

Japan and the Antarctic Treaty System

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INTRODUCTION

Japan, in recent years, has attained prominence in shaping the course of Antarctic affairs. This commentary addresses three sets of fundamental questions in Japan's contemporary South Pole policies. First, what is the nature and degree of Japan's commitment to the Antarctic area, and how has that relationship contributed to the regime administering activities in the region? Second, what are Japan's national interests in the Antarctic, and how might these interests affect Japanese resource needs, both living and nonliving, on and around the Antarctic continent? Third, what diplomatic posture has Japan assumed since 1983 in the United Nations General Assembly debates over the question of Antarctica, and what position does Japan take towards establishing a common heritage of mankind regime there? By examining these questions, Japan's foreign policy, economic priorities, and legal concerns in the Antarctic should become clear and more appreciated.

I

THE ANTARCTIC TREATY SYSTEM

The centerpiece of the legal regime in the South Pole region is the Antarctic Treaty.¹ This accord, signed on December 1, 1959, entered into force on June 23, 1961 after the twelve governments, including Japan, that had participated in the Washington Conference Treaty negotiations ratified it.²

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1. Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 794, T.I.A.S. No. 4780, 402 U.N.T.S. 71.

2. *Id.* at preamble. When the Antarctic Treaty was concluded in 1959, there were twelve original contracting states, or Antarctic Treaty Consultative Parties (ATCP's). Of the original contracting parties, seven are claimants—Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom—while five remain nonclaimants—Belgium, Japan, South Africa, the Soviet Union, and the United States. Ten states have been granted ATCP status in recent years: Poland (1977), West Germany (1981), Brazil (1983), India (1983), China (1985), Uruguay (1985), East Germany (1987), Italy (1987), Spain (1988), and Sweden (1988), all of whom are nonclaimants.

There is no doubt that Japan firmly and resolutely supports the Antarctic Treaty. As the Japanese Government asserted officially in a report to the Secretary-General of the United Nations, Japan considers the functions of the Antarctic Treaty to be of "inestimable value" for maintaining peace and international cooperation in the area.³ Japan heralds the present Treaty regime as being of "prime importance to the well-being of mankind."⁴

The Treaty is a preclusive agreement, specifically designed to forestall activities that might spawn conflict in the region. To that end it contains confidence-building measures that encourage scientific and military cooperation in place of competition. It specifically declares that the Antarctic should be used for peaceful purposes only⁵ and forbids any activities of a military character,⁶ essentially establishing a nonmilitarized zone on the continent.⁷ It also prohibits nuclear explosions and the disposal of radioactive wastes in the region.⁸ It ensures free access to and unannounced, open onsite inspection of all government facilities⁹ and provides special provisions for settling disputes.¹⁰ Furthermore, the Treaty guarantees freedom of scientific research throughout

3. *Question of Antarctica: Study Requested under General Assembly Resolution 38/77, Report by the Secretary-General Part Two: Views of States*, at 102, U.N. Doc. A/39/583 (1984) [hereinafter *Question of Antarctica*] (statement of the Japanese delegate).

4. *Id.*; see also 38 U.N. GAOR C.1 (42d-46th mtg.), U.N. Doc. A/C.1/38/PV.42-46 (1983) (statement of Mr. Kuroda, Japan).

5. See Antarctic Treaty, *supra* note 1.

6. *Id.*

7. See *id.* art. I. In full, article I provides:

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

Id.

8. *Id.* art. V, ¶ 1. In full, this provision states:

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

Id.

9. See *id.* art. VII.

10. See *id.* art. XI. Article XI provides:

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek

Antarctica¹¹ and diminishes the possibility of sovereignty disputes among Treaty parties by freezing all claims to territorial sovereignty on the continent.¹²

The latter provision is critical to the operation of the Treaty. Article IV provides that no acts should constitute a basis for asserting, supporting, or denying a claim to territorial sovereignty, or for creating any rights of territorial sovereignty on the continent. It stipulates that no new claim, or enlargement of an existing claim, may be asserted while the Treaty remains in effect. The proviso also stipulates that nothing contained in the Treaty should be interpreted as a renunciation or diminution by any party of previously asserted rights, claims, or bases of claims to territory in the Antarctic. Thus, article IV allows claimant states to retain claims, and nonclaimant states to continue to refuse to recognize the legitimacy of claims.¹³

Article IV has been criticized for being legally ambiguous and purposefully vague.¹⁴ Nonetheless, it operates effectively within the political sphere because it balances the complex national interests of claimants and nonclaimants, of the United States and the Soviet Union, and of the larger industrial powers (like Japan) and the smaller less developed ones. The ambiguous yet functional construction of article IV strikes an equilibrium among the conflicting and competing interests of the Treaty's various parties and supplies the chief reason for its success over the past three decades. The Japanese have strongly supported this "creative am-

to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

Id. As of February 1989, no dispute between the Contracting Parties concerning the Treaty has been reported that required resort to these dispute settlement techniques.

11. *Id.* art. II. This provision declares: "Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty." *Id.*

12. *See id.* art. IV.

13. Article IV provides:

1. Nothing contained in the present Treaty shall be interpreted as:

(a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

(b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

(c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

Id. art. IV.

14. *See, e.g., The Antarctic Treaty: Hearings Before the Senate Comm. on Foreign Relations*, 86th Cong., 2d Sess. 13 (1960) (statement of Sen. Gruenig); Triggs, *The Antarctic Treaty Regime: A Workable Compromise or a "Purgatory of Ambiguity"?*, 17 CASE W.J. INT'L L. 195, 199-204 (1985).

biguity" as a viable means of preserving regional cooperation and stability.¹⁵

The regularly scheduled meetings¹⁶ of certain states party to the Antarctic Treaty have facilitated diplomatic cooperation in Antarctic affairs. Named "Meetings of the Antarctic Treaty Consultative Parties" (ATCP's), Japan, the other eleven original Contracting Parties, and any new Contracting Party that has been able to demonstrate "its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition"¹⁷ have attended these conferences. Meetings are held every two years and function as the Treaty's decisionmaking apparatus.

The recommendations adopted at ATCP meetings are considered Treaty policies. As policy statements, ATCP recommendations tend to be formal and inflexible. They enter into force upon the unanimous approval of the participating governments. In the thirteen ATCP meetings convened since 1961, some 160 recommendations have been adopted by consensus, demonstrating the close, continuous constructive collaboration among all the ATCP's, including Japan. Recommendations have addressed meteorology, telecommunications, tourism, postal services, facilitation of scientific research, nongovernmental expeditions, logistics, rescue operations, specially protected areas, and historic sites. Recent recommendations have addressed environmental protection and resource conservation and management.¹⁸ These valuable ancillary multilateral

15. The official position of the Japanese Government has been summed up this way: [Article IV] is an outstanding, indeed unprecedented, feature of the Treaty . . .

Japan believes that Antarctica must not become the object of territorial claims, and that disputes over the territorial claims in Antarctica would be, in every way, contrary to the interests of the whole international community. Japan does not recognize any claims to territorial sovereignty in Antarctica and does not assert any claims of its own.

Question of Antarctica, supra note 3, at 103.

16. Antarctic Treaty, *supra* note 1, art. IX, ¶¶ 1-2. At present, Consultative Party Meetings are attended by Argentina, Australia, Belgium, Brazil, Chile, China, East Germany, France, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, the Soviet Union, Spain, Sweden, United Kingdom, the United States, Uruguay, and West Germany. In addition, 16 states have acceded to the Antarctic Treaty, but have not yet sought Consultative Party status. As of early 1989, the following states were considered Non-Consultative Parties: Austria, Bulgaria, Canada, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, Greece, Hungary, Democratic Republic of Korea, Republic of Korea, Netherlands, Papua New Guinea, Peru, and Romania. U.S. DEP'T OF STATE, TREATIES IN FORCE ON JANUARY 1, 1988, at 265 (1988); L. KIMBALL, REPORT ON ANTARCTICA 5 n.1 (1987).

17. Antarctic Treaty, *supra* note 1, art. IX, ¶ 2. This provides:

Each Contracting Party which has become a party to the present Treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

Id.

18. See F. AUBURN, ANTARCTIC LAW AND POLITICS 165-70 (1982).

agreements have supplemented the 1959 Accord and have been adopted with the concurrence of the Japanese Government.

The success of the Antarctic Treaty depends upon continued achievement and cooperation, rather than competition and confrontation. To resolve resource management issues not covered by the Treaty proper, a family of protective measures known collectively as the Antarctic Treaty System has evolved.

The first of these was the Agreed Measures on the Conservation of Antarctic Fauna and Flora,¹⁹ which was designed to protect native birds, mammals, and plant life on the continent, to safeguard against the introduction of nonindigenous species, and to prevent water pollution near the coast and ice shelves. In addition, the Measures sought to preserve the unique character of Antarctica's ecological systems. The Scientific Committee on Antarctic Research, on which Japan has a standing representative, monitors compliance with the Agreed Measures.²⁰

The Convention on the Conservation of Antarctic Seals was promulgated in 1972 and entered into force in 1978.²¹ It seeks to limit the commercial exploitation of six species of seals to maintain their populations at an optimal level. Japan is a member of this Convention and has supported its conservation mandate.²²

A third appendage of the Antarctic Treaty System is the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR).²³ Japan, although slow to ratify this Convention, is now a party to this agreement. The CCAMLR accord, which entered into force in 1982, encompasses the region south of 60 degrees south latitude, as well as certain areas of the Antarctic Convergence Zone that meander as far north as 45 degrees south latitude. As its name implies, the princi-

19. Antarctica: Measures in Furtherance of Principles and Objectives of the Antarctic Treaty, June 2-13, 1964, Agreed Measures for the Conservation of Antarctic Fauna and Flora, 17 U.S.T. 991, 996, T.I.A.S. No. 6058, *modified in* 24 U.S.T. 1793, 1802, T.I.A.S. No. 7692 (1973) (approved as Recommendation III-8 in 1964).

20. On the role of the Scientific Committee on Antarctic Research in the Antarctic Treaty System, see F. AUBURN, *supra* note 18, at 171-83.

21. Convention on the Conservation of Antarctic Seals, June 1, 1972, 29 U.S.T. 441, T.I.A.S. No. 8826, 11 I.L.M. 257 (entered into force Mar. 11, 1978). All parties to the original Antarctic Treaty, except New Zealand, are parties to this Convention as well. TREATIES IN FORCE, *supra* note 16, at 356.

22. Not all the ATCP's are members of the Seals Convention. Of the original twelve ATCP's, New Zealand is not a party. Article 10 of the Seals Convention is only open to "States participating in the Conference on the Conservation of Antarctic Seals held at London from 3 to 11 February 1972." Convention on the Conservation of Antarctic Seals, *supra* note 21, at 8. For parties to the Convention, see U.S. DEP'T OF STATE, TREATIES IN FORCE ON JANUARY 1, 1987, at 305 (1987).

23. Convention on the Conservation of Antarctic Living Marine Resources, May 2, 1980, 33 U.S.T. 3476, T.I.A.S. No. 10,240 [hereinafter CCAMLR] (entered into force Apr. 7, 1982). For a detailed discussion, see Frank, *The Convention on the Conservation of Antarctic Living Marine Resources*, 13 OCEAN DEV. & INT'L L. 291 (1983).

pal purpose of CCAMLR is the preservation of all living marine resources, including fish, crustaceans (especially krill), creatures on the continental shelf (such as mollusks), and birds. CCAMLR embodies an ecosystemic conservation approach to preservation; this approach recognizes the need to maintain the ecological balance between harvested species and dependent predators.²⁴ The key to this balance is krill, a two-inch long shrimp-like crustacean which is the principal link in the Antarctic food chain. Krill contain the protein equivalent of beefsteak or lobster, and thus may hold great potential for augmenting human food needs. However, unregulated harvesting of krill during the late 1970's, particularly by the Soviet Union and to a lesser extent by Japan, prompted the need for conservation measures to preserve krill stocks.²⁵ Japan eventually became a party to the CCAMLR agreement, but only after hard negotiations abroad and prolonged debate at home. Despite Japan's interest in fishing foreign waters, the Japanese Government determined that certain long range benefits of ecosystemic conservation and diplomatic cooperation outweighed the possible short run gains of unrestrained krill harvests.

The Antarctic Mineral Convention represents the latest effort to augment the Treaty System. Since 1982, the Consultative Parties have been engaged in a series of negotiations aimed at establishing a treaty-based minerals regime. Although the extent of mineral wealth in the continent is unknown,²⁶ the establishment of a regime presumably would

24. CCAMLR, *supra* note 23, art. 2; see Frank, *supra* note 23, at 303-05. The "ecosystem standard" in CCAMLR's approach to conservation is a principal contribution to international environmental protection techniques. Through the ecosystem approach, harvesting of the target species—in this case, krill—is to be carefully considered in relation to the consequences for other dependent species in the ecosystem. This approach is a true regional approach, based on the consequences created for related species in that particular ecosystem. If overharvesting of one species presents dangers for other species, such harvesting should be curtailed. The critical problems, of course, arise in setting threshold standards for depletion in that ecosystem, monitoring levels of harvesting, and enforcing standards once they are fixed. At present, levels of harvesting are reported by harvesting states, and the accuracy of those reports may be suspect.

Krill poses certain difficulties for determining what conservation measure should be adopted. Krill is relatively short-lived, and its position in the Southern Ocean ecosystem is difficult to establish. Perhaps most significantly, implementation of a conservation standard predicated on the "ecosystem-as-a-whole" approach requires a serious commitment by the relevant governments to support a long-term scientific program and a willingness to curtail krill harvesting until sufficient scientific data is available to undertake reasonably scientific decisions. Obviously, the fundamental legal difficulties involved relate to standard-setting, monitoring, and enforcement procedures.

25. See generally Barnes, *The Emerging Convention on the Conservation of Antarctic Marine Living Resources: An Attempt to Meet the New Realities of Resource Exploitation in the Southern Ocean*, in *THE NEW NATIONALISM AND THE USE OF COMMON SPACES: ISSUES IN MARINE POLLUTION AND THE EXPLOITATION OF ANTARCTICA* 239 (J. Charney ed. 1982).

26. Much of the uncertainty about Antarctica's mineral wealth is attributable to the massive ice sheet, which covers 98% of the continent's 14 million square kilometers, and has an average thickness of 2,000 meters. CENTRAL INTELLIGENCE AGENCY, *POLAR REGIONS AT-*

furnish regulatory predictability and stability should recoverable deposits be discovered at a later date. After intense discussions and prolonged negotiation, the institutional framework for a mineral regime is now in place.²⁷ The regime is designed to administer and regulate the prospecting, exploration, and exploitation of mineral resources both on the continent and offshore.²⁸ Although Japan has assumed a secondary role in fashioning the minerals regime, any viable minerals treaty requires Japan's concurrence. The absence of such an important potential miner of Antarctic minerals resources certainly could disrupt the entire Antarctic Treaty System.²⁹

Finally, substantial analysis in the Friedheim and Akaha Article is devoted to Japanese whaling operations in the Antarctic and the politics of the International Whaling Commission (IWC).³⁰ Given Japan's high

LAS 35 (1978). Only 1% of the exposed, ice-free areas of the continent (about .02% of Antarctica) has been explored. The overall harsh climatic conditions of the region have also served to limit the amount of exploratory research. See CONGRESSIONAL RESEARCH SERVICE, 94TH CONG., 2D SESS., POLAR ENERGY RESOURCES POTENTIAL, REPORT PREPARED FOR THE SUBCOMM. ON ENERGY RESOURCES, DEVELOPMENT AND DEMONSTRATION (FOSSIL FUELS) OF THE HOUSE COMM. ON SCIENCE AND TECHNOLOGY 1 (Comm. Print 1976). For a highly optimistic account of Antarctica's mineral potential, see generally M. DE WIT, MINERALS AND MINING IN ANTARCTICA: SCIENCE, TECHNOLOGY, ECONOMICS AND POLITICS (1985). Compare Behrendt, *Scientific Studies Relevant to the Question of Antarctica's Petroleum Resource Potential*, in GEOLOGY OF ANTARCTICA (R. Tingley ed. 1986).

27. See Joyner, *The Evolving Antarctic Minerals Regime*, 19 OCEAN DEV. & INT'L L. 73 (1988); Joyner, *The Antarctic Minerals Negotiating Process*, 81 AM. J. INT'L L. 888 (1987). The Antarctic Minerals Convention has evolved through a series of draft documents over the past six years. See *The Antarctic Minerals Regime: The Beeby Draft*, reprinted in GREENPEACE INTERNATIONAL, THE FUTURE OF THE ANTARCTIC: BACKGROUND FOR A U.N. DEBATE app. 8 (1983); Beeby Draft II, reprinted in 1984 GREENPEACE BRIEFING DOCUMENT, THE FUTURE OF THE ANTARCTIC: BACKGROUND FOR A SECOND U.N. DEBATE app. 8 (1984); C. Beeby, Antarctic Mineral Resources: Chairman's Informal Personal Report (Sept. 19, 1986); C. Beeby, Antarctic Mineral Resources: Chairman's Informal Personal Report, Annex to Chairman's Informal Personal Report (Apr. 1987); C. Beeby, Antarctic Mineral Resources: Annex to Chairman's Informal Personal Report, Draft Convention (Nov. 1987). A recent account of the minerals negotiations progress is L. KIMBALL, REPORT ON ANTARCTICA: SPECIAL REPORT: THE ANTARCTIC MINERALS CONVENTION NEGOTIATIONS (1988).

28. On June 2, 1988 the Convention on the Regulation of Antarctic Mineral Resource Activities was adopted by consensus in Wellington, New Zealand. This agreement concluded six years of negotiations involving 33 states and concerned establishing regulations for developing oil and mineral resources exploration and exploitation activities in and around Antarctica. Japan assumed a leading role in the negotiations as a state with serious mining interests in Antarctic minerals. Shabecoff, *Development Seen for the Minerals of All Antarctica*, N.Y. Times, June 6, 1988, at A1, col. 3. The Minerals Treaty was opened for signature on November 25, 1988. Doc. AMR/SCM/88, 27 I.L.M. 859 (1988).

29. The absence of Japan would disrupt the entire Antarctic Treaty System because the system is dependent upon consensus to function. Japan's departure would signal a fundamental breakdown of the consensus process. Japan's absence would also pose problems because of that state's intense desire to engage in prospecting and exploration activities in Antarctica. Absent its participation in the minerals agreement, Japan would likely go forward in its exploration efforts, thus creating pressures for like-minded states in the regime to do the same.

30. See Friedheim & Akaha, *Antarctic Resources and International Law: Japan, the United States, and the Future of Antarctica*, 16 ECOLOGY L.Q. 119 (1989) (this issue).

economic stake in these whaling activities, this treatment is certainly an important consideration in estimating Japan's overall calculus in the Antarctic.³¹ Significantly, although the IWC is not formally part of the Antarctic Treaty system, many of the same states participate as interested parties in both fora.

II

JAPAN'S NATIONAL INTERESTS

Cooperation between Japan and the other ATCP's has been essential for the extensive expansion of the Antarctic Treaty System. Japan has national interests in the Antarctic and clearly recognizes that cooperation with the other ATCP's is more productive than competition or unilateral activity outside the Treaty.

A litany of national interests motivates Japanese involvement in the Antarctic. Japan has found it desirable to reserve the Antarctic exclusively for peaceful purposes and to keep the continent demilitarized and nuclear-free.³² Japan supports efforts to ensure that Antarctica remains free of international discord and encourages peaceful and constructive relationships among all states active in the region. That no violation of Treaty provisions has ever been reported strongly suggests that Japan has contributed successfully to keeping these policies on course.

The Japanese Government also has prominent economic interests to protect in the Antarctic and Southern Ocean region. It seeks to preserve access for its nationals to exploit living marine resources and minerals. Japan is an archipelagic nation of some 146,000 square miles, an area slightly smaller than California. With over 120 million citizens, Japan has a population density of approximately three hundred persons per square mile.³³ Japan's domestic supplies of mineral resources are negligible. Japan's fish catch in 1985 was 12.1 million metric tons.³⁴ Accordingly, Japan is searching for greater access to additional sources of food

31. The Japanese commitment to whaling was underscored at the very time the Sho Sato Conference was convened. On April 6, 1988, President Reagan denied Japan's request to harvest 3,000 metric tons of sea snails and 5,000 tons of Pacific whiting within United States waters. The specified explanation for this decision was to sanction Japan's violation of the International Whaling Commission's 1986 international moratorium on whaling. The alleged violation occurred when Japanese commercial whaling vessels killed some 300 minke whales off Antarctica for "research" purposes. While this hunt purportedly was intended "to determine the number of surplus minkes, the number of births which exceed deaths," the plain fact remained that harvested whales were sold commercially. U.S. retaliation followed as a result. Shabecoff, *U.S. Denies Japan Plea on Fishing*, N.Y. Times, Apr. 7, 1988, at D1, col. 6.

32. *Question of Antarctica*, *supra* note 3, at 102.

33. In comparison, the population density of the United States in 1980 was 66 persons per square mile, with a population of 240 million in 1986 and 3.54 million square miles of land area. California's population density in 1980 was 168.6 persons per square mile, with a population of 26.9 million in 1986 and 158,000 square miles. THE WORLD ALMANAC AND BOOK OF FACTS 1988, at 416, 603, 690, 732 (1987).

34. *Id.* at 690.

and natural resources to sustain its domestic growth. For these reasons, Japan finds the possibility of accessing Antarctic supplies of petroleum and natural gas, hard minerals such as platinum, chromium and nickel, and the Southern Ocean's fisheries attractive. The Japanese made it clear during the CCAMLR negotiations that they insisted on preserving their right to fish in the Southern Ocean.³⁵ Similarly, during the recent mineral negotiations, Japanese negotiators worked to ensure that Japanese miners would have access to all areas in Antarctica where minerals extraction might one day be feasible.³⁶ With these objectives in mind, the Japanese have been less enthusiastic about imposing strong environmental safeguards in the Antarctic, particularly where proposed standards would reduce access to potentially exploitable resources.³⁷ Indeed, Japan's program of research in Antarctica's geodesy, geology, petrology, and geomorphology has intensified since 1985, fostering suspicions about Japan's motives. Environmental groups and some governmental officials have suggested these research efforts are, in effect, prospecting activities designed to give Japan a head start over the minerals regime that has been slowly emerging over the last decade.³⁸

35. Barnes, *The Emerging Antarctic Living Resources Convention*, 73 PROC. AM. SOC'Y INT'L L. 272, 277 (1979). Recent CCAMLR reports indicate that Japan actually increased its Antarctic krill fishing to record levels—some 78,000 tons—during the 1986-87 season. See *Report of Members' Activities in the Convention Area 1986/87, Japan*, Commission for the Conservation of Antarctic Marine Living Resources Doc. CCAMLR-VI/MA/9, at 1 (1987).

36. To protect its interests, Japan proposed during the minerals negotiations in 1987 that a provision be included in the Beeby draft allowing a state undertaking significant prospecting activities "automatic inclusion" in any regulatory committees with jurisdiction over those activities. Precisely because this situation implicitly would guarantee Japan a seat on most regulatory committees, this proposal was adamantly opposed by claimant states. See *Status of Mineral Negotiations 3* (Antarctica Briefing No. 13, June 30, 1987).

37. Speaking in his personal capacity, Takeo Iguchi, Japan's Ambassador to the CCAMLR negotiations, summed up Japan's position on Antarctic environmental concerns in the following terms:

Environmentalists tend to view the Antarctic as sacrosanct, that it should be maintained in its relatively pristine state for the benefit of future generations. They view the Antarctic environment as a fragile, almost static, ecosystem which is slow to recover from the impacts of human activity. However, in any environment, constant adaptation and change, even though slow, is a natural and inevitable occurrence. The impacts of human activities are just beginning to be felt in Antarctica, and continued interaction must be an accepted reality. While environmental concerns are of unquestionable importance, they have been stressed to the point of unduly deterring human activities which seek to investigate the resource potential of this vast region. What is needed is a balanced management strategy which emphasizes the importance of development of the resource potential of the Antarctic for the benefit of mankind.

Iguchi, *Commentary on Antarctic Environment and Resources*, in OCEAN POLICY SERIES: THE POLAR REGIONS, PROC. ELEVENTH ANNUAL SEMINAR OF THE CENTER FOR OCEANS LAW AND POLICY 230, 232 (1987).

38. Recent activities of the Japanese research vessel *Hakurei Maru* within the Antarctic Treaty area have fueled this controversy. In early 1988 this vessel, operating under the aegis of Japan's Agency for Natural Resources and Energy, reportedly conducted certain scientific exercises closely resembling minerals prospecting and exploration activities around Antarctica. See JAPANESE ANTARCTIC ACTIVITIES FOR 1987-1988, at 16-17 (1987); Friedheim & Akaha, *supra* note 30, at 143 n.143.

Japan also has scientific interests in the South Pole region. Japan appreciates the fact that Antarctica presents a unique laboratory for scientists. Remarkably pristine and removed from civilization, the ice-clad continent is an ideal place from which to monitor critical global environmental variables. Japanese research there has concentrated on astrophysics, biology, geology, geomagnetics, glaciology, meteorology, and volcanology. Although this research may heighten existing suspicions, Japan's scientific activities nonetheless have advanced the understanding of the Antarctic continent and the geophysical processes of the south polar region.³⁹

Implicit in Japan's Antarctic activities is the realization that the resources of the Antarctic must be conserved if they are to be available for future exploitation. Japan's national interests make it imperative that the ecosystem of both the continent and its surrounding ocean survive. These fundamental realizations no doubt have supplied powerful incentives for Japan to accept the conservation-oriented measures the ATCP's have produced. Fostering the freedom of scientific research and encouraging the exchange of data with other ATCP's are positive accomplishments contributing to that end. It is clearly in Japan's interest over the long term to support these activities.⁴⁰

III

JAPAN AND THE UNITED NATIONS DEBATE

Since negotiation of the Antarctic minerals regime began in 1982, the future of Antarctica has been an issue for consideration on the agenda of the United Nations General Assembly. In 1983 and 1984, the first two General Assembly debates on the question of Antarctica resulted in a consensus agreement on resolutions.⁴¹ Since then, consensus has eluded agreement over recommendations. This breakdown is attributed to adamant parties to the Antarctic Treaty on the one hand, and to

39. See generally NATIONAL INSTITUTE OF POLAR RESEARCH, JAPANESE ANTARCTIC ACTIVITIES (1986).

40. As Ambassador Iguchi has observed,

Japan is increasingly aware of, and struggling with, the problem of environmental pollution in its small but highly industrialized islands as well as marine pollution in the surrounding seas, which abound not only with fish but also with supertankers. Japan therefore is quite sympathetic to the protection of the environment in the Antarctic.

Iguchi, *supra* note 37, at 230. See generally Joyner, *Protection of the Antarctic Environment: Rethinking the Problems and Prospects*, 19 CORNELL INT'L L.J. 259 (1986); Joyner, *The Southern Ocean and Marine Pollution: Problems and Prospects*, 17 CASE W.J. INT'L L. 165 (1985); Joyner, *Oceanic Pollution and The Southern Ocean: Rethinking the International Legal Implications for Antarctica*, 24 NAT. RESOURCES J. 1 (1984).

41. G.A. Res. 39/152, 39 U.N. GAOR Supp. (No. 51) at 94, U.N. Doc. A/39/51 (1984); G.A. Res. 38/77, 38 U.N. GAOR Supp. (No. 47) at 69, U.N. Doc. A/38/47 (1984).

the sponsors of the General Assembly items, led by Malaysia and Antigua and Barbuda, on the other hand.

In 1985 and 1986, three sets of similar General Assembly resolutions were adopted by vote. The first (Resolution "A") requested the Secretary General to seek cooperation of ATCP's to make information generally available to the United Nations and called for additional studies to be produced by the Secretary-General on three questions: (1) the availability of information to the United Nations from the ATCP's on their activities and deliberations regarding Antarctica; (2) the involvement of relevant specialized agencies and intergovernmental organizations in the Antarctic Treaty System; and (3) the significance of the 1982 U.N. Convention on the Law of the Sea in the Southern Ocean.⁴² In 1986, Resolution "A" promoted the role of the United Nations as a central repository for information on all aspects of Antarctica and called for an updated report detailing that information to be prepared for the 1987 General Assembly session.⁴³

In 1985, the second U.N. General Assembly resolution (Resolution "B") called upon ATCP's to make information regarding the negotiations to conclude a regime governing possible minerals development in Antarctica available to the United Nations.⁴⁴ Then, in 1986, the Assembly added a demand that the ATCP's "impose a moratorium on the negotiations . . . until such time as all members of the international community can participate fully in such negotiations."⁴⁵ The 1986 resolution also stated that Antarctic resource exploitation should only be pursued so as to maintain international peace and security in Antarctica, to protect the environment, and to conserve Antarctic resources. In addition, it declared that any attempt at resource exploitation should employ international management and the equitable sharing of benefits.⁴⁶ That these elements duplicated the core features of the Common Heritage of Mankind concept as it has come to be defined relative to the seabed and the moon is significant.⁴⁷

42. G.A. Res. 40/156 A, 40 U.N. GAOR Supp. (No. 53) at 105, U.N. Doc. A/40/53 (1985).

43. G.A. Res. 41/88 A, 41 U.N. GAOR Supp. (No. 53) at 99-100, U.N. Doc. A/41/53 (1986).

44. G.A. Res. 40/156 B, 40 U.N. GAOR Supp. (No. 53) at 106, U.N. Doc. A/40/53 (1985).

45. G.A. Res. 41/88 B, 41 U.N. GAOR Supp. (No. 53) at 100, U.N. Doc. A/41/53 (1986).

46. *Id.*

47. See Joyner, *Legal Implications of the Concept of the Common Heritage of Mankind*, 35 INT'L & COMP. L.Q. 190 (1986). It is significant that common heritage principles are preserved in the Antarctic Treaty System simply because that situation places the ATCP's in the role of stewards of the region for the international community and, at the same time, deflates contentions by the New International Economic Order advocates that the rich are getting richer in the Antarctic at the expense of the world's poor majority.

The third U.N. General Assembly resolution (Resolution "C") appealed to the ATCP's to exclude the apartheid government of South Africa from participation in Antarctic Treaty Consultative Meetings and to inform the Secretary-General in this regard.⁴⁸ In 1986, Resolution "C" also requested that the Secretary-General submit a report on this issue to the 1987 General Assembly session.⁴⁹

In voting on these United Nations resolutions, Japan consistently joined most other ATCP's in their decision not to participate in the General Assembly vote. This demonstration of solidarity clearly revealed the determination of the Antarctic Treaty parties to frustrate attempts of non-Treaty states to influence policy prerogatives within the Antarctic Treaty System.⁵⁰ The rationale Japan advanced for accepting this strategy is just as clear. The Antarctic Treaty System works efficiently and effectively, not only to preserve the interests of Antarctic Treaty parties, but also to enhance the benefits for all mankind. Japan views policies designed within the U.N. General Assembly to impugn the legitimacy of the Antarctic Treaty System or to undercut its efficacy as being contrary to its own national and foreign policy interests in the area.⁵¹ As a consequence, Japan has resisted such policies. In the General Assembly, refusal to participate in a formal vote easily demonstrates this resistance, thereby gainsaying legitimacy to the entire occasion through the nonparticipation of those states who would be most affected.

48. G.A. Res. 40/156 C, 40 U.N. GAOR Supp. (No. 53) at 106, U.N. Doc. A/40/53 (1985).

49. G.A. Res. 41/88 C, 41 U.N. GAOR Supp. (No. 53) at 100, U.N. Doc. A/41/53 (1986). For views of the ATCP states on the South African participation question in general, see *Question of Antarctica: Report of the Secretary-General*, 42 U.N. GAOR (Agenda Item 70), U.N. Doc. A/42/587 (1987). For the 1986 debates in the First Committee of the U.N. General Assembly, see *Question of Antarctica: Report of the First Committee*, 41 U.N. GAOR (Agenda Item 66), U.N. Doc. A/41/902 (Nov. 26, 1986); 41 U.N. GAOR C.1 (49th-51st mtgs.), U.N. Docs. A/C.1/41/PV.49-51 (1986). For the debates in 1985, see *Question of Antarctica: Report of the First Committee*, 40 U.N. GAOR (Agenda Item 70), U.N. Doc. A/40/996 (1985); 40 U.N. GAOR C.1 (48th-55th mtgs.), U.N. Docs. A/C.1/40/PV.48-55 (1985).

50. L. KIMBALL, *supra* note 16, at 23. The votes on the 1987 resolutions among the Antarctic Treaty parties, however, were not unanimous. On the first resolution, among the parties to the Antarctic Treaty, Romania voted in favor and China abstained. On the second resolution, several Treaty parties voted in favor, including: Argentina, Brazil, Bulgaria, China, Cuba, Czechoslovakia, Ecuador, German Democratic Republic, Hungary, India, Papua New Guinea, Peru, Poland, Romania, and the Soviet Union. *Id.* at 22.

51. As stated by the Japanese Government,

The Antarctic Treaty ensures the peaceful uses of the Antarctic region and international co-operation in the region and actively promotes the purposes and principles of the Charter of the United Nations. . . . [T]he Treaty has frozen all claims to territorial sovereignty in Antarctica and has helped to preserve peace in the region for a quarter of a century. It is in the interests and is the duty of the international community of nations to maintain and extend this invaluable regime and its fruits.

Question of Antarctica, supra note 3, at 105.

In 1987, failure in the General Assembly to reach consensus again resulted in roll call voting on two more Antarctic resolutions. The first resolution called both upon the ATCP's to invite the U.N. Secretary-General to all meetings, including Consultative Party meetings and the minerals negotiations, and upon the Secretary-General to report the results of these meetings to the United Nations. The resolution also reiterated the 1986 call for a moratorium on the minerals regime negotiations until all members of the international community could participate fully.⁵² A second resolution requested that parties to the Antarctic Treaty inform the Secretary-General of steps taken to exclude South Africa, and that the Secretary-General report developments on this issue to the 1988 General Assembly.⁵³ Again, Japan, like most Antarctic Treaty parties, refused to participate in the formal vote.

Since 1985, the focus of debate over Antarctica in the United Nations has shifted. In 1983 and 1984, several speakers had advocated that Antarctica, like the seabed beyond national jurisdiction, be declared the Common Heritage of Mankind.⁵⁴ But by 1985, the General Assembly debate evidenced greater willingness to consider more indirect arrangements that would give effect to common heritage principles without calling for actual internationalization of the area. In the 1986 debate, several speakers condemned the existence of territorial claims and questioned their validity under international law.⁵⁵ A study on the implications of the 1982 Convention for the Southern Ocean, which noted the irresolute status of coastal state rights of sovereignty and jurisdiction in Antarctic offshore areas, in part prompted this attack. The most vexing questions the study raised concerned the problem of determining the exact location at which the jurisdiction of an Antarctic minerals regime would end and that of the International Seabed Authority established in the 1982 Convention would begin.⁵⁶

Over the past five years, several themes in the General Assembly debates have remained constant. First, developing states have criticized the impropriety of the two-tier system of participation in the Antarctic

52. See 42 U.N. GAOR C.1 (48th mtg.) at 52-53, 71-72, U.N. Doc. A/C.1/42/PV.48 (1987) (discussion of draft resolution A/C.1/42/L.87 and record of roll-call vote); L. KIMBALL, *supra* note 16, at 22.

53. See 42 U.N. GAOR C.1 (48th mtg.) at 54-57, 76-80; L. KIMBALL, *supra* note 16, at 22.

54. See, e.g., 38 U.N. GAOR C.1 (44th mtg.), at 10, U.N. Doc. A/C.1/38/PV.44 (1983) (Pakistan); 39 U.N. GAOR C.1 (54th mtg.), at 51, U.N. Doc. A/C.1/39/PV.54 (1984) (Bangladesh).

55. 41 U.N. GAOR C.1 (49th-51st mtgs.), U.N. Docs. A/C.1/41/PV.49-51 (1986).

56. United Nations Convention on the Law of the Sea, Dec. 10, 1982, U.N. Doc. A/CONF.62/122, 21 I.L.M. 1261 (1982). On the likelihood of problems arising from these overlapping treaty jurisdictions in the Antarctic, see generally L. KIMBALL, *supra* note 27, at 11-12; Joyner & Lipperman, *Conflicting Jurisdictions in the Southern Ocean: The Case of An Antarctic Minerals Regime*, 27 VA. J. INT'L L. 1 (1986).

Treaty System that distinguishes between ATCP's and Non-Consultative Parties.⁵⁷ The Japanese Government clearly rejects this criticism. A related point of debate centers around the criterion set for becoming a member of the ATCP group. Under article IX, potential ATCP members must demonstrate "interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition."⁵⁸ Developing states castigate this "entry fee" to acquire full decisionmaking rights in the Antarctic Treaty system as contrary to the contemporary era of democratization.⁵⁹ Again, Japan forthrightly defends this requirement on the grounds that work in the Antarctic is difficult, expensive, and selective.⁶⁰ The third point of debate has centered on the fact that under the ATCP arrangement a few states have arrogated to themselves the right to make decisions affecting a region that encompasses nearly one-tenth of the Earth's space and exerts considerable influence upon the world's climatic, atmospheric, and oceanic systems.⁶¹ The Japanese argue that membership is available to all states that wish to demonstrate their commitment to the Antarctic enterprise by engaging in sufficient scientific activity to merit inclusion in the ATCP group.⁶²

Most recently, nonparty states have moved away from criticizing the Antarctic Treaty and instead have acknowledged its achievements. However, criticism has been leveled at the emerging minerals regime and the ATCP's rush to complete it without inviting the full participation of the international community in the negotiations. Frustration also exists in the General Assembly over the ATCP's refusal to submit detailed information regarding the minerals negotiations to the United Nations. The Treaty parties' general decision to abstain from voting on Antarctic resolutions, while at the same time selecting but one spokesman to deliver the group's views during the debate, has exacerbated this frustration.⁶³

Japan's policy towards the United Nations debate over the

57. See, e.g., 38 U.N. GAOR C.1 (42d mtg.), at 18-19, U.N. Doc. A/C.1/38/PV.42 (1983) (statement of Mr. Zain-Azraii, delegate from Malaysia). The views of Pakistan well express this concern: "The self-appointed system established by the Antarctic Treaty for administering the continent is unjust and undemocratic. It establishes two classes of States parties: the Consultative Parties and the Non-Consultative Contracting Parties. The right of participation in decision-making is denied to the latter." *Question of Antarctica*, *supra* note 3, at 34.

58. See *supra* note 17.

59. *Question of Antarctica*, *supra* note 3, at 34, 92, 110, 136-37 (Bangladesh, Malaysia, Pakistan, Zambia).

60. See 38 U.N. GAOR C.1 (42d-46th mtgs.), *supra* note 4, at 90 (statement of Mr. Kuroda, Japan).

61. See generally *Question of Antarctica*, *supra* note 3.

62. *Id.* at 104; 38 U.N. GAOR C.1 (42d-46th mtgs.), *supra* note 4, at 90-91 (statement of Mr. Kuroda, Japan).

63. See 41 U.N. GAOR, U.N. Doc. A/41/688 (1986), for the ATCP refusal to respond

Antarctic has been unmistakably aligned with the concerted strategy of nearly all the other Antarctic Treaty parties. As with other ATCP governments, Japan reckons that its national interests will be served most effectively by remaining within the Antarctic Treaty System.⁶⁴ If the past is prologue, that assessment appears right on point.

IV

CONCLUSION

Three main conclusions may be drawn from this analysis. First, Japan has been a firm, consistent, and enterprising supporter of the Antarctic Treaty and the family of resource-related agreements that has evolved over the past three decades. Second, Japan has become a real stakeholder in Antarctic affairs. Maintaining an active presence in the region plainly serves certain Japanese national interests. These national interests include security concerns, economic objectives, scientific ambitions and, perhaps to a lesser degree, environmental and conservation goals. Third, Japan has calculated that participating as a Consultative Party within the functional framework provided by the Antarctic Treaty System, rather than as one of some 160 states in a universal Common Heritage of Mankind regime, best serves these national interests. As viewed by Japan, the Treaty System is a more pragmatic, efficient, and manageable method of administering activities in the region. The bottom line is that Japan's Antarctic activities during the past three decades have been legally viable, politically notable, and scientifically impressive. It seems safe to posit that, given this legacy, Japan will continue to make constructive policy contributions aimed at promoting stable Antarctic affairs well into the future.

to United Nations' requests for more detailed information on the Antarctic Treaty System's operation because of failure to secure consensus on the resolutions.

64. The representative from Japan expressed this point well before the General Assembly: "Japan is convinced that the co-operative efforts of all of the consultative parties are in the interests of the entire international community. Moreover, we believe that no other treaty promotes the purposes and principles of the United Nations Charter to the extent that the Antarctic Treaty does." 38 U.N. GAOR C.1 (42d-46th mtgs.), *supra* note 4, at 91 (statement of Mr. Kuroda, Japan).

