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Australia and the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA)

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Abstract

Australia, a leading Antarctic state that played a key role in negotiating the Convention for the Regulation of Antarctic Mineral Resource Activities, in May 1989 announced its opposition to the Convention and adoption instead of a World Park or Wilderness Reserve concept for Antarctica. This article examines possible environmental and economic reasons for Australia's attitude, which is likely to have significant implications for the future of the Convention and for the Antarctic Treaty System as a whole. -Authors

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Australia and the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA)

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ABSTRACT. Australia, a leading Antarctic state that played a key role in negotiating the Convention for the Regulation of Antarctic Mineral Resource Activities, in May 1989 announced its opposition to the Convention and adoption instead of a World Park or Wilderness Reserve concept for Antarctica. This article examines possible environmental and economic reasons for Australia's attitude, which is likely to have significant implications for the future of the Convention and for the Antarctic Treaty System as a whole.

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Introduction

One of the most significant developments within the Antarctic Treaty System in recent times is the successful negotiation of the Convention for the Regulation of Antarctic Mineral Resource Activities (CRAMRA) in June 1988. Since the adoption of the Convention, the enthusiasm with which it was negotiated has not been matched by the support of all the Antarctic Treaty states. In a move that surprised most of the other states, Australia, which is a leading Antarctic state and one that played a key role in the negotiation of the Convention, announced in May 1989 that it is opposed to the Convention and that it would rather support the declaration of Antarctica as a World Park or a Wilderness Reserve (*The Australian* 1989a).

In a press statement announcing the Australian position, Mr Bob Hawke, the Prime Minister, was careful to note that, if the Australian initiative is unsuccessful, Australia would consider acceding to the Convention. Nonetheless the Australian announcement met with mixed responses from other treaty states. The United Kingdom, New Zealand and the United States expressed disagreement with Australia. The Foreign Minister of New Zealand, Mr Russel Marshall, described the Australian decision as 'dictated by political considerations rather than any fine feelings about Antarctica' (*The Australian* 1989b). In the United Kingdom, the Foreign Office Minister Mr Timothy Eggar described the Australian decision as disappointing (*Sydney Morning Herald*, 7 June 1989). On the other hand Belgium, France and India indicated their support for the World Park concept. Belgium described CRAMRA as 'dangerous and inappropriate' (*Hobart Mercury*, 7 July 1989). The Belgian Parliament also voted to stop any Belgian national or corporations from mining

or prospecting in Antarctica (*ibid.*).

The Australian position is significant because Australia claims 42% of the Antarctic. As an original signatory of the Antarctic Treaty, Australia is also a leading Consultative Party and without doubt one of the most influential Antarctic Treaty states. The general view is that all claimant states will need to ratify or accede to CRAMRA before it can enter into force. Australia's refusal to ratify or accede to the Convention could therefore constitute a veto. Given Australia's influential position, its apparent rejection of CRAMRA could have significant implications for the future of the Convention and indeed of the Antarctic Treaty System as a whole.

Traditionally, Australia has supported Antarctic Treaty programmes and Consultative Meeting recommendations, and displayed commitment to the Treaty System. What could be the possible basis for its current position, that threatens the System so used to a tradition of consensus? This article examines the basis of the Australian rejection of CRAMRA in favour of the Wilderness Reserve concept.

Background to CRAMRA

Since the discovery of mineral deposits in Antarctica mining prospects have always been a reality. The Antarctic Treaty, adopted in 1959 to regulate specific aspects of Antarctic activities, made no references to minerals exploitation nor provided any regime to control resource activities. At the time of the Treaty's negotiation, these issues were not considered vital. In any case technology at the time and the availability of alternative sources for these resources did not make it commercially attractive to pursue the exploitation of the continent's resources.

In 1982 the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) was concluded to regulate the exploitation of Antarctica's marine living resources, in the face of mounting pressures, by some distant-water fishing nations, to exploit the living resources of Antarctica, particularly krill. The issue of minerals resource exploitation in Antarctica was first discussed informally by the Antarctic Treaty Consultative Parties (ATCPs) as far back as the Sixth ATC Meeting in

1970, but it was not until December 1980 that a Special Meeting was called to discuss the form of the Minerals Regime and the negotiating process. In March 1981 the meeting convened again in Buenos Aires and finished just in time for the Eleventh ATC meeting in the same city in June 1981. This meeting had the issue of the Minerals Regime as its main agenda item: its Recommendation XI-1 was devoted exclusively to the question of a Minerals Regime for Antarctica. The recommendation called for the development of the regime 'as a matter of urgency', and further established a Special ATC Meeting to negotiate a minerals convention.

In June 1982 the Special ATC Meeting started its work in Wellington, New Zealand. After ten meetings involving negotiations over six years, the ATCPs adopted CRAMRA. Throughout the negotiations Australia played an active role, with one of the sessions being convened in Hobart, Australia's 'Antarctic city'. Though the records of the meetings indicate that Australia was among the states that unsuccessfully sought stringent environmental conditions in the Convention, and the payment of royalties to claimants, there is no evidence that Australia rejected the consensus that was reached on the various clauses of the Convention. At the end of the meeting that adopted CRAMRA, a Final Report was issued (New Zealand Ministry of Foreign Affairs 1988a) which included remarks and statements made by several delegates expressing their views on the Convention. The report does not include any statements by Australia nor a statement by any state objecting to the Convention as such. Indeed the statements issued after the Conference were generally in praise of the Convention. One statement which came close to an objection to the Convention was that of the Netherlands, which had participated in the negotiations as an observer.

The Minerals Regime

The Australian rejection of CRAMRA is based mainly on what it considers to be faults with the Convention, particularly in the area of the protection of the Antarctic environment. A brief discussion of the main features of the Convention is therefore useful in an analysis of the Australian position.

The full text of the Convention appears in *SCAR Bulletin 94* (printed in *Polar Record* 1989: 264). Mining activities under the Convention are regulated through a complex structure of institutions (Blay and Tsamenyi 1989; Beck 1989). The primary institution of the Convention is the Commission, which is composed of all ATCPs party to the Convention, sponsoring states which are not ATCPs and any parties which may be actively engaged in substantial scientific, technical or environmental research in the area to which the Convention applies directly relevant to decisions about Antarctic mineral resource activities (Art. 18). The plenary body under the Convention is the Special Meeting of Parties which comprises all the parties to the Convention (Art. 28). CRAMRA also makes

provision for the establishment of Regulatory Committees in respect of each area to be mined (Art. 29). Each Regulatory Committee is to be made up of ten members: six non-claimant states and four claimants including the claimant in whose area the mining activity is to take place (Art. 18 (2)). All these institutions are to be assisted by a Scientific Advisory Committee (Art. 25) and a Secretariat (Art. 33).

The Convention makes provision for three levels of mining activities: prospecting, exploration and development. Operators need no permits from the institutions of the Convention to engage in mineral prospecting on the continent, but any exploration or development activity can take place only after the issuing of a permit and the approval of a Management Scheme for such purposes by the relevant Regulatory Committee. The issuing of the permit and the approval of the Management Scheme are subject *inter alia* to strict environmental conditions.

Environmental conditions

Given the delicate nature of the Antarctic environment, the negotiation and drafting of CRAMRA required the drawing of a careful balance between the demands to exploit the continent's resources and the all-important need to preserve its pristine environment. The protection of the Antarctic environment is therefore made one of the central objectives of the Convention. Article 4 (1) of the Convention provides in very clear terms that decisions about Antarctic mineral resource activities '... shall be based upon information adequate enough to enable informed judgments to be made about their possible impacts and no such judgments shall take place unless this information is available for decisions relevant to those activities'.

In this regard the Convention provides further that no Antarctic mineral resource activity shall take place unless it is judged, based upon assessment of its possible impacts on the Antarctic environment and on dependent and associated ecosystems, that the activity shall have no significant adverse effects on air and water quality, or cause significant changes in atmospheric, terrestrial or marine environments, or in the distribution, abundance or productivity of Antarctic fauna or flora, or the degradation of areas of special biological, scientific, historic, aesthetic or wilderness significance (Art. 4 (2)). The Convention further provides that no mineral activity is to take place unless it is determined that the activity will not affect global or regional climatic or weather patterns significantly (Art. 4 (3)).

Since the use of the appropriate technology is crucial if the Antarctic environment is to be protected in the course of any mining activity, the Convention provides that no mining will take place in Antarctica unless it is judged that 'technology and procedures are available to provide for safe operations and compliance' with the environmental conditions under the Convention and there exists the capacity to monitor key environmental parameters and the impacts of any resource activity on the environment (Art

4 (4)). There must also exist the capacity to respond effectively to environmental accidents before any mining can be permitted (Art. 4 (4) (c)).

Through the system of issuing permits and the approval of management schemes, the Regulatory Committees can maintain an effective control and monitoring system on resource activities. Decisions in the Regulatory Committee on the approval of management schemes and the issuing of permits for development are to be taken by a two-thirds majority of the members present and voting including a simple majority of the claimant states on the Committee present and voting, plus the US and the USSR, which are mandatory members on all Regulatory Committees (Art. 32 (1)). Decisions on all other matters of substance are to be taken by a two-thirds majority of the members present and voting (Art. 32 (3)). It follows that where an application is not supported by the requisite majority, the Regulatory Committee will not give the permit or authorization for a requested mineral resource activity.

The cumulative effect of the decision-making procedures in both the Commission and the Regulatory Committees is that the members are well placed to prevent mining in any area of Antarctica if they determine that a particular activity will be detrimental to the Antarctic environment or inconsistent with the objectives of the Convention. Indeed, to the extent that the decision-making process in the Commission requires consensus for the identification of an area for mining activity (Art. 22), any member of the Commission (eg Australia, if it chose to be party to CRAMRA) could theoretically veto any mining activity through a negative vote on environmental or other relevant grounds.

With its stringent conditions, the regime under CRAMRA provides a good opportunity for a claimant such as Australia, concerned with the Antarctic environment, to control and influence mineral resource activities there within an established framework. These environmental conditions were the product of the stance taken by Australia and other pro-environmental groups during the negotiation of the Convention. As the Minister for Foreign Affairs, Senator Evans, admitted in the Senate debate on CRAMRA:

Throughout the course of the negotiations we (ie Australia) argued vociferously, vigorously and, for the most part, pretty effectively for environmental protection provisions in (the) Treaty which were far-ranging and of really significant impact in their character. We wanted strict liability; we wanted unlimited liability; we wanted narrow defences for anyone who might engage in such activity and cause environmental damage in the process; we wanted strict threshold requirements to be satisfied before people could get in there and do anything at all; we wanted an effective enforcement mechanism; and we wanted a substantial role for the countries with actual territorial claims as distinct from those who are just drifting around the edges, so as to enhance our capacity to impose this sort

of regime. I think it has to be said that overwhelmingly ... we have been successful in achieving these various objectives (*Hansard* 1989: 1652–53).

This admission by Senator Evans only nineteen days before the Cabinet's decision not to sign CRAMRA brings us back to the central issue in this article: given that CRAMRA provides a legal framework within which each claimant could play an effective role in the protection of the Antarctic environment, why has Australia rejected it in favour of the seemingly unachievable ideal of a Wilderness Reserve?

Australia's responses to CRAMRA

Apart from a few brief reports in the media, the conclusion of CRAMRA in June 1988 did not attract much publicity or attention in Australia. Despite the efforts of conservationist groups to publicize the Convention before and after its conclusion as a disaster for the Antarctic environment, the Australian public remained generally unaware of it. Within Australian government circles there was initially some evidence of support for the Convention. Mr Michael Duffy, the then Acting Minister for Foreign Affairs and Trade, welcomed the Convention indicating that 'Australia ... placed a high priority on the early conclusion of such a Convention because of the need to have an effective international system of control in place well in advance of any minerals activity in Antarctica' (*Australian Foreign Affairs Record* 1988: 258–59).

But disagreements later emerged within the Government over the Convention. The Minister for the Environment, Senator Richardson, and the Foreign Minister, Senator Evans, favoured Australia's ratification. Both Senators, while opposed to mining in Antarctica in principle, expressed the view that the ratification of CRAMRA might be the only way to protect the Antarctic environment. As Senator Evans stated:

What the Convention does is provide a framework for deciding whether or not [mining] may take place and, if it's ever approved, for closely regulating it when it does occur....In fact it provides that mining should not take place unless it's clear on the basis of objective criteria that mining will cause no significant environmental harm (*Hansard* 1989: 1653).

On the other hand the Treasurer, Paul Keating, opposed Australia's ratification (*Hansard* 1989: 1647).

In early 1989 the issue of CRAMRA was tabled in the Australian Parliament for public debate. This heightened public interest in, and awareness of, CRAMRA and led to pressures on the Government from different interest groups. The Australian Mining Industry Council lobbied the Government to ratify the Convention, arguing that it was opposed to any move that locked away any area of the world from future development (*The Sun*, 23 May 1989). Australian conservationist groups led by the Australian Conservation Foundation called on the Government not to sign CRAMRA in the interest of the Antarctic environment.

The conservationists' move in Australia received considerable support from international conservationists groups including Greenpeace and the Cousteau Society. In April 1989 the French naturalist Jacques Cousteau called on the Australian Government not to sign the Convention. In a letter addressed to the Australian Prime Minister he pleaded:

... on behalf of the more than 300,000 members of the Cousteau Society and Foundation Cousteau, we respectfully call upon you to help in protecting Earth's last unspoiled continent of Antarctica from the threat of mineral exploitation ... Next week when your Parliament meets to consider the Wellington Convention ... Australia will have the unprecedented opportunity to save Antarctica from the type of devastation that is at this moment destroying sea life and polluting the Arctic ... [W]e appeal to you to oppose the Convention (*Sydney Morning Herald* 18 April 1989).

In an increasingly environmentally conscious Australia, the preponderance of public opinion appeared to favour any policy that would oppose mining activity in Antarctica irrespective of the environmental safeguards in CRAMRA. By April 1989, the protection of the Antarctic environment and the propriety of CRAMRA had assumed major national political significance. The major political parties sought to gain electoral support by opposing mining in Antarctica and rejecting CRAMRA. In early May the Liberal-National opposition, which is not traditionally associated with environmental protection, tabled a motion in the Senate calling on the Australian Government not to sign CRAMRA (*Hansard* 1989: 1645–1667). The motion was passed with the help of the Australian Democrats. This was followed a day later by a similar motion in the Victorian Upper House, jointly sponsored by the Liberal, National and Labour parties and the Independents. The motion supported 'the principle of Antarctica becoming a world heritage wilderness park' and called on the Victorian Government to express the opposition of the Victorian people to Australia becoming a signatory to CRAMRA (*Wilderness News* 1989: 15).

The significance of environmental issues and indeed the question of CRAMRA in Australian politics were underscored in early May 1989 when the Green Independents won sufficient seats to hold the balance of power in the Tasmanian State Parliament in Australia. The Tasmanian State election had been fought on environmental issues. The singular success of the Green Independents was therefore to be taken as an indicator of community concerns for the protection of the environment and of future electoral trends.

Events outside Australia reinforced the environmentalists arguments against mining in Antarctica and CRAMRA generally. In February 1989 an Argentinian naval ship *Bahia Paraiso*, with a load of oil became wrecked in Antarctic waters near Anvers Island and thus raised fears of possible damage to the Antarctic environment. Weeks after the incident, newspaper reports of it

spelled gloom for Antarctica. One prominent newspaper reported it in these terms:

Diesel fuel, almost one million litres of it, is right now spreading along the frigid Antarctic coast. The suffocating black slick, stretching more than 3 km is threatening the wild life rich area with disaster. Penguins are emerging from the icy depths covered in oil. Their natural oil glands clogged, they are unable to function and will die. Other animals such as seals will be affected by the destruction of krill, the crustacean at the centre of the Antarctic's food chain (*Sydney Morning Herald* 22 March 1989).

A month later *Exxon Valdez* ran aground in Prince William Sound in Alaska, causing considerable damage to marine life and associated ecosystems over a wide area. The two incidents provided the basis for the conservationists' argument that whatever the safeguards in CRAMRA may be, they will not be capable of stopping accidents. These events, along with the domestic political situation, set the scene for the formal announcement of Australia's position on CRAMRA.

In mid-May the Prime Minister announced to the Australia Mining Industry Council that Australia was considering not signing the Convention. At a press conference on 22 May 1988 he formally announced that Australia would not sign CRAMRA. The press statement issued jointly with the Ministers of Foreign Affairs and of the Environment read in part:

The Australian Government is dedicated to the comprehensive protection of the Antarctic environment and in that context our strong commitment is that no mining at all, including oil drilling — should take place in and around the continent.

Although we recognize that the recently concluded ... CRAMRA is very much better than no protective regime of any kind in relation to these activities, we believe that it is both desirable and possible to seek stronger protection for what remains the world's last great wilderness. Accordingly, we have decided that Australia will not sign the Minerals Convention, but instead will pursue the urgent negotiation of a comprehensive environmental protection convention within the framework of the Antarctic Treaty System. In that context Australia will specifically explore the prospects for the establishment of an Antarctic 'Wilderness Park' (Press Statement 22 June 1989).

Reasons for rejecting CRAMRA

The major reason given by the Prime Minister in support of the Australian position was environmental. However, since the announcement two other reasons have been suggested; these are the prospects of subsidised mining activity in Antarctica, and the absence of any provision for revenue in CRAMRA for claimants such as Australia.

Environmental reasons

In the press statement to announce the Australian position on CRAMRA, the Prime Minister pointed to the inadequacies of the Convention protecting the Antarctic environ-

ment as the principal reason for Australia's rejection of CRAMRA. Since the announcement, neither the Prime Minister nor any Government official has elaborated on these inadequacies. In a speech to the National Press Club in Washington, the Prime Minister emphasized the inadequacies of the Convention in general terms without reference to any specific details. He simply noted that:

Australia has recently decided not to sign the Antarctic Minerals Convention because we did not believe that it provided proper safeguards against damage to this the last pristine continent. We believe all mining activity in Antarctica should be banned. We seek instead a comprehensive Antarctic environment protection convention and the creation of a wilderness reserve (Ministerial Document Service 8).

The Prime Minister then went on to explain the details of such a convention. Australian conservation movements have, however, been more specific in their critique of the Convention, identifying the following as some of its inadequacies.

First, it is argued that the Convention does not delimit the extent of liability for environmental damage (Moore 1988: 22–23). This is to be done later in a protocol to be established under the Convention. Conservationists argue that under pressure from operators applying for mining permits, the liability provisions to be included in the proposed protocol will be subject to interpretation and ultimately less stringent rules may be adopted to favour operators.

It is also argued that the protocol may provide limits to the liability of operators and defences against liability. The basis of this argument is that the CRAMRA provisions on environmental damage exclude liability for natural disasters of exceptional character which could not reasonably have been foreseen and those caused as a result of armed conflict and acts of terrorism. Groups opposed to the Convention argue that 'conservationists and scientists who have wide knowledge and experience of the Antarctic and sub-Antarctic region are hard pressed to think of any natural disaster that could be classified as exceptional or unforeseen' (*ibid.*).

Another argument fundamental to the conservationists' position is that, even if the liability provisions of the intended protocol were to be stringent, it may be practically impossible to repair any resultant damage. This, it is argued, is well evidenced by the *Exxon Valdez* accident in Prince William Sound. The logical extension of these arguments is that it is prudent to abolish all mining activity on Antarctica.

These views provided a basis for Australia's rejection of the Convention. Other statements by the Prime Minister since the press statement endorsed the concern of the conservationists. In a statement on the environment Mr Hawke indicated that a degradation of any part of the Antarctic environment could destroy the entire ecosystem of Antarctica with far-reaching global implications and that '[t]he grounding of the *Exxon Valdez* in Alaska is

testimony to the damage than an oil spill can do to such an environment' (*Hobart Mercury* 21 July 1989). In the opinion of the Australian Government, mining or oil drilling is not consistent with the protection of the Antarctic environment.

The current Australian position is hard to reconcile with past official statements indicating Australia's Antarctic policies. Successive Australian governments have usually taken the general position that Australia would pursue and derive any reasonable economic benefits from the living and non-living resources available in the Antarctic, while seeking at the same time to protect the continent's environment, and that the idea of an Antarctic World Park was not realistic. Senator Evans, now the Minister of Foreign Affairs, once described the idea of Antarctica as a World Park as a 'dream of elves and fairies' when he was Minister for Resources and the Environment (*Conservation News* 1989). In a statement on the environment entitled *Our country, our future*, released by the Prime Minister's Office in July 1989, the Government explained the apparent inconsistency in its policy with the statement that, consistent with its decision not to allow mining in Antarctica, it had amended previous Australian policy in favour of a comprehensive protection of the Antarctic environment and a complete ban on mining.

Economic reasons

Australia's rejection of CRAMRA is partly motivated by economic considerations. Australia is a leading producer of some of the minerals that may be mined in Antarctica. There is a concern within the Australian Treasury that CRAMRA does not provide sufficient safeguards to protect the Australian mining industry against competition from Antarctic mineral resource activities. In particular it is argued that the absence of an anti-subsidy provision in CRAMRA may be inimical to Australia's interest. The worry seems to be that without a provision on anti-subsidy it is likely that some nations would subsidize their companies operating in Antarctica with the result that minerals could be dumped on the world market.

During the negotiations on CRAMRA Australia and a number of ATS sought unsuccessfully to have an anti-subsidy clause in the Convention. In the end the Final Report simply noted that:

The Meeting recognized that unfair economic practices including certain forms of subsidies could cause adverse effects to the interests of Parties to the Convention and that such effects should be addressed in the context of the relevant multilateral agreements. To this end, the Meeting agreed that Parties to the Convention which are also Parties to such multilateral agreements will determine conditions of application of these agreements to the Antarctic mineral resource activities (New Zealand Ministry of Foreign Affairs 1988b: 2–3).

Another economic reason which influenced Australia's position on CRAMRA is the absence of royalty provisions in the Convention for claimants such as Austra-

lia. During the negotiations on CRAMRA, the claimant states persistently sought the payment of royalties for any mineral resource activities within their sectors. At an Informal Group Meeting convened in Montevideo under the direction of Arthur Watts of the United Kingdom to consider how to finance the institutions of the Convention and what to do with any profits that may accrue from mining activities on the continent, the issue of royalties was discussed at length. The claimants viewed their rights to an automatic share of revenue from minerals activities as an important aspect of the 'internal accommodation' in the evolving minerals regime. It was argued that such a share was based on their presumed 'right to tax activities in their respective areas, general compensation for derogation of sovereignty rights, or payments for the special management role to be assumed by claimants' under the regime (*Antarctic Briefing* 1987: 9).

These demands were rejected by non-claimants; indeed some were vehemently opposed to even discussing the issue since any concession on the question of royalties to claimants would have amounted to an implicit or a *de facto* recognition of the territorial claims in Antarctica. The negotiations thus ended without any financial concessions to claimants such as Australia. The point in issue here is that, in the absence of any substantive economic benefits, Australia left the negotiations at the end of the day dissatisfied and that the situation provided the basis for its rejection of CRAMRA later in May 1989. The Australian Treasurer Mr Keating confirmed this in a letter he wrote to the Foreign Minister Senator Evans, in which he argued:

I do not believe that Australia should sign the Convention until we attempt further to negotiate provisions that better protect our national interest....[S]ignature would mean we would, in effect, concede our economic claims over Antarctica for virtually nothing, forfeiting our sovereignty over Antarctica and opening up the possibility of subsidized production competing with Australian mineral producers... (*Hansard* 1989: 1647).

Conclusion and overview

Three reasons have been given for Australia's rejection of CRAMRA. In our view the economic arguments based on the absence of anti-subsidy and royalty provisions in CRAMRA are of relative significance in any proper assessment of Australia's position on the Convention. Australia entered and left the negotiations aware that it could not realistically expect any substantial concessions on the issues of sovereignty rights and the entrenchment of anti-subsidy provisions in the Convention. One can hardly use the economic factors as the substantive bases for Australia's refusal to sign or ratify the Convention. Indeed, it is instructive to note that Australia has not publicly used these economic arguments as the justification for its rejection of CRAMRA.

So far the stated official reasons for Australia's rejection of the Convention have been environmental. As we

have indicated, the World Park concept was earlier rejected by Australia; but Australia has explained its change of policy on the grounds that new evidence suggests that the Antarctic environment is too fragile to accommodate mineral resource activities. The current Australian position may well have been dictated by a genuine commitment by the present Labour Government to protect the Antarctic environment. However, in Australia where environmental issues are becoming politically significant, the electoral advantages that the Government stands to gain cannot be overlooked. Given the political realities in Australia, the Government's position is understandable and indeed quite pragmatic.

It knows that it may well be impossible to secure agreement for a World Park in Antarctica; but for domestic political purposes the World Park concept has an unmistakable appeal. Since the Convention would take a long time to come into force it makes little political sense to antagonize the environmentally-conscious Australian electorate by pursuing signature of CRAMRA. In this regard it is important to note that Australia has left open its option to accede to CRAMRA at a future date if it fails to gain international support for the Wilderness Reserve proposal. It is also of interest to note that the Minister for the Environment has stated on more than one occasion that, in his view, mining in Antarctica is inevitable (*The Sun* 23 May 1989) and that 'the only way you'll stop them (ie other nations from mining in Antarctica) will be if you attempt to send in the gunboats' (*The Sun* 5 July 1989). For the moment, however, the Australian Government prefers to be seen by its electorate as being environmentally responsible in Antarctica by rejecting the idea of mining on the continent.

In place of the CRAMRA, Australia is seeking a comprehensive Antarctic Environment Protection Convention, '... the principal objective of which would be the conservation and protection of Antarctica's unique environment and its associated ecosystems' (*Ministerial Document Service* 1989). In his speech to the National Press Club in Washington, and again at the Australian Institute of International Affairs Conference on Antarctica in Hobart in November 1989, the Prime Minister explained (*ibid.*) the main elements of such a convention as follows:

- an agreement to protect Antarctica's environment and its scientific value;
- a ban on mining;
- arrangements to which will allow an assessment of proposed Antarctic activities or facilities;
- a means of determining whether sufficient knowledge exists to enable adequate impact assessment;
- an agreement not to undertake activities where there is insufficient knowledge to judge whether they are environmentally sound;
- criteria and standards to enable those judgments to be made..

The convention proposed by the Prime Minister would allow some activities in Antarctica but would ban mining altogether. In this regard, the proposed convention will differ significantly from CRAMRA. The basis of the complete ban on mining is that mining is incompatible with the idea of a Wilderness Reserve. In this regard, the Australian position on Antarctica seems inconsistent with aspects of its domestic environmental policies. In the case of Coronation Hill in the Kakadu National Park for instance, the Government appears quite willing to accommodate resource exploitation within its framework of environmental protection regime for the area. It is a position which undermines the Government's view that minerals exploitation is inconsistent with the notion of a Wilderness Reserve in Antarctica.

In relation to CRAMRA itself, there is the general view that ratification or accession by all claimants is required to bring the Convention into force. The view is based on Article 62 of CRAMRA which provides that the '... Convention shall enter into force on the thirtieth day following the deposit of the instruments of ratification, acceptance, approval or accession by 16 Antarctic Treaty Consultative Parties which participated as in the final session of the Fourth Special Antarctic Consultative Meeting, provided that number includes all the states necessary to establish all of the institutions of the Convention in respect of every area of Antarctica, including five developing countries and 11 developed countries'. As a claimant state, Australia's membership on any Regulatory Committee to be formed in respect of the Australian sector is mandatory under the terms of the Convention. It therefore follows that without Australia such a Regulatory Committee cannot be formed. The view is that in such a case a vital condition under Article 62 cannot be fulfilled; the Convention can, therefore, not enter into force. The Australian rejection of the Convention would thus constitute a veto.

This view that Australia can veto CRAMRA is debatable. If Australia can indeed veto the Convention, then it would follow that, by its repeated statements that it would not sign it, the Convention has become a dead letter. But despite the Australian position, current indications are that CRAMRA is not dead. At the Fifteenth ATC Meeting in Paris in October 1989, Australia actively pursued the Wilderness Reserve concept and tabled proposals for a comprehensive Antarctic Environment Convention. The Meeting adopted a Recommendation sponsored jointly by Australia and France that '... a Special Antarctic Treaty Consultative Meeting be held in 1990 to explore and discuss all proposals relating to the comprehensive protection of the Antarctic environment and its dependent ecosystems' (Rec. XV-1). However, the Meeting also adopted another Recommendation to the effect that a meeting be held in 1990 to explore and discuss all proposals relating to Article 8 (7) of CRAMRA (Rec. XV-2). Article 8 (7) relates to the adoption of a separate protocol in respect of the liability provisions of CRAMRA. Since

there will be little point in meeting to discuss the details of such a protocol in 1990 if CRAMRA is a dead letter, it seems reasonable to conclude that, by adopting Recommendation XV-2, the ATCPs still consider CRAMRA as an active document notwithstanding the Australian position.

It is of interest to note that so far neither Australia nor France has declared CRAMRA dead because of their opposition to it. But if indeed they do have a veto and the Convention is dead, the implications would be significant for the Antarctic Treaty system as a whole in the 1990s. Even though the 'hands-off, no mining' approach being championed by Australia has attracted the support of some ATCPs, it has also attracted considerable opposition from influential ATCPs such as the United Kingdom and the United States. If CRAMRA is dead because of the absence of consensus, Australia can hardly expect to gain the consensus it will need to negotiate, let alone implement, the proposed comprehensive Antarctic Environment Convention which includes a ban on mining. It is a situation that could destroy the consensus approach to negotiations which has been a traditional feature among the ATS.

The death of CRAMRA could well mark a turning point in the relations between the ATS. In specific terms, the disunity Australia's position is likely to create may well herald a review of the Antarctic Treaty in the period after 1991. The irony is that if CRAMRA does not come into force and the Australian proposal for a Wilderness Reserve is not adopted, the situation could leave mineral resource activities in Antarctica unregulated with all the attendant risks to the Antarctic environment.

References

- Antarctic Briefing*. 1987. Status of Antarctic minerals negotiations. Washington, Antarctic and Southern Ocean Coalition.
- Australian Foreign Affairs Record*. 1988. *Australian Foreign Affairs Record*. Canberra, Government of Australia.
- Beck, P. J. 1989. Convention on the Regulation of Antarctic Mineral Resource Activities: a major addition to the Antarctic Treaty. *Polar Record* 25 (152): 19-32.
- Blay, S. K. N. and Tsamenyi, B. M. 1989. *The Convention on the Regulation of Antarctic Mineral Resource Activities: can a claimant veto it?* Hobart, University of Tasmania Law School. (Antarctic and Southern Ocean Law and Policy Occasional Papers, 1)
- Conservation News*. 1989. Antarctica — a great victory. *Conservation News (Newsletter of the Australian Conservation Foundation)* 21(5) June.
- Hansard*. 1989. *Commonwealth of Australia Parliamentary Debates, Senate*. Canberra, Government of Australia.
- Ministerial Document Service. 1989. *Daily collation of Ministers' and Opposition Leaders' statements, No 230/88-89, 28 June*. Canberra, Government of Australia.

- Moore, M. 1988. Antarctica, miners cast their eyes on a glittering prize. *Habitat (Australia)* 16 (August): 20.
- New Zealand Ministry of Foreign Affairs. 1988a. *Final report of the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources. AMR/SCM/88/79 (2 June 1988)*. Wellington, New Zealand Ministry of Foreign Affairs.
- New Zealand Ministry of Foreign Affairs. 1988b. *Final Act of the Fourth Special Antarctic Consultative Meeting on Antarctic Mineral Resources. AMR/SCM/88/79 (2 June 1988)*. Wellington, New Zealand Ministry of Foreign Affairs.
- Polar Record*. 1989. Convention on the Regulation of Antarctic Mineral Resource Activities. *Polar Record* 25(154): 264-82.
- The Australian*. 1989a. Cabinet kills Antarctic Treaty. *The Australian* 23 May.
- The Australian*. 1989b. Antarctica worth a try. *The Australian* 24 May.
- Wilderness News*. 1989. *Wilderness News (Newsletter of the Australian Wilderness Society)* 10 (July): 15.