Antarctic EPA Debated

NGOs Hold Dinner/Workshop on Antarctic Protection Plan

The NGO proposal for an Antarctic Environmental Protection Agency (AEPA) received its first public airing at a well-attended dinner and workshop held in Tokyo’s Hai Loung restaurant Monday night, May 28. Twenty government delegates joined fifteen NGOs for the discussion.

The meeting, chaired by New Zealand NGO delegate Peter Barrett, featured two detailed papers on the AEPA concept. Delegates had earlier received NGO papers on Environmental Principles and Protected Areas.

Greenpeace UN representative Jim Barnes presented the argument for the AEPA, pointing out that "since more than 110 governments have established environmental protection agencies in their own countries in the past decade, it is only appropriate to extend the same standards to the Antarctic." Stressing that NGOs do not doubt the sincerity of the government delegates in wanting to protect the Antarctic wilderness, Barnes argued that there is a need for an agency that would provide an independent voice in assessing impacts of proposed development projects and developing appropriate regulations.

Located near the Commission office, the AEPA would be headed by a director appointed by the Commission. Unlike the Advisory Committee proposed in the "Beeby II" draft, the AEPA would be staffed by full-time professional scientists and technical experts, not under state direction. Although its recommendations would be sent to the Advisory Committee for review, the NGOs urged that those recommendations be forwarded intact to the Commission along with a report.

The NGOs also suggested that AEPA recommendations be "presumptively valid", binding unless disapproved by some number of Commission members. Alternatively, action proposed by the AEPA might require an affirmative vote in the Commission.

Continued on page 3.
The Antarctic is a zone free of nuclear and conventional weapons. However, it has suffered from the bad effects of nuclear activities in its history. The "Ash of Death" resulting from atmospheric testing by France near Moruroa was carried by air to the Antarctic, contaminating it with radioactivity. If such activities continued, we fear that the ecosystem of Antarctica could be destroyed. Likewise, a US base was contaminated with radioactivity when they operated a small nuclear power plant there. If this Antarctic Consultative meeting allows the exploitation of minerals and gives effect to claims of sovereignty, we are concerned that the Antarctic could be used for military bases. We, the Japanese Congress Against A and H Bombs, are working towards a non-nuclear world. We support ASOC in its efforts to keep Antarctica a peaceful, nuclear-free area.

1984年5月25日

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Masakuni Kitazawa

(Executive Director)
The major functions of the AEPA would be:

- review available information to determine if it is sufficient to allow compliance with the principles and objectives of the minerals regime
- review draft environmental assessments prepared by companies or operators
- prepare independent environmental assessments, as appropriate
- advise on whether areas should be "opened" for minerals activities
- prepare environmental regulations for all activities and projects
- review draft management plans
- conduct inspections and monitoring operations
- report on compliance with rules and regulations
- conduct its own scientific research if necessary to carry out its obligations.

NGOs disagreed with criticisms that such an agency would be "too costly". It was pointed out that initially the AEPA would be a very economical operation. Its modest staff could consist of the director, a chief scientist, a few scientific advisers and possibly a data manager and a lawyer. As a matter of priorities, it seems strange to NGOs that nations which spend hundreds of billions of dollars on arms every year would be unwilling to spend one or two million dollars to help ensure environmental protection in Antarctica -- one-tenth of the world's surface.

After hearing from AEPA proponents, the ATCP delegates in attendance responded with vigorous and pointed questions, some appreciative, and most constructively critical.

Some delegates expressed interest in the qualifications which would be required of AEPA staff. Others confessed to strong doubts that the proposed AEPA could escape politicization. Several argued against the creation of yet another level of bureaucracy, suggesting that the roles proposed for the AEPA might just as effectively be conducted by the Secretariat, Commission and Advisory Committee. Referring to the organizational chart, one delegate objected that the Advisory Committee appeared to have no firm responsibilities in the assessment process. NGOs responded that the Advisory Committee apparently would have no power under "Beeby II" in any event.

It was also suggested that the AEPA might more properly be created under the Antarctic Treaty than within the Minerals Regime, thus avoiding administrative and legal problems. NGOs agreed that they would prefer to see the AEPA created to cover all activities in the Antarctic.

One delegate expressed the worry that, under the NGO proposal, all interests other than environmental protection would be placed "on the back foot." J.D. Barnes concluded by expressing the hope that environmental protection would "at the very least be placed on an equal footing" to minerals activities.

NGOs look forward to continuing this dialogue with the diplomats at the next minerals negotiating session, in Brazil early in 1985. In the meantime, we hope delegates will consider the issues we have raised and the solutions suggested in the papers on the AEPA, environmental principles and protected areas.
BEEBY II - ON THE RIGHT TRACK? BUT IN THE WRONG DIRECTION!

(Continued)

REGULATORY COMMITTEES:

As we said in ECo No. 2, the Regulatory Committees would lie at the heart of the proposed minerals regime. This is where the political deals will be worked out between claimants, non-claimants and companies. Because they can see no solution to the question of sovereignty in Antarctica, the interest lies in continuing the "jurisdictional ambiguity" utilised in Article IV of the Antarctic Treaty and in the Marine Living Resources Convention. Thus, the new treaty will say nothing about "ownership" of resources.

But this ambiguity over who owns resources leads inevitably to ambiguity over who controls decision making. The administrative structure being created leaves vague the legal framework for responsibility and enforcement in the interests of defending neither claimants nor non-claimants. The claimants are very interested in deriving material benefits as a result of their claims, and see the Regulatory Committees as the best way to accomplish this.

Regulatory Committees will be responsible for (1) defining specific blocks in which mining or drilling rights can be applied for, (2) determining the fees to be submitted with any application, (3) enacting specific terminal conditions, (4) considering applications for exploration and development, (5) preparing draft management plans, (6) approving final management plans, (7) making any necessary revisions to management plans, and (8) determining that mineral resource activities are acceptable.

DECISION MAKING IN REGULATORY COMMITTEES:

"Beeby II" would allow all decisions in these powerful committees to be made by simple majority vote. There is a further caveat, however, as to two key decisions -- choosing who will prepare a draft management plan, and approving final management plans: the claimant or claimants asserting territorial rights in the area and the sponsoring state would have to vote in favor. This gives the claimant and the sponsoring state veto power over those two decisions.

SECRETARIAT:

A Secretariat would be allowed but not required. If one is set up, an Executive Secretary would be hired by the Commission, who would then appoint and direct staff. No particular functions or responsibilities are spelled out for the Secretariat.

Many delegates have suggested that a Secretariat could perform some of the functions proposed by NGOs for an Antarctic Environmental Protection Agency. If that is a possibility, however, the functions would need to be spelled out clearly. The Secretariat would need a large degree of independence if given a mandate to conduct environmental assessment and regulation.

In any event, ECo believes it would be useful to give the Secretariat responsibility regarding (1) serving as the central depository for all data and information collected by the regime, (2) requesting from parties for data and information, (3) maintaining the public record and disseminating information, (4) making recommendations to member states for implementation of the aims and principles, and (5) inviting the attention of parties to any matter concerning the aims and principles of the regime.

BUDGET:

Ultimately the regime would be financed by fees and levies on operators, based on rules to be adopted in the future. Until there are sufficient fees available from those conducting minerals activities, each member would have to contribute equally. ECo believes that a system of financing based solely on revenues from minerals activities substantially prejudices decisions in favor of minerals development. This is diametrically opposed to the ATCp's statements that a major purpose of the regime is to determine if minerals activities are acceptable.

PROSPECTING:

Prospecting would be essentially unregulated, in spite of some new "review" provisions. The sponsoring state would be required to notify the Secretariat three months before an operator begins to carry out prospecting. Notifications are to be circulated to all parties. If "support facilities" are required, the only additional obligation is to provide "information". As to the activities themselves, an assessment is required of any environmental impacts and measures to be adopted to avoid environmental harm. A general report must be submitted to the Commission annually.

The Commission is given the power to regulate prospecting by (1) classifying activities according to their likely impact on the environment, (2) prescribing bonds for drilling, dredging and establishment of "permanent or semi-permanent installations" and (3) resolving conflicts between prospecting and other legitimate uses of Antarctica.

The new draft adds an article which would allow any party to request a review of particular prospecting activities. If some additional numerical of parties agreed with the request, a meeting of the Commission would be convened within three months, and could recommend measures to protect the environment or to resolve conflicts with other uses. This provision could not, however, be used to stop any prospecting activity. Depending on the number of states required to join in the request for review, it may have no practical effect whatsoever.

EXPLORATION:

These articles have been expanded somewhat to spell out more clearly what is required of states and companies which wish to conduct minerals exploration. Beeby makes clear that the initial decision to authorise the submission of applications does not amount to a positive determination that mineral resource activities will be acceptable, but only that an operator will be "enquiring in more detail about that question" has been set in motion.

1. Opening an Area.

A state which has an interest in exploration and development or operations based on rules to be adopted in the future requesting that the Commission authorise submission of applications for a particular area. These notifications are sent immediately to the Commission, in the first instance, and to all members of the Commission. They are to contain details of the area, the resource, physical and environmental conditions, proposed methods of exploration and development, an assessment of
environmental impacts, and measures to avoid harmful consequences.

In making its determination, the Commission is to take "full account" of the principles in Articles II and III, other uses of the area, and the advice of the Advisory Committee. Article XXVI states that the Commission "shall decline to make a positive determination...if the exploration envisaged or subsequent development would present an unacceptable risk to the Antarctic environment." This is a much stronger statement concerning the obligation not to allow certain activities than in the earlier draft.

Article XXVI also specifies that any area approved by the Commission "shall be such that, taking into account the physical, geological, environmental, and other characteristics of the area, it can effectively be treated as a unit for the purpose of resource management." ECO is unsure what this means, but it sounds interesting in terms of "ecosystem as a whole" management.

The decision to open an area for applications must be made by consensus.

2. Regulatory Committee-Initial Action

A new article would require that a Regulatory Committee be convened within a set number of months after an area is opened, to establish "block sizes" for applications in the area and a fee schedule.

Thirty days after the Regulatory Committee has established block sizes and fees, applications could be made by a state, either on its own behalf or for an operator. Those applications would contain a detailed description of exploration methods (including equipment, installations, support facilities and methods anticipated for the development stage); an assessment of the environmental impacts of activities and facilities; an account of the measures to be taken to avoid harmful environmental consequences (including a detailed contingency plan in the event of accidents); and details about the operator.

Competing applications are judged in the order received. The Regulatory Committee passes applications on to the Advisory Committee for evaluation. ECO notes that this will have the effect of encouraging early applications, thus forcing the pace of minerals development.

3. Action by Advisory Committee

In evaluating an application, the Advisory Committee is to identify environmental risks and the means by which they "might be reduced to a practical minimum", risks which would have to be accepted, and then advise whether the project poses an unacceptable risk to the environment.

The advice given by the Advisory Committee is to contain measures for protection of the environment, technical and safety standards, monitoring procedures, data collection and reporting requirements, contingency plans and criteria for suspension, modification or cancellation of permits "in the event of identification of unforeseen risks to the environment."

4. Regulatory Committee-Further Action

If the Advisory Committee finds that the project poses unacceptable risks, the Regulatory Committee must either reject it or ask the Commission to review the matter. If the project is approved by the Advisory Committee, then the Regulatory Committee draws up a Management Scheme which covers both exploration and development. This Management Scheme is to give effect to any relevant measures adopted by the Commission and "take fully into account" the guidelines established by the Advisory Committee.

5. Preparation of Management Schemes

The Regulatory Committee designates one or more of its members to draft a Management Scheme by simple majority vote, but that majority has to include the claimant(s) in the area and the sponsoring state. Obviously this will facilitate a deal being struck between those two states and the interested company.

A long list of requirements for such schemes is set out in Article XXX. It remains unclear whether the Regulatory Committee should adopt specific terms and conditions for the entire area under its jurisdiction prior to action on any applications. Beeby notes in his report that some delegations oppose this on the ground that it would jeopardise the "internal accommodation". The idea is that the Management Scheme provides the mechanism for protecting conflicting positions about territorial sovereignty. To the extent that measures adopted in advance cover the same issues as the Management Scheme, they might "erode its significance and limit, in a prejudicial way, the negotiations leading to its adoption."

ECO is very concerned that if regulations are not enacted in advance of applications for the entire area, there will be no uniform standards and it will prove difficult to agree on comprehensive regulations. It is bad enough that there will be a multiplicity of regulatory committees, but if the claimants' positions followed, there will surely be piecemeal protection of the Antarctic environment.

6. Adoption of Management Schemes

Regulatory Committees will approve the document which sets out the basic authorisation and all operative conditions by a simple majority vote. That majority must include any claimant(s) in the area and the sponsoring state. Once again, enormous power would be lodged in the hands of a few countries. Although the Commission would be given a chance to review the document, it could not permanently reject it, but could only refer the matter back to the Regulatory Committee for further consideration.

RIGHTS OF OPERATORS:

Operators will receive exclusive rights to explore and exploit resources in any block.

ECO Wishes to express special thanks to the National Audubon Society, Center for Environmental Health, Oceanic Society, Monitor Consortium, John Hunting, John and Anne Eaves, Note, Nagayo Sawa, Masakazu Nobi, Tom Milliken and Takeshi Shimura for their assistance and contributions.

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Concluded on page 8.
Treasure Hunting in the Name of Science?

In previous editions, ECO has drawn attention to the seismic surveying work being undertaken by the Japanese research vessel "Hakurei Maru" in Antarctic waters. Our concern has focused on the fact that the "Hakurei Maru" was effectively prospecting for oil in the Antarctic under the guise of a scientific programme. We have also pointed out that other countries have conducted similar research, sometimes in collaboration with oil industry bodies.

We noted in these articles the implications of Recommendation IX-1, passed at the Ninth Consultative Meeting in 1977:

"...[The ATCPs] urge their nationals and other States to refrain from all exploration and exploitation of Antarctic mineral resources while making progress towards the timely adoption of an agreed regime concerning Antarctic mineral resource activities. They will thus endeavour to ensure that, pending the timely adoption of agreed solutions pertaining to exploration and exploitation of mineral resources, no activity shall be conducted to explore or exploit such resources..."

While Recommendation IX-1 does not define "exploration", its intention clearly is meant to stop the ATCPs and their nationals from undertaking any minerals-related work prior to agreement on a minerals regime that regulates all stages of activity.

ECO has been able to piece together the circumstances of the "Hakurei Maru"'s programme. It was the Ministry of International Trade and Industry (MITI) which initiated the programme in September 1979, rather than the Japanese National Institute of Polar Research, as might have been expected had the work been of purely scientific interest. MITI channeled the money (US$12 million) through the Japan Agency for Natural Resources and Energy, one of its divisions.

The vessel itself is owned by the Metal Mining Agency of Japan, a body which is partly government-financed, and partly financed by private industry. Also involved in the research programme was the Japan Petroleum Corporation, another body with both government and private involvement.

As ECO reported in Washington last January (see Volume 26, No 2), the voyage of the US vessel "S P Lee" was also co-sponsored by an industry group, the Circum-Pacific Council for Mineral and Energy Resources. This vessel conducted seismic surveys in the Antarctic during the summer of 1983-84.

The question of industry participation in such "research" programmes is one which has concerned scientists in several countries. Dr J H Zumberge, currently the president of SCAR, suggested in 1979 that geological and geophysical activities on land and sea, conducted as part of Antarctic scientific programmes, should be classified as "mineral exploration" if they are sponsored or funded by commercial companies. ECO agrees.

The attitude of the ATCPs has been that so long as the results of the research are made freely available to all, then the work can be categorised as "science" and not "commercial exploration". The ATCPs have not, however, ever made a formal determination that this is the criterion to be applied, and they show no apparent willingness to do so, in spite of concern from both scientists and environmentalists that de facto mineral exploration may be occurring in the name of science.

The work of the "Hakurei Maru" and the "S P Lee" thus falls into a "grey" area. Clearly, there was considerable input from bodies which were partly financed from private industry. How much industry finance is too much? Obviously, if an oil company wished to undertake the work on its own behalf -- even if it did promise to share the results freely -- that would be unacceptable to many of the ATCPs.

The conclusion to be drawn is that the ATCPs need to come up with a solid definition of what is covered by Recommendation IX-1 and firm guidelines established regarding commercial participation in these "grey" areas. Otherwise, as more states undertake this kind of research to prevent other states from gaining a potential advantage, there will be a loss of credibility in the eyes of environmental groups and nations outside the Treaty system.
Prospecting vs Protection
Prospects Look Bleak

At the last minerals meeting, held in Washington DC in January this year, the ATCPs accepted with apparent ease that prospecting should be subject to minimal or no regulation. It seems that they are prepared to compromise their supposed genuine commitment to the integrity of the Antarctic environment in order to avoid "excessive formalities" and "unnecessary" meetings.

The defencelessness and susceptibility of the unique Antarctic flora and fauna - and their scientific importance - make it essential that any mineral activity proposal include a careful assessment of the potential impacts of the activity on the environment. Stringent monitoring and enforcement of any imposed special conditions would also be necessary.

ECO cannot accept that the ATCPs expect prospecting not to harm the environment. Why are they prepared to ignore experiences in their own countries which suggest that prospecting can be environmentally damaging? In many of these countries, prospecting activities require appropriate assessments and safeguards under domestic legislation. Why do these countries consider this unnecessary in the Antarctic?

Potential dangers to the environment from prospecting activities are many and varied. The steadily increasing number of people working in the Antarctic and the associated logistic facilities will place further stress on a highly vulnerable ecosystem. This impact will be compounded by the need for additional personnel and associated infrastructure in the Antarctic compared with that required for similar activities elsewhere because of the extreme harshness of the Antarctic environment.

The uncertain consequences of striking a high-pressure gas pocket whilst conducting routine drilling have disturbing implications. The potential harm to whale populations by seismic explosions cannot be ignored, either. ECO reported on this serious threat to endangered marine life in Volume 26, No 3, produced in Washington.

The decision to accept no regulation is based on current prospecting technologies, and takes no account of the potential impact of future technologies. Nor does it consider the cumulative effect of different prospecting activities within a particular area. It must also be remembered that little is known of the Antarctic environment's ability to recover from such impacts.

Further, prospecting without regulation will make it extremely difficult to add to the list of areas deserving protection because of their special biological, scientific, wilderness and aesthetic significance.

At the last minerals meeting, the British delegation put forward a definition of "benign" prospecting which would require only minimal regulation. "Benign" implies a benevolent interaction of the environment - can prospecting ever be benevolent? ECO is pleased that this concept is no longer in vogue. However, we are concerned that Beeby II's prospecting definition may be interpreted in many ways. What exactly is meant by sampling? How can it be determined unharmed if unregulated and no provision for inspection included?

There may even be a good reason for the regulation of field observations. Can geologists employed by a multinational mining company be expected to show the same concern for, say, a moss bed as an Antarctic biologist for whom the bed is an object of study? There must, at very least, be a case to be made for inspection of such activities.

Many delegates are arguing that as there is no essential difference between prospecting activity and scientific activity (presently not subject to specific regulation) there should be no requirement to regulate prospecting. ECO is concerned by the increasing intensity of scientific activity and is alarmed at the potential for prospecting activities on a large scale at the conclusion of the minerals regime. We believe that it is essential to regulate all activities, whether scientific or prospecting, if the near-pristine nature of the Antarctic is to be preserved.

We recognise it is the wish of the ATCPs not to trigger the establishment of the full institutional structure of the minerals regime too early. However, there must be a regulatory structure established to ensure some oversight of prospecting.

Beeby II includes a provision that allows for the adoption of additional matters relating to prospecting should the Commission consider it necessary to do so. ECO believes that such consideration by the Commission should be mandatory.

The Commission could receive objections (from both its members and interested NGOs) to any notifications of intent to prospect and formulate, upon consultation with the Advisory Committee and Environmental Protection Agency, special conditions related to the potential impact of the proposed activity. There must also be provision for inspection and enforcement of the provisions of the licence.

When the liberties taken by mineral companies in the rest of the world are considered, there is little reason to suspect that their performance, unregulated, in the Antarctic, would be any better than it is elsewhere. For ECO, this reinforces our belief that the idea of minimal or no regulation for the minerals regime is an idea that must be abandoned, and swiftly.
Continued from page 5.

DEVELOPMENT:

At any time after an exploration permit has been issued and a Management Scheme approved, a sponsoring state may apply for a development permit. The application must include updated information, including additional measures to protect the environment and ensure safety. Ironically, at the time when the most information is available, no comprehensive environmental assessment is required. There does not appear to be any chance to take the "big picture" look at this critical stage.

Applications will be referred to the Advisory and Regulatory Committees. The standard of review remains the same, and virtually ensures automatic approval of the exploitation plan. Even if the Advisory Committee finds "significant modifications to the development activities envisaged at the time the Management Scheme was adopted" or "significant modifications to the environmental considerations unforeseen at the time the Management Scheme was adopted", it can only recommend "guidelines for the modification" of the Scheme.

The Regulatory Committee then makes any final adjustments to the Management Scheme and sends it to the Commission, which (according to Article XXXV) must "without further review, authorise the issue of a development permit."

LAW SAYS: "ABANDON CLAIM"

Dr Philip Law, the first permanent head of Australia's Antarctic Division, spoke out on Antarctica recently at the conference of the Australia and New Zealand Association for the Advancement of Science (ANZAAS), in Canberra. He maintained that Australia's Antarctic claim no longer held any validity, and that Australia should be prepared to relinquish it to facilitate agreement on minerals.

Law also called for some of the proceeds of exploitation to be distributed internationally. "The possibility for an idealised system of preferment for under-developed nations would not be beyond the bounds of possibility," he said.

He suggested that the regime would act as a "world trust" for the benefit of humankind in general. "I see no reason why it should not achieve UN confidence and support if it is operated responsibly and efficiently in the above manner," he said.

While ECO would not have agreed with all the comments that Dr Law made in his address to ANZAAS, it does feel that the above ideas are worthy of serious consideration by the ATCPs.

BUDD SAYS: "ADOPT A MORATORIUM"

"The need to maintain Antarctica as a major global environmental monitoring region is sufficient cause to adopt a moratorium on commercial exploitation for a considerable period.

A policy to establish a moratorium on Antarctic exploitation for a period, say 30 years on from 1990 may be well worth-while fostering in order to forestall proposals for misuse of Antarctica.

The concept of an international environmental park for Antarctica may also help establish a preservation concept for the region.

In the long term it can be expected that the value of Antarctica for global monitoring may prove to be much greater than any short term gains from exploitation."

(Statement of Dr. W F Budd to Workshop on Australia's Antarctic Policy Options, March 27-28, 1984)