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Australia's Antarctic agenda

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Australia has had a long connection with, and significant national interests in, the Southern Ocean and Antarctica. The Australian Antarctic Territory comprises 42 per cent of Antarctica's landmass. Australia is not only a claimant state and original signatory to the Antarctic Treaty but has played a significant role in the development of what is termed the Antarctic Treaty System (ATS). This article aims to provide an overview of Australia's key policy interests and government policy goals towards Antarctica, including its commitment to the ATS. In examining key policy objectives we note that despite continuity and development of these objectives, significant changes and challenges have arisen in the period 1984–2006. It is these challenges that will help frame Australia's Antarctic agenda over the next 20 years and beyond.

Introduction¹

Australia has had a long connection with the exploration of Antarctica. Australians took part in a number of expeditions in the 'heroic era' of Antarctic exploration during the last years of the nineteenth and early years of the twentieth centuries. Douglas Mawson's work in particular helped reinforce Australia's interests in, and later territorial claims to, the Australian Antarctic Territory (AAT), a claim encompassing 42 per cent of the Antarctic continent. Australia, too, was an important participant in the negotiation of the Antarctic Treaty, and hosted the first meeting of the Antarctic Treaty Consultative Parties (ATCPs), following entry into force of the Treaty, in 1961. These factors have contributed to Australia taking a long-term interest in Antarctic affairs as both a claimant state and major player in the Antarctic Treaty System (ATS). Two related sets of interests influence Australia's Antarctic policy. The first is the domestic political agenda that includes commitments to the AAT as one part of Australia's territorial claim and the important scientific output generated as a result of that claim and Australian scientific activity on the continent. The second, and clearly not mutually exclusive, set of interests derives from Australia's obligations and responsibilities following ratification of a number of international instruments. These instruments, described as an alphabet soup (see, among others, Davis and Haward 1994), provide parameters for

Australian Antarctic policy and provide increasing challenges for Australia's Antarctic agenda.

Australia is party to key international instruments that cover the region. These include the Antarctic Treaty (entered into force 23 June 1961), the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR, entered into force 7 April 1982) to which it is depositary state and host of the CCAMLR secretariat, one of three international secretariats located in Australia,² and the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol, entered into force 15 January 1998) of which Australia alongside France was a key promoter. Altogether, these instruments plus some others form the ATS. Australia's interests and agenda in Antarctica and the Southern Ocean is also influenced by other international instruments, most notably the United Nations Convention on the Law of the Sea (LOSC, entered into force 16 November 1994), the International Convention for the Regulation of Whaling (ICRW, entered into force 10 November 1948) and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

This article aims to provide an overview of Australia's Antarctic interests, identifying key policy interests and government policy goals and notes changes and challenges over the period 1984 to 2006. This 22-year period was one in which Australia took a high profile position within the ATS over the question of environmental protection (to the extent that some considered that Australian actions challenged the fundamentals of the ATS), reviewed and extended its Antarctic science program,³ and the government reviewed its goals for this program. The longstanding and bipartisan domestic political support for Australia's involvement within the ATS, together with commitments to maintaining the AAT, are critical underpinnings of Australian policy.

Australia's Antarctic agenda reflects a balance between a commitment to its claim to sovereignty and its engagement with the ATS. In pursuing this agenda, Australia necessarily will face challenges: maintaining a commitment to environmental protection in the Southern Ocean and, perhaps, to a lesser extent terrestrial Antarctica in the face of pressures for resource exploitation; maintaining its claim to the Australian Antarctic territory against future challenges to the legitimacy of this claim; and addressing the impacts of climate change and recognising the importance of Antarctica in the global climate system. While many of these challenges are longstanding, they are likely to increase in salience in the next few decades. Australia's response to these challenges will determine its future agenda in Antarctica. The key to Australia's response centres on its relationship with the ATS. The article notes that Australia has been active in both maintaining its national interests and working within the ATS, taking the lead in issue areas such as environmental protection and marine resource management, yet recognising the particular complexities of its Antarctic interests in relation to its maritime claims under the LOSC.

Australian Antarctic policy interests: antecedents

As noted, Australia claims 42 per cent of the Antarctic continent, making the AAT an important 'external territory'. Australia also claims sovereignty over the sub-Antarctic Territory of Heard and Macdonald Islands, and Macquarie Island—jurisdictionally part of the state of Tasmania. Australia's interest in Antarctica pre-dates Federation, with early British and French voyages south departing from Hobart (Kriwoken and Williamson 1993). It was from Hobart that Roald Amundsen telegraphed the news that he and his companions had been first to the South Pole in December 1911. It is the work of Australian scientists (Louis Bernacchi, Tannant Edgeworth David, Griffith Taylor and, most famously, Mawson) on a number of expeditions during the period 1890 to 1914—the so called 'heroic era' of Antarctic exploration—that has helped reinforce Australia's interests in, and later territorial claims to, Antarctica. Mawson's contribution stands as *primus inter pares* in terms of its influence on Australian interests in the Antarctic (see, among others, Haward 2006).

The administration of what became the AAT was transferred to Australia from Great Britain in 1933, following a claim made to the territory for Britain and King George V by Mawson, as part of the British, Australian and New Zealand Antarctic Research Expeditions (BANZARE) in 1929–31. Mawson raised the Union Jack on Proclamation Island on 13 January 1930, 'to assert the sovereign rights of His Majesty over British land discoveries met within Antarctica' and then repeated this proclamation from the cockpit of a Tiger Moth plane that was flown along the coastline, dropping a Union Jack onto the ice on 25 January 1930 (Bowden 1997: 1; see also Chester 1986).

Domestic policy interests

Antarctica provides powerful and evocative images. Australia's claim to the AAT, based on heroic era exploration and science, has been supported by significant bipartisan political commitment for over 70 years. Ministers with responsibility for Australian Antarctic policy have played significant roles; from Richard Casey in his support for the development of Australian National Antarctic Research Expeditions (ANARE) and the establishment of a continental presence, Prime Minister Robert Menzies's support at the first Antarctic Treaty Consultative Meeting (ATCM) in Canberra 1961, through to strong support from Prime Minister Bob Hawke and senior ministers in the proposal not to sign the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) (Woolcott 2003). More recently Australian Environment Ministers⁴ including Senator Robert Hill have maintained high-level interest in and support for Australian Antarctic interests. Hill made two visits to Antarctica in 1996 and 2001. The current Minister for Environment and Heritage, Senator Ian Campbell, has continued to focus on the problems of Illegal, Unreported and Unregulated (IUU) fishing in the Southern Ocean at

CCAMLR meetings (Campbell and Macdonald 2005), and has taken a high profile position over Australia's continued opposition to commercial whaling (Campbell 2005).⁵

As this political commitment has remained, the key interests that drive that commitment have also remained relatively stable, albeit developing and evolving. In an important survey in 1984, John Brook noted that Australia's policy interests included 'sovereignty', 'neutrality', 'protection of the Antarctic environment', 'Antarctic science', 'involvement in Antarctica' and 'benefit' (Brook 1984: 256–9). Following a review of the Australian Antarctic program in 1997 (ASAC 1997), current Australian government goals for the Australian Antarctic program are to:

- maintain the ATS and enhance Australia's influence within the system;
- protect the Antarctic environment;
- understand the role of Antarctica in the global climate system; and
- undertake scientific work of practical, economic and national significance (AAD 2000: 6).

These goals encapsulate Australia's Antarctic agenda, yet understandably do not address a number of emergent issues or cross-cutting factors that may affect the operation of the ATS and/or Australia's influence within this system.

In the 20 years since Brook's analysis, certain interests have increased in salience—for example commitment to environmental protection has increased in importance reflected by and given expression in the negotiation and entry into force of the Madrid Protocol and the development of procedures for environmental impact assessment. The question of 'benefit' from Antarctica was, for Brook, 'immediately qualified, because Australia has an interest also in the protection of Antarctica from unjustifiable or damaging exploitation' (Brook 1984: 259),⁶ but it is important to note the emphasis on 'scientific work of practical, economic and national significance' as the current fourth goal for the Australian Antarctic program. Whilst Australian domestic policy regarding Antarctica is therefore somewhat constrained by the limitations imposed upon Australia's territorial claim as a result of the ATS and its policy of ensuring the conservation and protection of the continent, there nevertheless remains a strong undercurrent of the promotion of Australian national interest in Antarctic affairs. Brook's categories provide a useful framework through which Australia's Antarctic agenda can be identified and examined, drawing from the past through the present to identify future challenges.

Sovereignty

Sovereignty also remains a significant, if understated interest. The question of territorial claims and sovereignty was the critical element of what was termed the 'Antarctic problem' in the 1940s. States like Australia that had territorial

claims⁷ wished to maintain the status of their claims. This position was opposed by the US and the Soviet Union that did not recognise any claim but had reserved their rights in the region. This 'wait-and-see' approach of the two superpowers was evident in the strategic nature of their scientific research activities on the continent. The Soviet Union established research stations in each of the claimant's territory (including the AAT) during the International Geophysical Year in 1957–58, whilst the US established Amundsen–Scott station at the south geographic pole, effectively within all but Norway's territorial claims (Norway does not define either the southern or northern limits of its claim).

These differences over the status of territorial claims and sovereignty in Antarctica were resolved during the negotiation of the Antarctic Treaty. The Chilean initiative provided a *modus vivendi* to resolve the differences between claimants and others—with Article IV effectively 'freezing' existing and any further territorial claims, while allowing states to recognise claims. Australia played an important brokerage role in the development of the Antarctic Treaty.

More recently the intersection of the LOSC and the ATS has helped focus attention on sovereignty (Kaye and Rothwell 2002). The declaration of maritime zones off the AAT has been controversial,⁸ but resolved by not enforcing territorial sea or exclusive economic zone rights. The question of delimitation of the AAT continental shelf posed important political and legal challenges to Australia, but also a dilemma in relation to its interests. Australia had included the continental shelf of the AAT in its 1953 declaration of an Australian continental shelf, a move that pre-dated the negotiation and entry into force of the Antarctic Treaty. Failure to include the AAT in survey work and data collection for the extended continental shelf would have indicated Australia's weakening of its claims to sovereignty over the AAT (see Baird 2004; Serdy 2005). The solution to this dilemma was relatively simple: Australia lodged data for its claims to an extended continental shelf and requested that the Commission on the Limits of the Continental Shelf not examine the data associated with the AAT (DFAT 2004; Jabour 2006). The delimitation of the Antarctic continental shelf utilised a range of provisions available to Australia under Article 76 of the LOSC, including the 'sediment thickness formula', and as a result has provided significant scientific data for further research.⁹

Antarctic science

Science has been a major driver of the Australian Antarctic agenda (Herr and Hall 1989). Australia's science program facilitated through ANARE was initiated in 1947. The development of ANARE corresponded with the establishment of research stations on Heard and Macquarie Islands and the construction of research stations for 'wintering over' programs established on the Antarctic continent within the AAT at Mawson Station in 1954. Australia has three

permanently staffed stations on the continent: Casey, Mawson and Davis and a station on sub-Antarctic Macquarie Island. The permanently staffed stations are supported by a number of summer bases and field camps established for specific research and environmental monitoring purposes (AAD 2000).

From an initial focus on activities on the sub-Antarctic Islands in 1947, ANARE expanded to include activities on the Antarctic continent and the Southern Ocean from the 1950s. Australia's Antarctic program includes contributions from the Australian Antarctic Division (AAD) and other government agencies including the Bureau of Meteorology, GeoScience Australia and the Commonwealth Scientific and Industrial Research Organisation (CSIRO) (AAD 2000: 5), staff and programs in Australian universities, and the Antarctic Climate and Ecosystems Cooperative Research Centre based at the University of Tasmania.

Australia's Antarctic science program broadened through the 1980s and 1990s to include major programs in Antarctic marine living resources, atmospheric sciences, biology, geosciences, glaciology, human impacts, oceanography, human biology and medicine, cosmic ray physics and astronomy (AAD 2000). The Australian government's Antarctic Science Advisory Committee (ASAC) commissioned an external evaluation of the Antarctic science program in 2002–03. This led to the release of a five-year science program (2004–05 to 2008–09) that refocused scientific research into four multi-disciplinary programs: ice, oceans and climate; Southern Ocean ecosystems; adaptation to environmental change; and impact of human activity in Antarctica (ASAC 2004).

The International Polar Year (IPY) 2007–08 will again provide a significant impetus to Antarctic science. In addition to terrestrial Antarctic programs Australia is committing to a major marine science research program, the Census of Antarctic Marine Life (CAML).¹⁰ CAML will involve major research cruises during the IPY and involves Australian scientists collaborating with a number of other countries.

Involvement in the Antarctic Treaty System

Whilst Australia's claim to the AAT was finalised in 1933 with adoption of the Australian Antarctic Territory Acceptance Act 1933 (Cth), the status and legitimacy of that claim remained untested into the early years of the Cold War. The dispute in the 1950s over claims to the Antarctic Peninsula between Argentina, Chile and the United Kingdom plus the ongoing interest of the US and USSR in Antarctica meant that for Australia, whilst it maintained the largest claim to the continent, it was by no means secure. Australia was therefore a strong supporter of efforts in the late 1950s to develop a diplomatic solution to the sovereignty issue whilst permitting ongoing scientific research activity. The resulting Antarctic Treaty was a significant diplomatic effort balancing the aspirations and interests of a number of different actors. Formal

negotiations in Washington lasted 18 months from June 1958 and included 60 preparatory meetings and a formal diplomatic 'Conference on Antarctica' that began on 15 October 1959 and ended with the Antarctic Treaty open for signature on 1 December 1959. Australian diplomats had considerable involvement in the drafting of the Treaty, with the Minister for External Affairs, Casey, maintaining an active interest in Antarctic matters. While Casey's direct involvement in the treaty negotiations in Washington was limited he was, nonetheless, instrumental in helping to forge relations with the delegates from the Soviet Union that were critical in ensuring the USSR's support for the Antarctic Treaty (see Hall 2001).

The first meeting of Antarctic Treaty Parties (the first ATCM) was held in Canberra in Parliament House from 10–14 July 1961. Addressing the first ATCM, Menzies noted the intense negotiations that had accompanied the drafting of the Antarctic Treaty and commented on the way in which the parties had accommodated different views and interests within this instrument for the pursuit of peaceful scientific exploration.

Australia also took a central role in the development of CCAMLR in the 1970s and 1980s, hosting the final conference of parties, becoming depositary state for the Convention, and providing significant support to the Commission secretariat. The negotiations of the CCAMLR pioneered innovative approaches to marine resource management, introducing an ecosystem-based approach to managing these resources, an approach that has since been incorporated more widely into other international instruments and management organisations. The annual meeting of the CCAMLR Commission in Hobart has not only helped raise the profile of Antarctic fisheries issues within Australia but also given Australia a unique capacity to influence the CCAMLR regime due to its ease of access to the Commission and its capacity to send large delegations to the meetings.

Australia's active diplomatic engagement in and promotion of the ATS continues in numerous other ways. Recently a significant element of this engagement has been the support given to Argentina in establishing the Treaty Secretariat. Australia has also worked closely with some states outside of the ATS and encouraged them to play an active role in the system. These initiatives have been particularly prominent in the case of work with Malaysia between 2002 and 2005 to facilitate increased interaction between it and the ATS, and ATCPs. The latter initiative indicates how such interests can evolve, as it was Australia that led the debate against Malaysia in the United Nations on the question of Antarctica in 1983 (Tepper and Haward 2005; Woolcott 2003). In 2003–08 Australia also holds the Chair of the Committee on Environment Protection (CEP) established under the Madrid Protocol which has provided a capacity to influence the development of the Antarctic environmental debate and in particular the implementation of key provisions under the Protocol dealing with environmental impact.

Protection of the Antarctic environment

Despite Australia's commitment to the Antarctic Treaty and the ATS it was also a central player in the most significant challenge to fundamentals of this system. Australia's decision not to ratify CRAMRA in 1989 was a significant action. Australia's concerns over CRAMRA, supported by France, were pivotal in leading to effectively scuttling the 'Minerals Convention' and initiating negotiations that led to the development of the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol). The Australian government's opposition to CRAMRA centred on the problem of environmental protection, safeguarding Australia's territorial claim and concerns over the subsidisation of mineral exploration and extraction (Bergin 1991). This Protocol was adopted on 4 October 1991 and its text and four annexes entered into force on 14 January 1998, with the fifth annex that had a separate ratification process not entering force until 24 May 2002. The Protocol included a commitment to develop one or more annexes to address liability for environmental damage. Australia participated in protracted negotiations over liability that concluded at ATCM XXVIII held in Stockholm in June 2005. ATCM XXVIII saw agreement on Annex VI of the Madrid Protocol.

International policy interests

The pursuit of Australia's interests in the ATS depends on an ability to negotiate positions in the following forums of the treaty system, as well as the working groups and committees of these forums: ATCM; Scientific Committee on Antarctic Research (SCAR); CEP; CCAMLR; Standing Committee on Antarctic Logistics and Operations (SCALOP); and the Council of Managers of National Antarctic Programs (COMNAP). To that end, the pivotal positions that Australia has been able to occupy from time to time in bodies such as CEP and COMNAP have given to it a unique capacity to contribute to the policy development at the international level. Australia's position within the ATS is buttressed and reinforced by decades of diplomatic and scientific effort over the Antarctic. Australia's scientific program is based on over half a century of organised scientific endeavour on the sub-Antarctic islands, the Antarctic continent and the waters of the Southern Ocean (Haward 2006; AAD 2000) and this gives Australia a particular standing when contributing to international science policy in Antarctica.

Australian Antarctic policy: challenges

Australia faces some important challenges in its future interaction within the ATS. The Antarctic Treaty and its associated instruments and arrangements have been developed to provide a management regime south of Latitude 60° South (the Antarctic Treaty Area), based on consensus and collaboration.

Throughout the life of the ATS that consensus has been tested from time to time, especially during the 1980s and early 1990 when a significant debate took place within the system as to whether mining should be permitted in Antarctica or whether in the alternative a comprehensive environmental protection regime should be developed. That debate was eventually resolved after a significant diplomatic 'about-turn' by Australia and France in 1989 who abandoned CRAMRA and instead opted for a new environmental regime. This initiative eventually resulted in the adoption of the Madrid Protocol. A key aspect of the Protocol is the moratorium it places upon mineral resource activities in Antarctica. The effect of this decision is that all Antarctic mineral resources are 'locked-up' until 2048 after which there is the potential for renegotiation of the moratorium. With Antarctica and the Southern Ocean known to possess oil and gas reserves in addition to other valuable mineral resources, there is bound to be inevitable pressure for the moratorium to be reviewed and possibly relaxed. This will inevitably pose significant challenges for those treaty parties striving to maintain the integrity of Antarctica's pristine environment that has been a dominant force in Australian Antarctic policy.

Another challenge arises from Antarctica's maritime dimension in the adjacent Southern Ocean. The principal international instrument governing the law of the sea is LOSC, negotiated between 1974 and 1982 under the auspices of the United Nations, and entering into force in 1994. This convention provides a number of rights for coastal states and establishes a regime of maritime zones. Whilst LOSC does not directly address Antarctica, it does cover the maritime areas within the Treaty Area.

Antarctica was specifically excluded from discussion at the third United Nations Conference on the Law of the Sea (UNCLOS III) but the nexus between the two regimes is likely to be a significant driver in the future. A clash in the applicable international law regimes arises through the differential approach to Southern Ocean maritime claims under the Antarctic Treaty. Maritime claims in the Antarctic Treaty Area are subject to the Treaty's Article IV limitation on the assertion of new claims. The sub-Antarctic islands—under national jurisdiction and outside the Treaty Area are not subject to Article IV of the Antarctic Treaty—can legitimately generate exclusive economic zones (EEZs) and continental shelves (Vigni 2001). Heard Island, for example, due to its distinctive seabed geomorphology, generates a significant large area that can be delimited as 'legal continental shelf' under Article 76 of the LOSC.

The relation of LOSC to the Antarctic Treaty remains an important and unresolved issue area. The unresolved issues centre on the extent to which claimant states can claim rights as 'coastal states' or even whether coastal states exist in Antarctica, given the particular status of Antarctic claims under the Antarctic Treaty. This links also to the critical issue of whether an EEZ and/or continental shelf can be claimed, with a number of treaty parties interpreting treaty provisions to preclude the declaration of maritime zones offshore Antarctica. In addition to the fundamental questions raised by these states

over the status of territorial claims in Antarctica they also highlight the difficulties in the delimitation of territorial sea baselines in Antarctica under the provisions of LOSC (Green 1996, 2001; Rothwell 2001).

Australia has resolved this dilemma in a pragmatic manner. It has declared an EEZ but applies Australian law only to Australian citizens and chooses not to apply its law to other states. This position has been challenged by non-governmental organisations (NGOs) over Japanese scientific research involving the lethal take of whales that occurs within the waters off the AAT. In 2004 Humane Society International (HSI) took action in the Federal Court of Australia against Japanese whalers arguing that their action breached provisions of Australia's Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act).¹¹ This case resulted in the unusual step of the Court inviting the Federal Attorney-General to intervene in the proceedings in order to provide a clear view of the Commonwealth government's position regarding the enforcement of Australian law in Antarctica against foreign nationals. Ultimately, this proved to be a pivotal ground upon which the Court declined to exercise its jurisdiction to decide the case on its merits (Mossop 2005). While the HSI litigation failed to halt Japanese 'scientific whaling', Southern Ocean lethal research on whales will continue to provide a challenge for Australia, given Japan's announced intention to double its take of minke whales and expand the scientific program to include fin and humpback whales. It will also continue to pose a challenge within the ATS despite this activity being specifically excluded from CCAMLR's responsibilities, and lethal scientific research being permitted under the ICRW rules.

Management of human impacts will continue to be a challenge for all treaty parties, including Australia. Antarctic tourism is expanding, with increased visitor numbers impacting on a small number of sites (mostly in the Antarctic Peninsula, south of South America). Antarctic tourism is regulated under the ATS, but also relies heavily on national controls by treaty parties and self-management by tour operators through the International Association of Antarctica Tour Operators (IAATO). Antarctic tourism operations are segmented; ship-borne visits are the major component, with smaller numbers of airborne tourists landing on the continent. While there are limited ship-borne tourist operations landing tourists within the AAT, the sub-Antarctic Macquarie Island is a stopping-off point for such cruises, with limits on landings and numbers of people (Kriwoken, Ellis and Holmes 2006).¹² Increasing interest in 'adventure tourism' and small expedition-style activities have led to concerns from treaty parties related to search and rescue, and repatriation of individuals following accidents. The treaty parties, with Australia an active player, have moved to address these lacunae, through intersessional contact group discussions, a meeting of experts sponsored by Norway, and discussion at ATCMs XXVII in 2004 and XXVIII in 2005. Australia has a close relationship with Australian-based tourism operators, which are required to submit environmental evaluations for their activities. It has also played an active and important

facilitating role in helping to design site-specific guidelines for Antarctic Peninsula visitation and has tabled an innovative approach to operator accreditation, which the parties and IAATO are working with. Australia is represented at IAATO annual meetings and the Tasmanian government is an associate member of IAATO, maintaining a close interest in east Antarctic tourism matters.

The ATS, through CCAMLR, is continuing to address the problem of IUU fishing in the Southern Ocean. Australia has been vigorous in pursuing this agenda item, and has been active since the late 1990s in drawing attention to the problems caused by inadequate controls over high seas fishing in a variety of international forums. Australia faces specific challenges in combating IUU fishing around the Australian EEZ off the external territory of Heard and Macdonald Islands and to a lesser extent off Macquarie Island.

While LOSC provides the cornerstone of the high seas regime, other 'hard law' instruments, chiefly the UN Fish Stocks Agreement (UNFSA, entered into force 11 December 2001)¹³ (Hayashi 1999) and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement) have been developed to fill lacunae identified in the provisions of LOSC, particularly in relation to IUU fishing. In parallel, and nested within these instruments, are voluntary, hortatory, instruments such as the UN Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries (1995). The Code of Conduct provides opportunities for the development of subsidiary specialist instruments—International Plans of Action—that are key elements of an emerging regime governing high seas fisheries. The development of the International Plan of Action to Prevent, Deter and Eliminate IUU (IPOA–IUU) fishing builds upon, and reinforces, these other instruments—both 'hard' and 'soft' law—that together can be seen to be creating a new regime for high seas fisheries (de Fontaubert 2001; see also Joyner 2000). Australia initiated discussion of IUU fishing at the FAO, building on the concerns raised in CCAMLR meetings, and hosted the technical consultation that led in turn to the drafting of the IPOA–IUU. The IPOA–IUU provides a set of tools (Edeson 2000) including refocusing on the roles and functions of regional fisheries management organisations and an emphasis on cooperation between states to provide an important toolbox (FAO 2002) to address IUU fishing. The embedding of these tools and organisations within key instruments provides, *inter alia*, the basis for their operations against IUU fishing (see Haward 2004).

The Commission for the Conservation of Antarctic Marine Living Resources (the Commission) has worked hard to address the significant management challenges posed by IUU fishing within the CCAMLR area. Following extensive discussion the Commission established an innovative Catch Documentation Scheme (CDS) at CCAMLR XVIII in November 1999 to attempt to reduce the level of IUU catch of toothfish. The CDS is a CCAMLR Conservation Measure—binding on all parties—that entered force on 7 May 2000.¹⁴ The

CDS was first raised at the 1997 meeting of CCAMLR, where the Australian delegation urged the Commission to adopt a set of measures to curb the high levels of IUU fishing. In 1998 Australia and the US submitted draft conservation measures to establish a catch certification system for toothfish. Neither of these proposals gained the necessary consensus at CCAMLR XVII, but the meeting did recognise the need to continue to develop a certification scheme that was compliant with World Trade Organization rules. In April 1999 an intersessional CCAMLR meeting was held in Brussels¹⁵ and attended by most parties. A further meeting between the European Union (EU), Australia and US officials in Washington in September 1999 provided the basis of a draft measure tabled at CCAMLR XVIII. This draft measure, co-sponsored by Australia, the EU and the US, was the basis of detailed discussion that led to the introduction of the CDS.

In addition to the ATS instruments, there are a number of other environmental instruments that can intersect with the ATS and apply to Antarctica and the Southern Ocean. These instruments include the Convention on Migratory Species of Wild Animals (CMS or the Bonn Convention), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention). The World Heritage Convention has been utilised by Australia to secure World Heritage listing for the sub-Antarctic Macquarie Island, and the Heard and Macdonald Islands. CMS has been used to address issues related to the impacts of incidental catch of seabirds, regarded as a major conservation problem within the CCAMLR and Antarctic Treaty Areas. Australia played a major role in publicising the problem of incidental catch of seabirds within CCAMLR and in other forums, and took the lead in negotiating the Agreement on the Conservation of Albatrosses and Petrels (ACAP) under the CMS.

Australia's attempts to use CITES as part of measures against IUU fishing in the CCAMLR area met with significant resistance. CITES regulates international trade in species that are threatened with extinction or may become so as a result of international trade driven by commercial demand (Kimball 2001: 33). Article II of CITES provides for the inclusion in Appendix I of species threatened with extinction that are or may be affected by trade. Listing on Appendix I prohibits international trade in wild specimens but does not prohibit the harvest or domestic sale of fish caught by recreational or commercial fishers within a state's EEZ. It further provides for the inclusion in Appendix II of species that are not necessarily threatened but may become so unless trade is strictly controlled. Australia proposed listing of toothfish on CITES Appendix II at the 12th Conference of Parties (COP 12) held in Santiago, Chile in November 2002. This listing was seen by Australia as strengthening CCAMLR's CDS and trade monitoring arrangements and helping to close loopholes related to claims of 'out of area' catches and IUU fishing. NGOs supported this initiative, drawing attention to CITES broad reach—with 160 States Parties as opposed to the CCAMLR Commission's 24 members. The Antarctic and Southern Oceans

Coalition argued that while CITES could designate the Commission as the management and/or scientific authority, the Commission will remain 'the appropriate body for management of toothfish' (ASOC 2002). Australia attracted broad opposition to this proposal at CCAMLR XXI, with only New Zealand supporting the proposal (*Mercury*, 30 October 2002), indicating the difficulties in achieving such a listing. Opposition to the Australian proposal centred on objections that CITES is not a fishery management convention, and the CCAMLR Commission and the FAO remain the most appropriate organisations to manage toothfish in the first instance and coordinate efforts against IUU fishing in the second.

While the Madrid Protocol provides a comprehensive regime to regulate the Antarctic environment, a number of challenges still remain. These challenges centre on emergent issues such as Antarctic biological prospecting (bioprospecting). The issue of bioprospecting activities and related outcomes is relatively new to the Antarctic Treaty Consultative Parties. Although bioprospecting has been occurring from the 1980s, it was not until 1999 that SCAR addressed this issue. While the ATCMs have received information and working papers on this topic, there has yet to be any decision within the ATS on regulating biological prospecting (Jabour-Green and Nicol 2003).

Conclusion

Australia has played a significant part in the development and evolution of the ATS. Australian contributions at key stages have been pivotal in the development of the instruments and arrangements that make up this system. Australia played a major role at a critical time in the negotiation of the Antarctic Treaty. Twenty years later Australia was involved in the establishment of the CCAMLR and offered to host the first dedicated institution created under the ATS framework. Likewise, Australia played a pivotal role in the ATS abandoning Antarctic mining and instead adopting the Madrid Protocol and its framework for comprehensive environmental protection. Australia, too, took a lead role in the United Nations General Assembly debates on 'the question of Antarctica' in the 1980s. Through these actions Australia has not only been a strong supporter of the ATS but a very active promoter and defender of the regime. Yet, influence within the ATS is more than 'diplomatic clout' as measured through successes in establishment and maintenance of international instruments. Australia's longstanding commitment to Antarctic science is a further arena of influence, and one that complements its dedication to leadership.

Australian policy and practice towards Antarctica maintains a longstanding domestic bipartisan political commitment, a commitment that is embodied in the first goal of the Australian Antarctic program—to maintain the ATS and enhance Australia's influence within this system. Despite this longstanding commitment, however, there are a number of challenges facing Australia as it

develops its Antarctic agenda. The first is the effective implementation, management and enforcement of the Antarctic environmental protection regime. In many respects the environmental focus of the ATS has become the prime international justification for the Antarctic regime and is regularly held up as a model for the international community to emulate. However, that regime is increasingly under threat from a number of sources. External threats are being posed by illegal fishing within the CCAMLR area. Whilst this is not an extraordinary issue for any contemporary regional management fishery organisation, what it has thrown up in sharp relief in the vast Southern Ocean is the considerable challenge in implementing and enforcing both national fishing laws and CCAMLR provisions against illegal fishers. Related to this has been Japan's continued snubbing of Australia's anti-whaling legislation and the recent acceptance by the Australian government that it has a very limited capacity to enforce Australian law against foreign nationals such as the Japanese whalers. Whilst ensuring greater global participation and respect for the ATS is one way to counter these issues, it does not get around the fundamental limitations that Australia faces in enforcing its environmental protection laws against foreign nationals in Antarctica.

The second challenge arises from climate change. Antarctica is providing important data on climate change, and Australia's scientific effort has a major focus on increasing understanding of the role of Antarctica in the global climate system. Australian scientists are drawing on their work in Antarctica and the Southern Ocean in contributions to the Intergovernmental Panel of Climate Change Fourth Assessment Report to be completed in 2007.¹⁶ The Antarctic and Southern Ocean also face direct effects of global climate change, with potential impacts on sea-ice and marine ecosystems, as well as on terrestrial Antarctica. Australia faces a particular challenge in responding to the global greenhouse challenge with one of its territories at the frontline. While Australia is a party to the United Nations Framework Convention on Climate Change it has not ratified the Kyoto Protocol. Australian research from Antarctica and the Southern Ocean will, however, be important in ongoing negotiations on responses to climate change that include the Asia-Pacific Partnership on Clean Development and Climate.¹⁷

Finally, Australia must face up to perhaps the biggest challenge in its Antarctic agenda—the maintenance of the legitimacy of its sovereignty claim in parallel with ongoing comprehensive environmental protection. Australia has in a quiet but equally robust manner sought to solidify the legal bases for its Antarctic claim in order to shore up that claim from any future challenge. As the world's fossil fuels diminish, and technology for mining in polar regions improves, pressure may grow for exploitation of Antarctica's mineral resources. Whilst for the time being exploitation of these resources is prohibited under the Madrid Protocol, Australia needs to take into account two factors. One is that the Protocol only binds a small number of states in the international community. The other is that the Protocol's mining moratorium is capable of

review after 50 years. Australia needs to tackle these realities as it develops a long-term policy framework for these Antarctic challenges.

Notes

1. This article is part of a research project coordinated by the Policy Program, Antarctic Climate and Ecosystems Cooperative Research Centre (ACE CRC), University of Tasmania, and the Sydney Centre for International and Global Law, Faculty of Law, University of Sydney. The authors thank colleagues for comments during project workshops and in the preparation of this paper. The authors also acknowledge the support of the ACE CRC funded through the Australian government's Cooperative Research Centres Program.
2. The others are the Commission for the Conservation of Southern Bluefin Tuna, Canberra and the Secretariat for the Agreement for the Conservation of Albatrosses and Petrels, Hobart.
3. Including rebuilding and refurbishment of continental stations, the building and commissioning of the research and supply vessel *Aurora Australis*, and most recently work on an Australia–Antarctica airlink.
4. The Australian Antarctic Division is part of the Department of Environment and Heritage.
5. This raises interesting issues in relation to Australia's other Antarctic and Southern Ocean interests.
6. This is an interesting comment, and anticipates Australian action in 1988–89 that saw it refuse to sign the completed CRAMRA, an action that led directly to the negotiation of the Madrid Protocol.
7. The Antarctic 'claimant states' are Australia, France, New Zealand, Chile, Argentina, United Kingdom and Norway. Prior to the negotiation of the Antarctic Treaty in 1958–59, New Zealand did indicate it favoured internationalisation of the Antarctic, a position at odds with that of Australia.
8. On 1 November 1979 Australia proclaimed a 200 mile Australian Fishing Zone including the waters of the external territories such as the AAT, but 'one month later a new proclamation was made exempting the waters around the AAT' (Kaye 1995: 191).
9. Sediment cores drilled off the AAT as part of the program are providing important data on the paleo-climate record used in climate reconstructions as part of Australian research on global climate change.
10. Information on CAML can be found on its official website, <www.caml.aq>.
11. *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* FCA 664 (27 May 2005), <www.austlii.edu.au/au/cases/cth/federal_ct/2005/664.html>.
12. Tourist flights from Australia to Antarctica are popular, with an Australian travel company chartering a Boeing 747 400 to overfly the AAT in the summer season. The numbers of these types of tourists are counted in annual IAATO statistics on tourism and the popularity of such flights reinforces the public interest in Antarctica.
13. Agreement for the Implementation of Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
14. Conservation Measures enter into force six months after the conclusion of the Commission meeting, see CCAMLR Article IX 6 (b).
15. At this meeting draft proposals concerning catch documentation were tabled by the US and European Union.
16. See <www.ipcc.ch/activity/act.htm>.
17. See <www.dfat.gov.au/environment/climate/ap6/>.

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Glossary

AAD	Australian Antarctic Division
AAT	Australian Antarctic Territory
ACAP	Agreement on the Conservation of Albatrosses and Petrels
ANARE	Australian National Antarctic Research Expeditions
ASAC	Antarctic Science Advisory Committee
ATCM	Antarctic Treaty Consultative Meeting
ATCP	Antarctic Treaty Consultative Party
ATS	Antarctic Treaty System
BANZARE	British, Australian and New Zealand Antarctic Research Expeditions
CAML	Census of Antarctic Marine Life
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CDS	Catch Documentation Scheme
CEP	Committee on Environmental Protection
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on Migratory Species of Wild Animals
COMNAP	Council of Managers of National Antarctic Programs
CRAMRA	Convention on the Regulation of Antarctic Mineral Resource Activities
CSIRO	Commonwealth Scientific and Industrial Research Organisation
EEZ	exclusive economic zone
EPBC	Environment Protection and Biodiversity Conservation Act
FAO	United Nations Food and Agriculture Organization
HSI	Humane Society International
IAATO	International Association of Antarctica Tour Operators
ICRW	International Convention for the Regulation of Whaling
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IUU	Illegal, Unreported and Unregulated
IPY	International Polar Year
LOSC	Law of the Sea Convention
MARPOL	International Convention for the Prevention of Pollution from Ships
SCAR	Scientific Committee on Antarctic Research
SCALOP	Standing Committee on Antarctic Logistics and Operations
UNCLOS III	Third United Nations Conference on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement