

# Public Participation in Antarctica: The Role of Nongovernmental and Intergovernmental Organizations

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Article III of the Antarctic Treaty provides, *inter alia*, that “to the greatest extent feasible and practicable” information regarding plans for scientific programs and scientific observations and results from Antarctica are to be exchanged and made freely available. In implementation of this article, every encouragement is to be given to establishing cooperative working relations with United Nations specialized agencies and other international organizations having a scientific or technical interest in Antarctica.<sup>1</sup>

Thus, from the beginning, and anchored in the treaty itself, was the concept that there was a role for international organizations having a scientific or technical interest in Antarctica, both nongovernmental and intergovernmental organizations. Nongovernmental organizations are generally created by private persons or groups with no participation or representation by governments. They may raise funds privately and may also receive funds from governments, often for specific projects. Intergovernmental organizations generally include as members sovereign states or other intergovernmental organizations. National academies of science are often chartered, and largely funded, by governments but operate as and are considered nongovernmental. The Scientific Committee on Antarctic Research (SCAR) is an interdisciplinary committee of the International Council for Science (ICSU), which, in turn, is a nongovernmental body made up of national scientific members (often national academies of science) and international scientific unions.

At the First Antarctic Treaty Consultative Meeting (ATCM) in Canberra in 1961, the parties adopted two measures that confirmed this role. Recommendation I-IV recognized that SCAR’s recommendations concerning scientific programs and cooperation were “a most valuable contribution” to international scientific cooperation in Antarctica” and that SCAR should be encouraged to continue its advisory work. Recommendation I-V recommended that governments encourage the work of international organizations having a scientific or technical interest in Antarctica and was not limited in its reference only to intergovernmental bodies.

Nevertheless, the Antarctic Treaty System (ATS) could not be considered open to outside bodies during its first years, although SCAR’s advice and influence continued to play a prominent role.<sup>2</sup> The first opening of Antarctic Treaty

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meetings to intergovernmental organizations came in the 1970s. The Food and Agriculture Organization of the United Nations (FAO) participated as an observer delegation to the Conference on the Conservation of Antarctic Seals in London in February 1972 at which the Convention for the Conservation of Antarctic Seals was adopted.

Following the adoption of this convention, work within the treaty system focused on marine living resources. This led to growing involvement by both intergovernmental and nongovernmental organizations in providing expert analyses, participating as observers in ATS meetings, and participating as members of national delegations to Antarctic Treaty meetings. At the Eighth Consultative Meeting in 1975, Recommendation VIII-10 put certain questions to SCAR, which led to a meeting of scientists in 1976 to develop a research program on the Biological Investigation of Marine Antarctic Systems and Stocks (known as BIOMASS). The FAO prepared three reports in 1977 on the importance of krill to Antarctic marine ecosystems and their health.

The negotiation of the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) represented a significant milestone in opening up the Antarctic Treaty System. In the United States, the National Environmental Policy Act (NEPA) became law in 1970. It provided for public consultation on the environmental effects of certain U.S. federal activities and alternatives thereto. The United Nations Conference on the Human Environment in Stockholm in 1972 also served as a stimulus for an expectation for public participation in environmental consultations. As early as 1977 at IX ATCM the U.S. delegation included an advisor from the nongovernmental organization The American Committee on International Conservation and the British delegation included an advisor from British Petroleum.

In Washington the Center for Law and Social Policy focused on Antarctica following the announcement by the 1972–1973 Deep Sea Drilling Project of the discovery of hydrocarbons in the Ross Sea. In London, the International Institute for Environment and Development began an Antarctica project in 1975–1976. Both urged the International Union for Conservation of Nature (IUCN) to become more involved in Antarctic issues, and members of the IUCN adopted resolutions with respect to Antarctica at IUCN general assemblies starting in 1977. The Antarctic and Southern Ocean Coalition (ASOC) was established in 1978. The 1981 IUCN resolution called, *inter alia*, for Antarctic Treaty Consultative Parties (ATCPs) to invite qualified nongovernmental organization representatives, including IUCN and ASOC, to participate in ATCMs. The

IUCN Council in 1981 called for the preparation of a conservation strategy for Antarctica and the Southern Ocean.

The conference adopting CCAMLR held in Canberra in May 1980 included a variety of international organizations, both intergovernmental and nongovernmental. These organizations included the European Community, the FAO, the Intergovernmental Oceanographic Commission (IOC) of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Whaling Commission (IWC), IUCN, SCAR, and the Scientific Committee on Oceanic Research (SCOR). Through the adoption of ATCM Recommendation IX-2 in 1977 it had been decided to include participation on an observer basis of “appropriate international organizations” “actively engaged in research and exploitation of Antarctic Marine Living Resources.”

Interest from outside of the Antarctic Treaty System continued. With the adoption of CCAMLR, Consultative Parties turned their attention to the potential for the exploitation of mineral resources. At XI ATCM in 1981 in Buenos Aires it was agreed to consider a legal instrument with respect to mineral resources. The United Nations Convention on the Law of the Sea, adopted in 1982, provided that the resources, referred to as minerals, on the seabed beyond national jurisdiction were the “common heritage of mankind.” Several developing states were of the view that mineral resources in Antarctica should be subject to a similar regime and raised the issue within the United Nations. In 1983, the question of Antarctica was discussed as an agenda item within the United Nations General Assembly. The Antarctic Treaty System was criticized because of its closed nature. This criticism served as a catalyst for opening the Antarctic Treaty meetings to Non-Consultative Parties and to international organizations, including nongovernmental ones. It also served to encourage greater public availability of papers and reports from Consultative Meetings.

Thus, over time participation in its meetings and processes was opened to observers from the outside. These changes were reflected in the Rules of Procedure, which were amended at XIV ATCM in Rio de Janeiro in 1987 to provide for participation by representatives of SCAR and the CCAMLR Secretariat as observers and representatives of several international organizations as experts. Observers were viewed as permanent components of the Antarctic Treaty System, whereas experts were to be invited only for specific agenda items on which they had expertise. Invited to XIV ATCM were the World Meteorological Organization (WMO) with respect to agenda items 13 and 15 on Antarctic meteorology and telecommunications and

an international system of marine hydrometeorological services to navigation in the Southern Ocean, SCAR with respect to agenda item 14 on air safety in Antarctica, and IUCN with respect to agenda item 9 on human impact on the Antarctic Environment.<sup>3</sup>

These organizations provide important information and advice without which the Antarctic Treaty Parties could not effectively or efficiently manage Antarctica. In other words, if these organizations did not provide certain necessary information, the parties would have to develop that information themselves. I refer to the scientific advice that is received, for example, from SCAR, ASOC, the International Hydrographic Organization (IHO), IOC, IUCN, SCAR, the United Nations Environment Programme (UNEP), and WMO. From the earliest days of the treaty system, SCAR provided advice and information that informed key decisions, including the adoption of the Agreed Measures for the Conservation of Antarctic Fauna and Flora, the Convention for the Conservation of Antarctic Seals, and CCAMLR.

The IUCN members maintained a focused interest in the conservation of Antarctica and its environment.<sup>4</sup> As early as 1972 it had been recommended at the Second World Conference on National Parks that Antarctica be designated as a world park. Following a 1984 IUCN resolution on Antarctica and consultations with SCAR and a joint IUCN-SCAR symposium on the scientific requirements for Antarctic conservation in 1985, a joint IUCN-SCAR working group was established to consider a long-term conservation plan for Antarctica. An interim report was prepared in 1986. The IUCN had prepared a report on "Conservation and Development of Antarctic Ecosystems" in 1984, and SCAR had published a report on "Man's Impact on the Antarctic Environment" in 1985. The IUCN has sent a delegation to ATCMs in most years since 1987 and to CCAMLR Commission meetings in most years since the first one in 1982. In 1991 IUCN published "A Strategy for Antarctic Conservation." In 1994 IUCN published "Developing the Antarctic Protected Area System: Proceedings of the SCAR/IUCN Workshop on Antarctic Protected Areas" following a workshop held in 1992 in Cambridge, and in 1996 it published "Opportunities for Antarctic Environmental Education and Training: Proceedings of the SCAR/IUCN Workshop on Environmental Education and Training" following a workshop held in 1993 in Gorizia. The IUCN also published the "Proceedings of the IUCN Workshop on Cumulative Impacts in Antarctica: Minimisation and Management" following a workshop held in 1996 in Washington, D.C.

The ASOC provides key information on a variety of issues. For example, ASOC submitted nine information papers to the most recent Consultative Meeting in Baltimore, including ones on marine protection, tourism, and climate change. The coalition submitted seven papers to the CCAMLR meetings in 2009. The Oceanites Project, a nongovernmental nonprofit science and education foundation, has participated for some years at Consultative Meetings as advisers on a national delegation and has provided invaluable information through the Antarctic Site Inventory on visitor sites. The UNEP has provided advice on bioprospecting and on other topics, sometimes in collaboration with other UN family bodies. Conservation trusts that do not necessarily participate directly in meetings provide information for the management of certain historic sites and monuments.

The International Association of Antarctica Tour Operators (IAATO) was founded as an industry group in 1991 to promote and practice safe and environmentally responsible private travel to Antarctica. The IAATO has acted as a conduit from Consultative Meetings to its members to provide the industry with up-to-date information about safety and environmental protection requirements adopted at Consultative Meetings. The IAATO also provides Consultative Meetings with data about tourists, their numbers, their site visits, and their management. Consultative Parties need these data to manage and would have to collate them directly if IAATO did not provide them.

The various nongovernmental and intergovernmental organizations that attend Antarctic Treaty meetings also serve their members and the general public by providing information on actions taken with respect to the governance of Antarctica and developments on and around the continent, especially including those with respect to the environment. This, in turn, encourages interest in Antarctica and helps to build constituencies within different countries in support of programs in Antarctica, both for science and for conservation. It also requires care, as organizations must be careful to address or avoid the claimant/nonclaimant issue in such a way as to help the parties without offending any. Sometimes, an effective approach can be to provide scientific and technical advice to national delegations in a discrete and diplomatic way. At other times, a public approach may be more effective.

The IUCN has an additional complexity in that its members include both governments and nongovernmental organizations. Over half of the Treaty Parties are state members of IUCN, and many of the others have agencies that are also IUCN members. The IUCN's mission is to influence, encourage, and assist societies throughout the

world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. In some countries IUCN is recognized under private law; in others it is an international organization. In addition, the IUCN family includes six commissions, which are made up of individual volunteers, some with a private, academic, conservation, or industry nongovernmental background and others who work for government agencies. There are, at times, members of commissions who also serve on national delegations. These individuals may provide advice directly through IUCN or as part of a national delegation. The IUCN thus must provide its advice in such a way that it reflects resolutions passed at its governing meeting while at the same time reflecting its diverse membership and ensuring that it is true to its mission to influence, encourage, and assist societies to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

I would like to turn to the issue of public availability of information, which is clearly and directly related to the issue of public participation. Looking back, the Antarctic Treaty grew out of the International Geophysical Year of 1957–1958 and was developed as a way to reserve Antarctica from cold war tensions that troubled the world at the time. It represented an innovative way to use scientific exchanges to promote disarmament, but in many ways the impetus for the Antarctic Treaty was disarmament. Thus, the treaty grew out of a disarmament (and therefore an arms) background. This set the stage for a culture in which governments of the time operated in relative secrecy, and early ATCMs were conducted in that atmosphere (though from the beginning the advice of SCAR and other international organizations was sought). As developments in the United Nations and several international treaty processes increasingly noted, the closed nature of the Antarctic Treaty System became more and more of an anomaly, and the debates on Antarctica in the United Nations General Assembly beginning in 1983 also played a major role in promoting more open information policies.

At the preparatory meeting for XII ATCM in April 1983 it was agreed to invite Non-Consultative Parties for the first time. At the Twelfth Consultative Meeting in September 1983 in Canberra Recommendation XII-6 was adopted and referred to the Antarctic Treaty as based on the principles of the United Nations Charter, acknowledging “the value of increasing public knowledge of the achievements and operation of the Antarctic Treaty system.” This recommendation included a call to send certified copies of the final report of the meeting to the Secretary-General

of the United Nations and to draw the attention, when ATCPs through it appropriate, of any United Nations specialized agency or any other international organization having a scientific or technical interest in Antarctica. The *Antarctic Treaty Handbook* was to be renamed and brought up to date. Starting with the Thirteenth Consultative Meeting, delegates were to indicate when submitting information documents if these were intended to be publicly available. After the closure of the meeting and provided no Consultative Party objected, any party could make the information document publicly available. The United States, as Depositary Government for the Antarctic Treaty, was invited to identify and catalog publicly available information about the treaty system.

At the Thirteenth Consultative Meeting in October 1985 in Brussels, through Recommendation XIII-1, it was agreed that efforts should continue to ensure full and accurate records of Consultative Meetings and that to the extent allowable under national law the reports of Consultative Meetings, the *Antarctic Treaty Handbook*, and annual exchanges of information under the Antarctic Treaty should be made available to the public upon request. At XIV ATCM in October 1987 in Rio de Janeiro, Recommendation XVI-1 was adopted, amending Recommendation XIII-1 to read that all information documents would be considered public at the close of the Consultative Meeting unless the submitting party notified otherwise in advance.

With the opening of Consultative Meetings to Non-Consultative Parties, to observers, and to experts, reports of the meetings and documents submitted to it became available to those groups. The practice still remained to consider documents as not public, though the Internet has, to a large extent, changed this practice. Documents remain password protected until after the Consultative Meeting, though parties and all interested international organizations, both intergovernmental and nongovernmental, have access to the password.

From the very beginning the role and expertise of nongovernmental organizations, and here I refer to SCAR, and of some other international organizations was recognized. The FAO and WMO, for example, were both recognized early on as important to Antarctic management.

Nongovernmental and intergovernmental organizations provide information and advice that is essential to good governance by Antarctic Treaty Parties. If information and advice from these organizations were not available, the system would have to compile this on its own and at considerable expense to itself, or it would not be able to fulfill properly its mandate. Participation by these



organizations assists the parties; indeed, it is necessary for the management of Antarctica. These organizations also make better known to the general public the importance of Antarctica with its special role for peace and science. A number of organizations have helped to bring to public attention the effects of climate change that are now causing lasting and worrisome changes to the environment of Antarctica and the Southern Ocean.

Although the system has opened to nongovernmental and intergovernmental organizations over the years and recently has been fully open, the Rules of Procedure do not fully reflect this. Although Article IX of the Antarctic Treaty provides that Consultative Parties alone are entitled to appoint representatives to Consultative Meetings, the Rules of Procedure rightly provide that representatives of Non-Consultative Parties and of observers and experts may be invited. Some areas for consideration for change in the Rules of Procedure when they are next reviewed by the parties could include the following:

- Rules 3 and 27 should be amended to reflect that Non-Consultative Parties should always be invited (in practice, this has been the case in recent decades).
- Rules 32 and 42 should be amended to reflect that observers and invited experts are normally welcome at all sessions of the Consultative Meeting (in practice, this has been the case in recent years).
- Though not reflected in the Rules of Procedure, the handling of documents for meetings should be changed to make them publicly available ab initio and to eliminate the password protection procedures on the secretariat web site.<sup>5</sup>

Recalling the key role of science in Antarctica and with respect to Antarctic governance from the beginning of the Antarctic Treaty System, an increase in funding for science, including for basic research, would support continued public participation in the diffusion of knowledge about Antarctica and its role in global physical processes, including biological, geochemical, and environmental processes. The promotion of science would thus promote both public participation and the objectives of the Antarctic Treaty, especially Article III.

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role that nongovernmental and intergovernmental organizations have played in the treaty system. On the 50th anniversary of the signing of the Antarctic Treaty, I think it important to acknowledge those who crafted this elegant treaty that reserved a continent for peace and science, ensuring that this special place would remain free of military fortifications and activities while promoting international cooperation in scientific investigation. The remarks given herein belong solely to the author and do not necessarily represent the views or policies of IUCN.

#### NOTES

1. Sources for information incorporated in these remarks include the Web site of the Antarctic Treaty Secretariat, [http://www.ats.aq/index\\_e.htm](http://www.ats.aq/index_e.htm); Harlan K. Cohen, ed., *Handbook of the Antarctic Treaty System*, 9th ed. (Washington, D.C.: U.S. Department of State, 2002), <http://www.state.gov/g/oes/rls/rpts/ant/>; Christopher C. Joyner and Sudhir K. Chopra, eds., *The Antarctic Legal Regime* (Dordrecht, the Netherlands: Martinus Nijhoff Publishers, 1988); Philippe Sand, ed., *Greening International Law* (New York: The New Press, 1994); the ASOC Web site, <http://www.asoc.org/AboutUs/tabid/163/Default.aspx>; the IAATO Web site, <http://www.iaato.org/about.html>; the Oceanites Web site, <http://www.oceanites.org/>; the SCAR Web site, <http://www.scar.org/>; and Lee Kimball, personal communication. All web sites cited here were accessed in December 2009.

2. The SCAR's advice was sought with respect to conservation of Antarctic fauna and flora (The Agreed Measures for the Conservation of Antarctic Fauna and Flora) and again two years later specifically with respect to seals, and this advice was recognized through recommendations adopted at the Third and Fourth Consultative Meetings in Brussels in June 1964 and Santiago in November 1966, respectively. The SCAR's influence was recognized in a preambular paragraph of the Agreed Measures for the Conservation of Antarctic Fauna and Flora as adopted through Recommendation III-VIII.

3. The SCAR, CCAMLR, and COMNAP now participate as observers, and at recent meetings experts who were invited included those from the Interim Secretariat of ACAP, ASOC, IAATO, IHO, IMO, IOC, the IPY International Programme Office, IUCN, UNEP, WMO, and WTO. Thus, the observers include one nongovernmental organization, one intergovernmental organization, and one international association of government employees. The experts include three nongovernmental organizations, seven intergovernmental organizations (including three that are UN specialized agency related), and several that are independent of the United Nations. However, the Rules of Procedure provided that experts would not necessarily be invited to observe the whole of the meeting, and indeed, until the late 1990s experts were asked to leave the meeting during discussion of at least one agenda item.

4. Founded in 1948 as the world's first global environmental organization, IUCN is the world's largest professional global conservation network, whose membership includes over 200 government and over 800 nongovernment organizations; thus, it is a unique intergovernmental and nongovernmental organization.

5. There would appear to be no real reason to protect working, information, or secretariat papers before the meeting. All parties and

interested observers and experts who assist the meeting have access to the documents. It is unlikely that representatives of a state that is not a party to the treaty could not find a friendly country to share papers, and it is doubtful that there are large numbers of unaffiliated persons who might

seek access. But even if persons unaffiliated with the system obtained access to papers in advance, no obvious harm would be done. Public availability of documents reflects modern best practice and would ease access for delegates and simplify work for the secretariat.