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Antarctica Adjourned? The U.N. Deliberations On Antarctica

I. Introduction

The conclusion of the Antarctic Treaty¹ completed earlier endeavors² to find an international regime for Antarctica within the framework of the United Nations (U.N.) and solve existing issues which were in international arbitration.³ During the first decade of the Treaty's existence, the efforts of various United Nations agencies (specifically, the Food and Agriculture Organization (FAO), the United Nations Environment Programme (UNEP) and the Economic and Social Council (ECOSOC)) to take a more active role in the management of Antarctica have encountered firm and successful resistance from the Consultative Parties of the Antarctic Treaty (Parties).⁴

This situation changed fundamentally during the second decade of the Treaty system (1969–1979). New forces supporting the international management of space and resources rather than national jurisdiction emerged:

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1. Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 795, T.I.A.S. No. 4780, 402 U.N.T.S. 72 (entered into force for the United States, June 23, 1961). For an excellent introduction, see Oxman, *The Antarctic Regime: An Introduction*, 33 U. MIAMI L. REV. 285 (1978); Dupuy, *Le Traité sur L'Antarctique*, 6 A.F.D.I. 111 (1960).

2. WOLFRUM, *DIE INTERNATIONALISIERUNG STAATSFREIER RAUME* (The Internationalization of Common Spaces Outside National Jurisdiction), 49–55 (1984); Note, *A Thaw in International Law* 87 YALE L. J. 804, 845 n. 197 (1978).

3. Antarctica Cases (U.K. v. Argen., U.K. v. Chile), 1956 I.C.J. Pleadings, Oral Arguments, Documents 15.

4. See AUBURN, *Antarctica Law and Politics*, 120 (1982); the Consultative Parties are: Argentina, Belgium, France, Japan, New Zealand, Norway, South Africa, U.S.S.R., United Kingdom, U.S.A. (original signatory states of the Treaty); Poland (acquired Consultative Status in 1977), West Germany (1981), Brazil (1983) and India (1983).

Third World pressure for the implementation of a new international economic order (NIEO),⁵ the new jurisdiction for the deep seabed in UNCLOS III⁶ and the incorporation of "common heritage principle"⁷ in the Moon Treaty.⁸ These forces led to a new challenge to the Treaty system: the question of a new international regime for Antarctica and its resources. Prominent speakers from third world countries have demanded a new international regime for Antarctica throughout the seventies⁹ but these efforts have been consistently rejected by the parties.¹⁰ Different positions arose during the discussions of the "Question of Antarctica" at the United Nations.¹¹ These debates focused mainly on a proposed new international regime for the management of Antarctica's mineral resources.¹² This article briefly describes the recent U.N. deliberations on Antarctica and identifies the policy concerns underlying them.

II. Existing Legal Framework for the Management of Antarctica

The 1959 Treaty¹³ established the legal jurisdiction for Antarctica, guaranteeing international stability, demilitarization (Art. I) and scientific

5. See G.A. Res. 3201 (S-VI), U.N. Doc. A/9551 (1974), *reprinted in Official Documents*, 68 A.J.I.L. 798 (1974).

6. U.N. Convention of the Law of the Sea, U.N. Sales No. E.83.V.5 (1982), *reprinted in* 21 I.L.M. 126 (1982) [hereinafter cited as UNCLOS III]. Art. 136 states: "The area and its resources are the common heritage of mankind."

7. On that principle and its legal validity in international law, see Kiss, *Patrimoine commun de l'Humanite*, 175 R.C.A.D.I. 99-245 (1982); White, *The Common Heritage of Mankind: An Assessment*, 14 CASE W. RESERVE J. INT'L L. 509-542 (1982); WOLFRUM, *supra* note 2, at 331-336.

8. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, G.A. Res. 34/68, U.N. Doc. A/34/46, at 77; *reprinted in* The U.N. Treaties on Outer Space, (1984) (U.N. Sales No. E.84.I.10) and 7 J. SPACE L. 165 (1979).

9. E.g. Statement of Ambassador Pinto (Sri Lanka), *The Int'l Community and Antarctica*, 33 U. MIAMI L. REV. 475-487 (1978) *Antarctic Challenge—Proceedings of an Interdisciplinary Symposium*, *id.* at 164-168 (1984).

10. See most recently *Question of Antarctica*, study requested under G.A. Res. 38/77, Report of the Secretary General (Views of States), U.N. Doc. A/39/583 (Part II) (1984) [hereinafter the S.G. Report]; *id.* at 90, para. 305 (statement of Australia).

11. See U.N. Doc. A/38/C.1/PV 42-46 (1983); for a summary see S.G. Report, *supra* note 10, Part I, at 33-44.

12. See the following writings on this issue: Alexander, *A Recommended Approach to the Antarctic Resources Problem*, 33 U. MIAMI L. REV. 371-425 (1978); Burton, *New Stresses on the Antarctic Treaty: Toward International Legal Institutions Governing Antarctic Resources*, 65 VA. L. REV. 421-512 (1979); Colson, *The Antarctic Treaty System: The Mineral Issue*, 12 L. AND POL'Y IN INT'L BUS. 841-902 (1980); Lagoni, *Antarctica's Mineral Resources in International Law*, 39 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VOLKERRECHT (1979); Zorn, *Antarctic Minerals A Common Heritage Approach*, 10 RESOURCES POL'Y 2-19 (1984); Wolfrum, *supra* note 2, at 85-91.

13. *Supra* note 1, Parties *see* note 4.

cooperation (Arts. II, III).¹⁴ Member-states consist firstly of the twelve Signatory States who participated in the Washington conference on the Treaty¹⁵—the (permanent) Consultative Parties. Any country can accede to the Treaty (Art. XIII); however, the nations which desire to join the Parties have to “prove” their special scientific interest in Antarctica by “the establishment of a scientific station or dispatch of a scientific expedition” (Art. IX, para. 2). Only the Parties manage the Antarctic affairs today, and only these states may vote at the meetings under Art. IX, para. 1. 2). In these meetings, member states decide on recommendations concerning the relevant issues arising regarding the management of Antarctica (Art. IX, para. 1, e.g. scientific research and environmental issues).

The conference of member states under the Treaty operates by consensus; thus, at least at first glance, there seems to be no distinction between the voting rights of the Parties and the non-Consultative Parties. The Parties, however, have reserved onto themselves the right to control the management of Antarctic affairs, as any resulting recommendations enter into force only after approval by all the Parties (Art. IX). Furthermore, only the Parties are entitled to exercise the rights to inspect foreign stations under Art. VII, para. 1.2.¹⁶

It is difficult to obtain consultative status under Art. IX because the installation of a permanent scientific station or the dispatch of a scientific expedition demands enormous financial and scientific resources. The high “entry fee” to the club of the Parties has been repeatedly criticized by small Third-World countries which feel excluded from the management of the continent. The exclusiveness of the existing Treaty system was one of the main issues during the U.N. debates on the issue.¹⁷

III. Debates in the 38th United Nations General Assembly (1983)

The political positions of the concerned states regarding the Treaty system in general remained unchanged in 1983. The Third World’s assessment of the Treaty was most accurately expressed by Ambassador Ghebo of Ghana, who stated that “the Treaty, in our view, cannot guarantee our

14. The Treaty Art. VI is concerned with its jurisdiction: “The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all iceshelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under International Law with regard to the high seas within the area.”

15. On the Conference, see *The Conference on Antarctica—Conference Documents, the Antarctic Treaty and Related Papers*, Dept. of State Pub. 7060, International Conference Series 13, (Washington 1960); Hanessia, *The Antarctic Treaty 1959*, 9 I.C.L.Q. 472 (1960).

16. On the advantageous status of the Parties, see WOLFRUM *supra* note 2, at 71–75.

17. See, Zorn, *supra* note 12, at 11 n. 21.

Ghana, who stated that "the Treaty, in our view, cannot guarantee our common heritage and at the same time be a rich man's club."¹⁸ An opposing stand was taken by the Parties, who considered the Treaty as one of the best examples of international cooperation for the past and future.¹⁹

The nonaligned countries initiated recent discussions on the Antarctica issue,²⁰ as expressed in the positions of India²¹ and Brazil.²² These two prominent nonaligned states obtained Consultative Status under Art. IX in 1983. Though carefully expressed, the position of India and Brazil, once they entered the "rich man's club,"²³ changed to one of defending the Treaty system against criticism from the smaller third world countries and thus, Third World consensus on the Antarctica Question, if it had ever existed, did not last long. Most recently, both India and Brazil became even more solid supporters of the Treaty and rejected any proposed reform or modification of the existing Treaty system.²⁴

Their political positions were reiterated during the discussion of the "mineral resources question" at which Third World states called for a "common heritage approach" to the issue of the exploitation of the mineral resources on the Antarctic continent.²⁵ The Parties insisted that the issue of mineral resources should be dealt with under the framework of the Treaty.²⁶

The debates in the First Committee on the subject failed to reach a substantive agreement on the question of a future common management of the continent and on the disposition of Antarctica's mineral resources. Subsequently, the 38th General Assembly adopted resolution 38/77.²⁷

18. U.N. Doc. A/38/C.1/PV 43, 21.

19. See Statement of Mr. Wolcott (Austral.) on behalf of the Parties, U.N. Doc. A/38/C.1/PV 48, 23; Position Paper adopted by the Parties Aug. 9, 1983, U.N. Doc. A/38/439 (1983); Statement of Ambassador Sorzano (U.S.A.), U.N. Doc. A/38/C.1/PV 45, 8 (1983).

20. Final Communiqué of the Meetings of the Heads of States or Government of the Non-Aligned Countries, New Delhi, Mar. 7-12, 1983; U.N. Doc. A/38/132 and Corr. 1 and 2, Annex Sect. III paras. 122, 133. Final Communiqué of the Meetings of Ministers and Heads of Delegation of the Non-Aligned Countries to the thirty-ninth session of the General Assembly, New York, Oct. 1-5, 1984, U.N. Doc. A/39/560, para. 109.

21. Statement of Ambassador Verna (India), U.N. Doc. A/38/C.1/PV 43 (1984).

22. Statement of Ambassador Souza de Silva (Brazil), U.N. Doc. S/38/C.1/PV 43 (1984).

23. See *supra*, note 18.

24. See S.G. Report, *supra* note 10, Part II, Vol. II, at 11 (Brazil), 89 (India).

25. For further references see Zorn, *supra* note 12, at 11 42; Statement of Permanent Representative Jakobs (Antigua and Barbuda), U.N. Doc. A/38/C.1/PV 42, 9; Statement of Ambassador Zainal Abidin (Malaysia), *id.*

26. See the not yet officially published negotiating text of An Antarctic Resources Regime, under consideration in the Parties meetings since 1977, reprinted in GREENPEACE, THE FUTURE OF ANTARCTICA, App. 8 (1984); for the actual state of negotiations, see Kimball, International Institute for Environment and Development (IUED), *Report on Antarctica*, 10 (1984). The last Parties meeting (Rio de Janeiro, Feb. 25—Mar. 10, 1985) did not proceed to a new proposal on this issue.

27. U.N. Doc. A/RES/38/77 (1984).

Under that resolution, the Secretary General was requested "to prepare a comprehensive, factual and objective study on all aspects of Antarctica, taking fully into account the Antarctica Treaty System and other relevant factors."²⁸

The discussions on the "Question of Antarctica" in the 38th General Assembly remained deadlocked in a classic North-South dispute, or, to be more precise, a Parties versus small Third World States confrontation. Interestingly, the Eastern and Western Parties formed a successful political alliance to block Third World aspirations.

IV. The S.G.'s Report and Discussions in the 39th United Nations General Assembly (1984)

A. A COMPREHENSIVE REPORT?

The Secretary General's report,²⁹ comprising two parts is certainly the most recent and complete study of these issues. The first part, dealing with the physical, legal, political and scientific issues, provides the necessary information for a discussion of basic Antarctic affairs; the second part, containing the views of fifty-four member states, shows clearly the different positions already evident during previous discussions.³⁰

The legal assessment of the "Question of Antarctica" is dealt with in several portions of the S.G.'s report. Chapter II of the first part (Antarctica: Legal and Political Aspects),³¹ and Chapter III of the report (The Antarctic Treaty System in Practice)³² are, in general, an accurate evaluation of the existing Treaty system. It does, however, place particular emphasis on the achievements under the Treaty and therefore it reflects mainly the political positions of the Parties. Notably, the report lacks discussion of important shortcomings of the Treaty.

1. *Sovereignty Over Antarctica*

The report deals firstly with the status of the different territorial claims asserted by some Parties.³³ The report³⁴ neglects to deal, however, with the

28. *Id.*, at operative para. 1.

29. See S.G. Report *supra* note 10; for a more positive evaluation of the S.G. Report, see BOCKSLAFF, *VEREINTE NATIONEN* 51 (1985).

30. See *supra* notes 18-23 and accompanying text.

31. S.G. Report, *supra* note 10, Part I, at 13-33 (on sovereignty, the Treaty in general, deliberations during the 38th U.N. General Assembly).

32. S.G. Report, *supra* note 10, at 33-78.

33. The claimant states are: Argent. (1942), Austl. (1933), Chile (1939), Fr. (1942), N. Z. (1923), Nor. (1939), U.K. (1908).

34. S.G. Report, *supra* note 10, at 21.

doubts concerning the legal validity of these claims under international law which have been widely discussed in political and legal circles.³⁵

The legal validity of these claims is not only contested by "some non-Treaty parties."³⁶ According to the standards of effective occupation under international law, the legal force of these territorial claims remains ambiguous.³⁷ Effective occupation as a means of acquisition of territory must be based on two elements: possession and continuous administration, the latter element being the decisive criterion.³⁸ In the words of the Permanent Court of International Justice: ". . . a claim to sovereignty involves two elements, each of which must be shown to exist: the intention and will to act as a sovereign, and some actual continued display of such authority."³⁹ Applying these standards to the claims to Antarctica, the first observation to be made is that none of the claimant states has ever, strictly speaking, "possessed" the territory claimed in Antarctica. In addition, it is doubtful that the activities of the claimant states prior to the conclusion of the Treaty would meet the conditions of an effective occupation (*i.e.* "some actual continued display of authority").⁴⁰ Even under "relaxed standards" applicable to polar regions,⁴¹ the legal validity of these claims is disputable. These arguments are missing from the S.G.'s report, making it inaccurate and noncomprehensive.

2. *The Treaty System and UNCLOS III*

The second shortcoming of the S.G.'s report is that it avoids a serious discussion of the relationship between the existing Treaty system and the emerging Law of the Sea.⁴² The three main issues in that field are neglected

35. See Bernhardt, *Sovereignty in Antarctica*, 5 CAL. W. INT'L J. 297, 316-332 (1975); Alexander, *supra* note 12, at 382-397; Note, *supra* note 2, at 811-828; Burton, *supra* note 12, at 460-483; Luard, *Who Owns Antarctica?*, 62 FOR. AFF. 1175 (1984).

36. S.G. Report, *supra* note 10, at 21; the U.S.S.R. and the U.S.A., both prominent Parties, do not recognize any territorial claim on the Antarctic continent. On the Soviet position, see the detailed paper of Boczek, *The Soviet Union and the Antarctic Regime*, 78 A.J.I.L. 824 (1984); on different positions, see WOLFRUM, *supra* note 2, at 36-48.

37. The leading cases are: Eastern Greenland Case, 1933 P.C.I.J., ser. A/B, No. 53; Clipperton Island Case, U.N.R.I.A.A. II, 1105 (1931), *reprinted in* 26 A.J.I.L. 390 (1932); see Note, *supra* note 2, at 818.

38. Waldock, *Disputed Sovereignty over the Falkland Islands Dependencies*, 25 BRIT. Y. INT'L 311, 317 (1948); Bernhardt, *supra* note 35, at 324.

39. Eastern Greenland Case, *supra* note 37, at 45.

40. For a similar evaluation of the status of the claims, see AKEHURST, *A MODERN INTRODUCTION TO INTERNATIONAL LAW* 144 (1984); Alexander, *supra* note 12, at 393-397; Joyner, *The Exclusive Economic Zone and Antarctica*, 21 VA. J. INT'L L. 691, 725 (1981).

41. Bernhardt, *supra* note 35, at 326-332; WOLFRUM, *supra* note 2, at 46-48.

42. S.G. Report, *supra* note 10, at 27; on that topic, see Harry, *The Antarctic Regime and the Law of the Sea Convention: An Australian View*, 21 VA. J. INT'L L. 227-244 (1981); for a German position see Scharnhorst-Müller, *The Impact of UNCLOS III on the Antarctic Regime, in: Antarctic Challenge*, 33 U. MIAMI L. REV. 169-176 (1984).

by the S.G.'s report: 1) the question of an Exclusive Economic Zone (EEZ) in Antarctica (Art. 55 *et seq.* UNCLOS III);⁴³ 2) the law applicable to the continental shelf of Antarctica (Art. 76 *et seq.* UNCLOS III);⁴⁴ and 3) the jurisdiction of the deep seabed within the zone of application of the Antarctic Treaty (Art. 133 UNCLOS III). The first two issues closely linked to the question of sovereignty over Antarctica are discussed above.⁴⁵ Prerequisite to the exercise of sovereign rights in the EEZ and in the continental shelf is the existence of a coastal state.⁴⁶ As the claims to sovereignty over Antarctica are not internationally recognized, a claimant state's exercise of these rights would encounter serious resistance from nonclaimant Parties and Third World countries. The Parties to the Treaty probably would invoke Art. IV to block the exercise of sovereign rights in the EEZ Antarctica by claimant states.⁴⁷ The consequences of this scenario are unclear.⁴⁸ The Parties may seek to establish a regime similar to the UNCLOS III EEZ within the framework of the Treaty in order to exclude international organizations from the management of the Antarctic EEZ and the Continental Shelf of Antarctica.⁴⁹ The Convention on the Conservation of Antarctic Living Resources⁵⁰ constitutes an example of these options under the umbrella of the Treaty.

Even more complicated is the legal status of Antarctica's deep seabed and ocean floor.⁵¹ If the Parties try to bar the new international Seabed Authority from management of the deep seabed within the area of application of the Treaty⁵² by creating a mineral resources regime under the Treaty, this strategy is questionable under Art. 311, para. 2 UNCLOS III,⁵³ at least for

43. See Joyner, *supra* note 40, 691-725.

44. See Lagoni, *supra* note 12, at 23-25; for uncertainties in the U.S. position, ("legal status of the continental shelf unclear") see *U.S. Antarctic Policy, Hearing Before the Subcomm. on Oceans and Int'l Environment of the Comm. on Foreign Relations*, 94th Cong., 1st. Sess. 19 (on U.S. policy with respect to mineral exploitation and exploration of the Antarctic).

45. See *supra* note 7.

46. See UNCLOS III, *supra* note 6 at Arts. 55 and 76.

47. The Treaty Art. IV para. 2 provides: "No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica . . ."; see Joyner, *supra* note 40, 724.

48. For a different point of view ("Common EEZ rights, to be exercised by the Parties"), see Scharnhorst-Müller, *supra* note 42, at 174-176. This point of view is incompatible with the concept of the EEZ under international law.

49. For this strategy, see Lagoni, *supra* note 12, at 24.

50. May 20, 1980, BGBI 1982 II 420; reprinted in GREENPEACE *supra* note 26, app. II.

51. For an updated overview see Note, *The Current Status of Deep Seabed Mining*, 24 VA. J. INT'L L. 361-417 (1984).

52. See PLATZOEDER, POLITISCHE KONZEPTIONEN ZUR NEUORDNUNG DES MEERESVOKERRECHTS 175 (1976); Lagoni, *supra* note 12, at 25.

53. See UNCLOS III, *supra* note 6, at Art. 311 para. 2 stipulates: "This Convention shall not alter the rights and obligations of State Parties which arise from other agreements *compatible*

those Parties participating in the UNCLOS III process. A minerals regime managed exclusively by the Parties is probably not a "compatible" agreement under Art. 311, para. 2 UNCLOS III. The possibility of contradicting obligations assumed by those Parties which have signed or ratified the UNCLOS III or intend to do so should have been one of the relevant issues included in the "comprehensive" S.G.'s report.

3. *Consultative Status (Art. IX AT)*

The third major shortcoming of the S.G.'s report is the inadequate description of the Consultative Status.⁵⁴ The S.G.'s report refers to the Consultative Status only as a "mechanism for the purpose of the exchange of information, consultations, consideration and formulation of measures in furtherance of the principles and objectives of the Treaty."⁵⁵ A major focus of criticism of the existing Treaty system has been the financial barrier to obtaining Consultative Status.⁵⁶ Thus, in reality only the Parties today manage Antarctic affairs.⁵⁷

The report's qualification of Consultative Status as a politically indifferent annex to normal membership under the Treaty is incorrect and grossly misleading.

B. ANTARCTICA ADJOURNED: DISCUSSIONS DURING THE 39TH UNITED NATIONS GENERAL ASSEMBLY⁵⁸

The S.G.'s report was published too late to provide a basis for the debates in the General Assembly and in the First Committee. Therefore, the political positions of the states concerned remained unchanged. In particular, Malaysia,⁵⁹ one of the states which initiated U.N. discussion on the "Question of Antarctica," called for the establishment of a special committee on Antarctica to elaborate the objectives of a new international regime for the continent and its mineral resources. During the General Debates, Antigua and Barbuda⁶⁰ presented a detailed plan for the international management of the mineral resources of Antarctica. These statements and the discussions in the First Committee from November 28 to November 30, 1984,⁶¹ did not

with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention." (emphasis added)

54. S.G. Report, *supra* note 10, at 28.

55. *Id.*

56. *Id.* at 3.

57. See Zorn, *supra* note 12, at 11; and Note, *supra* note 2, at 824.

58. See BOCKSLAFF, *supra* note 29, at 51-53.

59. Statement of Prime Minister H. E. Seri Mahatir Bin Mohammad (Malaysia), U.N. Doc. A/39/PV 28 (1984).

60. Statement of Rep. Jobs (Antigua and Barbuda), U.N. Doc. A/39/PV 30, 11 (1984).

61. U.N. Doc. A/39/C.1/PV 50, 52-55 (1984).

indicate any change in the political standpoint of the main protagonists—the Parties and small Third World countries. The establishment of a Special Committee on Antarctica remained the main goal of the first informal draft resolution Malaysia circulated in the First Committee.⁶²

Worth mentioning again are the statements of Brazil and India, the new Parties, which defend the Treaty categorically against the criticism of small Third World countries.⁶³ Thus, any possible consensus was again reduced to two quite different assessments of the Treaty system. Following the draft resolution finally adopted by the First Committee by consensus,⁶⁴ the General Assembly decided without a vote to include the “Question of Antarctica” in the provisional agenda of the fortieth General Assembly of 1985.⁶⁵

V. Concluding Remarks

Contrary to many high expectations, this year’s U.N. debate on the “Question of Antarctica” was not a major step forward toward a substantive discussion of the problematic issues, *e.g.*, the environmental questions, the new mineral jurisdiction and the relevant legal and political implications. Once again, the U.N. only provided the organizational framework for the exchange of controversial viewpoints, rather than a forum for resolving the political conflicts over Antarctica. This failure is, in the case of the “Question of Antarctica,” due to two principal reasons. First, the Parties view the Treaty as a successful international arrangement.⁶⁶ They believe that it has achieved its important political goals: continued denuclearization and demilitarization of the continent, the guarantee of the free scientific research and the use of Antarctica for exclusively peaceful purposes. These achievements, they feel, should be appreciated by the international community. Many states, therefore, do not see a pressing political need for a new international regime for Antarctica to replace the Treaty system.

62. The second informal draft resolution sponsored by Malaysia enumerated the issues a future special committee on Antarctica should cover. Malaysia abandoned that proposal at the beginning of the debate in the first Committee; *see* statement of Rep. Zain (Malaysia), U.N. Doc. A/39/C.1/PV 50, 11 (1984).

63. *See* Statement of Rep. Verna (India), U.N. Doc. A/39/C.1/PV 53, 1 (1984); Statement of Mr. Valle (Braz.), U.N. Doc. A/39/C.1/PV 50 (1984); *see* the harsh criticism of these two statements by Ambassador Ghebo (Ghana), U.N. Doc. A/39/C.1/PV 53, 46 (1984).

64. G.A. Res. 39/152, Dec. 17, 1984 (based on Comm. res. at U.N. Doc. A/39/C.1/L. 83).

65. In the words of the Permanent Representative of Malaysia, “It is a draft with which none of us is particularly happy, and perhaps in that very fact lies whatever merit it possesses . . .” U.N. Doc. A/39/C.1/PV 55, 18 (1984).

66. Statement of Ambassador Sorzano (U.S.A.): “A look at the twenty-five years of the Antarctic Treaty reveals its basic operational characteristic: It works.” U.N. Doc. A/39/C.1/PV 53, 61 (1984).

In addition, the Malaysian initiative challenged the Antarctic Treaty too generally. The initiative did not adequately distinguish the different areas of application of the “common heritage principle,”⁶⁷ to the Antarctic territory, the marine life resources and the mineral resources of Antarctica. Only in the latter case is the application of that principle legally arguable. Confronted with the massive resistance of the Parties to the proposed Special Committee on Antarctica, Malaysia and the other supporting states failed to present compromising initiatives in order to intensify the discussion of the “Question of Antarctica” at the United Nations.

67. See *supra* note 7; Zorn, *supra* note 12, at 11–17.