

UNEP and the Antarctic Treaty System*

by Donald R. Rothwell**

1. Introduction

One of the characteristics of the Antarctic Treaty System (ATS) is that it has remained outside of a number of important international institutions. The ATS, does of course exist within the confines of the United Nations system. However, apart from operating within the UN system, including 'defending' the ATS against criticism within the UN General Assembly during the 1980s and early 1990s,¹ the ATS has not actively engaged the UN system. This is to be contrasted with the more active engagement between the ATS and other international institutions.² This has been partly facilitated through the mechanisms of the Treaty itself, which through Articles II and III have provided an avenue for active engagement between the ATS and a number of international organisations which have a scientific or technical interest in Antarctic affairs.³ In addition, institutions such as the Intergovernmental Oceanographic Commission, International Civil Aviation Organisation (ICAO), International Hydrographic Organisation (IHO), International Maritime Organisation (IMO) and World Meteorological Organisation (WMO) have all been engaged in the ATS process, principally through invitations to attend ATCMs.⁴

The ATS has, however, not stood still during the past 37 years. It has evolved from the relatively simple 1959 Antarctic Treaty,⁵ into a 'system' which now includes three other international legal instruments,⁶ and over 200 measures and recommendations adopted at 22 Antarctic Treaty Consultative Meetings (ATCM) since 1961.⁷ As a result of this evolution of the ATS new institutions have been created along the way. In the case of the 1980 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), a Commission was provided for to collect catch data and monitor Southern Ocean fishing activities.⁸ In the case of the Environmental Protocol, which entered into force in January 1998, a Committee for Environmental Protection is established to provide advice and formulate recommendations to the Treaty parties regarding implementation of the Protocol.⁹

This evolution of the ATS, and expansion of its area of interest beyond peaceful scientific cooperation on the Antarctic continent, has inevitably forced the ATS to consider the merits of developing linkages with a broader range of international organisations that

may have expertise in areas that the Treaty parties are now in need of. To that end, the ATS has during the 1990s begun to develop more linkages with the United Nations Environment Programme (UNEP). Founded in 1972 following the Stockholm Conference on the Human Environment, UNEP has increasingly become a focus for environmental programmes within the UN system. UNEP first attended an ATCM as an observer in 1994 at which it indicated its willingness to cooperate, and offer its experience and assistance to Antarctic Treaty parties.¹⁰ In the same year, an international symposium of Antarctic experts meeting to consider the future of the ATS, recommended that "Consideration be given to closer cooperation with relevant United Nations specialised agencies and programmes, in particular UNEP".¹¹ Since that time, UNEP has repeated its offer to the ATS that avenues for cooperation be further explored.¹²

On its face, the potential for possible cooperation between the ATS and UNEP seems vast. The ATS and the institutions created around the system has expertise in dealing with Antarctic affairs while UNEP has expertise in dealing with environmental affairs, and especially in providing assistance to States in dealing with environmental problems and meeting their international environmental obligations. The purpose of this article is, therefore, to explore the recent engagement between the ATS and UNEP, and then to consider the possibilities and benefits associated with enhanced interaction between the two.

2. UNEP's Interest

2.1 UNEP Conventions and Antarctica

When UNEP was first established it was not given any clear mandate to deal with Antarctic matters. However, as UNEP began to develop in the 1980s, it became clear that the potential existed for a linkage to be created between the matters UNEP was investigating and Antarctica. This was especially the case in areas of UNEP interest and expertise such as environmental monitoring and management, ecosystems and oceans, and conservation.¹³ More recently in 1994 and 1996, UNEP provided assistance in the preparation of Antarctic 'State of the Environment' reports following a request from the UN Secretary-General.¹⁴ During the 1990s UNEP has also expanded its interests in contemporary environmental matters so that it is now directly concerned with some of the global environmental problems which impact upon Antarctica such as ozone depletion and global warming. ➤

* This article is a revised version of a paper originally prepared for the "Future ATS" project initiated and administered by the Fridtjof Nansen Institute, Oslo; particular appreciation is extended to Dr Davor Vidas for his comments on an earlier draft of the paper.

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Various types of connections and scope for interaction exist between a number of UNEP Conventions and Antarctica. For example, the Convention on International Trade in Endangered Species (CITES)¹⁵ has application to trade in Antarctic fauna, flora or other species which may be considered endangered. However, as it does not guarantee *in-situ* protection, the most the regime can provide is an additional mechanism for the protection of any Antarctic species being traded. Given the high level of acceptance of CITES amongst Antarctic Treaty parties, there is scope for the Treaty parties to individually, or collectively, seek to have a variety of endangered Antarctic species placed on either the Appendix I or II lists. Such an opportunity presents itself not only for those species which are found on the continent, but especially for the marine living resources found in the Southern Ocean such as whales and other fish species threatened by recent overfishing.¹⁶ CITES listing would enhance the international protection of endangered Antarctic species both *in-situ*, in the sense that trade in the species would be restricted or prohibited and so thereby remove the incentive for commercial exploitation, and *ex-situ*, and would provide further global support for existing ATS instruments such as the Environmental Protocol.¹⁷

The 1985 *Vienna Convention on the Protection of the Ozone Layer* (Vienna Convention)¹⁸ and the subsequent 1987 *Montreal Protocol*¹⁹ are of direct interest in Antarctica due to the existence of the ever-expanding 'hole in the ozone layer' which appears over Antarctica during the Spring and Summer. While the impact of this development upon the Antarctic environment is difficult to quantify, it is known that the continued depletion of the ozone layer has global consequences for both climate and the environment. As such, the Antarctic Treaty parties have a real interest in the issues which arise from meeting obligations under the Vienna Convention.

The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)²⁰ has an important provision which deals directly with Antarctica. Article 4 (6) provides:

The Parties agree not to allow the export of hazardous wastes or other wastes for their disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.

The effect of this provision is that transboundary wastes can not be exported to any area in Antarctica, irrespective of whether there exists a State of import. The seven Antarctic territorial claimants are therefore precluded from seeking to export waste from their continental territories to their Antarctic territories. Likewise, any attempt to exploit the fact that a portion of the Antarctic continent remains unclaimed²¹ would not offer a 'loophole' to other States, whether they be parties to the Antarctic Treaty or not, to export their wastes to Antarctica. The Convention also controls the export of hazardous wastes from Antarctica, but only in situations where there is a distinctive State of export and State of import.

If a claimant State did seek to export waste from an Antarctic scientific facility to its continental territory, notwithstanding there not being transboundary movement, the Convention would still have application if the export of waste took place through a State of transit.²² Annex III of the Environmental Protocol includes a number of provisions which complement the operation of the Basel Convention, though the Protocol does not specifically refer to the Convention.

The 1992 United Nations Convention on Biological Diversity²³ has a clear application to Antarctica and the Southern Ocean and complements a number of instruments adopted by the ATS, especially the Environmental Protocol. For example, one of the key environmental principles of the Protocol is to ensure that activities in the Antarctic Treaty area are planned so as to avoid "detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora."²⁴ Likewise, Annex I dealing with environmental impact assessment, Annex II dealing with the conservation of fauna and flora, and Annex V dealing with area protection and management, all contain features which ultimately seek to conserve and protect elements of Antarctic biodiversity. Given the close relationship between the goals of the Convention on Biological Diversity and the Environmental Protocol, it is important to note Article 22 (1) of the Convention which provides:

1. *The provisions of the Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.*

While, therefore, the Convention does not affect the rights and obligations of States under any ATS instruments, it clearly supports many of the principles and goals found in CCAS, CCAMLR and the Environmental Protocol.

The 1992 *Framework Convention on Climate Change* (FCCC)²⁵ is also relevant for Antarctica due to the perceived vulnerability of the polar ice cap to global warming and the consequence such an event would have for the polar ecosystem. The fact that many of the significant political players in the ATS are also States that bear substantial burdens under the FCCC further heightens the connection between the climate change regime and Antarctica.

UNEP therefore has Secretariat responsibility for a number of some of the most important additional environmental conventions which have application in Antarctica and the Southern Ocean. While it is not often recognised that these instruments have relevance for Antarctica, no doubt due to the dominance of the ATS within the region, a review of the level of acceptance of the above instruments by Parties to the ATS demonstrates that many of the ATCPs, and especially the seven claimant States, are bound by these instruments.²⁶ As such, the ATCPs have a further layer of international obligation imposed upon them by these international

instruments. While it is true that only the Basel Convention makes specific reference to Antarctica, it is clear that all of the above instruments further support the essential obligations to protect and preserve Antarctica contained within the Environmental Protocol, and in some instances advance the case for environmental protection to a level not addressed in the Protocol, especially in the case of global issues such as climate change and ozone depletion. The UNEP Conventions are therefore clearly relevant to Antarctica, many of the ATCPs are parties to these instruments, and as such there is a clear link between the institutional interests of UNEP and the interests of the ATCPs, which oversee the ATS.

2.2 UNEP participation within the ATS

Notwithstanding the competence and the authority of UNEP in relation to environmental matters, it has not been a regular attendee at ATCMs. This no doubt partly reflects the fact that the ATS has at times during the past 37 years moved slowly on some environmental matters and that only with the adoption of the Environmental Protocol have environmental affairs begun to predominate. It is also partly a consequence of a reluctance on the part of the ATS to engage with outside organisations or institutions unless it has become absolutely necessary.²⁷ In that regard, it must be recalled that the close, even intimate, relationship that has existed between the ATS and SCAR since the negotiation of the Antarctic Treaty in 1959 is very much grounded on the foundation that the conduct of science in Antarctica has been inte-

gral to much of the activity and interest that has occurred on the continent and Southern Ocean for nearly all of the twentieth century. Science and Antarctica are synonymous,²⁸ however environmental protection in Antarctica is a comparatively modern phenomena.

Nevertheless, with the adoption of the Environmental Protocol and its dedication of Antarctica as a "natural reserve, devoted to peace and science",²⁹ the ATCPs have been more interested in developing linkages between the ATS and organisations with an environmental mandate, and with relevant international organisations whose competence in this area overlaps or directly relates to Antarctica. In this regard, UNEP has attended a number of recent ATCMs and has submitted papers to the ATCM under the procedures established under Article III (2) of the Antarctic Treaty.

At ATCM XVIII (1994) in Kyoto, UNEP made a statement which, in addition to outlining the extent of its responsibilities in the environmental field, especially in the area of oceans, marine living resources and marine pollution, also sought to raise for consideration how UNEP and the ATS may be better able to interact. To that end it was noted:

"Many of the environmental and management issues raised in the context of Antarctica and the Southern Ocean are similar to those that are being addressed by UNEP's Oceans Programme; these include tourism, waste, scientific research, biodiversity, effects of land-based activities, the coordination of intergovernmental activities and even the organization and management of convention secretariats. UNEP through its Oceans Programme, is present at this meeting to formally offer its cooperation, experience and assistance to the parties of the various treaties pertaining to Antarctica and the Southern Ocean and the other observer organisations as those parties and organisations deem appropriate. UNEP stands ready to receive your suggestions on how it can best be of service to the common interest of the world community in the environmentally responsible management of the Antarctic."³⁰

At ATCM XIX (1995) in Seoul, UNEP reported to the ATCM on the role UNEP played in 1994 in providing Antarctic environmental information to the First Committee of the United Nations General Assembly, and the provision of "comprehensive and objective environmental information" to the report of the Secretary-General.³¹ UNEP also reaffirmed its interest in engaging with the ATS:

"UNEP stands ready to explore with the Parties any suggestions they might wish to make for its possible contributions to the environmental work of the Parties as they deem appropriate in general, and specifically a) as indicated in WP 20 (Relation between the Protocol on Environmental Protection to the Antarctic Treaty and Other International Agreements of a Global Scope, submitted by Chile), and b) as may also arise out of Action Point No. 5 in INFO 54 (International Seminar on the Future of the Antarctic Treaty System, submitted by Argentina/Australia).

UNEP is also ready to cooperate with other observers and experts at the ATCM on matters which advance the shared interest of all in the environmentally sound management of Antarctica."³²

UNEP has continued to attend ATCMs as an invited observer. At ATCM XXI (1997) in Christchurch, UNEP presented a statement which outlined its current programmes and the relevance of this for Antarctica. UNEP reconfirmed its offer of assistance to the Antarctic Treaty parties in any manner that is deemed appropriate.³³ Likewise at ATCM XXII (1998), UNEP again noted the range of its expertise in environmental matters and offered its "cooperation, experience and assistance to the parties to the various treaties pertaining to Antarctica and the Southern Ocean."³⁴ Particular reference was made to the preparation by the ATCPs of a 'State of the Antarctic Environment Report,' and the role that "coordinated input from the secretariats of various conventions" may be of assistance in this process.³⁵

3. 'Future of the Antarctic Treaty' Symposium 1995

A catalyst for some of the consideration of the potential for enhanced interaction between the ATS and UNEP was an international symposium convened in Antarctica in March 1995 which addressed the 'Future of the Antarctic Treaty System.' During that symposium, a paper was presented by Counsellor *Sergei Karev* of the Russian Federation, which addressed relations between the ATS and a number of international organizations, including UNEP.³⁶ As a general comment it was noted that relationships between the ATS and UN specialised agencies were based on mutual interest in the development of "scientific and technical cooperation in different fields of Antarctic activities" and that the further development of these relationships was in the interest of the ATS.³⁷ Counsellor Karev noted that in relation to UNEP the areas of marine living resources and the marine environment were potential fields for cooperation between the ATS and UNEP, especially taking into account the UNEP Oceans Programme. It was stated that:

"Many of the environmental and management issues discussed in the framework of the ATS (tourism, waste disposal, scientific research, biodiversity, effects of land-based activities and coordination of intergovernmental activities) are similar to those addressed by UNEP's Oceans Programme. That provides a good basis for enlargement of relations with this UN specialised agency."³⁸

It was concluded that cooperation with UNEP was important for the ATS, not only because of the political element of indicating to the international community that the ATS was prepared to engage a UN agency in Antarctic affairs, "but also because of the benefits which it can give to the Antarctic Treaty system. It is a very important and strong organisation, which can help in developing

scientific research and protection of the Antarctic environment."³⁹

In the discussion which followed this paper there was remarkably little direct comment on the proposition that the ATS could benefit from enhanced interaction with UNEP, though one commentator did refer to the benefits for the ATS in cooperation with UNEP as a means of deflecting critical debate about Antarctica in the United Nations General Assembly.⁴⁰ In the concluding remarks to the discussion however, Ambassador *Jan Arvesen* of Norway noted that agreement existed amongst the participants for "close cooperation with the specialised agencies (of the UN), and in particular with UNEP."⁴¹ The discussion from this debate was eventually reflected in the specific action points proposed by the Chairmen of the meeting when they recommended that consideration be given to closer cooperation with UN specialised agencies, and in particular UNEP.⁴²

4. Opportunities for Enhanced Interaction between UNEP and the ATS

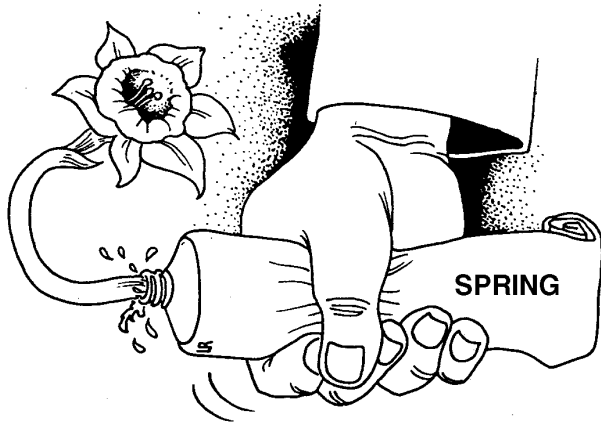
As noted above, while UNEP has held observer status at ATCMs, it has not been formally integrated into the ATS. In this regard it needs to be recalled that while the ATS has developed institutionally during the past decade, it has still to develop a permanent institutional framework by way of a Secretariat. There have been ongoing discussions regarding a Secretariat for much of the 1990s; however, the Antarctic Treaty parties have yet to resolve this issue.⁴³ Without a Secretariat, the ATS lacks a clear voice in which to engage other international institutions. While the Treaty party responsible for hosting each Treaty Meeting does have some ability to speak on behalf of the Treaty parties, this is a limited authority and certainly is not equivalent to the authority which would exist for a permanent Secretariat. Therefore, any assessment of the potential for enhanced ATS and UNEP interaction needs to be constrained by the limitations the ATS faces to be able to engage in such interaction.

As shown above, there has to date been some limited interaction between the ATS and UNEP. The issue which arises now is whether this interaction can be expanded into a more substantive and productive relationship. The potential exists for a number of enhanced interactions to take place between the ATS and UNEP. These interactions could take the following form:

- Institutional level: direct linkage between the ATS and UNEP such as assisting the Committee for Environmental Protection established under the Environmental Protocol in dealing with matters under the Protocol, *i.e.* environmental impact assessment as per Annex I of the Protocol;
- Programme level: direct linkage between UNEP programmes such as the UNEP Regional Seas programme and specific programmes that may be developed under the Environmental Protocol under Annex IV dealing with marine pollution;

- State level: assistance between UNEP and individual ATS States in dealing with environmental issues such as the conduct of EIA that arise under the Environmental Protocol for that particular state.

Linkages between UNEP and the ATS at each of these levels would have a variety of consequences for



each. From the UNEP perspective, one of the principal concerns that may arise from the development of such linkages would be the costs associated with any Antarctic programme. To that end, it is significant to recall that at ATCM XIX (1995) UNEP specifically noted that it had already engaged in some work dealing with Antarctica "within its existing resources."⁴⁴ From the ATS perspective, allowing UNEP to play a greater role in Antarctic affairs would also raise some concerns within the Treaty System that management of Antarctic affairs is being opened up to greater international participation by international organisations that do not have a specific Antarctic mandate.⁴⁵ Therefore, while the potential exists for interaction, there are issues to be considered on both sides before such an initiative could be fully implemented.

4.1 Possible Normative Interactions

It would be productive if the ATS could explore more closely with UNEP the relationship between UNEP Conventions and the ATS. As noted above, nearly all of the UNEP conventions have a direct or indirect impact upon Antarctica. However, only in the Basel Convention is express reference made to the limitation on the export of hazardous wastes to Antarctica. It is clear that the ATS is prepared to accept the terms of other global instruments and either implicitly⁴⁶ or expressly acknowledge their application.⁴⁷ It may therefore be fruitful to explore whether UNEP conventions may be more actively applied and adopted within the ATS in order to supplement and bolster the provisions of the ATS. For example, would it be possible for the ATS and UNEP to explore the merits of amending some of

the UNEP conventions so as not only to apply more directly to Antarctica but also to contain provisions which place obligations upon the international community to protect Antarctica more fully? Such an initiative would, in effect, extend the environmental protection of Antarctica beyond the Antarctic Treaty parties to the wider international community. Particularly relevant in this regard would be the provisions of CITES with respect to enhancing the international protection of endangered species within Antarctica. To that end there have already been initiatives to have albatross protected under the CITES regime, and some of the ATCPs have declared albatross endangered under their domestic legislation;⁴⁸ however, it would be possible for ATCPs to make more active use of CITES and work with UNEP to ensure the enhanced conservation of Antarctic species through that regime. In addition, the Basel Convention could be made applicable to the export of all hazardous wastes from the Antarctic continent. The effect of this prohibition would be not only to place a further international legal obligation upon the ATCPs in regard to hazardous wastes, but also extend the application of this prohibition to the State parties to the Basel Convention; thereby in effect providing an enhanced means for Antarctic environmental protection through the operation of the more readily accepted global regime – the Basel Convention – and also thereby sidestepping the sovereignty issue which exists in Antarctica.⁴⁹ Finally, more extensive consideration could be given to whether the Convention on Biological Diversity would assist in further developing the principles of the Environmental Protocol, particularly those dealing with protected areas and environmental impact assessment. This is an area which to date the ATCPs have neglected but which, following the recent entry into force of the Protocol, is ripe for further consideration – given the emphasis which the ATS has traditionally given to the question of protected area management.⁵⁰

4.2 Possible Interaction in the implementation of International Environmental Conventions

UNEP may be able to assist ATS parties in developing appropriate mechanisms for the implementation of environmental impact assessment procedures.⁵¹ It is clear that the ATCPs are struggling to come to terms with this obligation under the Environmental Protocol. At recent ATCMs the question of EIA has been a matter of some import for the ATCPs and now the newly established Committee for Environmental Protection. New Zealand has presented a number of important working papers dealing with understanding the EIA process,⁵² and an interpretation of key terms in the Protocol such as 'minor' and 'transitory.'⁵³ While there is some degree of state practice in this area amongst the ATCPs, it is clear from the discussions at ATCMs that it is recognised that much more needs to be understood about this process and its application in Antarctica.

The area of EIA is one in which UNEP has longstanding expertise through not only its Convention Secretariats

but also due to the regional and in-country work UNEP has done throughout many parts of the world. The capacity of UNEP to assist the ATCPs to develop consistency in the EIA process would complement UNEP's role in training and education. In addition, the expertise of UNEP in a range of other environmental matters may also be of some assistance to the ATS which to date has only developed clear institutional linkages with scientific organisations such as SCAR and the Scientific Committee of CCAMLR. UNEP would be able to offer to the ATS expertise in dealing with a range of environmental matters which the ATS presently does not have. This will be important in assisting individual States to implement the provisions of the Environmental Protocol within a national legal framework, but it would also more broadly assist the Treaty parties in collectively implementing the Protocol through new institutions such as the Committee for Environmental Protection.

UNEP's experience in dealing with the UNEP Regional Seas Programme would be of obvious benefit to the ATS in implementing the provisions of Annex IV of the Environmental Protocol. While Annex IV does make direct reference to the 1973/78 International Convention for Prevention of Pollution from Ships (MARPOL),⁵⁴ UNEP has the most direct experience in assisting States at the regional and subregional level in dealing with marine pollution problems. To that end the technical and legal expertise of UNEP in this matter may prove to be of considerable assistance in the case of the Southern Ocean. It may even be possible that through ATS/UNEP cooperation UNEP may be prepared to work with the ATS to develop a Regional Seas programme for the Southern Ocean. Such a development would be especially significant and also helpful for the ATS as it could be developed so as to avoid the issue

of sovereignty – both its assertion and recognition – and could prove to be a very useful mechanism to deal with the application of the ATS against third States. This could prove to be an important development given the continued growth of ship-based tourism in Antarctica and the problems which will arise in applying claimant state laws against non-ATS parties, especially flag-of-convenience ships.

4.3 Possible institutional and procedural interactions

UNEP may be able to assist the ATS parties in opening lines of communication with other international environmental institutions and regimes. As the principal UN agency responsible for environmental matters, UNEP has in effect become the *de facto* international organisation responsible for global environmental affairs. As such it has strong linkages with all convention secretariats and other convention regimes which deal with the environment. By being able to work with UN environmental officers through UNEP the environmental expertise of UNEP would be more readily available within the ATS which would be to the benefit not only of the whole ATS but also to individual ATCPs attempting to meet their obligations under the Environmental Protocol. In addition to the availability of UNEP expertise, by developing better lines of communication between UNEP and the ATS it would be possible to enhance communication and cooperation between the ATS and other regimes. This would assist in dealing with problems caused through regime interaction and regime overlap which are beginning to emerge in Antarctica and the Southern Ocean. UNEP would become more aware of Antarctic issues through the linkage and therefore be better placed to alert emerging institutions to the problems that would result from overlapping regimes. The potential would develop for Antarctic perspectives to be presented at UNEP conferences and other international fora, thereby allowing for a better appreciation of how the ATCPs are responding to Antarctic environmental issues and also how global environmental issues are affecting the Antarctic environment.⁵⁵

Finally, a linkage with UNEP would allow the ATS to gain access more clearly to negotiations for future international environmental conventions. It is clear that a great many global international environmental conventions increasingly have potential application in Antarctica and the Southern Ocean. In order to ensure that the specific interests of ATCPs are represented during future

treaty negotiations it would therefore be helpful if the ATS were represented at the table during treaty negotiations. A clear linkage with UNEP may open the door for this form of participation in treaty negotiations.⁵⁶

5. Conclusion

While the ATS and UNEP have not to date developed an extensive relationship, it is clear that with the increasing development of international environmental law in Antarctica and the Southern Ocean that opportunities exist for greater cooperation between the two institutions. This is a point which UNEP has consistently made during the 1990s when it has attended Antarctic Treaty Meetings. From the perspective of the ATS, the entry into force of the Environmental Protocol will have a substantial impact. It will, for the first time since the negotiation of the Treaty in 1959, clearly make the ATS an environmentally centred regime. It will therefore, become important for the ATS to explore the potential for giving greater effect to the Protocol and also the interaction between the Protocol and ATS and other environmental instruments. Developing closer linkages with UNEP may be one important step in this process. In addition, the development of clear linkages between the ATS and UNEP would allow the ATS to develop for the first time a strong relationship with the UN system. This is an inevitable consequence of the benefits noted above. A closer interaction of the ATS and the UN system would add to the international political credibility of the ATS because by dealing with a global international institution such as UNEP it would be interacting with a truly global international organisation and therefore add strength to the claim that the ATS had global acceptance and legitimacy. This would also potentially allow for a greater understanding of the position of the ATS within the UN system, especially the environmental focus the ATS has developed throughout the 1990s since the rejection of CRAMRA and adoption of the Environmental Protocol. It is accepted, however, that this type of linkage may create problems for some Antarctic Treaty parties and already concerns have been expressed about developing *too close* a relationship between the ATS and UNEP.⁵⁷ However, the Antarctic Treaty parties also realise that the debates that have taken place in the UN system since the 1980s have created an impression (warranted or unwarranted) that the ATS is a 'club' and therefore opening the ATS up to more interaction with a leading UN agency may be one means to deflect this criticism.⁵⁸

However, while this article has addressed these issues in a positive light, it is also important to take into account the limitations that may exist in such a relationship. Perhaps the most important limitation is that UNEP already has a very broad brief in responding to environmental issues at a global level and it may be that its resources do not allow for a further expansion to deal

with Antarctica. This is especially a relevant factor given the budgetary constraints that UNEP is facing towards the end of the 1990s and may partly explain the relatively low profile that UNEP has taken towards further developing any linkages with the ATS. The number of relatively wealthy developed States engaged in Antarctic activities may also act as a disincentive for UNEP to be more actively involved in Antarctic affairs when its budgetary situation demands that it give higher priority to environmental crises in the less developed world. Another issue is the capacity of the ATS to engage in such interaction. The fact remains that with no significant history of institutional linkage between UNEP and the ATS it will take some time to develop a fruitful relationship. If such a relationship was deemed to be helpful, how would the ATS develop such a relationship? Without a Secretariat with responsibility for engagement with other international organizations it is currently difficult for the ATS to engage in this type of dialogue. This issue clearly identifies one of the problems in seeking to establish an institutional linkage with UNEP – who would represent the ATS? The possibility of an Antarctic Treaty Secretariat being established in the future would make a considerable impact upon the ATS and potentially pave the way for enhanced institutional linkage between the ATS and UNEP. However, the Secretariat is proving to be a difficult matter for the ATCPs and presently it is not possible to speculate on when the matter may be finally resolved.

Notwithstanding the problems that have been identified above, there seems to be a strong case for enhanced interaction between the ATS and UNEP. The entry into force of the Environmental Protocol may well prove to be a turning point in this developing relationship. As UNEP recognised at the time, the Antarctic environment can not be seen as part of a separate system but instead is engaged with the entire global system.⁵⁹ Antarctica cannot therefore be seen by either the Antarctic Treaty parties or relevant international organisations as separate from the global community. Historically strong scientific linkages have existed with a range of scientific institutions and the ATS thereby giving further content to Antarctica being a land of scientific research consistently with the Antarctic Treaty. Similar considerations may soon need to apply to environmental linkages between the Antarctic Treaty parties and UNEP. □

Notes

1 Professor Peter Beck has undertaken an extensive and ongoing study of the debate within the United Nations concerning Antarctica, see generally Peter Beck, *The International Politics of Antarctica* (London: Croom Helm, 1986), and more specifically "Antarctica, Vina del Mar and the 1990 UN Debate" *Polar Record*, Vol. 27, 1991, pp. 211–216; "The 1991 UN session: The Environmental Protocol Fails to Satisfy the Antarctic Treaty System's Critics", *Polar Record*, Vol. 28, 1992, pp. 307–314; "The United Nations and Antarctica, 1992: Still Searching for the Elusive Convergence of View", *Polar Record*, Vol. 29, 1993, pp. 313–320.

2 For a general overview of the Antarctic Treaty System in the international community, see Davor Vidas, "The Antarctic Treaty System in the international community: an overview" in Olav Schram Stokke and Davor Vidas eds., *Governing the Antarctic* (Cambridge: Cambridge University Press, 1996) 35–60.

3 The most prominent of these is SCAR - Scientific Committee on Antarctic Research; for a review see Carlos Rinaldi, "SCAR in the ATS: Conflict or Har-

mony?" in Arnfinn Jorgensen-Dahl and Willy Ostreng eds., *The Antarctic Treaty System in World Politics* (London: Macmillan, 1991) pp. 153–160; James H. Zumberge, "The Antarctic Treaty as a Scientific Mechanism – The Scientific Committee on Antarctic Research and the Antarctic Treaty System" in *Antarctic Treaty System: An Assessment* (Washington: National Academy Press, 1986), pp. 103–151.

4 For background, see Philippe Gautier, "Institutional Developments in the Antarctic Treaty System" in Francesco Francioni and Tullio Scovazzi eds., *International Law for Antarctica 2nd* (Dordrecht: Kluwer Law International, 1996) pp. 31–47.

5 402 *United Nations Treaty Series* 71; the Treaty entered into force on 23 June 1961.

6 These instruments are the 1972 Convention on the Conservation of Antarctic Seals (CCAS), *International Legal Materials*, Vol. 11, 1972, p. 251; 1980 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), *International Legal Materials*, Vol. 19, 1980, p. 841; and the 1991 Protocol on Environmental Protection to the Antarctic Treaty, *International Legal Materials*, Vol. 30, 1991, p. 1624. Note that the Environmental Protocol defines the 'Antarctic Treaty System' in Art. 1 (e) as follows: "the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments."

7 For a discussion of the nature of the recommendations, and their environmental focus, see Donald R. Rothwell, *The Polar Regions and the Development of International Law* (Cambridge: Cambridge University Press, 1996), pp. 111–121.

8 CCAMLR, Art. VII.

9 Protocol, Art. 12.

10 *Final Report of the Eighteenth Antarctic Treaty Consultative Meeting* (Kyoto: 11–22 April 1994) Annex C (v).

11 Roberto Guyer and Hugh Wyndham, "Chairmen's Summary of the Symposium" in Andrew Jackson ed., *On the Antarctic Horizon: Proceedings of the International Symposium on the Future of the Antarctic Treaty System* (Hobart: Australian Antarctic Foundation, 1995) p. 109 at p. 113.

12 *Final Report of the Nineteenth Antarctic Treaty Consultative Meeting* (Seoul: 8–19 May 1995) Annex C (v); Statement by UNEP (XXI ATCM/IP 113, May 1997); Statement by UNEP (XXII ATCM/IP 111, June 1998).

13 United Nations Environment Programme, *Annual Review 1980* (Nairobi: United Nations Environment Programme, 1981) Pt. Two.

14 *Final Report of the Eighteenth Antarctic Treaty Consultative Meeting* (Kyoto: 11–22 April 1994) Annex C (v).

15 993 *United Nations Treaty Series* 243.

16 Extensive recent overfishing of the 'patagonian toothfish' may suggest that this Antarctic fish stock is a suitable candidate for CITES listing: see Gail L. Lugten, "The Rise and Fall of the Patagonian Toothfish – Food for Thought" *Environmental Policy and Law*, Vol. 27, 1997, pp. 401–407; Sam Bateman and Donald R. Rothwell eds., *Southern Ocean Fishing: Policy Challenges for Australia* (Wollongong: Centre for Maritime Policy, University of Wollongong, 1998).

17 While the Environmental Protocol does not deal specifically with trade in endangered species, it contains a number of provisions which seek to protect species *in situ* and as such CITES listing would seek to complement those provisions of the Protocol which seek to protect fauna and flora species; see especially Protocol, Arts. 3, 8, Annex II.

18 *International Legal Materials*, Vol. 26, 1987, p. 1529.

19 *International Legal Materials*, Vol. 26, 1987, p. 1550.

20 *International Legal Materials*, Vol. 28, 1989, p. 657.

21 A sector of Antarctica encompassing Ellsworth Land and Marie Byrd Land between 90° W and 150° W remains unclaimed; it is often argued that the United States has the greatest potential to assert a claim over this sector based on discovery, however Art. IV of the Antarctic Treaty prohibits any such assertion of a claim while the Treaty is in force; see Sir Arthur Watts, *International Law and the Antarctic Treaty System* (Cambridge: Grotius, 1992) pp. 118–140.

22 See Basel Convention, Art. 6 (4). In the case of Antarctica, possible transit states would be Australia, New Zealand, Chile and South Africa.

23 *International Legal Materials*, Vol. 31, 1992, p. 818.

24 Environmental Protocol, Art. 3 (2)(b)(iv).

25 *International Legal Materials*, Vol. 31, 1992, p. 849.

26 On the basis of the level of acceptance by the seven claimant states and the US and Russia of the UNEP Conventions as at 17 June 1998, all are parties to CITES, the Basel Convention – except the US, the Convention on Climate Change, and the Convention on Biological Diversity – except the US.

27 The following comment was made by an un-named commentator during the course of a symposium on the 'Future of the Antarctic Treaty System':

... We want to stay in control of what we are doing, and we should not be ashamed of it. ... We should not be ashamed because, after all, the Antarctic Treaty parties are doing an excellent job, and we have been successful in dealing with the very special political and legal status of Antarctica. ... If we mingle too

much with other international organisations we might lose control of the process which we have established and upset the very delicate balance between our interests.

Andrew Jackson ed., *On the Antarctic Horizon: Proceedings of the International Symposium on the Future of the Antarctic Treaty System* (Hobart: Australian Antarctic Foundation, 1995) p. 52.

28 See the discussion in E. Fred Roots, "The Role of Science in the Antarctic Treaty System" in *Antarctic Treaty System: An Assessment* (Washington: National Academy Press, 1986), pp. 169–184.

29 Environmental Protocol, Art 2, which provides in full:

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

30 *Final Report of the Eighteenth Antarctic Treaty Consultative Meeting* (Kyoto: 11–22 April 1994) Annex C (v).

31 *Final Report of the Nineteenth Antarctic Treaty Consultative Meeting* (Seoul: 8–19 May 1995) Annex C (v).

32 *Ibid.*

33 See XXI ATCM/INF/113 "Statement by UNEP" (submitted by UNEP, 23 May 1997). UNEP attended ATCM XX as an observer but did not present a statement or report.

34 XXII ATCM/IP 111 "Statement by UNEP" (submitted by UNEP, June 1998).

35 *Ibid.*

36 Sergei Karev, "Relations with International Organizations – UNEP, IMO, FAO, WMO, ICAO and UNGA" in Jackson ed., *On the Antarctic Horizon: Proceedings of the International Symposium on the Future of the Antarctic Treaty System*, pp. 43–47.

37 *Ibid.*, p. 45.

38 *Ibid.*, p. 44.

39 *Ibid.*, p. 47.

40 *Ibid.*, p. 56 – contributions at the Symposium by commentators were not attributed.

41 *Ibid.*

42 Guyer and Wyndham, p. 113.

43 For discussion see Philippe Gautier, "Institutional Developments in the Antarctic Treaty System" in Francioni and Scovazzi eds., *International Law for Antarctica*, p. 31 at pp. 34–40.

44 *Final Report of the Nineteenth Antarctic Treaty Consultative Meeting* (Seoul: 8–19 May 1995) Annex C (v).

45 See generally the discussion in Jackson ed., *On the Antarctic Horizon: Proceedings of the International Symposium on the Future of the Antarctic Treaty System*, pp. 47–56.

46 See Art VI, CCAMLR

47 See Annex IV, Environmental Protocol.

48 This is an initiative which Australia has taken under the Endangered Species Act (Cth).

49 For a detailed discussion of the waste disposal and management in Antarctica see Valentin Bou, "Waste Disposal and Waste Management in Antarctica and the Southern Ocean" in Francioni and Scovazzi eds., *International Law for Antarctica*, pp. 319–374.

50 See the discussion in Beth Marks Clark and Karen Perry, "The Protection of Special Areas in Antarctica" in Francioni and Scovazzi eds., *International Law for Antarctica*, pp. 293–318.

51 See Ian Campbell, "Environmental Impact Assessment: Where to from here?" (UNEP Environmental Economic Series Paper No 6, 1993).

52 XXI ATCM/WP 36 "Understanding of EIA Processes" (Submitted by New Zealand, 20 May 1997).

53 XXI ATCM/WP35 "Further Understanding of the terms 'Minor' and 'Transitory'" (Submitted by New Zealand, 20 May 1997)

54 *International Legal Materials*, Vol. 12, 1973, p. 1319; *International Legal Materials*, Vol. 17, 1978, p. 546; this convention is administered by the International Maritime Organization.

55 For a discussion of some of these issues see Donald R. Rothwell, "A Maritime Analysis of Conflicting International Law Regimes in Antarctica and the Southern Ocean" *Australian Yearbook of International Law*, Vol. 15, 1994, pp. 155–181.

56 This suggestion is also contingent on the ATS accepting proposals for a Secretariat.

57 Jackson ed., *On the Antarctic Horizon: Proceedings of the International Symposium on the Future of the Antarctic Treaty System*, p. 52.

58 *Ibid.*, pp. 55–56.

59 See "Agreement on the Protection of the Antarctic Environment Enters into Force" (UNEP Press Release 1998/1, 14 January 1998) at www.unep.org/unep/per/ipa/pressref/.