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CHANGES IN LATTITUDE CHANGES IN ATTITUDES?

The latest developments in the drafting of the minerals convention put into clear focus the desire of many delegations to facilitate minerals development and their unwillingness to confront directly the difficult environmental problems associated with mining and drilling. The modest changes incorporated in the revised text (BB IV) represent insignificant progress on the points made by NGOs in Tokyo about environmental protection or conservation, and in some cases are regressive.

ECO understands from talking with many delegations that the reports and proposed draft articles emanating from the three working groups convened in Tokyo -- on Legal Issues, Exploration and Development and Confidentiality -- indicate that more and more delegations are prepared to give short shrift to environmental issues. But those reports also reveal that, in spite of many negotiating sessions and gatherings of the working groups, there has been little time for an in-depth discussion of the changes proposed. Moreover, because the negotiations are taking place on so many different levels at once, with the Chairman utilizing a bewildering array of small, informal groups, some obviously carrying more weight than others, it is difficult for many delegations -- especially NGOs -- to know what is going on.

ECO feels it is worth examining some of the changes between BB III and BB IV.

SPONSOR/OPERATOR LINKS

Placing the definition of both "sponsor" and "operator" in Article I only defers the problem of who decides what constitutes an adequate significant link between an operator and its sponsor, and how to ensure the maintenance of that link throughout the prospecting, exploration and development phases of minerals activity.

Some pro-mining states would like to see it left entirely to the sovereign state concerned to establish the necessary links, which would merely present to the institutions of the minerals regime a certificate that adequate links exist. ECO understands that many negotiators do not regard that as sufficient, but none apparently have tabled counter proposals.

One of the functions of the Commission must be to establish detailed rules and conditions about these links, to which every applicant must conform. It is important that the requirements be the same for all parts of the Antarctic and hence a Commission responsibility rather than something left to a Regulatory Committee.

These rules and conditions should cover information and undertakings with respect to financial control, management control, financial resources, adequacy of technologies and personnel, history of environmental responsibility, liability and responsibility for damage to the environment, conditions on takeovers, farming or contracting out, joint ventures, changes of shareholders, directors, corporate structure, base of operations, and so forth.

ECO congratulates Chile for its suggestion of an Antarctic Treaty Park during debate at this minerals negotiating session. If accepted, it would leave Antarctica to be administered in much the same way as it has been under the Antarctic Treaty since 1959, but with minerals activities not allowed. This proposal for the maintenance of the status quo with an explicit ban on mining is warmly welcomed by the members of the Antarctic and Southern Ocean Coalition. ECO urges that more delegations seriously consider this kind of future for Antarctica. It might be easier to achieve than consensus on a minerals regime.
operations and control. There should be a requirement in the Convention itself that the sponsoring state enact appropriate legislative provisions for ensuring control.

A condition of every management scheme also must be that an operator inform both the Sponsoring State and the Commission, through the Secretariat, of any significant change in the operator's control or financial structure, so that there is some independent review of the matter. Mining companies are notoriously adept at wrecking their own codes -- especially environmental ones -- and avoiding their responsibilities.

**LIABILITY PROVISIONS**

Perhaps one of the most significant developments since the Tokyo meeting is the inclusion of a text for Article 10 on Liability. Although it is constructive to see some text at last on one of the most crucial issues of the minerals regime, it is depressing to see that the negotiators are attempting to defer resolution of this issue beyond the conclusion of the regime negotiations. In ECO's view, leaving the details of liability to the Commission will not favor protection of the Antarctic environment. Moreover, to do so will most likely mean there is no liability for accidents occurring during the prospecting phase, unless all minerals activities, including prospecting, are prohibited until such time as liability provisions are agreed on.

The BB IV text would define damage to the Antarctic environment as "any impact which is inconsistent with Article 4 (2)." Several new papers are on the table if the negotiators retain the approach used in the draft text, who is to decide what constitutes "significant changes" in or "significant adverse effects" on environmental characteristics, and by what criteria? The definition seems to be circular, given the ambiguities and undefined terms in Article 4. Any operator would defend itself against liability on the grounds that damage is insignificant or has had an insignificant effect. Such debates currently take years, if not decades, to resolve in national courts. How do the negotiators think that the Antarctic Treaty System can resolve such questions before remedial action is instigated and also allow parties to meet their obligations to each other and to the Antarctic environment? If it can be agreed that sponsoring states have both the responsibility to take appropriate action when an operator has precipitated residual liability for damage, perhaps these problems can be lessened. In general, however, this approach seems sure to cause many problems.

A better approach might be to define "the Antarctic environment" in broad terms, including its physical aspects, its characteristics and systems of interactions of life, and its values as represented in special protected areas and sites of specific scientific interest. In this context, the damage could be defined as any harm to the environment beyond that specified as "acceptable" in the management plan. The standards of acceptability should be based on the analysis carried out in preparing the environmental impact statement. That way, any operator or responsible institution can initiate action in the firm knowledge of its responsibilities and liabilities. If the damage or risk of damage is minor, then costs of correcting obligations would be correspondingly minor. The environmental damage itself determines the scale of the response.

BB IV also seems to have abandoned Antarctica's dependent and related ecosystems in Article 10, apart from a brief mention in the opening paragraph. This is a serious omission when considering the risks to coastlines and fisheries of neighboring countries, but ECO understands that assurances have been given that this will be remedied.

The concept of unlimited liability for damage to the environment is diminished in BB IV by a long but non-comprehensive list limiting liability to costs of preventing or minimizing damage, containment, clean-up, removal, and "appropriate remedial measures" -- whatever they are. During sessions in Tokyo, some pro-mining countries vehemently opposed the economic responsibility for damage to scientific research programs, specially protected areas or sites of special scientific interest, wildlife habitat and historic sites.

Will the other delegations accept this shirking of responsibility?

ECO knows there are delegations that favor covering such damage, and also provisions for liability for harm to the environment that is not "economic," or to ensure punitive damages against operators for damage which cannot be undone. What provision is there for long-term monitoring programs to assess damage, guide rehabilitation and ensure effective remedial action?

The suggestion that the Commission should be allowed some discretion in allocating residual liability beyond the operator is likewise potentially dangerous to the environment, if there is to be any residual liability for damage which the operator cannot meet, the sponsoring state, which vouchsafed the responsibilities of the operator in the first place in certifying the genuine link between itself and the deficient operator, must shoulder all the residual burden. In this way, we can be assured that a sponsoring state will not act carelessly in its approval of operators. This question of residual liability is particularly acute in case the operator and sponsor have close financial links: its own vested economic interest and pressure from domestic considerations may lead a sponsor to be lax in its control of an operator.

If the Commission is given discretion to weaken the liability provisions, at the very least it should be exercised only by consensus.

The idea of placing some responsibility on the shoulders of countries benefiting from economic development in Antarctica has merit. But why not also have a

cont. on page 4
A number of important issues were raised. The one that caused the most significant debate was the admission of outside organisations as observers to meetings of the Antarctic Treaty (ATC) states, the need to appease criticisms of the Treaty system as a closed "club" in which a select group of countries able to afford Antarctic research programmes make decisions in the absence of any external scrutiny, was important. For the last several years, the debates at the United Nations have drawn attention to the inadequacies of the Treaty system in this regard, and some Treaty states have found this increasingly discomforting.

After strong initial opposition by some states to opening the door to observers, the Preparatory Meeting eventually agreed to a two-tiers observer status. Members of the Antarctic Treaty "family" -- SCAR, CCAMLR, the Seals Convention and the chairman of the minerals negotiation will be allowed observers entitled to participate in all aspects of Treaty meetings. "Expert" organisations will be invited to submit advice only on the parts of meetings that deal with their fields of expertise. It was decided that initially the World Meteorological Organisation (WMO) and the International Union for Conservation of Nature and Natural Resources (IUCN) should be invited as experts. These invitations are subject to approval from the 14th ATC meeting that should be a mere formality, given the length of the debate at the Preparatory Meeting. The WMO will participate on items dealing with meteorology and forecasting, while IUCN will provide expertise on EIA procedures. ECO anticipates that IUCN also will be able to provide advice on such topics as protected areas, waste disposal and scenarios that have environmental implications.

Greenpeace International also formally requested observer status on the basis of several years' consistent involvement in Antarctic matters and the establishment of a permanent Antarctic scientific station on Ross Island. A land number of delegations resisted taking that step.

ECO congratulates the ATCPs for taking the sensible step of inviting IUCN to contribute its expertise to agenda items dealing with the environment. It hopes that it will not be too long before other organisations, such as ASOC and Greenpeace, are similarly invited to participate.

A number of other important agenda items were foreshadowed. There was a proposal that guidelines be agreed with regard to drilling projects undertaken in the name of science. Because of the dangers of accidentally encountering oil, it should be clearly spelled out that areas known to be prospective should be left alone. Further, consideration should be given to requiring that scientific drilling projects be equipped with blow-out preventers to meet the contingency of unexpectedly finding hydrocarbons.

Another serious concern that ECO shares with some Treaty members is that many states are slow to adopt Treaty recommendations. In particular, some of the newer Treaty states have yet to adopt the Recommendations made by earlier ATCPs. Any party to the Treaty, however, that has any intention of becoming an ATCP in the future, should establish the necessary domestic legislation to implement Recommendations and notify the depositary state accordingly. In particular, ECO urges that those states with an announced intention of becoming ATCPs -- the German Democratic Republic, Italy, Sweden, and the Republic of Korea and Spain -- should immediately begin this process.

The most important issue to be discussed at the October meeting will be the establishment of mandatory guidelines for environmental impact assessment. ECO urges that the treaty parties agree on clear, comprehensive, and universally agreed rules for how EIAs should be undertaken. Informal discussion at the Preparatory Meeting indicated that most countries accept the need for guidelines, but that this still could be a major political battle. The debate on this issue at the ATCM will clarify which states genuinely have the interests of the Antarctic environment at heart, and which states are merely mouthing platitudes. In the longer term, however, something stronger than guidelines is required. There is a need for enforceable rules, with appropriate institutions to ensure compliance.

ECO suggests that all Treaty members undertake programs of continuous annual assessment of all activities in the Antarctic. A typical assessment should consist of three parts. The first would examine the impact of the activities undertaken to date, including an evaluation of how accurate the previous assessment had been. The second would detail the changes proposed for the coming season's activities, while the third would examine the cumulative impacts of the existing operation and the changes that were proposed.

Another key issue is waste disposal. It is clear from surveys undertaken by Greenpeace and ASOC that there is a wide range of practices in the Antarctic. Some of these do not stand close scrutiny. Even some of those countries which proclaim loudest their concern for the Antarctic environment have some appalling waste disposal practices. The working group established by SCAR to examine this issue is due to meet in June to prepare its final report. ECO looks forward to studying the report, and hopes the ATCPs will take action in October to remedy the problems.

The need for new institutions for the Antarctic Treaty System also is a priority. To outsiders, it appears to be cont.
The ways in which the Advisory Committee will participate in the regime are limited throughout the draft Convention. For example, it will not on its own initiative have the right to review and advise on environmental impact assessments and management schemes at any stage of minerals activities. Evidently absent are provisions requiring the decision making institutions to follow the advice of the Advisory Committee. In the one case when this is required, Article 43(8), it appears that those powerful delegations desiring to retain the provision are in the minority, although, conversely, ECO hears much corridor talk about the "need to strengthen" the Advisory Committee.

TIME LIMITS IMPOSED ON INSTITUTIONS

Although this issue has not been carefully addressed, the Chairman has introduced some small changes which indicate an attitude on the part of the negotiators to give the Advisory Committee a role. It is not seen as having a legitimate role in reviewing management schemes and environmental impact analyses.

ECO understands that some delegations have expressed dismay at the wielding of the scalpel by Dr. Rolf. We can only support them.

RATIFICATION

The debate over the number of states that should be required to ratify in order to bring the Convention into force reveals that most delegations prefer a substantial number. ECO believes that the Convention should come into force only following its ratification by all ATCPs.

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ASOC submitted an Information Paper to all delegations, ANT SCM/10 No. 1, outlining in detail proposed changes to the draft text, BB IV. ECO urges all delegations to study these proposals, and to put them on the table. We invite delegates to respond to us directly as well.
between a rock

The Antarctic minerals negotiations have been conducted since 1982 with offshore oil as the most likely first target. ECO is concerned that too little attention has been focused on whether rules and procedures designed around the oil industry are appropriate for the hard-rock mineral industry. Discussions with delegates who have experience with hard-rock mining suggest that we are not alone in this view.

In the oil context, there is initial uncertainty about the technology and methods to be used, including the type of drilling structure, oil recovery systems and oil transport systems. By comparison with a hard-rock explorer, however, an oil explorer will have a much clearer idea of the likely nature of an eventual development project when applying for an exploration license.

A hard-rock miner applying for an exploration licence will have considerable uncertainty about the eventual development. The potential operator probably will have undertaken geophysical field readings, geophysical investigations, satellite mapping and preliminary shallow sampling, all of which have helped narrow the area of interest. Typically, however, an operator will be looking for a spectrum of possible minerals. The information gained at this early stage will likely be insufficient to determine which minerals are present, in what quantity and at which grades.

Even when the mineral is known, the size and physical shape of the orebody, its grade and the degree of veining or dissemination throughout the host rock will dictate the mining method to be used. This could involve underground methods such as tunneling or block-caving, or it could be open cast. Differences in the richness and size of the deposit will lead to very different operations. If hard-rock mining occurs, it is bound to be on a very large scale in Antarctica, but there can be considerable variation.

A mine is not just a hole in the ground. For some minerals, only a few parts of mineral per million of host ore are extracted, and to get at the ore perhaps two, three or more times as much overburden and waste-rock must be shifted to recover it. Because of the high volume of rock, the ore would have to be extracted near the site, so an extraction system with a grinding mill and processing plant with chemical reagents and physical extraction facilities would be required. Many of the chemical reagents are highly toxic pollutants.

A transport mechanism would be required to take the ore and waste rock from the mine face to the mill, and then to move the extracted mineral and tailings (ground-up rock from which the target mineral has been extracted) to the stockpile or dump.
The need to find an accommodation of special interests has been a prominent feature throughout the minerals negotiations. In the beginning, it was described as resolving the internal and external accommodations. The internal accommodation referred to the dichotomies between claimants and non-claimants, potential miners and more conservation-minded states, and the positions of the superpowers. The external accommodation referred to the reconciliation of ATCP interests with those of the rest of the world, especially developing countries. The need for such an accommodation has been crystallized by the difficulties caused by the debate on Antarctica at the UN General Assembly.

As the negotiations have proceeded, additional elements have been added, with both internal and external dimensions.

Internal accommodations now must be found between developing countries, which have become more assertive, and developed countries, and between ATCPs and NCPs. This is the source of limiting developing countries as ATCPs, which was agreed to in order to ease the external accommodation.

The external accommodation has grown simpler in one sense, now that the NCPs and some developing countries are, to a certain extent, "superpowers" but has grown more complex as the public has become aware of Antarctic politics. The external accommodation now must include the participation of International and Non-Governmental Organizations as observers and advisers to the institutions of the regime. How have these newer interests fared in the negotiations?

The NCPs first were invited to observe the minerals negotiations at the Rio de Janeiro meeting in February 1985. In the last two years, their status as legitimate participants has unquestionably improved. Many observers believe that this acceptance is a result of the debates at the United Nations, reflecting the Treaty's desire to present a united front there.

Some NCPs have taken their new role quite seriously, and have begun to negotiate for a meaningful participatory role within the institutions of the regime. Following the Rio meeting, the Chairman circulated a paper which followed NCP suggestions that a Special Meeting of States Parties, including the NCPs, should have the power to decide whether an area should be opened for minerals exploration. Voting procedures outlined in the document would have required a qualified majority, with the concurrent vote of all ATCPs, to open an area. This would have meant that a single ATCP could veto a decision, but that if they unanimously agreed, the NCPs would have had to increase in number to the point where they were ATCPs and voted as a group in order to block a decision to open an area. Unlike as such a prospect might be, ATCPs objected to the signatures of such powerful NCPs.

In the present text, the opening of an area appears to be firmly placed in the hands of the Commission, from which NCPs are excluded. The Special Meeting of States Parties has only a limited advisory function.

The participation of NCPs as members of the Scientific, Technical and Environmental Advisory Committee has been further eroded in Beeby IV. Changes in Article 24 have stripped the Committee of its discretion to provide information to the EC0. The incentive for ATCPs to accommodate NCP views will be lessened as the perceived threat of UN intervention diminishes.

The acceptance of Brazil, India, China and Uruguay into the ATCP fold has resulted in a strong internal lobby for the special protection of developing countries. Negotiations have centered around the composition of the Regulatory Committees, and the means of choosing between competing exploration applications. One objective of these countries is to secure a share of technology and other benefits.

It has been a long-standing position among these countries that the Regulatory Committee should include adequate representation of developing countries. Beeby IV stops short of prescribing a formula to ensure the equity of the composition, instead giving the Chairman of the Commission discretion to make such a determination. Brazil, Uruguay, China and India would like to see a requirement that developing countries are allotted a specific number of seats on each Regulatory Committee. Their proposal, however, does not appear to have been welcomed by other ATCPs.

Developing countries also wish to see the level of international participation included in the criteria for deciding between competing applications. They have gained some concessions in this in successive drafts. Competing applicants will first have the opportunity to resolve the questions among themselves. If this proves impossible, the Regulatory Committee would have to devise a method to resolve the conflict. If all else is equal, priority would be given to the application with the higher degree of international participation.

Treatment of the two types of organizations differs in the draft Convention. International Organizations (IOs) fare better than Non-Governmental Organizations (NGOs). Observer status in
the Commission, for example, is open to NGOs, though not to NGOs. Indeed, the only institution of the regime which is open to participation by NGOs is the Advisory Committee — and then only with the approval of the Commission. Interested NGOs do not have a guaranteed opportunity to comment on assessments of adequacy of information, environmental impact assessments, draft management schemes, inspection reports, or plans to establish protected areas.

NGOs represent the public in a direct way. To leave them out of any real participation in the minerals convention’s institutions would be to neglect important information, expertise and the concern of the general public about conservation and protection of the Antarctic.

### NOT SECRET BUT PRIVATE

"Not secret, but private," was Chairman Beeby’s term for the third major intersessional meeting of key ATCPs at Whanganca, New Zealand, in late March this year. The NCPs once again were left out in the cold.

The discussions about exploration, development and legal issues such as inspection and liability went beyond the Tokyo discussions, allowing Chris Beeby to produce another revision of the negotiating text, the so-called Beeby IV draft. The self-selected major players, however, left many key issues to be resolved.

While the meeting was in progress, telegrams arrived from around the world from respected individuals and concerned groups urging that the diplomatic effort be put to ensuring the preservation of Antarctica and the adoption of an agreement to ban mining.

ECO hopes that if there are to be future Whanganca sessions, all Antarctic Treaty members will be represented.

### prospecting

There is a certain degree of confusion, even contradiction, in the treatment of prospecting in the draft Convention. The contradiction apparently stems from differing attitudes toward the actual environmental risks involved at the prospecting stage. Many delegates consider prospecting to be a benign activity. Indeed, given that the Convention would apply stricter constraints on prospecting than are now applied to scientific research activity such as core drilling, they consider prospecting to be well covered in the text.

There are, however, many delegates who are concerned about the possible environmental consequences of prospecting activities, particularly if there is a surge of interest once the Convention comes into force.

Article 35 of “BB IV” acknowledges that environmental harm may result from prospecting. Paragraph 6 (e) requires that an environmental impact assessment be prepared as part of the sponsoring state’s notification to the Commission that prospecting activities are to begin. In the context of the EIA, the sponsoring state is required to describe the measures to be adopted to avoid or mitigate environmental consequences and outline the measures to be put into effect in the event of any accident.

Likewise, ECO understands that the new Article 10 on liability, proposed by Beeby at this session, applies to all mineral resource activities, and that the definition of such activities clearly includes prospecting.

These expressed concerns about the potential for prospecting are contradicted, however, by the intention to negotiate detailed liability provisions early in the regime coming into force. If the Commission is to establish detailed rules for liability, the process is not likely even to begin for at least six months and possibly years after the regime comes into force.

Further, given that some states insist that the liability provisions must be voluntary, consensus the potential for delay is very great indeed. If liability provisions are required to be adopted as a protocol to the Convention, their negotiation could also result in a protracted debate and endless delay on ratification. Either way, agreement is likely to be slow in being reached, given the present wide range of views on this subject. Minerals prospecting, on the other hand, could begin at once.

ECO wonders how delegates can acknowledge the potential dangers of prospecting by requiring EIA procedures, and yet exhibit a lack of concern that prospecting may be adopted by the Commission before liability provisions are in place. This is particularly disconcerting given the possibility of a rush to carry out resource inventories in prospective areas by companies or states, even if exploration is not anticipated for many years.

As ECO sees it, there are only two reasonable courses of action. First, the Advisory Committee on mineral resource activities, adopted at the cont. on page 8.
Telex from Slimbridge

The following message was received by telex from Sir Peter Scott, which he asked to be passed on to delegates attending this session of the minerals negotiations. For those who don't know him, Sir Peter is one of the world's great naturalists and a particular champion of the Antarctic, having been there many times.

MAY 13, 1987
MESSAGE TO DELEGATES:

"I HAVE BEEN FOLLOWING THE PROGRESS OF THE ANTARCTIC MINERALS NEGOTIATIONS VERY CLOSELY AND WITH GROWING ANXIETY. ALTHOUGH THE PRESENT DRAFT CONVENTION INCORPORATES SOME GOOD GENERAL PRINCIPLES TO ENSURE THE PROTECTION OF THE ENVIRONMENT, THESE ARE NOT FOLLOWED THROUGH IN THE DETAILED PROVISIONS OF THE REGIME. IT IS ONLY TOO EASY TO PAY LIP-SERVICE TO ENVIRONMENTAL PROTECTION WHILE IN PRACTICE ALLOWING SHORT-TERM COMMERCIAL INTERESTS TO HAVE THE UPPER HAND. THIS HAS HAPPENED OVER AND OVER AGAIN IN ALL CORNERS OF THE WORLD -- IN THE ARCTIC, IN THE TROPICAL RAINFORESTS, AND IN THE OCEANS. BEFORE IT IS TOO LATE, I URGEOUX TO HAVE THE WISDOM NOT TO LET HAPPEN IN THE EARTH'S LAST REMAINING WILDERNESS, THE ANTARCTIC." Sir Peter Scott, Slimbridge, Gloucester, United Kingdom.

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eleventh ATCM in Buenos Aires, could be extended until such time as liability provisions, however they are negotiated, are ratified by all Commission members. ECO understands that this suggestion has been put forward by at least one delegation.

Alternatively, liability provisions could be negotiated as part of the Convention itself, a course of action favored by a quite a few delegations.

Further, inspection rights, beyond those spelled out by the Antarctic Treaty, should be extended to the prospecting activities. This should include a provision for the placement of observers on any vessels engaged in prospecting, and ecosystem monitoring to detect any environmental changes as a result of prospecting activities.

Unless these courses of action are adopted, ECO would find it hard to accept that the Treaty states are serious in their professed concern that prospecting activities might have a potential for unforeseen environmental damage.

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PRODUCTION TEAM:
Jim Barnes
Andie Figari
Kelly Rigg
Ricardo Samperio
Cath Wallace Roger Wilson

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