

Police Response to

Antarctica



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iii ABSTRACT

This paper examines the legal obligations for New Zealand Police to respond to incidents or investigate incidents or accidents occurring in the 'New Zealand territory' in Antarctica as defined by New Zealand legislation from our ratification of The Treaty and subsequent enactment of the Antarctic Act in 1960. The key agreements of the Treaty are listed and discussed with sovereignty issues. Case studies outline previous incidents and accidents and attempt to highlight potential conflicts. Current best practice by Antarctic New Zealand in managing risk is examined. The success of current enforcement and future response to incidents or accidents occurring particularly with injury or death are discussed and recommendations made as appropriate. Several recommendations are drawn from the conclusions.

1 INTRODUCTION

I have spent 23 years working for the New Zealand Police the majority related to tactical policing, responding to armed and serious incidents in New Zealand and overseas under various international police cooperation. During this time I experienced first hand the complexities of responding to remote locations where the likelihood of serious incidents was seen as virtually impossible. The Chatham Islands: an attempted homicide and a suicide. The Solomon Islands: previously under British rule was an idyllic paradise which turned ugly with self government and many people killed.

In 1990, Aramoana, a remote backwater in the Otago Peninsular put New Zealand in the spotlight with 13 people being shot and killed. The New Zealand Police had never responded to an incident of such magnitude, amplified by one of their own, a well respected local sergeant responding to the incident, also being killed.

Nothing is sacred, Antarctica is pristine, all of those metaphors and clichés are applicable but the world has seen seemingly impossible events occur. The Twin Towers coined '9/11' etched indelibly in history, Port Arthur when 34 people were killed by one gunman, Columbine High School where students hunted and killed their class mates. The world is forever changing and we must change with it. The worst case scenarios must be examined and some response contingencies developed and exercised. If exercises are not conducted an agency such as the police will be hampered through logistics, legal aspects, transport, political interference and time. Time is the overriding factor in a serious on going incident. Antarctica is only five hours away by plane. In Australia, State police travel similar distances to respond to incidents and it is the same the world over. Five hours is simply a factor. Factored in, it is manageable as long as all the other factors are planned for accurately and professionally. By training for the worst case, the more likely scenarios will be handled efficiently and effectively.

New Zealand's Antarctic presence and interest cannot exist without the United States Antarctic Program. The United States is actively engaged in a Global War on Terror. Al-Qaeda is a terrorist group whose stated goal is to establish a worldwide pan-Islamic Caliphate and actively target non Islamic regimes and US citizens. This presents an ongoing threat to any US connected operation. That is a fact that needs to be considered. In recent time activists have committed themselves to the extreme belief of their cause.

'All human actions have one or more of these seven causes: chance, nature, compulsions, habit, reason, passion, desire.' Aristotle.

1.1 Key questions

1. Should New Zealand Police proactively incorporate Antarctica into their 'patch' and what impact does this have on an operational policing response?
2. What regulations and laws are applicable to Antarctica from a police response perspective?

3. Does Antarctica New Zealand's incident management plan and pre plans cover all contingencies?
4. What lessons can be learned from the Erebus disaster report debrief notes?

1.2 Case studies

A series of seven case studies have been selected to represent a cross section of accidents, incidents and issues that have or are occurring which can potentially impact on New Zealand's interests in Antarctica. Case study is an ideal methodology when a holistic, in-depth investigation is needed (Feagin et al., 1991). Yin (1994) suggests that case study should be defined as a research strategy, an empirical inquiry that investigates a phenomenon within its real-life context.

1.3 Constraints of this piece

The scope of this work allows only for certain case studies to be examined to provide a broad example of incidents and accidents as they relate primarily to New Zealand and Antarctica. The research has been limited by time-constraints therefore well known international events referred to serve to reinforce the report without in depth analysis.

I am completing this GCAS course in my own time, without any acknowledgement from the New Zealand Police, therefore, when referring to police procedures I do so from my experience as a police officer, not officially from the New Zealand Police.

2 REPORT

2.1 What is Response?

Contributing to an emergency response for 19 years, having spent a large portion of my career and life tied to a pager is a first hand example of the effectiveness of such a system and the professionalism of response teams. Pagers are activated at any time, day or night, home or work. All members able to, respond immediately. There is no use in responding later as the situation would have been resolved or one could expect another page requiring more staff. This response is replicated world wide by police teams. There are faster responses provided by SWAT and other such teams around the world. These are larger full time tactical teams that have essential equipment with the (usually) small initial response that, on their arrival, initially hold and take control of the situation. Other resources are called for as required.

Such rapid responses are necessary due to the severity of the incident. Other police staff are deployed to hold the incident until the tactical teams arrive. The quality of the response is generated through all contingencies being planned for and quality training to exercise the wide range of likely incidents. Everything is prepared to deploy immediately, all equipment both team and personal, all maps, planning documents, communications, vehicles or other transport, established lines of authority, legal advice if necessary, investigators provide the intelligence on the subject, a ground briefing is gleaned from maps, aerial photos and from staff at the scene. Deployment is established through a quick brief outlining the situation and the mission. Standard operating procedure ensures that the tactical team deploys according to the nature of the incident, e.g. a person intending to take their own will require a certain type of approach. A hostage situation will require a very different approach to the incident.

This 'proven' response capability has evolved over 30 to 40 years from communicating with and learning from other police agencies around the world.

For planned operations or major security involving head of governments or other internationally protected persons a set format is again used to complete a reconnaissance of the venue to best prepare plans to thoroughly brief the staff that are tasked to provide protection around the cock and to brief other teams to provide immediate response capability if any incident develops.

2.1.1 Why respond to Antarctica?

Incidents likely to occur at Scott Base or in New Zealand Territory

- Accident involving death e.g. fall or crush
- Suicide
- Vehicle crash – could result in prosecution
 - mitigated though drink driving, use of seat belts, driver training
- Assault / rape sexual attack incident. Crime scene procedures are crucial to a successful prosecution.
- Kidnapping/hostage – requires specialist intervention, resulting in possible death or injury, crime scene procedures and Police investigation leading to a successful prosecution

- Shipping accidents e.g:
 - *MV Explorer* in 2007, hit a submerged ice berg and sunk. All persons escaped on life rafts and were rescued by another ship in the area. Mitigating factors were kind weather and rehearsed life boat drills.
 - *Exon Valdez* Alaska. On 24 March 1989, the oil tanker *Exon Valdez* sank in Prince William Sound, Alaska, thereby spilling 40,000 tons of oil of its 180,000 tons load along 1,700 km of coastlines. The unprecedented environmental disaster still carries today the title of the largest animal death toll. Exxon has certainly paid a high price for its lapse, the total cost being variously quoted at anything from US\$4 billion to over US\$ 9 billion.

- Eco terrorism - also called ecological terrorism or environmental terrorism. Destruction of the environment by states, groups, or individuals in order to intimidate or to coerce governments, civilians or companies. Intended to prevent or to interfere with activities allegedly harmful to the environment.

- Terrorism – The English word ‘terrorism’ was first recorded in English dictionaries in 1798 as meaning ‘systematic use of terror as a policy’. The term appeared earlier in English in newspapers, such as a 1795 use of the term in *The Times*.
 - A psychological strategy of war for gaining political ends by deliberately creating a well-founded climate of fear among the civilian population... (nadiaonline, 2008).
 - Defined by The Oxford English Dictionary ‘Government by intimidation carried out by the party in power in France 1789-1794. Generally, a policy intended to cause terror in those against whom it is adopted.’

The scale of any incident will be dictating the proportion of any Police response, e.g. from an investigator / Detective, O/C Operation or the more extreme response of a tactical team e.g. Special Tactics Group (STG). The office of a US Marshal out of the Hawaii Office, is bestowed on the O/C of the National Science Foundation (NSF) at McMurdo Station. Firearms are not kept at Scott Base. All passengers pass through security checks at the airport, it is very unlikely that any one has access to firearms. McMurdo Station could be different.

2.1.2 Current response to Antarctica

The New Zealand Police have no current contingency planning for deploying to Antarctica (Parker, 2007). Antarctica New Zealand does not have any Police liaison in Christchurch. Antarctica New Zealand operates effectively from a comprehensive incident management plan (CIMS). Any incident can be applied to this system but specific incidents requiring Police intervention or response are not specifically covered.

I perceive the reason for this is that Antarctica New Zealand believes that they will never be the subject of any incident requiring Police intervention. They are correct in assuming that threat levels are no doubt considered low and the likelihood of an incident also low. A full threat assessment would identify the current levels accurately.

2.2 Case Studies Analysis

2.2.1 Erebus Disaster 1979

In 1840 British explorer, James Clark Ross left Hobart with his ships *Erebus* and *Terror*. He sailed south, broke through the ice pack and discovered the open sea subsequently named 'Ross Sea'. The Victoria Land mountain ranges were also named by Ross including the twin peaks of Mt Erebus (3,794m) and Mt Terror (3,230m) in honour of his two ships.

Erebus has a prominent place in Greek Mythology meaning 'The darkness of the underworld, a dark place where lost souls rest on the way to Hades, the abode of the dead. (Tripp, 1962)

EREBUS VOICES

The Mountain

*I am here beside my brother, Terror.
I am the place of human error.
I am beauty and cloud, and I am sorrow;
I am tears which you will weep tomorrow.
I am the sky and the exhausting gale.
I am the place of ice. I am the debris trail.
I am as far as you can see.
I am the place of memory.
And I am still a hand, a fingertip, a ring.
I am what there is no forgetting.
I am the one with truly broken heart.
I watched them fall, and freeze, and break apart.*

The Dead

*We fell.
Yet we were loved and we are lifted.
We froze.
Yet we were loved and we are warm.
We broke apart.
Yet we are here and we are whole.*
(Manhire, 2007) Read by Sir Edmund Hillary 50th Anniversary of Scott Base 2007

Police Response to Erebus

The successful conduct of this operation was due in part to the recent establishment of a Disaster Victim Identification (DVI) team. New Zealand's Police Commissioner, Bob Walton, had recently attended a conference in Australia where the response of the New South Wales Police to the 1977 Glanville railway disaster (which killed 83 people) was discussed. The New South Wales Police had subsequently created a specialist DVI team, prompting Walton to do the same on his return. The Erebus disaster occurred only a few weeks later – the very day before this team was due to hold a refresher course. In all, 133 police personnel worked at the recovery site or in other areas, including the Auckland-based mortuary.

Among the dead was a police colleague, Constable Trevor Maskelyn, who had ironically won the scenic flight to Antarctica in a raffle conducted by the New Plymouth Search and Rescue organisation. It was a raffle any of his colleagues could have won, and some even offered to buy the ticket from him after his win.

These flights did not come cheap. Ticket prices of around \$330 in 1978 were the equivalent to the cost of a return flight to North America. Flight TE901 was Air New Zealand's 14th flight to the ice since 1977. Qantas had also been offering sightseeing flights for a similar length of time and had made 25 trips to Antarctica.

Croydon Travel now offers a travel package to Antarctica from AUD999 to AUD5,499 on a Boeing 747-400 aircraft. The operating requirement is that the aircraft must be commanded by a senior Qantas Captain who has previously flown at least one of the 73 flights to Antarctica. The flights are 12 hours long and when over Antarctica 10,000 feet above sea level is maintained, which brings the aircraft within 2000 feet of the highest ground (Croydon Travel, 2008).



This map shows the flight path of Air New Zealand Flight TE901 on 28 November 1979 (solid red line) before it crashed into the lower slopes of Mt Erebus. The dashed line on the left shows where the pilot probably thought he was. In the detail image Mt Erebus is in the foreground. The actual flight path was about 45 kilometres to the east of where it was supposed to be. ('The crash of Flight 901 - Erebus disaster, 2007')

Map by: Christchurch Regional Office Reference: CAHU CH282/Box12/1 Map of Ross Island area showing flight path of aircraft (as reconstructed by R.B. Thomson, Jan. 1980) and where captain may have believed he was, 1980 (New Zealand History, 2008)

Erebus - Operation Overdue: The Police Role

Legal situation

The loss of flight 901 posed legal questions relating to the recovery operation. The New Zealand Parliament has no power to legislate extra-territorially i.e. laws made in New Zealand apply only to this country. A few exemptions exist e.g. extradition matters or where a crime is committed on board a aircraft or ship under certain circumstances (s.8 Crimes Act 1961). Legal advice examined the principle of legislative jurisdiction. The Ross Sea by implication in a New Zealand Act of Parliament is not part of New Zealand.

The question of jurisdiction was never raised because:

- The aircraft was registered in New Zealand
- It had departed from a NZ airport and was returning to a NZ airport
- The majority of passengers were New Zealand citizens
- The necessary logistical support depended on New Zealand involvement

The Attorney General acting on advice from the Solicitor General declined to order inquests where no corpse was identifiable. This decision was based solely on the location of the crash site. Although the Coroner held a hearing in respect of the 43 bodies not recovered or identified, the hearing was not a formal inquest and no coroner's verdict could be given.

However the evidence at that hearing formed the basis of an application to the Registrar General of Births and Deaths to have those 43 deaths registered. This cleared the way for the individual's estates to be wound up.

A recommendation was to prepare legislation amending the Coroner's Act to extend the Attorney General's power under the act to include deaths occurring on New Zealand aircraft and possibly Commonwealth aircraft en route to New Zealand.

Personnel

A Police recovery group was assembled and included eight volunteers from the Federated Mountain Club (FMC). Prior to the flight 3 persons had to be off loaded due to accommodation shortage at McMurdo and Scott Base. Three FMC men were unloaded. The report admits this was an error as these volunteers were invaluable due to the very physical nature of the operation.

The recovery team arrived in Antarctica within 20 hours. Briefings and equipment issues had to be resolved plus inclement weather preventing access to the crash site. On day 4 the recovery team undertook a six hour survival training course while waiting for the weather to clear. This course was successful in providing them with the skills required for ice and snow work and boosted their confidence. The first movement of crash investigators found the voice recorder within 5 hours and the data recorder within another 6 hours. By day 13 the recovery operation was completed.

Erebus Debrief

The first five debrief points related to advising the public where to address their enquires in the event of an incident of this magnitude. The establishment of airline liaison officers to interpret the passenger manifest and for the airline not to release the passenger list, as this notification is strictly a police role. The passenger list will contain discrepancies and extreme care must be taken when making initial enquires with next of kin.

A meeting must be held as early as possible with police and agency heads from all organisations responsible in the recovery or investigation task to establish:

- Areas of responsibilities
- Coordination of activities and resources
- Guidelines relating to the release of information to the news media
- Priorities – body recovery and identification (as top priorities in this case)

This meeting would be chaired by the senior police officer present, who by law is responsible for body recovery and identification. Clear guidelines are needed within police who has the authority to make media releases.

Once the operation plan is formed the senior police officer in charge will front a media conference to assure primarily the next of kin (in this case) that the body recovery and subsequent identification will be dealt with as quickly as possible.

Staff Selection

Police must have the most suitable persons for the job. Search and Rescue (SAR) being fit and conditioned to working in more extreme environments should be trained in Disaster Victim Identification (DVI) procedure.

Deployment in the field

The need to relieve staff is of prime importance and is achieved by total replacement or temporary stand-down from the crash site. Staff on this operation worked 12 hour shifts, this would be too long at an 'urban' crash site where body disposition, proximity of crowds, news media would affect work performance.

Staff must understand through briefings and training that they can expect to be replaced or relived so that a morale problem does not occur when this takes place. In conjunction with this each team should be kept together to maintain team spirit.

Additional staff should be allocated to assist DVI personal in this physical task of moving, bagging and carriage of bodies.

Other debrief points referred to mortuary procedure, DVI kits, DVI staff training, DVI forms, road transport of bodies, mortuary procedures, fingerprints, photographs, personal property, enquiry team, records and staff welfare.

All staff deployed on the gruesome aspects of the operation should receive full medical examination and psychological testing.

Persons in command should be given advice in recognising signs of stress for early intervention.

Staff deployed in remote areas need some form of communication with their families. A welfare officer should be appointed at the coordination centre to deal directly with the individual families.

Morgan (1980) agrees that police action and responsibility had to be defined early i.e. the police were in charge and who was in charge of the police. He highlighted issues of the quality of command, the lack of experience and training and the right man to command all needed to be dealt with. The problems of the initial response had to be faced and disposed of. Morgan (1980) discusses Foote (1974) that more intensive training is required all the way to the higher levels of police hierarchy, aiming at providing genuine understanding of the unaccustomed dilemmas affecting commanders, personnel of all services and the victims themselves which disaster presents including human problems.

The physiological impact affected the police involved with reception work and reconciliation. There was a need to understand the reactions of the second phase victim i.e. the relatives who are the zone between parent and dead ancestor, spouse and widowhood, child and orphan etc.

The Japanese in particular placed enormous pressure on the police for early release of the bodies of the Japanese victims due to their cultural beliefs that crossing of frontiers is tainted with ritual, from one social status to another.

Erebus Conclusion

Commissioner Walton deserves praise for his insight to establish procedures for such tragedies. He could have selected and trained his team, created their standard operating procedures and they could have never been used. That is not the issue. Response is planned with a commitment from every agency that is likely to be involved. Obviously must have been significant issues in the early stages relating to command, lack of experience and training.

Although persons in command should be given advice in recognising signs of stress for early intervention, there was no mention of themselves being checked for signs of stress. Systems need to be established to maintain operational efficiency and mental health is critical.

The operation in Antarctica was an impressive effort of all that were involved despite the rough start. The issues about staff rotation are most pertinent in terms of mental and physical recovery in their downtime. This is not alluded to in the New Zealand Police Manual of Best Practice 1994, section Disaster Victim Identification page 142. I trust that it would be covered in some other manual.

2.2.2 Greenpeace and Sea Sheppard (Paul Watson) current

The Greenpeace website states that it is committed to the principles of non-violence, political independence and internationalism (Greenpeace, 2008). It advocates non violence in all of its protests or actions and they recently applied risk management to their operations in the Southern Ocean.

In the summer of 1994 Greenpeace showed that they were willing to destroy the whalers' equipment in order to stop them. They boarded the whaling boat *Senet* and tried to remove the loaded harpoon gun with tools they had brought with them. The whalers stepped in fearing the loaded harpoon could endanger their lives or valuable equipment being destroyed (Harpoon, 1996). In their 1992-93 annual report Greenpeace embraces the principle of non-violence, rejecting attacks on either people or property' (Greenpeace, 2008).

Greenpeace claimed in January this year (2008) that it was careful to avoid a major incident in the Southern Ocean during their recent anti Japanese whaling operation. They objected to a refuelling operation in a protected area due to the risk of a spill and attempted to delay the refuelling time for the whaling ship by deploying inflatables between the whaling 'mother ship' *Nishan Maru* and the refuelling ship *Oriental Bluebird* flagged to Panama. Greenpeace claimed had they used their ship, the *Esperanza*, a chance of a collision was imminent creating more of an environmental risk.

In contrast *Sea Sheppard* Captain Paul Watson advocated that Greenpeace should have used the *Esperanza* to block the ships attempting the refuelling operation, acknowledging that even non violent tactics can be dangerous citing Gandhi and Martin Luther King Jr. had their followers injured and even killed but they did not back down because it was 'dangerous'. *Sea Sheppard* does destroy equipment used to illegally kill whales or shark or seals but justified it by quoting Martin Luther King Jr.: 'violence cannot be committed against a non-sentient object'.

Watson argued that the mere presence of a ship even an official ship such as the Australian Customs service *Oceanic Viking* is ineffective as the Japanese killed five whales as the crew of the *Oceanic Viking* looked on and took pictures. We (*Sea Sheppard*) intervene and shut down the killing on a fraction of the Greenpeace budget with volunteers and we do it without injuring anyone. Lives saved without injuries inflicted (teamyank, 2008).

On 18 January 2008 two *Sea Shepherd* member who illegally boarded the Japanese flagged research vessel *Yushin Maru No.2* were safely transferred to the Australian Customs vessel, the *Oceanic Viking*. The Director General of the ICR, Mr Minoru Morimoto, thanked the Australian Government for acting as the intermediary and ensuring the protection and safety of the crew and scientists aboard the Japanese vessel.

The Institute of Cetacean Research (I.C.R.) is a Japanese organization specializing in the biological and social sciences related to whales, came into being in October 1987. It is a nonprofit research organization whose legal status is authorized by the Ministry of Agriculture, Forestry and Fisheries, Government of Japan, as a foundational judicial person (icrwhale, 2008). The forerunner of the I.C.R., the Whales Research Institute, founded in 1947, was developed from the Nakabe Foundation for Whale Science, which was established in 1941.



The Greenpeace zodiac gets entangled to the wires of the OBB fender. The crew of the OBB hurriedly makes efforts to disentangle the zodiac. At 09:56 the zodiac is released from the fender wires but keeps inside the space between both vessels. The Nisshin Maru broadcasts through the vessel microphone a message in English ordering the zodiacs to leave. (Icrwhale, 2008)

Conclusion

It is clear that Greenpeace, *Sea Sheppard's* Paul Watson and the Japanese whaling fleet under the guise of The Institute of Cetacean Research (I.C.R.) have vested interests in their own operations. Each party will continue to use media to further their cause with photos, interviews and video footage. One redeeming aspect is the presence of the Australian Customs vessel; *Oceanic Viking* will act as the independent observer and may reduce some risk to all parties. Paul Watson is honest about their tactics, they deliberately target equipment and see that as fair game. That makes them dangerous from a shipping perspective and successful as an activist, the whaling boats will attempt to avoid them.

2.2.3 *Rainbow Warrior* Bombing 1985



Rainbow Warrior sunk at her moorings at Marsden Wharf
(Copyright 2007 New Zealand Police)

On 7 July 1985 the *Rainbow Warrior*, flagship of the Greenpeace Organisation, arrived in Auckland and tied up at Marsden Wharf. On the night of 10 July 1985 shortly before midnight two high explosive devices detonated within the space of a few minutes. The vessel sank within minutes (NZ Police, 2008)

Earlier that evening approximately 30 people had been on board the ship attending a birthday party and at the time of the explosion 12 people, including the captain, were still on board. Ferando Pereira, crew member and official photographer was drowned while attempting to retrieve photographic equipment from his cabin.

The incident was immediately treated as a homicide enquiry and there began one of the most far reaching investigations in New Zealand history. As a major international scandal it was, ironically, to give Greenpeace far more publicity than would have occurred had the ill fated *Rainbow Warrior* completed her voyage to Muroroa Atoll.

Major Alain Mafart, aged 35 and Captain Dominique Prieur, aged 36 were arrested on 15 July 1985 charged with arson and the murder of Pereira.

In the weeks leading up to the depositions hearing, media interest was fanned by conflicting statements from the French Government. On 27 August President Mitterrand of France had released a report which fully exonerated the French Secret Services. The French Press continued to pressure the Government for the truth led to the inescapable conclusion that their own Government was responsible. Monsieur Hernu, the Defence Minister resigned and on 22 September Prime Minister Laurent Fabius admitted that the French Secret Service had ordered the attack on the *Rainbow Warrior*.

After earlier pleading guilty, Mafart and Prieur appeared in the Auckland High Court on 22 November 1985 and were sentenced to ten years imprisonment on the charge of manslaughter and seven years imprisonment on the charge of arson. In delivering judgment the Chief Justice Sir Ronald Davison gave a clear indication of his feelings on the possibility of early deportation stating "People who come to this country and commit terrorist activities cannot expect to have a short holiday at the expense of our Government and return home as heroes".

After the conviction and imprisonment, France threatened to block New Zealand exports to the European Economic Community (EEC) unless the two were released. In June 1986, in a political deal with the Prime Minister, David Lange and presided over by the United Nations Secretary-General, Javier Pérez de Cuéllar, France agreed to pay compensation of NZD13 million (USD6.5 million) to New Zealand and 'apologise', in return for which Alain Mafart and Dominique Prieur would be detained at the French military base on Hao atoll for three years. (*Rainbow Warrior Wiki*, 2008)

In 1987, under heavy international pressure, the French government paid \$8.16 million compensation to Greenpeace. In 2005 Admiral Pierre Lacoste, head of DGSE at the time, admitted that the death weighed heavily on his conscience and said that the aim of the operation had not been to kill.

On the twentieth anniversary of the sinking it was also revealed that the French president François Mitterrand, himself, had given authorisation for the bombing.

Conclusion

A terrorist act was committed by a foreign government in New Zealand. Despite the arrogance of the attack, it does outline how vulnerable we are. Any organisation with sufficient resources and intent can commit any terrorist act anywhere.

Police need to be prepared to deal with the international aspect of such crimes. This is usually well handled by specialists in this area but it does raise questions about a response to Antarctica and the implications of multi agencies with vested interests in the region.

2.2.4 The Battle of Harewood 1973

On Saturday 24 March 1973 activists from Committee Against Foreign Military Activities in New Zealand (CAFMANZ) tried to invade United States Operation Deep Freeze facilities at both Harewood and Weedons air bases in Christchurch.

The Police Operation Commander, Gideon Tait complained in his autobiography that the spokesman of the group Owen Wilkes 'did not like me from the beginning' (Tait, 1978). In a press conference prior to the demonstration the Committee stated that it could not be held responsible for the behaviour of the crowd. The 350 strong Police contingent rappelled the demonstrators with 36 people arrested and detained for the weekend. It was the first of anti Americanism demonstrations and could be seen as a forerunner to the violence that occurred in the 1981 Springbok Tour.

On that Saturday night a home made bomb was found was found near the United States Naval Support Force headquarters.

2.2.5 ANTI-BASES CAMPAIGN (ABC) Current

ABC is a Christchurch-based group with members around New Zealand and concentrate on the three foreign military and intelligence installations in New Zealand:

- US Deep Freeze military base at Harewood (Christchurch Airport);
- NZ intelligence gathering installation at Tangimoana (Manawatu)
- NZ intelligence gathering station at Waihopai (Marlborough),

ABC claim that these are outposts of American Intelligence. Their website demands that Harewood be demilitarised; and the others closed ASAP. They also demand the abolition of the NZ Government Communications Security Bureau (GCSB), which operates Waihopai and Tangimoana. Their website promotes research, education, publication and direct action. They have run campaigns on all three installations, concentrating on Harewood and Waihopai. A 1990 Touching the Bases Tour invited people from New Zealand and throughout the Asia/Pacific region to visit all three bases. They have sent representatives to actions in Australia, the Philippines and the US and have hosted overseas experts here e.g. Canadian ex-spy, Mike Frost, in 2001.

They have campaigned and made submissions on legislation such as the Terrorism Suppression Act, the Crimes Amendment No. 6 Act, which gives the Police, SIS and GCSB extended powers of electronic spying; the GCSB Act and the various SIS Amendment Acts, which extended the powers of the SIS and exempts them from any legal action. Since ABC first discovered plans to build Waihopai, back in 1987, they have campaigned against it, organising numerous non-violent direct action national demonstrations. They have researched all aspects of these bases, specialising in Harewood and Waihopai, and have developed an expertise in researching NZ and allied intelligence agencies. They publish Peace Researcher, an authoritative journal on these subjects, and a record of our activities. Sixty issues of *Peace Researcher* have been published since 1983. (Converge, 2008)

2.2.6 Nicky Hager and John Campbell 1997

Nicky Hager revealed intimate details of how the UKUSA Echelon system operated at Waihopai (codenamed 'Flintock') and Tangimoana satellite interception sites in his book 'Secret Power' published in 1996. He trawled through government records discovering somewhat easily information that should have been classified as secret. A year later Hager and John Campbell carrying a step ladder and a TV camera breached the electrified fences, intruder detectors and infra-red cameras and filmed the operations centre through high open windows (Campbell, 1999).

'Secret Power' – Foreword

'It was with some apprehension that I learned that Nicky Hager was researching the activity of our intelligence community. He has long been a pain in the establishment's neck. Unfortunately for the establishment, he is engaging, thorough, unthreatening, with a dangerously ingenuous appearance, and an astonishing number of people have told him things that I, as Prime Minister in charge of the intelligence services, was never told. There are also many things with which I am familiar. I couldn't tell him which was which. Nor can I tell you. But it is an outrage that I and other ministers were told so little, and this raises the question of to whom those concerned saw themselves ultimately answerable'.

By: David Lange, Prime Minister of New Zealand 1984-89. (Hager, 1996)

2.2.7 Wanganui Police Computer - Neil Roberts 1982

On November 18, 1982 at 12.35 a.m., Neil Roberts, a 22 year old punk anarchist, walked up to the entrance of the building which housed the Wanganui police computer. Two security guards in the building saw Roberts approach with a carry bag on his shoulder. As the guard reached to activate a remote speaker in the foyer and ask him what he wanted, Roberts bent over and there was a flash and a huge explosion. The blast could be felt for miles, and buildings were rocked up to 400 metres away. Roberts was killed instantly when the gelignite bomb he was carrying exploded. Pieces of his body were found up to 65 metres away.

Before he died, Roberts spray painted a slogan on a public toilet block near the computer building: "WE HAVE MAINTAINED A SILENCE CLOSELY RESEMBLING STUPIDITY" followed by the anarchy is order sign (A circled by an O) and the words "anarchy - peace thinking".

It was soon established that Roberts had acted alone but debate as to whether Roberts attempted to kill himself or accidentally blew himself up. It is certain that he planned the bombing well in advance. He had visited Wanganui two weeks before the bombing with a friend, they were noticed by many locals because they were wearing safety pins and razors in their ears. The day he left for Wanganui, he told friends, "I am going to Wanganui to do something frightful. If I should blow up the Wanganui computer, the cops will be around."

The government in an inquest came to the conclusion that Neil was a suicide bomber. It seems the main evidence for this was a tattoo on Neil's chest: "This punk won't see 23. No future."

Conclusion

This is similar in concept to the Oklahoma bombing by Timothy McVeigh 19 April 1995 aimed at the U.S. Government in which the Alfred P. Murrah Federal Building was destroyed killing 168 people and 800 injured. Until the September 11, 2001 attacks, it was the deadliest act of terrorism on U.S. soil. McVeigh had the specialist knowledge and military training to carry out his act of extreme violence.

Ability to carry out an attack is one factor, the other is intent. Whether Roberts intended to kill himself is irrelevant, he carried a significant amount of explosives which, had he gained access or even had the door to the building opened could have caused significant damage and injury to others.

2.2.8 Incidents in Antarctica

An American chef attacked two fellow Americans with a meat cleaver in the galley at McMurdo Station. The offender was held at McMurdo Station by the Deputised U.S. Marshal until the FBI arrived and investigated the incident. The offender was arrested and charged with assault, and returned to America where he was tried under US law and sentenced to 4 years imprisonment (Christian, 2002 quoted in Cron et al, 2005). The US Embassy, US Attorney (District of Hawaii) and the New Zealand Government were all involved in the case. It was the first time that the FBI had been sent to McMurdo Station to investigate a serious crime (Speilmann, 1996 quoted in Cron et al, 2005).

On this last Christmas (2007) day two men were evacuated from the South Pole with wide media coverage after fighting, one was taken to Christchurch Hospital for treatment. The offender will face charges in the US Federal Court.

3 DISCUSSION

3.1 LEGAL ISSUES

Sovereignty

The definition of sovereignty is consistent amongst both English and American definitions.

Britannica (2008) defines sovereignty as 'political theory, the ultimate authority in the decision-making process of the state and in the maintenance of order. In 16th-century France Jean Bodin used the concept of sovereignty to bolster the power of the king over his feudal lords, heralding the transition from feudalism to nationalism. By the end of the 18th century, the concept of the social contract led to the idea of popular sovereignty, or sovereignty of the people, through an organized government. The Hague Conventions, the Geneva Conventions, and the United Nations all have restricted the actions of sovereign countries in the international arena, as has international law'.

West's Encyclopaedia (2008) defines sovereignty as 'supreme, absolute, and uncontrollable power by which an independent state is governed and from which all specific political powers are derived; the intentional independence of a state, combined with the right and power of regulating its internal affairs without foreign interference. Sovereignty is the power of a state to do everything necessary to govern itself, such as making, executing, and applying laws; imposing and collecting taxes; making war and peace; and forming treaties or engaging in commerce with foreign nations'

Jurisdiction

McLeod (1987) defines jurisdiction as: *n.* 1. the right to power to administer justice and to apply laws. 2. the exercise or extent of such right or power. 3. authority in general.

History of Antarctic Discovery

Before Antarctica was discovered it was seen as an ice bound waste land, the most inaccessible and inhospitable region on earth. It was considered terra nullius, literally a no mans land. In 1773 Explorer James Cook was the first to cross the Antarctic Circle, a parallel of latitude at approx 66.33^o south (World Atlas, 2008). In 1774 Cook, wrote that ... 'the difficulties of thick fogs, snow storms and intense cold are greatly heightened by the inexpressible horrid aspect of the Country, doomed by nature, never once to feel the warmth of the sun's rays, but to lie forever buried under everlasting snow and ice'. In 1775 he wrote 'I can be bold to say that no man will ever venture farther than I have done and the lands which may lie to the South will never be explored' (Rice, 1999).

Several explorers ventured south in ships from 1675 onwards when a British merchant Anthony de la Roche discovered South Georgia.

Numerous sealing and whaling expeditions ventured into the southern oceans during the 1800's but it was not until the end of the century that ships began to penetrate the

pack ice and come closer to the Antarctic mainland. Antarctica was sighted in 1819 by Bellingshausen and the first landing was probably in 1821 by sealers. (Headland, 1996).

Sir James Clark Ross circumnavigated the continent in 1841-43, charted 800 km of coastline along Victoria Land, and located the northern edge of the discovered the Ross Ice Shelf. In January 1843 Sir Ross landed at Palmer Peninsular and claimed Ross Island and all contiguous lands for the British Crown.

The first undisputed landing on the continent was made on 24th January 1895 during a Norwegian whaling and sealing expedition under the command of Leonard Kristensen, his ship, the *Antarctic* sailed from Tønsberg in 1893. In Melbourne he hired a Norwegian, Carsten Egeberg Borchgrevink. On 24th January 1895 they took *Antarctic* close to the shore at what is now known as Cape Adare. A boat was lowered and six men along with the expedition manager Henrik Bull made a landing. It remains a matter of debate as to was actually first to touch land but there is general agreement that it was either Borchgrevink or Kristensen (AHT, 2008).



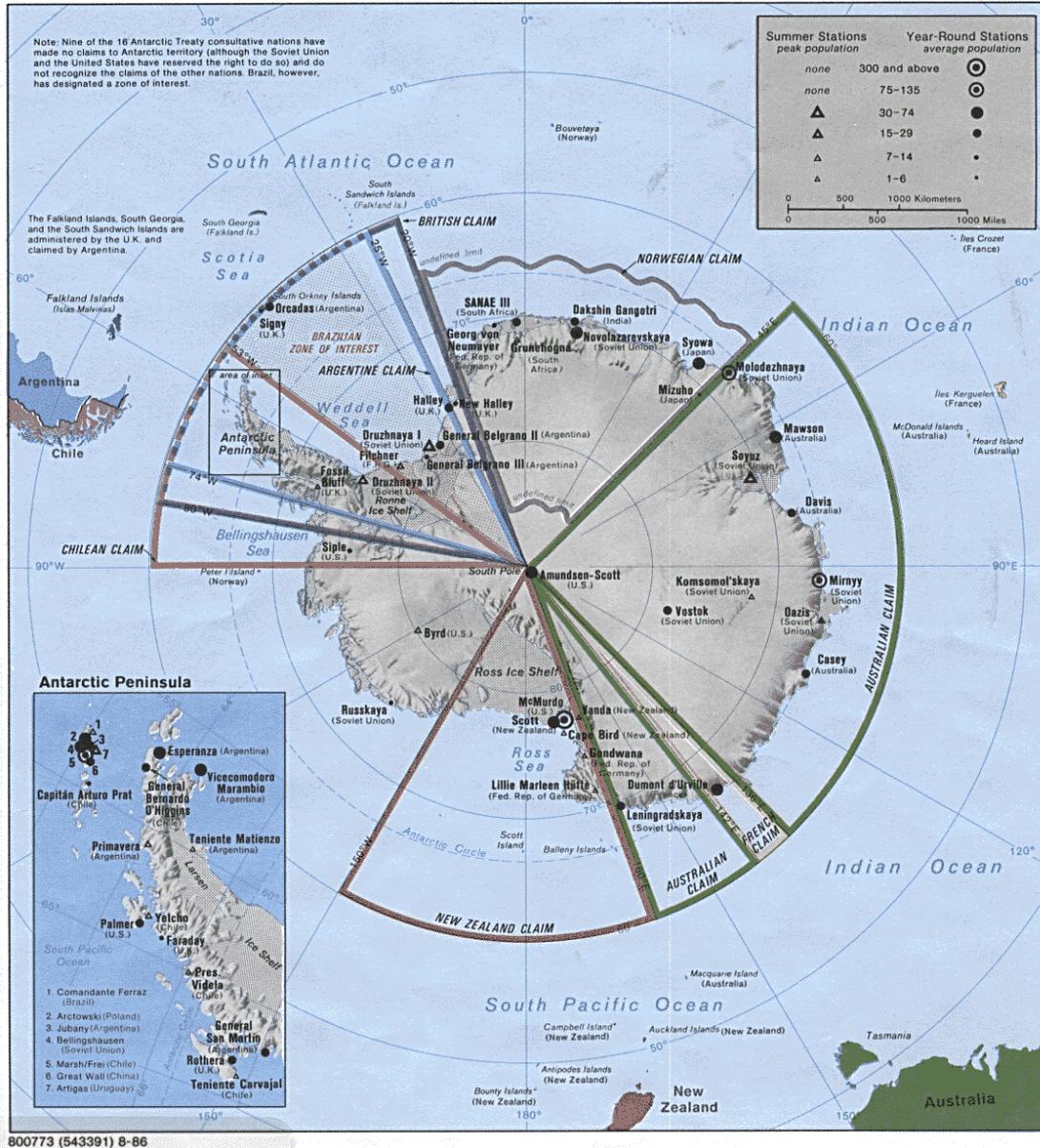
From 1907 seven governments Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom progressively asserted pie shaped claims to tracts of Antarctica as portions of their own territories. Although these claims remain in force they are not recognised by any other countries.

Ross Dependency Claimed

By an Order-In-Council in 1923, Great Britain formally claimed that part of His Majesty's Dominions in the Antarctic seas which comprises all the islands and territories between the 160° east longitude and the 150° west longitude which are situated south of the 60° south latitude shall be named the Ross Dependency. This was effectively to the South Pole where the two longitudinal lines intersected. The Governor General of New Zealand was appointed Governor of the Ross Dependency and was authorized and empowered to make all such rules and regulations as may lawfully be made by His Majesty's authority for peace, order and good government. (Order in Council, 1923). The order was published in the New Zealand Gazette and took effect on 16 August 1923. [Appendix A](#)

The unstated assumption of the Order in Council that Britain already had title to the territory as a matter of international law is presumably based on the discovery and exploration of British nationals such as Ross, Shackleton, and Scott (van Bohemen, 1994)

Antarctica: Research Stations and Territorial Claims



The laws of New Zealand and Antarctica

The Governor of the Ross Dependency made regulations extending to the Ross Dependency 'the laws and usages' in force in New Zealand and applicable to the conditions of the Dependency, not as New Zealand law, but as the law of the Dependency. [Appendix B](#)

Antarctic Treaty influence on laws

The Antarctic Treaty was adopted in 1959 by 12 countries including New Zealand, who were active in the Antarctic. Parliament enacted the Antarctica Act 1960, thereby ratifying the Treaty, which marked the first occasion that Parliament had extended New Zealand law directly to activities taking place in the Ross Dependency as well as to the activities in other parts of Antarctica. It did so by providing that certain acts and omissions taking place in the Ross Dependency and, in certain circumstances, in other parts of Antarctica, were offences as if they would have taken place in New Zealand.

Further developments within the Antarctic Treaty system have continued to shape the way in which New Zealand law has been extended to Antarctica. Over the last 30 years, legislative practice has evolved to the point that for certain purposes the term "New Zealand" includes the Ross Dependency as a matter of New Zealand legislation.

Antarctica New Zealand

Antarctica New Zealand is the trading name of the New Zealand Antarctic Institute, a Crown Entity established by the New Zealand Antarctic Institute Act 1996 (Annual Report, 2007)

The Institute has three principal functions:

- to develop, manage, and execute New Zealand activities in Antarctica and the Southern Ocean, in particular in the Ross Dependency
- to maintain and enhance the quality of New Zealand Antarctic scientific research
- to co-operate with other institutions and organisations, both within and outside New Zealand.

The Institute is to conserve the intrinsic values of Antarctica and the Southern Ocean consistent with active and responsible stewardship of the Ross Dependency for the benefit of present and future generations of New Zealanders, and our international obligations, in a manner that minimises the risks to personnel. The Institute is governed by the New Zealand Antarctic Institute Board.

New Zealand sovereignty over Ross Dependency

The revised Letters Patent Constituting the Office of Governor-General of New Zealand in October 1983 confirm New Zealand sovereignty over the Ross Dependency as a matter of New Zealand constitutional law. It included Tokelau and the self governing states of the Cook Islands and Niue.

Laws of Ross Dependency

The Ross Dependency Regulations 1923 do not themselves extend New Zealand law to the Ross Dependency. New Zealand Courts and law enforcement authorities do not have automatic jurisdiction in the Dependency by virtue of the Regulations. The effect of the Regulations is to establish a separate system of laws for the Ross Dependency applicable to the conditions of the Ross Dependency.

The Regulations remain in effect at this date (1 January 1994). Officers of the Ross Dependency continue to be appointed by the Governor of the Dependency pursuant to the Regulations e.g. the Scott Base Winter Supervisor has powers and authorities of a Justice of the Peace. Traditionally a coroner's position had been inferred but this has been withdrawn due to the newer Coroners Act (Miller, 2008)

New Zealand law not automatically extended to Ross Dependency.

Legislation enacted by the New Zealand Parliament does not automatically extend to Ross Dependency. This is inferred when Parliament has decided to extend New Zealand legislation to the Ross Dependency it has made specific provision in the statute.

An element of uncertainty was introduced by the Territorial Sea and Exclusive Economic Zone Act 1977 which provides that, with certain exceptions, “New Zealand” includes the Ross Dependency, declaring a New Zealand territorial sea around the Dependency.

The uncertainty in this question was removed when Parliament enacted the Interpretation Act 1999 clarifying that when ‘New Zealand’ is used as a territorial description, it does not include the Ross Dependency (van Bohemen, 1994).

New Zealand legislation extended to Ross Dependency.

The enactment of the Antarctica Act 1960 extended New Zealand law to certain acts and omissions occurring in the Ross Dependency and, in particular circumstances to other parts of Antarctica. The Act provided that those offences be regarded as if they had occurred in New Zealand.

In subsequent statutes, a more direct approach has been taken providing that in specified instances, ‘New Zealand’ includes the Ross Dependency e.g. The Immigration Act 1987. Persons travelling from New Zealand to the Ross Dependency are not regarded as leaving New Zealand for the purposes of New Zealand's immigration laws. The Coroners Act 2006 also applies directly in the Ross Dependency, any death in the Ross Dependency can be inquired into by a coroner on the same basis as an inquiry in any other part of New Zealand.

Territorial sea of Ross Dependency.

The Ross Dependency is part of New Zealand for the purposes of the Territorial Sea and Exclusive Economic Zone Act 1977. Accordingly, it has a territorial sea of 12 miles which is part of the territorial sea of New Zealand.

The Marine Mammals Protection Act 1978 gives “New Zealand fisheries waters” the same meaning as in the Fisheries Act 1996 which defines the territorial sea of New Zealand, which in turn includes the territorial sea of the Ross Dependency according to the Territorial Sea and Exclusive Economic Zone Act 1977. The Marine Mammals Protection Act 1978 and the Fisheries Act 1996 therefore both apply to the Ross Dependency.

The Marine Pollution Act 1974 also applies to the Ross Dependency, defined as including the territorial sea of New Zealand, which in turn includes the territorial sea of the Ross Dependency according to the Territorial Sea and Exclusive Economic Zone Act 1977.

The New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987 applies to the Ross Dependency. This Act prohibits the manufacture, testing of, acquisition, possession, and stationing of nuclear explosive devices and biological weapons in the New Zealand Nuclear Free Zone. Exceptions in the Act include ships or aircraft in distress or exercising their right of innocent passage in accordance with international law, including foreign military aircraft, warships, and certain other government ships (van Bohemen, 1994).

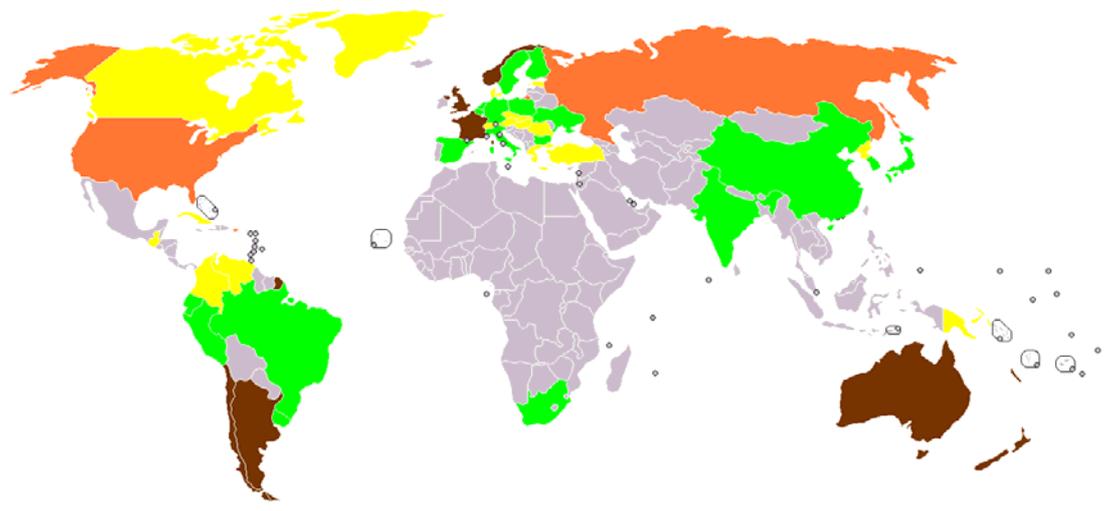
Antarctic Treaty outline

The Antarctic Treaty was adopted in Washington DC on 1 December 1959 by the 12 countries actively involved in Antarctica during the International Geophysical Year (IGY) of 1957-58. The original signatories consisted of the seven countries with claims over parts of Antarctica - Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom - and five other countries with Antarctic activities, Belgium, Japan, South Africa, the Soviet Union and the United States. [Appendix C](#)

These nations wanted to maintain the cooperation that characterised the IGY, when science proceeded unhindered without getting into conflict about the different, sometimes overlapping, claims of sovereignty over the continent. Such cooperation was important in the context of the Cold War, which was at that time causing international tensions elsewhere. Since coming into force 23 June 1961, the Treaty has been recognised as one of the most successful international agreements ever negotiated. Differences over territorial claims have been effectively set aside, and as a disarmament regime the Treaty has been outstandingly successful. Treaty Parties remain firmly committed to a system still effective in protecting their essential Antarctic interests (Rubin, 2005).

Parties to the Antarctic Treaty

Since 1959, thirty-four other countries have acceded to the Treaty. According to Article IX.2, they are entitled to participate in the Consultative Meetings during such times as they demonstrate their interest in Antarctica by “*conducting substantial research activity there*”. Sixteen of the acceding countries have had their activities in Antarctica recognized according to this provision, and consequently there are now twenty-eight Consultative Parties in all. The other eighteen Non-Consultative Parties are invited to attend the Consultative Meetings but do not participate in the decision-making (ATS, 2008). Any amendments enter into force only if they are ratified by all consultative parties.



■ signatory, *consulting*, territorial claim ■ signatory, *consulting*, reserved right for territorial claim ■ signatory, *consulting* ■ signatory, *acceding* status ■ non-signatory

New Zealand ratified the Antarctic Treaty on 1 November 1960. The Treaty entered into force on 23 June 1961, following its ratification by all 12 original signatories.

The Treaty is surprisingly short but remarkably effective (Rubin, 2005). In its 14 articles, the Treaty (abbreviated):

- Stipulates that Antarctica should forever be used exclusively for peaceful purposes and not become the scene or object of international discord
- Prohibits nuclear explosions, the disposal of nuclear waste and any measures of a military nature
- Guarantees freedom of science and promotes the exchange of scientists and research results
- Allows on-site inspections by foreign observers to ensure the observance of the Treaty
- Removes the potential for sovereignty disputes between parties

The Antarctic Treaty applies to the area south of 60° south, but does not affect the freedom of the high seas under international law.

Jurisdiction under Antarctic Treaty

The Antarctic Treaty has no specific jurisdiction over persons in Antarctica. However, it does provide that observers authorised to undertake inspections are subject only to the jurisdiction of the Contracting Party of which they are nationals. The Treaty does not affect New Zealand's right to legislate in respect of and assert jurisdiction over activities occurring in the Ross Dependency.

Conversely some contracting parties that do not recognise rights or claims to sovereignty in Antarctica could dispute the exercise of such jurisdiction.

Antarctic Act 1961

The Antarctic Act 1961 confers jurisdiction on the Courts of New Zealand to deal with crimes committed in the Ross Dependency and certain other parts of Antarctica, and to restrict the jurisdiction of the Courts in respect of acts or omissions in Antarctica of certain nationals of other countries (van Bohemen, 1994).

The Act establishes offences in respect of certain acts and omissions occurring in the Ross Dependency and other parts of Antarctica which would have been punishable under New Zealand law if they had occurred in New Zealand.

New Zealand Courts do not have jurisdiction over foreign nationals of contracting parties which include observers, exchanged scientists and members of their staff. Their State may waive their immunity from prosecution in certain circumstances.

No prosecution may be brought against any non-New Zealander for any offence under the Act unless the Attorney-General consents. This consent is not required before an alleged offender is arrested or remanded in custody or on bail, but no further action may be taken without consent.

The Act defines "Antarctica" as being the area south of 60° south latitude and extends principally to the continent, ice shelves and adjacent territorial seas around Antarctica.

The Act does not limit or affect the liability of persons in respect of acts done or omitted beyond New Zealand, except that the Attorney-General's consent may be required before proceedings may be brought in respect of such liability. Appendix D

Crimes committed in Ross Dependency.

Any person who does any act or omission in the Ross Dependency which, if it had occurred in New Zealand, would have been a crime under New Zealand law, commits a crime and is liable to prosecution and punishment in the same manner as if the crime had taken place in New Zealand.

However, New Zealand Courts do not have jurisdiction over certain nationals of Contracting Parties while they are in the Ross Dependency exercising their functions as observers, exchanged scientists, and members of their staff. The State of such persons may waive their immunity from prosecution.

No prosecution may be brought against any non-New Zealand citizen or resident in the Ross Dependency unless the Attorney-General consents. The Attorney-General's consent is also required before a prosecution can be instituted against a New Zealand citizen or resident who is charged with having committed a crime in the Ross Dependency on board a non-New Zealand ship or aircraft. The Attorney-General's consent to prosecution is not required before an alleged offender can be arrested or remanded in custody or on bail, but no further action may be taken until that consent is obtained.

Crimes committed outside Ross Dependency.

Any New Zealand citizen who does any act or omission in any part of Antarctica outside the Ross Dependency which is not within the jurisdiction of another country commits a crime as if it had occurred in New Zealand. If the act or omission took place on a New Zealand ship or aircraft no prosecution may be instituted except with the consent of the Attorney-General.

Any New Zealand observer, New Zealand exchanged scientist, or any New Zealand staff member, who does any act or omission in a part of Antarctica outside the Ross Dependency which is within the jurisdiction of another country, commits a crime as if it had occurred in New Zealand. However, no prosecution may be instituted except with the consent of the Attorney-General.

Antarctic Treaty - Protecting the environment

Protecting Antarctica unique ecosystem is a major priority of the Treaty. Specific measures include:

- The Convention for the Conservation of Antarctic Seals (1978) provides a means to regulate commercial sealing activities, in the unlikely event that they should ever be resumed. Three species are totally protected and catch limits are set for others.
- The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR: 1980) was adopted in response to fears that unregulated fishing for krill which are at the centre of the Antarctic food chain, might threaten the marine ecosystem. It ensures that the Southern Ocean's living resources are treated as a single ecosystem. CCAMLR identifies protected species, set catch limits, identifies fishing regions, defines closed seasons, regulate fishing methods and establishes fisheries inspection.

- The Protocol on Environmental Protection to the Antarctic Treaty (1991) was negotiated following the failure of the Antarctic minerals convention in 1989 (also known as the Madrid Protocol). The protocol comprises a number of environmental protection measures in a single, legally binding form. Among its provisions, the Protocol:
 - Designates Antarctica as a 'natural reserve, devoted to peace and science'
 - Establishes environmental principles for the conduct of all activities
 - Prohibits mining
 - Subjects all activities to prior assessment of their environmental impacts
- Annexes to the Protocol detail measures relating to environmental impact assessment, conservation of Antarctic fauna and flora, waste disposal, marine pollution and the management of protected areas. (Jackson, 2005)

Legal Summary

Antarctica's legal and political status is ambiguous and subject to dispute (Joyner, 1998). The legal situation in the Antarctic remains clouded by the ambiguity and suspicion of the national claims. Relying on discovery which occurred over a century ago and other special circumstances for justifying Antarctic claims fails to reach the standards for modern international law for acquiring sovereign rights to territory.

Effective occupation is still the key factor which determines legal title to territory. Occupation must be continuous, a government in place which is functioning and controlling. Joyner (1998) argues that physical challenges of Antarctica make effective occupation almost impossible to achieve. Claimant states have been unable to sustain any colonization that might be seen as a permanent settlement. The transient nature of visiting scientific parties are not seen as colonists. Settlement of an Antarctic Territory is essential but not sufficient for sustaining the effectiveness for that occupation.

Antarctic Treaty

The area south of 60° south latitude is governed under legal framework established by the 1959 Antarctic Treaty. As a multilateral accord, the Antarctic treaty is given high marks for its success in maintaining demilitarization and denuclearization of the area, as well as in promoting free scientific research and cooperation and peaceful settlement disputes. The Antarctic treaty has worked well to promote science and provide for exclusively peaceful purposes uses of Antarctica. It accommodates sovereignty claims by sidestepping them and allows for on site, surprise inspections as its means of monitoring and enforcement (Joyner, 1998).

3.2 ANTARCTICA NEW ZEALAND: SELF POLICING

Antarctica New Zealand achieves self policing through a thorough staff selection process. In particular the winter-over staff are subject to a personality profile essentially a physiological test before going to interview (Lindros, 2008). Summer staff are not subject to the tests, due to lesser isolation factors and more staff within Scott Base to interact with. All persons travelling to Antarctica within the Antarctica New Zealand programme must complete a medical examination by a general practitioner including any record of mental illness and current prescribed medicines.

These preventative measures contribute to the quality of persons travelling with the Antarctica New Zealand programme.

Antarctica New Zealand employment agreements have a drug and alcohol testing clause where if they have reasonable grounds for suspecting that an employee is under the influence of illegal drugs or alcohol in the workplace, they may require that person to undergo a non-intrusive drug test. If that person is found to be under the influence of drugs or alcohol while performing their duties it is considered serious misconduct and may result in an instant dismissal. This is clearly in the agreement with explanations and expectations of termination, behaviours and discipline. Role descriptions, hand book, values and mission statements are also conveyed to all persons travelling. Pre-deployment training at Scott Base completes the package with further explanations and practical application from the trainers.

The implications of a lost employment and embarrassment of 'deportation' from Antarctica are totally appropriate given the environment.

Scott Base managers

The Manager Antarctic Programme is currently Erik Barnes, based in Christchurch and is responsible for coordinating the annual event programme and managing operational support in Antarctica. He reports to the CEO, currently Lou Sanson.

3 Scott Base supervisors report to Manager Antarctic Programme from Scott Base:

- Coordinator (also a Justice of the Peace and Coroner)
- Programme Support Supervisor
- Engineering Supervisor

Enforcement

Antarctica's remoteness is its enforcer. Antarctica New Zealand as the facilitator to all programmes provides the transport and logistics to support those programmes. Without this vital link no-one travels and compliance with guidelines and rules appears high. Increasingly employers are managing risk by implementing controls over staff such as drug and alcohol testing to reduce the risk to the organisation.

Employer responsible for workplace

The ACC provisions in New Zealand have long stymied employer compliance but recent Labour court decisions have sent a clear message that risk must be reduced with appropriate controls in place. Injuries or deaths in the workplace are unacceptable.

In June 2005, the commercial fishing company Sealord pleaded guilty and was convicted on two health and safety charges arising from the death of an employee, Hugh Hope, 58. The company was ordered to pay \$195,000 reparation to the family, and was fined \$10,000. Hope had become trapped, with both legs caught up to his hips, in the blades of a fishmeal cooking machine he was cleaning on board the Sealord vessel *Aoraki*, 550kms south of Bluff (Maritime NZ, 2005).

The Maritime Safety Authority investigation into the tragedy found Sealord had not taken all reasonable steps to prevent the accident occurring, and had not provided adequate supervision. Sealord was convicted for failing to take all practicable steps to ensure the safety of its employees, and for failing to ensure employees were adequately trained or supervised, under the Health and Safety in Employment Act.

3.3 SAFETY CULTURE

A 'second generation' of road safety is based on an ethical commitment to saving lives, a refusal by society to accept that deaths and serious injuries are the inevitable result of using our roads. This 'second generation' seeks improvement in roads, vehicles and human behaviour working together. The development of personal and organisational responsibility and cultural values for all decisions and behaviour across the road transport system (Ministry of Transport, 2008).

People must be fully aware of how their actions, decisions, personal and professional impact on their own and others safety. Strong safety culture accepts community values expressed in laws and standards reinforced by compliance agencies.

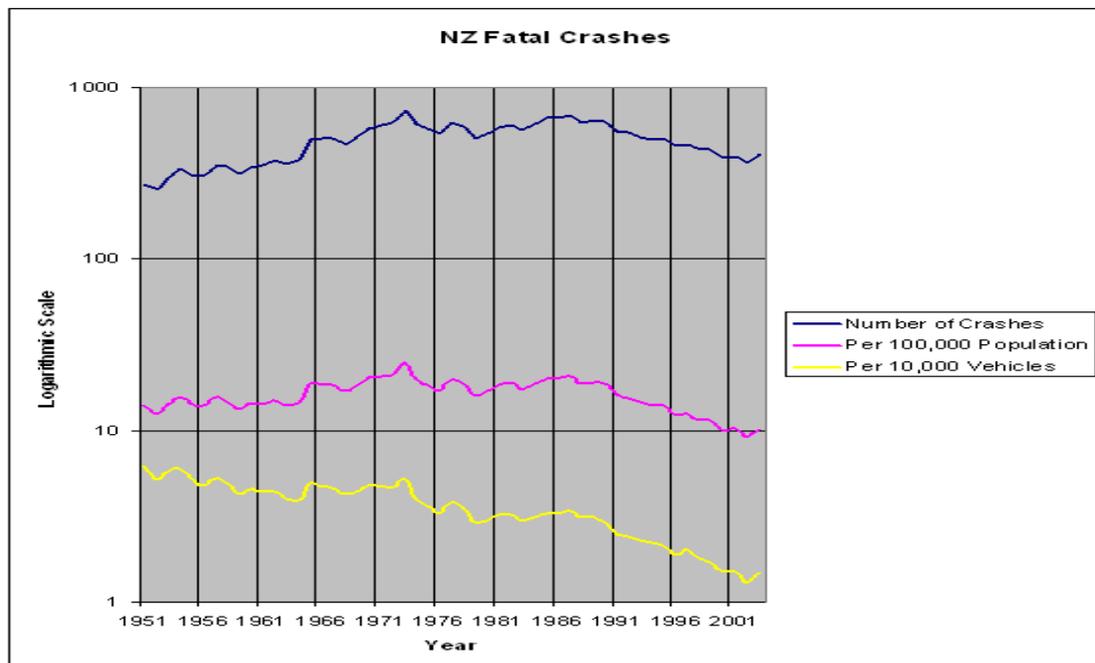


Diagram: (Fast and safe, 2008)

Traffic accidents have been among the leading causes of deaths in OECD countries (Peltzman 1975). With about 16 deaths per 100,000 people, New Zealand had one of the highest road fatality rates in the world (Statistics New Zealand 1998). In an effort to reduce the road fatalities, the Land Transport Safety Authority (LTSA) implemented a Supplementary Road Safety Package (SRSP) in October 1995. It was modelled on a 1989 hard hitting Victorian campaign showing violent car crashes and crashes (Macpherson and Lewis 1998).

The main problem in drink-driving behaviour is that drivers believe that the risk is low. Although it is difficult to envisage that drivers have a low perceived cost of death, the problem lies in the perceived low probability of becoming involved in a fatal accident. Campaigns should actually focus on drivers' probability of being killed in a crash.

Resources should also be directed at increasing the expected cost of risky driving even without becoming involved in an accident. Rotfeld (1999) argues that youths respond more to threats of fines or a loss of licence. This can be accomplished by increasing the penalties or by increasing the perceived probability of being caught for such behaviours.

3.4 MINISTRY OF FOREIGN AFFAIRS - OFFICIAL ANTARCTIC COMMITTEE (OAC)

The Ministry develops New Zealand Antarctic policy. It provides the Chair and the Secretary for the Official Antarctic Committee (OAC), which is comprised of agencies with an interest in Antarctica and the Southern Ocean and through which advice to the Government on major Antarctic policy matters is coordinated. The Ministry, working closely with Antarctica New Zealand, also looks after New Zealand's interests in respect of its claim to the Ross Dependency.

The Ministry administers the Antarctica (Environmental Protection) Act 1994, which requires Environmental Impact Assessments (EIAs) to be prepared for any proposed Antarctic activity (MFAT, 2008).

Current OAC membership:

- MFAT (chair)
- Land Information New Zealand
- NZDF
- Ministry of Economic Development
- Fulbright-Ministry of Research, Science and Technology (MoRST)
- NIWA
- Department of Conservation
- Ministry of Fisheries
- Ministry of Transport
- The Foundation for Research, Science and Technology (FoRST)
- Antarctica New Zealand
- Maritime New Zealand
- Treasury
- Ministry of Tourism
- Ministry for the Environment

Figure: MFAT (Hughes, 2007)

New Zealand's Strategic Interests in Antarctica

The key considerations are Antarctica's proximity to New Zealand, the sovereignty of the Ross Dependency, the gateway for the US and the Italian Antarctic programmes, the unique opportunities for understanding global systems in particular climate change with the ANDRILL project, and the protection of the environment and economic benefit from Antarctic fisheries.

A key component in strengthening the Antarctic Treaty is the discussion of sovereignty which was *modus vivendi* under Article IV, an agreement to disagree on sovereignty.

In May 2002 the Government adopted a new Statement of Strategic Interest in Antarctica, replacing the earlier "Strategic Objective" for Antarctica, agreed in 1995. The Statement guides the development of specific further New Zealand policy for Antarctica. (MFAT, 2008)

In 1995, Cabinet adopted a Strategic Objective for Antarctica which focussed on amongst other issues national security, commitment to the Ross Dependency, economic well-being, international stability and values and ideology. These issues remain relevant and are reflected in the new statement of interest.

Conclusion: MFAT

One of the major issues that MFAT has in the Southern Ocean and Antarctic area is the illegal fishing operations. The RNZAF provide Orion P3 surveillance aircraft to gather intelligence and the Royal New Zealand Navy (RNZN) is purchasing ice strengthened vessels to provide a presence in the Southern Ocean when required. To date MFAT claim that they have not deployed the military to protect our interests in the region. Under the Antarctic Treaty, could New Zealand deploy military assets below the 60° south latitude to protect its assets?

The Police have previously deployed tactical teams of which I was a member on a RNZN vessel in a multi agency effort to support Customs and Fisheries (Operation DRAM - 1994) to the extent of physically boarding ships where there is a perceived risk that the offender may have access to firearms or that the offender may attempt to escape outside New Zealand territorial waters.

It should be considered included into include The New Zealand Police into the above OAC group as consultants to provide stewardship in the event of any police lead response to an accident or incident in the Ross Dependency.

3.5 POLICE SUPPORTING FISHERIES / IMMIGRATION OPERATIONS

There are 3 relevant zones defined in the territorial Sea, Contiguous Zone, and the Exclusive Zone, and Exclusive economic Zone Act 1977. The territorial sea is the inner zone which has an outer limit of 12 nautical miles. The contiguous zone extends from the outer edge of the territorial sea to an outer limit of 24 nautical miles and the exclusive economic zone has an outer limit of 200 nautical miles (Land Information New Zealand, 2008).

All New Zealand law applies within the territorial sea but only certain sections of the Customs and Excise Act and the Immigration Act 1987 can be exercised outside the contiguous zone. Fisheries officers powers extend out to the exclusive economic zone and beyond in some circumstances.

The Immigration Act definition of New Zealand includes the territorial sea of New Zealand, the Ross Dependency and any ice shelf. Under section 137(2)(aa) of this Act the outer limit includes the contiguous zone relating to entering and searching any ship or vessel for the purpose of detecting any offence against this act or apprehending any person whom a deportation order has been made. It permits the exercise of any power that the Police or Customs Officer could exercise if they are satisfied that there are people on board who will commit an offence if they land or will be in New Zealand illegally

As discussed in Territorial sea of Ross Dependency, the Fisheries Act 1996 extends out to an outer limit of 200 nautical miles from New Zealand. Section 198A of this act permits Fisheries Officer to exercise their statutory powers outside New Zealand waters where they must believe on reasonable grounds that a person on board has committed an offence in New Zealand fisheries waters and they commenced that pursuit in New Zealand fisheries waters.

Conclusion: Police supporting other agencies

The geographical limits for the exercise by Police of statutory powers contained in the Customs and Excise Act, Immigration Act and the Fisheries Act depends on the

specific power being exercised. The Fisheries Act has the widest coverage and would by definition include the Ross Dependency. The Immigration Act includes the territorial sea (12 nm) of New Zealand, the Ross Dependency and any ice shelf and includes the contiguous zone (24 nm) for entering and searching any vessel.

Police therefore should be prepared to act in support of any of the above agencies to assist in boarding and searching vessels where there is a reasonable expectation that the offenders could be armed or will attempt to escape.

3.6 BRIEF AND PREPARE NZ POLICE RESPONSE TEAMS

Christchurch Police would provide any initial response team for deployment to Antarctica. Contingency planning for response teams should include briefing on deployment, equipment, communications, logistics, venue layout such as Scott Base and McMurdo, the location of the respective airfields and weather expectations dependent on the time of year.

A non-operational brief i.e. an overview would contribute directly to consideration being given to Police training and operational preparedness.

3.7 SERIOUS ORGANISED CRIME AGENCY (SOCA)

The Serious Organised Crime Agency (SOCA) is an Executive Non-Departmental Public Body sponsored by, but operationally independent from, the Home Office. The Agency has been formed from the amalgamation of the National Crime Squad (NCS), National Criminal Intelligence Service (NCIS), that part of HM Revenue and Customs (HMRC) dealing with drug trafficking and associated criminal finance and a part of UK Immigration dealing with organised immigration crime (UKIS).

SOCA is an intelligence-led agency with law enforcement powers and harm reduction responsibilities. Harm in this context is the damage caused to people and communities by serious organised crime. SOCA plans its priorities, including how it will exercise the functions given to it by statute, and what performance measures it will adopt.

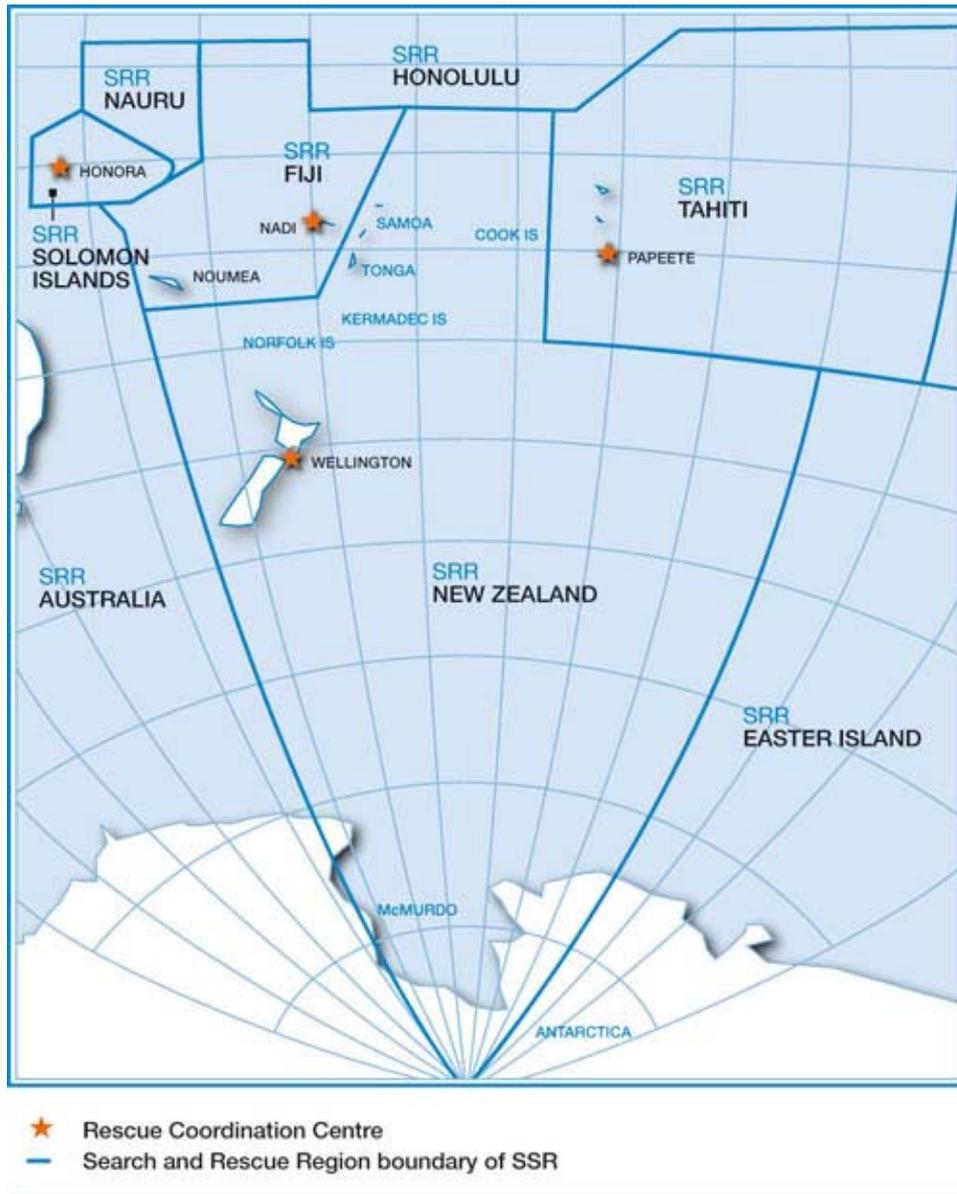
In political / terrorist related kidnaps / hostage taking of a UK national overseas, it may be deemed appropriate by the Foreign & Commonwealth Office (FCO) to send negotiators from New Scotland Yard to support and give advice to the Ambassador or High Commissioner. In a criminal kidnap of a British national overseas i.e. where a financial ransom is demanded by the hostage takers, SOCA would become involved directly or indirectly. It may be that a members of the unit would be deployed or we would task a SOCA liaison officers (45 country posts – worldwide) to make contact with agency investigating and offer advice (considerations). Primacy for the investigations remains that of the country where the incident has occurred.

Through experience in lengthy kidnap / hostage operations overseas involving the taking of nationals from multiple jurisdictions (India / Cambodia / Sierra Leone), diplomacy, experience, trust and skill levels are a prerequisite. Agreed protocols and strategies are pivotal in working to a successful conclusion. Debriefs have always shown that police are better placed to resolve the incident without involvement of Government (Jones, 2008).

3.8 THE NZ SEARCH & RESCUE REGION (RCCNZ)

The Rescue Coordination Centre New Zealand (RCCNZ) is responsible for coordinating all Class III search and rescue in the New Zealand Search and Rescue Region.

This region is one of the largest search and rescue areas in the world. It covers a large part of the Pacific Ocean from the Equator to the Antarctic, and from half way to Australia to half way to Chile. This area amounts to 30 million square kilometres.



3.9 INCIDENTS - CRIME SCENE, LOGISTICS and TRANSPORT

Antarctica New Zealand Incident Management and Pre Plans

This abovementioned is an impressive document which has incorporated 'The New Zealand Coordinated Incident Management Incident System' (CIMS) with a summary and outline. Chapter 5, p23 (Incident Management, 2007).

When an incident occurs an Incident Command is appointed with overall management of incident. A liaison with Police is correctly referred to (p 26). This clearly advocates liaison with the police and therefore consideration should be given to establishing a formal liaison in Christchurch between Antarctica New Zealand and Police. A relationship would promote understanding of each group's roles and responsibilities, the insight particularly enhancing any Police response.

A facilities unit is responsible for layout, set up, maintenance and demobilisation, provide security services as needed.

The Incident Management guide states that 'Most incidents are handled in Antarctica. Christchurch based CEO advised'. (p. 71). For an incident with high significance, a Christchurch based incident management team is established to handle:

- Specialist advice
- Government / other agencies
- Media
- Families

The Christchurch based incident management team meets at Emergency Operations Centre (EOC) and the board chairman and MFAT advised. A Multi Agency Coordination System (MACS) is considered.

- Ant NZ
- RCCNZ
- USAP
- MFAT

Scott Base staff for critical incidents

The AFT / Fire teams are well trained teams that could also be trained to handle critical incidents e.g. threat of suicide and other incidents requiring intervention, until specialists arrived or the incident was resolved.

In a hostage situation crisis intervention is important. In Antarctica the incident will initially have to be handled by Antarctica New Zealand staff. Such an incident is potentially dangerous and Antarctica New Zealand staff cannot be placed at risk to 'rush in and deal with it' which could be a temptation. Such an incident requires a process to be followed so it can be resolved without injury.

The powers of a Special Constable could be inferred to one or more of the supervisors at Scott Base giving them the ability to call upon an AFT / Fire team to assist with any incident until it was resolved or New Zealand Police responded.

Scene preservation

Any serious accident or incident will require police investigation particularly where a death or serious injury has occurred.

Scene of crime

1. Freeze, preserve, secure, document,
2. Leads to successful investigation and prosecution

This is not covered in Antarctica New Zealand incident management guide. Once again the AFT/Fire teams could be trained to effectively deal with the initial scene and preserve it until Police investigators arrive.

This was an issue in the death of Rodney Marks at the South Pole in 2000. He was an Australian astrophysicist wintering over. He died in suspicious circumstances from methanol poisoning either by misadventure, suicide or even murder as the media played out at the time. Post death his body was placed 'on ice' for almost six months until it could be taken to Christchurch where the Coroner decided it was within his jurisdiction. The ensuing New Zealand Police investigation proceeded over six years and the case came before the Coroners Court last year but the decision is still reserved much to the chagrin of the Marks family.

The New Zealand Police investigators were hampered by a lack of cooperation from Raytheon and the National Science Foundation (NSF) at the South Pole no doubt due to civil litigation prevalent in the USA. An internal investigation has not been disclosed, hampering efforts to interview witnesses. A questionnaire forwarded only after long negotiations only received nine replies (Brooker, 2006).

Scene management is crucial to a successful investigation. The only privilege afforded in death is that someone will investigate it and if suspicious or accidental any perpetrators will be brought to justice. Scott Base Fire or AFT teams could be trained to a basic level to accomplish this.

Transport

In the summer season the USAP deploys the C17 Globemaster with a forecasted schedule to cover all necessary seasonal flights.

WINFLY	MAINBODY	EXTENDED SEASON	REVERSE WINFLY	WINFLY MEDI-VAC
20 Aug to 25 Aug	01 Oct to 25 Feb	25 Feb to TBA	17 April to TBA	
5 days			TBA	
2-3 x C17 flights	52 x C17 flights 20 x LC130 flights 6-10 x RNZAF C130 flights		2 x C17 flights	RNZAF Orion P3 C130

Note: In winter the RNZAF are responsible for medi-vac, an option for Police.

The New Zealand Police has a memorandum of understanding with the Royal New Zealand Air Force to provide operational support. This includes:

- Search and Rescue (SAR) operations and training
- Armed Offender Squad (AOS) and Special Tactics Group (STG) operations and training – nationally and internationally
- Civil Defence assistance
- Operational support as required e.g. homicide scene search or access

Any police response to Antarctica will involve either the USAP or the RNZAF to facilitate the travel. Antarctica New Zealand will be intimately involved to provide transport advice and logistical support.

4 Conclusions

4.1 CONCLUSIONS and RECOMMENDATIONS

From the discussions and case studies it is clear that New Zealand has jurisdiction over Antarctica and parts of the Southern Ocean. New Zealand Police were obliged lawfully to respond to the Erebus tragedy. This was successful primarily because Walton had just formed the DVI teams from learning lessons of the rail disaster in New South Wales. Transport and logistics responding to Erebus were arranged with the comparative Antarctica New Zealand agency at the time. Urgency was not a major factor.

New Zealand Police tactical teams can expect to find themselves deployed on Royal New Zealand Naval vessels down to New Zealand territorial waters in the Southern Ocean supporting Fisheries, Immigration or Customs. Illegal fishing vessel could fall into this category. The proposed new Navy patrol vessels could increase surveillance operations with the Fisheries seeking Police support based on intelligence.

Greenpeace, *Sea Sheppard* and the Japanese whalers are likely to have an accident or incident which could result in losing or injuring people though their actions in the Southern Ocean, let's hope that does not occur in New Zealand territorial waters.

The *Rainbow Warrior* is an example of how easily activists/terrorist can infiltrate the country and carry out a bombing. Any well funded and resourced group can travel to any part of the world by sea relatively freely.

Anti Americanism is not currently prominent in the New Zealand media but recent campaigns could re-emerge. It only takes one committed activist such as Neil Roberts or a Timothy McVeigh to cause significant damage. Anti-Americanism is high internationally with terrorist groups vowing to kill Americans at any opportunity. Any activist could be in the Antarctic community and could strike without warning. Imagine a television news flash that international media that have received a call from a person claiming to have taken over the communications room at Scott Base with hostages making anti-American demands. It is likely that international media will arrive in Antarctica before any New Zealand Police response.

Any accident or incident at Scott Base requiring police response will create a state of confusion unless some procedures are established and exercised. A Police liaison should be established in Christchurch with Antarctica New Zealand to communicate, discuss and exercise likely scenarios. Southern Police Communications need to know Antarctica New Zealand's role, organisational structure and contacts in the event of facilitating a response.

This partnership will mitigate the risk to both organisations by making each aware of their respective roles. In the event of an incident requiring intervention at Scott Base, Antarctica New Zealand can reduce risk to staff by further training existing response teams (Fire & AFT) to better handle any such incident, e.g. threat of suicide, a stressed person holding a victim at knife point. The same team could perform initial crime scene duties which were woefully inadequate in the Rodney Marks case (Brooker, 2007). Scott Base supervisors with the position of Special Constables could empower such a team.

The New Zealand Police should be incorporated into the Official Antarctic Committee (OAC). This strategic committee is responsible for examining all Antarctic issues including security. Police are responsible for maintaining security and has intelligence sections that directly contribute. The RAAC component itself should necessitate Police involvement as any lost persons or other death could be the subject of a Police investigation.

International experience shows that Police are better placed to resolve an incident without the involvement of government (Jones, 2008). The Erebus report alluded to problems at the beginning of the response that need to be faced and disposed of (Morgan, 1980). As with any other factor or risk, political interference needs to be managed. By exercising for the worst case scenario, these 'players' will be present at exercises eg a Minister, and the appropriate person used to best manage and resource them.

Even if there is a low perceived risk, there appears to be a general acceptance of the safety culture that will identify, acknowledge and mitigate risk. Contemporary risk management may not identify the various risks as discussed in this paper. Some warned about planes being flown into the World Trade Centre and some forward planners actually put plans in place for rapid evacuation which ultimately reduced significant casualties.

Recognition of the risks, preparation and exercises are the key factors in providing an effective Police response. Unless scenarios are developed in training in line with agreed protocols and thoroughly exercised and debriefed there will be initial stumbling and precious time wasted. We do not want to learn this lesson the hard way, its going to be too embarrassing.

People are the link to conducting the many scientific projects that are integral to our planet. People deserve to be treated with dignity especially when the subject of a crime or accident. Any such incident needs to be responded to as soon as possible, resolved and investigated, the offender identified and prosecuted in the appropriate Court. Police are the most appropriate responders and will be in charge of the incident until resolved and investigated.

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APPENDIX A: Order in Council Providing for Government of Ross Dependency 1923

(Gazette 1923, vol II, No 63 (16 August) p 2211)

Whereas by the British Settlements Act, 1887, it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to establish all such laws and institutions and constitute such Courts and officers as may appear to His Majesty in Council to be necessary for the peace, order, and good government of His Majesty's subjects and others within any British settlement:

And whereas the coasts of the Ross Sea, with the islands and territories adjacent thereto, between the 160th degree of east longitude and the 150th degree of west longitude, which are situated south of the 60th degree of south latitude, are a British settlement within the meaning of the said Act:

And whereas it is expedient that provision should be made for the government thereof:

Now, therefore, His Majesty, by virtue and in exercise of the powers by the said Act, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:

- I. From and after the publication of this Order in the Government Gazette of the Dominion of New Zealand, that part of His Majesty's Dominions in the Antarctic seas which comprises all the islands and territories between the 160th degree of east longitude and the 150th degree of west longitude which are situated south of the 60th degree of south latitude shall be named the Ross Dependency.
- II. From and after the publication as aforesaid the Governor-General and Commander-in-Chief of the Dominion of New Zealand for the time being (hereinafter called "the Governor") shall be the Governor of the Ross Dependency; and all the powers and authorities which by this Order are given and granted to the Governor for the time being of the Ross Dependency are hereby vested in him.
- III. In the event of the death or incapacity of the said Governor-General and Commander-in-Chief of the Dominion of New Zealand, or in the event of his absence from the said Dominion, the officer for the time being administering the government of the Dominion shall be Governor for the time being of the Ross Dependency.
- IV. The said Governor is further authorized and empowered to make all such rules and regulations as may lawfully be made by His Majesty's authority for the peace, order, and good government of the said Dependency, subject, nevertheless, to any instructions which he may from time to time receive from His Majesty or through a Secretary of State.
- V. The Governor is authorized to make and execute, on His Majesty's behalf, grants and dispositions of any lands which may lawfully be granted or disposed of by His Majesty within the said Dependency, in conformity with such rules and regulations as may from time to time be in force in the Dependency.

APPENDIX B Ross Dependency Regulations 1923

(Gazette 1923, vol III, No 80 (15 November) p 2815)

Whereas by His Majesty's Order in Council under the British Settlements Act (Imperial), 1887, dated the thirtieth day of July, one thousand nine hundred and twenty-three, I, John Rushworth, Viscount Jellicoe, Governor-General of the Dominion of New Zealand, was appointed Governor of the Ross Dependency, and all the powers and authorities which by such Order were given and granted to the Governor for the time being of such dependency were vested in me, and I was further authorized and empowered to make all such rules and regulations as may lawfully be made by His Majesty's authority for the peace, order, and good government of the said dependency:

Now, therefore, I, acting as Governor of the said dependency, in pursuance of the powers vested in me by the said Order in Council or otherwise, do make the following regulations:-

- I. The laws and usages in force in the Dominion of New Zealand at this date shall be from this date in force in the Ross Dependency in all respects as if the same had been enacted or in force in such dependency by regulation or otherwise, except in so far as the same are inapplicable to the conditions of such dependency.
- II. All laws hereafter enacted by the Legislature of the said Dominion shall, as far as applicable, have the same force and effect as if they had been duly enacted for such dependency, unless disallowed or modified by myself or the Governor for the time being of such dependency.
- III. All persons appointed by myself or the Governor for the time being of such dependency shall have such power and authority as shall be granted them in due course of law, and may be empowered to do such things as are necessary or desirable to ensure that the said laws are duly observed and complied with in every respect, and to do all things necessary or expedient for the peace, order, and good government of such dependency, and to safeguard and preserve His Majesty's rights and sovereignty over and in respect of such dependency.

As witness my hand this 14th day of November, 1923.

JELICOE, Governor.

APPENDIX C Antarctic Treaty (Relevant Provisions)

(Washington, 1 December 1959; NZTS 1961 No 12)

Schedule 1

[Section 2\(1\)](#)

The Antarctic Treaty

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognising that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

Article I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.
2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purpose.

Article II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty.

Article III

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in [Article II](#) of the present Treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

- (a) Information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;
- (b) Scientific personnel shall be exchanged in Antarctica between expeditions and stations;
- (c) Scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialised Agencies of the United Nations and other international organisations having a scientific or technical interest in Antarctica.

Article IV

1. Nothing contained in the present Treaty shall be interpreted as:

- (a) A renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
- (b) A renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
- (c) Prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State's right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force.

Article V

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under [Article IX](#) are parties, the rules established under such agreements shall apply in Antarctica.

Article VI

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

Article VII

1. In order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in [Article IX](#) of the Treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.
2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.
3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.
4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.
5. Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of
 - (a) All expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organised in or proceeding from its territory;
 - (b) All stations in Antarctica occupied by its nationals; and
 - (c) Any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of [Article I](#) of the present Treaty.

Article VIII

1. In order to facilitate the exercise of their functions under the present Treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of [Article VII](#) and scientific personnel exchanged under subparagraph 1(b) of [Article III](#) of the Treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.
2. Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of [Article IX](#), the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

Article IX

1. Representatives of the Contracting Parties named in the preamble to the present Treaty shall meet at the City of Canberra within 2 months after the date of entry into force of the Treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the Treaty, including measures regarding:

- (a) Use of Antarctica for peaceful purposes only;
- (b) Facilitation of scientific research in Antarctica;
- (c) Facilitation of international scientific cooperation in Antarctica;
- (d) Facilitation of the exercise of the rights of inspection provided for in [Article VII](#) of the Treaty;
- (e) Questions relating to the exercise of jurisdiction in Antarctica;
- (f) Preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present Treaty by accession under [Article XIII](#) shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the dispatch of a scientific expedition.

3. Reports from the observers referred to in [Article VII](#) of the present Treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present Treaty may be exercised as from the date of entry into force of the Treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

Article X

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present Treaty.

Article XI

1. If any dispute arises between 2 or more of the Contracting Parties concerning the interpretation or application of the present Treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

Article XII

1.

- (a) The present Treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under [Article IX](#). Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.
- (b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of 2 years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1(a) of this Article shall be deemed to have withdrawn from the present Treaty on the date of the expiration of such period.

2.

- (a) If after the expiration of 30 years from the date of entry into force of the present Treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under [Article IX](#) so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the Treaty.
- (b) Any modification or amendment to the present Treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under [Article IX](#), shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.
- (c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1(a) of this Article within a period of 2 years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present Treaty; and such withdrawal shall take effect 2 years after the receipt of the notice by the depositary Government.

Article XIII

1. The present Treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by

any other State which may be invited to accede to the Treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under [Article IX](#) of the Treaty.

2. Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional processes.
3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary government.
4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the Treaty and of any modification or amendment thereto.
5. Upon the deposit of instruments of ratification by all the signatory States, the present Treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the Treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.
6. The present Treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

Article XIV

The present Treaty, done in the English, French, Russian, and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

In witness whereof, the undersigned Plenipotentiaries, duly authorised, have signed the present Treaty.

Done at Washington this 1st day of December 1959.

[Here follow the signatures.]

Hist.

The headings "Schedules" and "Schedule 1" were substituted for the original heading "Schedule" by s3(b) of the Antarctica Amendment Act 1970.

Appendix D: Antarctica Act 1960

Public Act 1960 No 47

An Act to confer jurisdiction on the Courts of New Zealand to deal with crimes committed in the Ross Dependency and certain other parts of Antarctica, and to restrict the jurisdiction of the Courts in respect of acts or omissions in Antarctica of certain nationals of other countries

1 Short Title and commencement

- (1) This Act may be cited as the Antarctica Act 1960.
- (2) Sections [4 to 6](#) of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

{ Editorial Note: s4 - s6 came into force on 27 June 1961 by SR 1961/72. }

- (3) Except as provided in subsection (2) of this section, this Act shall come into force on its passing.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Antarctica means the area south of 60 degrees south latitude, including all ice shelves in that area:

Exchanged scientist means a person exchanged pursuant to subparagraph (b) of paragraph 1 of [Article III](#) of the Treaty (which relates to the exchange of scientific personnel between expeditions and stations in Antarctica):

New Zealand aircraft means any aircraft that is registered or required to be registered in New Zealand under the [\[\[Civil Aviation Act 1990\]\]](#); and includes any aircraft for the time being used as an aircraft of any of the armed forces of New Zealand:

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of any of the armed forces of New Zealand:

[Observer means an observer designated as such under [Article VII\(1\)](#) of the Treaty or under [Article 14\(2\)](#) of the Protocol on Environmental Protection to the Treaty, a copy of the English text of which is set out in the [Schedule 2](#) to the Antarctica (Environmental Protection) Act 1994:]

Treaty means the Antarctic Treaty, signed at Washington on the 1st day of December 1959, of which a copy is set out in the [\[Schedule 1\]](#) to this Act.

- (2) For the purposes of this Act, a person shall be deemed to be ordinarily resident in New Zealand if—
 - (a) His home is in New Zealand; or

(b) He is residing in New Zealand with the intention of residing therein indefinitely; or

(c) Having resided in New Zealand with the intention of establishing his home therein, or with the intention of residing in New Zealand indefinitely, he is outside New Zealand but has an intention to return to establish his home therein or to reside in New Zealand indefinitely.

Status Compendium

Hist.

“New Zealand aircraft”: Reference to “Civil Aviation Act 1990” substituted for reference to “Civil Aviation Act 1964” on 1 September 1990 by [Civil Aviation Act 1990](#) (1990 No 98), s101(1) & 1924 No 11, s21(1).

Hist.

“New Zealand aircraft”: Reference to “Civil Aviation Act 1964” substituted for reference to “Civil Aviation Act 1948” being the corresponding enactment, on 17 November 1964 by Civil Aviation Act 1964 (1964 No 68), s34 & 1924 No 11, s21(1).

Hist.

“Observer”: Definition omitted and substituted on 23 January 1998 by [Antarctica \(Environmental Protection\) Act 1994](#) (1994 No 119), s56(1) & SR 1998/1/2. The omitted definition is listed below for reference.

“ ‘Observer’ means an observer designated as such under paragraph 1 of Article VII of the Treaty (which relates to the appointment of observers to carry out inspections in Antarctica):”

Hist.

“Treaty”: Definition, omitted word “Schedule” and substituted words “Schedule 1” by s3(a) of the Antarctica Amendment Act 1970.

3 Crimes committed in the Ross Dependency or in certain other parts of Antarctica

(1) This section applies to any act done or omitted—

- (a) In the Ross Dependency, by any person; or
- (b) In any part of Antarctica, other than the Ross Dependency, that is not within the jurisdiction of any country, by any person who is a New Zealand citizen or a person ordinarily resident in New Zealand.

(2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment, whether passed before or after the passing of this Act, he commits a crime and is liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person who,—

- (a) Not being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed a crime in the Ross Dependency; or
- (b) Being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed, in the Ross Dependency, a crime on board any ship or aircraft which is not a New Zealand ship or a New Zealand aircraft; or
- (c) Being a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed a crime in any other part of Antarctica, otherwise than on board a New Zealand ship or a New Zealand aircraft—

shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted:

Provided that a person so charged may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

[Status Compendium](#)

[4 Crimes committed by certain New Zealand citizens in other parts of Antarctica](#)

(1) This section applies to any act done or omitted in any part of Antarctica, other than the Ross Dependency, that is within the jurisdiction of any country by any New Zealand citizen who is an observer or exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in that part of Antarctica for the purpose of exercising his functions.

(2) Subject to the provisions of this Act, where any person does or omits any act to which this section applies, and that act or omission would, if it occurred in New Zealand, be a crime under any enactment, whether passed before or after the commencement of this section, he commits a crime and is liable to be proceeded against and punished in the same manner in all respects as if the act or omission had occurred in New Zealand; and the Courts of New Zealand shall have jurisdiction accordingly.

(3) The provisions of subsection (3) of [section 3](#) of this Act, so far as they are applicable, shall apply to proceedings for the trial and punishment of any person in respect of any act or omission to which this section applies.

[Status Compendium](#)

[5 Restriction of jurisdiction over certain nationals of other countries](#)

(1) Notwithstanding anything in [section 3](#) of this Act or in any other enactment (whether passed before or after the commencement of this section) or in any rule of

law, but subject to subsection (1) of [section 7](#) of this Act, the Courts of New Zealand shall not have any jurisdiction, whether civil or criminal, in respect of any act done or omitted by any person who is a national of any Contracting Party to the Treaty, other than New Zealand, and who is an observer or exchanged scientist or a member of the staff accompanying any observer or exchanged scientist, while he is in any part of Antarctica, including the Ross Dependency, for the purpose of exercising his functions.

(2) In respect of any act or omission to which this section applies, the Contracting Party of which the person who did or omitted the act is a national may waive any immunity of that person under this section; and thereupon, to the extent of the waiver, the Courts of New Zealand shall have such jurisdiction as they would have had if subsection (1) of this section had not been passed.

[Status Compendium](#)

[\[6 Certificate of Minister of Foreign Affairs and Trade to be evidence of certain facts](#)

If in any proceedings there arises any question whether or not any person is or was at any time an observer or exchanged scientist, or a member of the staff accompanying any observer or exchanged scientist, within the meaning of this Act, or whether or not any immunity has been waived under [section 5](#) of this Act, a certificate issued by the Minister of Foreign Affairs and Trade stating any fact relevant to that question shall be conclusive evidence of that fact.]

[7 Saving of jurisdiction otherwise than under this Act](#)

(1) Nothing in this Act shall limit, affect, or extend the jurisdiction of any New Zealand Court under any enactment or rule of law in respect of acts done or omitted on the high seas within Antarctica.

(2) Except as provided in subsection (3) of [section 3](#) of this Act, nothing in that section or in [section 4](#) of this Act shall limit or affect the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond New Zealand.