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FOREWORD

The author of this extraordinary work believes that law is an artifact, created by human beings in whatever context they operate, to achieve common social goals: the maintenance of the minimum order indispensable to all social organization and the optimal use of resources and environment in ways that enhance life opportunity and human dignity. Within this conception, Dr. Sahurie has set out for himself the ambitious task of explaining and appraising how international law has been shaped as a tool to facilitate the use of the many resources of the continent of Antarctica, why the developments which have taken place until now have occurred, what is likely to happen in the future, and how all the potentially relevant actors in the international legal process can act to fashion a better law with greater dividends for all.

This secular, yet quintessentially teleological approach to law requires for its implementation a clear identification and methodical performance of a set of interrelated intellectual tasks. Dr. Sahurie has set them out and then carried them out with admirable skill and energy. The tasks follow one another logically. Because one cannot shape law or any other tool without knowing the environment in which it must be fashioned and applied in its broadest sense, Dr. Sahurie, in the first part of his work, locates the continent of Antarctica in its global context, as part of a world social and world power process. Eschewing the still lives (the French term *natures mortes* captures their distinctive quality more precisely) of lesser efforts at scholarship, he conceives of the robust reality of Antarctica as part of a dynamic global process which can only be conceived, whether for purposes of understanding or of manipulation, in terms of: those who are actually involved in it; the varied subjective perspectives that animate them; the varied settings in which these actors interact; the varied power bases they may draw upon to influence outcomes that discriminate in their favor; the different modes by which they mani-

pulate those bases; and the aggregate outcomes of this process, delineated in terms of all the values produced and distributed.

The focus is not Antarctica as such, but the social, political, and legal processes that deal with the continent and thus make it pertinent to human beings. These dynamic processes relate to a physical and geographical area which is, itself, described in precise detail, taking full account of its history and politics and the intervening variables of science and modern technology.

Having set the context, Dr. Sahurie addresses the question of the purposes for which the resources of Antarctica should be used. Insofar as law is conceived of as a tool, the specific purposes for which it is to be used must also be clarified and expressed. "Every choice," Dr. Sahurie writes, "relating to Antarctica ought to seek the achievement of certain consequences for every value process effected, with the ultimate goal being to promote the greatest production and the widest possible sharing of human dignity values among all peoples." This formula is not self-executing. In Dr. Sahurie's sophisticated analysis, it is only the basis for a set of guidelines for an ongoing process of choice-making that must take account of all of the changing contextual features that he has identified in his dynamic conception of the context.

Even acolytes of international law appreciate that an effective legal system may operate without the formal, articulated institutions familiar to domestic lawyers. Dr. Sahurie goes much beyond this basic insight. In order for his approach to the question of Antarctica to be operable, he requires a more refined conception of the processes by which the fundamental institutions for making decisions about the continent and its resources operate. This he calls the constitutive process, deftly sidestepping the potentially sterilizing conception of a constitution as a document. In keeping with his dynamic approach, he identifies basic claims that those who are concerned with Antarctica have made about establishing, maintaining through time, or changing the key institutions for making decisions.

The great bulk of this book is concerned with the claims which the many actors involved in the Antarctic process have made with regard to the continent. The methodology which Dr. Sahurie deploys involves: a precise identification of each congeries of claim; a specification of the community policies which he believes are relevant to it; an examination of the flow of decisions which have taken place with regard to the use or resource in question; the conditioning factors which influenced those decisions; projections or speculations about lines of future decision with regard to the claim; and, if

that last task indicates a discrepancy between projection and preferred community policy, suggestions of alternatives that might lead to a greater approximation of outcomes with community interest.

This exacting technique is applied first to the ongoing claims to establish exclusive appropriation of Antarctica. In this part of his work, the study Dr. Sahurie produces, certainly the most comprehensive and detailed to date, examines claims made on the basis of so-called historic rights, discovery, exploration, mapping and scientific research, effective occupation, and proximity. The author also examines here the perennial international legal question of the law applicable for the resolution of claims of exclusive appropriation, with admirable studies of intertemporality and critical date theory.

A major impetus for the various pretensions made with regard to Antarctica is access to and exclusive use of the resources to be found there. Dr. Sahurie examines the resources which are claimed, the international policies which should guide decision in this matter, and, following the method developed in the previous chapter, the trends, conditioning factors, and projections for claims relating to access to mineral development, local activities, protection of proprietary data and fiscal regimes. Once again, Dr. Sahurie considers his projections of future decisions in terms of preferred international community policies and suggests, where appropriate, alternatives.

A major change in post-war international law has been the transformation of ocean areas proximate to land into an appropriable resource. Dr. Sahurie reviews the background of these developments in other political and geographical areas, relates them to the more difficult case of Antarctica and identifies claims with regard to continental shelf, seabed, marine living resources, spatial-extension uses, and the varying maritime zones and their legal incidents. Here again, the author organizes each claim in terms of the trends in decisions, factors that influence those trends, likely projections, and, where they appear to be discrepant from preferred policy, alternatives which may secure a greater approximation. He concludes this part of his inquiry with a comparable examination of claims relating to uses of air space over Antarctica.

Much of the scholarly literature on Antarctica is little more than an exposition of the idiosyncratic regime that has been established for the continent. Since it appears to have worked and endured, two outcomes relatively rare in the international legal process, those who take the trouble to study the subject tend to celebrate the experiment and to rush to its defense. By conducting such a comprehensive and yet detailed examination of every phase of the constitutive process and public order that has been established with regard to

Antarctica within an articulated normative framework, Dr. Sahurie is in a position to give a much more complex, nuanced and goal-pertinent appraisal of the different features of the Antarctic regime. His recommendations for a more structured decision process with regard to many claims are cogent and, in the light of the depth of his inquiry, difficult to challenge. What emerges is a mature and balanced appraisal which should contribute to improved decision in the future.

Because all law, indeed all politics, is a process of decision which allocates the use and enjoyment of resources for which demand exceeds supply, the method which Dr. Sahurie has so impressively refined and applied to Antarctica will serve as a model for meaningful legal inquiry and recommendations about other resources, whether on our planet or beyond it, which human beings must learn to shape and share in ways that serve the common interest.

W. MICHAEL REISMAN
Yale Law School
New Haven, Connecticut

CONTENTS

FOREWORD	v
ABBREVIATIONS	xviii
ACRONYMS	xix
INTRODUCTION	xxi
ACKNOWLEDGMENTS	xxviii

PART 1

1. ANTARCTICA IN A GLOBAL CONTEXT	1
Participants	2
Individuals	3
Nation-States	9
Antarctic Treaty Consultative Parties	11
Original Parties to the Antarctic Treaty	12
Territorial Claimants	12
Great Britain	12
Australia	14
New Zealand	17
Argentina	19
Chile	22
France	27
Norway	29
Non-Claimant States	31
The United States	31
The Soviet Union	41
Japan	46
Belgium	47
South Africa	49
Acceding Consultative Parties	50
Poland	50
Germany	51
GDR (East Germany)	52

FRG (West Germany)	53
Brazil	54
India	57
China	58
Uruguay	59
Spain	61
Sweden	62
Italy	63
Non-Consultative Contracting Parties	63
Peru	63
The Netherlands	65
Other Acceding States	66
Other States: Third Parties to the Antarctic Treaty	66
Intergovernmental and International Organizations	70
The United Nations	71
The Organization of Petroleum Exporting Countries	73
The European Economic Community	74
International Scientific Bodies	76
Scientific Committee on Antarctic Research	77
The World Meteorological Organization	81
Food and Agriculture Organization	82
Other International Scientific Bodies	83
Private Associations	85
Perspectives	89
Identifications	90
Demands	95
Power and Security	95
Wealth	96
Enlightenment	98
Skills	100
Well-Being	100
Respect	101
Loyalty	101
Expectations	102
Arenas	103
The General Assembly of the United Nations	105
Antarctic Treaty Consultative Meetings	111
Establishment	111
Communication of Policies: How Claims and Decisions are Mediated	112
Content of Claims and Decisions Lodged at ATCMs	113

CONTENTS

xi

Access	113
Functions Performed at ATCMs	118
Procedure of ATCMs	118
Duration	120
Projection of Future Developments	121
Adjudicatory Arenas	122
The International Civil Aviation Organization	123
The Intergovernmental Maritime Consultative Organization	124
The International Oceanographic Commission	126
The International Whaling Commission	127
Bases of Power	130
Authority	130
Control	134
Strategies	137
Outcomes	139
Factors Conditioning Antarctic Processes	140
Antarctic Physical and Geographic Features	140
Legal Effects	142
Constraints on the Exploration and Exploitation of Resources	144
Effects of Science	146
Antarctica in the Historical Context of Law and Politics	146
The Impact of Modern Technology	153
Features of the World Economy Influencing Antarctic Processes	155
2. BASIC COMMUNITY POLICIES: CLARIFICATION OF CRITERIA FOR DECISION	159
Observational Standpoint	163
Method	163
Preliminary Statement of Basic Policies	166
3. CLAIMS RELATING TO THE ESTABLISHMENT AND MAINTENANCE OF A CONSTITUTIVE PROCESS IN ANTARCTICA	171
Historical Background	171
Earlier Attempts to Organize a Constitutive Process of Decision-making	173
The International Geophysical Year: The Impact of Science on the Organization of the Constitutive Process in Antarctica	179
The Antarctic Treaty of 1959	182

Outcomes of Constitutive Claims: The Allocation of	
Decision Functions	186
Intelligence Function	186
Promotion Function	187
Prescription Function	187
Invocation Function	188
Application Function	188
Termination Function	189
Appraisal Function	191
Demands for Change in the Constitutive Process	191

PART 2

4. NATIONAL CLAIMS TO ESTABLISH EXCLUSIVE APPROPRIATION OF ANTARCTICA	193
Clarification of Basic Community Policies	196
National Claims to Antarctic Territory on the Basis of	
Historical Rights	200
The Papal Grant of Antarctica	201
The Context of the Papal Grant of Antarctica	202
Trends in Decision	205
The Rise of Protestantism, the Decline of Papal Authority, and the Consequences in Legal Literature	209
Changes in the Balance of Power and the Juridical Status of Spain's Southern Possessions	212
The Independence of Spanish America, Territorial Succession, and the Doctrine of <i>Uti Possidetis</i> : The Principle of Pre-Independence Boundaries	214
Appraisal	224
National Claims to Antarctic Territory on the Basis of	
Discovery	226
The Discovery of Antarctica	227
Trends in Decision	234
Claims to Antarctica Based on Discovery	242
Appraisal	246
National Claims to Antarctic Territory on the Basis of	
Polar Exploration, Mapping, and Scientific Research	248
Claims and Responses	249
Appraisal	253
National Claims to Antarctic Territory on the Basis of	
Effective Occupation	254
The Meaning of Effective Occupation	257

State Activity in the Antarctic	259
Administrative Acts of the Spanish Crown	260
Administrative Acts of Argentina	262
Administrative Acts of Chile	263
British Acts of Administration	267
French Acts of Administration	268
Norwegian Administrative Acts	271
Acts of Administration of New Zealand	273
Administrative Acts of Australia	275
Acts of Possession	277
The Establishment of Permanent Settlements in Western Antarctica: The "American" Antarctic vs. The Falkland Islands Dependencies	278
The South Orkney Islands	278
The Antarctic Peninsula and Other Islands and Archipelagos in Western Antarctica	284
The <i>John Biscoe</i> Incident	286
The Proliferation of Permanent Bases	287
Eastern Antarctica	296
The Effect of the IGY on Territorial Claims	298
The Effect of the Antarctic Treaty on Territorial Claims	299
National Claims to Antarctic Territory on the Basis of Proximity	305
Clarification of Policies	307
Types of Particular Claims and Responses in Relation to Antarctic Territory	309
Past Trends in Decision	310
The Sector Theory	314
Specific Claims to Antarctica Based on Proximity:	
Divergent Applications of the Sector Theory	316
Claims of the British Commonwealth	316
Claims of South American States	319
Argentine-Chilean Delimitation of Boundaries in Antarctica	323
The Position of Other Antarctic Powers	328
Appraisal	330
The Determination of the Applicable Law and of the Relevant Facts in the Antarctic Territorial Dispute	331
The Intertemporal Principle	332
The Critical Date	336
Appraisal	341

PART 3

5. CLAIMS RELATING TO RESOURCES IN ANTARCTICA	351
The Resources Claimed	352
Minerals on Land	352
Offshore Resources	355
Living Resources	358
Other Uses and Resources	361
The Relevance of Ideology in Resource Allocation	364
Basic Community Policies	373
Economic Efficiency	375
Participation	377
Responsibility	378
International Cooperation	378
Experience in Comparable Resources	379
The Law of the Sea	380
The Development of the Law of the Sea	382
Limits of National Competence	384
International Control of Seabed Resources	386
The Arctic Experience	390
Arctic Lands	390
The Arctic Ocean	405
Outer Space	412
Appraisal	420
6. CLAIMS RELATING TO ANTARCTIC MINERAL RE- SOURCES	424
The Economics of Antarctic Mineral Development	427
The Framework of Negotiations for an Antarctic Mineral Regime	433
Historical Background	433
The Accommodation of Interests	438
Internal Accommodation	439
External Accommodation	441
Claims to Authority: Institutional Arrangements for Decision-making Relating to Antarctic Mineral Re- sources	444
The Commission	445
The Advisory Committee	447
The Regulatory Committees	448
The Legal Process of Mineral Development Activities	449
Prospecting	450
Identification of an Area for Possible Exploration and Development	451

CONTENTS

xv

Exploration	452
Development	454
Criteria for Decision	455
Protection of the Antarctic Environment	456
Protection of Other Uses of Antarctica	460
Promotion of Fair and Effective Participation	462
Claims Relating to Access to Mineral Development	
Activities in Antarctica	462
Minerals Convention Requirements on Membership and Sponsorship	463
Appraisal and Recommendations	464
Claims Relating to the Exchange of Scientific Information and Protection of Proprietary Data	466
Claims Relating to the Exercise of Tax Competence:	
The Fiscal Regime	469
Activities Subject to Taxation	471
Type of Payments and the Choice of Tax Base	471
Outcomes of Tax Claims	475
National Fiscal Treatment of Payments to the Institutions of the Antarctic Minerals Regime	475
Application and Sharing of Proceeds	477
Budgetary Competences	478
Environmental Fund	478
Sharing of Benefits	479
Appraisal	479
7. CLAIMS RELATING TO THE SEABED OF ANTARCTICA: SOME LEGAL AND POLICY ISSUES	482
General Background on the Doctrine of the Continental Shelf	484
Delimitation of the Continental Shelf and Deep Seabed in Antarctica: Prospective Patterns of Controversy over the Allocation of Authority over Offshore Mineral Resources	485
Protection of the Status Quo with Respect to Territorial Claims Under Article IV of the Antarctic Treaty as a Basis to Delimit a Continental Shelf in Antarctica	487
Temporal Opportunity to Assert National Claims over the Continental Shelf	488
Application of General Principles to Determine the Extent of the Continental Shelf in Antarctica	495
Physical Features Conditioning the Process	495

Trends in Decision	495
General Background on the Deep Seabed	498
Claims Relating to the Deep Seabed of Antarctica	501
Appraisal and Recommendation	504
8. CLAIMS RELATING TO ANTARCTIC MARINE LIVING RESOURCES	507
Claims to Authority	508
Claimants	509
Objectives	510
Situations	510
Strategies	510
Outcomes	511
Clarification of Basic Community Policies	512
Trends in Decision	518
Appraisal	534
9. CLAIMS RELATING TO ANTARCTIC MARITIME AREAS	539
Significant Features Affecting the Process of Claims and Decisions	539
Clarification of Basic Community Policies	540
Claims to Authority over Territorial Sea in Antarctica	541
Claims to Exercise Authority and Exclusive Control over Economic Activities in Certain Antarctic Maritime Areas	542
Claims to Apply the Freedom of the High Seas in Antarctic Maritime Spaces	546
Patterns of Claims, Decisions, and Past Trends	546
Appraisal and Recommendations	548
Eventual Claims to Measure Maritime Areas in Antarctica	549
10. CLAIMS RELATING TO THE AIR SPACE OVER ANTARCTICA	554
Background	554
Clarification of Basic Community Policies	560
Trends in Decision	562
Claims Regarding Freedom of Overflight over the High Seas of the Antarctic	563
Claims to Regulate Flight and Maneuver of Aircraft in the Air Space of Antarctica	564
Claims to Use the Air Space of the Antarctic Area for Inspection and Observation	567

CONTENTS

xvii

Free Movement for Scientific Investigation in the Air Space of Antarctica	568
Access to Information on Aircraft Operations	569
Claims for Access to Weather Information	569
Claims for Access to Radio Aids to Air Navigation	570
Competences to Regulate Commercial Overflights in the Antarctic	570
Collaborative Arrangements for a Rational Use of the Air Space in Antarctica	571
Appraisal	572
APPRAISAL	574
INDEX	587