



Geopolitics, Patagonian Toothfish and living resource regulation in the Southern Ocean

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ABSTRACT *This paper is concerned with the ongoing controversies regarding the over-harvesting of Patagonian Toothfish (*Dissostichus eleginoides*) in the Southern Ocean. After some thoughts on the varied geographies of this region, attention is then paid to the Convention for Conservation of Antarctic Marine Living Resources. Thereafter, illegal, unregulated and unreported fishing of Patagonian Toothfish is considered in some detail because it forms the basis for a subsequent examination of attempts by states and intergovernmental organisations (IGOs) to manage living resources. These measures have been contested by a variety of bodies and interest groups, however. The final part of the paper considers how the latest fishing crisis in the Southern Ocean challenged intergovernmental governance in the late twentieth century.*

The Food and Agriculture Organization (FAO) has argued that all the world's current fishing grounds are being exploited at or above their sustainable limits. In its 1997 report the organisation noted that 44% of fish stocks are 'intensively' to 'fully exploited' and 16% are 'over-fished'.¹ The remaining fisheries are either moderately depleted or slowly recovering, while there is also evidence that aquaculture is growing in terms of total world seafood supply.² In terms of geographical regions, the Southern Ocean represents one of the last remaining fisheries not yet fully exploited by states and commercial fishing companies.

At present, a new and highly emotive game of resource geopolitics is being played out between fishing vessels, geographically proximate states such as the UK (in the form of its Overseas Territories such as South Georgia), New Zealand and South Africa, and intergovernmental and non-governmental organisations (NGOs) such as Greenpeace.³ The Patagonian Toothfish saga and the related allegations of systematic illegal fishing in parts of the Southern Ocean have attracted newspaper and televised media attention in both the northern and southern hemisphere. It has been alleged by the Commission to the Convention for the Conservation for Antarctic Marine Living Resources (CCAMLR) and states such as Australia and the UK that illegal, unregulated and unreported fishing of Patagonian Toothfish is threatening the long-term viability of particular fishing stocks. Such fishing is also compromising claims to exclusive economic zones around Southern Ocean islands north of the 60° South latitude. In his speech to

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the 21st Antarctic Treaty Consultative Meeting in Christchurch in 1997, the New Zealand Associate Foreign Minister, Simon Upton, warned that the over-fishing of Toothfish was only 'the tip of the exploitation iceberg'.⁴ More recently, the Australian Defence Minister, Ian McLachlan, stated that the Australian Navy was intent on 'detering illegal activities in the Southern Ocean and reinforcing Australia's sovereignty in the area'.⁵ This case of the Toothfish is used to explore how the management of a particularly remote body of oceanic water has implications for geography, governance and state sovereignty. Thereafter, it addresses the illegal, unregulated and unreported fishing (of Toothfish) in more detail by examining how particular organisations and states have sought to regulate such activities, while others have either circumvented these controls or criticised the ongoing efforts of enforcement. The final part of this investigation considers how and why overlapping territorial sovereignties can complicate attempts to impose a rules-based system of governance.

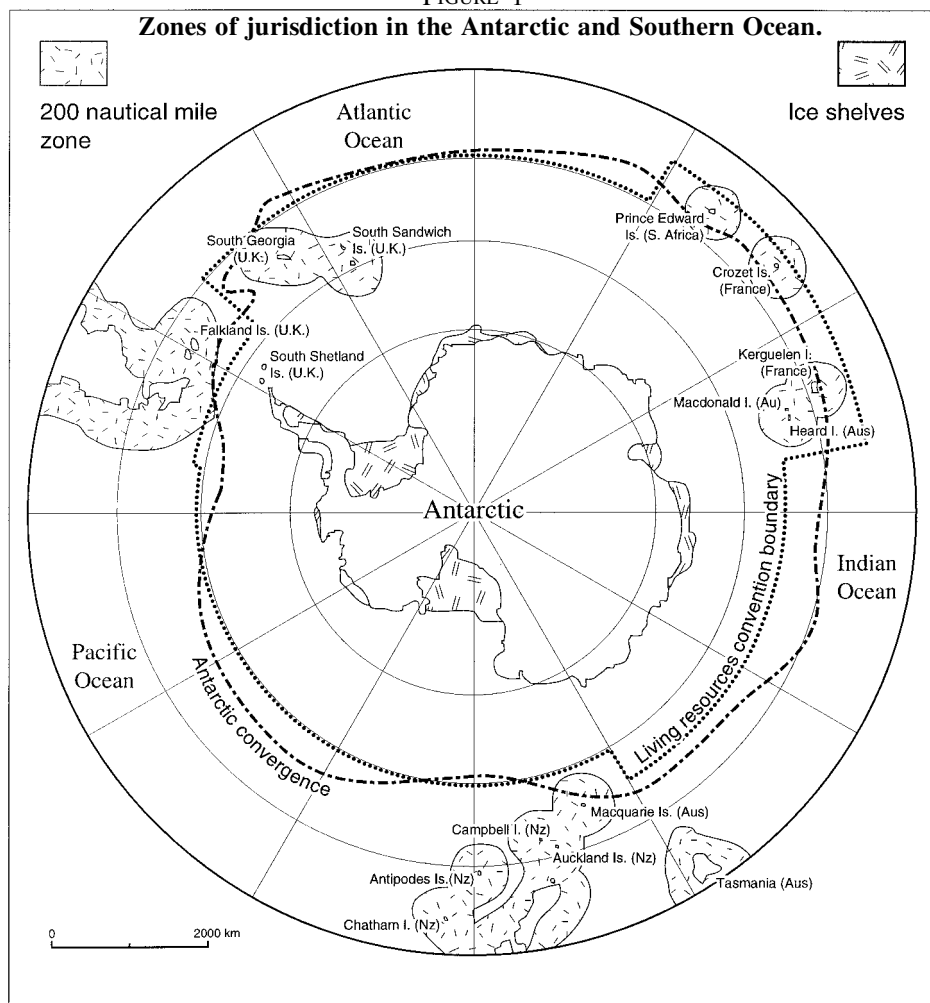
Political and legal geographies of the Southern Ocean

International law and political geography embrace a considerable corpus of writing on the implications of territorial sovereignty with regard to resource management and international environmental relations.⁶ While some commentators have warned that sovereign states may not be able to respond to transnational resource issues such as fishing in the Southern Ocean, others have pointed to how the state system has generated international regimes and mechanisms designed to overcome 'anarchy' in the international system.⁷ Regime analysis has been particularly significant in generating detailed research on interstate interdependence and regime co-operation. The key assumption within this body of research is that states remain central to an emerging network of regimes covering environmental and resource problems.⁸ Normatively, therefore, regime theorists assume that the state system can handle transnational challenges because there is no necessary reason why states cannot overcome the sovereign limits of international co-operation.

Regions such as the Southern Ocean exemplify how regime development in the shape of the Antarctic Treaty System (ATS) and associated conventions such as CCAMLR has had to handle overlapping territorial and resource sovereignties (see Figure 1). In some ways it no longer makes sense to pretend that the governance of Antarctica and the Southern Ocean is overwhelmingly an interstate phenomenon. The expanding influence of NGOs and transnational institutions in the 1970s and 1980s changed patterns of polar governance. As a consequence of these changes, ATS member states are increasingly committed to institutional structures such as CCAMLR as resource management in the Southern Ocean cuts across territorial boundaries.

While critics have challenged the normative assumptions of regime analysis, less attention has been devoted to the geographies of regime management. For instance, there remains a common assumption that territorial boundaries, such as the Antarctic Convergence in the Southern Ocean, are natural (because the latter is based on a biological assumption of oceanic circulation) rather than explicitly political. Subsequent analyses of territorial boundaries often fail to consider how

FIGURE 1



areas such as the 'Antarctic Convergence' are socially constructed and subsequently defined, implemented and contested by institutions and political bodies. International environmental regimes such as CCAMLR have to be understood within a political context, encompassing international legal inventions such as the 'high seas', exclusive economic zones and national sovereignties, which all contribute to shape the strategies for resource management. While the Southern Ocean is divided into FAO sub-regions for the purpose of administrative control, the geographies of administration and regulation do not correlate with the ecological boundaries of the Southern Ocean (commonly defined by the Antarctic Convergence).⁹

During the twentieth century, sovereignty claims to the Southern Ocean were

regulated by the activities of intergovernmental organisations such as the International Whaling Commission (created in 1946),¹⁰ and influenced by a growing body of international law as applied to remote areas. At the same time, the number of claimants to parts of the Antarctic had risen to seven states even though the two superpowers had determined that no such claims would be recognised in either Washington or Moscow. The ratification of the 1959 Antarctic Treaty created the conditions for a unique set of agreements concerning the interrelationship between state sovereignty and international co-operation. In the first decade of the Treaty's life, 12 member states collaborated in a political system designed to govern through consensus. By the 1970s and 1980s, the closed world of polar governance was exposed not only to Third World states demanding that the region be converted into a UN managed common heritage but also to non-governmental groups agitating that higher priority be given to environmental protection.

Although the Antarctic Treaty consultative parties attempted to regulate living resource exploitation through the ratification of CCAMLR in 1982, state sovereignty and governance were further complicated by a growing body of international law which sought to dictate the behaviour of states. The UN-sponsored Law of the Sea (UNCLOS III, ratified in 1994)¹¹ and the 1995 UN Fishing Agreement on Straddling Stocks and Highly Migratory Fish Stocks placed new pressures on the Antarctic Treaty System. The provisions of UNCLOS included enhanced rights for coastal states, mechanisms for the establishment of common heritage regimes for the deep seabed and a series of responsibilities for all states dealing with marine pollution, navigation, resource exploitation and environmental management. In terms of living resource management, UNCLOS established new rights for coastal states to declare exclusive economic zones while at the same time under Article 192 demanding that states protect and preserve marine environments. Article 194 of the final text also stipulated that states should seek to co-operate with one another in the development of common environmental measures.¹²

In the case of the Southern Ocean, there is a bewildering mixture of authorities with jurisdiction over coastal state waters to high seas inside and outside the Convention area.¹³ Within CCAMLR, however, practical territorial control relating to monitoring fish stocks, sharing information and reporting illegal fishing activities could actually enhance (rather than undermine) claims to territorial sovereignty in the Southern Ocean. In these confusing circumstances, many commentators would concur with Barston's pessimistic assessment for the future:

The increasing inter-meshing of regimes, together with increasing regulation of high seas fisheries may (*inter alia*) heighten conflicts between coastal states and distant water fishing nations.¹⁴

CCAMLR and the Southern Ocean: an overview

The *raison d'être* for CCAMLR was firmly rooted in the widespread concern that 'In the late 1970s, there was a desire to prevent a scramble for living resources

in the Southern Ocean, especially krill ...'.¹⁵ The Convention was far-sighted in the sense that it was dedicated to the adoption of an ecosystem-centred approach and included the precautionary principle later to be codified in Agenda 21 negotiated at the Rio Summit in 1992. The institutional framework of CCAMLR was negotiated at a time when North-South relations entered a critical phase, precipitated by the South's demands for greater access to technology, resources and finance. The Northern-dominated Antarctic Treaty Consultative Parties (ATCP) were anxious, therefore, to negotiate a mechanism for the protection of living resources in the Southern Ocean before other international organisations such as the FAO of the UN intervened. The geographical boundaries of the CCAMLR were extended to coincide with the Antarctic Convergence, in contrast to the 60° South boundary of the 1959 Antarctic Treaty. The decision to extend the jurisdiction of the ATS made good political and biological sense given the location of the rich fishing grounds around the Convergence. CCAMLR was designed to balance the conservation of living resources in the Southern Ocean with its rational use by member states (Article II).

Since the ratification of CCAMLR in 1982, scientists and policy makers have sought to introduce measures to regulate fishing within an area widely identified as the Antarctic convergence.¹⁶ CCAMLR's commitment to an ecosystem's approach acknowledged that the management of fishing stocks in the Southern Ocean could not be circumscribed by the pre-existing political and geographical jurisdiction of the Antarctic Treaty area.¹⁷ In a similar vein, the International Whaling Commission (IWC) established an international whale sanctuary in 1994 for the region covered by CCAMLR and some geographical areas close to the South American mainland.¹⁸ While the Convention covers the Antarctic Convergence area, only CCAMLR's authority extends to all living marine resource matters. In order to facilitate living resource management, the geographical area under the jurisdiction of CCAMLR was sub-divided, following the FAO's schema, into managerial regions such as those proximate to South Georgia (sub-area 48.3) and other insular territories. Within these regions CCAMLR determines so-called Total Allowable Catches (TAC) which act, among the contracting parties, as an agreed annual level of exploitation.

The management of the area beyond the Antarctic Treaty region has been facilitated by the 1980s Claimants' Agreement, which noted that sovereignty over South Georgia (at the edge of the Antarctic Convergence), Kergulen and Crozet islands and the Prince Edward Islands would be unaffected by the implementation of CCAMLR. The so-called bi-focal approach to the problem of jurisdiction around Sub-Antarctic islands such as Heard and Marion is one of the key features of CCAMLR. In the midst of the CCAMLR negotiations, another body of international law related to the Law of the Sea proposed extending maritime sovereignties of coastal states to include a 12-mile Territorial Sea and a 200-mile Exclusive Economic Zone (EEZ). Within this EEZ, the coastal state had complete sovereignty over the establishment of artificial islands, resource exploitation, marine scientific research and the protection of the marine environment. The bi-focal approach to marine sovereignty embedded within CCAMLR, however, was intended to avoid the divisive issue of ownership and resource rights by stating:

that nothing in the convention can prejudice rights or claims 'to exercise coastal state jurisdiction under international law in the convention area'. This 'bi-focal' approach means different things to different states. Claimants interpret the phrase 'coastal state jurisdiction' to refer to rights as claimants to the mainland as well as their rights around sub-Antarctic islands. Non-claimants interpret it to refer to islands within the convention area which are north of 60 degrees South and thus not contested.¹⁹

In operational terms CCAMLR was to be handled by a policy-making Commission and a Scientific Committee, which advised the former on fishing management strategies for the region. From 1982 onwards the Commission attempted to assess the state of fish stocks in the Southern Ocean and to set TACs for species within geographical areas. While the Scientific Committee of CCAMLR advises the Commission, contracting parties provide fisheries information which is then submitted to CCAMLR in order for the latter to provide advice on particular managerial and scientific strategies.²⁰ Under this arrangement, CCAMLR's fisheries surveys and managerial plans are independent of any information given by fishing nations or fishing companies. Some have argued that the conservationist objectives of CCAMLR have not been met thanks either to inadequate information about particular stocks or to ineffective management of conservation and commercial fishing interests.²¹

The implementation and monitoring of CCAMLR's living resource management was complicated by new rounds of international environmental and resource agreements coupled with the globalisation of Antarctica in the 1980s and 1990s. Countless discussions in the UN General Assembly followed, leading onto high profile reports on sustainable development (e.g. the 1987 *Brundtland Report*). The Protocol on Environmental Protection (Protocol) was a landmark agreement. With its ratification in January 1998, the Antarctic Treaty Consultative Parties committed themselves to the environmental protection of the Antarctic Treaty region. The Protocol, however, does not have the legal capability to address marine resources, hence the lack of reference in Annex II to elements such as marine invertebrates. It should be clear that the final act of the Protocol was not intended to replace or undermine the existing competence of instruments and bodies such as CCAMLR and the IWC. Article 3 of the Protocol created a new series of environmental principles within the Antarctic Treaty area but it was not designed to deal with the environmental management of the Southern Ocean.²²

CCAMLR members have sought to impose responsibility for living resource conservation through fisheries protection measures, exposing parties engaged in illegal fishing and revealing centres responsible for the transshipment of illegally caught fish. But the re-flagging of vessels, the rebranding of Toothfish and the lack of strong importation controls in Northern markets places severe limitations on these forms of controls.²³ Fish and fishing companies can circumvent the restrictions of states and IGOs. The application of conservation measures to third parties remains in question and the limited membership of the ATS (43 member states) means that some states (such as flag states) are not party to specific measures concerning the region.

The illegal, unregulated and unreported fishing of Patagonian Toothfish

During the past five years, the fate of Patagonian Toothfish (sometimes called the sea bass, Chilean sea bass, Chilean grouper, black hake, merluza negra, or mero) has invited a considerable degree of interest from nation-states, intergovernmental organisations and NGOs.²⁴ Environmental movements such as Greenpeace and the Antarctic and Southern Ocean Coalition (ASOC) claim that the region is in the midst of a resource crisis and have warned that a 'gold rush mentality' has developed among fishing vessel operators owned by Argentine, Chilean, Norwegian and Spanish companies.²⁵ Commentators from the United Nations Environment Programme (UNEP) acknowledged that interested parties will have to 'address the main environmental issues, including the over-exploitation of fish stocks in the Southern Ocean'.²⁶ Government ministers in Australia, South Africa and New Zealand have also issued dire warnings about the fate of the Toothfish and noted that, in the words of Nick Smith, the then New Zealand Minister of Conservation: 'It was a sad moment for us to discover that much of the plunder of Toothfish was being carried out by companies and individuals from countries which are members of CCAMLR. It's like members of a club leaving the clubrooms with the silverware they have nicked clinking in their pockets'.²⁷

In the 1994–95 season the total reported catch for Patagonian Toothfish was 8889 tons.²⁸ In comparison with the total reported catch of Antarctic krill (118–715 tons in 1994–95), the Patagonian Toothfish might, at first sight, appear a minor issue in terms of living resource management. However, the Commission for CCAMLR which sets the TAC estimates that illegal and unregulated fishing of the Toothfish substantially exceeds the TAC and that current levels of illegal, unreported and unregulated fishing of the Toothfish lie at around 115 000 tonnes per year.²⁹ A variety of commentators, especially NGOs such as Greenpeace and the World Wide Fund for Nature, have used illegal fishing to highlight once again fears that living resource management is either unsustainable or is beyond the control of IGOs such as CCAMLR. The protection of the marine ecosystem in the Southern Ocean is difficult because the fishing grounds are often beyond the limits of national jurisdiction and therefore rely upon an unprecedented degree of international co-operation. Moreover, there has been a tendency by international negotiators to delay implementing conservation measures over fishing until a particular stock has fallen below a maximum sustainable yield.

The enforcement of conservation measures relies in the main on compliance by the flag states and the contracting parties of CCAMLR. Under CM 119/XVI, fishing vessels now require a high seas licence from their flag state in order to fish in CCAMLR waters. Only in restricted geographical areas of the Southern Ocean does coastal state jurisdiction have a place in the implementation and enforcement of CCAMLR's TACS.

For the purpose of the subsequent analysis it is critical that some key terms are carefully established.

Illegal fishing

This refers to fishing either by vessels of CCAMLR parties which have contra-

vened Conservation Measures set by CCAMLR or by vessels fishing in a coastal state's EEZ without that state's permission. It could also include non-CCAMLR parties (with licences from sub-Antarctic states) who subsequently contravene CCAMLR Conservation Measures.

Unreported fishing

This refers to fishing activities which are simply not reported to CCAMLR parties or any other competent body. And this can include illegal and unregulated fishing.³⁰

Unregulated fishing

This is fishing carried out by third parties in CCAMLR (high seas) waters.³¹

Allegedly, fishing for Toothfish began in the late 1980s when Russian vessels started to exploit the fish in the waters around South Georgia. By the early 1990s Argentine and Chilean companies were joined by Spanish and Norwegian enterprises in extensive fishing in the southwest Atlantic. Since the early 1990s the British government has deployed a fisheries protection vessel to South Georgia in an attempt to halt further illegal fishing around this British dependent territory. The Chilean vessel *Antonio Lorenzo* was arrested by UK authorities for illegal fishing in 1996 and the Argentine vessel *Estela* was seen fishing illegally in South Georgian waters. While the Commission of CCAMLR does not address the issue of licensing in particular managerial regions, the waters around South Georgia have been subjected to a licensing system which is similar in nature to that operating in and around the waters of the Falkland Islands. At present Argentine-registered vessels are not prohibited from acquiring licences to fish in South Georgian waters. However, the British government has extended the Scheme of International Scientific Observation for the South Georgian sub-region so that all vessels involved in fishing for Patagonian Toothfish are required to carry scientific observers on board in order to monitor the nature and scale of the catch. As the competent authority for South Georgia, the UK government's most recent actions have included supporting the shortening of the fishing season for the Toothfish, as recommended at the 16th CCAMLR meeting in Hobart in October–November 1997. Some media reporting has tended to ignore the recently endorsed conservation measures of CCAMLR, such as the adoption by the Commission in 1991 of Conservation Measure 31/X which insists that members provide prior notification and scientific data for any region before they embark on any new fishing activities.

In spite of CCAMLR's latest attempts to introduce new systems of inspection and control, most environmental and scientific commentators agree that over-fishing remains a major environmental issue in the waters of the Southern Ocean. This is also explicitly recognised by international agencies such as the FAO and conventions such as the UN Convention on Fishing of Straddling Stocks. At the heart of the Toothfish saga lies the problem that all prior attempts to manage or even conserve particular fishing areas have had to confront the popular notion

that fish are a renewable and hence potentially inexhaustible resource. A lack of scientific information about stock size has often been used by some national governments and fishing companies to undermine the efforts of scientists and conservationists who have pressed for the proper implementation of conservation measures. Open access to the high seas has enabled fishing vessels to operate beyond the control of any regulatory body and management strategies designed to protect fishing stocks have tended to focus on a single species approach rather than concentrating on overall ecosystem dynamics. In that sense the underlying principles of CCAMLR undermine a single species approach, because the initial concerns to conserve krill stocks clearly affect the overall balance of the Southern Ocean ecosystem.³²

Since its entry into force, the inspection and monitoring of fishing vessels in the CCAMLR region has been low, in spite of the impressive range of conservation measures (regarding, *inter alia*, mesh size and fish stock seasons) adopted between 1982 and 1997. In the past two years the CCAMLR contracting parties have agreed to implement new Conservation Measures 118/XVI (a scheme to promote compliance by non-contracting party vessels with CCAMLR conservation measures) and 119/XVI (the requirement for contracting parties to license their flag vessels in the Convention Area). Moreover, the contracting parties have agreed to strengthen their commitment to vessel monitoring and the inspection of non-contracting party vessels in the ports of CCAMLR members. It is not possible for CCAMLR parties to inspect the vessels of non-contracting parties (only vessels of CCAMLR parties can be inspected because of the limits of effective sovereignty) found within the CCAMLR area.³³

The Commission of CCAMLR reported that a widespread problem existed with non-contracting parties disregarding the CCAMLR conservation scheme and the rights of coastal states in the Convention Area. More disturbingly, there is also evidence that vessels registered by CCAMLR contracting parties such as Argentina, Norway and Chile have violated the CCAMLR conservation measures for Toothfish. In 1997 it was estimated that 60% of the vessels fishing in the Indian Ocean sector were CCAMLR flagged (fishing illegally) and 40% were non-CCAMLR flagged (unregulated fishing). Government officials from the English-speaking world estimate that 75% of the former were effectively re-flagged (ie registered in Liberia, Vanuatu and Panama) by either Argentina or Chile.³⁴

The implementation of CCAMLR has always been conditioned by the very geography of the Southern Ocean (ie vast expanses of ocean, difficult sea conditions and distance from centres of population) which appear to defy close and consistent monitoring of fishing activities. The problem for those committed to reducing levels of illegal fishing in the Southern Ocean is matching a borderless vision of this ecological region with a view of the political world conditioned by the activities of nation-states. Most of the measures designed by CCAMLR have been explicitly conditioned by territorialised understandings of global political space. In such circumstances, it is perhaps not surprising that inspection and enforcement has been piecemeal even in the waters around South Georgia. The overlapping geographies of administration and regulation do not coincide or correlate with ecological zones and hence implementing CCAMLR conservation measures has been more problematic in places where sovereignty

is disputed, such as in South Georgia, where Argentina disputes the UK's claim.³⁵ The selling of fishing licences by the British government in the waters of South Georgia caused considerable tension between the British and Argentine governments (both countries claim the islands) at recent CCAMLR meetings in 1996, 1997 and 1998. In 1993, for example, the British government claimed a 200-mile maritime zone around South Georgia and the South Sandwich Islands which was rejected by Argentina. While the contracting parties to CCAMLR reaffirmed their collective belief in 1998/9 that the organisation should not get involved in the UK/Argentina sovereignty dispute, it would be unwise to underestimate the tension caused and the effect on the proceedings of international meetings concerning fishing regulation. By way of contrast, the British and Argentine authorities have created a regime of co-operation (through bodies such as the South Atlantic Fisheries Commission) in the waters close to the Falklands and the Patagonian continental shelf.³⁶

Implementing the rules: CCAMLR parties, flag states, third parties and illegal fishing

According to the newspaper media and NGOs in the UK and southern hemispheric states such as Australia and South Africa, the Patagonian Toothfish has emerged as the most controversial contemporary issue to affect the international politics of Antarctica and the Southern Ocean. Environmental groups such as Greenpeace have alleged that the continental shelves of the sub-Antarctic islands of Heard, McDonald, Marion, Crozet and Kergulen became the favoured fishing grounds for unregulated and illegal longline fishing in the late 1990s. In her summation of the recent CCAMLR meeting held in Hobart between October and November 1997, Margaret Moore, a senior conservationist allied to the World Wide Fund for Nature noted that:

Modern day piracy is alive and well, and unregulated fishing for the highly prized Toothfish has reached dangerous levels ... WWF applauds the recent action taken by the Australian government to crack down on the illegal fishers, but further action is needed. CCAMLR nations need to follow up by closing all fishing for Toothfish on the high seas until *fail-safe enforcement measures* are in place.³⁷

It has been alleged by scientists, CCAMLR and NGOs that fishing companies have moved to the South Indian Ocean islands of Marion and Heard in search of new fishing grounds from 1995 onwards because of the attraction of new fishing opportunities. Environmental groups such as Greenpeace have argued that the Toothfish (a valuable commodity in the fish markets of the USA, Japan and the Far East) was subject to massive exploitation, as 80 fishing vessels caught 100 000 tonnes, as opposed to the CCAMLR TAC of 14 000 tonnes in 1996. Darren Gladman of Greenpeace (Australia) noted that the decision by the Australian government to apprehend illegal fishing vessels was critical given that 'illegal fishing in the Southern Ocean is likely to continue as long as there is a market for illegally caught fish'.³⁸ The illegal bounty of Toothfish, mainly destined for US and Japanese markets, was estimated to be worth £200 million by some NGOs.

The over-harvesting of Toothfish in the 1990s has been a common concern for the UK, France, South Africa, New Zealand and Australia. Broadly speaking, these latest examples of unregulated and illegal fishing reveal at least five enduring points on resource management. First, individual states and/or intergovernmental organisations are often unable to prevent illegal fishing in maritime spaces as large as the Southern Ocean. Second, existing agreements concerning the control of migratory fish stocks or high seas fishing are not ratified swiftly enough. Third, the regulation of the high seas requires a range of state and non-state organisations to act cohesively against a context of either uncertain scientific information about fishing stocks or opportunistic fishing fleets. Fourth, the various fishing industries are often remarkably reluctant to accept government or state regulation concerning conservation measures. Finally, media and environmental groups can often seize upon particular incidents and by using terms such as 'piracy' and 'poaching' are apt to launch high-profile campaigns against organisations such as CCAMLR. In so doing, the public credibility of such inter-governmental organisations may be severely tested, even if the issue of third party control, for example, is common to all international treaties.

The CCAMLR has attempted to manage fishing of Toothfish by establishing TACS in relation to FAO areas and sub-areas such as South Georgia and the Prince Edward Islands. The CCAMLR therefore fixes TACS for Patagonian Toothfish in various geographical areas with a total catch established at 14 000 tonnes for the 1996–97 season. According to published figures in August 1997, the overall TACS for the Patagonian Toothfish had not reached 5459 tonnes, which led to fears that intense illegal exploitation had already depressed stocks. The CCAMLR-approved TACS for the 1997–98 season concentrated on regions east of Heard and McDonald islands, as the Toothfish, according to political sources, migrate away from the South Atlantic and Indian Oceans.

In the past two years large-scale illegal fishing of Toothfish had been concentrated in the regions around Heard (Australia), Crozet and Kerguelen (France) and the Prince Edward Islands (South Africa). Environmental movements had in the past been critical of the failure of Australian and French governments to establish controls on the fishing around their sub-Antarctic territories. More recently, both governments have sent warships and fisheries protection vessels to the Southern Ocean in an attempt to regulate the fishing and in some cases they have impounded fishing vessels found to be without a licence. The demand for 'fail-safe enforcement' from NGOs seems unreasonable in the light of the vast areas of ocean potentially affected by illegal and unregulated fishing. For the Australian government, as the host nation of the Hobart-based CCAMLR, the illegal fishing of the Toothfish has been an unfortunate political problem which has revealed not only that fellow member states have implicitly supported the illegal fishing but also that the country is unable to protect its own resource rights around islands located over 4000 kilometres southwest of Perth. It was acknowledged by the Minister for the Environment, Senator Hill, in October 1997 that Heard and McDonald islands were 'located in one of the wildest and most remote parts of the globe'.³⁹

In the aftermath of the Cold War, the Australian armed forces have had to rethink their role in resource protection, given the geographical extent of

Australia's maritime and resource interests. In the same year, the Howard government pledged US\$87 million over the next five years for the purpose of protecting fishing stocks in the Australian sectors of the Southern Ocean and for the protection of marine species often threatened by the actions of illegal fishing. In one such incident in 1997, an Australian warship dispatched to the Southern Ocean apprehended a Belize-registered ship called the *Salvora* and a Panamanian-registered ship called the *Aliza Glacial*. The two ships, commanded by Argentine captains, were escorted back to the port of Perth and subsequently had their cargo of Toothfish impounded by the Australian authorities. The Australian Fisheries Department later confirmed that around 25 tonnes (worth around US\$100 000) were confiscated from the *Salvora* as were 21 tonnes from the *Aliza Glacial*. Australian sources have argued that these actions point to the fact that Canberra is determined, wherever possible, to ensure enforcement and compliance.

In the midst of this Toothfish controversy, the New Zealand government used the 21st Antarctic Treaty Consultative Meeting in Christchurch to draw attention to the difficulties of enforcing environmental and fisheries protection in the Antarctic and the Southern Ocean.⁴⁰ The New Zealand Ministry of Foreign Affairs and Trade invested considerable energy in the 1990s not only in re-imaging New Zealand as a 'gateway state' responsible for the environmental stewardship of the southern polar region but also in raising the political profile of the Toothfish. The result of this ongoing controversy over Toothfish has been to strengthen not only the points of contact between the English-speaking Southern Oceanic states but also to promote new dialogue between other claimant 'gateway' states such as Britain and France through informal groupings such as the East Antarctic Coastal States.⁴¹ A disturbing aspect for the contracting parties to CCAMLR is the role that other contracting parties such as Argentina and Chile (both signatories to the CCAMLR) have played in allowing their vessels to land their illegal catches in ports such as Buenos Aires.

As 'gateway states', countries such as Australia and the UK play an important role in implementing the conservation measures of CCAMLR but any environmental monitoring of the Southern Ocean will always be subject to the geographical constraints of distance and location. Thus the airborne monitoring of fishing stocks and trawlers is no replacement for so-called 'effective' regulation of TACs by fishery protection vessels and port state controls. NGOs have, however, complained that countries such as Australia and New Zealand, while denouncing illegal fishing, have nonetheless requested that the CCAMLR parties agree to a rise in the TACs for Toothfish. In doing so, Australian vessels may benefit from the rich waters around the proposed World Heritage Sites of Heard and McDonald Islands. As in previous rounds of resource exploitation of the Southern Ocean, appropriate territorial/ecological frameworks are being overwhelmingly conditioned by sovereignty claims and national interests.

The eagerness of states to maintain the legal and political distinction between areas such as Heard to the north of 60° latitude South (subject to coastal state jurisdiction), and other regions such as CCAMLR high seas, has meant that illegal fishing has caused problems for the CCAMLR Commission. The Convention's membership have had to tread a careful line between the existing rights of

coastal states (under UNCLOS III) and the need to prevent further illegal fishing. The Australian government is legally entitled to extend fishing quotas around their EEZs north of the 60° boundary and their jurisdiction over these islands such as Heard and McDonald is internationally accepted. The dilemma for Antarctic claimant states and CCAMLR claimant parties is how to react to the illegal and unregulated fishing of the Toothfish when there is evidence that other CCAMLR parties are not devoting sufficient energy to the problem of enforcement of and compliance with CCAMLR conservation measures. Once more, the question of collective political and financial will within CCAMLR and the wider global community is becoming central to the protection of fishing stocks, particularly in geographically remote areas.

Imposing living resource management on the Southern Ocean

With an eye for an appropriate turn of phrase, Lee Kimball once noted that the parties involved in the ATS and bodies such as CCAMLR tended to be reluctant to 'rock the boat'.⁴² She implied that members were often reluctant to publicly condemn fellow states because international regimes such as CCAMLR are based on consensus decision making and sovereignty norms. This reluctance to criticise or morally shame has also been mooted by many commentators, including environmental groups such as ASOC and various academics.⁴³ Within CCAMLR the scientific committee's reports on illegal fishing have, it is alleged by some civil servants and NGOs, often been subsequently modified by the CCAMLR Commission before formal publication. For CCAMLR and other international bodies the relationship between political (in)action and (un)certainities regarding scientific knowledge on fishing stocks has been long standing.⁴⁴ As a consequence, NGOs and others have noted that the principles and norms associated with consensus decision making can be inherently conservative, environmentally ineffective and can actually delay decision making.

The role of NGOs in 'shaming' Antarctic parties involved in particular activities (such as illegal fishing) has grown in significance since the late 1980s.⁴⁵ There is evidence to suggest that countries such as Australia, New Zealand and the USA are increasingly sensitive to the campaigning strategies of NGOs such as Greenpeace, Friends of the Earth and ASOC. It is noteworthy that the Australian government provided a grant to NGOs in order that a monitoring centre could be created for fishing in the Southern Ocean in December 1997. Under the chairmanship of Michael Lynch of the Tasmanian Conservation Trust, International Southern Oceans Longline Fisheries Information Clearing House (ISOLFICH) is intended to act as a site for information about illegal fishing and *inter alia*, seabird deaths that result from longline fishing. Initial reports from ISOLFICH have identified Mauritius as a landing port for illegally caught fish.⁴⁶

Environmental, political and scientific commentators have emphasised the need for a number of policies and practices to be implemented with regard to Toothfish. It has been argued that the UN Convention on Fishing of Straddling Stocks will need to be enforced so that CCAMLR can effectively manage the living resources in the Southern Ocean according to the general principles of sustainable development, even though there are genuine difficulties with such a

strategy. At the heart of the problem lies not only the definition of 'straddling stock' but also the problems posed by the implementation of such measures by sector states such as Argentina and the unregulated fishing activities of third parties. The obligation to enforce will only affect the states which have signed the UN Convention and will probably not affect the behaviour of non-contracting flag states such as Liberia, Panama and Vanuatu (even though the 1995 Agreement on Straddling Stocks has attempted to improve accountability for flag-state activities under Articles 24–26).⁴⁷

It has also been argued that political pressure must be placed on geographically proximate and non-contracting countries such as Mauritius, Madagascar and Namibia in order either to prevent the landing of illegal catches of Toothfish or, at the very least, to ensure that records are kept of landings and owner information.⁴⁸ Thereafter, major importers of Toothfish, such as Japan and the USA, should ban the importation of the product (where there is good evidence to suggest that it was illegally caught) and seek to co-operate closely with other members of CCAMLR. This would mean that CCAMLR parties must explore how to strengthen market controls and on-shore management mechanisms through product labelling and custom inspection.⁴⁹ The US National Marine Fisheries Service (NMFS) announced in September 1998 that it will be implementing import permit controls on Toothfish entering the USA. Henceforth, importers will be responsible for ensuring that only legally caught Toothfish are brought into the fish markets of the US mainland. However, apparent Japanese ambivalence to Toothfish imports may well be related to the country's hostility towards renewed attempts by the IWC to limit its whaling activities in the Southern Ocean. The surveillance and enforcement of zones around islands such as South Georgia, Heard and Marion would, it is argued, need to be strengthened because Toothfish is mainly concentrated around these regions. This implies that 'coastal states' such as the UK, France, South Africa, New Zealand and Australia need to show a continued ability to exercise jurisdiction therein. Finally, the 23 members of CCAMLR would have to be more resolute in denying fishing access to those states which fail to prevent their own ships from engaging either in illegal fishing or unregulated fishing in international waters.

Some of these proposed measures—such as placing pressure on landing states to prevent illegally caught fish to be processed—are problematic. While strategies of 'shaming' can be used as a mechanism for raising difficult areas of international life, there is a danger that pressurising 'southern' states such as Namibia and Mauritius over illegal fishing could transform the issue into another struggle between North and South over economic management. Numerous environmental problems, from global warming to the dumping of radioactive waste at sea, have their origins (at least in part) in existing patterns of industrial development and resource consumption by Northern states.⁵⁰

NGOs also hope that ISOLFICH will be a useful supplement to the existing scientific and managerial work of CCAMLR. A recent report from ISOLFICH confirmed that the organisation would seek, notwithstanding concerns over effectiveness, to support the continued political and scientific legitimacy of CCAMLR. While it is the case that CCAMLR parties have failed to prevent illegal and unregulated fishing of Toothfish, the Hobart-based organisation issued new

regulations in 1999 concerning the licensing of CCAMLR vessels, the reporting of illegal fishing and improved port-state control. In 1998 and 1999 representatives from Mauritius and Namibia attended as observers of the CCAMLR meetings. The challenge for all those concerned with the living resource management of the Southern Ocean is to generate a moral consensus concerning the need for sustainable fisheries and to strengthen networks of support and administration.

Scientific knowledge, national sovereignty, trust and the limits of international co-operation provoke difficult issues with regard to the institutional effectiveness of CCAMLR. While it is apparent that the situation of illegal fishing would be considerably worse without CCAMLR, it is appropriate to consider whether member states need to adopt a more robust attitude towards this problem. Countries such as Spain and, to a lesser extent, Norway have been reluctant to address the role of their re-flagged vessels currently engaged in illegal fishing for Toothfish. The moral, legal and political responsibilities with regard to ownership and flagging are deeply problematic and the Commission of CCAMLR will have to address these overlapping responsibilities and the effective implementation of conservation measures at forthcoming meetings in Hobart.

Despite all the problems attached to the sovereign control of resources, the 'international community' has made unprecedented steps towards the promotion of 'responsible fishing' (FAO adopted a code on the latter in October 1995 and UNCLOS III Article 177 imposes obligations on states over the high seas). These international agreements emphatically endorse responsible and precautionary behaviour. Regional agreements such as CCAMLR, in combination with global bodies of law and convention (such as the 1995 UN Agreement of Straddling Stock), provide some support for the struggle to restrict illegal fishing. In that sense, environmental critics have acknowledged that state sovereignty in combination with international obligations can be a benefit.

Conclusions

In the aftermath of Expo '98 in Lisbon, the Independent World Commission on the Oceans (IWCO) issued its report on the state of the oceans. Under the chairmanship of Mario Soares, the IWCO advocated stronger controls on the activities of countries and sea-based operators who violate the living resources and ecosystems of the oceans. Illegal trawling, unregulated dumping, illegal trafficking and coastal habitat destruction were all identified as major threats to the ecological well-being of marine environments, coastal communities and oceanic life. The dilemma facing concerned policy makers, environmentalists and scientists is how to act in a world where nation-states are neither in a position to conserve marine environments nor willing to act in a responsible and environmentally sustainable manner. While many environmentalists have argued that international bodies such as CCAMLR are flawed, there is no doubt that, without these regulatory structures, the environmental well-being of the Southern Ocean would be in a worse condition in terms of illegal and unregulated fishing.

The Patagonian Toothfish controversy has been most keenly felt in southern hemispheric states such as Australia, France, New Zealand and the Overseas Territories of the UK. The Australian government, as the largest Antarctic

claimant state, has been one of the most active participants (since the mid-1990s) in the struggle to prevent the illegal, unregulated and unreported fishing of Toothfish. The political and financial investment devoted to fighting illegal fishing in Australian waters of the Southern Ocean reflects long-standing concerns over the nation's resource and sovereignty rights. However laudable these efforts to prevent illegal fishing are, the actions of sovereign states are only one element in a network of responsible parties, governance and interests.

It is clear that effective management of fishing stocks in regions such as the Southern Ocean requires us to creatively re-imagine the political world and concepts such as responsibility and enforcement. Any form of sustainable management of fishing stocks will require new partnerships between coastal states, fishing states, flag of convenience states, non-governmental groups and existing inter-governmental regimes such as the CCAMLR and the ATS. One avenue of further research is to explore how various states and non-state organisations seek to re-imagine geographical spaces such as the Southern Ocean, while acknowledging that there is much value in the current work on international law and the polar regions. The central problem for all those concerned with the Southern Ocean is how to respond to a geographical space which often defies traditional controls on territorial sovereignty (ie state regulation) and places considerable pressures on intergovernmental organisations. Some states, such as Australia, New Zealand and the UK, have engaged in new debates concerning the rights and responsibilities of so-called 'gateway states' in protecting the environments and ecosystems of the Antarctic and Southern Ocean. But there remains a fundamental lack of consensus among all interested parties as to the handling of living resource management. Because of its immensity and variety, the Southern Ocean continues to rebel against geopolitical and legal synthesis.

Notes

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¹ See Food and Agricultural Organization (FAO), *Recent Trends in Global Aquacultural Production 1984–1995*, Rome: FAO, 1997.

² See J Barton & D Staniford 'Net deficits and the case for aquacultural geography', *Area*, 30, 1998, pp: 145–155.

³ See G Lugten 'The rise and fall of the Patagonian Toothfish: food for thought', *Environment Policy and Law*, 27, 1997, pp 401–407.

⁴ Speech by the Hon Simon Upton, Associate Minister of Foreign Affairs and Trade 'Illegal Antarctic fishing worries New Zealand', Press release by the New Zealand Ministry of Foreign Affairs and Trade, Wellington, 29 April 1997.

⁵ Statement by Minister for Defence, Ian McLachlan, on illegal fishing in the Southern Ocean, Press release by the Australian Department for Defence, Canberra, 25 February 1998.

⁶ On environmental management and risk management, see M Gandy 'Rethinking the ecological leviathan: environmental regulation in an age of risk', *Global Environmental Change*, 9, 1999, pp 59–69.

⁷ See the recent review by M Paterson, 'Interpreting trends in global environmental governance', *International Affairs*, 75, 1999, pp 793–802.

- ⁸ For reviews concerning Antarctica, see C Joyner, *Governing the Frozen Commons*, Columbia, SC: University of South Carolina Press, 1998 and J Vogler, *The Global Commons*, Chichester: Wiley, 1995.
- ⁹ The Southern Ocean is defined by the British Admiralty's *Antarctic Pilot* (London: Admiralty, 1974) as a body of water lying north of the Antarctic continent, the northern limit of which is roughly 55° degrees S. The Antarctic Convergence refers to the region where the warmer waters of the Indian, Pacific and Atlantic Oceans collide with the colder waters of the Antarctic. According to marine biologists, this expanse of water is extremely rich in living organisms such as whales, krill, fish and marine birds.
- ¹⁰ On the role of the IWC, see M Peterson 'Whalers, cetologists, environmentalists and the international management of whaling', *International Organization*, 46, 1993, pp 147–186. In 1994 the IWC declared a Southern Ocean Whale Sanctuary which banned all forms of commercial whaling for the next 50 years.
- ¹¹ The UNCLOS III negotiations between 1973 and 1982 produced some important obligations for coastal states, such as Article 61 of the final convention, which requires states to conserve resources in EEZs, and Article 177, which imposes responsibilities on states to protect the resources of the high seas.
- ¹² For further details see C Joyner, 'Maritime zones in the Southern Ocean: problems concerning correspondence of natural and legal maritime zones', *Applied Geography*, 10, 1990, pp 307–325.
- ¹³ *Ibid.*
- ¹⁴ R Barston 'UN Conference on Straddling and Highly Migratory Fishing Stocks', *Marine Policy*, 19, 1995, pp 159–166. The quote is taken from page 163.
- ¹⁵ B Davis 'The legitimacy of CCAMLR', in O Stokke & D Vidas (eds), *Governing the Antarctic*, Cambridge: Cambridge University Press, 1996, pp 233–245.
- ¹⁶ For a critical assessment of CCAMLR, see L Elliot, *International Environmental Politics; Protecting the Antarctic*, London: Macmillan, 1994; and J Vogler, *Global Commons: A Regime Analysis*, Chichester: Wiley, 1995.
- ¹⁷ A point made by K Kock, *Antarctic Fish and Fisheries*, Cambridge: Cambridge University Press, 1992; and Kock, 'Fishing and conservation in southern waters', *Polar Record*, 30, 1994, pp 3–22.
- ¹⁸ See S Oberthur 'The international convention for the regulation of whaling: from over-exploitation to total prohibition', in H Bergesen, G Parmann & O Thommessen (eds), *Yearbook of International Co-operation on Environment and Development*, London: Earthscan, 1998, pp 29–37.
- ¹⁹ K Shusterich, 'The Antarctic Treaty System: history, substance and speculation', *International Journal*, 39, 1984, pp 800–827. The quote is taken from page 814.
- ²⁰ On the role of scientific advice in CCAMLR decision making see D Agnew 'Review: the CCAMLR ecosystem monitoring programme', *Antarctic Science*, 9, 1997, pp 235–242. This important article details the current stock monitoring programmes organised by the Working Group on Fish Stock Assessment and notes how the Working Group on Ecosystem Monitoring and Management has been involved in research concentrating on so-called indicator species and their predatory populations. At present nine out of 23 members of CCAMLR actively collect data for the Scientific Committee, which have to be submitted three months before the end of the statistical year (from 1 July to 30 June).
- ²¹ S Chaturvedi, *The Polar Regions: A Political Geography*, Chichester: Wiley, 1996, pp 226–227.
- ²² See D Rothwell, *The Polar Regions and the Development of International Law*, Cambridge: Cambridge University Press, 1996, pp 151–152.
- ²³ See Lugten 'The rise and fall of the Patagonian Toothfish' for details on the problem of re-flagging and illegal fishing. The FAO has attempted to deal with re-flagging through a Re-Flagging Agreement (approved in November 1993) and Code of Conduct for Responsible Fishing (approved in November 1995).
- ²⁴ See *CCAMLR Newsletter December 1998*, Hobart: CCAMLR, which noted that illegal fishing 'continues to threaten stocks of Toothfish and populations of sea birds'.
- ²⁵ The over-zealous exploitation of fish by Spanish-owned vessels has also been a cause for concern in the waters off Morocco. See J Davis, 'Morocco's 1995 Fisheries Agreement with the EU: a crisis resolved?', *Mediterranean Politics*, 3, 1998, pp 61–73.
- ²⁶ Cited in UN document 'Question of Antarctica: state of the environment in Antarctica: report of the Secretary-General' A/51/390.
- ²⁷ 'Statement by the Minister for the Environment, Dr Nick Smith May 16 1997', Press release from the New Zealand Ministry of the Environment, Wellington.
- ²⁸ See *CCAMLR Statistical Bulletin 1986–1996*, Hobart: Commission for CCAMLR, 1996.
- ²⁹ See *CCAMLR Newsletter December 1997*, Hobart: CCAMLR.
- ³⁰ CCAMLR estimated that unreported catches of Toothfish amounted to 22,415 tonnes in 1997–98 statistical year, with the vast majority of this catch being sent to markets in the USA and Japan.
- ³¹ Unregulated fishing has been a considerable problem for the Toothfish in Statistical FAO Area 88, which encompasses part of the Indian Ocean proximate to the South African islands of Prince Edward and Marion.
- ³² See K Kerry & G Hempel (eds), *Antarctic Ecosystems*, Berlin: Springer-Verlag, 1990; and Kock, *Antarctic Fish and Fisheries*.
- ³³ See J Heap 'Has CCAMLR worked? Management, political and ecological needs', in A Jorgensen-Dahl & W Ostreng (eds), *The Antarctic Treaty in World Politics*, London: Macmillan, 1991, pp 43–53.

- ³⁴ This is based on a series of informal and confidential interviews carried out with officials responsible for implementing Antarctic and Southern Ocean policies in the UK, Australia, New Zealand and South Africa.
- ³⁵ These sub-Antarctic islands have been a long-standing source of concern for the CCAMLR parties because of fears that Mackerel Icefish were being over-exploited in the 1980s.
- ³⁶ See P Beck, 'Fisheries conservation as a basis for a special Anglo-Argentine relationship', *The World Today*, 47, 1991, pp 102–106; and K Dodds, 'Towards rapprochement? Anglo-Argentine relations and the Falklands/Malvinas in the late 1990s', *International Affairs*, 74, 1998, pp 617–630.
- ³⁷ World Wide Fund for Nature 'Toothfish poaching scandal challenges CCAMLR nations: WWF calls for closure of high seas fishing for Toothfish', Hobart, 5 November 1997.
- ³⁸ Greenpeace, 'Media release: Greenpeace congratulates government action in the Southern Ocean', Sydney, 21 October 1997.
- ³⁹ Australian Hansard, 'Proceedings of the Senate' *Hansard*, 21 October 1997. See also *The Age* (Melbourne), 'Antarctic poaching heats up', 7 June 1997.
- ⁴⁰ This move by the New Zealand delegation in 1997 was not widely welcomed by other Anglophone policy makers because it was felt that using the ATCM as a forum for fishing issues was inappropriate given CCAMLR's well established remit for living resource management.
- ⁴¹ See K Dodds, *Geopolitics in Antarctica: Views from the Southern Oceanic Rim*, Chichester, Wiley, 1997.
- ⁴² See L Kimball 'The Antarctic Treaty System', *Oceanus*, 31, 1988, pp. 14–19.
- ⁴³ See C Joyner, *Antarctica and the Law of the Sea*, Dordrecht: Martinus Nijhoff; and L Elliot, *International Environmental Politics: Protecting the Antarctic*, London: Macmillan, 1994.
- ⁴⁴ This has led some academics such as Lorraine Elliot to claim that CCAMLR is a 'flawed convention agreement'. Elliot, *International Environmental Politics*, p 97.
- ⁴⁵ See N Rengger, 'The ethics of trust in world politics', *International Affairs*, 73, 1997, pp 469–487.
- ⁴⁶ See ISOLFICH, *The Involvement of Mauritius in the Trade in Patagonian Toothfish from Illegal and Unregulated Longline Fishing in the Southern Ocean*, Occasional Report Number 1, Hobart: ISOLFICH, 1998. Mauritius attended CCAMLR's Commission Meeting for the first time in October–November 1997.
- ⁴⁷ See B Cicin-Sain & R Knecht, 'Implications of the Earth Summit for ocean and coastal governance', *Ocean Development and International Law*, 24, 1993, pp 327–338.
- ⁴⁸ Mauritius and Namibia attended the October–November 1998 Meeting of CCAMLR as observers.
- ⁴⁹ CCAMLR parties are currently developing a Catch Certification Scheme, see CCAMLR newsletter, December 1999, Hobart: CCAMLR.
- ⁵⁰ See M Miller, *The Third World in Global Environment Politics*, Boulder, CO: Lynne Rienner, 1995; and M Paterson, *Global Warming and World Politics*, London: Routledge, 1996.

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