



# THE ANTARCTICAN SOCIETY

1619 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D. C. 20009

## MEMORANDUM TO EDITORS

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November 23, 1973

Human activity on an industrial scale is increasing in regions once deemed inaccessible, regions in which applicability of national and international law is far from clear.

The recent disposition of a Federal criminal case involving a shooting on Fletcher's Ice Island (T-3), a drifting scientific station in the Arctic, left the matter of U.S. jurisdiction unresolved. Meanwhile, active work toward resource exploitation—particularly oil and gas drilling—has begun in the Arctic.

U.S. logistical operations in support of scientific activity in the Antarctic are shifting from use of U.S. Navy personnel, subject to the Uniform Code of Military Justice, to the use of civilian contract labor, raising new jurisdictional questions. Tourism, not contemplated in the Antarctic Treaty, is growing in the Antarctic. Serious proposals for resource exploitation, covered only vaguely in the Antarctic Treaty, are arising for the Antarctic Treaty area.

In those circumstances in the Antarctic that are uncovered by the Antarctic Treaty and in those areas of the Arctic that apparently lie beyond national territorial and continental-shelf limitations, the questions of civil and criminal jurisdiction are understood dimly if at all, and they may be expected to be complicated by the involvement, in these circumstances, of multinational ventures. Of growing significance, the common legal condition of the polar regions — sovereignty unresolved and international convention unclear — bears striking legal resemblance to the condition that obtains for fixed towers and stations in the seabed beyond national shelves and territorial seas.

The Antarctic Society, an organization of individuals involved in polar operations and polar studies, has scheduled a colloquium, Science, Technology, and Sovereignty, to explore these problems. The program is open to the public without charge and will be held from 2 p.m. to 5 p.m. Saturday, December 1, 1973, in the Lecture Room of the National Academy of Sciences, 2101 Constitution Avenue N.W., Washington, D.C.

Panelists include N. Marshall Meyers, attorney and legal scholar with considerable polar experience; Kenneth J. Bertrand, geographer and historian of polar geography; John C. Miller, labor-law specialist; Justin W. Williams, prosecutor in the T-3 case and scholar in the field of extraterritorial jurisdiction; and William Thomas Mallison, Jr., scholar in the field of international law.

A copy of the program is attached.

# SCIENCE, TECHNOLOGY, AND SOVEREIGNTY

A colloquium sponsored by the Antarctic Society

2-5 p.m., Saturday, December 1, 1973

in the Lecture Room of the  
National Academy of Sciences  
2101 Constitution Avenue N.W.  
Washington, D.C.

## Purpose

Questions of civil and criminal jurisdiction have arisen in the polar regions and in other situations—involving, for example, fixed towers and seabed stations outside territorial seas—where national sovereignty is not resolved and where applicability of national law and international convention is unclear. As human activity increases on an industrial scale in these situations, the questions of legal regime become increasingly important. The Antarctic Society has assembled a variety of distinguished specialists in law and polar operations in an effort not to develop policy recommendations but rather to expose the range of legal and operational situations to be expected and to show, where possible, the lessons in this connection already yielded by experience in the Arctic and Antarctic.

## Program

Opening remarks.....	Peter F. Bermel President, Antarctic Society
Introduction: <i>Transnational science and technology in the absence of defined sovereignty; developments in the polar regions and in legally similar situations</i> .....	Gerald S. Schatz Editor, <i>News Report</i> National Academy of Sciences
Operational considerations .....	N. Marshall Meyers Meyers, Marshall & Meyers Washington, D.C. Kenneth J. Bertrand Professor of Geography The Catholic University of America Discussion
Domestic and international legal considerations .....	John C. Miller Solicitor National Labor Relations Board Justin W. Williams Assistant U.S. Attorney Alexandria Division Eastern District of Virginia William Thomas Mallison, Jr. Professor of Law National Law Center The George Washington University Discussion
Summary remarks .....	Mr. Schatz
Off-record, open discussion	

## Ground Rules

The formal portions of the program each will be followed by a brief question-and-discussion period, on the record, involving principal discussants and a group of invited audience discussants who are specialists in various fields of law and polar operations. The final half-hour of the colloquium will be off the record and open for discussion from the floor. In all discussions, whether on or off the record, speakers should identify themselves by name and professional affiliation. The colloquium record will be held open for 30 days, during which participants—including those in the general audience—are invited to submit, for possible inclusion in the proceedings, statements and documentary material relevant to the colloquium. These materials should be mailed, by January 1, 1974, to Colloquium, The Antarctic Society, 1619 New Hampshire Avenue N.W., Washington, D.C. 20009.

NOTES AND IMPRESSIONS AT ANTARCTICAN SOCIETY COLLOQUIUM, 1 DECEMBER 1973,  
ON SCIENCE, TECHNOLOGY AND SOVEREIGNTY

Meredith F. Burrill

The purpose of the colloquium as stated on the attached program was to explore something of the range of polar area problems related to unresolved sovereignty without attempting to provide the answers. This was adhered to. Schatz and the panelists elaborated for about 20 minutes each on various aspects of present and possible future situations. Their prepared remarks will be published in the spring.

A good statement of the general problem was released on November 23 in a memorandum to editors by Schatz, which is also attached. The meeting did not lend itself to note taking, but a few interesting statements and questions can be given here.

The terra nullius concept is a hazy one which may or may not be applicable in the Arctic. It is reported that the Soviets might use language in the Alaska purchase treaty to support claiming in the Antarctic. Situations and questions are now arising that the Antarctic Treaty did not anticipate for several reasons. We know a great deal more about the Antarctic than we did then; the numbers of people involved are far larger; technological progress has revolutionized access, communications, and logistics; the world situation and the mutual relations of nations are quite different; multinational corporate giants have introduced new complications; pressures on resources have pushed industrial and commercial activities, some of which may involve high monetary stakes. Such operations cannot tolerate a legal vacuum.

The homicide on the Arctic ice island is considered not to furnish widely applicable precedents.

Pending legislation, S.1400, which has to do with extraterritorial justice, was mentioned but not discussed at length.

Several questions related to ice as a "ship," since maritime law relates to ships. Should free-floating ice be considered technically as a "ship"? Should an ice shelf, partly afloat and in motion (though very slowly) be a "ship"? Can one set up criteria on which to base such decisions and anticipate consequences?

The latter part of the colloquium was open discussion off the record, a lively interchange between well informed people. Attendance was perhaps 50. At the end the panelists were invited to offer a one or two sentence capsule, which they did as follows:

Bertrand: historical experience does not provide adequate precedents; military or marine law has been the basis in polar areas exploration even when on land.

Mallison: international law can solve new problems, requires cooperation by scientists and lawyers to find practical, viable solutions.

Meyers: with today's technology we can reach any area quickly and can do crime laboratory type investigations, etc., on the spot. This permits the effective exercise of jurisdiction in administration of justice.

Miller: under the NLRB act, the US flag is the primary guide line for judging whether a locus is under NLRB jurisdiction; sees no immediate problem for 5TLRB in polar areas.

Williams: the proper exercise of justice in the polar areas will require provision of some regular procedures; since one can't subpoena, some other way of adducing evidence needs to be found, e.g., making depositions, letters of rogation, etc.

On the whole, the colloquium did what it was designed to do, and those in attendance were receptive to the message—that we do not now have for polar and some other areas of unresolved sovereignty the solid legal foundation that our system requires, that we are unsure what we want in the foundation, that current sudden appearance of situations that do not fit previous concepts warns that hasty far-reaching commitments could later be embarrassing or disadvantageous, and that strong pressures may force decisions before we are ready to make them.

The participants will undoubtedly carry the message to some federal agencies and to some colleagues in several disciplines. Others may not hear much about it until some alternatives are identified, or some concrete proposals are put forward, or something spectacular focuses attention.