

**MEASURE 1 (2003) SECRETARIAT OF THE ANTARCTIC  
TREATY, ADOPTED AT MADRID, SPAIN ON 20 JUNE 2003,  
UNDER THE ANTARCTIC TREATY, DONE AT WASHINGTON  
ON 1 DECEMBER 1959  
[2005] ATNIF 03**

**Documents tabled on 11 May 2005:**

- **National Interest Analysis [2005] ATNIA 4**  
**with attachment on consultation**
  
- **Text of the proposed treaty action**
  
- **Background information: Current status list**

# **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

## **SUMMARY PAGE**

### **Measure 1 (2003) Secretariat of the Antarctic Treaty, adopted at Madrid, Spain on 20 June 2003, under the Antarctic Treaty, done at Washington on 1 December 1959 [2005] ATNIF 03**

#### **Nature and timing of proposed treaty action**

1. A “Measure” under the Antarctic Treaty is a recommendation which the representatives from Consultative Parties at an Antarctic Treaty Consultative Meeting (ATCM) make to their Governments. A Measure contains provisions which are intended to be legally binding once approved by all such Governments. A “Decision” under the Antarctic Treaty addresses an internal organisational issue and becomes operative either immediately, or at a specified time.
2. Measure 1 (2003) of ATCM XXVI (Madrid, June 2003) – establishing the Secretariat of the Antarctic Treaty – will enter into force when approved by the relevant Contracting Parties (which number twenty-eight at March 2005). In the interim, Decision 2 (2003) applies the Measure provisionally to enable the Secretariat’s operations to proceed. Decision 1 (2003) apportions financial contributions to the Secretariat and will become operative on the date on which Measure 1 (2003) becomes effective.
3. The meeting unanimously adopted these texts and related Decisions – on the scale of financial contributions to fund the Secretariat, and its staffing and financial regulations (Decisions 3 and 4).
4. The effect of Measure 1 is to establish a Permanent Secretariat for the Antarctic Treaty, in Buenos Aires, Argentina (in accordance with a Headquarters Agreement between ATCM and Argentina). It outlines the functions, legal capacity and budget of the Secretariat and the role of the Executive Secretary.

#### **Overview and national interest summary**

5. Measure 1 creates an independent secretariat, to assist ATCM and its Committee for Environmental Protection (CEP) to perform their functions. This is in the national interest because it is expected to improve the efficiency of the Antarctic Treaty system, to which Australia has been strongly committed since its inception. The establishment of a secretariat was a key objective of the Australian delegation to ATCM XXVI, and the result of several years of formal and informal negotiations.

## **Reasons for Australia to take the proposed treaty action**

6. The proposed treaty action is a Measure under the Antarctic Treaty to which Australia has been a Consultative Party since it came into force in 1961. Measure 1 (2003) establishes a permanent Secretariat for the Treaty.

7. The Treaty is a multilateral agreement which ensures that Antarctica is used exclusively for peaceful purposes, guarantees freedom of scientific research, promotes international scientific cooperation, allows for inspection of all operations, sets aside the potential for disputes over territorial sovereignty in Antarctica, and provides for regular meetings between the Parties. Australia has a large territorial claim and an extensive research program in Antarctica. Australia took a leading role in the formulation of the Treaty, and successive Australian governments have viewed maintenance of the Antarctic Treaty system as a high priority.

8. Measure 1 (2003) puts into effect an earlier decision of ATCM to establish a Permanent Secretariat in Buenos Aires, with legal personality in Argentina. It makes the Secretariat an organ of ATCM, to assist ATCM and its CEP, as directed by ATCM. The Measure sets out functions which are typical for a secretariat of a multilateral agreement.

9. The Secretariat's key functions are to manage the administrative side of annual and intersessional meetings, facilitate contact between Parties, maintain contacts with other international organisations, develop and maintain databases relevant to the operation of the Treaty, and produce reports and publications. ATCM appoints the Executive Secretary, and sets the Secretariat's budget. Half of the budget shall be contributed equally by all Consultative Parties, and half based on Consultative Parties' national Antarctic activities, taking into account their capacity to pay.

10. The legal capacity of the Secretariat and its staff members' privileges and immunities are defined by a Headquarters Agreement between ATCM and the Government of the Argentine Republic.

11. Since the adoption of Measure 1 (2003), ATCM has appointed an Executive Secretary – Mr Johannes (Jan) Huber of the Netherlands. In September 2004, the Secretariat took possession of an office in Buenos Aires, provided by the Government of the Argentine Republic.

12. Australia's position is to maintain and improve the efficiency of the Antarctic Treaty system. This Measure is consistent with this position.

## **Obligations**

13. Australia will be obliged to pay a contribution to the Secretariat's budget, under the formula agreed at ATCM XXVII. Currently, this will set Australia's contribution at USD \$48,122.

## **Implementation**

14. No changes to domestic law or policy are required for implementation.

## **Costs**

15. The proposed treaty action imposed an additional cost of USD \$47,468 annually on Australia which, under the formula in Measure 1 (2003), was increased in 2004 to USD \$48,122. Provision for the annual payment to the Antarctic Treaty Secretariat will be organised through the Department of Foreign Affairs and Trade, which will seek an appropriation as an administered item when the Measure comes into force. Until this Measure is ratified by the relevant Consultative Parties, Parties will pay voluntary contributions, for which provision is being made from the budget of the Australian Antarctic Division. The Measure will not require any new domestic agencies or management arrangements to be put in place.

## **Regulation Impact Statement**

16. The Office of Regulation Review, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required

## **Future Treaty Action**

17. The Antarctic Treaty may be amended at any time in accordance with the provisions of Article XII. Article XII(1) provides for such amendment when there is unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the consultative meetings.<sup>1</sup> Any such modification or amendment enters into force when the depositary Government (the United States of America) has received notice from all such Contracting Parties that they have ratified it.

18. ATCM takes action under the Antarctic Treaty through “Measures,” which, in accordance with Decision 1(1995), are legally binding once approved by all Consultative Parties, and “Decisions” on organisational issues, which do not require ratification to become operative (and are not intended to have the same legal status as a Measure). In relation to Measure 1 (2003), Decision 1 (2003) on financial contributions will also become operative on the date the Measure becomes effective. Measures may have the effect of amending previous Measures.

19. There is currently one Protocol to the Treaty: the Protocol on Environmental Protection to the Antarctic Treaty (the “Madrid Protocol” of 1991). This provides for comprehensive and legally binding rules to protect the Antarctic environment, designates Antarctica as a natural reserve devoted to peace and science, prohibits mining, establishes environmental principles for the conduct of all activities and provides for a Committee for Environmental Protection, to advise the ATCM. There are currently no other protocols proposed under the Antarctic Treaty. The Madrid Protocol is accompanied by annexes on specific environmental actions (such as

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<sup>1</sup> Consultative Parties include all original signatories to the Antarctic Treaty and all Parties that acceded to the Treaty and are demonstrating their interest in Antarctica by conducting substantial scientific research activity there, in accordance with Article IX(2). Consultative Parties have voting status at ATCMs. Contracting Parties whose representatives were entitled to participate in the meetings in this context can also be read as Consultative Parties.

environmental impact assessment and waste management). An annex is currently being negotiated on liability for environmental damage.

### **Withdrawal or Denunciation**

20. Australia may decide not to accept Measure 1 (2003), in which case the Measure would not enter into force.

21. The Measure does not contain a specific withdrawal provision, which means that in order to withdraw from the Measure Australia would have to withdraw from its parent agreement, the Antarctic Treaty.

22. The Antarctic Treaty does not contain a specific withdrawal provision, except in the case where a modification or amendment has been proposed and not yet entered into force (not approved by all relevant Contracting Parties). In such a case, Australia could withdraw from the Treaty under Article XII (2)(c) by giving notice to the depositary Government (the United States); such withdrawal would take effect two years after this notice was received.

23. Apart from this situation, Australia can withdraw as a party from the Antarctic Treaty “at any time by consent of all the parties after consultation with the other contracting States”, in accordance with Article 54(b) of the Vienna Convention on the Law of Treaties.

### **Contact Details**

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International Organisations and Legal Division  
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Australian Antarctic Division  
Australian Department of the Environment & Heritage

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## **CONSULTATION**

1. The Department of Foreign Affairs and Trade convenes consultative meetings with other government departments – including the Australian Antarctic Division of the Department of the Environment and Heritage, the Attorney General’s Department and the Department of Industry, Tourism and Resources – and with non-government organisations before each annual ATCM. In May 2003, before ATCM XXVI, the consultative forum was attended by the Antarctic and Southern Ocean Coalition, the University of Tasmania, Greenpeace and the Whale and Dolphin Conservation Society. The views expressed at the meetings are taken into account in developing Australia’s position on the proposals to be considered by the ATCM.
2. The consultative forum elected a representative from the Antarctic and Southern Ocean Coalition to participate as a member of the Australian delegation at the 2003 ATCM. The State government representative on the Australian delegation to ATCM XXVI was the Director of the Office of Antarctic Affairs of the Government of Tasmania.
3. Measure 1 (2003) does not affect the States and Territories, as the financial contribution for the Secretariat to the Antarctic Treaty will be borne exclusively by the federal Government. The States and Territories have been informed through the Commonwealth-State/Territory Standing Committee on Treaties.

Countries that have approved Measure 1 (2003) to date are Argentina, Belgium, Bulgaria, China, Finland, Germany, Japan, and New Zealand.

### Signatories of the Antarctic Treaty

	State	Date	Status	Date when Acceding State became Consultative Party
1	United Kingdom	31 May 1960	OS/CP	
2	South Africa	21 June 1960	OS/CP	
3	Belgium	26 July 1960	OS/CP	
4	Japan	4 August 1960	OS/CP	
5	United States of America	18 August 1960	OS/CP	
6	Norway	24 August 1960	OS/CP	
7	France	16 September 1960	OS/CP	
8	New Zealand	1 November 1960	OS/CP	
9	Russia <sup>1</sup>	2 November 1960	OS/CP	
10	Poland	8 June 1961	AS/CP	29 July 1977
11	Argentina	23 June 1961	OS/CP	
12	Australia	23 June 1961	OS/CP	
13	Chile	23 June 1961	OS/CP	
14	Czech Republic <sup>2</sup>	14 June 1962	AS	
15	Slovak Republic <sup>2</sup>	14 June 1952	AS	
16	Denmark	20 May 1965	AS	
17	Netherlands	30 March 1967	AS/CP	19 November 1990
18	Romania	15 September 1971	AS	
	German Democratic Republic <sup>3</sup>	19 November 1974	AS/CP	5 October 1987
19	Brazil	16 May 1975	AS/CP	12 September 1983
20	Bulgaria	11 September 1978	AS/CP	25 May 1998
21	Germany, Federal Republic of	5 February 1979	AS/CP	3 March 1981
22	Uruguay	11 January 1980	AS/CP	7 October 1985
23	Papua New Guinea <sup>4</sup>	16 March 1981	AS	
24	Italy	18 March 1981	AS/CP	5 October 1987
25	Peru	10 April 1981	AS/CP	9 October 1989
26	Spain	31 March 1982	AS/CP	21 September 1988
27	China, People's Republic of	8 June 1983	AS/CP	7 October 1985
28	India	19 August 1983	AS/CP	12 September 1983
29	Hungary	27 January 1984	AS	
30	Sweden	24 April 1984	AS/CP	21 September 1988
31	Finland	15 May 1984	AS/CP	9 October 1989
32	Cuba	16 August 1984	AS	
33	Korea, Republic of	28 November 1986	AS/CP	9 October 1989
34	Greece	8 January 1987	AS	
35	Korea, Democratic People's Republic of	21 January 1987	AS	
36	Austria	25 August 1987	AS	
37	Ecuador	15 September 1987	AS/CP	19 November 1990
38	Canada	4 May 1988	AS	
39	Colombia	31 January 1989	AS	
40	Switzerland	15 November 1990	AS	
41	Guatemala	31 July 1991	AS	
42	Ukraine	28 October 1992	AS/CP	27 May 2004
43	Turkey	25 January 1996	AS	
44	Venezuela	24 May 1999	AS	
45	Estonia	17 May 2001	AS	

References

OS = Original Signatory

CP = Consultative party

AS = Acceding State

Dates = the dates of ratification of the Treaty by the original signatories or the dates of accession or succession by other states.

Notes

Czechoslovakia which separated into two republics on 1 January 1993.

3 Became united with Federal Republic of Germany on 3 October 1990 (now known as Germany).

4 Succeeded to the Treaty after independence from Australia

1 Known as  
the Soviet  
Union until  
December  
1990.

2  
Succeeded  
to the  
Treaty as  
part of