

Public Participation in Antarctica: The Role of Non-governmental and Intergovernmental Organizations

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I want to thank the organizers and the Smithsonian for making this event possible. As today is the fiftieth anniversary of the signing of the Antarctic Treaty, I think it important to acknowledge those who crafted this elegant Treaty that reserved a Continent for peace and science, ensuring that this special place would remain free of military fortifications and activities while promoting international cooperation in scientific investigation.

I draw attention to Article III of the Treaty that provides inter alia that “to the greatest extent feasible and practicable” information regarding plans for scientific programs and scientific observations and results from Antarctica are to be exchanged and made freely available. In implementation of this Article, every encouragement is to be given to establishing cooperative working relations with United Nations specialized agencies and other international organizations having a scientific or technical interest in Antarctica.²

Thus, from the beginning, and anchored in the Treaty itself, was the concept that there was a role for both non-governmental and intergovernmental organizations. At the First Antarctic Treaty Consultative Meeting (ATCM) in Canberra in 1961, the Parties adopted two measures that confirmed this role. Recommendation I-IV with respect of the Scientific Committee on Antarctic Research (SCAR) recognized that SCAR’s recommendations concerning scientific programs and cooperation were “a most valuable contribution” to international scientific cooperation in Antarctica “ and that SCAR should be encouraged to continue its advisory work. Recommendation I-V recommended that governments encourage the work of international organizations having a scientific or technical interest in Antarctica. Recommendation I-V was not limited in its reference only to intergovernmental bodies.

Nevertheless, the Antarctic Treaty System (ATS) could not be considered open to outside bodies during its first years although SCAR’s advice and influence continued to play a prominent role³.

¹ The remarks given herein belong solely to the author and do not necessarily represent the views or policies of IUCN.

² Sources for information incorporated in these remarks include the web site of the Antarctic Treaty Secretariat at http://www.ats.aq/index_e.htm; the Ninth Edition of the Handbook of the Antarctic Treaty System (U.S. Department of State, July 2002, Harlan K. Cohen (editor)), also available at <http://www.state.gov/g/oes/rls/rpts/ant/>; The Antarctic Legal Regime (Martinus Nijhoff Publishers, Dordrecht, 1988, Christopher C. Joyner and Sudhir K. Chopra (editors)); Greening International Law (The New Press, New York, 1994, Philippe Sand (editor)); ASOC web site at <http://www.asoc.org/AboutUs/tabid/163/Default.aspx>; IAATO web site at <http://www.iaato.org/about.html>; Oceanites web site at <http://www.oceanites.org/>; SCAR web site at <http://www.scar.org/>; and personal communication from Lee Kimball.

³ SCAR’s advice was sought and its interest and role with respect of conservation of Antarctic fauna and flora and two years later specifically with respect of seals had been recognized through a Recommendation adopted at the Third and Fourth Consultative Meetings in Brussels in June 1964 and Santiago in November 1966 respectively.

The first opening of Antarctic Treaty meetings to intergovernmental and non-governmental organizations came in the 1970s. The Food and Agriculture Organization of the United Nations (FAO) participated through an observer delegation to the Conference on the Conservation of Antarctic Seals in London in February 1972 at which the Convention for the Conservation of Antarctic Seals was adopted.

Following the adoption of this Convention, work within the Treaty System focused on marine living resources. This led to growing involvement by both intergovernmental and non-governmental organizations in providing expert analyses, participating as observers in ATS meetings and participating as members of national delegations to Antarctic Treaty meetings. At the Eighth Consultative Meeting in 1975, Recommendation VIII-10 put certain questions to SCAR, which led to a meeting of scientists in 1976 to develop a research program on the Biological Investigation of Marine Antarctic Systems and Stocks (known as BIOMASS). The FAO prepared three reports in 1977 on the importance of krill to Antarctic marine ecosystems and their health.

The negotiation of Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) represented a significant milestone to open the Antarctic Treaty System. In the United States, the National Environmental Policy Act (NEPA) became law in 1970. It provided for public consultation on the environmental effects of certain U.S. federal activities and alternatives thereto. The United Nations Conference on the Human Environment in Stockholm in 1972 also served as a stimulus for an expectation for public participation in environmental consultations. As early as 1977 at the Ninth Consultative Committee the U.S. delegation included an advisor from the non-governmental organization The American Committee on International Conservation and the British delegation included an advisor from British Petroleum.

In Washington the Center for Law and Social Policy focused on Antarctica following the announcement by the 1972-1973 Deep Sea Drilling Project of the discovery of hydrocarbons in the Ross Sea. In London, the International Institute for Environment and Development began an Antarctica Project in 1975-1976. Both urged IUCN to become more involved in Antarctic issues and members of the IUCN adopted resolutions with respect of Antarctica at IUCN General Assemblies starting in 1977. The Antarctic and Southern Ocean Coalition was established in 1978. The 1981 IUCN resolution called inter alia for Antarctic Treaty Consultative Parties to invite qualified non-governmental organization representatives, including IUCN and ASOC, to participate in ATCMs. The IUCN Council in 1981 called for the preparation of a conservation strategy for Antarctica and the Southern Ocean.

The Conference on the Conservation of Antarctic Marine Living Resources held in Canberra in May 1980 at which the CAMLR Convention was adopted included a variety of international organizations, both intergovernmental and non-governmental. These were the European Communities, the FAO, the Intergovernmental Oceanographic Commission (IOC) of UNESCO, the International Whaling Commission (IWC), IUCN, SCAR and the Scientific Committee on Oceanic Research (SCOR) and followed on agreement through ATCM Recommendation IX-2 in

SCAR's influence was recognized in a preambular paragraph of the Agreed Measures for the Conservation of Antarctic Fauna and Flora as adopted through Recommendation III-VIII.

1977 to allow participation on an observer basis of “appropriate international organizations” “actively engaged in research and exploitation of Antarctic Marine Living Resources”.

Interest from outside of the Antarctic Treaty System continued. With the adoption of CCAMLR, Consultative Parties turned their attention to the potential for the exploitation of mineral resources. At the Eleventh Consultative Meeting in 1981 in Buenos Aires it was agreed to consider a legal instrument with respect of mineral resources. The United Nations Convention on the Law of the Sea, adopted in 1982, provided that the resources, referred to as minerals, of the seabed beyond national jurisdiction were the “common heritage of mankind”. Several developing states were of the view that mineral resources in Antarctica should be subject to a similar regime and raised the issue within the United Nations. In 1983, the question of Antarctica was discussed as an agenda item within the United Nations General Assembly. The Antarctic Treaty System was criticized because of its closed nature. This served as a catalyst for opening the Antarctic Treaty meetings to non-Consultative Parties and to international organizations, including non-governmental. It also served to encourage the more public availability of papers and Reports from Consultative Meetings.

Thus, over time participation in its meetings and processes was opened to observers from the outside. These changes were reflected in where the Rules of Procedure which were amended at the Fourteenth Consultative Meeting in Rio de Janeiro in 1987 to provide for participation by representatives of SCAR and the CCAMLR Secretariat as observers, and representatives of several international organizations as experts. Observers were viewed as components of the Antarctic Treaty System, whereas experts were to be invited only for specific agenda items on which they had expertise. The three experts invited to the Fourteenth Meeting were from WMO with respect of agenda items 13 and 15 on Antarctic meteorology and telecommunications and international system of marine hydrometeorological services to navigation in the Southern Ocean, SCAR with respect of agenda item 14 on air safety in Antarctica and IUCN with respect of agenda item 9 on human impact on the Antarctic Environment⁴.

These organizations provide important information and advice without which the Antarctic Treaty Parties could not effectively or efficiently manage Antarctica. In other words, if these organizations did not provide certain necessary information, the Parties would have to develop that information themselves. I refer in particular to the scientific advice that is received, for example from SCAR, ASOC, IHO, IOC, IUCN, SCAR, UNEP and WMO. From the earliest days of the System, SCAR provided advice and information that was informed key decisions, including the adoption of the Agreed Measures for the Conservation of Antarctic Fauna and Flora or the Conventions for the conservation of Antarctic seals and marine living resources.

⁴ SCAR, CCAMLR and COMNAP now participate as observers and at recent meetings experts who were invited included from the Interim Secretariat of ACAP, ASOC, IAATO, IHO, IMO, IOC, the IPY International Programme Office, IUCN, UNEP, WMO and WTO. Thus, the observers include one from one non-governmental organization, one intergovernmental organization and one international association of government employees. The experts include from three non-governmental organizations, seven intergovernmental organizations (including three that are UN specialized agency-related) and several that are independent of the United Nations. However, the Rules of Procedure provided that experts would not necessarily be invited to observe the whole of the meeting, and indeed until the late 1990s experts were asked to leave the meeting during discussion of at least one agenda item.

IUCN members maintained a focused interest in the conservation of Antarctica and its environment. As early as 1972 it had been recommended at the Second Work Conference on National Parks that Antarctica be designated as a World Park. Following a 1984 IUCN resolution on Antarctica and consultations with SCAR and a joint IUCN/SCAR symposium on the scientific requirements for Antarctic conservation in 1985, a joint IUCN/SCAR working group was established to consider a long-term conservation plan for Antarctica. An interim report was prepared in 1986. IUCN had prepared a report on “Conservation and development of Antarctic ecosystems” in 1984 and SCAR had published a report on “Man’s Impact on the Antarctic Environment” in 1985. IUCN has sent a delegation in most years to ATCMs since 1987 and to CAMLR Commission meetings since the first in 1982. In 1991 IUCN published “A Strategy for Antarctic Conservation”. In 1994 IUCN published “Developing the Antarctic Protected Area System: Proceedings of the SCAR/IUCN Workshop on Antarctic Protected Areas” that was held in 1992 in Cambridge, in 1996 it published “Opportunities for Antarctic Environmental Education and Training: Proceedings of the SCAR/IUCN Workshop on Environmental Education and Training that was held in 1993 in Gorizia. IUCN also printed the “Proceedings of the IUCN Workshop on Cumulative Impacts in Antarctica: Minimisation and Management” that was held in 1996 in Washington.

ASOC provides key information on a variety of issues. For example ASOC submitted nine information papers to the most recent Consultative Meeting in Baltimore, including *inter alia* on marine protection, tourism and climate change. The Coalition submitted seven papers to the CCAMLR meetings this year. The Oceanites Project, a non-governmental nonprofit science and education foundation, has been represented for years at Consultative Meetings as advisers on a national delegation and has provided invaluable information through the Antarctic Site Inventory on visitor sites and places. UNEP has provided advice on bioprospecting and on other topics, sometimes in collaboration with other UN-family bodies. Conservation trusts that do not necessarily participate directly in meetings provide for the management of certain historic sites.

IAATO, the International Association of Antarctica Tour Operators, was founded as an industry group in 1991 to promote and practice safe and environmentally responsible private travel to Antarctica. IAATO has acted as a conduit from Consultative Meetings to its members to provide industry with up-to-date information about safety and environmental protection requirements adopted at Consultative Meetings. IAATO also provides Consultative Meetings with data about tourists, their numbers, their site visits. Consultative Parties need these data to manage and would have to collate them directly if IAATO did not provide them.

The various non-governmental and intergovernmental organizations that attend Antarctic Treaty meetings also serve their members and the general public by providing information on actions taken with respect of governance of Antarctica and developments on and around the continent, including with respect of the environment. This in turn encourages interest in Antarctica and helps to build constituencies within different countries in support of programs in Antarctica, both for science and for conservation. It also requires care, as organizations must be careful to address or avoid the claimant/non-claimant issue in such a way as to help the Parties without offending any. Sometimes, an effective approach can be by providing scientific and technical advice to national delegations in a discrete and diplomatic way. At other times, a public approach may be more effective.

IUCN has an additional complexity in that its members include both governments and non-governmental organizations. Over half of the Parties are state members of IUCN and many of the others have agencies that are also IUCN members. IUCN's mission is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. In some countries IUCN is recognized under private law, in others it is an international organization. In addition, the IUCN family includes six commissions, which are made up of individual volunteers, some with a private, academic, conservation, industry non-governmental background and others who work for government agencies. There are at times members of commissions who also serve on national delegations. These individuals may provide advice directly through IUCN or as part of a national delegation. IUCN thus must provide its advice in such a way that it reflects resolutions passed at its governing meeting while at the same time reflecting its diverse membership and ensuring that it is true to its mission to influence, encourage and assist societies to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

I would like to turn to the issue of public availability of information, which is clearly and directly related to the issue of public participation. Looking back, the Antarctic Treaty grew out of the International Geophysical Year of 1957-58 and was developed as a way to reserve Antarctica from Cold War tensions that troubled the world at the time. It represented an innovative way to use scientific exchanges to promote disarmament, but in many ways the impetus for the Antarctic Treaty was disarmament. Thus, the Treaty grew out of a disarmament (and therefore an arms) background. This set the stage for a culture in which governments of the time operated in relative secrecy and early ATCMs were conducted in that atmosphere (though from the beginning the advice of SCAR and other international organizations was sought). As developments in the United Nations and several international treaty processes increasingly noted earlier, the closed nature of the Antarctic Treaty System became more and more of an anomaly and the debates on Antarctica in the United Nations General Assembly beginning in 1983 also played a major role in promoting more open information policies.

At the preparatory meeting for the Twelfth Consultative Meeting in April 1983 it was agreed to invite non-Consultative Parties for the first time. At the Twelfth Consultative Meeting in September 1983 in Canberra Recommendation XII-6 was adopted that referred to the Antarctic Treaty as based on the principles of the United Nations Charter, acknowledged "the value of increasing public knowledge of the achievements and operation of the Antarctic Treaty system". This Recommendation included a call to send certified copies of the Final Report of the meeting to the Secretary-General of the United Nations and to draw the attention, when ATCPs through it appropriate, to any United Nations Specialized Agency or any other international organization having a scientific or technical interest in Antarctica. The Antarctic Treaty Handbook was to be renamed and brought up to date. Starting with the Thirteenth Consultative Meeting (which took place in Brussels in 1985) delegates were to indicate when submitting information documents if these were intended to be publicly available. After the closure of the Meeting and provided no Consultative Party objected, any Party could make the information document publicly available. The Depositary Government was invited to identify and catalogue publicly available information about the Treaty System.

At the Thirteenth Consultative Meeting in October 1985 in Brussels through Recommendation XIII-1 it was agreed that efforts should continue to ensure full and accurate records of Consultative Meetings and that to the extent allowable under national law the reports of Consultative Meetings, the Antarctic Treaty Handbook and annual exchanges of information under the Antarctic Treaty should be made available to the public upon request. At the Fourteenth Meeting in October 1987 in Rio de Janeiro Recommendation XVI-1 was adopted that amended Recommendation XIII-1 to read that all Information documents would be considered public at the close of the Consultative Meeting unless the submitting Party notified otherwise in advance.

With the opening of Consultative Meetings to non-Consultative Parties, to observers and to experts, Reports of the meetings and documents submitted to it became available to those groups. The practice still remained to consider documents not as public, though the Internet has to a large extent changed this practice. Documents remain password-protected until after the Consultative Meeting, though Parties and all interested international organizations, both intergovernmental and non-governmental, likely have access to the password.

I would like to close with several conclusions:

From the very beginning the role and expertise of non-governmental organizations, and here I refer to SCAR, and of international organizations was recognized. FAO and WMO were early important to Antarctic management.

Non-governmental and intergovernmental organizations provide information and advice that is necessary to Antarctic Treaty Parties. If information and advice from these organizations were not available, the System would have to either compile this on its own and at considerable expense to itself or it would not be able to fulfill properly its mandate. Participation by these organizations assists the Parties, indeed it is necessary, for the management of Antarctica. These organizations also make better known to the general public the importance of Antarctica with its special role for peace and science. A number of organizations have helped to bring to public attention the effects of climate change that are now causing lasting and worrisome changes to the environment of Antarctica and the Southern Ocean.

While the System has opened to non-governmental and intergovernmental organizations over the years and recent practice has been fully open, the Rules of Procedure do not fully reflect this. Though Article IX of the Antarctic Treaty provides that Consultative Parties alone are entitled to appoint representatives to Consultative Meetings, the Rules of Procedure rightly provide that representatives of Non-Consultative Parties and of Observers and Experts may be invited. Some areas for consideration for change in the Rules of Procedure when they are next reviewed by the Parties could include:

- Rules 3 and 27 to reflect that Non-Consultative Parties should always be invited (in practice this has been the case in recent decades).
- Rules 32 and 42 to reflect that Observers and invited Experts are normally welcome at all sessions of the Consultative Meeting (in practice this has been the case in recent years).

- Though not reflected in the Rules of Procedure itself, the handling of documents for Meetings should be changed to make them publicly available *ab initio* and to eliminate the password protection procedures on the Secretariat web site⁵.

Recalling the key role of science in Antarctica and with respect of Antarctic governance from the beginning of the Antarctic Treaty System, an increase in funding for science, including for basic research, would support continued public participation in the diffusion of knowledge about Antarctica and its role in global physical processes, including biological, geochemical and environmental. The promotion of science would thus promote both public participation and the objectives of the Antarctic Treaty, especially Article III.

⁵ There would appear no real reason to protect working, information or Secretariat papers before the meeting. All Parties and interested Observers and Experts who assist the meeting have access to the documents. It is unlikely that representatives of a State that is not a Party to the Treaty could not find a friendly country to share papers and it is doubtful that there are large numbers of unaffiliated persons who might seek access. But even if persons unaffiliated with the System obtained access to papers in advance, no obvious harm would be done. Public availability of documents reflects modern best practice and would ease access for delegates and simplify work for the Secretariat.