

# The "Madrid Protocol"

## The Protocol on Environmental Protection to the Antarctic Treaty

**Additions to the Antarctic Treaty are known as "protocols", they are usually named after the place where they were signed.** The most significant of recent protocols was signed in Madrid in 1991 therefore being known as the Madrid Protocol, though it's official title is, "**The Protocol on Environmental Protection to the Antarctic Treaty**".

The Antarctic Treaty Nations agreed on this in 1991, it came into force in 1998.

The purpose of the Protocol was essentially to protect Antarctica for 50 years from commercial exploitation primarily of its mineral wealth, it's rather wordy and not easy to read or understand, but I keep getting asked for it, so here it is:

### **Preamble**

The States Parties to this Protocol to the Antarctic Treaty, hereinafter referred to as the Parties,

Convinced of the need to enhance the protection of the Antarctic environment and dependent and associated ecosystems;

Convinced of the need to strengthen the Antarctic Treaty system so as to ensure that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principals of the Antarctic Treaty;

Recalling the designation of Antarctica as a Special Conservation Area and other measures adopted under the Antarctic Treaty system to protect the Antarctic environment and dependent and associated ecosystems;

Acknowledging further the unique opportunities Antarctica offers for scientific monitoring of and research on processes of global as well as regional importance;

Reaffirming the conservation principles of the Convention on the Conservation of Antarctic Marine Living Resources;

Convinced that the development of a Comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems is in the interest of mankind as a whole;

Desiring to supplement the Antarctic Treaty to this end;

Have agreed as follows:

### **Article 1**

Definitions

For the purposes of this Protocol:

- (a) "The Antarctic Treaty" means the Antarctic Treaty done at Washington on 1 December 1959;
- (b) "Antarctic Treaty area" means the area to which the provisions of the Antarctic Treaty apply in accordance with Article VI of that Treaty;
- (c) "Antarctic Treaty Consultative Meetings" means the meetings referred to in Article IX of the Antarctic Treaty;
- (d) "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty entitled to appoint representatives to participate in the meetings referred to in Article IX of that Treaty;
- (e) "Antarctic Treaty system" means the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments;
- (f) "Arbitral Tribunal" means the arbitral Tribunal established in accordance with the Schedule to this Protocol, which forms an integral part thereof;
- (g) "Committee" means the Committee for Environmental Protection established in accordance with Article 11.

## **Article 2**

### Objective and Designation

The Parties commit themselves to the comprehensive protection of the Antarctic environment and dependent and associated ecosystems and hereby designate Antarctica as a natural reserve, devoted to peace and science.

## **Article 3**

### Environmental Principles

1 The protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, in particular research essential to understanding the global environment, shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area.

2 To this end:

- (a) activities in the Antarctic Treaty area shall be planned and conducted so as to limit adverse impacts on the Antarctic environment and dependent and associated ecosystems;
- (b) activities in the Antarctic Treaty area shall be planned and conducted so as to avoid:
  - (i) adverse effects on climate or weather patterns;
  - (ii) significant adverse effects on air or water quality;
  - (iii) significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments;
  - (iv) detrimental changes in the distribution, abundance or productivity of species or populations of species of fauna and flora;
  - (v) further jeopardy to endangered or threatened species or populations of such species; or
  - (vi) degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance;

(c) activities in the Antarctic Treaty area shall be planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgements about, their possible impacts on the Antarctic environment and dependent and associated ecosystems and on the value of Antarctica for the conduct of scientific research; such judgements shall take account of:

(i) the scope of the activity, including its area, duration and intensity;

(ii) the cumulative impacts of the activity, both by itself and in combination with other activities in the Antarctic Treaty area;

(iii) whether the activity will detrimentally affect any other activity in the Antarctic Treaty area;

(iv) whether technology and procedures are available to provide for environmentally safe operations;

(v) whether there exists the capacity to monitor key environmental parameters and ecosystem components so as to identify and provide early warning of any adverse effects of the activity and to provide for such modification of operating procedures as may be necessary in the light of the results of monitoring or increased knowledge of the Antarctic environment and dependent and associated ecosystems; and

(vi) whether there exists the capacity to respond promptly and effectively to accidents, particularly those with potential environmental effects;

(d) regular and effective monitoring shall take place to all assessment of the impacts of ongoing activities, including the verification of predicted impacts;

(e) regular and effective monitoring shall take place to facilitate early detection of the possible unforeseen effects of activities carried on both within and outside the Antarctic Treaty area on the Antarctic environment and dependent and associated ecosystems.

3 Activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research, including research essential to understanding the global environment.

4 Activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required in accordance with Article VII (5) of the Antarctic Treaty, including associated logistic activities, shall:

(a) take place in a manner consistent with the principles in this Article; and

(b) be modified, suspended or cancelled if they result in or threaten to result in impacts upon the Antarctic environment or dependent or associated ecosystems inconsistent with those principles.

## **Article 4**

Relationship with other Components of the Antarctic Treaty System

1 This Protocol shall supplement the Antarctic Treaty and shall neither modify nor amend that Treaty.

2 Nothing in this Protocol shall derogate from the rights and obligations of the Parties to this Protocol under the other international instruments in force within the Antarctic Treaty system.

## **Article 5**

Consistency with other Components of the Antarctic Treaty System

The Parties shall consult and co-operate with the Contracting Parties to the other international instruments in force within the Antarctic Treaty system and their respective institutions with a view to ensuring the achievement of the objectives and principles of this Protocol and avoiding any interference with the achievement of the objectives and principles of those instruments or any inconsistency between the implementation of those instruments and of this Protocol.

## **Article 6**

### Co-operation

1 The Parties shall co-operate in the planning and conduct of activities in the Antarctic Treaty area. To this end, each Party shall endeavour to:

- (a) promote co-operative programs of scientific, technical and educational value, concerning the protection of the Antarctic environment and dependent and associated ecosystems;
- (b) provide appropriate assistance to other Parties in the preparation of environmental impact assessments;
- (c) provide to other Parties upon request information relevant to any potential environmental risk and assistance to minimise the effects of accidents which may damage the Antarctic environment or dependent and associated ecosystems;
- (d) consult with other Parties with regard to the choice of sites for prospective stations and other facilities so as to avoid the cumulative impacts caused by their excessive concentration in any location;
- (e) where appropriate, undertake joint expeditions and share the use of stations and other facilities; and
- (f) carry out such steps as may be agreed upon at Antarctic Treaty Consultative Meetings.

2 Each Party undertakes, to the extent possible, to share information that may be helpful to other Parties in planning and conducting their activities in the Antarctic Treaty area, with a view to the protection of the Antarctic environment and dependent and associated ecosystems.

3 The Parties shall co-operate with those Parties which may exercise jurisdiction in areas adjacent to the Antarctic Treaty area with a view to ensuring that activities in the Antarctic Treaty area do not have adverse environmental impacts on those areas.

## **Article 7**

### Prohibition of Mineral Resource Activities

Any activity relating to mineral resources, other than scientific research, shall be prohibited.

## **Article 8**

### Environmental Impact and Assessment

1 Proposed activities referred to in paragraph 2 below shall be subject to the procedures set out in Annex I for prior assessment of the impacts of those activities on the Antarctic environment or on dependent or associated ecosystems according to whether those activities are identified as having:

- (a) less than a minor or transitory impact;
- (b) a minor or transitory impact; or

(c) more than a minor or transitory impact.

2 Each Party shall ensure that the assessment procedures set out in Annex I are applied in the planning processes leading to decisions about any activities undertaken in the Antarctic Treaty area pursuant to scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities.

3 The assessment procedures set out in Annex I shall apply to any change in an activity whether the change arises from an increase or decrease in the intensity of an existing activity, from the addition of an activity, the decommissioning of a facility, or otherwise.

4 Where activities are planned jointly by more than one Party, the Parties involved shall nominate one of their number to co-ordinate the implementation of the environmental impact assessment procedures set out in Annex I.

## **Article 9**

### Annexes

1 The Annexes to this Protocol shall form an integral part thereof.

2 Annexes, additional to Annexes I-IV, may be adopted and become effective in accordance with Article IX of the Antarctic Treaty.

3 Amendments and modifications to Annexes may be adopted and become effective in accordance with Article IX of the Antarctic Treaty, provided that any Annex may itself make provision for amendments and modifications to become effective on an accelerated basis

4 Annexes and any amendments and modifications thereto which have become effective in accordance with paragraphs 2 and 3 above shall, unless an Annex itself provides otherwise in respect of the entry into effect of any amendment or modification thereto, become effective for a Contracting Party to the Antarctic Treaty which is not an Antarctic Treaty Consultative Party, or which was not an Antarctic Treaty Consultative Party at the time of the adoption, when notice of approval of that Contracting Party has been received by the Depository.

5 Annexes shall, except to the extent that an Annex provides otherwise, be subject to the procedures for dispute settlement set out in Articles 18 to 20.

## **Article 10**

### Antarctic Treaty Consultative Meetings

1 Antarctic Treaty Consultative Meetings shall, drawing upon the best scientific and technical advice available:

(a) define, in accordance with the provisions of this Protocol, the general policy for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems; and

(b) adopt measures under Article IX of the Antarctic Treaty for the implementation of this Protocol.

2 Antarctic Treaty Consultative Meetings shall review the work of the Committee and shall draw fully upon its advice and recommendations in carrying out the tasks referred to in paragraph 1 above, as well as upon the advice of the Scientific Committee on Antarctic Research.

## **Article 11**

### Committee for Environmental Protection

1 There is hereby established the Committee for Environmental Protection.

2 Each Party shall be entitled to be a member of the Committee and to appoint a representative who may be accompanied by experts and advisers.

3 Observer status in the Committee shall be open to any Contracting Party to the Antarctic Treaty which is not a Party to this Protocol.

4 The Committee shall invite the President of the Scientific Committee on Antarctic Research and the Chairman of the Scientific Committee for the Conservation of Antarctic Marine Living Resources to participate as observers at its sessions. The Committee may also, with the approval of the Antarctic Treaty Consultative Meeting, invite such other relevant scientific, environmental and technical organisations which can contribute to its work to participate as observers at its sessions.

5 The Committee shall present a report on each of its sessions to the Antarctic Treaty Consultative Meeting. The report shall cover all matters considered at the session and shall reflect the views expressed. The report shall be circulated to the Parties and to observers attending the session, and shall thereupon be made publicly available.

6 The Committee shall adopt its rules of procedure which shall be subject to approval by the Antarctic Treaty Consultative Meeting.

## **Article 12**

### Functions of the Committee

1 The functions of the Committee shall be to provide advice and formulate recommendations to the Parties in connection with the implementation of this Protocol, including the operation of its Annexes, for consideration at Antarctic Treaty Consultative Meetings, and to perform such other functions as may be referred to it by the Antarctic Treaty Consultative Meetings. In particular, it shall provide advice on:

- (a) the effectiveness of measures taken pursuant to this Protocol;
- (b) the need to update, strengthen or otherwise improve such measures;
- (c) the need for additional measures, including the need for additional Annexes, where appropriate;
- (d) the application and implementation of the environmental impact assessment procedures set out in Article 8 and Annex I;
- (e) means of minimising or mitigating environmental impacts of activities in the Antarctic Treaty area;
- (f) procedures for situations requiring urgent action, including response action in environmental emergencies;
- (g) the operation and further elaboration of the Antarctic Protected Area system;
- (h) inspection procedures, including formats for inspection reports and checklists for the conduct of inspections;
- (i) the collection, archiving, exchange and evaluation of information related to environmental protection;
- (j) the state of the Antarctic environment; and
- (k) the need for scientific research, including environmental monitoring, related to the implementation of this Protocol.

2 In carrying out its functions, the Committee shall, as appropriate, consult with the Scientific Committee on Antarctic Research, the Scientific Committee for the Conservation of Antarctic Marine Living Resources and other relevant scientific, environmental and technical organisations.

## **Article 13**

### Compliance with this Protocol

1 Each Party shall take appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Protocol.

2 Each Party shall exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to this Protocol.

3 Each Party shall notify all other Parties of the measures it takes pursuant to paragraphs 1 and 2 above.

4 Each Party shall draw the attention of all other Parties to any activity which in its opinion affects the implementation of the objectives and principles of this Protocol .

5 The Antarctic Treaty Consultative Meetings shall draw the attention of any State which is not a Party to this Protocol to any activity undertaken by that State, its agencies, instrumentalities, natural or juridical persons, ships, aircraft or other means of transport which affects the implementation of the objectives and principles of this Protocol.

## **Article 14**

### Inspection

1 In order to promote the protection of the Antarctic environment and dependent and associated ecosystems, and to ensure compliance with this Protocol, the Antarctic Treaty Consultative Parties shall arrange, individually or collectively, for inspections by observers to be made in accordance with Article VII of the Antarctic Treaty.

2 Observers are:

(a) observers designated by any Antarctic Treaty Consultative Party who shall be nationals of that Party; and

(b) any observers designated at Antarctic Treaty Consultative Meetings to carry out inspections under procedures to be established by an Antarctic Treaty Consultative Meeting.

3 Parties shall co-operate fully with observers undertaking inspections, and shall ensure that during inspections, observers are given access to all parts of stations, installations, equipment, ships and aircraft open to inspection under Article VII (3) of the Antarctic Treaty, as well as to all records maintained thereon which are called for pursuant to this Protocol.

4 Reports of inspections shall be sent to the Parties whose stations, installations, equipment, ships or aircraft are covered by the reports. After those Parties have been given the opportunity to comment, the reports and any comments thereon shall be circulated to all the Parties and to the Committee, considered at Antarctic Treaty Consultative Meeting, and thereafter made publicly available.

## **Article 15**

### Emergency Response Action

In order to respond to environmental emergencies in ^ Antarctic Treaty area, each Party agrees to:

(a) provide for prompt and effective response action to such emergencies which might arise in the performance of scientific research programs, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII (5) of the Antarctic Treaty, including associated logistic support activities; and

(b) establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems.

2 To this end, the Parties shall:

(a) co-operate in the formulation and implementation of such contingency plans; and

(b) establish procedures for immediate notification of, and co-operative response to, environmental emergencies.

3 In the implementation of this Article, the Parties shall draw upon the advice of the appropriate international organisations.

## **Article 16**

### Liability

Consistent with the objectives of this Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems, the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol. Those rules and procedures shall be included in one or more Annexes to be adopted in accordance with Article 9 (2).

## **Article 17**

### Annual Report by Parties

1 Each Party shall report annually on the steps taken to implement this Protocol. Such reports shall include notifications made in accordance with Article 13 (3), contingency plans established in accordance with Article 15 and any other notifications and information called for pursuant to this Protocol for which there is no other provision concerning the circulation and exchange of information.

2 Reports made in accordance with paragraph 1 above shall be circulated to all Parties and to the Committee, considered at the next Antarctic Treaty Consultative Meeting, and made publicly available.

## **Article 18**

### Dispute Settlement

If a dispute arises concerning the interpretation or application of this Protocol, the parties to the dispute shall, at the request of any one of them, consult among themselves as soon as possible with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other . which the parties to the dispute agree.

## **Article 19**

### Choice of Dispute Settlement Procedure

1 Each Party, when signing, ratifying, accepting, approving or acceding to this Protocol, or at any time thereafter, may choose, by written declaration, one or both of the following means for the settlement of disputes concerning the interpretation or application of Articles 7, 8 and 15 and, except to the extent that an Annex

provides otherwise, the provisions of any Annex and, insofar as it relates to these Articles and provisions, Article 13:

(a) the International Court of Justice;

(b) the Arbitral Tribunal.

2 A declaration made under paragraph 1 above shall not affect the operation of Article 18 and Article 20 (2).

3 A Party which has not made a declaration under paragraph 1 above or in respect of which a declaration is no longer in force shall be deemed to have accepted the competence of the Arbitral Tribunal.

4 If the parties to a dispute have accepted the same means for the settlement of a dispute, the dispute may be submitted only to that procedure, unless the parties otherwise agree.

5 If the parties to a dispute have not accepted the same means for the settlement of a dispute, or if they have both accepted both means, the dispute may be submitted only to the Arbitral Tribunal, unless the parties otherwise agree.

6 A declaration made under paragraph 1 above shall remain in force until it expires in accordance with its terms or until three months after written notice of revocation has been deposited with the Depository.

7 A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the Arbitral Tribunal, unless the parties to the dispute otherwise agree.

8 Declarations and notices referred to in this Article shall be deposited with the Depository who shall transmit copies thereof to all Parties.

## **Article 20**

### Dispute Settling Procedure

1 If the parties to a dispute concerning the interpretation or application of Articles 7, 8 or 15 or, except to the extent that an Annex provides otherwise, the provisions of any Annex or, insofar as it relates to these Articles and provisions, Article 13, have not agreed on a means for resolving it within 12 months of the request for consultation pursuant to Article 18, the dispute shall be referred, at the request of any party to the dispute, for settlement in accordance with the procedure determined by Article 19 (4) and (5).

2 The Arbitral Tribunal shall not be competent to decide or rule upon any matter within the scope of Article IV of the Antarctic Treaty. In addition, nothing in this Protocol shall be interpreted as conferring competence or jurisdiction on the International Court of Justice or any other tribunal established for the purpose of settling disputes between Parties to decide or otherwise rule upon any matter within the scope of Article IV of the Antarctic Treaty.

## **Article 21**

### Signature

This Protocol shall be open for signature at Madrid on the 4th of October 1991 and thereafter at Washington until the 3rd of October 1992 by any State which is a Contracting Party to the Antarctic Treaty

## **Article 22**

### Ratification, Acceptance, Approval or Accession

1 This Protocol is subject to ratification, acceptance or approval by signatory States.

2 After the 3rd of October 1992 this Protocol shall be open for accession by any State which is a Contracting Party to the Antarctic Treaty.

3 Instruments of ratification, acceptance, approval or accession shall be deposited with the Government of the United States of America, hereby designated as the Depository.

4 After the date on which this Protocol has entered into force, the Antarctic Treaty Consultative Parties shall not act upon a notification regarding the entitlement of a Contracting Party to the Antarctic Treaty to appoint representatives to participate in Antarctic Treaty Consultative Meetings in accordance with Article IX (2) of the Antarctic Treaty unless that Contracting Party has first ratified, accepted, approved or acceded to this Protocol.

## **Article 23**

### Entry into Force

1 This Protocol shall enter into force on the thirtieth day following the date of deposit of instruments of ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the date on which this Protocol is adopted.

2 For each Contracting Party to the Antarctic Treaty which, subsequent to the date of entry into force of this Protocol, deposits an instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the thirtieth day following such deposit.

## **Article 24**

### Reservations

Reservations to this Protocol shall not be permitted.

## **Article 25**

### Modification or Amendment

1 Without prejudice to the provisions of Article 9, this Protocol may be modified or amended at any time in accordance with the procedures set forth in Article XII (1) (a) and (b) of the Antarctic Treaty.

2 If, after the expiration of 50 years from the date of entry into force of this Protocol, any of the Antarctic Treaty Consultative Parties so requests by a communication addressed to the Depository, a conference shall be held as soon as practicable to review the operation of this Protocol.

3 A modification or amendment proposed at any Review Conference called pursuant to paragraph 2 above shall be adopted by a majority of the Parties, including three-quarters of the States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

4 A modification or amendment adopted pursuant to paragraph 3 above shall enter into force upon ratification, acceptance, approval or accession by three-quarters of the Antarctic Treaty Consultative Parties, including ratification, acceptance, approval or accession by all States which are Antarctic Treaty Consultative Parties at the time of adoption of this Protocol.

5 (a) With respect to Article 7, the prohibition on Antarctic mineral resource activities contained therein shall continue unless there is in force a binding legal regime on Antarctic mineral resource activities that includes an agreed means for determining whether, and if so, under which conditions, any such activities would be acceptable. This regime shall fully safeguard the interests of all States referred to in Article IV of the Antarctic

Treaty and apply the principles thereof. Therefore, if a modification or amendment to Article 7 is proposed at a Review Conference referred to in paragraph 2 above, it shall include such a binding legal regime.

(b) If any such modification or amendment has not entered into force within 3 years of the date of its adoption, any Party may at any time thereafter notify to the Depositary of its withdrawal from the Protocol, and such withdrawal shall take effect 2 years after receipt of the notification by the Depositary.

## **Article 26**

Notifications by the Depositary

The Depositary shall notify all Contracting Parties to the Antarctic Treaty of the following:

- (a) signatures of this Protocol and the deposit of instruments of ratification, acceptance, approval or accession;
- (b) the date of entry into force of this Protocol and any additional Annex thereto;
- (c) the date of entry into force of any amendment or modification to this Protocol;
- (d) the deposit of declarations and notices pursuant to Article 19; and
- (e) any notification received pursuant to Article 25 (5) (b).

## **Article 27**

Authentic Texts and Registration with the United Nations

1 This Protocol, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to all Contracting Parties to the Antarctic Treaty.

2 This Protocol shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.