

ANTARCTICA - MALAYSIAN GOVERNMENT'S VIEWS*

Malaysia's Response to the UNISG's letter on Antarctica

The Malaysian Government believes that Res. 38/77 and the debate on the item "Question of Antarctica" at the 38th Session of the General Assembly provide a useful starting point for the study which the Secretary General is required to undertake.

2 Res. 38/77 in its essence calls on the Secretary General to prepare "a comprehensive, factual and objective study on all aspects of Antarctica . "

The Malaysian Government believes that the terms of the resolution clearly require that the study should not be a mere compilation of background information with regard to Antarctica or the current situation pertaining to it. Likewise the debate inter alia sets out clearly the differing views and concerns of Member States which, under the terms of the Resolution, must be faithfully and fairly reflected in the Secretary General's study. Again however, the Malaysian Government does not feel that the study can be regarded as adequate if it merely sets out seriatim the views expressed at the debate or as conveyed to the Secretary General in accordance with paragraphs 2 and 3 of the Resolution. In summary, therefore the Malaysian Government would first wish to state that, in its view, the study should not merely be a compilation of the factual background information with regard to Antarctica or a recitation of the views of Member States and other relevant bodies.

3 In stating this, the Malaysian Government does not minimise the importance of both of these aspects as elements in the Secretary General's study. However such statistical and background information are in fact

* (This letter dated 1 June 1984 to the U.N. Secretary General sets out the position adopted by the Malaysian Government in relation to Antarctica. It was provided by His Excellency, Ahmad Fuzi Haji Abdul Razak, Acting High Commissioner for Malaysia, Canberra. For Australia's views, see (1984) Australian I.L. News 387)

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readily available, though scattered, in numerous books, journals, publications and Government statements. While such a compilation in an easily accessible form would facilitate discussions on the subject of Antarctica, it would not constitute in itself a "study" as required by Res. 38/77 or, indeed, as the word "study" would ordinarily connote.

4. The recent debate at the 38th General Assembly has amply demonstrated that, while there exist much similarity of views regarding the objectives of a regime in Antarctica, there are also differing, oftentimes divided, views regarding the specific nature and operation of such a regime. It must be the purpose of the study to analyse in depth these similarities as well as these differences so as to provide a broader basis and firmer foundation for international cooperation in Antarctica acceptable to, and in the interest of, the international community as a whole

5. Bearing the above purpose in mind, the Government of Malaysia believes that the study should inter alia examine in depth the following issues:

- (i) The significance of Antarctica to the international community in terms of:
 - International peace and security
 - The international economy and, more specifically the economy of developing countries, with particular reference to its marine and, possibly, mineral resources.
 - Environment
 - Meteorology

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- Telecommunications
- Scientific Research

(ii). The functioning of Antarctica Treaty System including:-

- Role of the Consultative Parties
- The role of the ^aexceeding but Non-Consultative Parties, including such questions as their contributions to discussions and decision making
- Accessibility of information including such question as the extend the information has been made available to the Non-Consultative Parties, other member states, and relevant international agencies before decision are made by the Consultative Parties.
- Co-operation with International Agencies such as UN itself, UNEP, WMO, ITU, FAO Committee on Fisheries, UN Committee on Natural Resources, etc. including an amount of efforts made, if any, by the Consultative Parties and by these and other relevant organisations to seek such cooperation.

(iii). The question of territorial claims including:-

- History and basis of such claims
- Proposal which have been put forward to resolve such claims
- Attitude of non-claimant Consultative Parties, Non-Consultative Parties and other states, including the question, if non-claimant Consultative Parties assert that the entire continent and its resources

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are open for their use, why should such assertion not be made applicable to the international community?

- Legal issues including the significance and validity in international law of such claims which have not been recognised by the international community except inter se by the 7 claimants states, including the question, if such claim to sovereignty have not been so recognised, why should Antarctica not be a " common heritage" and revert to the United Nations
- The status of the unclaimed sector.

(iv) The question of marine living resources:-

- A review of the negotiations which led to the conclusion of the and the legal significance or such negotiation affecting the high seas
- a review of the functions of the existing CCAMLR and the extent of its provisions and their compliance relating to inter-alia inspection and enforcement
- A review as above with regard to the CCAS.

(v) The question of mineral resources including:-

- A review of the current negotiations for a mineral regime among the Consultative Parties
- Legal issues such as the significance to Antarctica of the Convention on the Law of the Sea including the analogy to sea-bed beyond national jurisdiction and the applicability of the concept of common heritage

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- Question relating to the international management, rational exploitation and benefit sharing of such resources (if exploited).

(vi) The establishment of an international regime in Antarctica including:-

- Developments since 1958 which have led to this demand including increased UN membership, acceptance of the concept of common heritage/common benefit in relation to sea-bed beyond national jurisdiction, outer space and the moon, increasing democratization of decision making in international affairs and technological development
- The elements of an international regime including the concepts of common heritage and common benefit, accountability of such a regime to the international community
- The significance/danger of a situation in which there is no universal or wide international acceptance of a regime in Antarctica.

6. Within the framework of such a study, the Malaysian Government, for reasons which are explained later, wishes to express its substantive views on the questions raised in the following brief statement which should be regarded as supplementary to statements which the Government of Malaysia has made in particular at the 38th Session of the General Assembly.

- (i) Antarctica covers some 1/10th of the surface of the globe, it occupies a sensitive part of the world, it has a fragile eco-system and it possesses rich marine and, possibly, mineral resources. It therefore has great significance to the world in terms of international

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peace and security, economy, environment, meteorology, telecommunications etc. These are matters of global concern and therefore the international community through the UN system should be more directly involved in the decision-making process concerning Antarctica. The Malaysian Government also believes that there are many international agencies with specific mandates which have meaningful contributions to make to, and which should participate actively in, activities in Antarctica. These include UNEP, WMO, ITU, FAO Committee on Fisheries, UN Committee on Natural Resources as well as other relevant organizations of the UN including the General Assembly itself.

- (ii) The present machinery for Antarctica has not kept pace with current international reality. The Antarctica Treaty System with its two-tiered membership is unacceptable because of its exclusivity, its unaccountability and its secrecy. Membership as Consultative Parties requires the ability to meet stringent qualifications established by the original Consultative Parties themselves which can only be met by rich and scientifically developed countries. The Consultative Parties are not, and do not regard themselves as, accountable to the international community. Their deliberations are conducted in secrecy although their decisions are subsequently (and necessarily) made

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public. While the Consultative Parties assert that they have managed Antarctica in the interest of Mankind, it is obvious that the interest of Mankind can only be defined and managed by Mankind itself through a process or machinery which it establishes or finds acceptable, and not by any country or group of countries, however well-intentioned. The coincidence of the interest of Mankind and the interest of the Consultative Parties is not inevitable or preordained.

- (iii) The Malaysian Government also believes that South Africa, an international outlaw because of its apartheid policies, cannot be involved in the management of Antarctica.
- (iv) There are deficiencies in the Antarctica Treaty System. It has in effect postponed the issue of territorial claims so that, as a result, there is a vacuum on the issue of resources and uncertainty on the issue of legal jurisdiction. The Malaysian Government is also extremely concerned about the implications of a situation in which there is no internationally accepted system or regime in Antarctica.
- (v) The Government of Malaysia shares the objectives of the Antarctica treaty system including the continued peaceful use of Antarctica, its non-militarization and non-nuclearization, the protection of its environment and delicate eco-system, the promotion of scientific research etc. However it is firmly

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of the view that Antarctica as the common heritage of mankind requires a regime that is truly universal in character and committed to serving the interest of the entire international community. In this respect, the exploration of Antarctica and the exploitation of its resource shall be carried out for the benefit of mankind.

7 It will be noted that the above statement is quite brief. This is intentional. Discussions on Antarctica at the United Nations have only just begun. The Malaysian Government is convinced that differences among Member States can be resolved provided that governments do not take rigid positions. It is important to work for a consensus first on the objectives of a regime in Antarctica and, in the light of such consensus, on the machinery to achieve such objectives.

8 The Malaysian Government approaches the subject of Antarctica with an open-mind and a sensitivity to the concerns of other Member States. It is in that spirit that it will contribute to the forthcoming discussions at the 39th General Assembly. Bearing in mind the complexity of the subject, the sensitivities and concerns of Member States as well as the limited time for discussions during the General Assembly, the Malaysian Government is of the view that it would be appropriate, in the light of such discussions, to establish a Special Committee on Antarctica consisting of Member States who are parties to the Antarctica Treaty, both consultative and acceding, as well as other Member States which would examine the subject

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further and report to the 40th Session of the General Assembly.

9 The Malaysian Government looks forward to the Secretary General's study to provide a constructive basis for discussions at the 39th General Assembly. In this connection, it would emphasise that the study should be available in good time before the opening of the General Assembly to enable Governments to undertake the necessary consultations which are essential in order to facilitate informed and fruitful discussions at the General Assembly itself.

1st June, 1984