

DRAFT PROVISIONS
of a new
INTERNATIONAL CONVENTION
ON ANTARCTICA*

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Introductory Note

The following Draft Provisions of a new International Convention on Antarctica are a codification of principles of customary international law and of proposals for new administrative structures for Antarctica propounded by the author in a Note published in the *Yale Law Journal*.¹ In the *Journal* Note it is argued that under international law Antarctica should be identified as a world "common space" because of the history of customary practice in Antarctica, the articulation by states signatories to the Antarctic Treaty of 1959 of principles of common rights, and the universal interest in cautious use of the resources and protection of the environment of Antarctica. It is argued that Antarctica is a space analogous to the seas and outer space and cannot validly be subject to exclusive claims by particular states. Instead, Antarctica may be subject only to fully international administration.

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1. See Note, *Thaw in International Law? Rights in Antarctica under the Law of Common Spaces*, 87 YALE L.J. 804 (1978).

The new international organization that has been proposed² in order to protect common rights in Antarctica and to administer the use of its resources could be established by international convention. The following Draft Provisions are designed to provide a basis for negotiation for such a convention. The provisions are drafted both to affirm principles of customary international law already applicable to Antarctica³ and to establish an administrative structure consistent with those principles and capable of administering the region efficiently.

2. *Id.* at 844-48

3. *Id.* at 808-14.

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of a new
INTERNATIONAL CONVENTION
ON ANTARCTICA

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DRAFT PROVISIONS
of a new
INTERNATIONAL CONVENTION
ON ANTARCTICA

PREAMBLE

The States Signatories to this Convention, Noting the significant contributions made by explorers and scientists of many nations to the furthering of world knowledge and understanding of Antarctica, and noting that the practices of these explorers and scientists have affirmed the non-exclusivity of rights of settlement, mobility, and use throughout Antarctica;

Recalling the express affirmation by the Consultative Parties and other signatories to the Antarctic Treaty of 1959 of Antarctica's historical role as a space reserved for peaceful purposes and as a valuable site for scientific research, and recalling the further expression in the Antarctic Treaty and in the activities since 1959 of the signatories thereto of other common rights and interests in Antarctica;

Taking account of the unique ecological properties of Antarctica and the interdependence of all features of the world environment;

Recognizing that Antarctica is a focus of increased international attention as a result of discoveries of valuable resources on the continent and in the surrounding sea and seabed, and recognizing that in the absence of a convention reached through fully international processes these new discoveries may become a cause of discord among nations;

Noting that scientific knowledge of Antarctica is of important economic and environmental value to all world peoples;

Identifying Antarctica in all respects as a "common space" falling within the common heritage of mankind and thus analogous to outer space and the deep seabed, and affirming the common interest of all states and peoples in the orderly conservation and use of Antarctica's unique resources and properties;

Affirming that the rules of customary international law, in accordance with the principles and purposes of the United Nations as set forth in the Charter, continue to govern matters not expressly regulated by the provisions of the present Convention;

Have agreed as follows:

PART I

USE OF TERMS

Article 1. Definitions.

For the purposes of the present Convention:

1. "Antarctica" shall refer to the area south of 60° South Latitude, including all land, ice and ice formations, water, airspace, and underwater spaces within that area.

2. The term "space" shall refer to all substances, regions, and places in Antarctica including but not limited onshore to land uncovered by ice, land that is beneath the ice either above or below sea level, the subsoil, and the ice itself, and offshore to all ice formations and ice shelves, icebergs, water, islands, and land beneath the water. Areas within Antarctica which but for this Convention would be considered "high seas" are included for the

purposes of this Convention within the term "space".⁴

3. "Regime" shall refer to the Antarctic Common-Space Regime established pursuant to this Convention and shall be understood to include the Antarctic Assembly, Council, Secretariat, adjudicative bodies, and all assemblies, committees, and other subsidiary organs duly constituted to assist in the execution of the functions of the principal bodies of the Regime.

4. "Assembly" shall refer to the Antarctic Assembly established under Article 11 of this Convention.

5. "Council" shall refer to the Antarctic Council established under Article 11 of this Convention.

6. "Secretariat" shall refer to the Antarctic Secretariat established under Article 11 of this Convention.

7. "Rules of the Regime" shall refer to all resolutions and regulations duly promulgated by the various bodies of the Antarctic Common-Space Regime, including the Assembly, Council, and Secretariat.

8. The term "nondiscriminatory" as applied to rules of the Regime shall refer to a policy of impartiality in imposing burdens or distributing rights or privileges among parties of a particular type or class, such that no individual party incurs greater advantage or disadvantage than other parties similarly situated.

4. For discussion of the reasons for including "high seas" south of 60° South Latitude within the Antarctic "space", see *id.* at 849 n.213.

9. "Party" shall refer to any state, person, international or national corporation or other organization, or any association or collectivity thereof, whether or not such entity is a state signatory to this Convention.

10. The term "nonrenewable" as applied to resources shall refer to all resources that will not be replenished within a reasonable period of time. Resources of Antarctica that are "nonrenewable" include but are not limited to manganese nodules, oil and natural gas, iron ore, and coal.

11. The term "renewable" as applied to resources shall refer to all resources that are capable of replenishing themselves within a reasonable period of time in the absence of undue interference by outside causes. The term "renewable" does not imply "nondepletable" or "inexhaustible".

12. "Settlement" shall refer to any community or station, inhabited or uninhabited, permanent or temporary, established in order to further scientific research, exploration or recovery of resources, or for any other purpose.

13. The term "signatory" shall refer to any state that has ratified this Convention in accordance with the constitutional processes of that state.

14. The terms "science" and "scientific" shall be broadly construed to refer to all explorations and studies conducted in Antarctica with the goal of increasing knowledge of any aspect of any space of Antarctica, and shall include but not be limited to all investigations concerning the location, value, and technologies of exploitation of all resources of Antarctica.

PART II

GENERAL PRINCIPLES OF LAW GOVERNING ANTARCTICA

Article 2. Sovereignty over Antarctica.

1. Rights of sovereignty over all spaces of Antarctica shall be vested in the international community as a whole and shall not be subject to divestment or apportionment among individual parties.

2. No claims of national sovereignty or other form of exclusive right over any space of Antarctica shall be valid.

3. Notwithstanding Article 4, the placing of equipment, vehicles, or settlements in any space in Antarctica on either a permanent or a temporary basis, and the sponsoring or conducting of any scientific or other form of expedition or activity in Antarctica, either in the past or in the present, shall not be construed as creating a right of ownership or any other form of exclusive right in any space or over any resource of Antarctica.

4. This Article shall not prevent the Assembly, pursuant to authority granted in Article 19(3), from granting to any state exclusive jurisdiction to enforce the civil and criminal laws of that state within any settlement maintained by that state in Antarctica and within a reasonable space surrounding such settlement, or from granting to any state exclusive jurisdiction over persons in a group composed at least in part of nationals of that state on expedition in or visiting any space in Antarctica.⁵

5. Authority may be granted to states to exercise jurisdiction over groups of persons of various nationalities in order to avoid jurisdictional disputes among states and to make it unnecessary for the Regime itself to assume the complex legal tasks involved in exercising jurisdiction.

Article 3. Rights of access and mobility.

1. All spaces of Antarctica shall be open to exploration and transit by all parties so long as the nature and effects of such activities are not inconsistent with the provisions of this Convention and rules of the Regime.

2. No state or other party may validly claim an exclusive right of mobility through or access to any particular space of Antarctica. No barriers or other impediments to free mobility in and access to any space of Antarctica may be created without authorization from the Council.

3. All parties shall cooperate to the fullest extent reasonably possible in facilitating the free mobility and access of other parties to all spaces of Antarctica.

4. Activities of parties pursuant to this Article shall not interfere unreasonably with the activities of other parties in Antarctica, nor shall anything in this Article be construed as creating a right to enter without permission or to disrupt the activities of any settlement of another party in Antarctica except as may be otherwise provided in this Convention.

Article 4. Right to establish settlements.

1. All settlements already existing in Antarctica on a year-round basis for two consecutive years or more prior to the ratification of this Convention by at least ten states shall be permitted to remain indefinitely, but no such settlement shall be permitted to extend the range of its facilities so as to hinder unreasonably the activities of other parties in Antarctica.

2. The right to continue occupation of all settlements not among those specified in paragraph 1 of this Article shall be subject to review by the Council, according to the provisions of paragraphs 3 to 6 of this Article.

3. Sites for new settlements may be freely chosen by any party anywhere in Antarctica so long as such choice of location does not interfere unreasonably with the effective operation of a pre-existing facility, the ongoing scientific or other permissible activity of another party, or the free mobility or access of other parties through or to that space, and so long as the erection or operation of that settlement would not be in violation of any reasonable rules of the Regime.

4. In accordance with rules that shall be promulgated by the Council, all settlements must be open on a reasonable basis to inspection and visitation by other parties and by representatives of the Regime for the purpose of verifying compliance with the provisions of this Convention and with other rules promulgated by the Regime.

5. Parties are encouraged, but not obliged, to open settlements in Antarctica to co-residence by all other parties and to assist underdeveloped states in stationing personnel and engaging in the full range of permissible activities jointly with the personnel of existing settlements.

6. Nothing in this Article shall be construed as barring the Regime from issuing reasonable and non-discriminatory rules governing the environmental precautions and other measures to be taken by all parties in establishing and maintaining settlements in Antarctica.

Article 5. Rights to resources.

1. Title to all mineral, living, and other resources of Antarctica, renewable or nonrenewable, shall be vested in the world community as a whole and shall not be subject to divestment or to exploitation by individual or exclusive associations of parties except as provided in this Convention or according to procedures expressly authorized by the Regime. No claims of exclusive right to use or to hold title to such resources, no licenses or permits issued by parties to other parties, and no regulations purporting either to bar or to facilitate the exploitation or conservation of these resources shall be valid unless promulgated by the Regime.

2. Resources deemed to be nonrenewable, pursuant to regulations issued by the Council under authority of Article 22(1)(a), shall not be exploited, used, or disturbed, or their value otherwise impaired or altered until and unless the Regime has promulgated procedures providing explicitly for their use. Such resource activities may proceed only in compliance with those procedures.

3. Resources deemed to be renewable, pursuant to regulations issued by the Council under authority of Article 22(1)(a), may be exploited by parties without prior authorization of the Regime, but such exploitation may proceed only in accordance with the provisions of this Convention pertaining to the protection of the Antarctic environment and the non-depletion of Antarctic resource stocks and supplies, and in accordance with such other rules as the Regime may promulgate.

Article 6. Access to decisionmaking.

1. Procedures for making all decisions and promulgating all rules within the authority of the Regime shall allow for participation by states that are signatories to this Convention in accordance with rules and procedures hereinafter provided. No such state shall be excluded from its role in the Regime or from participation in such deliberations as are provided for in this Convention for any reason unless international sanctions have been invoked against such state by the Council under the authority of Article 22(1)(f).

2. This Article shall not be construed as creating a right in any state to exercise decisionmaking power within the Regime equal to that of any other state except insofar as such an equal role may be expressly provided in this Convention.

3. Parties other than states may also participate in making decisions to the extent and for the purposes provided in Articles 20(2) and 23(9).

4. No special or exclusive jurisdiction or decisionmaking power concerning Antarctica shall be afforded to the Consultative Parties or other signatories to the Antarctic Treaty of 1959 or to any other party with a past or ongoing program of any kind in Antarctica, except to the extent that a limited delegation of responsibilities to the Consultative Parties may be deemed advisable by the Regime to allow those parties individually or collectively to conduct and to coordinate ongoing programs of research and exploration consistent with this Convention.

Article 7. Protection of the environment and resources.

1. No party may subject any space of Antarctica to unreasonable environmental abuse. Parties engaging in scientific, exploratory, resource recovery, or any other form of activity in Antarctica shall undertake all reasonable efforts to protect Antarctic spaces from environmental injury, to protect both renewable and nonrenewable resources from unauthorized depletion, and to protect all living resources from avoidable harm.

2. The authority of the Council granted in Article 22(1)(a) shall include the power to determine which programs and activities in Antarctica are unreasonable in their environmental effects and to call for the cessation of such programs and activities.

3. The authority of the Council granted in Article 22(1)(b) shall include the power to declare the entirety of Antarctica or any particular space thereof to be an international environmental preserve and to promulgate such nondiscriminatory rules as may be necessary to protect such preserve.⁶

4. Spaces designated as Sites of Special Scientific Interest by the Consultative Parties to the Antarctic Treaty of 1959 shall remain so designated and all rules and regulations promulgated by the Consultative Parties governing those Sites shall remain in force until and unless otherwise provided for by the Regime.

6. For discussion of proposals to identify Antarctica as an international environmental preserve or park, see Note, *supra* note 1, at 839 & n.160.

Article 8. Peaceful purposes.

1. Antarctica shall be used by all parties exclusively for peaceful purposes.

2. No party may introduce to Antarctica any form of military armaments or weaponry except as permitted by regulations promulgated by the Regime. No party shall undertake measures of a military nature in Antarctica. Such measures include, but are not limited to, the establishment of military bases and fortifications, the testing of any types of weapons, and the carrying out of military maneuvers.

3. Nothing in this Article shall be construed as prohibiting the use of military personnel or equipment for scientific research or for any other peaceful purposes, although the Council shall have the authority to prohibit the introduction of such personnel or equipment for these or for any other purposes and to determine what is or is not military equipment, personnel, or armaments within the meaning of this Article. The Council also may deploy a security patrol in order to enforce the provisions of this Convention and rules of the Regime, pursuant to authority granted in Article 22(1)(i).

Article 9. Scientific research.

1. Scientific research may be conducted freely by all parties in all spaces of Antarctica provided that such research is not conducted in a manner that conflicts with environmental safeguards provided for in this Convention or by rules of the Regime.

2. All parties shall have the right to know of and to obtain the results and reports of all scientific investigations conducted in Antarctica by other parties, including all information pertaining to the location and value of Antarctic resources and the techniques and environmental risks of resource use, in accordance with procedures to be established pursuant to Article 25(8).

3. This Article shall not be construed as prohibiting any party from unilaterally determining the size, membership, or mission of any scientific research team or project, provided that such team or project does not aim to or does not actually violate environmental or other principles of this Convention or rules of the Regime.

PART III

ESTABLISHMENT OF THE ANTARCTIC COMMON-SPACE REGIME

Subpart A. General Provisions.

Article 10. The Regime.

There is hereby established the Antarctic Common-Space Regime for the purpose of enforcing and furthering rights and interests of all parties in Antarctica as affirmed in the Preamble and Part II of the present Convention. This Regime shall have the powers and authority set forth in this Part of the present Convention and shall function according to its provisions.

Article 11. Principal bodies and subsidiary organs.

1. There are hereby established an Assembly, a Council, and a Secretariat as the principal bodies of the Regime.

2. The principal bodies of the Regime may establish, according to the processes set forth in this Part, such subsidiary organs as they deem necessary to the effective execution of their duties, which organs shall carry on activities consistent with the functions and powers of the principal bodies as set forth in this Part.

Article 12. Adjudicative bodies.

A Tribunal or other adjudicative body or bodies may be established by the Assembly, pursuant to authority granted in Article 19(2), to hear and to settle disputes between or among parties concerning the rights and duties of those parties within or concerning Antarctica.

Article 13. All states signatories are members.

All states that are signatories to the present Convention are automatically members of the Regime and are entitled to all rights and subject to all duties of membership.

Article 14. Parties other than states.

Other parties that are not states may participate in the operations of the Regime in any manner provided for in this Convention or authorized by resolution passed by majority vote of those states signatories to this Convention present at a meeting of the Assembly at which there is a quorum, but parties other than states may not assume voting rights within the Assembly, Council, or other deliberative or adjudicative bodies or organs of the Regime except by two-thirds vote of the Council.

Article 15. Non-signatory states.

1. For purposes of this Article a person shall be deemed to be associated with the state of which he is a national, a corporation shall be deemed to be associated with the state in which it is incorporated, and an unincorporated association or other collectivity shall be deemed to be associated with the state in which it has its headquarters or principal offices.

2. A state not signatory to this Convention, or a party associated with such state, shall not be denied any rights affirmed in the provisions of this Convention as rights shared by all world states and parties, solely on the basis of the failure of such state to sign this Convention. But a state not signatory to this Convention shall not assume those rights and benefits accorded specially to signatory states through Part III of the present Convention, including but not limited to the right to share proceeds of resource development under Article 22(1)(c), and a non-signatory state, or any non-state party associated with such state, that seeks benefits under this Convention shall be bound by its provisions and by the rules of the Regime.

Article 16. Noninterference with common rights and interests.

No rule of the Antarctic Regime or other measure taken or adopted pursuant to this Part of the Convention shall lead to unreasonable interference with the unilateral or collective exercise or enjoyment by all parties, whether or not such parties are states or are states signatories to this Convention, of rights and interests affirmed in Part II of this Convention as common rights and interests, including but not limited to those rights expressly affirmed in Articles 2 to 9 of this Convention.

Article 17. Amendment and new convention process.

Amendments to this Convention shall take effect upon approval by a two-thirds vote of the members of the Council present at a regularly scheduled meeting at which there is a quorum and by a two-thirds vote of members of the Assembly present at a regularly scheduled meeting at which there is a quorum. An international conference to establish a new Convention may be called by the Assembly upon the authority granted and under the limitations stipulated in Article 19(4) with consent of the Council as provided in Article 22(1)(h). The Assembly and Council shall encourage, at such conference, the full and equal participation of states not signatories to the present Convention.

Subpart B. The Antarctic Assembly,

Article 18. Purposes of the Assembly.

1. The Antarctic Assembly shall be a forum for discussion and a body with such legislative authority as is provided in this Subpart of the present Convention.

2. The Assembly shall have the authority to set general policy guidelines for the Regime, in cooperation with the Council and Secretariat, giving full regard to the separation of responsibilities among bodies of the Regime as provided in this Convention. The areas of special competence and exclusive authority of the Assembly shall be limited to those specified in this Subpart of the Convention.

Article 19. Powers and authority of the Assembly.

1. The Assembly by vote pursuant to Article 20(4) may pass resolutions on matters of policy in any area, including but not limited to those areas in which the Council or Secretariat shall have exclusive authority, but such resolutions shall not be binding on any decisions or programs of those bodies within the areas of their exclusive authority.

2. The Assembly shall have the exclusive authority to establish the Antarctic Tribunal or other adjudicative bodies as authorized in Article 12, and shall prescribe the rules governing the procedure, membership, and jurisdiction of such body or bodies. If such adjudicative body or bodies are established, the Assembly shall provide for appeal as of right to the International Court of Justice or to other appropriate adjudicative or arbitral bodies in any case that would lie within the jurisdiction of such international bodies.

3. The Assembly shall have the authority to promulgate rules and procedures governing the exercise of jurisdiction by states or by the Tribunal over persons stationed in settlements of those states, as well as over persons visiting the settlements of other states, persons on expedition or assignment outside settlements, tourists and other temporary visitors to Antarctica, and all other persons in Antarctica. In promulgating such rules and procedures the Assembly shall take into account the interest of states in retaining exclusive rights of jurisdiction over their own nationals whenever it is practicable and reasonable to do so.

4. The Assembly, by three-quarters vote of all members present at a regularly scheduled meeting at which there is a quorum, shall have the authority, with consent of the Council pursuant to Article 22(1)(h), to convene an international conference for the purpose of drafting a new Convention, except that such conference shall not be called for at least five years following the ratification by at least ten states of the present Convention.

5. The Assembly shall elect the Secretary General of the Regime from among a panel of nominees selected by the Council, pursuant to Article 22(1)(g), at any time when the office of the Secretary General shall be vacant. The Assembly may participate in the removal of the Secretary General in accordance with Article 25(2).

6. The Assembly shall have the authority to establish such subsidiary organs as the Assembly shall deem necessary in order to accomplish its purposes as set forth in this Subpart, and such subsidiary organs shall have as their voting members all members of the full Assembly or such selected and representative members as the Assembly shall designate. Such subsidiary organs may include as non-voting participants or observers any parties selected to serve in that capacity pursuant to Article 20(2).

*Article 20. Composition and procedures of the
Assembly.*

1. The Antarctic Assembly shall include all states that are signatories to the present Convention as voting members. Such members shall have equal rights and duties within the Assembly and within any subsidiary organs of the Assembly to which those states shall be selected to send representatives, pursuant to Article 19(6).

2. The Assembly and its subsidiary organs may include as non-voting participants or observers any other parties that the members of the Assembly present at a meeting at which there is a quorum by majority vote may invite, and the Assembly by majority vote may determine all procedures governing the rights and responsibilities of such non-member parties within the Assembly or within the subsidiary organs of the Assembly.

3. Each member of the Assembly shall have one vote.

4. Except as otherwise provided in this Convention, all decisions and resolutions of the Assembly on matters of both substance and procedure shall be passed by three-fifths vote of those members present at a meeting at which there is a quorum.

5. A quorum of the Assembly for any particular meeting shall consist of three-fifths of those states signatories to the present Convention that have expressed intent, upon petition of the Secretary General of the Regime pursuant to Article 25(7), to participate in the affairs of that annual session of the Assembly.

6. The Assembly shall convene in regular session at least once a year at a time to be determined by vote of the Assembly at the termination of the previous regular session. A session of the Assembly shall continue for a period to be determined by vote of the Assembly in the course of that session.

7. The Assembly by vote at its regular session may call for special meetings of the Assembly during the course of the year to continue for such period of time as the Assembly at either its regular session or any of its special meetings shall decide. The quorum for any such special meeting shall be the same as for the annual session.

8. Any subsidiary organ of the Assembly established under Article 19(6) shall be free to convene at any time or to stay in session continuously as deemed necessary by that organ.

9. Any resolution passed by a subsidiary organ of the Assembly, to represent the policy of the Assembly, must be approved by a three-fifths vote of the members of the Assembly present at a meeting at which there is a quorum.

10. The Assembly at the commencement of its regular annual session shall select a chairperson of the Assembly and other persons to fill such other offices of the Assembly as the Assembly shall establish. All such officers of the Assembly shall retain their positions until the selection of their successors at the commencement of the next regular session of the Assembly.

Subpart C. The Antarctic Council.

Article 21. Purposes of the Council.

The Antarctic Council shall be a legislative organ that complements the policymaking role of the Assembly and that, through the composition of its membership, affords a greater role in the administration of Antarctica to states that are relatively developed or populous.

Article 22. Powers and authority of the Council.

1. The Council shall have the exclusive authority to:

a) establish specific rules and regulations pertaining to the proper administration of all activities in Antarctica and to the protection of common-space rights and principles, including but not limited to those rights and principles affirmed in the Preamble and in Part II of the present Convention;

b) determine whether, and if so in what spaces and in what respects, any part of Antarctica is to be preserved as an international scientific or environmental park; to determine what forms of activities (if any) are to be permitted to take place within spaces so identified; and to provide specific guidelines to the Secretary General pertaining to the administration of those spaces;

c) establish and oversee, with the assistance of the Secretary General and under general guidelines provided by the Assembly, an organization or entity to coordinate or to carry out international economic development efforts in Antarctica; to levy reasonable assessments against any duly authorized economic development efforts by private parties; and to formulate a plan for the equitable distribution of resource benefits that may accrue from international development efforts and from levies on private parties, taking into account both the technological and financial contributions of states thereto and the economic and resource needs of other states;

d) approve a budget for all activities of the Regime, taking into consideration recommendations submitted by the Secretary General pursuant to Article 25(5), but the Council shall retain the right to draw up budget proposals of its own and to establish any committees necessary to accomplish that purpose;

e) levy dues upon signatories to this Convention in order to finance the administration of the Regime until or unless the Regime should become self-supporting through assessments levied against economic activities under Article 22(1)(c);

f) invoke and call for world support for economic, diplomatic, and other appropriate sanctions against any party, whether or not such party is a signatory to the present Convention, that is found by the Council to violate or threaten to violate any rules of the Regime or any of the General Principles of Law stated in Part II of the present Convention, including but not limited to those Principles pertaining to the exclusively peaceful uses of Antarctica, protection of the Antarctic environment, and non-discriminatory distribution of rights of access throughout Antarctica;

g) select a panel of nominees for the position of Secretary General for submission to the Assembly at any time that the office of the Secretary General shall be vacant and to participate in the removal of the Secretary General in accordance with Article 25(2);

h) approve, by three-quarters vote of those present at a meeting at which there is a quorum, any measure initiated by the Assembly, pursuant to Article 19(4), to convene an international conference for the purpose of drafting a new Convention;

i) approve and oversee, with assistance of the Secretary General, the institution and deployment of a security patrol to enforce the provisions of this Convention and rules of the Regime;

j) prohibit or otherwise regulate the introduction of military personnel or equipment to Antarctica for scientific research or for any other purposes and to determine what is or is not military equipment for the purposes of this subparagraph.

Article 23. Composition and procedures of the Council.

1. The Council shall be composed of 30 members.

2. Ten members of the Council shall be selected by each of three Groups of states members of the Assembly. Membership in each of these Groups shall be determined according to the following ranking of demographic and economic characteristics of states members of the Assembly, as established by statistics issued annually by the United Nations:

a) Group A shall include all states members of the Assembly that satisfy either of the following conditions:

1) total population sufficient to rank within the top ten percent of Assembly members ranked according to population; or

2) per capita income within the top ten percent of Assembly members ranked according to per capita income and total population within the top twenty percent of Assembly members ranked according to population.

b) Group B shall include all Assembly members that are not members of Group A and that satisfy either of the following conditions:

1) total population within the top forty percent of Assembly members ranked according to population; or

2) per capita income within the top thirty percent of Assembly members ranked according to per capita income.

c) Group C shall include all Assembly members not included within either Groups A or B.⁷

7. The assignment of states to Groups according to demographic and economic rankings, provided in this Article, is designed to assign greatest representative weight in the Council to states that are most populous, or somewhat less populous but economically developed (Group A). This Group should include members of the Assembly likely to make the greatest contribution to scientific and economic development efforts as well as members that, regardless of such contribution, have a significant equitable claim, because of the large numbers of persons they represent, to share in the benefits accruing from such activities. States such as the People's Republic of China, India, Bangladesh, Indonesia, Nigeria, and Brazil thus will be included in this Group, as well as the major-power states such as the United States, the Soviet Union, Britain, and Japan.

Economic rankings are established on the basis of per capita income rather than gross national product because of the distorting effect of population on calculations of gross national product.

Less representative weight is afforded to states that have medium-sized populations or that have achieved a medium-range level of economic development, regardless of size of population (Group B). Highly developed states with small populations, such as Belgium and Kuwait, are thus included in this Group.

Least representative weight is afforded to the many states that are both small in population and least developed. In the aggregate, people of these states should enjoy a degree of influence in the Council comparable to that of people in highly populous states that are equally undeveloped but assigned to Group A.

No designation is made of particular states to serve as permanent members of any Group, in order to allow the constituency of each of the Groups to adjust to alterations in demographic and economic rankings of member states and to adjust to changes in numbers and identities of states signatories to the Convention. But if any Group as here defined should be composed of fewer than ten states, it would be appropriate in this Convention to designate the particular states to comprise such Group.

The demographic and economic percentage figures used here to define each group are tentative. Figures may be adjusted to

3. States that are members of the Council shall serve for terms to be determined by members of the Group from which they were selected, but each Group shall consider the value of rotating Council membership among the states within the Group.

4. Members of the Assembly that are selected by their Groups to serve on the Council are subject during the course of any regular session of the Assembly to removal and replacement by majority vote of the states of their respective Groups.

5. The Council shall determine the number and timing of meetings needed each year in order to conduct its business.

6. Eighteen members of the Council shall constitute a quorum.

7. Each member of the Council shall have one vote.

7 (Continued) accomplish the following desired result: of 145 world states that could become members of the Assembly by becoming signatories to the Convention, approximately 24 should be assigned to Group A, 48 to Group B, and 72 to Group C (a ratio of 1:2:3). A similar ratio should be maintained regardless of the actual number of signatories to the Convention. It is also acknowledged that demographic and economic statistics available for many states may be imperfect, and, in the case of economic statistics, may be subject to distortion because of the varying economic systems represented. The task of harmonizing the statistics and assuring the greatest possible accuracy is assigned to the United Nations, which is already involved for other purposes in gathering such data on a worldwide basis.

8. Each question presented before the Council, whether a matter of procedure or of substance, shall be decided by a three-fifths vote of those members present at a meeting at which there is a quorum, unless otherwise provided in this Convention.

9. The Council may establish a procedure to permit participation in the deliberations of the Council by parties that are not states, by non-signatory states, or by signatory states that are not represented on the Council, where such parties or states have an interest in, or expertise or other services valuable to, the deliberations. The Council, however, may not confer voting rights upon such parties or states.

10. The Council shall have the authority to establish such subsidiary organs as the Council by vote shall determine to be necessary in order to accomplish its purposes as set forth in this Subpart. Such subsidiary organs shall have as their members all members of the Council or such members as the Council shall select.

11. Any resolution passed by a subsidiary organ of the Council, to be made a regulation of the Council, must be approved by a three-fifths vote of the members of the Council present at a meeting at which there is a quorum.

Subpart D. The Secretariat.

Article 24. Purposes of the Secretariat.

The Secretariat shall be the executive agency of the Regime and shall be responsible for implementing the directives of the Council in accordance whenever possible with the general policies set by the Assembly.

Article 25. Powers and authority of the Secretariat.

1. The Secretary General shall be the chief executive officer of the Secretariat and shall have the authority to implement the directives of the Council and the general policies set by the Assembly whenever such policies of the Assembly are not inconsistent with directives of the Council. But when directives of the Council and policies of the Assembly conflict or diverge, the Secretary General shall resolve the conflict or divergence in favor of the directives of the Council.

2. The Secretary General shall be appointed by the Assembly from among a panel of nominees selected by the Council, as provided in Articles 19(5) and 22(1)(g), and shall hold office for a term of five years, subject to removal by three-fifths vote of both the Council and the Assembly before that time on grounds of incompetence or failure to execute properly the directives of the Council or the general policies of the Assembly where those policies of the Assembly are not inconsistent with directives of the Council,

3. The Secretary General shall have the authority to appoint such staff persons as may be necessary to assist in the work of the Secretariat, subject only to budgetary approval of the Council for the establishment of such positions.

4. The staff of the Secretariat shall be chosen on the basis of integrity and competence for the particular job, but due regard shall also be given to establishing as wide a geographical representation as possible within the Secretariat.

5. The Secretary General shall have the authority to draft and to propose a budget for all activities of the Regime, subject to modification and final approval by the Council, as provided in Article 22(1)(d).

6. Each year at a time to be specified by the Assembly the Secretary General shall make a comprehensive report to the Assembly on the work of the Regime and shall present to the Assembly and Council a detailed accounting of funds spent by the Regime pursuant to budgetary appropriations approved by the Council.

7. Each year prior to the annual session of the Assembly the Secretary General shall petition all signatories to this Convention to determine which of those states intend to participate in that session of the Assembly by sending to that session a delegation of at least two persons. The Secretary General shall present to the chairperson of the Assembly at the first meeting of that annual session a list of states that have expressed intent to so participate in that session, which list shall serve as the basis for determining a quorum at any meeting of the Assembly until the commencement of the next annual session, pursuant to Article 20(5).⁸

8. The Secretary General shall establish procedures, effective only upon approval by the Council, by which the right to know of and to obtain the results and reports of all scientific investigations conducted in Antarctica by all parties, as provided in Article 9(2), will be made effective.

9. The Secretary General shall perform any other functions that may be delegated by the Assembly or Council provided that such delegation is consistent with the distribution of powers and authority provided in this Convention.

8. In the early years of the functioning of the Regime, it may be anticipated that some signatories to the Convention will not find the deliberations of the Assembly sufficiently important to merit sending delegations to the annual session. The procedure set forth in this section is designed to allow those signatories that do send delegations to the annual session to establish a reasonable quorum among themselves and to carry on the affairs of the Assembly.