

THE ANTARCTIC TREATY SYSTEM: POLITICS, LAW, AND DIPLOMACY.  
By Jeffrey D. Myhre. Westview Special Studies in International  
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Antarctica, the seventh continent, is a land of cold and ice so forbidding that no permanent human population has settled there. Indeed, it was not until the early nineteenth century that man first sighted the vast continent,<sup>1</sup> and even then, the continent was subject to rival claims.<sup>2</sup> Throughout most of that century, only the most adventurous took notice of Antarctica, essentially because of the technological problems inherent in dealing with so harsh a climate.<sup>3</sup> For the most part, these adventurous souls were in search of answers to the unknown.<sup>4</sup>

In 1775 when Captain James Cook first circumnavigated the continent (without sighting it) he wrote, "I make bold to declare that the world will derive no benefit from it."<sup>5</sup> This point of view was clearly valid while mankind's technological expertise was still young. But, by the middle of the twentieth century, when the rivalries between nations over their claims to Antarctica became obvious, the validity of Cook's statement became questionable.

The history of the international rivalry, negotiations and cooperation that has engendered the Antarctic Treaty, and indeed, has been engendered by it, is addressed in THE ANTARCTIC TREATY SYSTEM: POLITICS, LAW, AND DIPLOMACY by Jeffrey D. Myhre. The centerpiece of Mr. Myhre's work is his in-depth examination and interpretation of the Antarctic Treaty's provisions (Chapter IV). The strength of his work, however, is that this analysis is not done in isolation, but rather, is set against the backdrop of the development and history of the "system" itself.

The prominent political questions in this area have always related to sovereignty and national claims.<sup>6</sup> Mr. Myhre has, therefore, started his discussion by focusing on the ways in which international law and methods of claiming legal title to a territory may be applied to Antarctica (Chapter II—Territorial Sovereignty

1. Taubenfeld, *A Treaty for Antarctica*, 531 INT'L CONCILIATION 245, 249 (1961); see also P. QUIGG, *ANTARCTICA: THE CONTINUING EXPERIMENT* 6 (1985).

2. Taubenfeld, *supra* note 1, at 249; see also P. QUIGG, *supra* note 1, at 6.

3. See generally D. SHAPLEY, *THE SEVENTH CONTINENT: ANTARCTICA IN A RESOURCE AGE* 14 (1985).

4. P. QUIGG, *supra* note 1, at 8-9.

5. *Id.* at 3.

6. See Taubenfeld, *supra* note 1, at 248-55.

in Antarctica).<sup>7</sup> He first discusses the five ways in which a state may obtain title under international law, 1) subjugation, 2) accretion, 3) cession, 4) prescription and, 5) occupation (p. 8). Myhre comes to the conclusion that, "[g]iven the uninhabited nature of the Antarctic continent prior to this century, it is obvious that the fifth mode, occupation, is the only one to have any bearing on the discussion here" (p. 8). He proceeds to discuss three legal decisions<sup>8</sup> that have had a crucial impact on how international law has come to view title by occupation and, thus, supports his assertion as to its importance in settling the rival claims to Antarctica.<sup>9</sup> Myhre clearly sets out the salient facts of those cases and draws cogent parallels to the claims made in them and those articulated in relation to Antarctica. He concludes that the law of occupation is "neither black nor white but an unsatisfying shade of grey" (p. 11). In the remainder of Chapter II, Myhre illustrates the way in which this failing of international law has given rise to many of the Antarctic claims.

Mr. Myhre uses his discussion of the standard international law of titles as a springboard into his explanation of the "sector theory," used to delineate territory by six of the countries that have asserted claims in Antarctica (p. 11). Myhre acknowledges the usefulness of this theory in delineating claims in the Arctic and, thus, its acceptability to many of the nations claiming lands in Antarctica. However, he explains that the vitality of the "sector theory" under international law is suspect and makes a good argument as to why this is so (pp. 11-12).

Myhre also makes clear that it is exactly this lack of a clear international legal consensus as to how to determine the force of rival claims over the land of the continent that was a crucial factor leading to the drafting of the treaty at the Washington Conference in 1959. He discusses in detail the theory each claimant power articulates as the basis of its claim, the history behind each claim, and the strengths and weaknesses of each (pp. 12-15). He then turns to the non-claimant signatories and articulates their

7. For the discussion on international law, Myhre has relied primarily on R.Y. JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* (1963); see also F.M. AUBURN, *THE ROSS DEPENDENCY* 7-14 (1972).

8. Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53 (April 5); *Affaire de L'île De Clipperton* (Mex. v. Fr.), 2 R. Int'l Arb. Awards 1105 (1931); *Island of Palmas Case* (Neth. v. U.S.), 2 R. Int'l Arb. Awards 829 (1928).

9. See also F.M. AUBURN, *supra* note 7; Taubenfeld, *supra* note 1, at 251-52 (both discussing impact of these cases on international law and how it applies to Antarctica).

bases of interest in Antarctica (pp. 15-18). All of this serves as useful background in understanding the genesis of the treaty and the discussion that Myhre undertakes in the next chapter.

In Chapter III (Origins of The Antarctic Treaty, 1948-1959), Myhre convincingly argues that while the focus on the scientific richness of Antarctica was strengthened during the International Geophysical Year (IGY),<sup>10</sup> this was not the overriding factor, as is often claimed,<sup>11</sup> leading to the treaty. Myhre, using information contained in United States Department of State documents, declares that "the Treaty was really spawned by an American State Department facing a possible war between its allies and lacking a policy with which to address the problem" (p. 23). He then recounts the history of United States policy in the area, claiming that it was truly inchoate prior to the treaty. Although the United States laid the groundwork for an official claim to part of Antarctica prior to 1949,<sup>12</sup> it has never officially laid claim to any part of the continent.<sup>13</sup>

In the late 1940s, the British were in the midst of an escalation of tensions in their long-standing feud with Chile and Argentina about overlapping claims to Antarctic territory and sub-Antarctic islands.<sup>14</sup> Myhre argues that the United States was concerned about the possible disunity among its Western allies that a war between Britain and the South Americans would cause and attributes that concern to the Cold War, which was in its early stages (p. 25). The possibility that the Soviet Union would stake a claim to as yet "unclaimed" territory in Antarctica was also feared. This led to the United States' reevaluation of its Antarctica policies. The Policy Planning Staff issued a policy paper, PPS-31, which became the basis of American policy in Antarctica and the foundation for many of the principles of the Antarctic Treaty (pp. 26-28).

Myhre's reliance on PPS-31 is illustrative of his utilization of government documents to support his analysis of the important steps, processes and underlying forces that led to the formulation

10. See generally P. QUIGG, *supra* note 1, at 9-11 (discussing the development, politicization and significance of the IGY).

11. See generally P. QUIGG, *supra* note 1, at 18-19; D. SHAPLEY, *supra* note 3, at 49-60 (supporting this conclusion).

12. See Taubenfeld, *supra* note 1, at 255-56.

13. *Id.* at 256; F.M. AUBURN, *supra* note 7, at 35.

14. F.M. AUBURN, *supra* note 7, at 35.

of the treaty. The care with which he reconstructs the historical background and the support he finds for his interpretations of the tension-causing problems is truly the most striking aspect of the book's structure. By laying this foundation for the discussion of the treaty, and the subsequent development of the system it creates, Myhre succeeds in making his analysis of the treaty and his doubts about its success all much more understandable and compelling.

PPS-31 recognized that while the United States had no claim on Antarctica, nor recognized any of the existing claims, it nonetheless reserved the right to issue a claim in the future. The report also supported a finding made by the Joint Chiefs of Staff that Antarctica was of no real strategic importance to American security but that it was crucial to keep the Soviets from using it militarily (p. 27). Later, in Chapter IV, Myhre analyzes the text of the treaty and indicates that a careful reading of it reveals that PPS-31 was in fact inspirational to those who drafted the treaty.

One thing that PPS-31 did call for, and that the drafters of the treaty rejected, was the internationalization of, or a UN trusteeship for, Antarctica. Myhre discusses the possible reasons for this rejection (p. 36) and the implications of it (Chapter IX—Administrative Arrangements). Myhre sees this as the crucial compromise necessary in order to have secured the agreement of the most adamant claimant states (p. 36). By the terms of Article IV of the treaty, all the claims are frozen at the point at which they stood prior to the treaty, and they are essentially made subordinate to the system created by the terms of the treaty for as long as it remains in force.

The treaty makes no provisions for a permanent bureaucracy or secretariat to administer the treaty system. Instead, all the major decisions are made at the Consultative Meetings, which occur about every two years, and at the preparatory meetings which are held before the Consultative Meetings in order to set the agenda. Myhre views this omission as one of the potential threats to the system. He suggests that a professional bureaucracy would strengthen the treaty system by handling the day-to-day administration and would, in addition, "create a political lobby within [the] system . . . dedicated to the preservation of that arrangement" (p. 93).

While Myhre's point about the lack of bureaucracy is inherently sound, it does not fit with most of his analysis of the strengths and

weaknesses of the treaty. Nowhere in the book does Myhre indicate that the basic tenets of the treaty—the use of Antarctica for peaceful purposes only, the gathering of scientific knowledge there and the sharing of it, the pledge to keep it non-military and to keep all weapons and nuclear testing from being deployed there, and the ability for “observers” from any of the signatories to have access to any stations or installations at any time—are not being complied with. Nor does he indicate how a bureaucracy would help the internal organization of the treaty.

However, this is not to say that Myhre makes no strong arguments supporting his views about the establishment of a bureaucracy, which could act as a full-time advocacy group loyal to the treaty. He stresses that the most critical threat to the treaty is not internal so much as it is external. The awakening interest in Antarctica in an increasing number of third world nations<sup>15</sup> and their subsequent attacks on the exclusivity of Antarctic Treaty membership have possibly weakened its chances for survival, at least in its present form.<sup>16</sup> Although Myhre discusses this third world threat in-depth in his last chapter (Chapter XI—The Future of The Antarctic Treaty System), he has laid the groundwork for this proposition earlier in the book. As early as his analysis of Article IX in Chapter III (pp. 39-40), Myhre points out the undemocratic nature of the treaty.<sup>17</sup> As he interprets Article IX, the Consultative Powers have what appears to be a democratic protection, in that many decisions require a unanimous vote. However, even within this group there are differences. The original twelve drafting nations have the right to “attend Consultative Meetings without reservation” (p. 39). All other states wishing to become Consultative Powers must conduct enough research to convince the current Consultative Powers that they deserve to belong to that group (pp. 39-40). Also, the original Consultative Powers are entitled to attend the Consultative Meetings forever, but the others may do so only “during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there. . . .”<sup>18</sup> This discussion of the provisions that allow the current Consultative Powers, espe-

15. See P. QUIGG, *supra* note 1, at 38-41.

16. See generally *id.* at 41-42.

17. See generally D. SHAPLEY, *supra* note 3, at 98-99 (similar discussion about the undemocratic nature of the Treaty).

18. Antarctic Treaty, Dec. 1, 1959, art. IX, para. 2, 12 U.S.T. 794, T.I.A.S. No. 4780.

cially the original signers, to control the membership of the treaty nations and, thereby, access to Antarctica, enables Myhre to explain the rising third world resistance to the treaty system as it currently stands and the request for United Nations involvement in Antarctica.

In a related argument, Myhre says that much of the third world skepticism about how the treaty system is run comes from the fact that so much of its business is conducted secretly (p. 40). Although there is some support for this view,<sup>19</sup> there are problems with the amount of importance Myhre gives it. As is clear from his own work, as well as the works of other scholars in the field,<sup>20</sup> the information that can be obtained about the meetings is extensive. The final results and reports of the Consultative Meetings are made public and the rules of procedure that govern the meetings are in the public domain (pp. 41-42). Even so, Myhre seems troubled by the fact that the minutes for every meeting are not available and that the meetings are not open to any but the signatories. In his view, this shrouds the Consultative Powers' actions in a veil of secrecy that leads to a distrust of the whole treaty system (p. 5).

While this view may have some validity, several factors militate against its being as crucial as Myhre seems to suggest. First, many documents have been released on a regular basis by the Consultative Powers or have otherwise become part of the public domain.<sup>21</sup> Second, during the twenty-eight years of the treaty's existence, six new nations have attained consultative status, with full participation rights, and fourteen others have acceded to the treaty, giving them access to the documents and to the meetings (pp. 17-18). That some of these are third world nations certainly seems to weaken the argument that the major powers are adamant about keeping Antarctica all to themselves. This expansion of the number of member nations has led to a situation in which three of the four billion people in the world are now represented by their respective countries' membership in the treaty.<sup>22</sup> An additional factor that weakens Myhre's view of the importance of

19. See P. QUIGG, *supra* note 1, at 41.

20. See, e.g., ANTARCTICA AND INTERNATIONAL LAW (W.M. Bush ed. 1982) (a four-volume collection of international and national documents relating to the Antarctic and to the Treaty System).

21. *Id.*

22. P. QUIGG, *supra* note 1, at 47.

this "secrecy" is that, as in all multi-national endeavors, there are leaks.<sup>23</sup> Also, many of Myhre's sources are materials that have been declassified by the United States government, making them part of the public domain (pp. 60-65, Chapter V—Notes). This indicates another method by which the shroud of secrecy is pierced, allowing previously unattainable information to reach outsiders.

Another factor influencing the decision to keep the discussions "secret" while the meetings are in progress may be an attempt to keep the meetings from becoming too politicized. It may be felt that opening them up would "chill" the free discussions necessary in a treaty system of this type. Myhre himself alludes to this possibility early in the book (p. 5).

Overall, however, Myhre uses the foundations laid in earlier parts of the book in very constructive ways as the book progresses. In Chapter V, titled "Conservation," he uses the development of the treaty system in respect to this crucial area to explain how the Consultative Powers dealt with each other in the formative years of the system and how the system's major components were effectuated. This chapter is the longest in the book and has at its core the history of how the treaty's methods of controlling scientific research evolved. Myhre successfully illuminates the development of a procedure to pass and enforce the governing "agreed measures" (pp. 50-57). The give and take of the Consultative Powers is reconstructed, in a very insightful manner, through the use of various declassified documents. Myhre heavily relies on the first five Consultative Meetings, which occurred between 1961 and 1968 (p. 42), to paint a vivid picture of how the Antarctic became one of the few areas in the world where the desire to conserve has, so far, been stronger than the desire to exploit.

Additionally, Myhre uses this chapter to begin his discussion of other important components of the system. He discusses the importance of the Scientific Committee on Antarctic Research (SCAR), upon whose shoulders much of the day-to-day compilation and exchange of data falls (p. 77). Some of the most important decisions that went into the implementation of the treaty concerned the role SCAR was to play within the system (pp. 49-

23. See, e.g., D. SHAPLEY, *supra* note 3, at 148 (discussing a draft proposal that became public via one such leak).

54). Myhre expands on the development of SCAR's position in the following two chapters: Chapter VI—The Role of The Meetings of Experts and Chapter VII—The Role of SCAR.

To date, Antarctica's main use has been as a natural scientific research laboratory. Indeed Article IX of the treaty recognizes the importance of this.<sup>24</sup> To implement this provision, the nature of the relationship that was to exist between the scientists and diplomats had to be resolved (p. 67). Myhre recounts the events and negotiations that led to the promulgation of Recommendation IV-24 at the Fourth Consultative Meeting and concludes that it was a compromise between science and diplomacy:

While the technical people were allowed to recommend actions, the decision-makers would have the final say. When the question was purely technical, the diplomats would defer to their technical experts. However, if issues of a technical nature threatened to spill-over into financial or territorial matters, to name but two, the diplomats wanted to make certain that they had control over the situation. (p. 74).

Notwithstanding this conclusion, Myhre shows that scientists have continued to play an active role in Antarctica's governance.

The importance of scientific concerns in the treaty system is expounded upon in the discussion of SCAR's role. SCAR is not officially a part of the system but is, instead, an independent organization which was created during the IGY (p. 78). After analyzing the manner in which SCAR and the treaty system actually interact, Myhre concludes that the continued recognition of SCAR's independence is "merely paying lip-service to SCAR's legal status under the Treaty. SCAR, in practice, is the technical support body of the Treaty" (p. 83). The documentation that Myhre offers to support this conclusion, and his reading of it, is quite convincing.

Finally, Myhre addresses the problems the Antarctic treaty system faces and its possible future. The most critical question seems to be the treaty's ability to handle the rising interest in the possibility of tapping the potential mineral riches of the continent. As technological advances continue to be made, the resolution of this issue becomes more and more pressing.<sup>25</sup> Myhre

24. Antarctic Treaty, *supra* note 18, art. IX.

25. See generally SCIENCE, TECHNOLOGY, AND SOVEREIGNTY IN THE POLAR REGIONS (G. Schatz ed. 1974) (articles discussing technological advances and their possible implications in the polar regions).



concludes that the failure to address this issue adequately could result in the collapse of the present treaty system, because of the problems that would arise with the scientific community, environmental groups and those nations committed to the preservation of Antarctica if wholesale mining should ensue (p. 99). Also, an economically oriented endeavor would be likely to resurrect the questions of territorial sovereignty.<sup>26</sup>

The Beeby Draft is a document developed in response to the tensions created by the technological advances which have been made since the treaty's drafting. Myhre includes a copy in Appendix B. Although it is the result of negotiations which are nominally separate from the treaty, Myhre indicates that these negotiations have been controlled by the Consultative Powers (p. 101). The most important sections of the draft are analyzed, leading Myhre to conclude that it is designed to maintain the Consultative Powers' control over Antarctica and to support the exploitation of the continent's mineral wealth (pp. 104-105).<sup>27</sup> His analysis of why the regime would favor exploitation of resources is only somewhat persuasive primarily because he works from the premise that the nations involved are naturally exploitative (p. 106). The Beeby Draft includes a proposal that would create a commission that would oversee the development of mineral recovery in Antarctica. Myhre uses this fact as support for his contention. However, while the exploitative nature of those countries which seek mining permits from the commission might be inferred, it does not follow that all of the nations currently active in the system are exploitative. Instead of giving specific examples of why he feels these nations would become exploitative, Myhre takes this as a given and proceeds to analyze the draft from there. Ultimately his view may prove to be correct; however, it weakens his analysis to start with an unsupported premise. This is especially true in light of his discussion two pages later of how strong a conservationist Britain, a Consultative Power, has been in relation to Antarctica (p. 108).

Myhre closes the book by weighing the possible problems previously enumerated and concludes that the treaty system "seems to be on basically sound footing and is capable of surviving more or less unchanged into the twenty-first century." While his book

26. *Id.*; see also P. QUIGG, *supra* note 1, at 17, 30.

27. See also D. SHAPLEY, *supra* note 3, at 164-67 (discussion of the Beeby Draft provisions and environmental concerns prompted by it).

successfully points out the Antarctic treaty system's weaknesses, his analysis also illuminates its strengths and, thereby, makes this conclusion highly plausible.

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