

**FINAL ACT OF THE
FOURTH SPECIAL ANTARCTIC TREATY CONSULTATIVE MEETING
ON ANTARCTIC MINERAL RESOURCES**

The final session of the Fourth Special Antarctic Treaty Consultative Meeting on Antarctic Mineral Resources was held at Wellington from 2 May to 2 June 1988. Representatives of the Consultative Parties to the Antarctic Treaty, namely Argentina, Australia, Belgium, Brazil, Chile, China, France, German Democratic Republic, Federal Republic of Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay, participated in the Meeting. On the invitation of the Consultative Parties, Representatives of 13 Contracting Parties to the Antarctic Treaty that are not Consultative Parties, namely Bulgaria, Canada, Czechoslovakia, Denmark, Ecuador, Finland, Greece, Republic of Korea, Netherlands, Papua New Guinea, Peru, Romania and Sweden, also participated in the Meeting.

As a result of their deliberations, the Consultative Parties adopted in the official languages of the Antarctic Treaty the “Convention on the Regulation of Antarctic Mineral Resource Activities”, the text of which is annexed to this Final Act and agreed that it would be opened for signature at Wellington on 25 November 1988.

Taking into account the decision reflected in Article 67 of the Convention that Chinese would be an authentic language, the Meeting agreed that the Drafting Committee would be reconvened by the Depositary, at a time and place to be agreed, for the purpose of bringing into concordance with the text of the Convention in the four official languages of the Antarctic Treaty, a Chinese text. To this end it was agreed that the Depositary would circulate in advance of such meeting a text of the Convention in the Chinese language.

The Meeting also agreed that the Drafting Committee should consider any questions of linguistic consistency, which might possibly be found to be necessary, in the authentic texts in the official languages of the Antarctic Treaty with a view to their rectification in accordance with the rules and procedures set forth in the Vienna Convention on the Law of Treaties 1969.

With respect to the decision reflected in Article 67(2) of the Convention the Meeting noted that at any time after the opening for signature of the Convention a Signatory or Acceding State could lodge with the Depositary an official translation of the Convention which would then be circulated in accordance with Article 67(2).

The Meeting also considered the question of continuing the restraint of Antarctic mineral resource activities agreed to in Recommendation IX-1 for the interim period before the entry into force of the Convention. Taking into account Recommendation IX- 1 and the adoption by the Meeting of the Convention on the Regulation of Antarctic Mineral Resource Activities, the Meeting agreed that all States represented at the Meeting would

urge their nationals and other States to refrain from Antarctic mineral resource activities as defined in the Convention pending its timely entry into force.

The Meeting recognised that unfair economic practices including certain forms of subsidies could cause adverse effects to the interests of Parties to the Convention and that such effects should be addressed in the context of the relevant multilateral agreements. To this end, the Meeting agreed that Parties to the Convention which are also Parties to such multilateral agreements will determine conditions of application of these agreements to Antarctic mineral resource activities.

The Meeting noted that mineral resources, as defined in Article 1(6) of the Convention, do not include ice and that if harvesting of ice, including icebergs, were to become a possibility in the future there could be impacts on the Antarctic environment and on dependent and on associated ecosystems. The Meeting also noted that the harvesting of ice from the coastal region of Antarctica, more particularly if land based facilities were required, could raise some of the environmental and other issues addressed in the Convention. The Meeting agreed that the question of harvesting Antarctic ice should be further considered by the Antarctic Treaty Consultative Parties at the next regular meeting.

The Meeting noted the requirement under Article 8 of the Convention for a separate Protocol on liability and agreed that it would be desirable to begin work on its elaboration at an early stage.

With respect to the financial obligations of Operators, the Meeting noted the importance for the operation of the Convention that an indication of the possible extent of the financial obligations of Operators should be available to them in reasonable time before applications for exploration permits are submitted.

The Meeting agreed that the area of regulation of Antarctic mineral resource activities defined in Article 5(2) of the Convention does not extend to any continental shelf appurtenant in accordance with international law to islands situated north of 60° south latitude.

The Meeting also agreed that the geographic extent of the continental shelf as referred to in Article 5(3) of the Convention would be determined by reference to all the criteria and the rules embodied in paragraphs 1 to 7 of Article 76 of the United Nations Convention on the Law of the Sea.

With respect to Articles 6 and 41(1) (d) of the Convention, the Meeting noted that the promotion and encouragement of international participation do not prejudice the right of any applicant to exercise freedom of choice over the partners in a joint venture, including the terms of their partnership, consistently with the Articles referred to above and any measures pursuant to them, in offering international participation in any proposed Antarctic mineral resource activity.

The Meeting agreed that Article 8(10) of the Convention was to be interpreted as excluding multiple judgments in respect of the same liability claim. Specifically, if a liability claim has been referred to adjudication in the courts of one Party, such claim would not be subject to additional adjudication while those proceedings are pending or after they have resulted in a final judgment. The Meeting also noted that Article 8(10) would apply in the period prior to entry into force of the Protocol referred to in Article 8(7) and it was understood that paragraph 10 should be interpreted in light of Article 37 of the Convention and that the Operators referred to in that paragraph were those defined in Article 1 of the Convention.

In relation to Article 29 of the Convention the Meeting agreed that the member or members of the Commission mentioned in Article 29(2) (a) are those identified by reference to Article IV(1) (a) of the Antarctic Treaty. The members of the Commission mentioned in Article 29(2) (b) are those identified by reference to Article IV (1) (b) of the Antarctic Treaty.

The Meeting acknowledged that the specific formula in Article 29(3) (b) of the Convention (“at least three developing country members” of the Commission) accurately reflected the balance between developed and developing Consultative Parties as at the date of the adoption of the Convention. It was also recognised that in the event of an increase of the size of the Commission in the future resulting in a significant alteration of this balance, there would be a case for considering, by way of an amendment in accordance with Article 64 of the Convention, the specific formula in Article 29(3) (b) of the Convention and, by reference to paragraph 2(c) (ii) of that Article, the total membership of the Regulatory Committee.

The Meeting agreed that it was desirable that the decision making process in the Regulatory Committee pursuant to Article 32 of the Convention should reflect all the interests represented in the Regulatory Committee. It was also agreed, in particular, that it was desirable that the two-thirds majority referred to in Article 32 should include at least one developing country.

With respect to Article 62 of the Convention, the Meeting agreed that all of the institutions of the Convention could not be established in respect of every area of Antarctica unless all the States referred to in Article IV (1) (a) and (b) of the Antarctic Treaty and at least four States referred to in paragraph 1(c) of that Article were Parties to the Convention, and that these included at least three developing countries.

The Meeting agreed that the titles of Chapters and Articles in the Convention are indicative only and were included for the sole purpose of facilitating examination of the text and reference to different provisions of the Convention.

The Meeting also agreed that the contents of this Final Act are without prejudice to the legal position under the Antarctic Treaty of any Party.

Done at Wellington, this second day of June 1988, in a single original copy in the four official languages of the Antarctic Treaty to be deposited in the archives of the Government of New Zealand which will transmit a certified copy thereof to all Contracting Parties to the Antarctic Treaty.