The Antarctic Treaty system

ANTARCTICA is controlled by the members of the Antarctic Treaty. This treaty, signed in 1959, came into force in 1961 and covers the area south of 60°S. It is usually credited with keeping the continent free of military and nuclear activities. It has also kept in check the issue of territorial claims.

Seven nations claim sovereignty over parts of the continent (see map). Some of the claims overlap. Neither the United States nor the Soviet Union has recognised the seven claims, but both have reserved the right to make their own claims (and there is no reason to suppose the breakup of the Soviet Union will alter this). The remaining 150 plus nations in the world do not recognise anybody as having a legitimate claim in Antarctica.

These conflicting positions are managed, under the treaty, through various devices, including consensus decision-making, free access to all parts of Antarctica and the fostering of science as the legitimate expression of national interest on the continent.

From the original 12 signatories in 1959, the membership has now climbed to around 40. There are two classes of membership. The top tier are the "consultative parties" – nations active in Antarctica which usually have a station there.

"Non-consultative parties" are states which have acceded to the treaty, but are not active in Antarctica – or states which have only just begun operations there, and will later become consultative parties. There are currently about 26 consultative parties – the uncertainty relates to which of the states of the former Soviet Union will inherit its place – a "who's who" of the developed world and major developing nations. There are 13 non-consultative parties. New Zealand is one of the original 12 consultative parties.

Various subsidiary agreements have been added to the Antarctic Treaty. The expression "Antarctic Treaty system" has been coined to describe this developing body of agreements around the 1959 treaty. In addition to various "rules" agreed at Antarctic Treaty Consultative Meetings, major issues have been addressed through negotiation of conventions linked to the treaty. In this manner, the Antarctic nations agreed a Convention for the Conservation of Antarctic Seals and a Convention on the Conservation of Antarctic Marine Living Resources.

During the 1980s, a minerals convention was negotiated under New Zealand chairing. Opposed on environmental grounds, it was nevertheless signed in Wellington in 1988. Opposition continued and during 1989 it was abandoned by first France and Australia, then Italy, Belgium and (in 1990) by New Zealand. Its rejection by these countries and others prevented the convention entering into force. The past two years have seen the negotiation, in its place, of an Environmental Protocol to the Antarctic Treaty, which includes a prohibition on minerals activities.

Territorial claims in Antarctica. The Antarctic Treaty and the Environmental Protocol only apply to the area south of 60°.

In practical terms this means that mining can occur in Antarctica 55 years after the entry into force of the protocol – with obviously serious environmental impacts. But the *possibility* of mining has more immediate implications too. It makes the ridiculous sovereignty claims in Antarctica far less resolvable and encourages states to continue staking their claims with more stations. Environmental protection and the quality of Antarctic research would have been better served by final resolution of the minerals issue. An unequivocal decision to prohibit Antarctic minerals exploitation in perpetuity would also have signalled a willingness to address the present unrestrained use of non-renewable resources worldwide.

There are also omissions. As a protocol to the Antarctic Treaty, it applies to the same area as that treaty, the land and fast-ice areas south of 60°S. It does not have jurisdiction over the marine environment which supports the animals and plants of Antarctica. This is left to the Convention on the Conservation of Antarctic Marine Living Resources and the International Whaling Commission, neither of which have an impressive record. As Greenpeace film from Antarctica last summer shows, the serious issues of overfishing and continued whaling in Antarctic waters remain.

Deep seabed mining is not specifically dealt with under the protocol. Quite where the deep seabed begins and ends in Antarctica is a contentious issue. With deep-water drilling technology developing apace, the seas around Antarctica are becoming more accessible. The supposed prohibition on mining under the protocol will be meaningless if it does not apply to the sedimentary basins below the sea floor around the continent.

THE PROTOCOL is still not complete. The main body of the protocol includes reference to liability for damage caused by activities in Antarctica, but the rules and procedures are to be developed in a further annex.

The issue is complex, involving decisions about what level of damage triggers the provisions, who is liable, what form liability takes, the extent of the liability, whether it is absolute and unlimited or limited in some way, and what happens if the liable party is unable to meet its obligations. In practical terms, we should expect the provisions to act as a real incentive to avoid environmentally risky behaviour in Antarctica. If, nonetheless, damage is inflicted somebody must clean it up and restore the environment to its