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ANTARCTICA: CONDOMINIUM OR RES COMMUNIS?

1. An Antarctic Profile

Antarctica is a circumpolar frozen continent of about 14 million square kilometers, larger than the United States and Europe combined. It is a desolate, icy world, surrounded by frozen seas. It is the driest and the windiest continent. This huge isolated land mass contains the world's largest source of fresh water (about 72%) and the volume of ice is so enormous (about 90% of the world's ice) that if all of it melted, the average sea-level would rise by 60 meters.¹ The great wilderness continent of Antarctica is of great environmental, climatic and scientific significance to the world. It is vital for stable global weather conditions. Antarctic currents carry their nutrients north, thus maintaining fisheries around other southern continents. Scientists of various disciplines and from many nations are carrying out important studies and research in magnetic fields, weather systems, distribution of earthquakes, effects of solar flares and the preservation of whales, seals and marine living resources, to promote international cooperation in environmental conservation and preservation of the world ecosystem.² Geologists estimate that the region is a gold mine of precious marine and mineral resources. The seas around Antarctica contain the biggest untapped food source in the world—about 150 million tons of shrimp-like krill which provide the major food base for

1. *The Bangladesh Observer* February 26, 1984

2. *The Bangladesh Observer*, March 17, 1984

the Antarctic ecosystem feeding millions of penguins and seals and the endangered great whales.³

The Antarctica was once linked to South America, Australia, and Africa in a vast continent known as Gondwana. The minerals found in other parts of the world are therefore also likely to be present in significant quantities in Antarctica. The presence of the world's largest coal field has already been confirmed, and reserves of minerals like silver, gold, oil, tin, iron, copper, molybdenum, titanium etc. are thought to be plentiful. Oil is the most sought after mineral which has so far eluded discovery. A representative of Gulf Oil in 1979 said the oil potential of the most prospective areas in the Ross and Wedell Seas was in the range of 50 billion barrels that could be much more.⁴

During the 1980s Antarctic resource questions have gained added prominence because of the Falklands war of 1982. According to Sir Hermann Bondi, Chairman of the British Natural Environment Research Council (NERC), the fighting in the South Atlantic (Falklands war of 1982) has concentrated people's minds on the potential of the Antarctica and the surrounding oceans.⁵ The resource-hungry

Most of the nations of resource-hungry world are, questioning the 1959 Antarctic Treaty which virtually made the continent a condominium of the signatories, and are raising the concept of "Common Heritage of Mankind" relating the Antarctic continent.

world is casting its eyes on the Southern continent as a treasure of wealth and it is evident from the following observation by M.J. Peterson : The risks of international great power confrontation stemming

3. *The Guardian*, May 1, 1983 ; F. M. Auburn *Antarctic Law and Politics*, London : Hurst, 1982, p. 323 ; *Foreign and Commonwealth Office Background Brief*, The economic potential of the Falkland Islands and Antarctica (London : FCO, May 1982) ;
4. *The Bangladesh Observer*, December 11, 1983 ; *International Law in Australia*, D.P. O'Connell (ed), Sydney, Australia, 1965, pp. 345-346.
5. *The Times*, October 27, 1982.

from economic causes will be critical in coming years . . . major powers will seek assured access to vital raw materials (and) may set off a scramble for assured access to the remaining raw material sources and economic disaster for all who lagged behind in the scramble. Thus the possible extension of the 'resource war' to Antarctica has already become a matter of concern.⁶

Hence it appears quite obvious that the present legal status of Antarctica is being questioned more openly and by more nations than ever. The real question hanging over Antarctica today is who will be in charge ? Will it be ruled for and by all nations of the world, or by the Antarctic Treaty members who have virtually made it a *condominium* by signing the Antarctic Treaty in 1959 ? The signatories, naturally, prefer to keep the treaty in tact, while the Third World countries, working through the United Nations, want Antarctica to remain the "Common heritage of mankind," much as the Law of the Sea Convention disposes of the oceans.⁷ Hence the question that looms : Whether Antarctica is *condominium* or *res communis*—land belonging to a few or 'Global Commons' ?

In dealing with this main question the present paper will focus on the present status of Antarctica highlighting the salients of the 1959 Treaty and the post-treaty activities of the treaty members, attitude of the Third World countries to the present status of Antarctica manifest in their concept of 'Common Heritage of Mankind', and envisioing an outlook for the future of Antarctica.

2. Status of Antarctica

The continent of Antarctica is now regulated by the provisions of the Antarctic Treaty of 1959. Before this legal status of Antarctica was adopted, various nations of the world laid claims to the Antarctic

6. J. M. Peterson 'Antarctica : The Last Great Land Rush on Earth' *International Organization*, 1980, vol. 34, No. 3, p. 398; Bruce Russett, Security and the Resources Scramble : Will 1984 be Like 1914 ? *International Affairs*, Winter 1981-2, vol. 58, No. 1, pp. 42-57.

7. *Newsweek*, July 11, 1983, p. 37.

territory. So a brief account of activities by states concerning Antarctica before 1959 would be of relevance.

a) *Political Background*

There have been seven states which have made claims to the territory in the Antarctica—Argentina, Australia, Chile, France, Great Britain, New Zealand and Norway.⁸ In addition to the formal claimants there are several other countries which have taken a close interest in Antarctic affairs—Belgium, the Republic of South Africa, the Soviet Union, the United States and Japan. Of these countries, Japan, before the World War II, had purported to have “interests and rights” in Antarctica which she renounced in the Treaty of Peace of 1951. South Africa possesses two islands near the continent which were acquired in 1948. Although the United States has made no formal territorial claim in Antarctica, American nationals and government-sponsored expeditions have taken a close interest in the continent for many years. Similarly the Soviet Union has never made a formal claim to Antarctic territory but it has asserted its right to be a party to any international settlement relating to the continent.⁹

During 1919-20 the British Government, influenced by Britain's prominent role in the exploration of Antarctica decided that the whole of the Antarctic should ultimately be included within the British Empire. By the early 1930s Britain and the dominion of New Zealand (1923 Ross Dependency) and Australia (1933 Australian Antarctic territory) claimed about two thirds of the continent. The French, Norwegian and American governments, however, combined to hinder the pursuit of these moves.¹⁰

The claimant states rely upon a variety of legal ‘arguments’ in support of their proclaimed national interests in the region. They refer to the arguments of “historical rights”, “discovery”, “occupation

8. *The Guardian*, July 17, 1983 ; *Newsweek*, July 11, 1983 p. 37.

9. *International Law in Australia*, pp. 341-343.

10. J. Beck Peter, Britain's Antarctic Dimension, *International Affairs*, vol. 59, No. 3, Summer 1983 p. 443.

and administration", "hinterland doctrine" etc.¹¹ But viewed within the framework of traditional international law principles on the acquisition of territory, the "historical rights" arguments of Argentina and Chile do not represent a strong foundation for their territorial claims. According to Professor Waldock there are "two serious obstacles to the historic claims of Argentina and Chile: (1) the absence of any title in Spain (their metropoly) and (2) the absence of any manifestation of Argentine or Chilian sovereignty after 1810".¹² The discovery of Antarctic territory has loomed importantly in the arguments of Australia, Britain, France, New Zealand and Norway. But discovery in itself has not been recognized by international law in the twentieth century as giving a state a full title to territory.¹³ There are so many overlapping and conflicting claims of "discoveries" in the south polar region that it becomes cumbersome to differentiate one from the other. Other arguments put forward by some states during the colonial age simply do not get along with the nature of the present day international law. Furthermore, other states including the super powers do not recognize these claims while a part of it still lies unclaimed.

Scientists, private groups and official government quarters had made a variety of proposals to create some form of international control in the region. Many proposals and suggestions were made during the 1940s and 1950s. All these, however, failed to receive sufficient support, particularly from the claimant states, and it was not until the International Geophysical Year (1957-58) that sufficient stimulus was created to set up international machinery to achieve a *modus vivendi* in the Antarctic. During the International Geophysical Year, arranged primarily by scientific groups from many countries, scientific stations and expeditions were maintained in the Antarctic by the United States, Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the Soviet Union and the United

11. See *International Law in Australia*, pp. 344-353.

12. *British Yearbook of International Law*, vol. 25, p. 327.

13. See *International Law*, Oppenheim, 8th ed., 1955, vol. 1, pp. 558-559.

Kingdom, under a more or less tacit agreement not to make new territorial claims and without regard to territorial claims asserted by the participants. There followed more than a year of negotiations and at the call of the United States, a conference of those states maintaining substantial activities in the Antarctic was held in mid-October, 1959. After six weeks of intensive negotiations and hard bargaining the Final Act and the completed Treaty were signed on December 1, 1959.¹⁴

b) 1959 *Treaty on Antarctica : Salient Features*

The Treaty of Antarctica came into effect in 1961. The Treaty was signed by 12 nations—Argentina, Australia, Belgium, Britain, Chile, France, Japan, New Zealand, Norway, South Africa, the Soviet Union and the United States. A few more countries including West Germany, Poland, Brazil and India subsequently joined the Antarctic Treaty.

The Treaty was aimed at the achievement of three principal objectives. First, to seal off the Antarctic areas (60° latitude being the outer limit) for peaceful purposes, and to create inspection arrangements to ensure adherence to this objective. Secondly, to facilitate cooperation in scientific investigation and research among the signatories and with other states which might subsequently accede to the Treaty. Thirdly, to freeze the *status quo* with respect to the various claims to territorial sovereignty and rights which had been advanced by the signatory states in the Antarctica.¹⁵ To achieve a state of demilitarization in the Treaty area, Article I of the Treaty declares that “Antarctica shall be used for peaceful purposes only” and provides that 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 manoeuvres, as well as the testing of any type

14. See *International Law: Cases and Materials*, William W. Bishop, Jr., Little, Brown and Company (Boston and Toronto), 1971, pp. 415-416 ; *International Law in Australia*, pp. 358-361.

15. See *International Law in Australia*, *op cit* above, p. 361

of weapons". This prohibition is reinforced by Article V which explicitly states that nuclear explosions in Antarctica and the disposal of radioactive materials are prohibited. The treaty provides that freedom of scientific investigation should continue and information and scientific personnel be exchanged and that representatives of the contrac-

Following a crude scramble among a host of nations for laying claims to the Antarctic territory, the Antarctic Treaty was signed in 1959. The treaty members have made it an exclusive Antarctic club of signatories.

ting parties meet at suitable intervals to formulate and recommend to their governments measures for facilitating the use of Antarctica. The Treaty further provides that the signatories, while carrying on activities in the Antarctic, shall have a right to designate observers to carry on inspection.

In the light of the previous failure of all attempts to settle the controversies over sovereignty in the Antarctic the most impressive achievement of the Antarctic treaty at least in the field of international law, was the agreement reached between the contracting parties on Article IV. This 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 claims 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.¹⁶ Thus the treaty was designed to place the sovereignty disputes in a state of suspended animation.¹⁷

A possible source of difficulty in the operation of the treaty, which is adverted to in Article X arises from the fact that it is binding only upon the signatory states. There is thus no formal bar on non-signatory states' asserting new claims in the Antarctic or otherwise acting in contravention of the terms of the treaty. Article X contains no reference to any enforcement measures.

It was agreed that the provision of the treaty should apply to the area south of 60° latitude, including all ice shelves, but would not "affect the rights or the exercise of the rights, of any state under international law with regard to the high seas within the area." Although the ice shelves of the Antarctic continent are included within the treaty area the possibility that there are "high seas" under some of these vast areas could raise problems of interpretation.

Although this treaty makes provision for other states (members of the UN) to accede to it, the treaty is far from universal. The access to Antarctica has been virtually denied to a great majority of nations of the world by a technical clause which requires "substantial scientific research activities" in Antarctica to be pursued by states, willing to accede to the treaty. Owing to the lack of development in required science and technology the majority of the countries of the world at present are not in a position to launch any exploration and exploitation programmes in Antarctica. Quite aware of this fact, the technologically developed nations in association with the so-called claimant states, have concluded a treaty on a vast expanse of land with huge

16. The text of the Antarctic Treaty can be consulted in F. M., Auburn, *Antarctic Law and Politics* pp. 298-303.

17. For details see *Ibid*, pp. 48-61.

potential, which in fact should belong to the mankind as a whole. Thus the signatories have signed virtually an exclusive treaty which has turned Antarctica into a condominium for them and deprived the poor majority of the riches of the Antarctic continent.

c) *The post-treaty period*

The original treaty of 1959 failed to cover resource questions and during the past decade or so the Antarctic consultative parties have become anxious to fill this gap. There has been a flurry of activities pertaining to research programmes as well as living and non-living resources of the Antarctic. France is building a new landing ship near one base, and India has already mounted two expeditions. West Germany has spent \$ 140 million on Antarctic research over the past four years, including the Polarstern, the world's most advanced research ship. In 1982, Brazil dispatched an ill-prepared team to the Antarctic and it nearly failed to return.¹⁸

d) *Convention on Conservation of Marine Living Resources*

At a meeting in Canberra (Australia) from May 7 to 20, 1980, attended by 15 participant nations and by some observers including the European Community, a Convention was signed on the Conservation of Antarctic Marine Living Resources, particularly krill, by regulation of their commercial exploitation. The Convention provided that an International Commission would be established with its headquarters in Hobart (Tasmania) to supervise the preservation of marine life and especially to study the food-chain of Antarctic fish and bird life and to recommend measures to protect the species. The countries which reached agreement on the Convention were the 12 original signatories of the Antarctic Treaty together with Poland, which is a consultative member, and East and West Germany, both of which had acceded to the treaty and were major harvestors of krill.¹⁹ In link with the Antarctic Treaty, the Convention also has been made one of

18. See *Newsweek*, July 11, 1983, p. 37.

19. See *Keesing's Contemporary Archives* 1980, vol XXVI, p. 30436.

exclusive nature, which deprives majority of the people of the world of share of this global common property.

Having drawn up a regime for the exploitation of the Antarctic marine resources, the treaty nations are trying to work out one for minerals. On minerals question (which was touched upon in the 1970s), again the negotiations are being held in closed session. No other countries or organizations are allowed to participate. The view expressed by the British government is pertinent to cite here—"we envisage that such a regime (about Antarctic mineral resources) can be agreed without modifying the treaty".²⁰ So they are putting their best efforts in hammering out an agreement without any regard for the stake which the rest of the world might wish to have in Antarctica.

There have been meetings in Wellington, New Zealand (14-15 June 1982 and 17-18 January 1983) and in Bonn, Federal Republic of Germany (11-22 July, 1983) to discuss a draft convention, which some governments hope to conclude this year to regulate exploration, exploitation, licensing and conservation questions within the Antarctic treaty system.²¹ The so-called Beeby proposal, drawn up by Zealand diplomat Mr. Chris Beeby whose draft proposal must be taken as indicating the direction in which things are moving, would set up a Minerals Regime to which anyone could apply *under sponsorship from a treaty nation for permission to explore for specific minerals*.²² So, the goals of the meetings of the Antarctic treaty nations are virtually not so much those of "opening up the continent to the exploiters" but of trying to hammer out rules determining who may grab what, when, where and how.

Progress in the minerals talks will probably depend upon how far the consultative parties are prepared not only to reconcile their own divergent views but also to adopt a global perspective in order to instil

20. See C. Beeby, 'Towards an Antarctic mineral resources regime', *New Zealand International Review*, 1982, vol. VIII, No. 3, p. 8; *International Affairs*, vol. 59, No. 3, Summer 1983, p. 438.

21. *Ibid.*

22. See *Far Eastern Economic Review*, February 24, 1983, p. 36.

confidence into non-signatories that their interests will be fully considered. It is only natural that 'Outsiders' (signatories are 'Insiders') expressly show their worry while the Antarctic nations are making their best to develop a minerals regime that will, in the end, benefit only the signatories to the treaty at the expense of the rest of the world. Any

The activities being carried out by the club members in the post-treaty period are aimed at reaping the Antarctic harvests at the expense of the rest of the world.

legal regime concerning Antarctica, should involve and must be acceptable to the whole international community, since otherwise non-signatories might fish in the area independently without recognizing the terms of the Convention. What is more important is that if the regime is made universal, many of the countries of the world will have access to untapped wealth and take part in the historical process of redistribution of world wealth and thereby contribute to the establishment of New International Economic Order (NIEO).

3. Challenges to Antarctic Regime and its Future

As indicated earlier the Antarctic Treaty is exclusive in nature. Beside the 12 signatories and 4 other consultative parties, eleven other countries, including China and Papua New Guinea, have applied for membership in the Antarctic club. The Marine Living Resources Convention of 1980 is also of the same nature and so will, in all likelihood, be the minerals Regime, currently being debated over. So a sense of deprivation from global commonwealth quite naturally compels the rest of the world to rise and question the legal validity of the exclusive Antarctic treaty system. They are challenging the Antarctic regime by upholding the concept of 'Common Heritage of Mankind' (CHM) relating the Antarctic continent. It is in full consonance with the present wave of NIEO movement launched and earnestly pursued by the Third World countries.

a. *Concept of 'Common Heritage of Mankind' in relation to Antarctica.*

The concept of Common Heritage of Mankind (CHM) was first discussed in 1967 by the General Assembly in the context of the questions of preservation of the sea-bed and ocean floor exclusively for peaceful purposes. This concept was not a new one (it dates back to the 19th century, and was referred to by the President of the first Law of the Sea Conference in his opening speech in 1958) but it had never before been discussed in an international forum.²³ On December 17, 1970 the United Nations General Assembly (UNGA) adopted a Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (GA resolution 2749-XXV), where it was declared, *inter alia*, that the area of the sea-bed and ocean-floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states. In addition, it was declared that this area "shall be opened to use exclusively for peaceful purposes by all States.....without discrimination".²⁴ Thus the common heritage was formally spelled out. The declaration has a certain value and significance. Although it is not intended to be, and it is not, *jus cogens*, it does set certain standards of international conduct against which the activities of the states may in future be judged.²⁵ Now the concept of CHM is being related to Antarctica by the Third World countries which is meant for challenging the present Antarctic Regime. Dr. Mahathir Mohammad, Prime Minister of Malaysia, included the Antarctica proposal in his 1982 UNGA address. He said "the days when rich nations can grab whatever territory and resources they have access to are over.....Henceforth, all the

23. See *The Law of the Sea, United Nations Convention on the Law of the Sea, United Nations, New York, 1983, Introduction, p. XX.*

24. *Ibid* ; Preamble of the Convention, p. 1.

25. See M.R. Nawaz (ed), *Essays on International Law*, Faridabad, Haryana, India, 1975, p. 158.

unclaimed wealth of this earth must be regarded as the common heritage of all the nations."²⁶ Mahathir's speech set in motion a fascinating sequence of diplomatic manoeuvres. Although reaction came promptly from ACTP (Antarctica Treaty Consultative Powers) states, they did not succeed in deflecting the Prime Minister from his proposal, which remains the replacement of the treaty beginning with "an impartial" report by UN Secretary General Javier Perez de Cuellar.²⁷ The governments of the Non-aligned countries at their 7th Summit conference held in New Delhi on 6-11 March, 1983, decided that there was need for international consultation to ensure that activities carried out in Antarctica are for the benefit and in the interest of mankind as a whole. In New Delhi the conferees agreed that the UN should undertake a comprehensive study on Antarctica.....with a view to widening international cooperation in the area."²⁸ In the XXXVIII UNGA Session Malaysia, joined by Bangladesh, Antigua and Barbuda, and a host of other nations, formally requested the General Assembly to add to its agenda of some 145 items one more topic : Antarctica. It turned into a Third World move which ultimately succeeded in being included on the UN agenda against strong opposition from the ATCP States.²⁹ The opponents of the proposal suggested that Malaysia had ignored the Antarctica Treaty's security dimension for many smaller signatories such as Chile and New Zealand in a demilitarized continent immediately to their south. These states feel Malaysia has overlooked the 'successful' and peaceful Antarctic collaboration between otherwise deeply competitive powers. Norwegian UN Ambassador Tom Vraalsem expressed the fear shared by other Antarctic club members that Malaysia's move could be the first step towards repealing the 1959 treaty. Britain, France and others followed suit. United States delegate William Sherman pointed out that Antarctica is a nuclear-free zone and added "Let's keep it that way." Japan's Sumihiro

26. *See Far Eastern Economic Review*, December 1, 1983, p. 25.

27. *Ibid.*

28. *Far Eastern Economic Review*, November 3, 1983, p. 34.

29. *Ibid.*

Kuyama said his delegation would boycott committee action on the item. For the Soviet bloc, the Soviet Union's Vladimir Petrovsky charged that the very fact that Malaysia had raised the matter at all undermined the treaty and threatened with "serious and deleterious consequences." The East German and Czechoslovakian delegates agreed. The United States has a doctrinal objection to the CHM concept while the Soviet Union does not want to abandon altogether any future claims it may have to the continent.³⁰

To counter all these 'arguments' of the 'insiders' of the treaty, one could easily pose questions: had Antarctica been declared a part of the CHM where all would have a share, how would it militarize the continent, jeopardize the security of the contiguous nations, undermine the sense and mood of collaboration (which already exists among the club members) between and among nations? What would be the harm if the 1959 treaty is repealed and an universal legal framework is devised for Antarctica? Law is made to serve mankind. So a legal order on Antarctica ought to be made so as to ensure benefits for the whole of mankind. That is what the Malaysian proposal, shared by the Third World countries, except Argentina and Chile, who are treaty members,³¹ speaks about. Antarctica is not a unique case in CHM concept. The Outer Space and LOS treaties are pertinent to cite here. In accordance with the provisions of these treaties, the outer space and the area of the sea-bed and ocean floor and the subsoil thereof, as well as its resources are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of states. The Antarctic continent hardly differs from outer space and the high seas as far as scientific and technological involvement in its exploration and exploitation is concerned. So the question, naturally,

30. *F.E.E. Review*, December 1, 1983, p. 25.

31. The position of India is ambivalent as she continues to harvest the benefits under the treaty while supporting the Mahathir initiative. See for details, *Far Eastern Economic Review*, December 1, 1983.

arises as to why not recognize Antarctica as a part of CHM. Antarctica is very much a part of CHM as the outer space and open seas are. What speciality the Antarctic has got that makes only a few nations turn it a condominium thereby closing the door of right of enjoying a common share, to most of the countries of the world? Nothing. As to the territorial claims by some of the ATCP states based on "historical rights", "discovery" and various others of this sort, the words of Dr. Mahathir are again very apt to quote: "Antarctica does not

In the backdrop of growing demands of the Third World countries the Antarctic Treaty of 1959 ought to be reviewed so as to give the continent of huge untapped riches the status of "Common Heritage of Mankind".

legally belong to its discoverers, just as the colonized countries did not belong to the colonial powers."³² A review of the Antarctic treaty is sought as the treaty itself failed to either prohibit or provide for resource exploitation. Moreover, existing national claims on Antarctica are ill-defined and indefensible. There are claims—counter and overlapping—with a potential of active international contest and rivalry of national interests.

A legal and practical access of the developing countries to the rich continent of Antarctica would immensely help a restructuring of international economic relations to suit the needs and aspirations of the 'South'. So an international legal order concerning Antarctica, based on CHM concept would be very much a step forward in establishing the long-sought after and overdue New International Economic Order (NIEO).

The fact that the Malaysian proposal could be made an item on the UN agenda testifies that the overwhelming majority of peoples in the world demand that the Antarctic regime should be reviewed and a universal legal framework be hammered out on the basis of the CHM

32. *Newsweek*, July 11, 1983.

concept. Thus the verdict of the vast majority of peoples of the world is that Antarctica is "not *condominium* but it is *res communis*". This verdict is only to be made universally official, probably through the UN efforts, which the peoples of the world are aspiring and working to bring about in coming years.

b. *Outlook for the future*

The magnitude of diplomatic tussle in the United Nations between the ATCP states and the developing countries shows that the battle over universalization of Antarctica won't be an easy one to win. But, the very fact that the battle is being fought between a limited few and a vast majority and that too on the UN platform, is the first bit of victory scored by the developing nations. The issue has come out of the research pages of scholars and has already been internationalized creating great awakening and hope among nations. There are arguments that exploitation of the living and non-living resources could, however, harm the fragile environment of Antarctica as well as other ecosystems far removed from Antarctica. Now, who can collect information about Antarctica? It is obviously the nations with the greatest expertise who all practically happen to be ATCP states. On the other hand, there already exists a Convention on Preservation of Marine Living Resources of Antarctica and, furthermore, there is a great haste among treaty nations in concluding a Minerals regime. So the above arguments seem to be not in consistence with the activities of club members who tend to gear up their expeditions and other research programmes more than ever. So it can be safely argued that it is political considerations meant for achieving economic gains out of exploitation of Antarctic resources that the Antarctic treaty members are guided by with a view to placating the rightful aspirations of the developing nations whereas the permanent needs of the international community should not be sacrificed to short-term political objectives or considerations of a limited few.

Despite the fact that some progress have been achieved in favour of CHM, it would be wrong to assume that the establishment of the

concept in relation to the Antarctic continent is within one's hand's reach. The attitudes of all nations, particularly those of the Antarctic treaty members should be attuned to this end and collective efforts should be made in order to achieve this objective. The words of Javier Perez de Cuellar while addressing the LOS Conference in Jamaica, are very encouraging for the Third World countries in carrying forward the banner demanding institutionalization of the CHM concept in relation to Antarctica—"Many of those present today in this hall participated in the initial stages of the lengthy negotiations

The developing nations have already scored the first bit of success in various world forums, including the UNGA. However, much would depend on the attitude of the major powers.

which are ending today. They will remember that there were some who reacted with scepticism when the possibility of embarking upon a fundamental revision of sometimes age-old institutions was first suggested. There were also some who reacted with open hostility to the prospect of going even further in certain fields by establishing completely new legal institutions".³³ Equally pertinent are the words of President of the LOS III conference: "When we set out on the long and arduous journey to secure a new Convention.....There were many who told us that our goal was too ambitious and not attainable. We proved the sceptics wrong, and we succeeded in adopting a Convention..."³⁴ But one has no reason to be blind to the fact that the sceptics are, among others, giant bears and eagles with their mighty

33. Statement made by Javier Perez de Cuellar, Secretary-General of the United Nations, made on 10 December 1982 at the final session of the Law of the Sea conference at Montego Bay, Jamaica, after the Convention was opened for signature. Quoted in "*The Law of the Sea, United Nations Convention on the Law of the Sea*" New York, 1983, p. XXIX.

34. Remarks by Tommy T.B. Koh of Singapore, President of the Third United Nations Conference on the Law of the Sea at the final session of the conference at Montego Bay, Jamaica. Quoted in *ibid.* p. XXXIII.

paws, practically on whom depends the fate of an Antarctic Convention if adopted in future.

4. Concluding Remarks

The Antarctic continent is a vast treasure house of potential wealth. It promises great hope for a hungry world with population of over 4500 million. Although the continent is yet less hospitable to the intruders, the existence of exploration and exploitation techniques under nearly the same climatic conditions (in Alaska and Siberia, for example) convinces one that the same would be possible in massive scale in Antarctic conditions in near future. There are claimants to the Antarctic territory, although it remains in a state of suspended animation under the provisions of Antarctic Treaty of 1959. This treaty is an exclusive one and its signatories consider the rich continent a property of theirs and a few others who can accede to the treaty under some technical conditions. The Marine Living Resources Convention and the Minerals Regime, which is in the making, are also of the same nature. But the countries of the Thire World have raised, to the despair of the rich nations, the concept of Common Heritage of Mankind in different international forums including the United Nations General Assembly. They are progressively succeeding in creating a notion about Antarctica that it is not a condominium, but it belongs to the whole mankind. As the Law of the Sea Convention provides a Sea-bed Authority, there could be an 'Antarctic Authority', to serve as an instrument of the 'Law of the Antarctic' for its regulation. The efforts of the deprived developing world is directed along this course, the realisation of which is at the hands of time only.