Den Hideo Endorses AEPA

The Honorable Den Hideo, President of the United Social Democratic Party and a Senator in Japan's Diet (Parliament), addressed an NGO press conference on May 22 at the Asia Center. He praised the proposal for creation of an Antarctic Environmental Protection Agency.

Mr. Den, who served on a Japanese Antarctic expedition in 1956-7, stated: "Antarctica is a Utopia for mankind. But now some countries are planning to exploit the rich mineral resources of Antarctica. Oil traces have been found in the Ross Sea. Since I was in Antarctica the Japanese have found uranium near a Japanese base. I would like to see Antarctica protected as a Utopia for human beings. In the long term, protection of the natural environment is far more valuable than minerals for human beings. I agree with the proposals of the Antarctica and Southern Ocean Coalition and I support the establishment of an Antarctic Environmental Protection Agency." Mr. Den also took note of the fact that the Japanese delegation to the Tokyo minerals meeting was composed exclusively government representatives. He expressed the hope that more NGOs would be represented at such sessions in the future.

Joining Mr. Den at the press conference were representatives of environmental organisations from five nations: Australia, New Zealand, UK, USA and Japan. They included Japan Union of Nature Conservation, Chikyu-no-Tomo, Gensuiken (Japanese Congress Against A and H Bombs), Pioneer Club, Fund for Animals, Greenpeace and The Antarctica Project.

Jim Barnes, Greenpeace representative to the UN and counsel to ASOC, echoed Mr. Den's feelings, adding "We would very much like to see a representative from Japanese NGOs among the delegates."

Matsuoka Nobuo, representative from the Peoples Research Institute for Energy and the Environment (PRIEES), spoke of the difficulties his group had experienced trying to obtain information about

Antarctic EPA Dinner

Representatives from the delegations of each country attending the Tokyo Conference have been invited to a special dinner and workshop next Monday night, hosted by ASOC. Participants will enjoy a Chinese meal at the Hai Loung restaurant, Akasaka [565-5010] at 6.30pm, followed by discussion of the AEPA.
NGOpinions

JAPAN UNION OF NATURE CONSERVATION

Japan and other developed countries have the power to destroy the earth’s ecosystem. So we believe we have a big responsibility to look after the environment.

Antarctica is the last continent on earth left in a virgin state, and it has been kept this way because of the Antarctic Treaty. But competition for mineral resources has begun. Antarctica should be safeguarded forever as an eternal heaven and its resources and natural ecosystem should be kept for human beings for millions of years to come.

PIONEER CLUB

Antarctica, the Southern Ocean and the continental shelf play a vital role in ensuring the future survival of the human race. So, when the Antarctic Treaty expires, these areas should be placed under the control of an international agency which must include representatives of non-government organizations and developing countries.

FRIENDS OF THE EARTH, TOKYO

Antarctica faces severe threats from the mineral regime and as nations compete for territory. Friends of the Earth thinks that Antarctica should not go the same way as other continents. We want to protect Antarctica forever as an international park, and leave it for future generations.

PEOPLES RESEARCH INSTITUTE FOR ENERGY AND THE ENVIRONMENT

I believe that information on activities, plans and policies which affect the Antarctic environment should be made available to NGOs and other experts who are concerned about the issue. The Antarctic is a model of international cooperation. It is free of borders between countries, military bases, and people have cooperated in their activities there ... I would like to see the Japanese government work towards protecting Antarctica as a Utopia.

- Mr Nobuo Matsuoka
The Netherlands has received a series of rebuffs in its attempts to participate in the Tokyo discussions on an Antarctic minerals regime. They are one of fifteen countries which have acceded to the Antarctic Treaty as Non-Consultative Parties (NCPS). These countries have been excluded from all five major meetings held so far to discuss the minerals regime.

In September 1983 the NCPS were invited for the first time to observe a regular biennial meeting of the Consultative Parties. At that meeting the Netherlands and other NCPS asked for observer status at both the minerals regime meetings and forthcoming ATCP meetings, and stressed their need for access to information. Their request to attend ATCP meetings was granted, but in the case of the minerals negotiations, a decision was deferred.

The question was debated by the ATCPs at the Washington minerals meeting in January, and it was decided that a decision about NCP attendance would be made in advance of each future meeting. Consequently, the Netherlands lodged a request two months ago, seeking observer status at the Tokyo meeting.

That request was refused, largely because of the resistance of the USSR. Developing countries such as Chile, India and Brazil all argued that the minerals meetings should be opened up for the NCPS.

As a token concession, the Chairman of the negotiations, Chris Beeby, called a meeting of representatives of the NCP embassies on May 23. He presented a short briefing on the Tokyo proceedings, but according to some of the invited diplomats, this was frustratingly lacking in substance. An additional complaint was that the NCPS hadn't been handed any papers in advance, making it very difficult for them to ask any substantive questions.

The Netherlands once again requested observer status. Beeby's response was that this would probably be given at the next minerals meeting, in Brazil in January. The Netherlands also questioned the secrecy of the negotiations in the light of calls from many members of the UN for more openness in the Antarctic Treaty system. Beeby's response apparently was not considered satisfactory by the Dutch. Denmark supported the Netherlands on both issues.

The NCPS expressed concern about whether they will be able to have any impact on the negotiations if they can only join the discussion at such a late stage. Beeby replied that the ATCPs were far from coming to a final agreement.

One thing emerged clearly from the meeting with Beeby: If the NCPS are given observer status at the next minerals meeting, they must receive all the relevant papers well in advance so they can participate in a constructive and informed manner.
As in the original draft, "Beeby II" provides for three types of institutions:

- A central Commission to set rules and guidelines for the whole area, the ultimate political body for the minerals regime.
- A Scientific, Technical and Environmental Advisory Committee consisting of experts nominated by each member of the Commission.
- A series of Regulatory Committees to draw up and enforce management plans and detailed rules for activities. One Regulatory Committee would be set up for every area opened to mineral activities by the Commission.

As before, a management plan prepared for exploration could be easily, almost automatically, adapted for the commercial development of a mine or well. There would be complete protection for "proprietary data" of companies, starting with the prospecting phase.

The Commission would decide by consensus whether to open areas, the size of blocks for commercial activities, budgets and questions relating to monopolies. All other substantive decisions would be made by a two-thirds vote, although Beeby notes in this report that the decision making rules remain open for further discussion and negotiation. Some ATCPs want all decisions to be made by consensus.

During the next two issues ECO will briefly analyse the new draft. Readers may want to refer to ECO Vol. XXIII, No. 1 for the text of the first draft of the Minerals Regime. ECO understands that the ATCPs are being urged to release the new text by the acceding states to the Antarctic Treaty. If this is not done, it will make public debate very difficult.

"Beeby II" includes a preamble which follows the model of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). Its most significant aspect is the elevation of scientific activities to a higher value than minerals development. ECO supports this. We are concerned, however, at the complete absence of any reference to "wilderness" values. One might think that language from the 1981 IUCN Resolution would be included, given that most ATCPs are IUCN members. That Resolution recognises "the paramount importance to mankind of [Antarctica's] great wilderness qualities (for science, education and inspiration), and calls on the Treaty Parties to foster measures which will maintain for all time the intrinsic values of the Antarctic environment for mankind and the global ecosystem." The new article on environmental principles does require that "account" be taken of "the aesthetic value of Antarctica as a part of the earth relatively undisturbed by man."

DEFINITIONS:

Prospecting is now defined to allow certain dredging and drilling. ECO would prefer to see these placed in a later phase of activities so that there is adequate regulation. We also repeat our suggestion from the Washington meeting that "noise pollution" from propelling work be regulated during the prospecting phase, especially given the potential harm to endangered whales migrating into the Southern Ocean to feed.

ECO suggests that there be a separate definition of "Pilot Projects", making that a separate stage in the minerals regime. If governments do decide to take the step of moving to commercial mineral development, then surely it would be the wisest course to develop one pilot project first, carefully regulated to prove the technology.

ECO also thinks that a definition is needed for "information adequate to enable informed judgments" about possible environmental impacts, a requirement contained in Article II (2)(a).

OBJECTIVE AND PRINCIPLES:

The new draft constitutes a step forward, but ECO believes it could still be improved substantially. ASOC has distributed an information paper for all delegations suggesting changes we would like to see. We trust that delegates will give our proposals serious consideration.

ECO also hopes that requirements will be spelled out as to what information is required before affirmative decisions to allow mineral activities, starting with the decision to open an area.

COMPLIANCE:

This is in essence a rewording of the old article on Responsibility. ECO continues to wonder why there is not a "collective" obligation "to exert appropriate efforts" to ensure that no one violates the objectives, principles and rules of the regime. The draft leaves individual states with most obligations, with virtually no centralised enforcement. In ECO's view, compliance relates to the question of an Antarctic Environmental Protection Agency, a topic on which we are preparing a paper for delegates.

RESPONSIBILITY/LIABILITY:

This important new article is left blank pending further discussion. In his report Beeby notes that some ATCPs want specific recourse to a state party, for damages to persons, property or the environment, while
others feel this can be dealt with in the management plans. Beeby notes the relationship of these issues to dispute settlement, which has yet to be discussed in any depth. ECO supports the concept of "strict liability" for all damage to the environment.

LINKS WITH ANTARCTIC TREATY SYSTEM:

This article has been expanded to include a reference to the Seals Convention, and now requires the Minerals Commission to "consult and cooperate" with the ATCPs, CCAMLR and other Treaty-related bodies. This should help prevent interference and inconsistencies.

INSPECTIONS:

The new draft adds a provision allowing inspection of stations, installations and equipment relating to mineral activities, including ships and aircraft at points of discharging cargoes and passengers, using the model of Article VI of the Antarctic Treaty. ECO strongly supports this, but wonders about inspections of drilling rigs and vessels in the area of the regime. Surely these should be covered as well?

PROTECTED AREAS:

The new draft adds an article on this topic. It would prohibit minerals activities in any area protected under the Antarctic Treaty, CCAMLR, the Seals Convention and in other areas set aside by the Commission for historic, ecological, environmental, scientific or other reasons.

ECO believes the draft could be improved by prohibiting activities (1) in areas protected by other international agreements, (2) which might adversely affect any protected areas, and (3) in large reserves created to protect wilderness values and breeding and feeding habitat for Antarctic species. We also urge that "buffer zones" be required to insulate all other types of protected areas from mineral and logistic activities.

The concept of "sanctuaries" for endangered species is very important. ECO urges the ATCPs to create such areas for protection of endangered whales in the Antarctic. In this connection, we note that the Agreed Measures under the Antarctic Treaty do not include whales in the list of "native species."

PROTECTING OTHER USES:

"Beeby II" adds an article requiring that mineral activities be conducted so as to "respect and protect" other activities. The list includes stations, support facilities, scientific research programs, conservation and rational use of marine life, tourism, historic monuments and navigation. ECO supports this addition.

CONFIDENTIALITY OF DATA:

The new draft comes down solidly on the side of companies, stating that they shall not be required to exchange or make freely available the data obtained from mineral activities. ECO believes this kind of open-ended restriction on the principle of scientific cooperation harms a key aspect of the Antarctic Treaty. It will also make it impossible to properly evaluate environmental risks and benefits, and will make enforcement difficult.

Any proprietary information privilege must be drawn more carefully. At the least, ECO suggests that all privileges be waived in the case of accidents or serious violation of the rules, and that all information be returned to the "public domain" under Article VI of the Treaty after a specified time period. Beeby has included a provision along this line for prospecting only.

In addition, ECO strongly believes that the regulatory authorities must be given access to all so-called "proprietary" data -- as is the normal case in countries -- in order that they may properly fulfill their responsibilities. This is another reason for creating an Antarctic Environmental Protection Agency. With its long-term mandate, professional staff and independent status, it would be relatively easy for an AEPA to guarantee the confidentiality of data.

We also ask the ATCPs to consider what has been called the "Non-Commercial Approach" to minerals. Under this arrangement, the nations party to a minerals regime would continue to operate under the requirements of Article VI of the Antarctic Treaty, freely sharing data and making cooperative decisions about whether to embark on the dangerous road to minerals development. Such an approach would not offer any artificial incentives to commercial operators.

Continued on next page.
MEMBERSHIP ON COMMISSION:

ECO believes the structure of the Commission prejudices this institution in favor of minerals activities. There is no provision for "conservation minded" nations to join the regime as full members unless they become Consultative Parties to the Antarctic Treaty. ECO suggests that any state with a serious interest in the purposes of the minerals regime -- including scientific research and environmental protection -- be allowed full participation.

ECO also believes the text would be strengthened by requiring that "advantage" be taken of opportunities to collect the data needed to predict, assess and detect the environmental effects of minerals activities.

DECISION MAKING IN THE COMMISSION:

Beeby sticks with the requirement for a two-thirds vote on all items of substance unless otherwise specified. ECO would prefer to see the highest possible qualified majority. Since all of Antarctica is closed to minerals activities unless "opened", it should not be too easy to change that status.

SCIENTIFIC, TECHNICAL AND ENVIRONMENTAL ADVISORY COMMITTEE

This is potentially a most important institution. Beeby has included a new provision requiring that the Advisory Committee give public notice of matters under consideration, and receive views from international organisations interested in its work. While this is a good beginning, ECO urges that procedures be included for definite participation by non-governmental organisations, whether international or not. The mere "receipt of views" falls far short of participation in any event. We suggest that any scientific, conservation or environmental organisation which shares the aims of the minerals regime be allowed to participate as an observer.

ECO suggests that meetings of the Advisory Committee be triggered at any time by one-fourth of its members, rather than leaving this to consensus politics.

It would be helpful if the Commission had to use consensus to reject clear environmental advice from the Committee.

The new draft does not require the Advisory Committee to evaluate whether adequate information exists to make a rational, informed decision about a particular minerals proposal. It should be modified to make this explicit, since that may well be one of the more important decisions. There should also be a requirement to evaluate (1) effectiveness of measures and (2) how to restore areas to their original condition. The Committee should have the right to develop analyses, assessments and reports on its own initiative.

REGULATORY COMMITTEES:

"Beeby II" would require a separate Regulatory Committee for every general area open to mineral activities. This is a step forward in comparison to the last version -- which would have set up one committee for each application. But ECO's grave concern about the power, number and standard of decision making for these powerful bodies remains.

Their decisions on the fate of Antarctica would be made by a simple majority of an exceedingly small number of nations -- eight or less. Each Regulatory Committee would consist of (1) the sponsoring or requesting state, (2) any claimant(s) in the area, (3) up to three other claimants chosen by the first claimant, and (4) additional non-claimants chosen by the Chairman of the Commission after consultation with the head of the Advisory Committee.

A new article on procedures for Regulatory Committees specifies that any Commission member may attend meetings as an observer. It remains unclear whether the full Commission has a "review" role regarding Committee decisions. There is no provision for other observers to participate.

ECO is appalled by the idea that a group of eight or perhaps fewer nations could decide whether to allow mineral activities and how to regulate them without public scrutiny or input into the decision. We reiterate the suggestion made last year that one Regulatory Committee be created for the whole of the Antarctic. This will best ensure the protection of the environment on an "ecosystem as a whole" basis.

To be continued in ECO Vol 27, No 3.
According to the New Zealand Minister of Science, Dr Ian Shearer, New Zealand has offered China the choice of seven sites for a permanent research station. They include Granite Harbour, Marble Point, Cape Adare, Terra Nova Bay, Jule Bay and two others, all located in the Ross Sea region of New Zealand-claimed territory.

The Wellington newspaper 'Dominion' reports Dr Shearer as saying that a "prerequisite" for any final agreement on the setting up of a Chinese base is Chinese "recognition" that New Zealand has "special rights" in the Ross Dependency.

The offer of sites and the request for China to acknowledge New Zealand's "special rights" must be viewed as an action by New Zealand to assert its claim to sovereignty to the Ross Dependency, in spite of Article IV of the Antarctic Treaty, which clearly states that during the course of the Treaty "...no acts...shall constitute a basis for asserting...any rights of sovereignty in Antarctica".

ECO believes that there is no basis for New Zealand to make the offer of sites for an Antarctic base to China. It is one matter for a state to assist another to establish an Antarctic base, but quite another to attach conditions to the assistance which have such profound political implications.

The New Zealand Government must declare its position publicly, and soon. If indeed New Zealand believes it has "special rights", then it also has "special responsibilities". One of the responsibilities which would apply if New Zealand territory was involved would be the preparation of an environmental impact report according to New Zealand law.

In the Antarctic, however, this would be an enormous precedent. In no other circumstances has one country allowed formal environmental scrutiny of its Antarctic operations by a "claimant" state. But there would be an inconsistency if New Zealand were to assert its sovereignty in this manner, and then decline some of the responsibilities normally associated with sovereignty.

If several sites are to be considered for establishment of a new base someone should analyze the potential environmental implications of each one. Any that are unsuitable from an environmental point of view should be withdrawn. Ideally the site that is least harmful should be chosen.

ECO believes that these sorts of problems could best be resolved by creation of an Antarctic Environmental Protection Agency (AEPA). However, pending the establishment of such a body, environmental impact studies must be conducted, and made available internationally for comment by all interested parties. Recommendation XII-3 of the Antarctic Treaty, adopted in Canberra in September 1983, says that such studies should be undertaken in compliance with the environmental laws of the state carrying out the project. In this case, China would be the state with the primary responsibility for the environmental impact analysis.

If the kind of international scrutiny of projects sought by NGOs is to be possible, China would have to make the report available internationally. ECO well remembers the difficulty of obtaining the environmental impact statement on the French proposal to build an airstrip in Adelie Land. We were told the report was available only to French citizens, and it was not released until after construction had begun.

If there is to be credibility attached to environmental impact statements prepared by the Consultative Parties, they must be made freely available to interested governments and organisations. Any other procedure violates the spirit of the Antarctic Treaty.

How will New Zealand's "offer" to China be viewed by other governments? While other claimant states may see the move as tactically in their interests, it seems clear that the non-claimant states will not be able to accept the validity of the offer. The acceding states to the treaty, the New Zealand move will be viewed as a totally unacceptable action. If it is allowed to pass without comment by the other Treaty powers, this action by New Zealand may reinforce the belief of some states that the Antarctic Treaty system can not deal with new developments.

ECO wonders why New Zealand is taking this step. Is New Zealand trying to buttress its claim in anticipation of a minerals regime, in the hope that material or economic benefits may result?
The penguins were watching on opening day as the Antarctic Treaty nations negotiators meet in Tokyo's Foreign Ministry Building.

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Antarctica from Japanese officials. "The Foreign Ministry was the most difficult," he stated. "All they provided in answer to our request was a copy of the Antarctic Treaty from 1959!"

Speaking on behalf of "tens of millions of people in 150 member groups" of the Antarctic and Southern Ocean Coalition, Roger Wilson of Greenpeace-International criticised the negotiators for operating "in total secrecy." Wilson argued that "Preservation of the Antarctic wilderness is obviously not compatible with development of mineral exploitation," charging that "preservation hasn't been discussed within the Treaty councils since 1975 and even then it was rejected."

Barnes emphasized the need to create a protective agency for the Antarctic. "In the last ten years most nations have set up cabinet level environmental protection agencies in their own countries," he observed, "so it is completely appropriate to have a similar agency set up for the Antarctic -- which is ten percent of the earth's surface. As it is now, if a nation wants to build an airstrip, that nation alone makes the decision. And if a nation violates Treaty rules, there is no agency to enforce the rules."

The Antarctic Environmental Protection Agency proposal appears to have received words of support from the US delegation. At the conclusion of the Minerals Regime meetings in Washington, DC earlier this year, Chief US Delegate Tucker Scully, responding to a question from the press, indicated that he had no qualms about an Antarctic protection agency modeled after his country's EPA. He seemed to go further, expressing the hope that an Antarctic EPA would be even more effective than America's EPA.

"True, there are lots of minerals in Antarctica," Mr. Den observed, "but we are really worried about the wilderness which has, so far, been preserved. We hope to protect Antarctica in the future for all humankind." ECO agrees. (For more on the press conference, see statements on page 2).

ECO is an occasional newspaper published by Friends of the Earth International and others at international meetings of importance to the global environmental community.

ECO is financed entirely from non-government sources. ECO's primary roles are to provide ideas and alternatives to the delegates and to educate the public outside the conference in order to generate a wide-ranging debate.

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