that one of the parties would request the convening of an evaluation conference (”a Conference of all the Contracting Parties [...] to review the operation of the Treaty”). Taken out of this context, this provision has then been linked up with those very detailed and quite demanding rules that are laid down in Article XII, paragraphs 2.(b) and 2.(c), for the event that any party should contemplate withdrawal from the Treaty.

Within the set of rules stipulated by Article XII, such eventualities – the convening of an evaluation conference, as well as the withdrawal of any party from the Treaty – must be considered to be very unlikely propositions. Neither of these eventualities would by themselves, however, entail the expiration of the Treaty.

The Antarctic Treaty has, in reality, no time limitation on its duration in force, and the Treaty has no clause providing for its eventual expiry.²¹

BACK TO THE FUTURE

Experience gained and Further Perspectives

The upcoming 50th anniversary of the Antarctic Treaty provides a suitable occasion for stock-taking, including both (1) to conduct an evaluation or assessment of the experiences that have been gained during this half-century; and (2) to conduct a review of the Treaty’s functionalities and working properties – in today’s situation as well as with regard to the tasks and challenges of the future.

This paper is not the place for such an evaluation exercise.

Certain features of the developments leading up to the present should nevertheless be identified and commented on:

- ***The consultation mechanism*** included at the outset only the Treaty's original 12 signatories. As an increasing number of additional countries acceded to the Treaty (in terms of the rules laid down in Article XIII, paragraph 1), a class-distinction soon evolved between the "consultative parties" (which, *inter alia*, enjoy voting rights at the consultative meetings) and "the others". The threshold for being elevated to consultative status is high (the main condition being the ability to demonstrate a substantial research effort). Decisions as to whether a party is worthy of being granted consultative status are made by consensus among those states which are already "inside". Thus, when analyzing the ATCM, we are actually looking at a type of association which experts on organization theory would denote a "self-perpetuating oligarchy".²² This arrangement has therefore at times been criticized for having created an exclusive club in order to have its own way with a whole continent, in flagrant disregard of the interests of the so-called "world community".²³ Thus, from a conflict-oriented perspective the Antarctic Treaty has been portrayed as an example of an imperialistically dictated dichotomy between "haves" and "have-nots". Such sporadic criticisms notwithstanding, the arrangement by and large seems to have functioned without causing particularly serious conflicts between the members of the Antarctic club and the rest of the world community. One probable reason for this may be that very few of the alleged "have-nots" (i.e. the non-consultative parties and the total outsiders) have been in a position to plead national interests of their own, that have been plausibly connected to the Ice Continent. In addition, the opportunity which after all has been available for outsiders to attain consultative status (by undertaking the necessary resource-demanding research effort), must in all likelihood have acted as an effective safety valve. Many states have actually availed themselves of this option. The number of consultative parties has grown gradually from the original 12, and includes now (2008) 28 countries, while the total number of parties to the Treaty amounts to 46 countries. Whereas consultative meetings initially took place every second year, a practice with annual meetings was eventually established and has been the norm since 1993, - presumably reflecting a perceived need to meet - and consult - more frequently. As mentioned earlier, these meetings are commonly

referred to as ATCM, with a numbering designation (this year's meeting in 2009 was thus ATCM XXXII).

- Through the years the Antarctic Treaty has served as a point of departure and a hub for the establishment of a network of agreed international cooperation instruments. In addition to the Antarctic Treaty itself, this network – which is commonly referred to as "The Antarctic Treaty System" (abbr. ATS) - comprises the *Agreed Measures on Conservation of Antarctic Flora and Fauna* of 1964; the *Convention on the Conservation of Antarctic Seals* of 1972; the *Convention on the Conservation of Antarctic Marine Living Resources* (abbr. CCAMLR) of 1980; and the *Antarctic Protocol on Environmental Protection* of 1991. Whereas the two conventions of viz. 1972 and 1980 are separate treaties, with, *inter alia*, geographical areas of application partly going beyond the area which is covered by the Antarctic Treaty, the 1964 Agreed Measures on Conservation as well as the 1991 Protocol on Environmental Protection have the formal status of annexes to (extensions of) and a more integral part of that Treaty. (A more ambitious agreement – the *Convention on the Regulation of Antarctic Mineral Resources*, abbr. CRAMRA – was signed by the parties in 1988 after six years of arduous negotiations. The agreement did however fail to pass the vital test of ratification, and was in 1991 finally abandoned in favour of the more modest Protocol on Environmental Protection – which in fact did incorporate most of the essence of the CRAMRA text). Notwithstanding the emphasis that can be put on the formal aspects of the various elements of the Antarctic Treaty System, the System constitutes a functional entity – and is seen as such by the System's actors. In any event, the present-day system of agreed-upon Antarctic cooperation may be said to have evolved by means of proliferation from the 1959 Treaty, to which it forms a supplement.

- The close institutional and functional connection between SCAR and the consultative system of the Antarctic Treaty (ATCM) was already from the very beginning a defining characteristic of Antarctic cooperation. Its architects in fact designed a system where a non-governmental organization (an NGO) would function as the auxiliary body and executive arm of an inter-governmental organization (an IGO). This would be a long-lasting aspect of the cooperation under the Treaty, esp. inasmuch as the ATCM was not equipped with a secretariat of its own. The question

of establishing a secretariat for the ATCM was for many years a permanent item on the agenda of the meetings, but national rivalries (esp. between Argentina and the United Kingdom) concerning the location issue would long be a constant obstacle to a solution. Only in 2003 did the parties succeed in reaching an agreement, with the result that a permanent ATCM-secretariat was established in Buenos Aires in September 2004. By necessity, this would augur the end of that epoch when SCAR had performed the secretarial functions for the political components of the Antarctic cooperation (ATCM). It will, however, hardly entail any phasing-out of SCAR's importance and rôle with regard to scientific cooperation, which in any event (albeit supplemented by an increasingly more important environment dimension) will remain the core subject of the Antarctic cooperation.

- During the early period the cooperation in terms of the Treaty first and foremost dealt with scientific investigation and immediately related questions. A gradual shift in the direction of nature conservation and environment issues was, however, noticeable already during the 1960's.²⁴ It is easy to see how this had to happen. As noted in the foregoing, scientific investigation *per se* forms an excellent basis for cooperation, but it also raises the questions of the substance of the research and the goals of the cooperation. Research taking place in a next to untouched (pristine) natural environment – and with that very same natural environment as the object of the research – will from the outset also be directly geared towards discovering needs and possibilities for measures of regulation and conservation concerning nature and environment. Furthermore the comparatively non-controversial character of such ventures must be taken into account. To introduce strict conservation measures in areas where no activities that would conceivably be affected take place, is a cost-free exercise, which has the extra bonus of bestowing on its perpetrators an aura of responsibility and a high "feel-good factor". At the same time, it should be noted that the increased focus on the environment has by no means replaced the scientific cooperation, but should rather be seen as an extension of such cooperation, and also – not the least – as an activity which in itself generates an increasing amount of new research tasks. This development, which is also manifest within the other agreements which constitute the Antarctic Treaty system, has gradually come to totally dominate the items which are discussed and the decisions

which are made in the context of the ATCM. There is scant evidence to the effect that this situation is going to change in the foreseeable future.

- It follows from the preceding descriptive account that a defining characteristic of the Antarctic Treaty System – its structure as well as its functionalities – is the intimate interrelationship of *policy* and *science*. It should, furthermore, be observed that this interrelationship is not a static entity, but a long-ongoing “interface”, the nature of which should display dynamic aspects which over time may be assumed to affect science as well as policy. For the scholar as well as for the practitioner, this raises questions which should merit further investigation. One such question would, perhaps rather obviously, concern the implications of this interface for scientific research: How has this affected the choices of subject matter to be studied, the strategic decisions on research programmes and projects, - i.e. the direction, the emphasis and the content of the research? (For a case in point, see the preceding paragraph which deals with the preponderance of environment conservation issues in the scientific cooperation under the ATS auspices). Another question which the nature of this science/policy interface raises, would be its implications for the stratagems, through which the ATS has been able to respond to various stresses without losing its essential character. And, furthermore, what can be said about these stratagems? The identification of such topics, which could usefully be subjected to closer analytic studies, would, however, also lead us directly over to the topic suggested in the next bullet point:

- One would have reason to expect that the parties to the Antarctic Treaty (separately or together) as well as other interested parties will see the forthcoming 50th anniversary as an occasion not only to celebrate, but also to make some stock-taking – possibly including in-depth analyses of the functioning and the functionalities of the Treaty, of the experience that has been gained during this half-century and of the Treaty’s suitability and possible adaptability for meeting the demands of the future. Thus, it has been announced that a so-called “Antarctic Treaty Summit” will be convened at the Smithsonian Institution in Washington D.C. from 30 November to 3 December 2009.²⁵ The stated purpose of this summit meeting is to “assess the legacy of the Antarctic Treaty” in connection with the 50th anniversary of the signing of the Treaty. The point of departure will, it seems, be retrospective, but

in an assessment of "the legacy" it would be difficult to evade the task of taking into consideration the relevance of such an assessment for the possible future perspectives. This could most likely be an interesting exercise.

Sedative or Spur?

A common aspect of the Antarctic territorial claims of all the seven claimants is their frail international recognition. Even though the legal arguments may have seemed rock-solid, the status of the claims from the outset and onwards were defined by a noticeable absence of a secure anchorage provide by a broad international recognition. Furthermore, the claims were actively challenged from various quarters, above all the United States, but also the Soviet Union. By virtue of their annexations in the south, each of the claimants had also incurred a need or put a pressure on themselves to act assertively – the pressure to demonstrate to themselves and to others that they meant business with their claims, and a need to demonstrate visually through appropriate kinds of actions that they deserved to be acknowledged as serious international actors.

With the Antarctic Treaty in place, some of this pressure was removed. The Treaty (and its Article VI in particular) entailed a formalization or "freeze" of *status quo ante*, and thus also meant an immediate lessening of those threats and challenges that had been directed at their claims. Thus the Treaty meant that the claimants – as far as it went – could breathe more easily.

True enough, the Treaty had not given the claimants any net gains - not one iota in the text of the Treaty provided any strengthening of their claims. But they had not, on the other hand, had to suffer any net losses either, and even better: The Treaty entailed – at least on paper – a guarantee against any further weakening of the claims. *Status quo* was obtained and secured, and the claimants would not need to do anything more in order to maintain their positions in the Antarctic, with those markers, lines, and names which they had been able to draw on the maps.

For the claimants the Antarctic Treaty could easily be felt to provide a hefty dose of sedatives. But was this really the case? What about those activities which were stipulated and prescribed in Articles II, III and VII? And what about the wider

repercussions of the stipulations, conditions, and activities that had been laid down in Article IX?

The dynamic character of the Antarctic Treaty envisaged a situation where the parties were not meant to spend their time in idleness. The Treaty did not only provide a breathing space with regard to the sovereignty questions, it also required that the parties continue to perform concrete, comprehensive, and costly tasks. Was this an aspect of the Treaty that would serve as an inspiration or a spur to renewed and reinforced activities?

The consultative parties had, high-handedly and arbitrarily, taken it upon themselves to form an (at least at the outset) exclusive club which to a considerable extent was based on the principle of "*Noblesse oblige*", i.e. that nobility carries with it certain obligations. Those tasks (mainly with regard to scientific research efforts) that had been laid down in the Treaty, also constituted a permanent challenge to the parties to fulfil their obligations, i.e. to perform and to deliver. A challenge of this nature could well be felt to be burdensome, but could also be seen to entail an encouragement to make strenuous efforts in order to demonstrate one's worthiness as members of this club. Even though the Treaty does not operate with any expulsion clause, this challenge could surely be felt as real and reasonable by the serious actors in the game.

How a central participant on the Norwegian side experienced this quandary can be seen from the following statement from 1973 by the then director of the Norwegian Polar Institute, Dr. Tore Gjelsvik (who had also the previous year served as the president of SCAR):²⁶

"After 1960 Norway has not dispatched a single expedition of its own to the Antarctic. In some years small groups or individuals have participated in the expeditions of other countries, or have been transported into the fields of operation by other nations' aircraft. Our cooperation has mainly been with the USA. This is the by far cheapest kind of Antarctic research, but it is also the kind which gives the least amount of national prestige, and which gives the least support to our sovereignty claims. This performance must be characterized as sheer minimum activity, which in the long run will not accord Norway a seat at the council table of the Antarctic states".

How Norway in the years to follow has tackled these challenges, is not a theme to be elaborated on in this article. One can, however, safely presume that this issue was not – and neither does it remain - a purely Norwegian problem. The question as to whether the Antarctic Treaty has become a sedative or a spur is an issue of relevance to the respective Antarctic policies of all of the claimant nations. It also ought to be an interesting theme for further study.

Lessons for the Arctic?

The ink of the signatures on the Antarctic Treaty document had hardly dried before observers – academics and others – started to speculate on the possible applicability of the "Antarctic Model" in other areas which were to be commonly known as "new territories", such as the seabed, the high seas, the outer space, and the Arctic. The Arctic analogy seemed especially exciting and tempting – if this particular model of political/scientific cooperation proved workable in one of the two ice-covered opposite ends of the Earth, why not see if some of its elements could be also useful in that other, northern "Frozen Frontier"?²⁷

A more systematic approach to the exploration of this and related questions, taking as its point of departure a gradually more elaborated and refined concept of "new territories", was adopted in the early 1970's by a research team at the Fridtjof Nansen Institute near Oslo (at that time known by the designation *The Fridtjof Nansen Foundation at Polhøgda*), producing a series of monographs, conference papers, and articles in academic journals highlighting various aspects of the possible applicability and/or adaptability of the "Antarctic Model" to address unsolved political and legal issues in areas where circumstances would call for international cooperation.²⁸ At that time, sovereignty issues concerning land and island territories in the Arctic were already long considered to have been solved. The legal and political status of the more or less ice-covered stretches of oceans and seabed was, however, seen as a different story. Thus, one notion which gained some attention, was the concept of a graduated approach whereby the Arctic would – at least conceptually - be subdivided into three concentric zones, tentatively designated viz. the 'Central Arctic', the 'Intermediate Arctic', and the 'National Arctic'. Within such a structure, the applicability of the "Antarctic Model" would primarily pertain to the 'Central Arctic'

- an area which would be defined as the area beyond any established and internationally recognized national domain and thus would in effect have a clear international status. One of the main architects of such a zonal concept explained its functionalities as follows:²⁹

"...by designating such zones in the Arctic on a concentric principle, emphasis is put on the need for a 'graduated northern frontier', as well as upon the quality of the Polar Basin as a region where joint international interests are involved. With this division between zones of the Arctic it will be possible to discuss also varying degrees of international regulation and this may make it less difficult to initiate a process of international cooperation in a region where the development may affect several countries, yet where the specific national interests in each country will be strong. In this respect, a system of consultations similar to that existing for Antarctica might be effective also in the Arctic".

One would have surmised that subsequent developments, from the middle 1970's and onwards - including the introduction of such international legal instruments as the 1982 UN Convention on the Law of the Sea as well as a host of bilateral agreements and such regional mechanisms or fora as e.g. the Arctic Council – would have rendered this discussion a thing of the past. By the dawn of the 21st century, there was already in place an extensive legal framework governing the region. Existing international law provides a comprehensive set of rules governing the use of the world's oceans, including the Arctic. Nevertheless, at various intervals the idea is mooted that there is a need for an "Arctic Treaty" along the lines of the Antarctic Treaty system. New – and anticipated – increases in Arctic shipping, tourism, and economic activity including an energy-hungry modern world's craving (quest?) for the exploitation of presumed offshore hydrocarbon deposits, as well as growing international awareness of environmental issues including concerns about possible prospects of climate changes, have, taken together, brought about a proliferation of media coverage including speculations about a "race to the Arctic", which somehow would call for new initiatives of international cooperation and regulatory measures. While such thoughts seemed to have gained some resonance among politicians of continental Europe, the countries bordering the Arctic Ocean (Canada, Denmark, Norway, Russia, and the United States) have displayed a distinct lack of enthusiasm

towards the idea of any new initiatives of such a nature. Thus, this issue was addressed at the “Arctic Ocean Conference” held between these five countries at Ilulissat, Greenland, 27-29 May 2008, adopting the so-called “Ilulissat Declaration”. This Declaration gave a clear message to the international community to the effect that the possibilities and challenges of the Arctic Ocean are amply taken care of under existing national, regional, and international provisions.³⁰

“By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges. In this regard, we recall that an extensive international legal framework applies to the Arctic Ocean as discussed between our representatives at the meeting in Oslo on 15 and 16 October 2007 at the level of senior officials...[...]... This framework provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean”.

The prevailing (and shared) attitude of the Arctic countries was further elaborated in an article by a senior spokesman of the United States government, in the following unequivocal terms:³¹

“Though it sounds nice, such a treaty would be unnecessary and inappropriate. The situations in the Arctic and the Antarctic are hardly analogous. The Antarctic Treaty, signed in 1959, governs a continent surrounded by oceans – a place where it was necessary to suspend claims to sovereignty in order to promote peace and scientific research. The Arctic, by contrast, is an ocean surrounded by continents. Its ocean is already subject to international rules related to marine scientific research, and its land has long been divided up, so there are few disputes over boundaries”.

There, it would seem, the matter rests for the time being.³² The broader question as to whether there are lessons to be learned from the Antarctic experience, - lessons which may yet be put to use in other conceivable settings, nevertheless remains a theme which one – at least in the academic community – would be well advised to not

discard altogether. In this vein, the forthcoming 50th anniversary of the Antarctic Treaty would seem to provide an appropriate occasion as well as a positive incentive.

NOTES

¹ A note of nomenclature: Throughout this paper, the term 'The Antarctic' is used in the broader sense of encompassing the South Polar mainland itself as well as adjacent islands, ice shelves and surrounding waters – roughly speaking the whole area to the south of 50° S. with the exception of the mainland of South America. In the strict geographical sense, the term 'Antarctica', which has gained wide usage in American literature and which is actually used throughout in the Antarctic Treaty itself, denotes the mainland only, and should – in the opinion of this author – be used thus.

² As New Zealand and Australia at the time enjoyed the status of self-governing British Dominions, this 'outsourcing' of administrative responsibilities would primarily be seen as an expression of the internal division of labour within the British Empire.

³ Later in the same year (1939), Germany laid a counter-claim to a sector (the so-called 'Neu-Schwabenland') which was, in its entirety, located within the territory annexed by Norway. The conflict thus created was, however, eliminated by Nazi Germany's defeat in World War 2. The claim for 'Neu-Schwabenland' has subsequently not been raised officially from the German side. On newer German maps, however, the name 'Neu-Schwabenland' is shown prominently in the interior of Queen Maud Land. The possible significance of this would presumably be a matter of pure speculation.

⁴ The narrative in this chapter is to a certain extent based on the relevant sections in Odd Gunnar Skagestad, Norsk Polarpolitikk 1905-1974, Dreyers forlag, Oslo 1975, see esp. pp.81-84 and pp.87-88. For further references, see also Odd Gunnar Skagestad, the article "Vår sydligste provins – fortellingen om Dronning Maud Land", in the journal Nytt Norsk Tidsskrift, nr.3 (September) 2005; <http://www.skagestad.info/DrMaudLandNNTsep.05.pdf> .

⁵ For a more comprehensive account of the rôle of the IGY in this context, reference is made to Odd Gunnar Skagestad, Vitenskapelig utforskning som internasjonalt samarbeidsobjekt i polarområdene, Report no. AA:S/1, The Fridtjof Nansen Foundation at Polhøgda, December 1974, 40 pages; <http://www.skagestad.info/VitUtforskIntlSamarbeid.pdf> .

⁶ Matthew Fontaine Maury, British Assn. for the Advancement of Sci., Rept. 31st Meeting, Manchester 1861, London 1862.

⁷ Philip M. Smith, "Prospects for International Cooperation on the Moon: The Antarctic Analogy", Bulletin of the Atomic Scientists, Vol.XXV, No.7, Sept. 1969, p.37.

⁸ Hugh Odishaw, "International Cooperation", International Science and Technology, p.29.

⁹ See in particular Ulf Engh, Antarktistraktaten – en ny type internasjonal organisasjon, Report no. AA:P107, The Fridtjof Nansen Foundation at Polhøgda, 1970, p.3.

¹⁰ See e.g. CSAGI, Bulletin d'Information, No,7 (1956), p.17; and SCAR Manual, Cambridge 1966, p.8.

¹¹ For an easy and concise account of the IGY cooperation, reference is made to The Antarctic, British Information Services, London 1966, pp.7-9.

¹² For a complete and comprehensive exchange of data, three large "world data centres" were established, the first in the USA, the second in the Soviet Union, and the third jointly between Western Europe, Australia and Japan. As soon as data became available, they were dispatched to these centres for archiving, copying and distribution so that all three data centres would have complete collections (Odishaw, op.cit.).

¹³ Skagestad, Report no. AA:P116, op.cit., p.7.

¹⁴ Odishaw, op.cit., p.30.

¹⁵ This was a concern which at the time was expressed from many quarters and in a number of publications; see for example J. Baard, "Red Threat from Antarctica", Missiles and Rockets, 1/6/59, p.5 and p.15; "The Cold War reaches Antarctica", Fortune, 1954, p.111 and p.226; E.K. Braybrooke, "The Future of Antarctica: Political and Legal", Landfall, New Zealand, December 1956, pp.337-338; and Howard J. Taubenfeld, "A Treaty for Antarctica", International Conciliation, January 1961, pp.261-262.

¹⁶ The Antarctic, op.cit., p.8.

¹⁷ U.S. Department of State Bulletin, Vol.38, No.988 (1958), pp.910-912.

¹⁸ Statement ascribed to the Norwegian participant Dr. Finn Sollie, as quoted in Aant Elzinga (ed.), Changing Trends in Antarctic Research, Kluwer Academic Publishers, Dordrecht/Boston/London 1993, see Chapter 2 – "The Role of Science in the Negotiations of the Antarctic Treaty – A Historical Review in Light of Recent Events", pp.31-35.

¹⁹ Truls Hanevold, Suverenitet og samarbeid. Antarktis i samarbeidets tegn, Report no. AA:H003, The Fridtjof Nansen Foundation at Polhøgda 1971, p.54.

²⁰ Engh, op.cit.

²¹ For a more detailed account and analysis of this issue, reference is made to Finn Sollie, The Duration of the Antarctic Treaty (An analysis of the amendment and revision procedures in a political perspective), Report no. AA:P108/2 (E), The Fridtjof Nansen Foundation at Polhøgda 1971, 44 pages

²² Term introduced by Roberto Michels in his book Zur Soziologie des Parteiwesens in der Moderne Demokratie, Leipzig 1911; see also Stein Ugelvik Larsen, "Oligarkiets jernlov", Lov og struktur, Bergen (Universitetsforlaget) 1987.

²³ See for instance Jozef Goldblat, "Troubles in the Antarctic?", Bulletin of Peace Proposals, Vol.IV, 1973, pp.286-288.

²⁴ For a more detailed account and analysis, see Skagestad, Report no. AA:S/I, op.cit.

²⁵ According to the website <http://adsabs.harvard.edu/abs/2005AGUFMED11D1124B> .

²⁶ Excerpt from Perspektivanalyse av 1973, issued by The Norwegian Polar Institute.

²⁷ See, inter alia, Philip M. Smith, op.cit.

²⁸ For a representative selection see, in particular, articles by Willy Østreng, Odd Gunnar Skagestad, Kim Traavik, Finn Sollie and Per Antonsen in viz. Internasjonal Politikk, No.3 B, (supplement), December 1973; Cooperation and Conflict, Nordic Journal of International Politics, No.2/3, 1974, reprinted in the anthology The Challenge of New Territories (Finn Sollie et al.), Universitetsforlaget, Oslo-Bergen-Tromsø, 1974.

²⁹ Finn Sollie, "The New Development in the Polar Regions", Cooperation and Conflict, op.cit., p.36 (88).

³⁰ For the full text of the Ilulissat Declaration, see the Danish Ministry of Foreign Affairs' website <http://www.cop15.dk/NR/rdonlyres/BE00B850-D278-4489-A6BE-6AE230415546/0/ArcticOceanConference.pdf>.

³¹ John B. Bellinger (the legal adviser to Secretary of State Condoleezza Rice), "Treaty on Ice", Op-Ed article in The New York Times, 23 June 2008; http://www.nytimes.com/2008/06/23/opinion/23bellinger.html?_r=1&th=&emc=th&pagewa...&oref=slogin .

³² Admittedly, not everyone seems to be happy with letting the matter rest thus. Notably, the European Parliament in a Resolution of 9 October 2008 "on Arctic governance" (Doc. P6_TA-PROV(2008)0574) challenged the views expressed in the Ilulissat Declaration and called on the European Commission "to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty, as supplemented by the Madrid Protocol signed in 1991, ...(etc.)".

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