PROTECTING ANTARCTICA

Speech by Senator Gareth Evans, Minister for Foreign Affairs and Trade, launching Richard Herr et. al, eds., Antarctica's Future: Continuity or Change? (Australian Institute of International Affairs, 1990), at the Commission for the Conservation of Antarctic Marine Living Resources Headquarters, Hobart, 17 August 1990.

When the Australian Government decided on 22 May last year not to sign or ratify the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA) but to seek instead a ban on mining in Antarctica and the negotiation of a comprehensive convention for the protection of the Antarctic environment, I have to concede that we did not have immediately in mind the Australian Institute of International Affair's then forthcoming National Conference, let alone this splendid book born of it.

But the Conference last November certainly provided an excellent opportunity for the first major open discussion of a decision going to the heart of Antarctica's future and an excellent series of papers were prepared for this occasion. We should all be indebted to Richard Herr and his colleagues for not only the skill but the speed with which they have now made those proceedings available to a wider audience, both Australian and international.

Their book is current, comprehensive, authoritative and accessible. The issues it debates are those the world is now debating, and none of the material is out of date, as so often happens with symposia of this kind. All the policy issues that are currently being wrestled with are amply covered, as a glance at the table of contents makes clear. The book contains contributions from some of the very best people in their field - including, may I say with some pride, officers in my own Department - writing after access to the latest information. And the book is accessible to a wide audience - not just because of its price (exceedingly modest for any book on this subject) but because of the quality of the writing and editing.

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In the spirit of this book, I want to take the opportunity its launching presents to make a substantive contribution of my own to the ongoing debate on Antarctic environmental protection - a worldwide debate which has taken off in a quite new direction since the Australian decision - and Australian-French comprehensive protection initiative - were announced. I want to bring you up to date on that debate, describe just what it is we are trying to achieve, and sketch out the steps ahead of us if we are to eventually get there.

The starting point for our decision, and all our subsequent activity, is the vital need to protect the indisputably fragile Antarctic environment. To do so is vital for science, vital to preserve the richness of the Southern Ocean, vital for the Antarctic's highly specialised wildlife and ecosystems, and vital for the world's environment.

Already the existing level of activity in the Antarctic poses worrying environmental threats. But those threats are minor compared to those entailed in mining and oil drilling. However much CRAMRA (which I shall refer to from now on as the "Minerals Convention") professes to take environmental factors into account, the environment would come out the loser should there be mining. The Australian environment is so unique, so uniquely fragile, and so irreplaceable that it simply cannot be treated in the same way as any other land mass around the world, where one may well want to argue out, and balance out, the competing claims of mineral exploitation and environmental protection. The only prudent response for this unique Antarctic wilderness is to remove altogether the option of mining which the Minerals Convention left open.

To demonstrate as unequivocally as we can Australia's determination to see that mining does not take place in the Antarctic, the Minister for the Environment, Mrs Kelly, and I are today jointly announcing that the Government has decided to legislate this session to ban all mining in the Australian Antarctic Territory, including offshore, on the continental shelf of that Territory. The legislation will extend to Australians and non-Australians alike so far as the Australian Antarctic Territory is concerned; it will also ban mining by Australian nationals anywhere else in the Antarctic region. "Mining" for the purposes of the legislation will include oil drilling, and the related steps of prospecting and exploration.

The new legislation will commit Australia in law to the approach we have adopted as policy. It indicates our realisation of the high stakes involved and is a concrete embodiment of our determination to preserve the Antarctic environment. It is a signal to the international community that our commitment to the approach we have begun will not falter. Australia intends to maintain its leadership in working with France towards an international prohibition on mining. The legislation will illustrate what we expect collective international action to achieve.

Proponents of the Minerals Convention argue against our approach, but in fact nearly all of them have already conceded a large part of the Australian case by admitting that there should be no mining for at least several decades because it could not be conducted safely. If for that reason, or for other practical ones such as the cost of mining and absence of known resources, mining is unlikely to take place for a long time, why not accept an outright ban? Those who reject our approach say a total ban will be unstable, and will be overturned or ignored. But why should such a ban on all mining activities be more unstable than the Minerals Convention, which has a bet both ways? Moreover, why should a ban on mining be any more unstable than the absolute ban on military activities and

nuclear explosions found in the Antarctic Treaty. Justifications for the Minerals Convention and the mining option have more in common with theology than either law or science.

A compelling argument against the Minerals Convention is that it will, in practice, hasten the very mining activity that its defenders acknowledge to be, at least for several decades, undesirable. The Convention includes incentives for mining activity. It permits prospecting here and now and offers security of title. It also allows the results of prospecting to remain confidential - so conceding a damaging exception to the important Antarctic Treaty requirement to share the results of scientific research.

The Minerals Convention, with its medley of objectives, does not in fact quite know where it is going. Our fear is that in that confusion, Antarctic environmental protection would suffer in any trial of strength with mining.

The defenders of the Minerals Convention have on a number of occasions gone so far as to suggest that Australia's attitude has threatened the Antarctic Treaty system itself. This is a claim we wholly reject. The Government has left no doubt about its commitment to the Antarctic Treaty system. When it was drawn up more than thirty years ago, the Treaty represented a quantum leap in international relations. Against a background of Cold War distrust and squabbling about national claims, it brought for the first time to an entire region of the globe lasting disarmament and a dedication of it to the pursuit of science. This outcome was visionary at the time, and the Treaty is no less valuable today. It guarantees the peaceful use of Antarctica and provides a framework for co-operative scientific research. It is also the only viable framework within which Australia's objectives of environmental protection can be achieved - so why would we want to undermine it?

Australia has also been criticised for proposing a comprehensive environmental protection convention, as well as the ban on mining activities. The nub of this criticism is that the practice since 1961 is good enough, and that any new measures to protect Antarctica can be put in place one by one after any particular problem has been identified.

This sector by sector approach - reflected in the companion Conventions to the Antarctic Treaty on Seals, and Marine Living Resources respectively - may have been adequate in the past. But now the increased level and greater diversity of human activity in the region requires that, 30 years after the Treaty, the Antarctic Treaty parties go beyond this sectoral approach. Australia and France are by no means alone in urging this approach: Chile and New Zealand, to name but two, have made persuasive calls for a comprehensive approach to environmental protection to bring about the co-ordination and integration which the existing system lacks.

Even more significantly, just three weeks ago, the United States Administration itself

called for a protocol on environmental protection. The change of attitude we are seeing reflects intense public scrutiny of the Antarctic Treaty system, reflected in the interest which parliaments are taking in Antarctic conservation, most recently in Spain. Officials who have administered Antarctic affairs are now accountable to a wider audience.

On my recent visit to New Delhi, the Indian External Affairs Minister, Mr I K Gujral, told me of his Government's continuing support for the Australian and French initiative. There is very widespread, and steadily growing, sympathy for the initiative in Europe. And we have been gratified by the receptive approach of South American countries to our ideas: I shall be making Antarctica the principal focus of my visit, starting next week, to Argentina, Chile, Brazil, Uruguay and Peru, which have for a very long time been central players in this whole debate.

I would like to now outline just what we have in mind for a comprehensive environmental protection regime, and to lay to rest some misconceptions about our position.

It should be said at the outset that the international political and legal framework covering the region, and upon which its peace depends, matches the fragility and uniqueness of the Antarctic environment itself. Twenty-six countries now have active Antarctic programs; seven of these, including Australia, have claims. Only four countries have expressly recognised Australia's claim and even fewer have recognised those of some others. A significant part of the continent is unclaimed. There is thus little scope for territorial regulation in the traditional sense. How is co-ordination to be achieved between the national Antarctic programs? What is to be done about non-governmental expeditions particularly when third countries are involved? How are third countries, wishing to establish an Antarctic program, to be brought into the decision-making process?

These issues have long been around. The Antarctic Treaty system has dealt with them primarily by informal cooperation, which was effective enough while the Antarctic community was relatively small. But because of the number of Antarctic actors and the level and range of their activity, the stage has been reached for us, the nations active in the Antarctic, to take a more formalised and co-ordinated approach to environmental protection. If we do not show to the international community that we can carry out this important task, in my view less competent forums will seek to do it for us.

There are four principles which guide Australia in its search for a satisfactory environmental protection regime.

In the first place, the achievements and guarantees of the Antarctic Treaty should not be imperilled. I have already stated Australia's commitment to the Treaty, and the reasons for that. The Treaty is the starting point for any viable proposal. While its assurances must not be prejudiced on matters such as the peaceful use of Antarctica and freedom of scientific

research and accommodation of the different view of states on claims, it is important to recognise that the Antarctic Treaty is silent on a number of points, or mentions them only obliquely. It is, for example, inconceivable today that a Treaty on Antarctica would be drawn up with merely a statement that measures may be adopted for "the preservation and conservation of living resources in Antarctica". As I have already indicated, the Treaty parties have already had to take steps to rectify blind spots of the Antarctic Treaty by supplementing it, not least by the Convention which is associated with this city of Hobart - the Convention on the Conservation of Antarctic Marine Living Resources.

Secondly, the regime must depend on international co-operation. Exemplary international co-operation between States has ensured the success of the Antarctic Treaty system to date - a practice all the more important because the Treaty leaves so much to be worked out. There is no substitute for the continuation of this co-operation. Without it, a more formalised approach and an attempt at greater co-ordination would be in vain.

Thirdly, the regime must incorporate a precautionary approach to environmental protection. The fragility of the Antarctic environment does not allow countries active in the region the luxury of adopting a trial-and-error approach. If a mistake is made in conducting an activity in the region, the effects might well be long term, permanently diminishing the scientific value of the area and even have implications for the regional and global environment. We must look before we leap.

Finally, the regime must be effective on the ground. It is not enough for the Antarctic Treaty Parties to erect an elegant theoretical edifice for the admiration of all while activity with unacceptable environmental impacts continues to take place. For this reason, I am apprehensive that some are now attracted to a regime with so scanty a framework that it is no more than a statement of good intent to set up a program of action. We already have a mechanism and a body of environmental measures under the Antarctic Treaty. To replicate that system would be no advance. We must move now to tackle basic issues.

These four principles underlie the attitude that Australia brings to the elements that a comprehensive environmental protection regime should have.

At the heart of a comprehensive regime must be a set of clear and rigorous standards applying to all human activity in the region. The absence of such standards is one of the main defects of the present system. Given the need for the regime to be effective and for it to embody a precautionary approach, it must be clear that no human activity may take place in the Antarctic unless there is a satisfactory assurance that its impact will be within acceptable bounds. Indeed, for all its fundamental weaknesses, the Minerals Convention is a helpful model in this respect.

Despite arguments from some quarters to the contrary, it is perfectly feasible for the

principle of prior assurance of environmental safety to be maintained. With our accumulated experience it can be confidently predicted that most of the activities that a comprehensive environmental protection regime would seek to regulate can be carried out without the need for any time consuming preliminary enquiry. Activity on the biologically inert ice cap would generally fall into this category. But the regime must identify such activities with precision. If there is doubt about the impact of a particular kind of activity, then it should not be allowed to proceed until it has been subject to an appropriate assessment.

While there must be general standards, there will need to be flexibility to adapt them to the needs of particular circumstances which in any case can change. It may come to be accepted that certain activities - tourism, for example - merit particular regulation of a more detailed kind, or that other activities can be safely added to the list of those for which prior assessment of impact is unnecessary. Since the convention will be a framework document, it needs to contain provision for the development of such subsidiary measures. Without it, the regime would rapidly become ossified. At the same time, those subsidiary measures must always be consistent with the general standards.

As I have mentioned, without effective implementation, the regime would be no more than a theoretical construct. In this context, prior assessment is not enough on its own. It needs to be supplemented by at least the following national or co-operative international steps or procedures:

- the establishment of legally binding measures, and effective national enforcement;

- monitoring and inspection, and the capacity to alter or even halt activity that monitoring shows to be harmful;

- response action in the event of accident; and

- compulsory dispute settlement procedures.

It is encouraging that the United States, for one, is also happy to embrace some of these elements, particularly legally binding measures and compulsory dispute settlement. I would be concerned, though, if other essential elements were to be relegated for future attention.

There is an intimate link between the protection of the Antarctic environment and the preservation of Antarctica's value for its primary human activity: science. Environmental degradation would undermine much scientific work and reduce or even eliminate Antarctica's value as an area for monitoring baseline levels of contamination and the

effects of environmental change.

From the earliest days of the Antarctic Treaty, the Scientific Committee on Antarctic Research initiated many environmental measures, in a convincing testimony to the link between the environment and science. Australia and France recognise that science should be reaffirmed as the primary human activity in Antarctica. For this reason we have called for the designation of the region as a "nature reserve - land of science" under the regime and have proposed that if we have to choose, for environmental reasons, between scientific and non-scientific uses of the Antarctic, the scientific use should be given priority.

Given this approach, I am perplexed by recurrent suggestions that an environmental regime is somehow incompatible with science and even infringes freedom of scientific research under the Antarctic Treaty. The suggestion is baseless. It is the more so because a principal objective of the regime would be to subject non-scientific activities to many of the same environmental disciplines that now apply to science. It is ironic that existing environmental impact assessment procedures should apply only to scientific activities.

I should also mention geoscientific research. Even though this uses many of the techniques applicable to minerals prospecting, it is quite clear that geoscientific research must continue. In the Antarctic it has much to offer not least because of the light that sedimentary cores can throw on past climate change. With mining ruled out and no exceptions made (as one is made in the Minerals Convention) from the Antarctic Treaty requirement to exchange the results of scientific research, geoscientific research can safely continue. The legislation I have proposed, insofar as it relates to the banning of prospecting, will make this clear.

At the same time, geoscience provides a good example of the need to consider environmental factors in carrying out scientific research. To conduct a seismic survey in a penguin colony during the breeding season would have the biologists just as much up in arms as the environmentalists. Again, the existing system already recognises this type of problem by, for example, establishing special rules for scientific drilling.

It is common sense that we should build as necessary on the arrangements as we now find them. Mining, because of its inevitably high environmental impact and economic consequences, required the establishment under the Minerals Convention of an elaborate organisational structure: other conceivable activities will not require this. Australia is not about redesigning the Antarctic Treaty system. We believe that the centre of gravity under the environmental regime for decision making and implementation should remain in national hands. It should be primarily for national authorities to implement the general and subsidiary standards of the regime and to carry out monitoring, inspection and other measures. What is presently lacking and what the regime needs to provide, is a set of co-

ordinated rules which will allow national efforts to work together.

A great deal can be achieved simply by improving mechanisms for co-operation between national authorities responsible for Antarctic programs. Two examples would be the exchange of information about possible activities early in the planning stage to permit the assessment of the cumulative impact of several activities, and the sharing of data information services to inform the basis of environmental decisions. Apart from the regime, much could be done by greater sharing of logistic facilities including stations to minimise environmental impact, reduce the high cost of operating in the Antarctic, and encourage more states to become active in the region. I would hope that an environmental regime would foster this move.

A costly and clumsy international structure should be avoided. At the same time, some organisational adaptation of the existing Consultative Party process is necessary. I am pleased that the United States recognises this point and has called for the accelerated entry into force of environmental measures, the establishment of a small and cost-effective secretariat and an advisory body to provide expert scientific and technical advice. I understand that a number of other countries are coming around to this view. I would only add that there should be a body which can meet more frequently and flexibly than Consultative Meetings.

Such changes are necessary to foster consistency of application of the regime. They would assist and supplement national application, take collective measures when necessary, review national decisions, talk through differences and in the final resort be there to blow the whistle.

There would be little difficulty in grafting institutional changes on to the existing Consultative Party structure. Provision will need to be made for the transparent operation of the system particularly in making information available and providing the opportunity for comment.

The political foundation of international co-operation in the Antarctic is the stipulation of the Antarctic Treaty that the position of neither claimants nor non-claimants can be prejudiced. A comprehensive environmental regime is compatible with national sovereignty just as much as is the declaration by a party within its metropolitan territory of a national park where mining is prohibited. Environmental protection measures are now a standard part of national life in many countries. So should they be in the Antarctic.

A great strength of the provision on moratorium of claims in the Antarctic Treaty, which would also form part of the conservation regime, is that the Treaty does not prescribe that any particular activity or international regulation is incompatible with claims to sovereignty. Much less does it single out environmental regulation in this regard.

While failure to respect realities such as claims would imperil the scope for co-operation on the environment and much else, it is in this area that ingenuity is needed. When unco-ordinated national measures are inadequate, we cannot afford to let legal formalism stand in the way of taking necessary action. Let me give a simple illustration why co-ordinated action is needed. In the Australian Antarctic Territory there are seven permanent bases but only three of them are Australian. On and around the Antarctic Peninsula there are just three claimants, but the bases of thirteen other countries. The Antarctic Treaty system needs to build on its tradition of finding constructive ways around political and legal obstacles.

There is particular scope for ingenuity on the question of jurisdiction - an issue only coyly touched on in the Antarctic Treaty. Thirty years of experience have invalidated fears of a break-down in the Treaty on the grounds that it did not regulate conflicts of jurisdiction. This positive experience is attributable to the restraint and good will that has characterised the operation of the Treaty. Subsidiary measures have since been adopted which in specific cases lay down jurisdictional rules. Let us build on this restraint and co-operation and harness available capacities, not to solve all theoretical jurisdictional difficulties but only those in aid of the environmental protection regime where the absence of adequate enforcement has been felt. Such an approach is the logical consequence of enforcement of the environmental regime being primarily in national hands, and of the call in United States Congressional testimony for "legally binding measures" and for parties "to ensure compliance with them." It is also consistent with the competence long asserted by Antarctic Treaty parties for the protection of the Antarctic environment.

Twelve months ago, in the light of the frosty initial reception of the Australian and French proposals, it was almost unimaginable that the Antarctic Treaty parties would accept the concept of a long-term ban on mining including prospecting, and a rigorous comprehensive environmental protection regime. There are now solid grounds for optimism in both respects. A long-term ban on mineral activity in the form of a moratorium for 30 years or longer is now being widely contemplated: it is not the permanent prohibition we prefer, but a step in that direction. In the same way, the idea is gaining currency in a number of countries of a protocol to the Antarctic Treaty on environmental protection with general standards, revised decision-making procedures and compulsory dispute settlement: this does not yet amount to embrace in those countries of our preferred position of a comprehensive environmental protection convention, but is moving towards it.

There is still, obviously, some distance to go before any new regime is put in place, but at least the course ahead is reasonably clear.

The next crucial step is the Special Consultative Meeting of the Antarctic Treaty parties devoted to the issue of comprehensive environment protection, which will open in

Santiago on 19 November this year and run for some three weeks. It will be attended by delegations of officials from 39 Treaty Parties. Already there are high expectations that it should produce significant results.

In the three months that remain until that meeting, Australia, France and other like-minded countries will be seeking to refine further our already quite well-developed ideas on the elements of a new international legal instrument within the Treaty system to provide an effective protection regime. We shall be seeking the widest possible dialogue with other Treaty parties so that by the time of the Santiago meeting as much common ground as possible is marked out and, collectively, we shall be well-positioned to achieve optimum progress there. Since the last meeting of the parties in Paris in October last year there has in fact, through the efforts of Australia and France, already taken place a level of dialogue between meetings which has been exceptional.

As to our expectations of the Santiago meeting, Australia would hope, first, that there will be agreement to begin a process of negotiation of a new legal instrument which will, within the shortest time-frame possible, lead to a comprehensive and effective regime to protect the Antarctic environment. Secondly, we would like to see some progress on the linked issue of putting in place some more satisfactory prohibition of mineral resource activities than the voluntary restraint agreement that now exists. We will work hard for a consensus, no easy task among 39 parties, which will be built around real and not just token advances in these areas.

Even if the Santiago meeting is successful in these terms much intensive work will be required to craft the instrument in final form and bed down the new regime. Australia stands ready to host a negotiating session for this purpose early in the new year. During 1991, meetings of the parties will take place in April and October in Bonn as part of the regular cycle of Treaty meetings, and further work on the environment protection regime could take place in association with those meetings. No-one with any experience of multilateral negotiations in general, or Antarctic ones in particular, doubts that there is a long, hard slog ahead. But it is a slog we are totally committed to undertaking, and we are confident that eventually we will have a protective regime in place for which future generations will thank us.

The Antarctic Treaty system is unique; but for it to remain relevant and to survive into the next century it must adapt now as it has adapted to new challenges at various stages in the last 30 years. Its ideals must be preserved but equally it is necessary to ensure that one ideal not tyrannise the others and pervert the whole. Untrammelled action carried out under the banner of, say, freedom of scientific research may not only damage the environment and even destabilise the basis of co-operation, but may well destroy the very

quality which gives the region its scientific value.

The challenge in the negotiation of a comprehensive environmental protection regime will be to accommodate the various elements in a way which perpetuates the inspirational quality that Antarctica has always had. The task is to maintain the relevance of the whole system in a world that is rapidly changing: unless the Antarctic Treaty system moves forward, it is in danger of moving back. And this whole process will require of its participants realism, creativity and - not least - stamina.

In all of this, I have no doubt that this book, Antarctica's Future, will be an ongoing resource of very great utility. I congratulate everyone associated with its publication, and declare it duly launched.