

10 years on – why is the Protocol important?



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It is just over 10 years since the Antarctic Treaty parties signed the Protocol on Environmental Protection to the Antarctic Treaty in Madrid. At the time it was heralded as historic – a remarkable about-turn in thinking to establish comprehensive, legally binding measures to protect the Antarctic environment. Every new activity in Antarctica became subject to prior impact assessment. Strict rules were put in place to look after plants and wildlife. Australia undertook to better manage its wastes and to protect the sea from pollution.

The political significance of the change was encapsulated in Article 7 which prohibited mining. No-one was looking to exploit Antarctic minerals at the time, but this was a statement about attitudes to the Antarctic, that mining would not be part of its future. Thus was resolved a critical, long-standing Antarctic resource issue.

The Protocol was also a sign of a shift from a resource view of Antarctica to an environmental view. Antarctica got a new

label – a natural reserve devoted to peace and science – a symbolic and effective link between key principles of the Treaty and the new direction for the continent. Globally, the Protocol was a landmark agreement – the first to cover an entire continent. On the ground in Antarctica it has had a remarkable effect. It remains an inspiration to those planning Antarctic activities.

The new environmental emphasis radically increased the amount of new Treaty business, leading to a doubling of the frequency of meetings and enlarged agendas, thanks largely to the new Committee for Environmental Protection (established 1998). There is also a higher degree of external accountability for actions in Antarctica and adherence to decisions made in the meetings. Environment related measures are still being developed under the framework of the Protocol, a demonstration that Parties remain committed to its environmental principles.

The Protocol didn't just prohibit mining. In designating the Antarctic as

a natural reserve, it established environmental principles governing the conduct

When can we go mining in Antarctica?

We often hear that mining has been banned in Antarctica for 50 years. This is not true. The Protocol's prohibition on minerals resource activities is not limited in time. Further, there are strict rules for modifying the mining prohibition. Simply put, it cannot be modified before the passage of 50 years with anything less than consensus of all the Treaty's consultative parties. After that time a review conference could be called, and it could decide to lift the mining prohibition. But two conditions would have to be satisfied — at least $\frac{3}{4}$ of the consultative parties must agree (including all of the consultative parties when the Protocol was adopted) *and* a binding legal regime on mining would have to be in force. As there is no obligation to call a review conference it could be a very very long time until mining can be contemplated in Antarctica!

Madrid Protocol: what do the critics say?

As a non-government observer on the Australian delegation negotiating the Madrid Protocol, I went through a nail biting six months in 1991, including three trips to Madrid, leading up to its signing on 4 October 1991. It was worth it. The negotiation of an agreement specifically prohibiting minerals activities was a fantastic achievement.

Environmental groups welcomed it after a decade of opposition to the previously-proposed Minerals Convention, but even at the height of our euphoria we were realistic about what had been agreed. Protocol compliance looked a problem without a more developed inspection system (which we still don't have) or a Secretariat (which we hope we will have soon). Critically, the Protocol did not include the liability regime which we and others saw as the necessary 'teeth' for the new creation. And of course, we were aware that adoption was a long way from ratification.

While welcoming the achievement of

Treaty states, particularly of Australia and France which led the drive for a new agreement, the Antarctic and Southern Ocean Coalition knew the Protocol still had to be 'bolted-down', a process which took until 1998. We have also seen the long drawn-out and so far inconclusive process of establishing a liability regime. While we never thought that such a regime would readily follow the commitment to developing it, we have found the slow progress depressing.

More encouraging has been the development of the Committee for Environmental Protection (CEP). It is clearly not been without problems, but the CEP has been blessed with a remarkably able first Chair in Olaf Orheim.

I have been involved in campaigning for protection of our last great continental wilderness for over two decades now. 1991 was a very special year for me, but the vigilance must continue – and it will!

Lyn Goldsworthy, Antarctic and Southern Ocean Coalition

sewage. Disposal at sea of any plastics is prohibited. The Annex's prescriptions are broadly consistent with related provisions under the International Convention for the Prevention of Pollution from Ships (MARPOL).

Annex V on area protection and management establishes a scheme for protecting and managing sites of special value. Previous categories of protected areas are integrated into Antarctic Specially Protected Areas (entry to which requires a permit) and Antarctic Specially Managed Areas. Management plans apply to both categories. The protected area system also provides for the designation of historic sites and monuments, which must not be damaged or removed.

The Protocol has been the stimulus for a highly-productive CEP. It continues to form a large component of the agenda for Antarctic Treaty Consultative Meetings, and has become a fundamental component of Treaty inspections of national activities. Most importantly, it has ensured that when they make decisions about their activities, national programs put protection of the Antarctic environment at the top of their priority list.

Gill Slocum, Antarctic Treaty & Government, AAD

of all activities, subjected all activities to prior environmental impact assessment and then to regular and effective monitoring, provided for the Committee for Environmental Protection, required national programs to develop contingency plans for environmental emergencies, and provided for rules governing liability for environmental damage.

Under the Protocol, the intrinsic value of the Antarctic and the protection of its environment and ecosystems must be fundamental considerations in planning and conducting all activities in Antarctica. All such activities must limit adverse impacts on the Antarctic environment. They must avoid adverse effects on climate, air or water quality, or on the distribution or abundance of wildlife; they must not jeopardise endangered or threatened species; and they must avoid substantial risk to areas of biological, scientific, historic, aesthetic or wilderness significance. And they must give priority to preserving the value of Antarctica for scientific research.

The Protocol's Annexes detail specific measures. *Annex I* deals with one of the Protocol's most important requirements – for prior impact assessment of all new or significantly changed activities. People planning work in Antarctica must now think about

how it can be done in the most environmentally friendly manner. For major activities, a Comprehensive Environmental Evaluation must be prepared and opportunity provided for the Committee for Environmental Protection and Consultative Parties to comment on the proposal.

Annex II provides measures for the conservation of Antarctic flora and fauna, including measures to deal with non-indigenous organisms.

Measures for managing and disposing of waste are provided for in *Annex III*, which prescribes disposal practices for each type of waste generated in Antarctica. It requires people to think about how they are going to minimise and store waste, along with development and circulation of waste management plans for all stations, field sites and ships. It specifies the wastes that must be removed from Antarctica, such as radioactive material and electrical batteries, and requires the cleanup of past waste disposal sites and abandoned facilities, where removal does not increase the impact.

An important aspect of *Annex IV* on preventing marine pollution is the need for marine pollution contingency plans for each ship and station. The Annex regulates discharge of substances from ships, including oily mixtures, garbage and ship-generated

The CEP

Protecting the Antarctic environment is the specific business of the Committee for Environmental Protection (CEP), established by Article 11 of the Madrid Protocol and meeting first in 1998. The CEP advises the Antarctic Treaty Consultative Meeting (ATCM) about matters concerning the Protocol's development and implementation. It is composed of representatives of the Parties which are signatories to the Protocol and includes observers from the Scientific Committee on Antarctic Research (SCAR), the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and other scientific, technical and environmental organisations.

The agenda for annual CEP meetings, generally in the first week of an ATCM, is based on the Protocol structure, with proceedings interpreted in the four Treaty languages (English, Spanish, Russian and French). A significant amount of its specific-issue work is undertaken between meetings by email or at annual meeting workshops.