

Guest editorial

Antarctic politics and Antarctic science — are they at loggerheads?*

“Antarctica shall be used for peaceful purposes only Freedom of scientific investigation and co-operation toward that end shall continue, subject to the provisions of the present Treaty.”

These are the fundamental objectives of the Antarctic Treaty as expressed in Articles I and II. What follows in the Treaty, and in most of the many “Recommendations” to the Governments of Antarctic Treaty Consultative Parties (ATCPs), is aimed at securing these objectives by the creation of a framework of law. Unusually for a system of laws, most of this legal framework is hortatory rather than mandatory in character - it cajoles rather than orders. Perhaps not surprisingly this has given rise to damaging suggestions about its ability to provide adequate protection for the Antarctic environment. The response of the ATCPs to this criticism has been to embark on a review of existing Antarctic law, to make it more consistent, reduce overlaps and more especially, make much of it mandatory. This process began at the XIth Special Antarctic Treaty Consultative Meeting in Chile last November. Since it aims to provide greater clarity, accessibility and certainty in the law, it must be welcomed. But within these admirable objectives a prospect of loggerheads begins to loom.

In democratic societies it is an established principle that the law needs to be acceptable to the governed. One way of ensuring this is for the law to be a little behind what the majority might be prepared to accept. The risk in the Antarctic situation is that, faced with an almost clean slate, and goaded by an inflated, media-hyped campaign about damage to the Antarctic environment, the ATCPs may find themselves getting legislatively ahead of their real constituents - the scientific community in Antarctica. Impossible, impracticable or unnecessary laws will not be obeyed. For Antarctic law to come to be looked upon “as an ass” by those it is intended to govern would be a great deal more damaging than the “soft” law problem the ATCPs are presently attempting to solve.

There are at least two specific measures that would help to avoid conflict between Antarctic politicians and scientists. Firstly, politicians need to take account of the views of the scientific community, expressed through SCAR, before making new laws. Secondly, the scientific community needs to develop an adequate system of geographical and scientific information services to help ensure that present and future legislation is grounded firmly on facts which are easily available to all interested parties. The first of these measures already features in the draft Environmental Protocol to the Antarctic Treaty tabled by Norway at the meeting in Chile. The second, the subject of recent Recommendations, faces SCAR with an urgent challenge. SCAR’s ability to speak authoritatively in support of continued freedom of scientific investigation could crucially depend on how the Antarctic scientific community responds to it.

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*The views expressed are the author’s and are not to be taken as necessarily representing those of the British Government.