

United States combined - if they have the logistic capability to do so. In conjunction with Article VII they also have the right to inspect ships and aircraft at the point of discharging or embarking cargoes or personnel in Antarctica, but not when they were at sea or airborne.

To ensure that the inspections carried out by official observers are conducted without any interference, Article VIII provides that observers and members of their staffs shall be subject only to the jurisdiction of the country of which they are nationals. The jurisdictional immunity not only contributes to the observers' freedom of movement, but also the efficacy of the inspections they carry out (U.S. ACDA, 1982, Manual).

Article IX is important to the inspection process - it establishes the tenor of inspections and provides a forum where inspection results can be openly discussed. Among other things representatives of the contracting parties will meet at suitable intervals and recommend to their governments, measures in furtherance of the principles and objectives of the Treaty. Many of these measures, known as recommendations (Heap, 1983, p.107) are potentially the object of inspections in Antarctica (see paragraph after next). Paragraph IX(3) also requires that reports from observers referred to in Article VII shall be transmitted to all of the other Antarctic Treaty Consultative Parties - in theory each original Treaty partner should have a complete file. "This clearly indicates that observers, although nationally designated, are in fact serving the interests of all parties to the Treaty" (U.S. ACDA, 1983, report).

Article X requires that each of the Contracting Parties take appropriate efforts to ensure that no one engages in any activity in Antarctica contrary to the principles or purposes of the Treaty. Its aim is not only to prevent such activity by nationals and organizations under

jurisdiction of the Parties, but to deter countries which are not party to the Treaty and their nationals from engaging in non-peaceful activities in Antarctica. Activity contrary to the spirit and intent as well as the letter of the law in this article would be the subject of a comment during inspection (U.S. DOS 1960).

Since the Antarctic Treaty entered into force in 1961 an *Antarctic Treaty System* for management of the continent and the surrounding seas has evolved through consultative meetings of member states as provided for in Article IX of the Treaty. Fourteen of these Antarctic Treaty Consultative meetings (ATCM's) have been held at approximately two-year intervals. There have been over 150 recommendations developed at these regular forums which were subsequently approved by the Treaty governments. These Recommendations have been catalogued into six broad categories in the Handbook of the Antarctic Treaty System - The Antarctic Environment, Conservation of Resources, Facilitation of Scientific Research, Facilitation of International Scientific Cooperation, Exchanges of Information, and Operation of the Antarctic Treaty System & Consultative Meetings (ATCP, 1987, Handbook). These measures are dynamic, being changed, augmented and cancelled as the situation requires. Compliance with the current provisions of these measures is one of the objects of the Antarctic Treaty inspection process.

It is beyond the scope of this study to analyze all of the measures in the *Handbook of the Antarctic Treaty System*. However, two of the Recommendations are worthy of note since they are extensive and their provisions require compliance by the Consultative Parties - *Agreed Measures for the Protection of Antarctic Fauna and Flora* negotiated at the Third Antarctic Treaty Consultative Party Meeting in 1964 with modifications

since that time and the *Code of Conduct for Antarctic Expeditions and Station Activities* enacted in 1975 which sets down guidelines for the conduct of national expeditions in Antarctica.

4.5 OBSERVATION AND COMPLIANCE

There are no strict rules for the conduct of inspections. The United States introduced a paper at the Fourteenth Antarctic Treaty Consultative Meeting describing the values of exercising the right of inspection, the planning process in preparation for conducting the inspection and a general description of the types of observations the observer team is required to carry out. Australia also submitted a paper on how to conduct inspections and announced that inspections were to be a regular part of their Antarctic program. Perhaps this indicates a trend toward standardization. In reviewing the reports, however, it is apparent that observers are given a great deal of flexibility on what to observe and what to report about. The United States published an inspection manual in 1970 and updated it in 1982 which gives guidance to the inspection teams on what to inspect for, but no cut-and-dried procedures on how to carry out an inspection (U.S. ACDA, 1982, Manual). Consequently observer visits were all conducted differently and the emphasis has varied from inspection to inspection. There is an inherent strength in non-standardization of inspections in that it makes it difficult for those being inspected to prepare specifically for the inspections. However, it also makes it difficult for an analyst to determine trends. The only trend one is able to determine with any certainty is originality.

Some writers who have examined the inspection process in action have been critical that no violations of the Treaty or the Agreed

Recommendations have been reported (Auburn, 1982; Quigg, 1983; Beck, 1986). However, given that the main purpose of inspection is to ensure that Antarctica is used for peaceful purposes only and that no nuclear tests are conducted or radioactive material stored, the inspections have been a resounding success. The Treaty does provide a reasonably satisfactory assurance that military activity will not go unnoticed (Beeby, 1972, p.14) and no violations of this nature have been reported and none of the reports have implied that any have occurred.

There also has been criticism that inspections have been ineffective because they have been brief and superficial and because of the advance warning of an inspection team visit (Beck, 1986, p.71) implying that military activities could be covered up and weapons hidden. The author's conclusion is that Antarctic visits have all involved enough personnel and have been long enough to cover every Antarctic station in a thorough manner. Stations on the continent are small, and the largest, McMurdo, is routinely inspected by the base leader for safety and cleanliness in a four hour time frame (personal experience). If there were significant quantities of military weapons or construction of military facilities they would be uncovered in an inspection.

Any military analyst would be quick to point out that the development of a logistics structure is necessary before contemplating construction of military activities. Examination of the reports leads one to understand that there are no year-round aerodromes or port facilities in Antarctica capable of supporting sustained military operations and the stations are, with the exception of Vostok, South Pole and several other inland sites, vulnerable to naval bombardment if they did pose a warlike posture - in other words, they are isolated and indefensible in depth from the

hinterland. Inland stations are vulnerable in that they depend upon the coastal stations. It makes no military sense to attempt to fortify a station in Antarctica and risk provoking a reaction - it would be only symbolic.

The prime assets of military value in Antarctica are mobile - the people, ships, and aircraft that move to and from the continent annually in support of national programs. The inspection reports have commented on numbers of military personnel at each site and ships and noted that aircraft have been inspected. If these assets increased markedly over previous years or if they were found to be in excess of the numbers reported in the advance information per Paragraph VII(5) of the Treaty, concern should be expressed. Observers have commented periodically on this aspect of inspections, but not consistently. This combined with the problem that many nations have been remiss in providing timely advance information for comparison to on-site observations (Auburn, 1982, p.140; Beck, 1986, p.79) appears to be the biggest weakness in the inspection system. However, advance reports aside, gross numbers of ships, aircraft and personnel observed to be working in Antarctica are insignificant on the scale of military things and the inspectors were wise not to express alarm.

Finally the on-site non-mobile facilities on the continent that are more important than armaments in the long run are the fuel storage capacity and the radio-telecommunications systems developed to support field operations. Both of these are critical if any nation is contemplating hostilities. Again there has been very little comment by inspectors and no apparent violations in the overall analysis. However, for thoroughness and to assure national authorities that Antarctica is being used for peaceful

purposes only, these facilities should be scrutinized carefully during on-site inspections.

Criticism has also been levelled that inspectors have been remiss in not reporting violations of the provisions on environmental protection and conservation of the Antarctic Treaty and its recommendations (Auburn, 1982, p.113; Beck, 1986, p.79). Examination of the reports does reveal descriptions of unsound environmental and conservation practices. For instance there are many routine reports of seals being used for dog food, dogs running loose among the penguins, sewage dumping, improper disposal of trash, fuel spills, etc., but no violations filed against these practices. However, taking the reports in context in the overall scope of things, a Treaty violation report would have been a gross overstatement of the problem. The observers reported what they saw - it was left up to the Antarctic Treaty Consultative Parties to make the judgement collectively and take action diplomatically.

It appears that the United States who conducted most of these early inspections, although concerned, did not want the inspection process to backfire over issues that were not pertinent to disarmament and denuclearization. The right to inspect was more important than the issues of conservation and environment and with only one nation voicing violations, criticism of the inspection process could develop, especially since the United States was guilty of many of the same infractions. As inspections have picked up in the last few years other inspecting nations have faced the same dilemma as the United States. It is best expressed by Arthur Chilingarov, the lead Soviet inspector in 1989, who noted that there were many violations, however, "before criticizing foreigners, we should first put our own house in order" (Novosti Press, 1989).

In the austral summer of 1987-88 Greenpeace conducted an environmental/conservation "inspection" of Antarctic stations (Greenpeace, 1988) with mixed reception. The *Agreed Measures for the Conservation of Antarctic Fauna and Flora* and *The Code of Conduct for Antarctic Expeditions and Station Activities* were used for guidelines. Predictably the Greenpeace report contradicted the reports of national expeditions in Antarctica. Many variances were charged and Greenpeace staged demonstrations against practices that they judged to be particularly noteworthy; these were produced in a report that was sent to each of the Treaty powers amid much fanfare and publicity. However, Greenpeace is interested in only a small aspect of the inspection process and does not have to balance their charges against other objectives of the Antarctic Treaty inspections. Greenpeace's *modus operandi* has been confrontational and designed to embarrass rather than inform. There has been an on-going effort to improve environmental conditions in Antarctica amongst most of the Treaty parties spurred by a worldwide concern for a cleaner environment which preceded Greenpeace by many years - hence documents like the *Agreed Measures for the Protection of Antarctic Fauna and Flora*. The need for a more thorough inspection for things environmental is apparent to all and, in the words of Arthur Chilingarov: "environmental issues will be a major consideration in conducting all future Antarctic inspections" implying that all nations will have to "put their houses in order" (Novosti Press, 1989).

To summarize, the reports indicate much more compliance than non-compliance, that non-militarization and denuclearization aspects of the Treaty have been fully complied with, that inspections have been successful in bringing conservation and environmental issues before the parties collectively and that this has been effective in initiating measures of

reform. During the 26 years since the inspection process was first implemented by New Zealand there have been no violations noted of any nation having denied access to another's inspection team. This attitude of openness to exposure of one's strengths and weaknesses speaks for itself - it is the major feature of compliance in the *Antarctic Treaty System* of Inspections.

Chapter 5

OTHER TREATIES AND INSPECTION

5.1 ON-SITE INSPECTION

The Antarctic Treaty was hailed as a model for other treaties in the field of disarmament, prohibition of nuclear explosions and the law of space by the U.S. Senate during their ratification process. At these hearings Herman Phleger was emphatic that the inspection provisions of the Treaty "should prove a valuable source of practical experience in the detailed processes of international inspection" (U.S. Senate, Hearings, 1960, p.38) implying that conduct of inspections would be important to the acceptance of on-site inspection provisions in other disarmament vehicles. Since the Antarctic Treaty was ratified a number of very important disarmament treaties have been negotiated that have verification processes. An analysis of all of them is beyond the scope of this paper, but a look at a select few offers insight into verification processes in general, on-site inspections in particular and the rôle of the Antarctic Treaty in their development.

In general all disarmament and test ban treaties have two parts, the provisions of the treaty and a verification section to ensure that the provisions are being carried out. Negotiation of the provisions of the treaty is the easy part and is usually accomplished quite rapidly. However, agreement on the procedures for verification have proven a stumbling block for treaty negotiations since disarmament talks began in the 1950's (U.S. Senate, Hearings, 1960, p.38).

In 1961 the United States and the Soviet Union signed a joint statement on the agreed principles for disarmament negotiations. The principles included the need for a verification system that "would provide firm assurance that all parties are honoring their obligations" (Agreement, 1961). To the western nations this meant on-site inspection wherever it was needed, but to the Soviet Union on-site inspection on Russian soil was unthinkable and other forms of assurance would be necessary (Wright, 1964, p.174-175). Article VII of the Antarctic Treaty, which included on-site verification, was considered an exception by the Soviets to their national policy of resisting on-site inspection because it was not threatening to their security - no precedent had been set (Tunkin, 1960, p.45). This conflict of views has been, and still is, the chief stumbling block to successful disarmament negotiations (Rowny*, personal interview, 1989).

The United Kingdom, the United States and the Soviet Union signed the Limited Nuclear Test Ban Treaty on July 25, 1963 after eight years of negotiation. It banned nuclear tests in the atmosphere, outer space and under water (Treaty, 1963). This treaty is one of the most important disarmament documents of the modern era. However, it is a fall-back from what was to be a Comprehensive Test Ban Treaty. The comprehensive test ban failed because the negotiating powers could not agree on on-site inspection provisions in the Soviet Union (U.S. ACDA, Agreements, 1989). The Limited Test Ban could be monitored by National Technical Means (NTM), such as taking pictures from photo-reconnaissance satellites and atmospheric sampling (OSIA, 1988) while the Comprehensive Test Ban

* Ambassador Rowny was a principal arms control negotiator for SALT and START and was serving in his present position as Special Advisor to the President and Secretary of State when the INF Treaty was negotiated.

required on-site inspections in order to distinguish between seismic events and underground nuclear explosions (Wright, 1964, p.165-169).

In May 1972 the United States and the Soviet Union signed the ABM Treaty that limited anti-ballistic missile systems in both countries. This treaty, the principal agreement of SALT I, was also verifiable by National Technical Means (Treaty, 1972). Since the methods of verification were adequate to ensure compliance, the United States Senate ratified the Treaty. (Note that the verification provisions considered adequate for ABM Treaty verification in 1972 would not be sufficient today because of major technological breakthroughs.) On the other hand SALT II was criticized by the Senate because it felt that on-site inspection provisions were inadequate. The treaty called for a limitation on MIRV's (Multiple Independently-targeted Re-entry Vehicles). Verification on numbers of deployed MIRV's was to be by NTM and a complex system of counting and testing. Many felt that it could be circumvented without on-site inspection including some of the arms control negotiators. So did most of the U.S. Senate. When it became obvious that the treaty would fail ratification, President Carter withdrew it from consideration (Rowny, personal interview, 1989).

On December 8, 1987 the INF Treaty was signed by President Reagan and Secretary Gorbachev in Washington DC (Treaty, 1987). The Treaty eliminates Intermediate Range and Short Range Missiles from the arsenals of both nations and the production of these type missiles in the future. Compliance is assured by an Inspection Protocol that includes unilateral on-site inspections within the borders of the USA and the USSR - the first treaty with these provisions since the Antarctic Treaty was negotiated 28 years before. The Inspection Protocol was not arrived at

easily - on-site inspection negotiations were most intense right up to the time it was signed (Rowny, personal interview, 1989). The INF Treaty inspection machinery is complex and it is restricted to missiles, missile sites and production facilities. There are also limits on the number of inspections and the inspections are limited in duration. The Antarctic Treaty, by contrast, is relatively unrestricted (see Section 4.4) and there are neither limits to the number nor the length of inspections. There have been several hundred INF inspections already conducted by observers from both countries - a tempo that far exceeds the pace of Antarctic inspections (Lacey*, personal interview, 1989). Unilateral on-site inspections are now acceptable within the borders of the Soviet Union.

The question implied here is, what effect has the 'precedent-setting' Antarctic Treaty had on the negotiating process that finally led to acceptance of on-site inspections in the USSR? According to Rowny, the Antarctic Treaty negotiations served notice to the Soviet Union that the western nations would insist on an adequate system of verification even for an area such as Antarctica which rates low in importance as a security issue. The issue of precedence for on-site inspection in Antarctica was never used as a wedge at the conference table during any other disarmament negotiations - the principle that 'verification must fit the treaty' was the basic guideline (Rowny, personal interview, 1989).

Did the inspections conducted so diligently over the years by the Americans have an effect on the Russians? By inference, perhaps they did. As Tunkin stated in 1960, the Russians could accept an on-site inspection clause because it did not threaten national security (Tunkin, 1960, p.45). Conduct of inspections was also non-threatening and the

* Dr James Lacey is the Principal Director of the On-Site Inspection Agency of the USA.

American attitude that they 'suspected no activities contrary to the Treaty' was important in building mutual confidence in the inspection process. Whether this was influential on the Soviets is not known - what is more of a surety was that if the Americans had conducted inspections in a manner that was confrontational, making accusations of non-compliance for environmental and other aspects of the Treaty, there would have been recriminations and these would have undermined other disarmament and denuclearization negotiations.

The last question implied from the foregoing analysis is whether the Antarctic system of 'verification fits the Treaty?' For the purposes for which it was originally intended, it was probably an over-kill. Inspections could have been limited in number and duration without diminishment of purpose - the inspection rate has been biennial at best and time on station has usually been limited to several hours. On-site inspections are needed, to check inside of buildings for evidence of unauthorized military activities. Unilateral inspections were necessary at the beginning - there was too much disagreement among western nations as to whether inspections were needed and coordinated multilateral inspection would have been difficult to mount. However, inspections are now institutionalized - perhaps multilateral inspections would serve to further the sense of cooperation and confidence that has become the underpinning of the Treaty. Finally, the lack of restrictions on the inspection process was probably an over-kill - they could have been restricted to Articles I and V of the Treaty or perhaps I, III and V and been just as effective for non-militarization and non-nuclearization purposes. In retrospect, however, the lack of restrictions has proven fortuitous for it has permitted the development of a system of inspection

for environmental and conservation purposes which may have wider reaching impact than the military and nuclear control provisions.

5.2 LIVING RESOURCES TREATY INSPECTIONS

There are three treaties that pertain to living resources in Antarctica that are important if one is to understand the significance of inspections in this field. They are the International Convention for the Regulation of Whaling (IWC, 1946), the Convention for the Conservation of Antarctic Seals (Treaty, 1972) and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) (Treaty, 1982). There are no inspection systems in force at the present time for any of these treaties, but may soon be. It is worthwhile to examine them for an estimate of what the future has in store.

The Whaling Convention precedes the Antarctic Treaty by 15 years. It is applicable to whaling world-wide, but since the major commercial whale fisheries are in Antarctica it is a significant Antarctic regulatory document. The convention establishes an International Whaling Commission (Article III) that among other things adopts regulations with respect to the conservation and utilization of whale resources (Article V(1)) and, after amendment in 1956 (IWC, 1956) authorizes establishment of 'methods of inspection' (Article V(1(1))). These inspection methods are codified in a 'Schedule' (IWC, 1988) that is flexible and can be amended by the Commission. The Schedule provides for national inspectors and international observers that embark on factory ships for the duration of each voyage. The inspectors are nationals of the host ships and observers are nationals from some other IWC participatory government arranged for bilaterally/reciprocally between governments. Both

inspectors and observers receive their appointments from the IWC. Reports are written up on the ship and presented to the Master of the vessel before reporting to the IWC.

The IWC appointed its first observers in 1966. In addition to their duties of compliance observation, the inspectors and observers were used to collect data on the whales taken - size, sex, weight, etc. - which has proved useful in developing new conservation regulations. There has been criticism that the inspection process has been abused, contributing to the decline of whaling stocks. However, it is more likely that the Antarctic whaling stocks have declined because the whaling quotas were set too high (Gamble*, personal interview, 1989). A world-wide whaling moratorium was declared in 1985 to reassess the problem and develop better regulations. If whaling resumes in Antarctica the conduct of IWC inspections will have to be coordinated with those provided for in the CCAMLR (see paragraph after next).

The Convention for the Conservation of Antarctic Seals established a number of safeguards for conservation of seals in Antarctica prompted by fears that a resumption of sealing might threaten the recovery of stocks (Treaty, 1972). The convention was negotiated by the Arctic Treaty Consultative Parties separate from the Antarctic Treaty, but is nevertheless considered part of the Antarctic Treaty System. However, other nations not party to the Antarctic Treaty can participate if so desired (Beck, 1986, p.221). There is no inspection clause, although one was proposed during the negotiations by the United States. If sealing were ever to resume, the convention would have to be amended to include inspection provisions if it is to be an effective vehicle for conservation

* Dr Ray Gamble is Director of the International Whaling Commission

and regulation. There is no sealing, as yet, so the question is today moot.

The CCAMLR was ratified into effect on July 4, 1982 after 10 years of negotiations. It established a conservation regime over an area twice as large as Antarctica - the region from the shores of the continent to the Antarctic Convergence. It treats the Antarctic marine ecosystem as a single management area, where conservation principles will reflect concern for all species and their interrelationships (Quigg, 1983, p.184). There is a provision to establish a system of observation and inspection in order "to ensure the observance of the convention" (Article XXIV), a draft inspection protocol has been circulated and inspections could begin as early as the 1989-90 austral summer season (CCAMLR, Commission Report, 1988).

During the negotiations of the CCAMLR there was considerable disagreement as to the type of inspection provisions needed - the conservation minded non-fishing nations favoring an international regime and the fishing nations favoring self-policing. One proposal called for linking inspections into the Antarctic Treaty inspection system (Barnes, 1982, p.267). The final draft is a compromise - executive authority resides in a Commission (Article VII) and each nation has responsibility for its own compliance (Article XXI). A "system of observation and inspection" is to be established by the Commission and the observers and inspectors are to be responsible to their own governments which in turn make formal presentations to the Commission (Article XXIV(c)). Any activity contrary to the objective of the Convention "is to be reported to the Commission for further dissemination" (Article XXII). The Commission will not have any inspection or enforcement authority.

It is difficult to compare CCAMLR inspections with the well established Antarctic Treaty System inspections since the final protocol for CCAMLR has not been approved. Some differences are, however, obvious - the Antarctic Treaty ends at the coast as far as inspection goes and ships can not be inspected while at sea, whilst the CCAMLR is a 'sea-going' treaty with some overlap along the coast. The Antarctic Treaty is relatively unrestricted in what it inspects while the CCAMLR is restricted to marine living resources. Both permit unlimited inspections and both facilitate on-site inspections. The CCAMLR is a combination multilateral/unilateral approach to inspection in that the CCAMLR Commission runs the inspection multilaterally, but the inspectors report to the national Commission Member unilaterally who in turn reports to the Commission.

Treaties are to be judged by how they work, not how they are written (see Section 3.4) and the CCAMLR will best be judged in this manner. However, some observations are possible. First, coordination between Antarctic Treaty inspections and CCAMLR inspections in the coastal regions will be necessary in order to prevent overlap and conflicting reports. In the same light, if whaling is to resume, then coordination between inspections/observations under the IWC and under the CCAMLR will be necessary; one can envisage CCAMLR inspectors boarding ships that IWC inspectors are already on board.

The current draft protocol of the Standing Committee on Observation and Inspection (CCAMLR, 1988) has focused their inspections in a manner that is certain to be confrontational. The underlying assumption of the inspections seems to be that there will be violations and that

inspections will uncover these violations as opposed to the underlying philosophy of the Antarctic Treaty that 'no violations are suspected' and the inspections are to prove that assumption correct. 'Guilty as suspected' seems to be the theme and surprise inspections at sea appear to be the focus of the protocol rather than plans to assist the fishing industry through inspections and thus prevent violations. Article III(c) of the protocol states that "observers may also be placed aboard vessels" for purposes of inspection. Would it not be wiser to enlarge upon this positive aspect of the protocol instead of concentrating on a scenario that could undermine the Antarctic Treaty System?

The greatest potential for confrontation is philosophical, not specific. The Convention was drafted by the Antarctic Treaty Consultative Parties, the majority of which "cast no nets in the fishery covered by the agreement" (Quigg, 1983, p.190). Many of the non-fishing nations have a strong environmental contingent that has strong reservations about the Convention (Barnes, 1982). This contingent is certain to have an impact on national inspection policy which is diametrically opposed to inspection policy of fishing nations. Inspection reports from the field could embody a wide variance of views that could, in turn, cause disagreement at the conference table back at the Commission.

5.3 MINERAL RESOURCES AND TREATY INSPECTIONS

On June 2, 1988, the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA) was adopted by consensus in Wellington, New Zealand. The convention is currently undergoing ratification proceedings in the Governments of the Antarctic Treaty

Consultative Powers. It enters into force upon the deposit of 16 instruments of accedence or ratification (Treaty, 1988). The CRAMRA, like its predecessor CCAMLR, is intended to fill a gap in the framework of the Antarctic Treaty System as 1991 approaches, when opportunity for an Antarctic Treaty review is provided (Beck, 1989, p.19).

There are three main types of mineral resource activities under the CRAMRA - prospecting (Articles 1.8, 37-38), exploration (Articles 1.9, 39-52) and development (Articles 1.10, 53-54). The convention provides for the establishment of six institutions: a Commission, Regulatory Committee(s), an Advisory Committee, a Special Meeting of Parties, an Arbitral Tribunal and a Secretariat. The Commission and the Regulatory Committees established are the main decision-making institutions. The Commission, whose members include all ATCP's, has broad authority for establishing general rules and procedures applicable to all development activities. The details for regulating these activities will be worked out after the convention has been ratified. One of the Commission's most important decisions is to decide whether or not to open an area for exploration or development. If it does open an area, it will appoint a Regulatory Committee to be the primary manager of the region and as such would be responsible for specifying detailed requirements for exploration and development for the area identified, including inspection requirements (Articles 12.8, 31.1f and 47g).

Inspections are to be on-site and unlimited - all facilities are to be open at all times under the Convention (Article 12.1). They are also to be both unilateral, with observers designated by a member of the Commission (Article 12.1(a)), and multilateral, with observers designated by either the Commission or Regulatory Committee (Article 12.1(b)).

Aerial inspection at all times is authorized (Article 12.1). Inspection Reports are to be sent directly to the Commission and to the Regulatory Committees (Article 12.4). The Regulatory Committee must make "effective provision" for inspection in the area prior to any exploration or development (Articles 12.8, 31.1f and 47g).

The inspection provisions of the CRAMRA appear to be better thought out and more in consonance with the Antarctic Treaty than those of the CCAMLR. It would be wise, however, to coordinate inspections under the three regimes in order to prevent conflicting reports because of different standards of inspection since the two areas of authority do overlap.

Again the rule to judge a Treaty by how it works not by how it is written applies here (see Section 3.4). The CRAMRA has not been ratified and its provisions are not in effect. However, there is one note of concern that needs to be expressed. Article 37.10 protects the proprietary nature of data and information "of commercial value". When and if the Minerals Convention comes into effect secrecy provisions will have been instituted within the Antarctic Treaty System framework for the first time. The clause has potential for mischief since many things and activities can be hidden behind it. Care should be taken when drawing up the inspection protocol by the Regulatory Committees to strictly limit its scope to prospecting at hand for there is a danger of circumventing the provisions of the Antarctic Treaty.

Chapter 6

CONCLUSIONS

'Antarctica shall be used for peaceful purposes only' has been the guiding principle of the Antarctic Treaty - the inspection provisions and their follow-on implementation ensured that this was not an empty platitude.

The Antarctic Treaty Conference which produced the Treaty was influenced more by the world-wide thaw in the *cold war* that characterized the late 1950s than it was by the merits of resolving Antarctic issues. Antarctica was a fallout of the disarmament talks - a symbol whereby both the eastern and western blocs could demonstrate the spirit-and-intent of disarmament without risking their national security. Implementation of the Treaty inspection provisions, likewise, was influenced more by external events surrounding nuclear test ban negotiations and the Cuban Missile Crisis than they were by the merits of conducting inspections in Antarctica.

Examination of the inspection provisions of the Treaty leads to the conclusion that they were an overkill. A much more restrictive inspection provision would have provided assurance that the Treaty provisions were being observed. The United States took the opportunity, created by the political thaw surrounding the negotiations, to insist that only unlimited, unilateral, on-site inspections were acceptable to make a political point in a wider international context.

Without the on-site inspection provisions of the Treaty the political tension existing under the IGY would have been perpetuated - the

inspection provisions and their consequent implementation/exercise were important for ensuring compliance, particularly the non-militarization and non-nuclearization provisions. More importantly they assured the inspecting nations that others were abiding by the treaty, allaying unfounded suspicions that something scurrilous was going on. Today no nation feels threatened by inspections in Antarctica by a sister state and all seem anxious to exhibit their facilities.

The world environmental movement has caused the Antarctic Treaty nations to widen the emphasis of their inspections to concentrate on conservation and environmental issues. Problems are being unveiled by inspections in this arena as they were not in the non-militarization and non-nuclearization arenas. However, these problems are being reported upon in a manner that permits the Antarctic Treaty Consultative Parties to address them as group issues rather than having them thrust upon each other in a divisive atmosphere of mutual recriminations.

Several other treaties contain inspection provisions that are pertinent to Antarctica and its surrounding oceans - the Whales Convention, the Living Resources Convention, the Minerals Convention and the Sealing Convention if it is amended. Inspections under these instruments will play an important rôle in resource regulation, conservation and environmental protection. There is, however, a danger that the issues that surround these treaties are so polarized between environmental groups and industry that these inspections could become confrontational and undermine the *Antarctic Treaty System*. These treaties also introduce the element of corporate secrecy that may be at variance with the intent of the Antarctic Treaty. In addition, there is a danger that the different inspection regimes could be at cross purposes since

their regimes overlap - conflicting standards of inspection could be applied to activities in the field. These issues highlight the possible need for an organization - possibly a Secretariat - to coordinate Antarctic Treaty System inspections (Birnie, 1986, p.6).

The Soviet Union knowingly stepped back from a strong international position against on-site inspections when it agreed to include them in the Antarctic Treaty in 1959. Words to the contrary, it opened the door a little for their inclusion in other agreements. By so doing, they made the Antarctic Treaty possible. It is difficult to assess their motives in this matter. Perhaps some wise Soviet policy maker recommended that they be approved for the Antarctic Treaty, knowing that if they didn't work in Antarctica, they wouldn't work anywhere - the Soviets would have reinforced their position. Perhaps he knew, as well, that if they did work that his nation would eventually have to concede on-site inspections in the Soviet Union.

Nevertheless, one can not conclusively state that the manner in which inspections have been conducted in Antarctica had an effect on the Soviet position *vis-à-vis* inspections within the borders of the USSR. What is important is that the inspections did not undermine follow-on negotiations as they could have done. Instead a world standard was set on how to peacefully go about the inspection process.

As this paper is being finalized the world is excited by both Secretary Gorbachev's and President Bush's proposals for CFE (Conventional Forces Europe) arms reductions and for SNF (Short-range Nuclear Force) reductions between NATO and the Warsaw Pact (Evans, *The Times*, May 30, 1989). It is important to note that the American President's proposals are conditional. They are linked to verification, both on-site and aerial

(*The Independent*, May 31, 1989, p.1 and 10). President Bush's call for an "open skies" regime intended to improve mutual confidence among states through reconnaissance flights harks back to the Eisenhower/Khrushchev era of arms negotiations. Verification issues will, in all likelihood, be very intensely negotiated during the arms reduction talks soon to follow. In this light it is more important than ever that the Antarctic Treaty inspection system, as it broadens its scope to take in conservation, environmental and regulatory issues, maintains its objective outlook that the main purpose of inspections is to "reinforce the basis for mutual confidence that prevails in Antarctica" (U.S. DOS, Bulletin 513, 1963) as a standard to be emulated elsewhere in the world.