THE 1959 ANTARCTIC TREATY
THE "FREEZING AND BIFOCALISM" FORMULA

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INTRODUCTION

The Antarctic Treaty system provides a unique example of a non-standard solution for difficult problems and its linchpin is the 1959 Antarctic Treaty. Operating against a sophisticated backdrop that involves territorial sovereignty, political rivalry and tension, the system has successfully prevented the Antarctica from being transformed into a theatre of conflict. Also, it has managed to ensure broad international cooperation in the region. This success is attributable to Article IV.

Arguably, Article IV of the 1959 Antarctic Treaty comprises two limbs. The central limb concerns the freezing of all claims to Antarctica. The other limb, referred to as bifocalism,[1] protects the interests of claimant States, potential claimants and non-claimants. Both limbs constitute an integrated formula, characterised by treating the regime as merely the lowest common denominator that makes policy by diffusion.

The central theme of Article IV, in the form of the freezing and bifocalism formula, preserves the apparently irreconcilable interests of the above three categories of claimants concerning territorial sovereignty. The provision has been described as the cornerstone of the Treaty by enabling progress on an issue adjudged capable of causing the failure of treaty negotiations as well as providing for the development of multilateral cooperation in the Antarctic region.[2] This approach does not resolve the territorial questions raised but merely evades the problems by not providing a solution. In other words, it freezes individual legal positions instead. By being utilised in this manner Article IV is seen to play a constructive role and provide a conflict avoidance mechanism. As such, its core spirit could have significance for

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* B Med. I would like to thank David Waters and Wendy Lacey for their comments on the drafts of this article.

[1] Beck, "The Antarctic Resource Conventions implemented: consequences for the sovereignty issue" in Jφrgensen-Dahl A (editor), The 1959 Antarctic Treaty System in World Politics (1991, Macmillan, Hampshire) 229, 242.

[2] Ibid 233.

territorial claims elsewhere around the world, as well as significance for international trade and commerce, human rights and new areas of international co-operation during this era of globalisation.

REVIEW OF THE ANTARTIC TREATY SYSTEM

Freezing

The central limb of Article IV of the 1959 Antarctic Treaty is found in paragraph 2 where the freezing strategy is found:

> No acts...shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty...or create any rights of sovereignty... No new claim, or enlargement of an existing claim to territorial sovereignty...shall be asserted.

This strategy of freezing all claims has played a key role in enabling the Antarctic Treaty system to survive for more than 40 years and achieve the goals of "peace" and "cooperation of free scientific research".[3] The difficulties in achieving these goals are more fully illustrated when one notes that the Treaty was created during the Cold War era. Those were the years when Antarctica witnessed a real tension between the super powers, the United States and the USSR. In addition, the claims of seven[4] Antarctic Treaty Consultative Parties (ATCPs) to territorial sovereignty were not acceptable to the other ATCPs and the overlapping claims of Argentina, Britain and Chile limited the prospects of territorial consensus amongst them. Furthermore, there were three overlapping sectors that caused real tensions between the claimant States and some of these States even made military gestures to one another.[5]

Some States have called for the Antarctica to be treated as a whole and for the provision of a "sharing or joint jurisdiction" to settle the issues concerning sovereignty. Others have chosen to depict the sovereignty problem as a destructive force in the implementation of the Antarctic

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[3] Article I(1)-(2).

[4] Australia, Belgium, France, Japan, New Zealand, Norway and South Africa.

[5] Beck, "The Antarctic Resource Conventions implemented: consequences for the sovereignty issue" in Jørgensen-Dahl A (editor), The 1959 Antarctic Treaty System in World Politics (1991, Macmillan, Hampshire) 229, 259; Karev, "Cooperative momentum? The 1959 Antarctic Treaty System and the prevention of conflict" in ibid 372, 375.

Treaty system.[6] Nonetheless, it is possible to move ahead without settling the issue because peaceful relations or co-existence may be achieved without aiming for a final resolution.

Bifocalism

Although the central limb of Article IV focuses on freezing the claims, sovereignty will continue to be a major issue in Antarctica. This is because the territorial claims made are unilateral in nature and not accepted or recognised by the non-claimant states that represent the great majority of the international community. The United States and the Soviet Union, with extensive and continuing activities in the Antarctic, have declared that although they may have a legitimate basis for a claim they have not formally carved out a niche for themselves. Thus, at every stage of the Antarctic Treaty system's development the various interests of claimants, potential claimants and non-claimants concerning jurisdiction and the distribution of resource benefits have had to be accommodated separately.[7]

Article IV.1 of the 1959 Antarctic Treaty provides as follows:

> Nothing...shall be interpreted as:
> renunciation...of previously asserted rights of...or claims to territorial sovereignty in Antarctica;
> a renunciation or diminution...of any basis of claim to territorial sovereignty;
> prejudicing the position...as regards...recognition or non-recognition of any other State's right of or claim or basis of claim...

The wording of the above provision is ambiguous. However, the ambiguity has enabled different groups to interpret it differently resulting in what is known as the bifocal approach or bifocalism. Consequently, when a State signs the Treaty no other claimant State may diminish its claim and the

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[6] Beck, "The Antarctic Resource Conventions implemented: consequences for the sovereignty issue" in ibid 229, 257.

[7] Crawford and anor, "Legal issues confronting Australia's Antarctica", (1992) 13 Australian Yearbook of International Law 53, 55; Karev, "Cooperative momentum? The 1959 Antarctic Treaty System and the prevention of conflict" in Jørgensen-Dahl A (editor), The Antarctic System in World Politics, (1991, Macmillan, Hampshire) 372, 375; Beck, "The Antarctic Resource Conventions implemented: consequences for the sovereignty issue" ibid 229, 240.

position of potential claimants is not prejudiced.[8] This bifocal approach creates a safeguard against immediate conflict and facilitates the smooth implementation of the freezing strategy.

An analysis of Antarctic affairs shows that bifocalism is practised actively in the region. Article VI of the 1964 Agreed Measures for the Conservation of Antarctic Fauna and Flora is also bifocal on the need for permits before one may work in or use the region by referring to "appropriate authority". Article II defines this as any person authorised by Participating Governments to issue permits under the Agreed Measures. The ATCPs interpret this reasonably freely, including the jurisdictional provisions, to suit their own national interests. As a logical consequence of exercise of jurisdiction over activities within their respective Antarctic territories claimants act on their own interpretation and implement decisions based on it. Similarly, since non-claimants may approach this as an exercise in national jurisdiction, they regulate the activities of their nationals within the treaty area in this manner as well.[9]

The 1959 Antarctic Treaty is incorporated into the 1980 Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) by virtue of Article IV of this Convention. Article IV(2) almost repeats the wording of Article IV (1)-(2) of the Treaty, the former reading as follows:

> Nothing...shall be interpreted as a renunciation or diminution...of, or as prejudicing any right or claim or basis of claim to exercise coastal state jurisdiction under international law within the area to which this Convention applies.

A bifocal interpretation of the provision has created a dual result. On the one hand, it enables claimants to point to Article IV(2)(b) of the Treaty and argue that their rights remain protected, including their sovereignty over waters adjacent to the territory claimed. On the other hand, it enables non-claimants to argue that this provision applies only to undisputed claims north of 60°S that has the effect of excluding the Antarctic continent.[10]

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[8] Ibid.
[9] Ibid 229, 242.
[10] Howard, "The Convention on the Conservation of Antarctic Marine Living Resources: a five year review", (1989) 38 International and Comparative Law Quarterly 104, 107.

Article XXI of CCAMLR adopts the "bifocal approach" also for the purposes of its enforcement provision. This provision states that each Contracting Party shall "take appropriate measures within its competence to ensure compliance" with the Convention and related conservation measures and inform the Commission on the nature of the "appropriate measures" taken. By relying on the ambiguous phrase "within its competence" found in the provision, the sovereignty issue becomes "finessed". Consequently, on the one hand claimants may exercise jurisdiction over foreign nationals in their claimed territory but failure to do so does not detract from the validity of any claim within the context of Article IV of CCAMLR. The same applies to the 1959 Antarctic Treaty. On the other hand, non-claimants may interpret Article XXI of CCAMLR to permit self-policing by Member States only.

So far, the above approaches have provided a compromise that all parties have been able to accept. As the Antarctic Treaty system steams steadily towards its goals with the use of the formula, it continues to face challenges. From within, the enforcement provision seems unable to prevent States from over-harvesting the region.[11] From outside, the most serious challenge comes from the common heritage of mankind doctrine.

COMMON HERITAGE OF MANKIND DOCTRINE

Although the resource conventions of the Antarctic Treaty system[12] suggest that a shared Antarctic jurisdiction with both individual and cooperative elements has emerged, the regime embodies elements of the common heritage of mankind doctrine. Further, commentators often point to the doctrine as an alternative basis for common sharing. The United Nations seems to support the commentators in the form of the 1969 "moratorium" resolution of the General Assembly, the Declaration of Principles Governing the Seabed and the Ocean Floor, and the 1982 Convention on the Law of the Sea.

The doctrine seems to have spilt over into other areas but instead of creating a difficulty it can co-exist comfortably with the Antarctic Treaty

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[11] Joyner CC, Antarctica and the Law of the Sea (1992, Martinus Nijhoff Publishers, Dordrecht) 244.

[12] For example, CCAMLR and the 1972 Convention on the Conservation of Antarctic Seals.

system. This is because they are not necessarily irreconcilable concepts[13] and the doctrine may even be applied to other international disputes in conjunction with the freezing and bifocalism formula.

APPLICATION OF THE FORMULA

Conflict is an inescapable aspect of the human condition and this is seen even in the freezing, non-populated and isolated Antarctic continent. History has shown that struggles for power and the search for international order have led to conflict and war, indicating the close relationship between conflict, aggression and violence. Most social scientists when weighing the empirical evidence predict the indefinite continuation of conflict in myriad modes.[14] There is an opposite viewpoint and Frankel argues that community interests in the end temper conflicts, which often end in compromise.[15] Be that as it may, the methods currently used to settle international conflicts are, broadly speaking, ineffective and insufficient.

It is generally recognised that there are three methods to settle a dispute:[16]

negotiation;
arbitration or adjudication; and
aggression and war.

This article will argue that the freezing and bifocalism formula in Article IV of the 1959 Antarctic Treaty system provides the fourth method.

Negotiation

Negotiation is a method that includes diplomatic techniques, good offices and mediation, and inquiry and conciliation.[17] Negotiation may be referred

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[13] Triggs G, International Law and Australian Sovereignty in Antarctica (1986, Legal Books, Sydney) Chapter 9; Beck, "The Antarctic Resource Conventions implemented: consequences for the sovereignty issue" in Jørgensen-Dahl A (editor), The 1959 Antarctic Treaty System in World Politics (1991, Macmillan, Hampshire) 229, 264-5.

[14] Dougherty JE, Contending Theories of International Relations (1981, Harper and Row, New York) 189.

[15] Frankel J, International Politics: Conflict and Harmony (1973, Penguin Books, London) 47; Frankel J, International Relations in a Changing World (1988, 4th edition, Oxford University Press, Oxford) 105.

[16] Hartmann FH, The Relation of Nations (1967, 4th edition, Macmillan, New York) 213.

[17] Ibid.

to as a compromise solution but to achieve this the parties must be willing to compromise in the first instance. Furthermore, there is the unanswered question on how long the disputing parties must continue to find a negotiated solution even when negotiations have broken down. Thus, negotiation is not always an easy or successful option. In this sense, the incompleteness of Article XI of the 1959 Antarctic Treaty and Article XXV of CCAMLR is a weakness. The Articles have similar provisions that read as follows:

> If any dispute arise...[the parties] shall consult among themselves with a view...resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means... Any dispute not so resolved shall be referred to the International Court of Justice, but failure to reach agreement on reference to the...Court, shall not absolve parties...from...continuing to seek to resolve [their dispute] by any ...peaceful means...

Bosco states that in negotiation, although the disputants may aim at ending the dispute, there is an obligation to produce an outcome. Unhappily, this is not easy or forthcoming.[18] Another difficulty is that it cannot succeed without the successful adjustment of the underlying conflict in the first case. It is this close connection between conflict and the methods employed to resolve it, including the confusion between the two, which have bedevilled United Nations peacekeeping activities for decades.[19]

Arbitration and Adjudication

Western States share the ideals of international justice and they are governed by the rule of law and not by the rule of force. Most consider that the best way to handle disputes is to insert a clause in a general or particular convention that provides for adjudication by the International Court of Justice or other international tribunal.[20] Under Article 36(1) of the Statute of the International Court, the Court has jurisdiction in all cases referred to it by parties on all matters specifically provided in the United

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[18] Bosco, "Settlement of disputes under the 1959 Antarctic Treaty" in Francioni F and anor (editors), International Law for Antarctica (1987, Giuffre Editore, Milan) 23, 26.

[19] Frankel J, International Politics: Conflict and Harmony (1973, Penguin Books, London) 44.

[20] Bosco, "Settlement of disputes under the 1959 Antarctic Treaty" in Francioni F and anor (editors), International Law for Antarctica (1987, Giuffre Editore, Milan) 23.

Nations Charter or in treaties or conventions in force. However, there is an important caveat and a State does not become a party before an international tribunal unless it commits itself in that way. The essence of the process is the State's consent to the tribunal's jurisdiction because it cannot be forced to become a party in the proceedings.[21] This is illustrated in the *Monetary Gold case*[22] and, more recently, the *East Timor case.*[23]

The need for consent has impacted negatively on the effectiveness of the International Court. Numerous States have never accepted the Court's jurisdiction because they fear the decision's outcome. On 7 October 1985, the United States announced that it was terminating its acceptance of the compulsory jurisdiction of the Court, although it would accept the Court's jurisdiction in "mutually submitted" legal disputes.[24] The withdrawal of consent to jurisdiction had followed the unfavourable decision of the Court against it in proceedings commonly known as the *Nicaragua case.*[25]

Joyner points out that "[i]nternational law and established institutions will be only as effective as their member States want them to be, or are willing to make them be."[26] This reluctance is fuelled by a common perception that a verdict awards all to one disputant and nothing to the other. The more crucial the issue the greater the likelihood that both parties will not be eager for a tribunal determination of their claims whether by adjudication or arbitration.[27] On the other hand, at times international law involves predilections and cannot avoid advantaging one to the disadvantage of the other. Thus, it is easy to understand why a state may not want to accept a settlement that contains binding terms and as a result judicial and arbitral settlements have not played a significant part in world politics despite great international efforts.[28]

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[21] Joyner CC, Antarctica and the Law of the Sea (1992, Martinus Nijhoff, Dordrecht) 267; Shaw MN, International Law (1997, 4th edition, Cambridge University Press, Cambridge) 755.

[22] [1954] International Court of Justice Reports 19.

[23] [1995] International Court of Justice Reports 90.

[24] See the United States Statement: (1985) 24 International Legal Materials 1742-1745; Shaw MN, International Law (1997, 4th edition, Cambridge University Press, Cambridge) 768-9.

[25] [1984] International Court of Justice Reports 392.

[26] Joyner CC, Antarctica and the Law of the Sea (1992, Martinus Nijhoff, Dordrecht) 274.

[27] Hartmann FH, The Relation of Nations (1967, 4th edition, Macmillan, New York) 225.

[28] Frankel J, International Politics: Conflict and Harmony (1973, Penguin Books, London) 210.

Aggression and War

Conflict is often equated with violence and war. Although aggression and war have been outlawed by international law the reality is that they will continue to exist in a sovereign state system. What converts potential strife into actual strife is incompatibility between the vital interests of two or more States that find themselves pushed to a point where they decide that the use of force is the sole solution. In other words, violence and war occur when a State cannot obtain what it desires without resorting to force.[29] The tension that exists amongst the claimant States such as Argentina, Britain and Chile on the issue of overlapping claims in the Antarctic sectors illustrates the possibility that this might occur.

The United Nations Charter provides an obligation on all member states to settle their international disputes by peaceful means so that international peace, security and justice are not endangered.[30] This conflicts with the doctrine of universal love which has a long history of war[31] and as such the idea of settling a dispute by violence, aggression or war will continue, something that China has acknowledged ever since ancient times. In this context, it is suggested that the freezing and bifocalism formula in Article IV of the 1959 Antarctic Treaty be employed to help States fulfil their obligations in a peaceful manner.

The Formula Approach – Freezing and Bifocalism

It was suggested above that the formula in Article IV of the 1959 Antarctic Treaty be used to provide the fourth method for settling disputes peacefully. This is the middle road, a compromise between a good deal and resort to violence and aggression. However, not every dispute needs to be settled and sometimes if disputes are left alone they settle themselves. Under the formula, freezing and bifocalism take advantage of common interests by overlooking antagonism and exploiting the differences.[32] Freezing stresses the importance of the cooling-off period during which passions are permitted to subside and fact-finding and impartial inquiries

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[29] Hartmann FH, The Relation of Nations (1967, 4th edition, Macmillan, New York) 155-6.

[30] United Nations Charter Article 2(3).

[31] Dougherty JE, Contending Theories of International Relations (1981, Harper and Row, New York) 190.

[32] Joyner CC, Antarctica and the Law of the Sea (1992, Martinus Nijhoff, Dordrecht) 270.

are made to clear any misunderstanding. On the other hand, bifocalism provides the balance that reassures the disputing States that their respective interests are protected. This dual approach offers a convenient, face-saving formula that sometimes results in ingenious ideas that go beyond the disputants' imagination. During the freeze, they may be subject to international public scrutiny, thus acting as a deterrent against irresponsible behaviour. Since freezing and bifocalism do not lead to anything that binds the disputing States this procedure is accepted more readily when compared to arbitration and judicial settlement.[33]

The current concerns of the international community on state territory may recede in the future if history is any guide. In the early periods, tribes used violence and war to gain territory from one another. In recent years, this practice has receded in importance since it became outlawed. However, modern examples of such unlawful behaviour still exist as seen in the Indian-Chinese border war in 1960 and the Kashmir war between India and Pakistan in 1947. In fact, the latter dispute is still going on.[34]

In power politics today, the basic objective of the modern state system is to protect the integrity of territorial sovereignty and political independence.[35] After World War II new groupings of States emerged as regional, functional and comprehensive groups, examples being the North Atlantic Treaty Organisation and the European Community. However, all inter-State governmental organisations are in essence extensions of States in the pursuance of collective interests and influence. In this way, the organisation infringes upon the sovereignty of their Member States. Nevertheless, this has increased interaction between States including developments in communication, technology and transportation. This is evidenced in other areas as well including international transactions in trade and commerce and travel, all of them representing steps in the social evolution of a world government and a global village.[36]

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[33] Frankel J, International Politics: Conflict and Harmony (1973, Penguin Books, London) 210.

[34] See Agence France-Presse, "Pakistan rejects India's pre-condition for dialogue" at <http://asia.yahoo.com/headlines/071099/news/939226020-91006160741.newsasia.html> (visited October 1999).

[35] Herz, "The territorial state in international relations" in Etzioni A, War and Its Prevention (1970, Harper and Row, New York) 47-52.

[36] Frankel J, International Relations in a Changing World (1988, 4th edition, Oxford University Press, Oxford) 166-230.

Although States face diminution in sovereignty when they group together formally it should not be viewed as entirely adverse in nature and effect. This is because if States remain as absolute sovereign entities they may have the opportunity or tendency to flout fundamental principles such as those on universal human rights and the obligations that are enshrined in the United Nations Charter.[37] Thus, while free access to Antarctica for scientific research threatens the claims of individual States to sovereignty in the region, it may be argued that the globalisation of international trade and commerce similarly threatens national sovereignty, but this is not such a bad thing.

At present, traditional notions of sovereignty are being diminished and may even become extinguished.[38] A quick look around shows that territorial sovereignty as an issue is becoming less important and nationality is not what it used to be. An example is the recent creation of the International Criminal Court. It was the same perception that a State need not be confined to its own boundaries that resulted in the Antarctica proposals,[39] with the freezing and bifocalism formula in Article IV leading the way.

At the 1959 Antarctic Treaty System Consultative Meeting in 1972 New Zealand proposed that Antarctica should become a "world territory". Issues discussed included the lack of a permanent population and human habitation in the region, the meaning of self-determination and sovereignty, and their implications for international law.[40] This should be contrasted with the doctrine of the common heritage of mankind that rejects the notion of the domination of territory by a State over another State or States. The rationale comes from the concept of *res communis* that implies equal access, equal enjoyment of benefits and peaceful use by all States. At least two international treaties have accepted this concept, the 1967 Outer Space Treaty and the 1979 Moon Agreement.

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[37] Brecher J, Global Village or Global Pillage (1994, South End Press, Boston) 62.

[38] Triggs G, International Law and Australian Sovereignty in Antarctica (1986, Legal Books, Sydney) 304.

[39] The Intermountain History Group, "The U.S.-Mexican War and the peoples of the year 2000" at http://www.sonic.net/~buscador/ (visited September 1999).

[40] Harris, "The influence of the United Nations on the Antarctic system: a source of erosion or cohesion?" in Jørgensen-Dahl A and anor (editors), The 1959 Antarctic Treaty System in World Politics (1991, Macmillan, London) 309, 310; Beck P, The International Politics of Antarctica (1986, Croom Helm, London) 272-275.

The above treaties support the view that the world is fast evolving into a single global village.[41] Globalisation will continue to grow and the issue of territorial sovereignty will also become less significant in a global village. Logically, if a conflict cannot be settled by non-military methods it would be sensible to apply the strategy in Article IV to that conflict. This way, the interests of all parties are preserved on the ground that bifocalism and freezing of the issue are an acceptable temporary solution until a more permanent solution is found. Even though this approach has limitations, nevertheless it enhances the chances of breaking deadlocks without violence and aggression and without compromising the obligations established by the United Nations.

LIMITATIONS OF THE FORMULA APPROACH

Freezing and bifocalism have limitations and several exist in Antarctic affairs. They are the following:

> One of the limitations concerns disputes over natural resources. The failure to resolve disputes that result from the lack of a compulsory dispute resolution mechanism has contributed to a weakening of the Antarctic Treaty system and its enforcement mechanisms. As a result the harvesting of resources will continue at dangerous levels in the region unless checked.[42]

Thus, the strategy works only if the disputing parties do not resort to force.

The question on how long a dispute should be frozen remains unanswered and thus has produced uncertainty.[43] The formula will not work if a dispute involves an emergency, such as a breakdown in law and order. This was demonstrated by the events that followed the independence vote in East Timor on 30 August 1999. After the overwhelming majority of East Timorese had voted in favour of independence from Indonesia, the pro-Indonesian militia was reported to have ravaged the territory.[44] In such

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[41] Triggs G, International Law and Australian Sovereignty in Antarctica (1986, Legal Books, Sydney) 278-285.

[42] Joyner CC, Antarctica and the Law of the Sea (1992, Martinus Nijhoff, Dordrecht) 244.

[43] Bosco, "Settlement of disputes under the 1959 Antarctic Treaty" in Francioni F and anor (editors), International Law for Antarctica (1987, Giuffre Editore, Milan) 23, 25.

[44] See USA Today, "Despite UN troops, Dili still dangerous" at <http://www.usatoday.com/news /world/newsewd05.htm> (visited October 1999).

situations, bifocalism is unrealistic and the freezing approach may result in bloodshed and lives being lost.

If the last occurs, it is arguable that the so-called "just war" may be justifiable. This is different to the freezing of conflicts. "Just war" is a substitute for judicial proceedings and a type of "lawsuit" that defends a State's lawful rights. However, because war under any label uses force, this is not the answer. In practice, the use of force still exists especially when there is no effective international judicial authority to dispense and restore justice.[45] As a result, the use of force highlights a weakness of the formula in its adoption and practical application.

Notwithstanding, this limitation is a small price for dispute settlement or avoidance. In Antarctic affairs to date, it has not been high considering the achievements of the 1959 Antarctic Treaty system. Furthermore, the formula has stopped territorial claims in the region. More importantly, the system may be considered a model for conflict management in other areas of international inter-relations such as in outer space.

OUTER SPACE

The outer space regime exemplifies the successful application of the freezing strategy to allow differences to be resolved later on. After the first satellite was launched in 1958, the United States and the Soviet Union refrained from claiming territorial sovereignty in outer space and the celestial bodies. Instead, they proposed the formulation of an international regime to govern the legal status jointly. The international community accepted the proposal unanimously and agreed that outer space was not subject to territorial acquisition. The United Nations affirmed this in a series of General Assembly Resolutions including Resolution 1721(XVI) of 1961 and the Outer Space Treaty.[46]

HUMAN RIGHTS

Additionally, the freezing strategy may be applied to conflicts involving human rights. There is general agreement that there is a core of

[45] See Dougherty JE, Contending Theories of International Relations (1981, Harper and Row, New York) 181, 192.

[46] Triggs G, International Law and Australian Sovereignty in Antarctica (1986, Legal Books, Sydney) 284-285.

fundamental rights that form the minimum that must be accepted and respected and which States cannot deviate from. However, it is acknowledged that there is a subjective element to what human rights are since they reflect the values and mores of different communities and cultures. For example, the Western democratic world interprets human rights differently to Russia and China and their views diverge on the basic civil and political rights of individuals.[47] As a result, it is proposed that their differences should be frozen and each party permitted to interpret differently by way of bifocalism to ensure that cooperation continues to exist in global affairs for the time being. Simultaneously, the international community should invest time and effort in this cause and genuinely work together to achieve common, lofty goals.

CONCLUSION

Conflict is a universal phenomenon. Modern practitioners of conflict resolution understand only too well that the complete elimination of conflict is unrealistic. Moreover, it could be dangerous if the solution is unilateral or too radical in nature.[48] Unless their needs are met, States will continue to be suspicious of one another and pursue their national interests with or without compromise. The classical methods used to settle conflict so far have not been effective or sufficient. On the contrary, conflict resolution is incompatible with the fact that aggression and wars have been and will be fought as shown by history. More often than not, the disputes had been territorial in nature. One such example was the French claim in Indochina that resulted in military action and great bitterness between the disputing parties.[49]

Nevertheless, the international community should never lose sight of its common responsibilities and continue to aim at creating a global environment where the world's citizens can feel safe and enjoy the benefits

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[47] See the Preamble to the 1948 Universal Declaration of Human Rights; Shaw MN, International Law (1997, 4th edition, Cambridge University Press, Cambridge) 196-8; Frankel J, International Relations in a Changing World (1988, 4th edition, Oxford University Press, Oxford) 231.

[48] Herz, "The territorial state in international relations" in Etzioni A (editor), War and Its Prevention (1970, Harper and Row, New York) 47, 61.

[49] Hartmann FH, The Relation of Nations (1967, 4th edition, Macmillan, New York) 156; White, "Overlapping and conflict of territorial self-images" in Etzioni A (editor), War and Its Prevention (1970, Harper and Row, New York) 279, 279-80.

of peaceful co-existence. Since the innovative approach of the Treaty system in Antarctic affairs has been tried and shown to be successful it should provide the model for the rest of the world and extended to other areas of existing disputes. The main thing is that the formula buys time for States to continue their dialogue in the hope of finding more permanent solutions. Thus, this method should be applied to existing disputes now, including the India/Pakistan dispute over Kashmir.[50]

The triumph of the Treaty system in Antarctica is just a prologue. If this approach is adopted in other international disputes, it could well produce harmony worldwide. This has a practical significance for every member of the international community in their social, economic and political development, and it could also facilitate the emergence of a real global village. Consequently, there is merit in the argument that the freezing and bifocalism formula of Article IV of the 1959 Antarctic Treaty could play an extended and important role in contemporary international affairs.

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[50] Ibid.