

IMAS



translating **nature** into **knowledge**

INSTITUTE FOR MARINE AND ANTARCTIC STUDIES

Introduction to International Antarctica

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two small islands...

Iceland



Tasmania

Google maps

Why study Antarctic law and policy?

- Antarctica is an un-owned “international” place devoted to peace and science
- It’s our common responsibility and legacy for our children
- Antarctica is vulnerable to human activities
- Government policies and laws help to regulate human uses of the region
- We must not get it wrong!











1.31.2001























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Aims and Learning Outcomes

- Fundamental understanding of
 - how international law works to help manage human activities, conserve the living resources and protect the environment of the Antarctic
 - what issues are still troublesome for Antarctic managers and how they might be addressed

Structure of the Unit

- Lectures
 - 10 x 2–3 hour lectures with a short break every ~45 minutes
- Tutorials
 - 8 x 1–2 hour workshops on a set topic
 - all students will hand in a 200 word paper the following morning
 - students will read out and discuss their work
 - 30% of overall assessment
- Exam
 - 3-hour examination, Fri 28 Oct at 1300
 - 70% of overall assessment

1 – Introduction to International Antarctica

This seminar introduces the Antarctic as an international space. Topics covered include the geographic location of the sub-Antarctic, Antarctica and the Southern Ocean. One of the distinguishing features of the Antarctic is its connection to the rest of the world by vast tracts of water. The introduction also outlines the historical context of the signing of the Antarctic Treaty, which is the basis upon which the Antarctic is considered truly “international”; the key players (48 countries in total); the way meetings are structured to promote cooperation in decision-making and the key instruments designed by them to manage activities in this area.

2 – The Antarctic Treaty System

This seminar gives an overview of the key components of each of the legal instruments, which comprise what is known as the “Antarctic Treaty System”. The System includes the Antarctic Treaty, the Convention for the Conservation of Antarctic Seals (CCAS), the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA; did not enter into force), the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol).

3 – Antarctic Sovereignty

This seminar investigates the significant difference between the Arctic and the Antarctic – that of sovereignty. Seven countries have made claims to Antarctic territory and at the adoption of the Treaty in 1959 these claimants, plus the US and the Soviet Union, agreed to “freeze” their claims during the life of the Treaty. The resulting compromise, contained in Article IV, has been the means through which the world has witnessed 50 years of cooperation, peace and science in Antarctica.

4 – Overlapping legal regimes

This seminar introduces the United Nations Law of the Sea Convention, one of the principal legal instruments outside the Antarctic Treaty System that has an impact on the Antarctic. The seminar will highlight overlaps between the ATS and the LOSC, and other legal regimes, including the potential for seabed mining in the extended continental shelf zones of Australia, which reach into the Antarctic Treaty Area south of 60° South, and the problem with whaling and a whale sanctuary.

5 – IUU fishing

One of the key impacts of the Law of the Sea Convention is ocean enclosure, which has driven fishers further and further afield as they search for uncompromised fish stocks. Illegal, unreported and unregulated (IUU) fishers have been a significant force in the Southern Ocean as well, even though it is far from home. This seminar focuses on a case study of IUU fishing and the case of the *Viarsa 1* hot pursuit in 2003 to highlight the strengths and weaknesses of the legal system

6 – The Madrid Protocol

This seminar examines the framework for environmental management established under the Madrid Protocol through a discussion of the key elements of the text and related annexes. This topic also looks at the emerging 'hot topics' related to environmental management within Antarctica. These 'hot topics' include area management, species protection and liability for environmental damage.

7 – E I A Case Study

This seminar is a case study of the EIA process for Lake Vostok deep ice core drilling. Lake Vostok is the largest of a vast number of sub-glacial Antarctic lakes (which may all be connected). It is the location of a scientific program aimed at sampling the lake water, which may have been isolated for more than one million years. The Madrid Protocol outlines the process of environmental impact assessment and this seminar uncovers the strengths and weaknesses of that process.

8 – Southern Ocean Whaling

In this session we will discuss the International Whaling Commission, the International Convention for the Regulation of Whaling and the political climate in which they operate in the Antarctic. It focuses on the Southern Ocean Whale Sanctuary, Japanese scientific research by permit, the Australian case before the International Court of Justice, and the protest action by Sea Shepherd Conservation Society against the Japanese.

9 - Antarctic Tourism

There are more tourists visiting the Antarctic than there are scientists. This seminar examines the characteristics of Antarctic tourism, including how it is managed and what the current issues are. It particularly focuses on recent initiatives from the International Maritime Organisation which has introduced a ban on the use or carriage of heavier fuel oils south of 60° South (which many Antarctic tourist vessels use) and the establishment of a mandatory Polar Code for Shipping (which will apply equally to the Arctic) in which new polar classes for ships is expected.

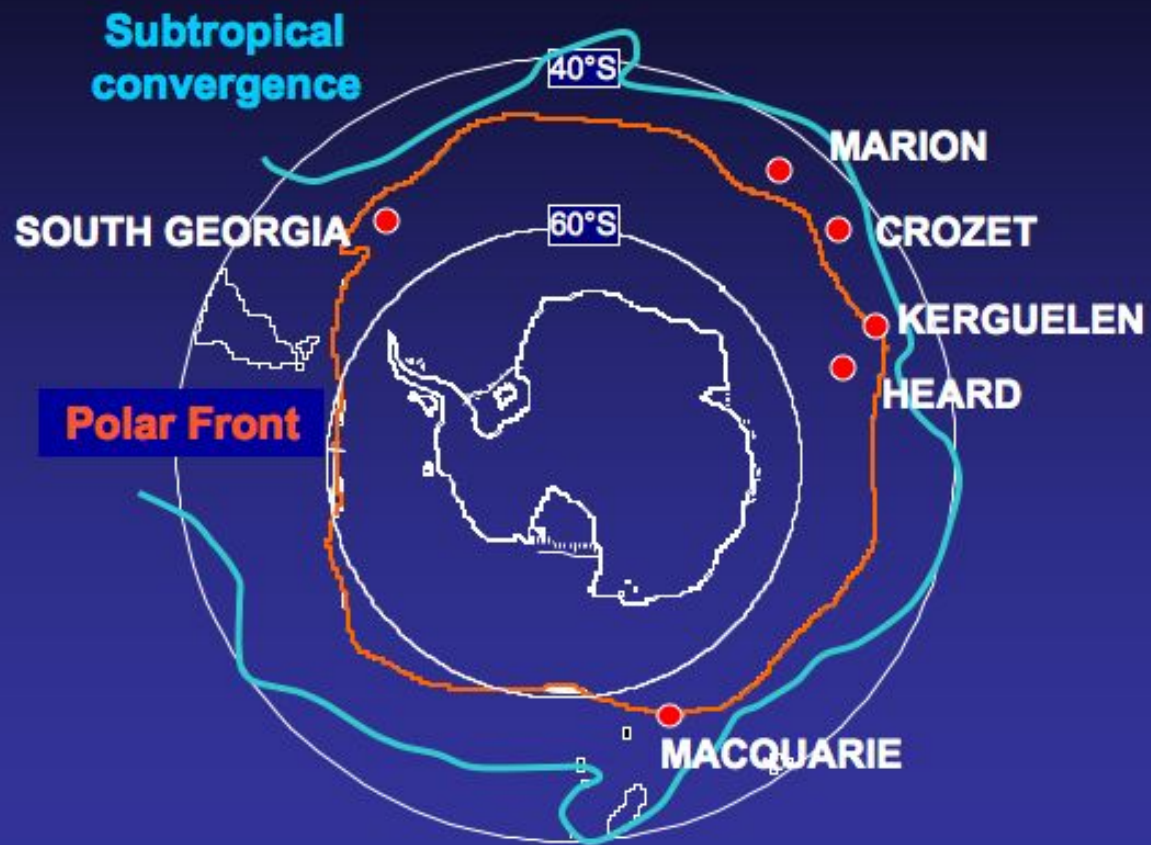
10 - The Future of the Antarctic Treaty System

The concluding seminar will summarise the Antarctic Treaty System and look towards the future. One of the main considerations for the future will be climate change, and this session will also examine what the science is indicating and what kinds of challenges the Treaty Parties may face in the future. The Antarctic Treaty System is seen as a remarkable example of international cooperation, providing the basis for the establishment of a sophisticated system of management for uses of Antarctica and the Southern Ocean. This seminar acknowledges the achievements of the ATS, its critics and their criticisms, and looks at matters that may affect the region in the future.

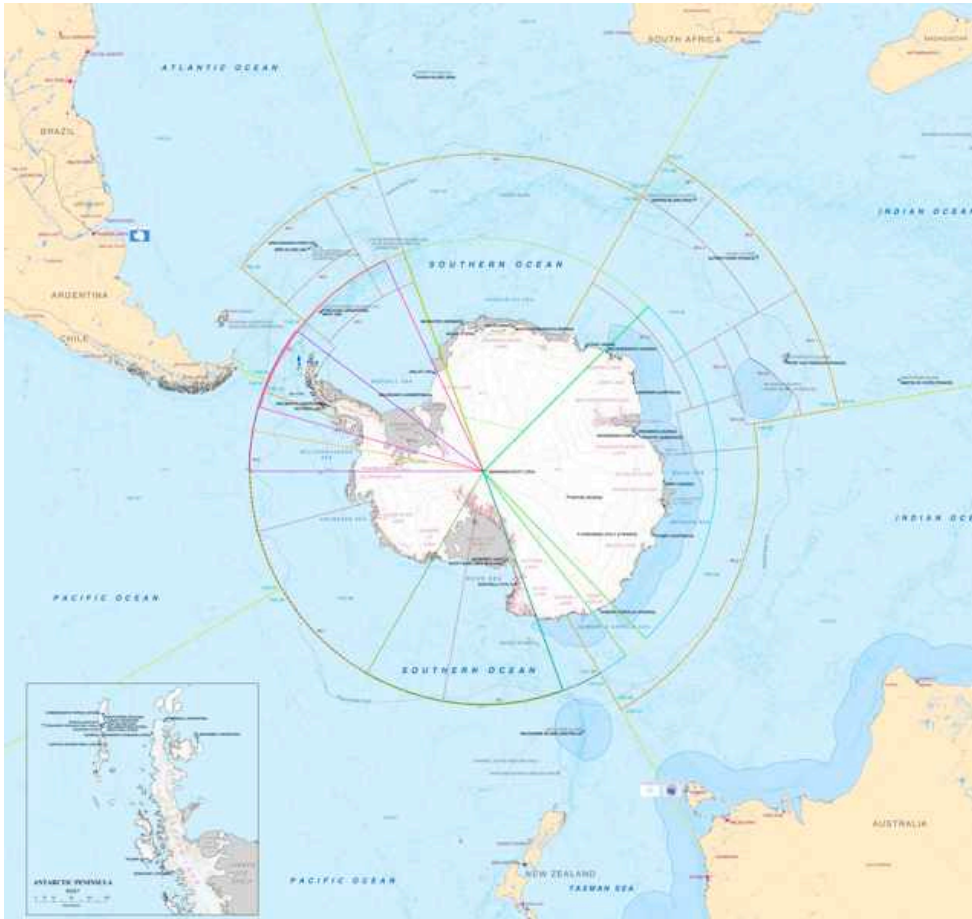
Introduction to International Antarctica

Recommended Reading

Christopher Joyner, “The Frozen Commons”,
Chapter 2 in Joyner, C (1998) Governing the
Frozen Commons: The Antarctic Regime and
Environmental Protection, Columbia:
University of South Carolina Press, pp24–53.



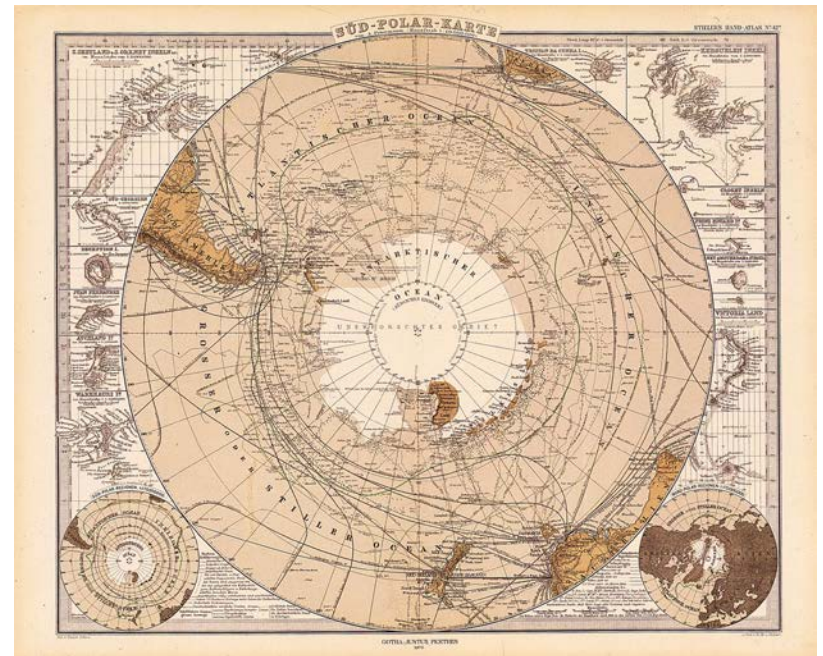
International Antarctica



- 7 claims to territory + 2 reservations
- ~10% of terrestrial surface of the planet
- Total of about 36 m sq km south of 60° South
- Some living organisms survive at absolute limit of existence
- Humans are aliens
- Uses managed by international law

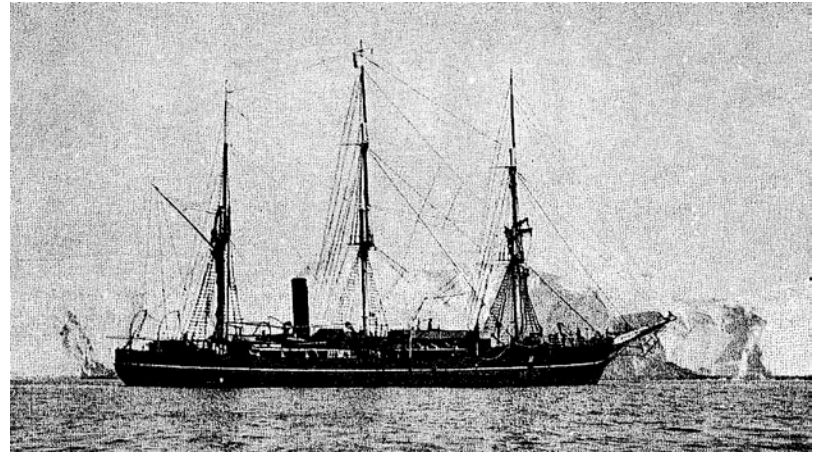
The Antarctic Revealed...

- Puzzle of *Terra Australis Incognita*
- Progressive advances in navigation, instrumentation, astronomy, shipbuilding, health, geographic mapping



Exploring the Antarctic...

- Explorers proved the existence of Antarctica by sailing there, and not falling off the edge of the world !
- Tales of epic adventure, disaster, discovery, jealousy, gross national/personal pride, competition, undisguised attempts to discredit discoveries of others



Discovery 1931

4 Phases of “knowing”

1 – Discovery and Exploration

- Heroic age (prior to WWI)
 - UK (including Aus/NZ), Norway, Soviet Union, USA, Chile, Argentina, France, Japan
 - Exploration mostly publicly funded
- Air age (between WWI & WWII to 1939)
 - USA very active (Byrd), also Germans new players
 - Exploration became government-sponsored
- Scientific age
 - Early voyages/explorers: *Challenger* (UK), *Discovery* (1925-39, 1950-51), Bellingshausen (Russia), Wilkes (USA), Dumont d'Urville (France), James Clark Ross (UK)
 - Funding often sourced from independent scientific bodies (eg. Royal Society)

2 – Marine Resources Harvesting

- Using Captain Cook's charts
 - 1784: Southern Ocean sealing commenced
- 1830: Decimation of fur and elephant seals → whales and penguins (incl. Sub-Antarctic)
 - 1870s: Sealing resumed
 - 1904: Grytviken (South Georgia) whaling station established by Norwegians/Argentineans; closed 1965
 - (Norway, Argentina, Chile, USA, UK)
- Some science/species protection incorporated into UK whaling regulations and subsequent scientific voyages partly funded by proceeds (*Discovery*, *William Scoresby*)

3 – Scientific Research

- Pursuit of scientific information prompted by curiosity
 - Unfettered marine harvesting led to recognition of value of marine ecosystem science
- 1st International Polar Year 1882-83
 - Station on South Georgia
- 2nd Polar Year 1932-33
- International Geophysical Year 1957-58
 - 12,000 scientists, 67 countries including USA and Soviet Union during Cold War and South Africa
 - Establishment of SCAR - Special (later Scientific) Committee on Antarctic Research

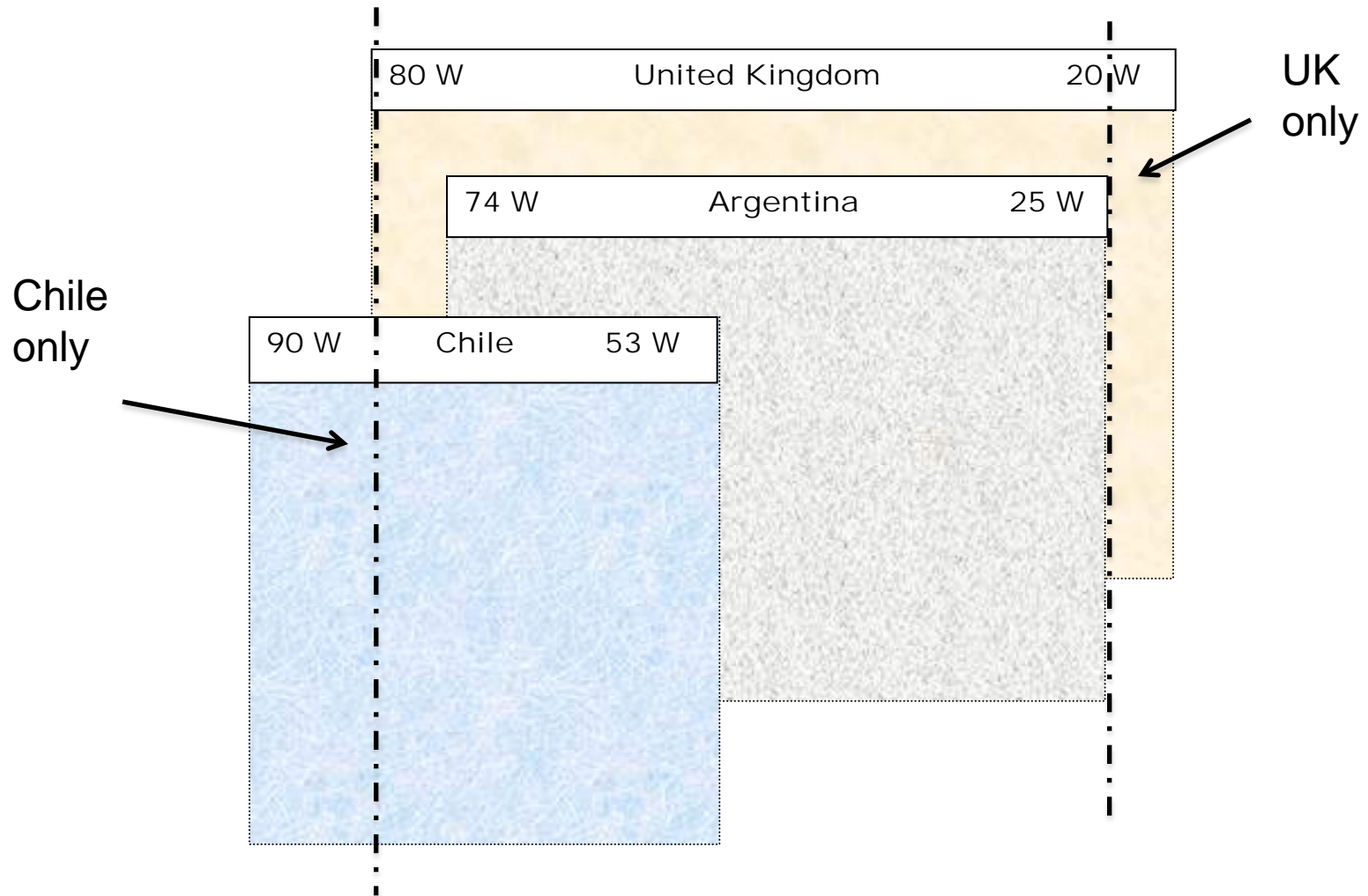
4 – Global politics

- USA/Soviet Union Cold War paranoia
 - USA (Hughes) did not recognise claims or want to make one
 - Soviets participated in IGY and stayed on
 - US military training (Operation *Highjump*)
- Security (UK's main concern)
 - UK in charge of whaling grounds \Rightarrow claimed Falkland Islands + part of continent as protection of investment
 - Security worries for UK over Drake Passage (alternative Pacific-Atlantic link to Panama Canal)
 - German vessels cruising Southern Ocean during WWII (proximity to Empire territories - Aus, NZ, South Africa, Falklands)
- Overlapping claims
 - UK, Chile, Argentina - overt rivalry, complicated by pan-American treaty of cooperation involving USA (Rio Treaty)
 - Argentina - German ally

Claims existing prior to 1959

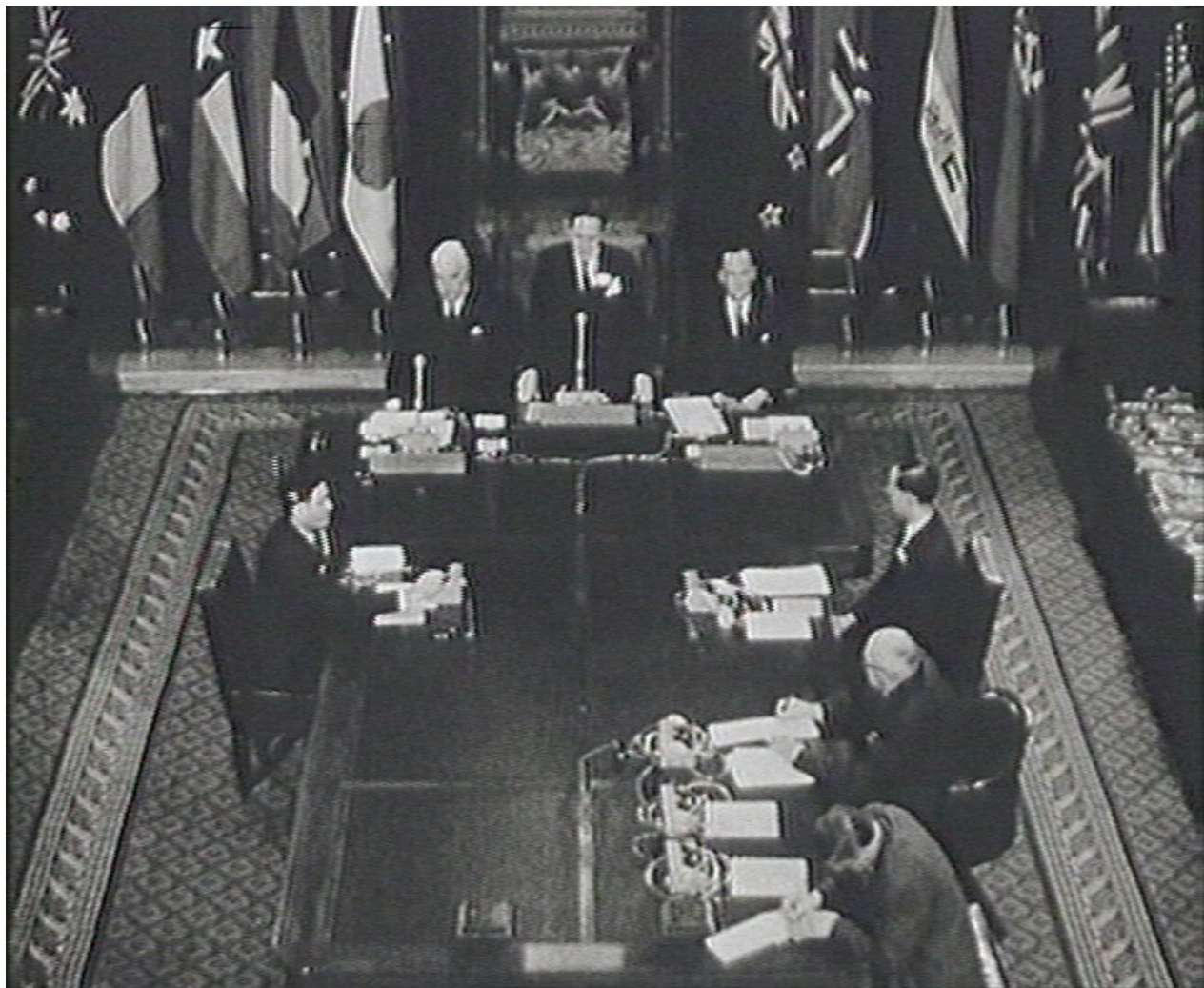
DATE	COUNTRY	COORDINATES	JUSTIFICATION
1943	Argentina	25 – 74 W, south of 60 S	Historical right, geographical proximity, geological contiguity, etc
1933	Australia	45 – 160 E (excluding 136 – 142 E) south of 60 S	Discovery and exploration, occupation
1940	Chile	53 – 90 W to South Pole	Historical right, geographical proximity, contiguity, etc
1924	France	136 – 142 E, south of 60 S	Discovery and exploration, occupation
1923	NZ	150 – 160 W, south of 60 S	Discovery and exploration, occupation
1939	Norway	20 W – 45 E, no northern/southern boundary	Exploration
1908	UK	20 – 80 W, South Orkneys, South Shetlands	Discovery, display of sovereignty

Overlapping Claims



12 states and a peace treaty

- Problems:
 - Desire to exclude Soviet Union
 - Desire to safeguard claims and maintain position of claimants
 - Non-claimant status of USA/Soviet Union
 - Anglo-Chilean-Argentinean stalemate; Rio Treaty
 - Prominence of USA in seeking the solution
- Claimants (7); USA, Soviet Union (reserving rights); Japan, South Africa & Belgium (national interest) held 60 closed diplomatic sessions in 18 months!
- USA convened meeting in Washington, October 1959, Treaty signed 01 December 1959

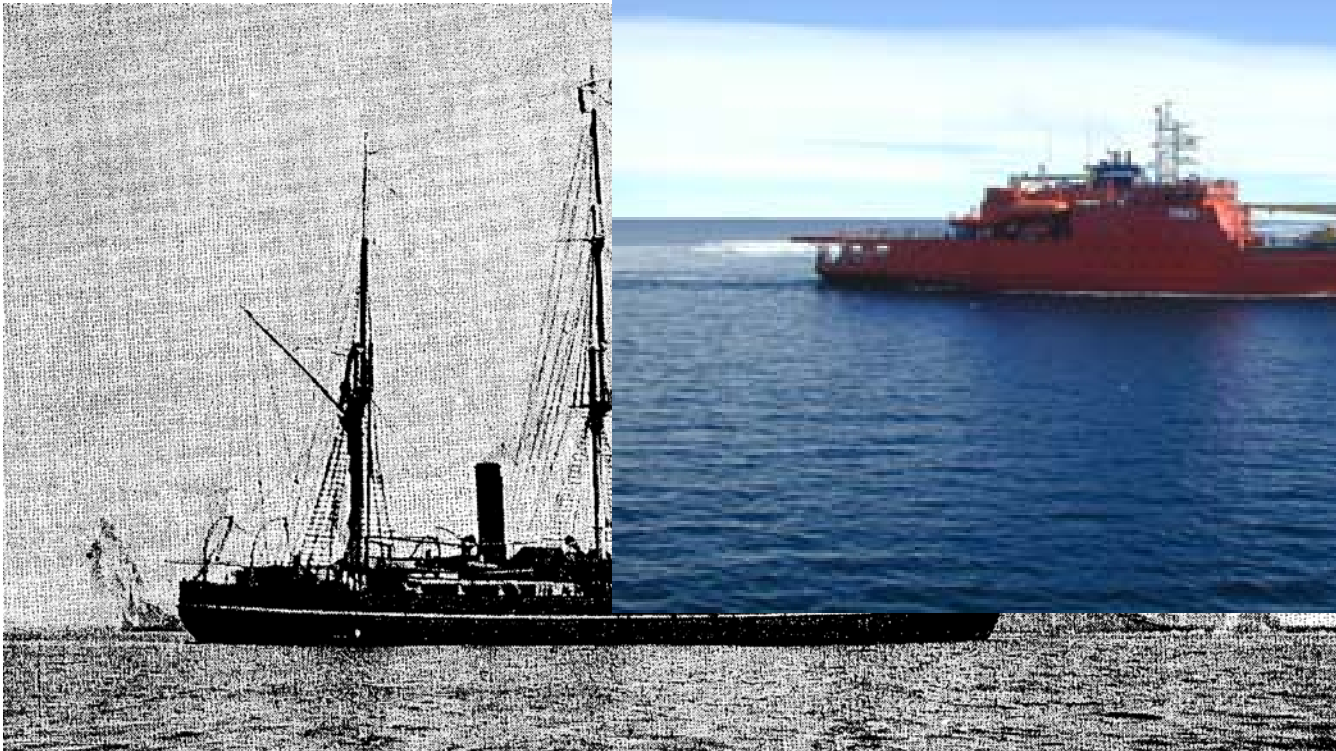


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1st Antarctic Treaty Meeting, Canberra, Australia, 23 June 1961

From Heroic Age to Diplomatic Age

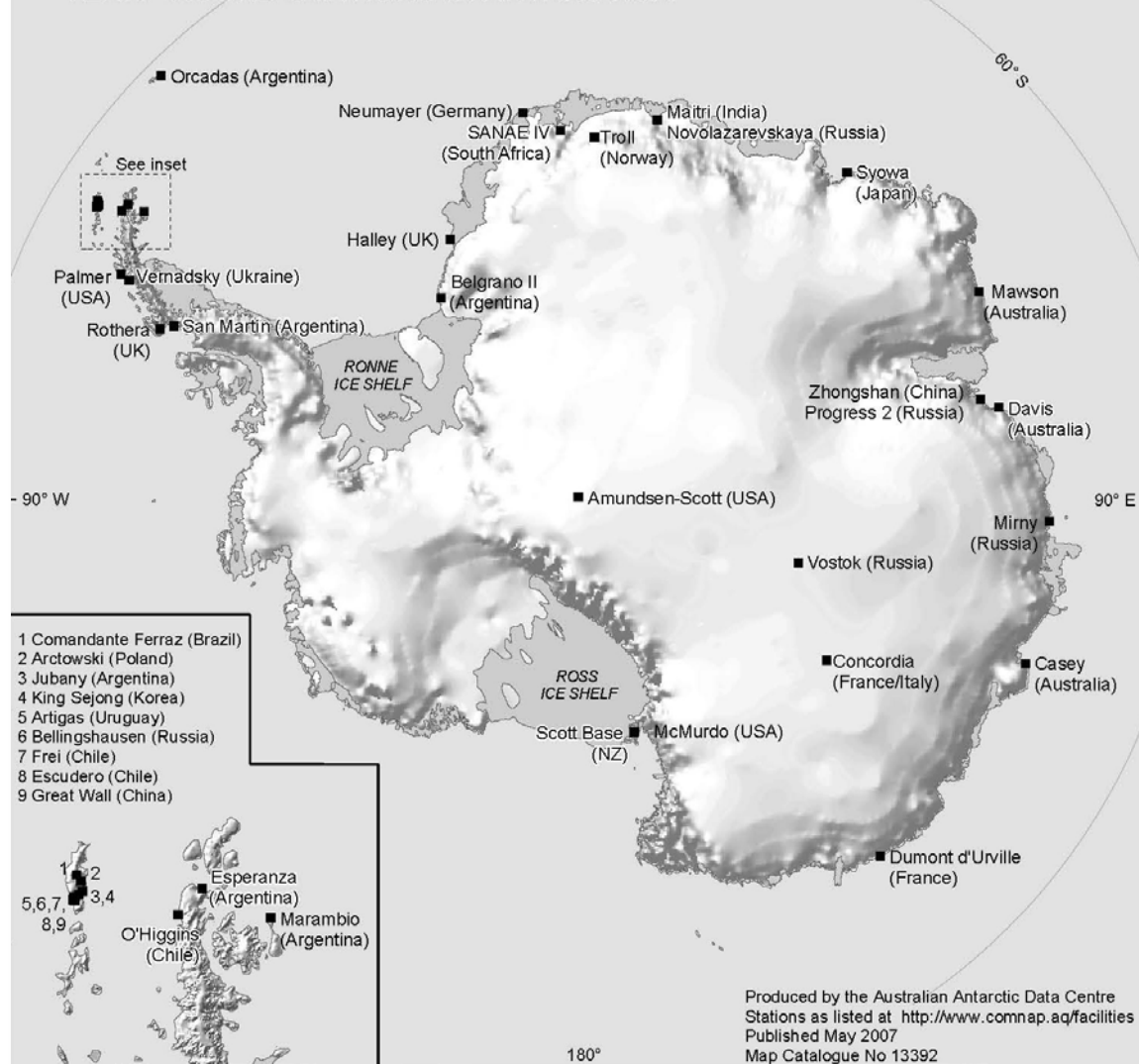
“if one can reach the ends of the earth and behave well, no matter what adversity looms, humanity will be better off for this example” (Shapley)



Antarctica in the 21st Century

- The most clichéd continent in modern history attracting fascination at times bordering on irrational
- “a natural reserve devoted to peace and science”
- ~30,000 tourists (tourism = largest commercial activity) and unknown number of fishers
- Number of scientists ~1,000 in winter, ~5,000 in summer, and number of bases (summer and winter) growing...

YEAR - ROUND STATIONS IN ANTARCTICA



Antarctic Treaty Consultative Meetings

**International cooperation in the
name of peace and science**

Antarctic Treaty

Contracting Parties (signatories)

** Argentina* ** Australia* Austria Belarus ** Belgium* ** Brazil*
** Bulgaria* Canada ** Chile* ** China* Colombia Cuba Czech
Republic DPR Korea Denmark ** Ecuador* Estonia ** Finland*
** France* ** Germany* Greece Guatemala Hungary ** India* ** Italy*
** Japan* Monaco ** Netherlands* ** New Zealand* ** Norway*
Papua New Guinea ** Peru* ** Poland* Portugal ** Republic of*
Korea Romania ** Russian Federation* Slovak Republic
** South Africa* ** Spain* ** Sweden* Switzerland Turkey ** Ukraine*
** United Kingdom* ** United States of America* ** Uruguay*
Venezuela

7 Claimants, 2 Reserve rights to claim included in 28

** * * Consultative Parties* = 48 signatories in total



Annual Meetings

- Parties meet annually at location of host Party (progressive in English alphabetical order; in Hobart in 2012!)
- Secretariat located in Buenos Aires
 - Mandated to run the Antarctic Treaty Consultative Meetings (ATCMs)
 - see www.ats.aq
- Week 1 - Committee for Environmental Protection + standing working groups
- Week 2 - ATCM (political and diplomatic decisions)



Meeting Output

- Measures (legally binding)
- Decisions (administrative matters)
- Resolutions (hortatory entreaties)

(Only used “Recommendations” prior to 1995 so no way to tell the difference without reading every recommendation)

- All agreements are made by consensus (ie. the absence of formal objection; not the same as “everybody agrees”)

Committee for Environmental Protection

- All parties that have acceded to Madrid Protocol meet in week 1 (see www.ats.aq)
- Discuss all environment-related issues
- Formulate a report on the operation of Protocol
- Make recommendations
 - CEP is advisory only

Antarctic Treaty Consultative Meeting (ATCM)

- All 28 Consultative Parties (+ other Contracting Parties) meet in week 2
- Receive and discuss reports from CEP, working groups, Treaty System organisations, NGOs and invited experts
- 28 Consultative Parties make decisions
- Produce and ratify Final Report
 - public document - www.ats.aq

Antarctic Treaty System (ATS)

1959 ANTARCTIC TREATY

Original 12 Signatories (*all Consultative Parties*)
36 other Contracting Parties (*16 Consultative Parties*)

**Treaty Meeting Recommendations,
Measures, Decisions, Resolutions**

1972
**Convention for the Conservation of
Antarctic Seals**

1980
**Convention on the Conservation of
Antarctic Marine Living Resources**

1991
Protocol on Environmental Protection

1988
**Convention on the
Regulation
of Antarctic Mineral
Resource Activities**

Tutorial Topic

In 200 words, identify and describe some of the special features of Antarctica and participants in the legal system that make the place “international”? How do these features differ from the circumstances in the Arctic? Could the Arctic be considered an international place as well?