

IMAS



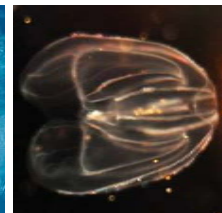
translating **nature** into **knowledge**

INSTITUTE FOR MARINE AND ANTARCTIC STUDIES

The Antarctic Treaty System

Dr Julia Jabour

*Master of Polar Law
University of Akureyri
Iceland
11 October 2011*



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).

Recommended Reading

Marie Jacobsson (2010) 'Building the International Legal Framework for Antarctica,' in Berkman PA, Lang MA, Walton DWH and Young OR (eds) Science Diplomacy: Antarctica, Science and the Governance of International Spaces, Washington: Smithsonian Institution Scholarly Press, pp1–15.

Antarctic Treaty

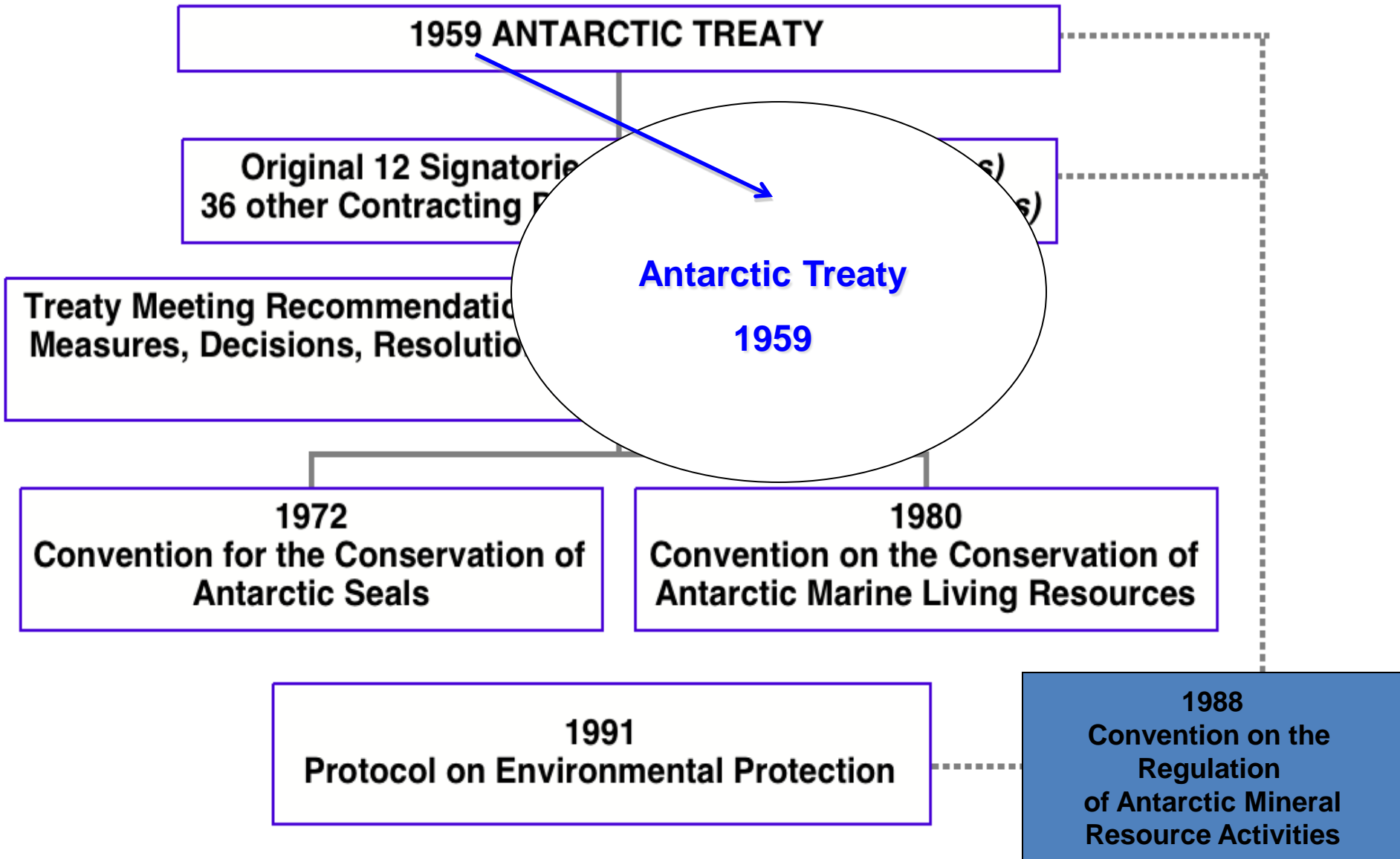
Convention for the Conservation of Antarctic Seals (CCAS)

Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA)

Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)

Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol)

Antarctic Treaty System (ATS)





ARTICLES

Preamble

Historical / Political Context

Article I

Peaceful Purposes

Article II

Freedom of Scientific Investigation

Article III

International Scientific Cooperation

Article IV

Status of Territorial Sovereignty

Article V

Nuclear Activity

Article VI

Geographical Coverage

Article VII

Inspections

Article VIII

Jurisdiction

Article IX

Treaty Meetings

Article X

Activities Contrary to Treaty Intent

Article XI

Disputes between Parties

Article XII

Modification and Duration

Article XIII

Ratification and Entry into Force

Article XIV

Deposition



Preamble

- Contains motives and facts relevant to the Treaty negotiation
- Expression of the historical and political context
- “all mankind” “peace” “science”
“cooperation” “firm foundation”
“international harmony”



Article I

- Peace
- Military activity prohibited
(other than as support for scientific
research/peaceful purposes)



Article II

- Freedom of scientific investigation
- International scientific cooperation



Article III

- Promotion of international cooperation through exchanges of:
 - Information on plans for scientific programs
 - Personnel
 - Scientific observations and results
- Cooperation with UN and Agencies with scientific/technical interest



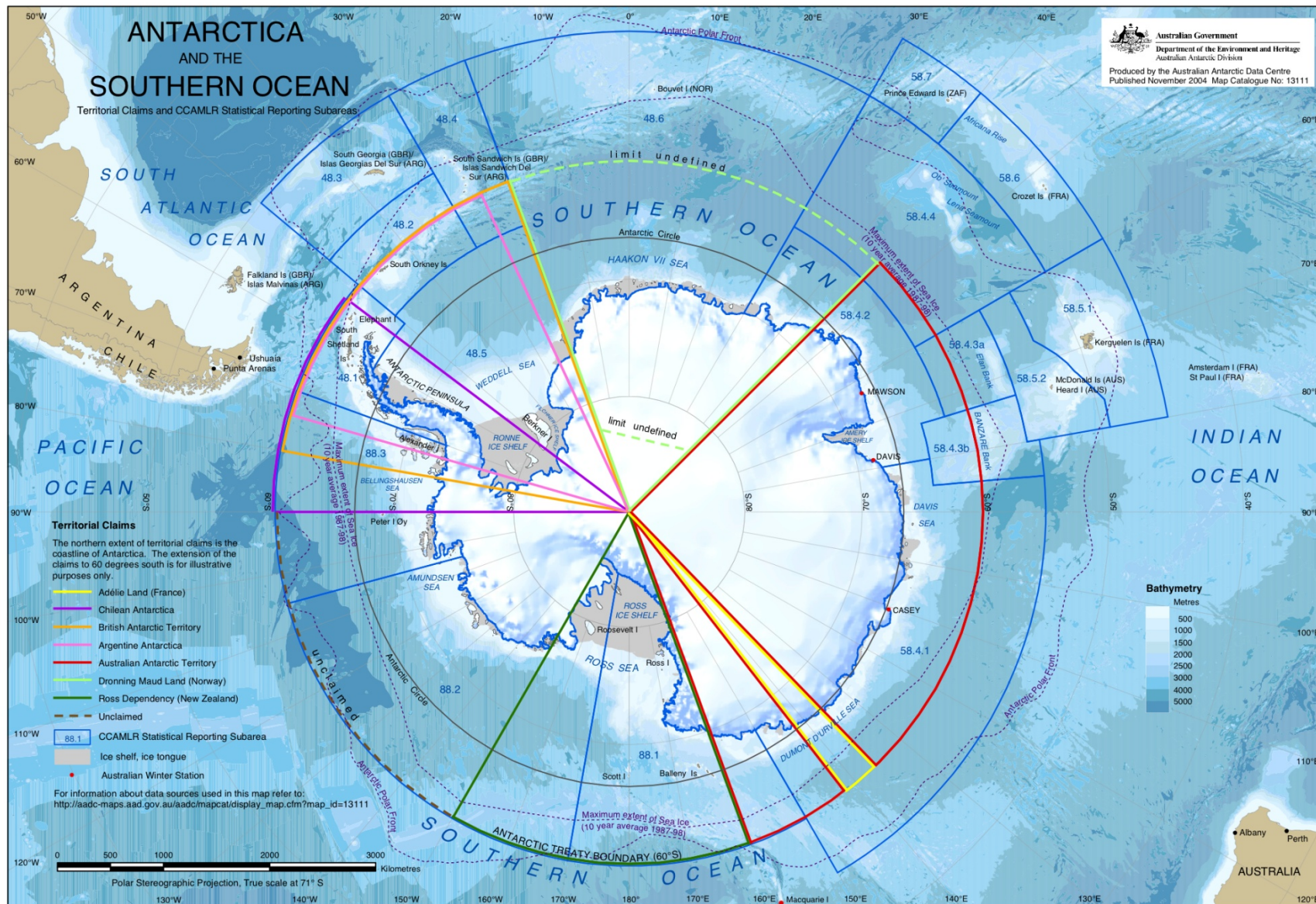
Article IV

- Preservation *status quo ante* of claims to territory and of rights to claim
- No acts assert, support, deny or create rights to sovereignty
- No new or enlarged claims during the life of the Treaty

ANTARCTICA AND THE SOUTHERN OCEAN

Territorial Claims and CCAMLR Statistical Reporting Subareas

Australian Government
Department of the Environment and Heritage
Australian Antarctic Division
Produced by the Australian Antarctic Data Centre
Published November 2004 Map Catalogue No: 13111





Article V

- Almost completely nuclear-free zone
- Any subsequent international law on nuclear material signed by the Consultative Parties shall also apply to Antarctica
 - eg. Basel Convention Article 4.6



Article VI

- Area of application is south of 60° South, including all ice shelves and air space, but not including air space above high seas or prejudicing high seas rights in international law



Article VII

- Establishes observation/inspection system from within Consultative Parties
- Observers have free access to all stations, installations, equipment, ships, aircraft
- ATCPs to provide advance notice of:
 - Expeditions by its nationals or from its territory
 - Stations occupied by its nationals
 - Military personnel or equipment



Article VIII

- National jurisdiction over:
 - Observers
 - Exchange scientific personnel
 - Support staff(without prejudice to a Party's right to jurisdiction over all other persons)
- Disputes over jurisdiction handled by consultation between involved Parties



Article IX.1

- Mandate to make decisions about the principles and objectives of the Treaty, including on the subjects of:
 - Use of Antarctica for peace
 - Scientific research and international scientific cooperation
 - Inspection
 - Jurisdiction
 - Preservation/conservation living resources
- ie. anything of relevance to the Antarctic



Article IX.2

- Contracting Parties are all parties that have signed and ratified or acceded/succeeded to the Treaty
- Consultative Parties (ATCPs) are Contracting Parties with decision-making rights at ATCMs based on demonstrated interest in Antarctic science



Article IX.3, IX.4

- ATCMs held annually to review:
 - Inspection reports
 - Exchanged information
 - Compliance and other matters
- Accept Information Papers from Parties, NGOs and invited experts - CCAMLR, CCAS, SCAR, COMNAP, ASOC, IAATO, IHO, WMO, IUCN



Formal Meeting Output

- Measure

A text which contains provisions intended to be legally binding

(needs approval of all ATCPs to become operative)

- Decision

A decision taken on an internal organisational matter (operative at adoption or as specified)

- Resolution

A hortatory text adopted at an ATCM

(not intended to be legally binding, only encouraging compliance)



Article X

- Attempt to apply Treaty to all States (including those not Party to it)
- “exert appropriate efforts” consistent with Treaty and UN Charter
- “any activity” means any incompatible activity



Article XI

- Disputes over interpretation or application to be resolved by any peaceful means
- Alternative is ICJ
- No dispute should remain unresolved



Article XII.1a-b

- Treaty amended any time by consensus of Consultative Parties
- All CPs must ratify changes to bring them into force
- All other Contracting Parties must ratify within 2 years
- Any Contracting Party not ratifying within 2 years is deemed to have withdrawn from Treaty



Article XII.2a-c

- Treaty review conference was due 1992 if requested by Consultative party - did not occur
- Included only formal mechanism for withdrawal from the Treaty by ANY Party (Consultative/Non-consultative)



Article XIII

- Ratification by original 12 Signatories
- Then open for accession by any UN Member or State invited by original CPs
- US Government is depositary



Article XIV

- Official Languages:
 - English
 - French
 - Russian
 - Spanish

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**



1959 ANTARCTIC TREATY

**Original 12 Signatories (12 Parties)
36 other Contracting Parties (36 Parties)**

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

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

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

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

**1991
Protocol on Environmental Protection**



Image © J Horsburgh

CCAS Parties

- Argentina
- Australia
- Belgium
- Brazil
- Canada*
- Chile
- France
- Germany
- Italy
- Japan
- NZ
- Norway
- Poland
- Russian Federation
- South Africa
- UK
- USA

***Only Canada is not an ATCP**



Article 1

- Applies to seas south of 60 degrees south including, presumably, sea ice but not ice-free land areas where they breed or haul out to molt
- But see Annex .5 re seal reserves
- May apply to Southern elephant, Leopard, Weddell, Crabeater, Ross, Southern fur seals

Article 2

- No killing or capturing except under national regulation

Article 3

- Refers to Annex and measures for conservation, scientific study, humane use of seal resources, ie.
 - Catch limits, protected species, seasons, areas, reserves, target characteristics, effort and gear
 - Reports, inspections, review and assessment
- Best scientific and technical evidence

Article 4

- Permits to kill or capture for:
 - Indispensable food for men or dogs
 - Scientific research
 - Specimens for museums, educational or cultural institutions
- A party is accountable to the others for reporting permits/kills/captures

Article 5

- Point 6 of Annex requires a party to report on catches, implementation, etc
- SCAR has mandate to assess information, encourage exchange of data, recommend programs, suggest amendments, etc. Can also order sealing to stop when catch limit reached

Article 6

- Commercial sealing to be subject to monitoring, control and surveillance
- Sealing commission to be established

Articles 7, 8 & 9

- Review meetings every 5 years
 - They don't do this; there is no activity
- Amended any time; only 2 so far, regarding dates and the taking of seal pups
- Amendments by 2/3 majority but parties can opt-out

Articles 10, 11, 12 & 13

- Opened for signature by Antarctic Treaty Parties attending conference
- UK is depositary state
- Once ratified, was open for signature by any state by agreement between the Parties
- Ratification by 7 brought Convention into force

Articles 14, 15 & 16

- Any party can withdraw with 6 months' notice
- Depositary notifies all parties of signatures
- English, French, Russian and Spanish, done in London on 01 June 1972

ANNEX

1. Permissible catch
2. Protected species
3. Closed Season and Sealing Season
4. Sealing Zones
5. Seal Reserves
6. Exchange of Information
7. Sealing Methods

1959 ANTARCTIC TREATY

**Original 12 Signatories (all Parties)
33 other Contracting Parties (all Parties)**

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

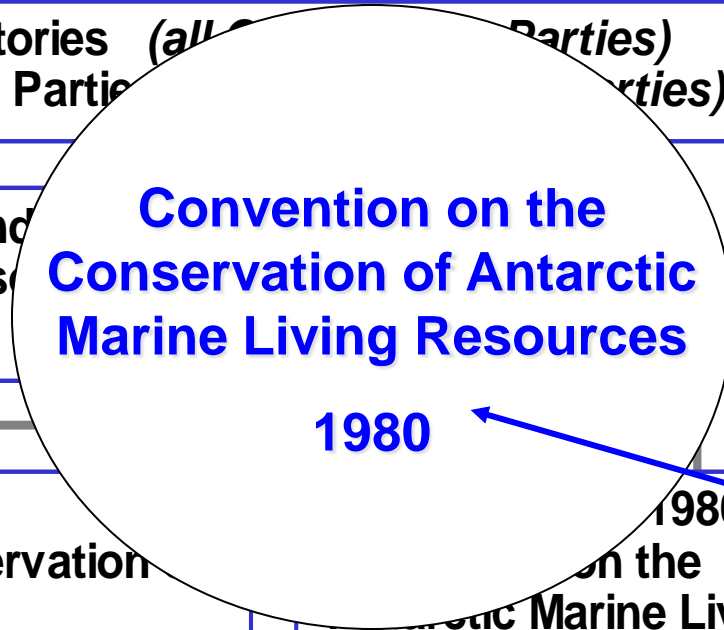
**Convention on the
Conservation of Antarctic
Marine Living Resources**

1980

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

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

**1991
Protocol on Environmental
Protection**



Main Features

- South of Antarctic Convergence (not 60 South)
- Conservation includes rational use
- Ecosystem approach (time and space; harvested, dependent and related populations)
- Whales/seals covered elsewhere
- Est. Commission to oversee Convention
- Decisions taken by consensus
- Commission members make conservation measures
- Can opt out (nobody does)
- Est. Scientific Committee
- Decisions based on best scientific advice
- Members pay fee based on harvest levels
- Compliance is voluntary
- Observation and inspection procedures

Participation in CCAMLR

Membership

- 24 Members of the Commission: Argentina, Australia, Belgium, Brazil, Chile, *European Community, France, Germany, India, Italy, Japan, Republic of Korea, *Namibia, New Zealand, Norway, Poland, Russian Federation, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States, and Uruguay
- 8 Acceding States: Bulgaria, Canada, Finland, Greece, *Mauritius, Netherlands, Peru and *Vanuatu.

(European Community, Namibia, Mauritius, Vanuatu are not Antarctic Treaty Parties)

CCAMLR Bodies

- Scientific Committee
 - Advisory body to the Commission
 - Working Groups on ecosystem monitoring and management, fish stock assessment
- Commission
 - Standing Committee on Implementation and Compliance (SCIC);
 - Decision-making by Commission Members: consensus with opting-out and possibility of invoking Chairman's Statement
- Secretariat (Hobart)

Objective and Species

- Objective:
 - Conservation of Antarctic marine living resources; including rational use
 - ecosystem approach; bird by-catch; predator-prey relationships
- Species coverage:
 - Antarctic marine living resources:
 - Fin fish, molluscs, crustaceans
 - All other species of living organisms, including birds
 - Not whales (ICRW) or seals (CCAS)

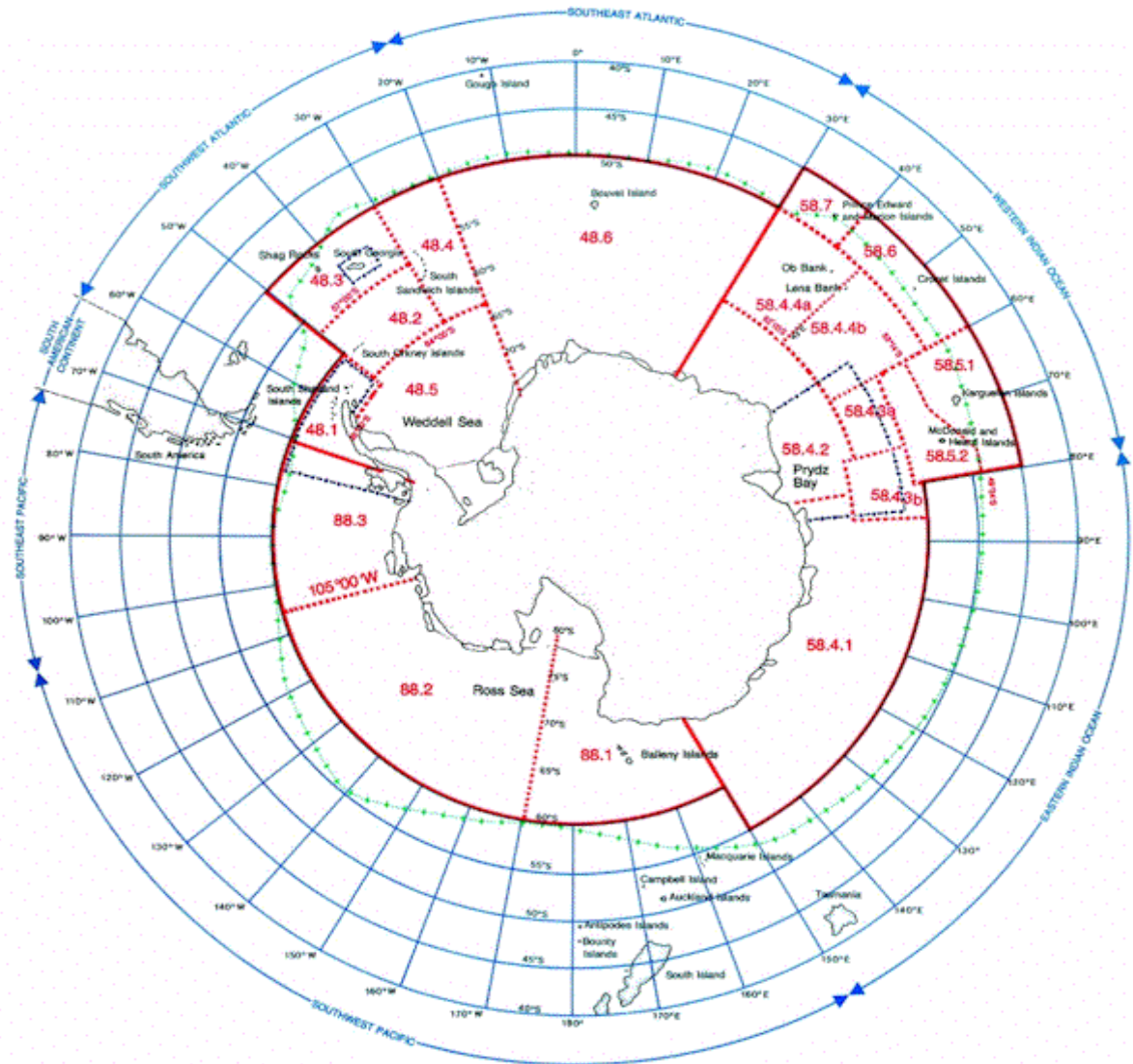
CCAMLR Regulatory Area



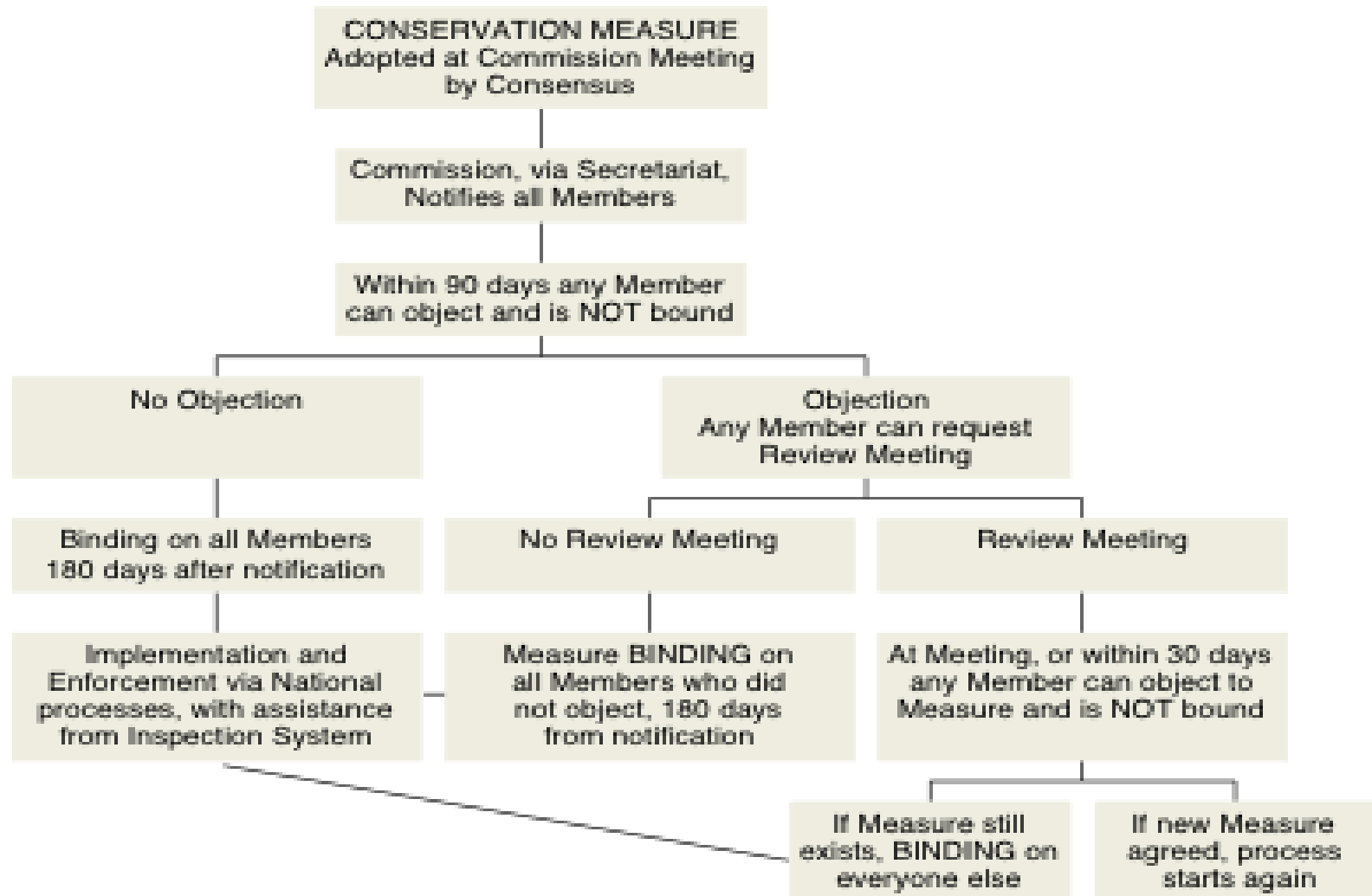
CCAMLR

Boundaries of the
Statistical Reporting
Areas in the
Southern Ocean

- LEGEND**
- STATISTICAL AREA
ZONE STATISTIQUE
СТАТИСТИЧЕСКИЙ РАЙОН
AREA ESTADISTICA
 - STATISTICAL SUBAREA
SOUS-ZONE STATISTIQUE
СТАТИСТИЧЕСКИЙ ПОДРАЙОН
SUBAREA ESTADISTICA
 - .- ANTARCTIC CONVERGENCE
CONVERGENCE ANTAIRIQUE
АНТАРКТИЧЕСКАЯ КОНВЕРГЕНЦИЯ
CONVERGENCIA ANTARTICA
 - CONTINENT, ISLAND
CONTINENT, ILE
МАТЕРИК, ОСТРОВ
CONTINENTE, ISLA
 - INTEGRATED STUDY REGION
ZONE D'ETUDE INTEGREE
РАЙОН КОМПЛЕКСНЫХ ИССЛЕДОВАНИЙ
REGION DE ESTUDIO INTEGRADO

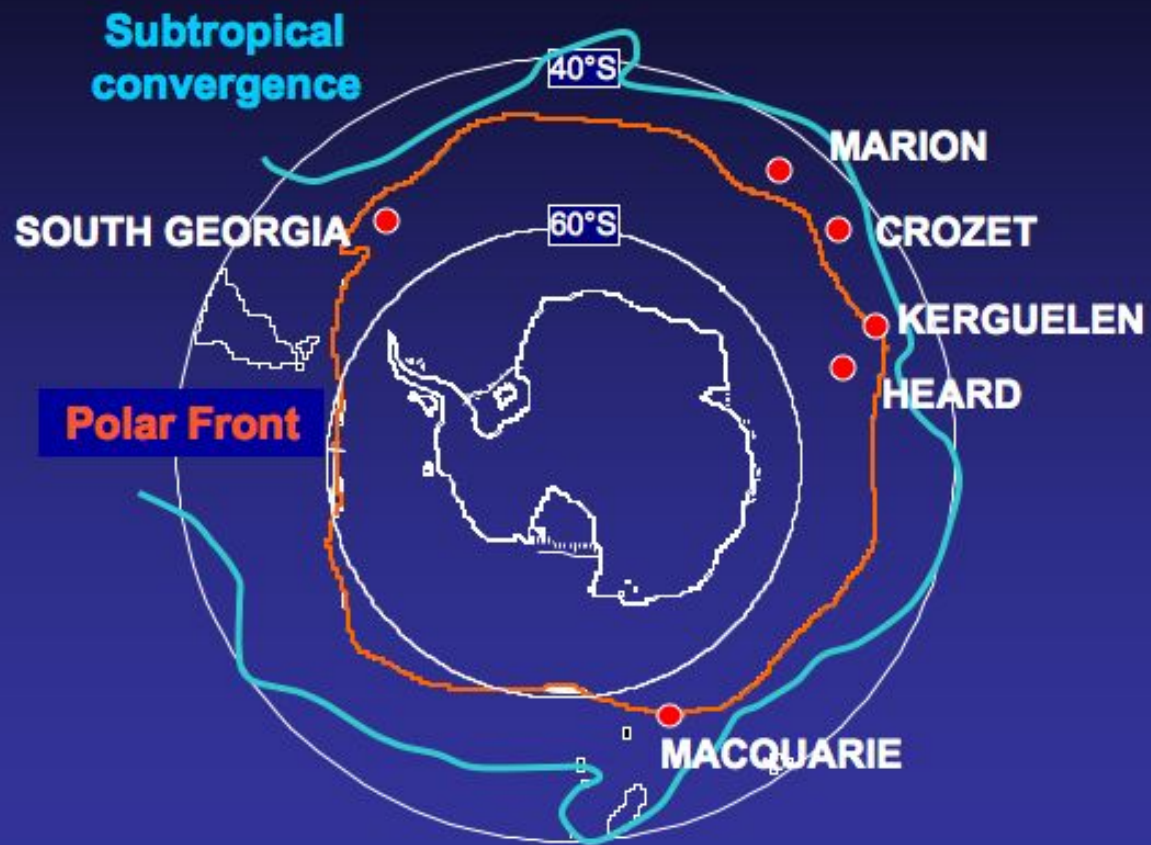


Conservation Measures



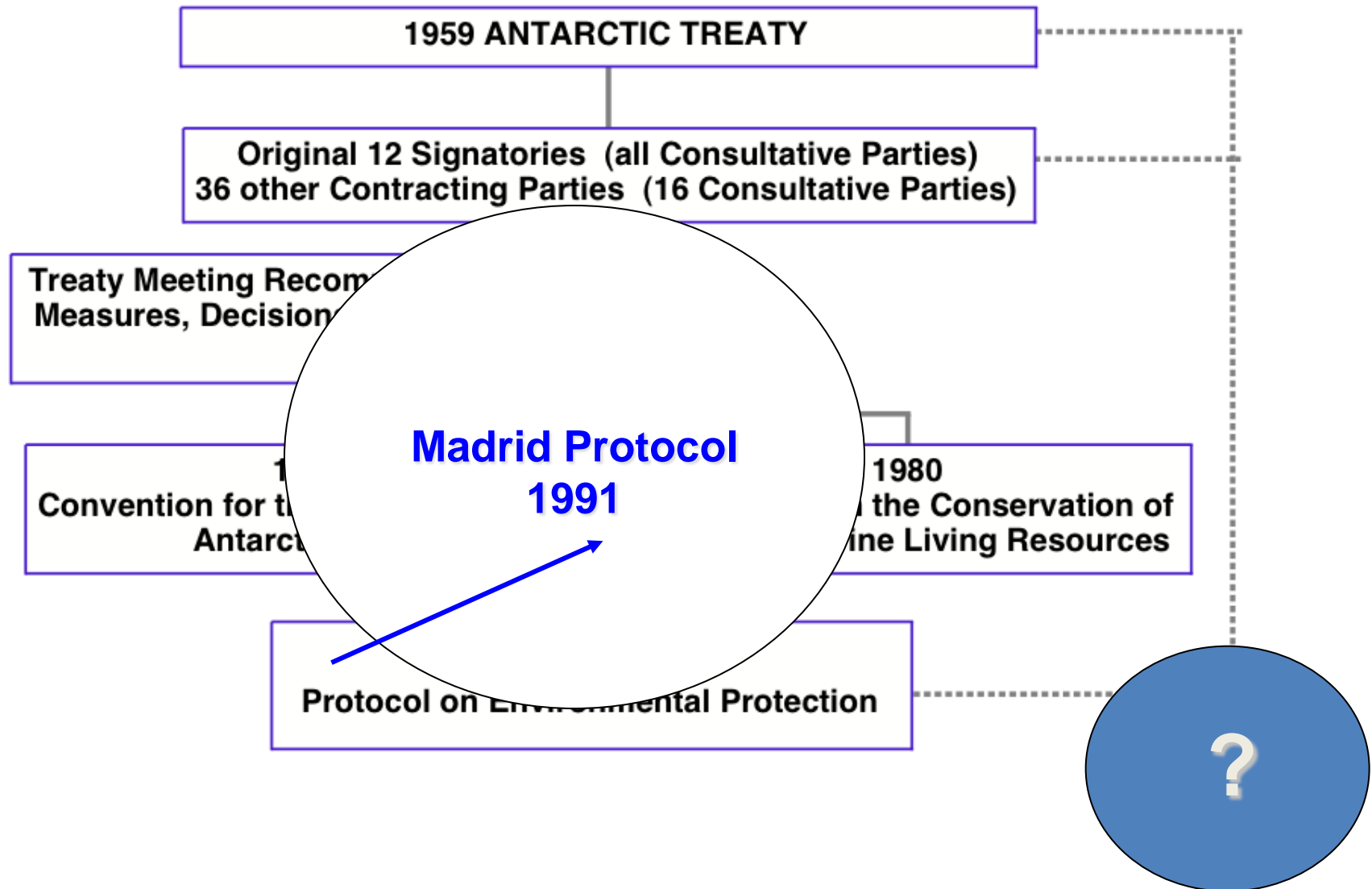
Sub-Antarctic Islands within CCAMLR Area

- Heard and McDonald Islands (Australia)
- Kerguelen and Crozet Islands (France)
- Bouvetøya (Norway)
- Prince Edward & Marion Islands (South Africa)
- South Georgia and the South Sandwich Islands and Shag Rocks (Argentina and United Kingdom - in dispute)



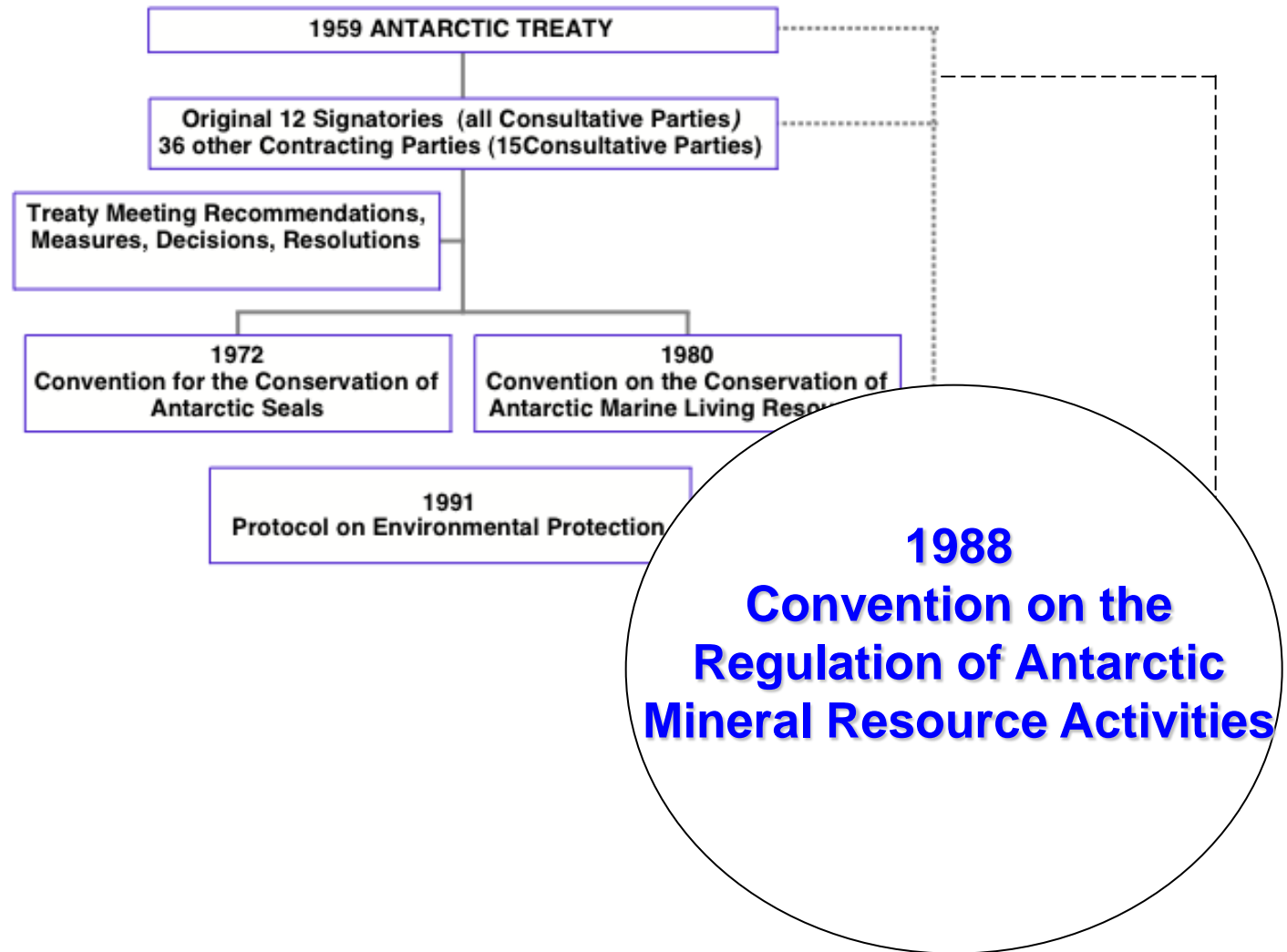
Chairman's Statement

- Sovereignty is maintained where it is not in dispute
- Sovereign governments can make and enforce own conservation measures, potentially more strict



GREENING
THE ANTARCTIC:

**The end of
the prospect of mining**



CRAMRA

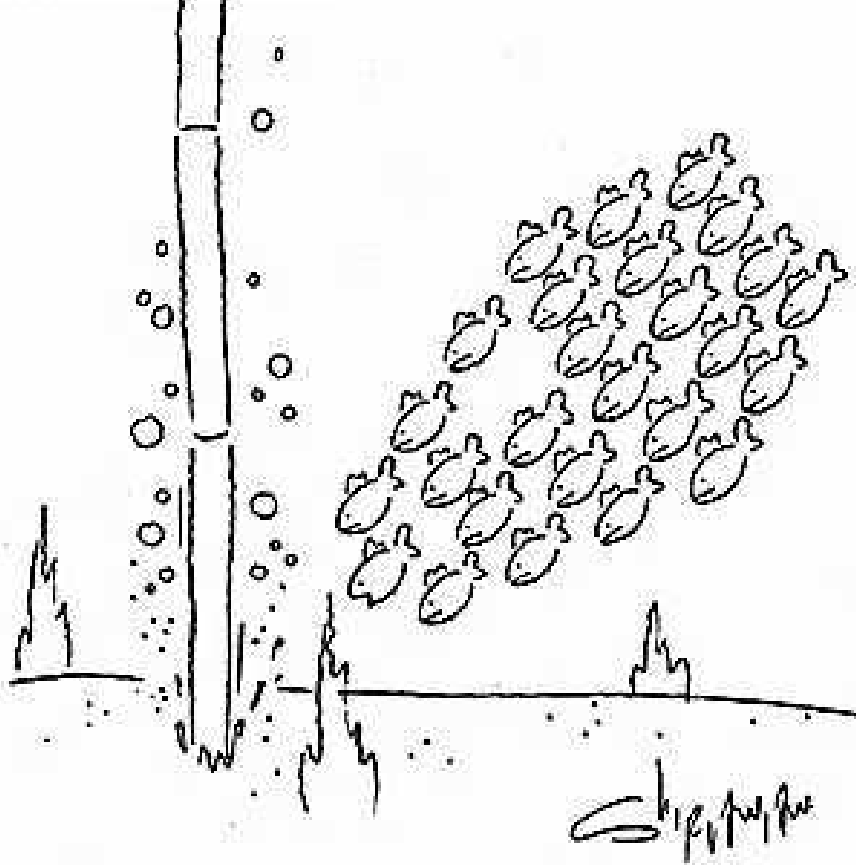
- Not usually considered a part of ATS *per se* because it never entered into force
- and CRAMRA can't be resurrected in its original form because it was only open for signature for 12 months to Nov 1989
- Replaced by Madrid Protocol but much good language from CRAMRA imported into Protocol

1959 too premature to be thinking about mining...



Image © R Suisted

© Original Artist
Reproduction rights obtainable from
www.CartoonStock.com



"It's taking a core sample but it also took Herbie."

But by 1970s
enquiries from
geophysical
companies about
prospecting in the
Southern Ocean
began to ring
alarm bells

But was hard rock dirt and noise compatible with



Peace and science...



(c) Rob Suisted - www.naturespic.com

Should we mine Antarctica?

- CRAMRA concluded in 1988 (after 6 yrs of negotiation)
- Strong opposition in the UN General Assembly, led by Malaysia, on grounds of “common heritage”
- 67 articles + Annex establishing Arbitral Tribunal
- ‘Prospecting’, ‘exploration’ & ‘development’ covered by substantive (legally binding) rules
- Infrastructure = Commission, special committees, etc.
- Strong environmental emphasis

CRAMRA Preamble

- *Noting* the possibility that exploitable mineral resources may exist in Antarctica
- *Bearing in mind* the special legal and political status of Antarctica...
- *Bearing in mind* also that a regime for Antarctic mineral resources must be consistent with Article IV of the Antarctic Treaty and in accordance therewith be without prejudice and acceptable to those States which assert rights of or claims to territorial sovereignty in Antarctica, and those States which neither recognise nor assert such rights or claims...
- *Recognising* that Antarctic mineral resource activities could adversely affect the Antarctic environment or dependent or associated ecosystems...

Article 1 Definitions

- 6 Mineral Resources = “all non-living natural non-renewable resources, including fossil fuels, metallic and non-metallic minerals”
- 7 Antarctic Mineral Resource Activities = “prospecting, exploration or development, but does not include scientific research activities...”
- 8 Prospecting = “activities...aimed at identifying areas of mineral resource potential for possible exploration and development”

Article 1 Definitions cont.

- 12 Sponsoring State = “the Party with which the operator has a substantial and genuine link...”
- 15 Damage to the Antarctic environment or dependent or associated ecosystems = “any impact on the living or non-living components of that environment or those ecosystems...beyond which is negligible or which has been assessed and judged to be acceptable pursuant to this Convention

Article 2 - Objectives and General Principle

- CRAMRA was...a means for:
 - Assessing the possible impact on the environment
 - Determining whether Antarctic mineral resource activities are acceptable
 - Governing the conduct of such...activities as may be found to be acceptable
 - Ensuring that any...activities are undertaken in strict conformity with this Convention

Article 2 - Objectives and General Principle cont.

...the Parties acknowledge the special responsibility of the ATCPs for the protection of the environment and the need to:

- (a) protect the Antarctic environment and dependent and associated ecosystems
- (b) respect Antarctica's significance for, and influence on, the global environment ...
- (d) respect Antarctica's scientific value and aesthetic and wilderness qualities ...
- (g) take into account the interests of the international community as a whole.

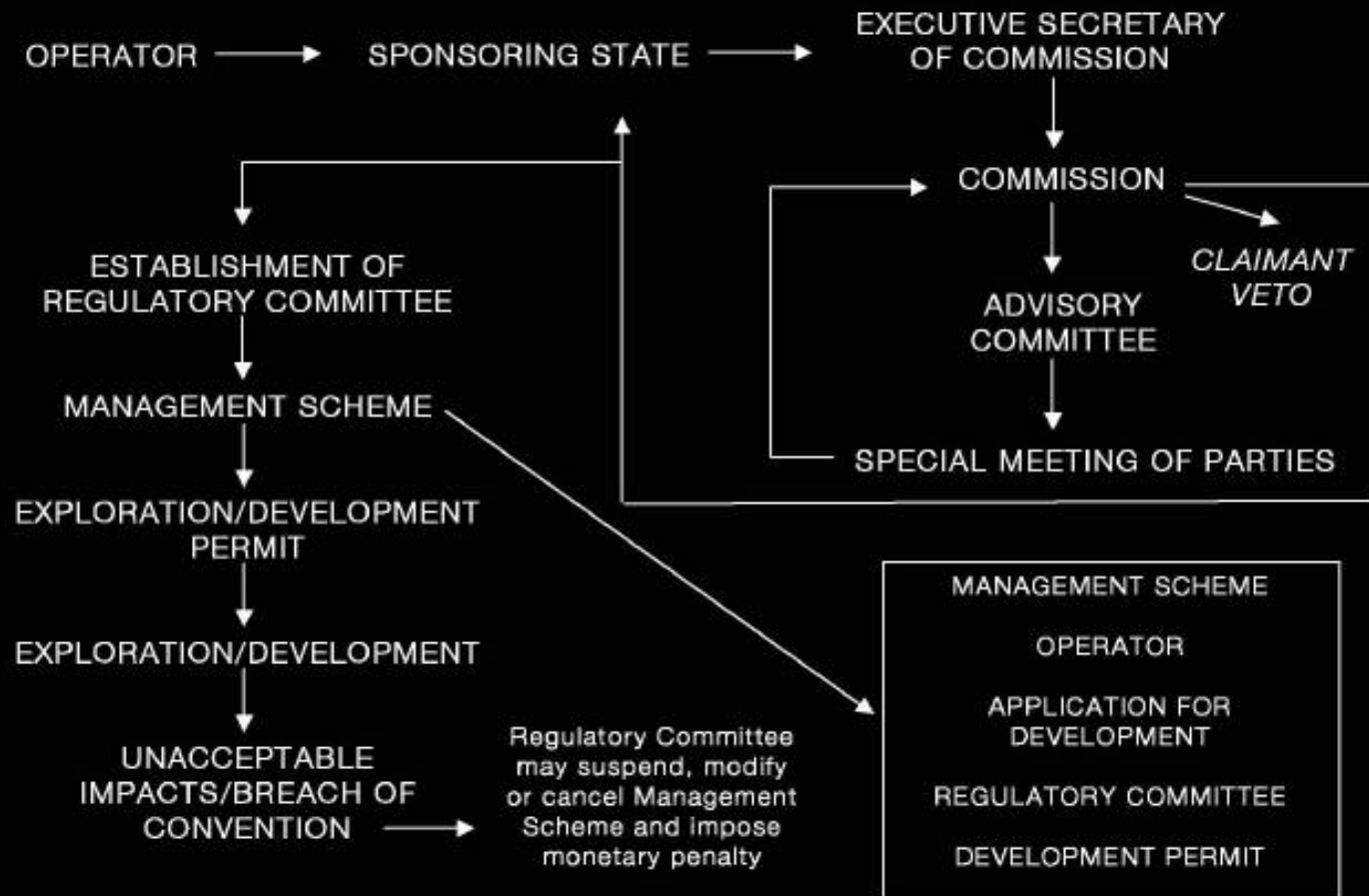
Article 8 - Response Action and Liability

- 8.7: Further rules and procedures in respect of the provisions on liability...shall be elaborated through a separate protocol
- 8.9: No application for an exploration or development permit shall be made until the Protocol...is in force for the Party lodging such application

Article 9 - Protection of legal positions

- Same as Article IV of the Antarctic Treaty
- Nothing in the Convention could modify the positions of any Parties with regard to claims, rights to claim, recognition or non-recognition, new claims, etc.

HOW TO EXPLOIT MINERAL RESOURCES IN ANTARCTICA



What did the rest of the world think?

- 1956 India proposed Antarctica be put on agenda of UNGA – first real push for internationalising. “Common heritage of mankind” idea developing
- 1972 2nd World Conference on National Parks – resolution that Antarctica be designated a World Park under UN protection
- 1973–74 Organization of the Petroleum Exporting Countries (OPEC) embargoed oil and price skyrocketed. Oil companies became interested in potential for Antarctic resources. US “*Glomar Challenger*” project drilled 4 holes in seabed of Ross Sea and finds traces of hydrocarbons...

How did ATCPs React?

- 1972 7th ATCM moratorium on minerals activity was first proposed but rejected
- 1975 8th ATCM agreed to an informal minerals moratorium
- 1977 moratorium became formal (Recommendation IX-1). Parties asked Scientific Committee on Antarctic Research to investigate minerals potential. SCAR concluded that:
 - no known mineral reserves;
 - anything there is unlikely to be economically exploitable;
 - technology doesn't exist; therefore
 - no need to worry.

Common heritage

- 1980s Treaty Parties were concerned about involvement of the UN
- Dr Mahatir (Malaysia), speaking on behalf of G77 (developing countries) in UN claimed that Antarctica was *res communis* (Latin: common things)
- Antarctica was owned by the community, therefore everybody should share in the profits of any resource activities

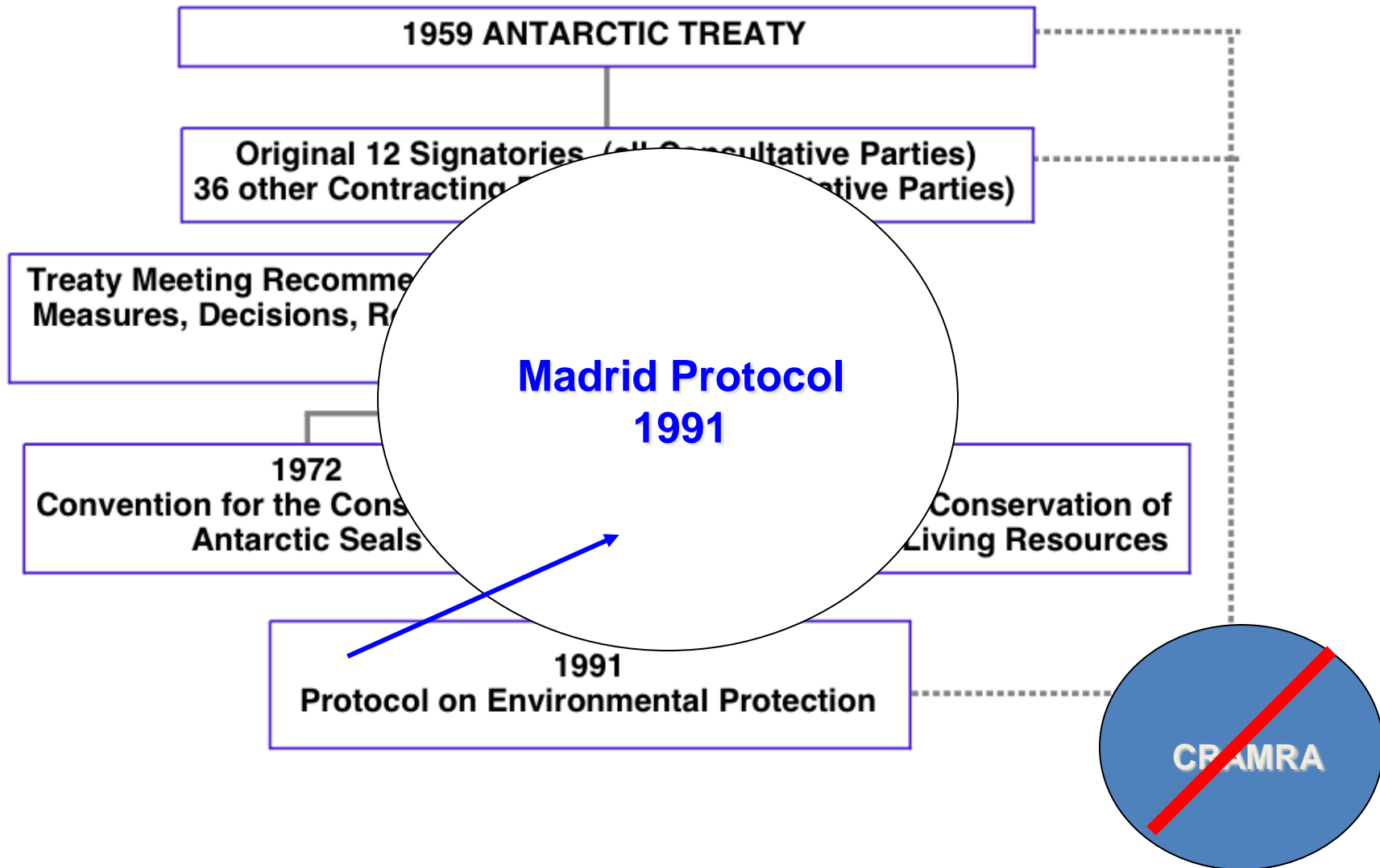
How did it end?

- Australia declined to sign CRAMRA
- France came on board and also did not sign, followed by others (eg, Italy)
- Time period for signing expired
 - (25 Nov 89; Article 60)
- Arguably most comprehensive resource management convention ever, but FAILED over resource allocation issues (sovereignty), subsidised mining (unprofitable), etc.
- AND public opposition to a “minerals convention” presented *legitimate* way out = greening Antarctica

Back to the table ...

**Result : From Mining to
Greening...**

**1991 PROTOCOL ON
ENVIRONMENTAL PROTECTION
TO THE ANTARCTIC TREATY**



Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol)

- Finalised October 1991 only 2 years after rejection of CRAMRA
- Many words re environment lifted directly from CRAMRA
- In force 14 January 1998
- 27 Articles + 6 Annexes
- Schedule on Arbitration
- 2 Institutions - the Committee for Environmental Protection (CEP) & Arbitral Tribunal

Objective - Article 2

“The parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve devoted to peace and science.”

Environmental Principles – Article 3

- Limit adverse impacts on total ecosystem
- Avoid adverse effects on total ecosystem
- Scientific research has priority
- Planned activities must take account of scope of activity, cumulative impacts, safety, capacity to monitor, capacity to respond promptly to accidents, etc
- NO DEFINITIONS ∴ interpretation arbitrary according to state practice

Mineral Resource Activities

- Prohibited under Article 7 - but says
 - Any activity relating to mineral resources, other than scientific research, shall be prohibited
- Effectively for 50 years (see Art. 25)
- Only binding on Antarctic Treaty Parties

Committee for Environmental Protection (CEP)

- Institution established under Article 11
- Advisory body only
- Reviews all environmental matters in 1st week of ATCM
- Reports to ATCM in 2nd week with recommendations
- Maintains IEE and CEE database (www.ats.aq)
- CEP reviews all CEEs and makes recommendations to ATCM but ATCM CANNOT veto activity (nor delay it for longer than 15 months)

Annexes

- I Environmental Impact Assessment
- II Conservation of Antarctic Fauna and Flora
- III Waste Disposal and Waste Management
- IV Prevention of Marine Pollution
- V Area Protection and Management
- VI Liability Arising from Environmental Emergencies (not yet in force)

Emergencies

- Requires contingency plans (Art.15)
- Emergency situations exempt from prior EIA (obviously!) but necessary to report afterwards
- Parties must provide prompt and effective response action to emergencies from 'authorised activities' ie. *activities relating to expeditions, stations and the movement of military personnel originating from the territory of a Treaty Party*
 - This includes tourism



MV *Explorer* sinking. Anon.

Compliance

- State responsibility :
 - Art. 13: *Each party shall take appropriate efforts within its competence...*
- Inspection procedures in place to try to encourage compliance

COMNAP Investigation

- 2003 COMNAP ranked scenarios
 - worst case land based emergency would be unplanned pollution of a hitherto pristine environment
 - worst case marine emergency would be the foundering of a ship in an environmentally sensitive coastal area
- COMNAP does not have the expert competence to address the issue of probability
- For several of the scenarios listed it was assessed that neither clean-up or restoration would be possible.
- COMNAP admitted it was not competent to put a value on the environmental damage in such cases

How do you put a value on an un-owned environment?



Mt Melbourne © Julia Jabour 2006

(c) Rob Suisted - www.naturespic.com

Tutorial Topic

Is it possible to trace the shift from utilitarian to intrinsic environmental values during the ideological development of the Antarctic Treaty System? Give examples to illustrate your answer. 200 words.