



international policy UPDATE

No.2, 1997

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THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

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ANTARCTICA AND THE 1991 MADRID PROTOCOL: THE POLITICAL IMPLICATIONS FOR SOUTH AFRICA

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In June 1991, the consultative Parties of the Antarctic Treaty System (ATS) negotiated the Protocol on Environmental Protection for the Antarctic Continent. The Madrid Protocol was designed to produce a legal and political framework for the implementation of environmental protection for the polar region. After a brief review of the Protocol, this paper will concentrate on some of the problems and issues that have confronted the ratification of the Protocol by ATS Consultative Parties. As one of the earliest signatories to the 1959 Antarctic Treaty, South Africa has been a relatively active participant in the ATS and this International Update will assess the implications of the Madrid Protocol for the government in Pretoria. In the second and major part of this paper, it will be argued that these implications need to be understood within an expanding context of regional responsibilities such as the Valdivia Group and the Zone of Peace and Co-operation in the South Atlantic.

The Madrid Protocol is the most important series of measures to be applied to the environmental protection of the Antarctic. The Antarctic continent, within the existing spirit of the ATS, was declared a 'natural reserve devoted to peace and science'. Under a series of separate annexes, the Protocol outlined procedures for the protection of the polar continent and surrounding oceans. These included: Article 3 which introduced the principle that environmental impact assessments should be carried out on all Antarctic activities whether concerned with tourism or scientific activities; Article 7 which prohibited mineral exploitation for at least a fifty year period; and, Article 16 which declared that liability for environmental damage to the Antarctic should be established. Annex 5 of the Protocol created the category of Specially Protected Areas which meant that all parties accepted that there were some parts of the

Antarctic that were considered so special (in environmental terms) that specific obligations to protect these regions were negotiated. In the aftermath of the negotiations towards a minerals-based regime (CRAMRA 1982-1988), therefore, the ATS created a Protocol which committed the Consultative Parties to the conservation, management and protection of the Antarctic. In the light of various environmental campaigning by South African groups such as the South African Wilderness Society, the major achievement of the Madrid Protocol was undoubtedly the prohibition of mining in the region.

The Implementation of the Protocol, however, has raised important tensions that have yet to be fully resolved. These can be described under a number of separate headings:

1. The ban on mining in the Antarctic is temporary and not permanent. Mining has been banned on the continent, the seabed areas and the continental shelf up to 60 degrees South. The prohibition on mining depends on the mutual restraint of states party to the ATS. Pressure groups such as the Antarctic and Southern Oceans Coalition had hoped for a permanent ban. Moreover, the Protocol has not addressed the issue of enforcement and the mechanisms by which the ATS would deal with third parties that flouted the ban on mining and mineral exploration.
2. The negotiation of a liability annexe remains unsettled. Article 16 of the Protocol declared that a separate annexe on liability would be negotiated. Under the management of Professor Wolfrum of Germany, the ATS has attempted to construct such an annexe. It has yet to be settled. The issue is critical because it will establish how liability for environmental damage is established in the Antarctic region.

3. The execution and implementation of EIAs in the Antarctic remains subject to variation. At present, there are a series of different guidelines prepared by various bodies: the Council of Managers of National Antarctic Programmes, the Committee for Environmental Protection and the national guidelines of individual states. Common standards, therefore, have yet to be instituted in terms of the EIA process. The South African government carried out an EIA of their SANAE IV base in Dronning (Queen) Maud Land but subsequently experienced difficulties in securing the expertise of outside authorities. Did that position invalidate the significance of the Department of Environmental Affairs' conclusions about the likely environmental impact of the SANAE IV base?
4. The treatment and management of marine pollution in the Antarctic remains uncertain. The Protocol established certain conventions such as the principle that waste management strategies would have to be introduced into every port that dealt with Antarctic vessels. However, the issue of liability has not been settled nor has the position of naval warships and government vessels been clarified in terms of whether they are exempt from the provisions regarding marine pollution. At times, therefore, it has appeared that national security interests have been deemed more important than the implementation of common environmental standards in the region.
5. The improvement of administrative support for the ATS will be a priority in the final part of the twentieth century. The recent experiences of negotiating and implementing the Madrid Protocol have demonstrated the need for a more efficient and centralised mechanism for dealing with the exchange of ideas and documentation. The question of establishing a central Secretariat will have to be resolved soon. Argentina has voiced its willingness to host such an organisation. However, the British have expressed their severe reservations over the choice of Buenos Aires as the centre for such a body, but are not unsympathetic to the idea that a southern hemispheric nation should be the host state.
6. The question of polar sovereignties has not been resolved by the Protocol. The CRAMRA negotiations, for example, recognised that the rights of claimant and non-claimant states would have to be established. Questions of liability, jurisdiction and the ownership of resources such as ice are shot through with controversies over territorial and maritime sovereignties. As a non-

claimant state, South Africa has a particular interest in playing a part in the ongoing negotiation of those difficult trade-offs between the polar claimant and the non-claimant states. One point to ponder is that the expansion of membership of the ATS in the 1980s and 1990s has changed the balance between those two types of states. In 1996, a third of the consultative parties in the ATS are claimant states as opposed to two-thirds in 1959.

7. The relationship between the Law of the Sea Convention (UNCLOS III) and the Protocol is unclear. One example of this lack of legal and political clarity can be demonstrated by reference to the continental shelf. In 1982 UNCLOS III established that coastal states could declare new continental shelves (up to 200 miles offshore). However, it is unclear whether claimant states could declare those new regions in the Antarctic, given that Article IV of the 1959 Antarctic Treaty prohibits the enlargement of territorial claims. The question of the deep sea bed also remains unresolved. The management of the deep sea bed areas of the Southern Oceans by the ATS runs into conflict with the spirit of common heritage which declares that those parts of the oceans belong to the international community as a whole, rather than under the management of a select group of consultative parties to the ATS.

In the aftermath of apartheid, the Government of National Unity has confirmed that South Africa will continue to play an important role in the Antarctic and the ATS. The plans for a new base (SANAE IV) were confirmed and the Department of Environmental Affairs and Tourism has managed to secure the bulk of funding for the Antarctic research programme in the midst of the Reconstruction and Development Programme. Two important developments have occurred in 1995-96: First, the South African government ratified the Madrid Protocol in July 1995. Second, the Minister of Environmental Affairs declared the Prince Edward Islands (PEI) a Special Nature Reserve in November 1995. A management committee, under the chairmanship of Professor Steven Chown, was appointed to monitor and evaluate the environmental impact of South African activities on the PEI. The committee is responsible for the implementation of the Prince Edward Islands Management Plan in 1997. The main thrust of the Management Plan (May 1995) is concerned with the environmental protection of the PEI and the co-ordination of scientific priorities for the region. The nature and purpose of visits to the PEI are also going to be assessed by the management committee. This is a considerable shift in

management strategies, when one considers that in the mid-1980s the Botha government was condemned for its proposals to construct a large runway on Marion Island. The Management Plan makes no mention, however, of the military agenda (relating to the retrieval of missiles fired into the South Indian Ocean) that precipitated such a consideration.

South African participation in the Antarctic and the PEI has undoubtedly been shaped by the provisions of the Madrid Protocol and the growing awareness of environmental issues in the polar continent. The recent trends towards formulating management plans for SANAE IV and the PEI are a welcome development. However, the implementation of those plans will need to be monitored carefully and the possibility of outside scrutiny would be an important consideration here. South African participation in the ATS should also be able to develop over time given that the stigma of apartheid has been removed. Contributing to the legal and political debates over issues of liability, pollution control and the implementation of the Protocol provides scope for action and influence. South Africa's position as a non-claimant polar state but a claimant sub-Antarctic state provide an opportunity to shape the interplay between sovereign rights and common management strategies.

The Antarctic dimension of South Africa's external responsibilities also needs to be considered within a range of other regional and hemispheric considerations. One such grouping should be considered: The Valdivia Group. The Committee of the Group of Temperate Southern Hemisphere Countries on the Environment (Valdivia Group) is composed of representatives from Argentina, Australia, Chile, New Zealand, South Africa and Uruguay. The expressed purpose of the Group is to articulate and co-ordinate mutual environmental concerns in the southern hemisphere. After the first meeting of the Group was held in Valdivia, Chile in March 1995, it was decided that there were five major areas of common environmental concern: Ozone, Forestry, Desertification, Biodiversity and Climatic Change. Scientific committees were created in order to facilitate the exchange of information on those subjects. Each country, with the exception of Uruguay, is primarily responsible for one issue. South Africa, for example, is responsible for co-ordinating the Desertification Scientific Committee. Moreover, South Africa has presented the concerns of neighbouring states such as Namibia and Lesotho to the Group. The issue of the Antarctic and the Southern oceans have been proposed for inclusion but thus far resisted by Australia and New Zealand, who argue *pace* Chile

that the ATS and specific agreements such as the South Atlantic Zone of Peace and Co-operation (SAZOP) is already responsible for those issues.

In March 1996, the Australian government hosted the second meeting of the Group. A Brazilian representative attended this meeting and there were subsequent suggestions from Australia that Brazil be admitted as a full member of the Group. The major outcomes of that meeting were several. First, the Valdivia Group agreed to release a statement at the 1996 Climatic Change meeting in Geneva, outlining their mutual southern hemispheric concerns. This statement was intended to raise the profile of the southern hemisphere in the face of the environmental and political interests of important northern hemisphere states such as the USA and Japan. Second, the Group agreed to conduct informal meetings at the margins of major international environmental conferences in the near future. Continuity of diplomatic and scientific personnel will clearly be important here. Third, it was decided that the working groups should be instructed to establish a list of priorities for member states, given that important new issues such as chemicals and persistent organic pollutants were due to be discussed in various international environmental forums.

Whilst it would be prudent to be cautious about the specific value of the Valdivia Group given its relative youthfulness, its *diplomatic* value to South Africa is considerable in the sense that it consolidates regional relationships with South America, Australia and New Zealand. On the one hand, the trading and security-based relationship with South America has increased markedly in the 1990s. In the aftermath of apartheid and military government, South America and South Africa have forged co-operation over intelligence-sharing, military exercises within the SAZOP and trade exchanges between SADC and MERCOSUR. Further afield, the South African government has held discussions with Australia over an Indian Ocean Basin Initiative and has given support to New Zealand's proposals for a southern hemispheric nuclear-free zone. A key element to these exchanges and formal relationships is the belief that, since the end of the Cold War in 1989 and the collapse of apartheid in 1994, there are new opportunities for forging regional and southern hemispheric relationships. The Antarctic dimension is complementary to these general trends and supportive of specific concerns such as the joint management of marine resources in the South Atlantic.

In conclusion, the Antarctic is an important element of South African regional relationships. During the

apartheid years, the ATS was an important source of international scientific and diplomatic exchange for Pretoria. The current attempts to secure the environmental protection of the Antarctic are important to South Africa given the recent investment in SANAE IV and funding for the Antarctic programmes. More generally however, the Antarctic is important because issues regarding the management of living and non-living resources have been partially settled. The provisions of UNCLOS III, for example, have provided the South African government with the right to declare a 200 mile Economic Exclusion Zone (EEZ) around the Prince Edward Islands (South Africa has declared a 200 mile fishing zone). However, the extension of South African marine jurisdiction also carries new *responsibilities*. On the one hand, the provisions of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) will have to be taken into account, as will expanding relationships with South American neighbours. On the other hand, the protection of marine resources and general environmental monitoring of the Southern Oceans will require investment in, *inter alia*, naval vessels, attendance

at major international conventions and support for scientific research.

Transforming South Africa into a major southern hemispheric power will take time and investment. Groups such as Valdivia, the ATS and the SAZOP are clearly important parts of the process. However, a longer-term strategy is also vital in the midst of competing demands on the South African treasury and the plethora of international meetings, conferences and conventions. The growing importance of international environmental diplomacy, for example, is placing great intellectual and financial strains on smaller nations. Negotiating the tensions between national, regional and global priorities is always a difficult task for national governments, especially for a government which is also dealing with the economic and spatial inequalities of apartheid. South African membership of international bodies, such as the ATS and the Valdivia Group, can therefore be of assistance in the formulation of strategic priorities. The future remains uncertain, as even ratified documents (such as the Madrid Protocol) depend upon the mutual restraints of member states and third parties.

STATEMENT OF PURPOSE

The South African Institute of International Affairs is an independent organisation which aims to promote a wider and more informed understanding of international issues among South Africans.

It seeks also to educate, inform and facilitate contact between people concerned with South Africa's place in an interdependent world, and to contribute to the public debate on foreign policy.